

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 14-61196-CV-COHN/SELTZER**

SECURITIES AND EXCHANGE :
COMMISSION, :
 Plaintiff. :
v. :
RICHARD A. ALTOMARE, :
 Defendant. :

_____ /

**UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT OF PERMANENT
INJUNCTION AND NOTICE OF FILING CONSENT**

Plaintiff Securities and Exchange Commission and Defendant Richard A. Altomare, through undersigned counsel, file this Unopposed Motion for entry of Final Judgment. The parties have reached an agreement that would resolve this matter in its entirety.

This matter had been stayed pending final resolution of the Defendant’s criminal appeal (D.E. 23). The Defendant filed in the U.S. Supreme Court for writ of certiorari following the Eleventh Circuit’s affirmance of his conviction. That application was denied. *United States v. Altomare*, 673 F. App’x 956 (11th Cir. Dec 22, 2016), *cert denied*, No. 16-1412, 2017 WL 2311853 (U.S. June 26, 2017). The parties had previously agreed that upon receipt of notice of finality of the certiorari proceeding, they would notify the Court and at that time request that the stay be lifted. (D.E. 29).

Mr. Altomare has signed a Consent to the Final Judgment of Permanent Injunction and Other Relief, which is attached hereto as Exhibit A. The Defendant has also consented to the entry of the attached proposed Order Granting the Commission's Motion for Final Judgment ("Final Judgment"). Accordingly, the Commission respectfully requests that the Court enter the unopposed Final Judgment, which will entirely resolve the Commission's case.

Dated: September 18, 2017

Respectfully submitted,

By: /s/ Wilfredo Fernandez
Wilfredo Fernandez
Senior Trial Counsel
Fla. Bar No. 142859
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6376
Facsimile: (305) 536-4154
E-mail: Fernandezw@sec.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 18, 2017, the above document was filed electronically with the Clerk of Court using CM/ECF. I also certify that the above document is being served this day on all counsel of record or *pro se* parties identified on the Service List below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of record or *pro se* parties who are not authorized to receive electronically Notice of Electronic Filing.

/s/ Wilfredo Fernandez
Wilfredo Fernandez

SERVICE LIST

Securities and Exchange Commission v Altomare
Case No. 14-cv-61196
United States District Court, Southern District of Florida

Richard A. Altomare
4904 Bocaire Boulevard
Boca Raton, FL 33487

Pro se

Via First Class Mail

Richard Klugh, Esq.
25 S.E. 2nd Avenue, Suite 1100
Miami, FL 33131
Telephone: (305) 536-1191
Facsimile: (305) 536-2170

Via First Class Mail

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 14-60240-CIV-COHN/SELTZER

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD A. ALTOMARE,

Defendant.

CONSENT OF DEFENDANT RICHARD A. ALTOMARE

1. Defendant Richard A. Altomare (“Defendant”) acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has been convicted after trial of criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Richard A. Altomare*, 14-60240-CR-COHN (S.D. Fla.), defendant Altomare was convicted of violations of mail fraud and securities fraud, in violation of 18 U.S.C. § 1341 and 15 U.S.C. § 78j. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v Richard A. Altomare*, 14-60240-CR-Cohn/Seltzer.

3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; and

EXHIBIT

A

(b) permanently bars Defendant from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or

representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the conviction for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the

complaint, or that this Consent contains no admission of the allegations; and (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

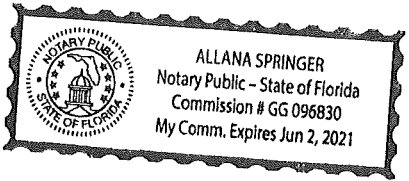
Dated: 7/18/17

Richard A. Altomare
Richard A. Altomare

STATE OF Florida)
COUNTY OF Palm Beach)

ss:

On this 18th day of July, 2017, before me personally appeared Richard A. Altomare, who [*check one*] () is personally known to me, or () produced a FL DRIVER'S LICENSE driver's license bearing his name and photograph as identification, and who executed this Consent, and acknowledged to me that he executed the same.



[Signature]
Notary Public
Commission Expires: 6/2/21

Approved as to form:

[Signature]

Richard C. Klugh, Esq.
25 S.E. 2nd Avenue, Suite 1100
Miami, Florida 33131
(305) 536-1191 - Office
(305) 536-2170 - Fax
rickklu@aol.com
Attorney for Defendant Richard A. Altomare,

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 14-60240-CIV-COHN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD A. ALTOMARE,

Defendant.

FINAL JUDGMENT AS TO DEFENDANT RICHARD A. ALTOMARE

The Securities and Exchange Commission having filed a Complaint and Defendant Richard A. Altomare, having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, by directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

PENNY STOCK BAR

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

SO ORDERED.

In Miami, Florida, on this _____ day of _____, 2017.

JAMES I. COHN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 14-60240-CIV-COHN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD A. ALTOMARE,

Defendant.

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I.

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- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, by directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

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IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

SO ORDERED.

In Miami, Florida, on this _____ day of _____, 2017.

JAMES I. COHN
UNITED STATES DISTRICT JUDGE