

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-23572-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PEDRO FORT BERBEL, et al.,

Defendants and Relief Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT
OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANTS
PEDRO FORT BERBEL AND FORT MARKETING GROUP, LLC**

THIS MATTER is before the Court on Plaintiff Securities and Exchange Commission's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendants Pedro Fort Berbel and Fort Marketing Group, LLC ("Fort Marketing," and, collectively with Berbel, "Defendants"). Having considered the motion and the entire record, the Court enters the following order granting the Plaintiff's motion:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the Defendants and the subject matter of this action. Venue is proper in the Southern District of Florida.
2. On December 22, 2017, the Defendants and Relief Defendant Sibades LLC moved to dismiss, which the Court denied on February 27, 2018.
3. On March 13, 2018, Defendants and Sibades moved for an enlargement of time to answer the complaint, which the Court granted, setting a deadline of April 13, 2018.
4. No answer was filed, and on April 25, 2018, the Court directed the clerk to enter default against the Defendants and Sibades, and the clerk did so the next day.

5. On June 13, 2018, an attorney entered his appearance on behalf of Berbel and filed a motion for the admission pro hac vice of two other attorneys, which the Court granted on June 29, 2018.

6. Neither Berbel, Fort Marketing, nor Sibades has sought to lift the default or has otherwise responded to the complaint.

7. By virtue of their default and failure to respond to the complaint, Defendants and Sibades are deemed to have admitted the allegations of the complaint, and liability is established against them. *See SEC v. Abatement Corp. Holding Co. Ltd.*, 2014 WL 5488760, *1 (S.D. Fla. Oct. 29, 2014). Accordingly, the Court finds Defendants committed the violations alleged in the Complaint and that Sibades received funds to which it was not entitled.

9. Berbel is not an infant or an incompetent person, has no guardian, committee, conservator or other such person appearing on his behalf, and is not on active duty in the United States military.

Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendants is **GRANTED**. Default Judgment is entered against Defendants as follows:

I.

SECTION 5 OF THE SECURITIES ACT OF 1933 (“SECURITIES ACT”)

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

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 Final Judgment by personal service or otherwise: (a) Defendants’

officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

SECTION 17(a) OF THE SECURITIES ACT

IT IS FURTHER ORDERED AND ADJUDGED that Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment in or offering of securities,
- (B) the registration status of such offering or of such securities,
- (C) the prospects for success of any product or company,
- (D) the use of investor funds; or
- (E) the misappropriation of investor funds or investment proceeds.

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 Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934 (“EXCHANGE ACT”) AND EXCHANGE ACT RULE 10B-5

IT IS FURTHER ORDERED AND ADJUDGED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the 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, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment in or offering of securities,

- (B) the registration status of such offering or of such securities,
- (C) the prospects for success of any product or company,
- (D) the use of investor funds; or
- (E) the misappropriation of investor funds or investment proceeds.

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 Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

CONDUCT BASED INJUNCTION

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Berbel is prohibited from, directly or indirectly, including through any entity he owns or controls (1) participating in the issuance, offer, purchase or sale of any securities, except for transactions involving his own personal brokerage account, and (2) participating in the management, administration, supervision of, or otherwise exercising any control over, any commercial enterprise or project that issues, purchases or sells securities.

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 Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

V.

DISGORGEMENT AND PREJUDGMENT INTEREST

IT IS FURTHER ORDERED AND ADJUDGED that Defendants and Sibades shall pay disgorgement of ill-gotten gains and prejudgment interest, and Defendants shall pay a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission to be made within 90 days of the date of this Order. Prejudgment interest shall be calculated from March 1, 2016, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalty, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure.

VI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and over Defendants and Sibades in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable

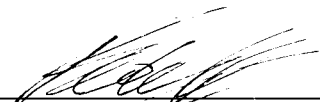
application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

VII.

RULE 54(b) CERTIFICATION

IT IS FURTHER ORDERED AND ADJUDGED that there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED in Chamber at Miami, Florida, this 5th day of March, 2018.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

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