UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ADMINISTRATIVE PROCEEDING
File No. 3-15628

In the Matter of **DANIEL IMPERATO,** **Respondent.**	**MOTION FOR SUMMARY DISPOSITION**

In accordance with the Order entered in this matter on January 10, 2014, the Division of Enforcement ("Division") submits this Motion for Summary Disposition against Respondent Daniel Imperato ("Imperato" or "Respondent")[1] and would respectfully show as follows:

I. Relevant Litigation History

On November 27, 2013, the Securities and Exchange Commission ("Commission") initiated public administrative proceedings pursuant to Section 15(b) of the Exchange Act ("Exchange Act") against Imperato, in which the Division alleged, among other things, that, on November 8, 2013, a final judgment was entered against him, permanently enjoining him from future violations of certain provisions of the Securities Act of 1933 ("Securities Act"), the Exchange Act, and the Investment Company Act of 1940. Order Instituting Proceedings ("OIP") at 1.

The Commission initiated these proceedings for three reasons: (1) to determine whether the allegations set forth in the OIP are true; (2) to afford Imperato an opportunity to establish any defenses to such allegations; and (3) to determine what, if any, remedial action is appropriate in the public interest against Imperato pursuant to Section 15(b) of the Exchange Act. *Id.* at 2.

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[1] This motion is supported by evidence in the attached Appendix. Reference to the Appendix is by page number using the format App. at ___ in the lower left corner.

As set forth below, the Division asserts that it is entitled to summary disposition against Imperato as a matter of law because it is beyond dispute that the aforementioned final judgment was entered and that remedial action against Imperato is appropriate in the public interest.

II. The Standard for Summary Disposition

Under Rule 250(b) of the Commission's Rules of Practice, a motion for summary disposition may be granted if there is no genuine issue as to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. 17 C.F.R. § 201.250(a).

The Commission modeled Rule of Practice 250 on Rule 56 of the Federal Rules of Civil Procedure. *Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010). By analogy to Rule 56, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon mere allegations or denials of its pleadings. *Id.* at 587.

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), 92

SEC Docket 2104, 2111-12 (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *See John S. Brownson*, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12.

III. The Facts are beyond Reasonable Dispute

A. Imperiali engaged in a fraudulent securities offering.

On October 8, 2013, United States District Judge Kenneth L. Ryskamp entered an Order granting summary judgment against Imperato in *Securities and Exchange Commission v. Imperiali, Inc., et al.*, Civil Action Number 9:12-cv-80021-KLR, in the United States District Court for the Southern District of Florida. App. at 13; 15-16. Judge Ryskamp found the following facts: (1) Imperato engaged in a fraudulent scheme to lure investors to purchase securities issued by his company Imperiali, Inc. by "knowingly making blatantly false and deceptive material statements in press releases and Private Placement Memoranda" and Imperiali SEC filings [App. at 8]; (2) in the scheme, "Imperiali sold more than 2,362,500 shares of common stock to at least 26 investors in at least 18 states," raising $2,493,785 from at least November 2005 through at least August 2007 [App. at 2, 6, 39]; and (3) Defendant Imperato controlled Imperiali and received the majority of the stock-sale proceeds [App. at 2; 4-5].

B. The District Court permanently enjoined Imperato in November 2013.

On November 8, 2013, United States District Judge Kenneth L. Ryskamp entered a final judgment against Imperato, permanently enjoining him from future violations of Sections 5 and 17 of the Securities Act of 1933 ("Securities Act"), Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 15(a) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, 13b2-2, and 13a-14, thereunder, and Section 34(b) of the Investment Company Act of 1940, in the

civil action entitled *Securities and Exchange Commission v. Imperiali, Inc., et al.*, Civil Action Number 9:12-cv-80021-KLR, in the United States District Court for the Southern District of Florida. A true and correct copy of the final judgment is filed herewith. App at 18-27.

C. The District Court found that Imperato was a broker.

While engaged in the misconduct giving rise to the permanent injunction, Imperato was acting as a broker. Judge Ryskamp found that the "SEC has provided sufficient undisputed proof that Imperato was acting as a 'broker' in that he 'personally solicited investors [and] served as the 'closer' for the sales staff he hired, speaking directly with their sales leads to negotiate the stock price and complete the sale." App. at 10.

IV. Sanctions are Appropriate against Imperato under Exchange Act Section 15(b)

Exchange Section 15(b)(6)(A) provides that the Commission may sanction any person who incurred a securities-related injunction if the person was associated with a broker at the time of the misconduct giving rise to the injunction and if it "is in the public interest." 15 U.S.C. 78o(b)(6)(A). The considerations that are relevant in making a public-interest determination include the following factors, among others:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of *scienter* involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 91 *(1981).*

Applying the *Steadman* factors to Imperato establishes that it is in the public interest to sanction him. His misconduct was egregious. He defrauded at least 26 investors of more than $2.4

million. His misconduct was not isolated, but occurred at least 26 times. Imperato acted with a high degree of *scienter*. Indeed, the District Court found that he deceived investors, not merely recklessly, but *knowingly*. Imperato has not recognized the wrongful nature of his conduct. On the contrary, he claims to be the blameless victim of a conspiracy. App. at 33. Finally, Imperato's occupation as an Imperiali associate will present opportunities for future violations. He admitted in the District Court case that he remains associated with Imperiali. App. at 28. For these reasons, it is in the public interest to sanction Imperato.

V. The Full Range of Bars Should Be Imposed against Imperato

The Commission has authority under Exchange Act Section 15(b) to sanction persons, such as Imperato, who act as unregistered brokers. *See Edward J. Driving Hawk*, Initial Decision Release No. 399, n. 4 (July 7, 2010). The Division requests that Imperato be barred under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. 111-203, H.R. 4173 (July 21, 2010), which modified Exchange Act Section 15(b)(6) [15 U.S.C. § 78o(b)(6)] to allow the Commission to bar a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or from participating in an offering of penny stock. *See John W. Lawton,* Advisers Act Release No. 3513 at 8 (Dec. 13, 2012); *Omar Ali Rizvi*, Initial Decision Release No. 479 (Jan. 7, 2013) (penny-stock bar).

The Dodd-Frank bar provisions apply to Imperato even though they were enacted after his misconduct. *John W. Lawton*, Advisers Act Release No. 3513 at 16. ("[W]e find that collateral bars imposed pursuant to Section 925 of Dodd-Frank are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct because such bars are prospective remedies whose purpose is to protect the investing public from future harm.").

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DANIEL IMPERATO,
Respondent.

APPENDIX IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-80021-Civ-Ryskamp/Hopkins

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

IMPERIALI, INC., et al.,

Defendants.
_____/

REPORT AND RECOMMENDATION

THIS CAUSE has come before this Court upon an Order referring all pre-trial matters to the undersigned United States Magistrate Judge for appropriate disposition. (DE 19, 35). The Court has before it Plaintiff's Motion for Summary Judgment (DE 105), Defendant's Response (DE 109), and Plaintiff's Reply (DE 114).[1] For the reasons stated below, the undersigned recommends that Plaintiff's Motion for Summary Judgment (DE 105) be **GRANTED**.

BACKGROUND

In the Complaint, the Securities and Exchange Commission (SEC) alleges that Defendants conspired to carry out a securities fraud scheme, whereby Defendants Charles Fiscina and Lawrence A. O'Donnell worked with *pro se* Defendant Daniel Imperato to deceive investors into buying stock

[1] Also pending is Plaintiff's Motion to Strike subsequent filings by *pro se* Defendant Daniel Imperato. (DE 115). Specifically, the SEC seeks to strike docket entries 111, 112, and 113 because Defendant Imperato did not seek leave of Court before filing these untimely supplemental response papers. This Court has considered these filings but finds them to be unpersuasive.

in Imperato's shell corporation, Defendant Imperiali, Inc., thereby violating a number of securities laws. (DE 1).[2] The SEC claims that Imperiali, Inc. had "virtually no assets or operations," but the individual Defendants collaborated to entice investors with a series of lies about the company and its assets, by making false filings with the SEC, issuing false audit reports on the company's financial statements, and disseminating false press releases and prospectuses to potential investors.

Specifically, the SEC contends that Imperato had complete control over Imperiali in that he owned most of the company's stock, and at various times served as its board chairman, president and CEO. *See* SEC's Statement of Material Facts ("SOF") at ¶ 2 (DE 105-1); *see also* Appendix at page 185. The appendix of documents supporting the SEC's Statement of Material Facts (DE 105-2 through DE 105-17) shows that Imperato (1) hired and fired the company's employees, attorneys, accountants, and auditors; (2) controlled the company's bank accounts; and (3) drafted and approved the company's fraudulent press releases and SEC filings. *See* Appendix at pages 8-9, 19-20, 46, 92, 182, 192-93, 200.

According to the SEC, from November 2005 through October 2006, Imperiali, Inc. engaged in unregistered stock offerings, which raised money from a variety of investors. *See* SOF at ¶3, 10. The SEC has provided sworn witness testimony that Imperato directly solicited investors (*see* Appendix at pages 93, 185-186), even though he was never registered as a broker or dealer, and that he hired a sales team to "cold call" potential investors. *See* SOF at ¶ 3. The SEC has produced copies of Private Placement Memoranda ("PPM") that were filed during this time which contain untrue and misleading statements, including the names of people who purportedly served on

[2] In its seventeen-count Complaint, the SEC alleges violations of the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*), and the Investment Company Act of 1940 (15.U.S.C. § 80a-1 *et seq.*).

Imperiali's board of directors, but in reality, did not. Moreover, excerpts of Imperato's rambling testimony (*see* Appendix at pages 26-27; 63-67) reveal that Imperiali's "portfolio companies" were falsely valued as multi-million dollar enterprises, but in reality were merely shell corporations that had no operations or employees and did not produce any revenue. These false representations were perpetuated through press releases distributed to investors and potential investors over the internet. *See* Appendix at page 224.

In addition, the SEC's Appendix includes documents that Defendants caused to be filed with the SEC, including a registration statement filed on October 19, 2006, whch misrepresents the members of Imperiali's board of directors and includes an audit report from Defendant O'Donnell, confirming the veracity of the untrue statements therein. S*ee* Appendix at pages 225-229. Similarly, Imperiali Inc.'s filings with the SEC in early 2007 contain contradictions about the type of stock that had purportedly been issued in exchange for projects owned by Imperiali Organization, even though Imperiali Inc. never acquired these projects and never issued stock for them. *See* Appendix at pages 24-25; 28; 234-237; 252-255.

According to the SEC, Imperiali's March 2, 2007 filing contained a "new version" of its August 31, 2006 financial statements. Specifically, the SEC charges that "Imperato directed Fiscina to alter the financial statements to reflect an investment in Imperiali Organization common stock valued at $3.5 million" even though this investment had never occurred. *See* Appendix at pages 230; 238-241. Defendants then used this "false entry [to] inflate[] Imperiali's assets by more than 574% from $609,541.00 to $4,109,541.00." *See* SOF at ¶ 15.

A third version of Imperiali's August 31, 2006 financial statement was filed with the SEC on March 21, 2007. This version deleted any reference of an investment in Imperiali Organization

and instead falsely asserted investments valued at $3.5 million in two non-existent companies. *See* Appendix at page 243. Each revised version of the financial statements included O'Donnell's original audit report.

The SEC also contends that over a two-year period, Defendants repeatedly filed quarterly and annual reports that contained false statements regarding stock that Imperiali claimed it owned (but did not) and that Imperiali grossly exaggerated the value of the assets listed on the company's balance sheet. *See* SOF at ¶ 18-26. In October 2007, Defendant O'Donnell issued a false audit report, certifying that the company's financial statements (which showed that Imperiali held assets valued at $70 million) accurately represented its financial position and were in compliance with generally accepted accounting principles. *See* SOF at ¶ 27-32. On the contrary, there was no evidence that Imperiali actually owned the stock it claimed to, nor was there any basis for the value attributed to it. *Id.*

The SEC seeks a variety of civil penalties against the Defendants.[3] Neither Defendant O'Donnell, nor the corporate Defendant (Imperiali) have ever appeared in this action.[4] Only *pro se* Defendant Imperato has actively defended against this lawsuit. However, Imperato's response papers (DE 109) primarily concern his misplaced reliance on a clerical mistake whereby the clerk's office erroneously designated this case as "closed."[5] In any event, even if this Court were to consider

[3] Notably, the claims against Defendant Fiscina have been resolved based on a final consent judgment he entered into with the SEC on January 24, 2012. (DE 17).

[4] On September 23, 2013, the SEC moved for a clerk's entry of default against Defendant O'Donnell. (DE 136).

[5] This Court finds that it was unreasonable for Imperato to rely on what was clearly a clerical error that resulted in the "closure" of the case on the Court's docket sheet. The text of District Court's Order, dated March 14, 2013, that prompted the case to be deemed "closed" did

Imperato's subsequent untimely and unauthorized filings (since the case was technically "reopened"), none have succeeded in adequately addressing the merits of the SEC's allegations, let alone provided any evidence to refute the documentary proof provided by the SEC in support of its motion.

DISCUSSION

Rule 56 (c) of the Federal Rules of Civil Procedure authorizes summary judgment where the pleadings and supporting materials establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The issue for the court is "whether the evidence presents a sufficient disagreement to require submission to a [fact finder] or whether it is so one-sided that one party must prevail as a matter of law." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the burden of establishing the absence of a genuine issue as to any material fact. *Id.* If the moving party meets its burden, it is up to the non-moving party to proffer "specific facts showing that there is a genuine issue for trial" and that "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248; *Celotex v. Catrett*, 477 U.S. 317, 324 (1986).

In reviewing the evidence, the court must accept non-moving party's evidence as true and draw all justifiable inferences in favor of the non-moving party. *Anderson*, 477 U.S. at 255. Further, the court must not make credibility determinations or weigh the evidence when considering whether summary judgment is proper. *Id.*

A motion for summary judgement may be supported by an affidavit or declaration that is

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not include any discussion that the case was over or the litigation complete. (DE 104).

"made on personal knowledge, set[s] out facts that would be admissible in evidence, and show[s] that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(1), (4); *see also Macuba v. Deboer*, 193 F.3d 1316, 1322-24 (11th Cir. 1999).

1. Selling Unregistered Securities (Count One)

Sections 5(a) and (c) of the Securities Act (Count One) require a registration statement to be in effect before securities can be offered or sold using any instrumentality of interstate commerce, including the mail. *See* 15 U.S.C. § 77e(a)(1), (c); 15 U.S.C. § 77q(a). According to the SEC, Imperiali had no registration statement on file prior to October 19, 2006, and thus, when Imperato began his offering in December 2005, by directly soliciting investors and hiring a sales team to "cold call" potential investors, he was in violation of the Securities Act. In his responses papers, Imperato does not appear to dispute the SEC's claim that the company sold more than 2,362,500 shares of common stock to at least 26 investors in at least 18 states during this time period. (DE 105 at page 4).

Once a *prima facie* case of a Section 5 violation has been established, the burden shifts to the Defendants to prove that an exemption from the registration requirement applied. *S.E.C. v. Rosen*, 2002 WL 34421029, *5 (S.D. Fla. Feb. 22, 2002). Here, nothing in Defendant Imperato's response papers demonstrates the existence of an exemption. Since the corporate Defendant Imperiali did not file response papers, there is nothing to rebut the presumption of its liability.

Accordingly, the Court finds that the SEC is entitled to summary judgment on Count One of the Complaint. Specifically, through its undisputed material facts, the SEC has put forth sufficient evidence that Defendants Imperiali and Imperato violated Sections 5(a) and (c) of the Securities Act,

in that they sold securities using interstate communications at a time when no registration statement was in effect.

2. The Anti-Fraud Statutes (Counts Two, Three and Four)

A violation of the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act (and Rule 10b-5 thereunder) requires: "(1) a misrepresentation or omission, (2) that was material, (3) which was made in the offer and sale of a security (Section 17(a)(1)) or in connection with the purchase or sale of securities (Section 10(b) and Rule 10b-5), (4) scienter, and (5) the involvement of interstate commerce, the mails, or a national securities exchange." *S.E.C. v. Gane*, 2005 WL 90154, *11 (S.D. Fla. Jan. 4, 2005)(*citing* 15 U.S.C. § 77q(a)(1); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5). These provisions were "designed to protect investors involved in the purchase and sale of securities by requiring full disclosure." *S.E.C. v. DCI Telecomms., Inc.*, 122 F. Supp. 2d 495, 498 (S.D.N.Y. 2000). *See also S.E.C. v. Monterosso*, 768 F. Supp. 2d 1244, 1261-62 (S.D. Fla. 2011)("[t]he scope of liability is the same under section 10(b) and Rule 10b-5")(*citing SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766, n. 17 (11th Cir. 2007).

The materiality prong is determined based upon "whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." *S.E.C. v. Carriba Air, Inc.*, 681 F.2d 1318, 1323 (11th Cir.1982).

Scienter is defined as "a mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193, n. 12 (1976). The Eleventh Circuit has stated that, "severe recklessness satisfies the scienter requirement." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1282-84 (11th Cir. 1999). "Severe recklessness is limited to . . . an extreme departure from

the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it." *Broad v. Rockwell Intn'l Corp.*, 642 F.2d 929, 961–62 (5th Cir. 1981). A defendant's scienter can be proven through direct or circumstantial evidence. *S.E.C. v. Monterosso*, 768 F. Supp. 2d at 1265-66 (*citing S.E.C. v. Ginsburg*, 362 F.3d 1292, 1298 (11th Cir. 2004)).

To establish primary liability for violations of Section 10(b), the accused "must actually make the material misstatement or omission and the misrepresentation must be attributed to [him] at the time of public dissemination . . ." *S.E.C. v. Lucent Tech.*, 363 F. Supp. 2d 708, 720 (D.N.J. 2005). "Anything short of such conduct is merely aiding and abetting, and no matter how substantial that aid may be, it is not enough to trigger liability under Section 10(b)." *Id.*

Here, the SEC has provided direct evidence of Imperato's intent to deceive by knowingly making blatantly false and deceptive material statements in press releases and Private Placement Memoranda that he himself authored, which were subsequently disseminated to potential investors via the internet. These falsities were then included in Imperiali's filings with the SEC. The false statements included the identity of Imperiali's board members, the operations and revenue of its portfolio companies, the stock Imperiali had allegedly acquired, and the valuations attributes to its supposed assets. These deceptions, which this Court finds to be material, were all part of Imperato's scheme to lure investors to the company, and establish his liability as a primary violator of the anti-fraud provisions set forth above.[6]

[6] In addition to asserting primary violations of Section 10(b) and Rule 10b-5 against Imperato, the SEC also claims that he is liable for aiding and abetting Imperiali's violations of these anti-fraud provisions, or in the alternative, that he is liable as a "controlling person"of the company. *See* Complaint (DE 1) at Count Four.

3. The Securities Exchange Act Violations (Counts Five - Twelve)

Section 15(a) of the Securities Exchange Act (Count Five) prohibits any broker from using any instrumentality of interstate commerce, including the mail, to sell securities unless the broker is registered. *See* 15 U.S.C. § 78o(a)(1) and (b).

In determining whether a person is a "broker" for purposes of this statute, courts consider whether the person: "1) actively solicited investors; 2) advised investors as to the merits of an investment; 3) acted with a certain regularity of participation in securities transactions; and 4) received commissions or transaction-based remuneration." *SEC v. U.S. Pension Trust Corp.*, 2010 WL 3894082, *21 (S.D. Fla. Sept. 30, 2010)(*quoting SEC v. Corporate Relations Group, Inc.*,, 2003 WL 25570113, at *17 (M .D. Fla. March 28, 2003)). Other factors to consider are whether the person "5) is an employee of the issuer; 6) is selling, or previously sold, the securities of other issuers; 7) is involved in negotiations between the issuer and the investor; 8) analyzes the financial needs of an issue; 9) recommends or designs financing methods; 10) discusses the details of

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"Aiding and abetting is established by showing that (1) another party violated the securities laws, (2) the accused is generally aware of his role in the improper activity, and (3) the accused aider and abettor knowingly rendered substantial assistance." *In re Sahlen & Associates, Inc. Sec. Litig.*, 773 F. Supp. 342, 360 (S.D. Fla. 1991)(*citing Rudolph v. Arthur Andersen & Co.*, 800 F.2d 1040, 1045 (11th Cir. 1986)).

To be a "controlling person" the defendant must have had (1) the power to control the general affairs of the entity at the time of the violation, and (2) the power to control or influence the specific policy that resulted in the primary violation under Section 10(b) or Rule 10b-5. *Marrari v. Med. Staffing Network Holdings, Inc.*, 395 F. Supp. 2d 1169, 1189 (S.D. Fla. 2005).

Here, given Imperato's alternating status as chairman, president and CEO of Imperiali, and his role as author of the false documents, there is ample evidence of his liability as a controlling person and, alternatively, of his liability as an aider and abettor. *See S.E.C. v. Huff*, 758 F. Supp. 2d 1288, 1354 (S.D. Fla. 2010).

securities transactions; and 11) makes investment recommendations." *Id.*

Here, the SEC has provided sufficient undisputed proof that Imperato was acting as a "broker" in that he "personally solicited investors by buy Imperiali stock . . . [a]nd he served as the 'closer' for the sales staff he hired, speaking directly with their sales leads to negotiate the stock price and complete the sale." (DE 105 at page 5). The SEC contends that "[a]lthough Imperato did not directly receive transaction-based compensation, he received the majority of the proceeds from the stock sales." *Id.* Given that Imperato has failed to provide any proof that he was registered to conduct these activities, the SEC is entitled to summary judgment on this claim.

Section 13(a) of the Exchange Act (Counts Six and Seven) requires the issuer of a registered security to keep "reasonably current" the information and documents that must be filed with the registration statement, and to have annual and quarterly reports certified by independent public accountants. 15 U.S.C. § 78m(a). As set forth above, the reports filed by Imperiali were utterly devoid of factual accuracy and the misrepresentations contained therein were materially misleading, in that a reasonable investor would have found the false information to be very important in deciding whether to invest in Imperiali. The SEC has also established Imperato's liability as a controlling person and/or aider and abettor in violating Section 13(a), given that he participated in the drafting and editing of these filings.

Section 13(b) of the Exchange Act (Counts Nine - Twelve)(and Rule 13b2-1 thereunder) requires the issuers of registered securities to keep records that "accurately and fairly reflect the transactions and dispositions of the assets," and to maintain a "system of internal accounting controls" so that investors can be reasonably assured that all transactions are authorized and properly recorded. 15 U.S.C. § 78(m)(b)(2). Section 13(b) also prohibits anyone from knowingly

circumventing or failing to implement any internal accounting system, or knowingly falsifying the accounting records. 15 U.S.C. § 78m(b)(5).

The documents attached in the Appendix support the SEC's claims that Imperiali "failed to keep even the most rudimentary records, including records showing that it owned the assets reported in its financial statements" and that Imperiali "had no controls in place to prevent Imperato from arbitrarily booking non-existent assets on its financial statements and assigning those assets multi-million-dollar values without the slightest basis." (DE 105 at page 10). In light of the undisputed facts presented by the SEC, it is entitled to summary judgment on these counts.

4. Violations of Exchange Act Rules (Counts Thirteen and Fourteen)

Operating in conjunction with the provisions of Section 13(a) of the Exchange Act are certain Exchange Act Rules, including 13b2-2 and 13a-14, which the SEC alleges have been violated here.

The former rule prohibits an issuer's director or officer from making (or causing to be made) a materially false, misleading statement or omission to an accountant in connection with reports required to be filed with the SEC. *See* Exchange Act Rule 13b2–2, 17 C.F.R. § 240.13b2–2.

The later rule prohibits the false certification of periodic reports filed with the SEC, wherein the signatory must attest to the truth of the statements contained therein. *See* Exchange Act Rule 13a–14, 17 C.F.R. § 240.13a–14.

The documents attached to the Appendix support the SEC's claims that Imperato made materially false statements to Imperiali's accountant, Defendant O'Donnell, with regard to reports O'Donnell filed with the SEC and that Imperato signed false certifications attesting to the accuracy of the reports filed with the SEC.

5. Violations of the Investment Company Act (Counts Fifteen through Seventeen)

Section 18(d) of the Investment Company Act (Count Fifteen) "limits the duration of a subscription right issued by a closed-end investment company to 'not later than one hundred and twenty days after [the] issuance' of such right." *Neuberger Berman Real Estate Income Fund, Inc. v. Lola Brown Trust No. 1B*, 485 F. Supp. 2d 631, 637 (D. Md. 2007)(*quoting* 15 U.S.C. § 80a–18(d)). Notwithstanding this section, "a business development company may issue warrants, options, or rights to subscribe or convert to voting securities of such company . . . if such warrants, options, or rights expire by their terms within ten years" and are approved by the company's shareholders and a majority of its disinterested directors. 15 U.S.C. § 80a-60(a)(3).

Here, the SEC alleges that Defendants violated Section 18(d) because the convertible preferred shares Imperiali issued to Imperato had no expiration date and were not authorized by shareholders or approved by any "disinterested directors." Defendants have failed to offer any evidence to refute this allegation.

Section 31(a) of the Investment Company Act (Count Sixteen) requires registered investment companies to maintain a variety of books, records, and ledgers reflecting all assets, liabilities, capital, income, records of all brokerage orders, copies corporate charters, bylaws, and meeting minutes, etc. *See* 17 C.F.R. § 270.31a-1(b)(2). The SEC alleges that Imperiali "failed to keep any ledgers that accurately reflected the value of its assets and investments." (DE 1 at ¶ 114). Again, Defendants fail to refute this claim with any evidence.

Finally, Section 34(b) of the Investment Company Act (Count Seventeen) states that in maintaining the records required by Section 31(a), it is unlawful to make omissions or false statements of material facts. *See* 15 U.S.C. § 80-33(b). The SEC alleges that Imperato violated this

section by "materially overstat[ing] the value of Imperiali's portfolio companies" and failing to maintain documents including minutes from board meetings and shareholder meetings. (DE 1 at ¶ 118, 119).

Given the foregoing, the SEC has carried its burden of establishing the absence of a genuine issue as to any material fact alleged and therefore, it is entitled to the entry of judgment as a matter of law.

RECOMMENDATION

IT IS HEREBY RECOMMENDED THAT the SEC's Motion for Summary Judgement (DE 105) be **GRANTED**, and all other pending motions be **DENIED AS MOOT**.

NOTICE OF RIGHT TO OBJECT

A party shall serve and file written objections, if any, to this Report and Recommendation with the Honorable Kenneth L. Ryskamp, Senior United States District Court Judge for the Southern District of Florida, within fourteen (14) days of being served with a copy of this Report and Recommendation. *See* 28 U.S.C. § 636(b)(1) (providing that "[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court."); *see also* Fed. R. Civ. P. 72(b) ("Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy"). Failure to timely file objections shall bar the parties from attacking on appeal the factual findings contained herein. *See LoConte v.*

Dugger, 847 F.2d 745 (11th Cir. 1988), *cert. denied*, 488 U.S. 958 (1988); *RTC v. Hallmark Builders, Inc*, 996 F.2d 1144, 1149 (11th Cir. 1993).

DONE AND SUBMITTED in Chambers this 25 day of September, 2013, at West Palm Beach in the Southern District of Florida.

James M. Hopkins

JAMES M. HOPKINS
UNITED STATES MAGISTRATE JUDGE

Copy to:
Daniel Imperato, *Pro Se* Defendant
[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 12-CV-80021-RYSKAMP/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

IMPERIALI, INC. et al.,

Defendants.
_____/

ORDER ADOPTING REPORT AND RECOMMENDATIONS OF MAGISTRATE JUDGE

THIS CAUSE comes before the Court on the report of United States Magistrate Judge Hopkins **[DE 137]** entered on September 25, 2013. Defendant Daniel Imperato filed objections **[DE 148]** to the Magistrate's report on October 2, 2013. This matter is ripe for adjudication.

The Court has conducted a *de novo* review of the report, objections, and pertinent portions of the record. Accordingly, it is hereby

ORDERED AND ADJUDGED that

(1) The report of United States Magistrate Judge Hopkins **[DE 137]** be, and the same hereby is **RATIFIED, AFFIRMED and APPROVED** in its entirety;

(2) Plaintiff's Motion for Summary Judgment **[DE 105]** is **GRANTED**;

(3) Within ten (10) days of this Order parties' are directed to submit supplemental briefing concerning the relief requested in the Motion, including:

a. Whether Defendants Imperato, Imperiali, and O'Donell should be permanently enjoined under Securities Act Section 20(b) [15 U.S.C. §77t(b)], Exchange Act Section 21(d) [15 U.S.C. §78u(d)(1)], and Investment Company Act Section 42(d) [15 U.S.C. §80a-41(d)], and the scope of such an injunction;

b. The amount of disgorgement to be paid by Defendants, and which Defendants should be held jointly or severally liable for such disgorgement;[1]

c. The amount of civil penalties to be imposed on Defendants under Sections 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and 21(d)(3)(A) of the Exchange Act [15 U.S.C. § 78u(d)(3)(A)], and which Defendants should be held jointly or severally liable for such civil penalties;[2] and

d. Whether an officer-and-director bar should be imposed against Defendant Imperato.

Parties' are limited to **one (1) filing** of supplemental briefs on the issues above. Any other filings will be stricken from the record. Moreover, parties' supplemental briefs **shall not exceed ten (10) pages** and shall include pertinent legal support.

(4) The Clerk of Court is directed to **DENY** all pending motions as **MOOT**.

[1] Defendants, including Defendant Imperato, may not contest *whether* disgorgement should be paid; that issue was decided upon the Court's adoption of the Magistrate's Report and Grant of Plaintiff's Motion for Summary Judgment. Defendants may only dispute the amount of disgorgement contested.

[2] Again, Defendants may not contest *whether* civil penalties should be imposed, only the amount of such penalties to be imposed.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 8 day of October, 2013.

/s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 12-CV-80021-RYSKAMP/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

IMPERIALI, INC. et al.,

Defendants.
_____/

FINAL JUDGMENT AS TO DEFENDANT DANIEL IMPERATO

THIS CAUSE comes before the Court on its order adopting the Magistrate's report and recommendations and granting Plaintiff Securities and Exchange Commission ("Plaintiff") summary judgment **[DE 163]** entered on October 8, 2013. The Court found Defendant Daniel Imperato ("Defendant") violated the federal securities laws set forth in the complaint in this matter. After supplemental briefing as to Plaintiff's request for monetary and injunctive relief, the Court finds Plaintiff has made a proper showing that permanent injunctions, an officer-and-director bar, and disgorgement plus prejudgment interest are warranted against Defendant. Given the extensive nature of the relief granted, the Court declines to impose a civil penalty against Defendant. *See S.E.C. v. Warren*, 534 F.3d 1368, 1369 (11th Cir 2008) (the imposition of a civil penalty is left to the discretion of the court). Accordingly, **FINAL JUDGMENT** is hereby entered in favor of Plaintiff and against Defendant as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and

Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from further violating Section 5 of the Securities Act of 1933 (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].

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (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.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], and Rule 13b2-1 [17 C.F.R. § 240.13b2-1], directly or indirectly, by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 [17 C.F.R. § 240.13b2-2], by, directly or indirectly,

(a) making or causing to be made a materially false or misleading statement, or omitting to state or causing another person to omit to state any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with the following: (i) any audit, review or examination of the financial statements of an issuer, or (ii) in the preparation or filing of any document or report required to be filed with the Commission; or

(b) taking action, or directing another to take action, to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the performance of an audit or review of an issuer's financial statements required to be filed with the Commission, while knowing or while it should have been known that such action, if successful, could result in rendering the issuer's financial statements materially misleading.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by using the mails or any means or instrumentality of interstate commerce, while acting as a broker or dealer, effecting transactions in or inducing or attempting to induce the purchase or sale of securities while not registered with the Commission as a broker or dealer or while not associated with an entity registered with the Commission as a broker or dealer.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from directly or indirectly controlling any person who violates Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1,

13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13], promulgated thereunder, by:

(a) filing or causing to be filed with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder, which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or which omits to disclose any information required to be disclosed; or

(b) failing to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; or

(c) failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles (GAAP) or any other criteria applicable to such statements and (b) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences,

unless Defendant acts in good faith and does not directly or indirectly induce the act or acts

constituting the violation.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13a-14 [17 C.F.R. § 240.13a-14], directly or indirectly, by falsely signing personal certifications indicating that they have reviewed periodic reports containing financial statements which an issuer filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and that, based on their knowledge,

(a) these reports do not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report; and

(b) that information contained in these reports fairly presents, in all material respects, the financial condition and results of the issuer's operations.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 34(b) of the Investment Company Act of 1940 ("Investment Company Act") [15 (U.S.C. § 80a-33(b)], directly or indirectly, by making any untrue statement of a material fact in any registration

statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act.

X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

XI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $2,493,785, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $640,703. Defendant shall satisfy this obligation by paying the sum of the above disgorgement and prejudgment-interest to the Securities and Exchange Commission within 28 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Daniel Imperato as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 28 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

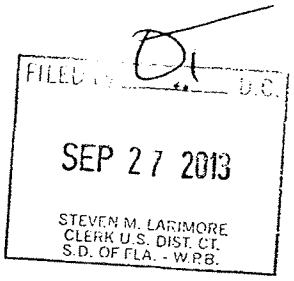
XII.

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

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 7 day of November, 2013.

/s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

United states district court
for the southern district of Florida
West Palm Beach Division



Securities and exchange commission,

Plaintiff

civil action no.: 9:12-cv-80021 klr

vs.

JUDGE KENNETH L. RYSKAMP

Daniel Imperato
Personally,
and individually

Sept 27 th 2013

Motion by defendant response to plaintiff request for pretrial stipulation (see attached emails exhibits)order by the court prior to closing the case against IMPERATO, meeting agreed to by defendant for imperaili inc as former director but not for IMPERATO since case is closed against IMPERATO meeting set for Monday sept 30th 2013 ,8:30 am till noon or Friday oct 4th 2013. 1 pm to 4 pm at the court house in west palm beach Florida with court appointed representative.

Notice to the court and plaintiff that Any activities in this case does not concern defendant IMPERATO and is deemed moot based on the case closed against him by order of the court and the judge Ryskamp.

Plaintiff once again has requested a pre trail stipulation meeting at the last minute , making it almost impossible to attend since the plaintiff erroneously reopen the case that is closed against IMPERATO but may be opened in error against defendants imperiali inc and O'Donnell although to date no court order from Judge Ryskamp was sent to IMPERATO.

The defendant imperaili inc has requested its insurance carrier to provide legal consul as a matter of contract law for the arbitration or jury trail in this matter.

Defendant IMPERATO as a director would also be entitled to

consul but case was closed against IMPERATO. march 14th 2013.

Concerning the erroneous excuse of the plaintiff that the defendant IMPERATO is unreasonable because the defendant should have not relied on the Judge Ryskamp court order.

Because defendant should have not relied on what plaintiff states is a clear clerical error.

Case was closed against IMPERATO which is stated in the body of the magistrates judge Hopkins recommendations under discussions

" case against defendant IMPERATO has been settled , his motions requesting dismissal of this matter should be denied as moot.

See motion filing sept 25th 013 and the original recommendation of jan 11th 2013.

The plaintiff had 14 days to respond and did not .
So where is the clerical error?

After 60 days the Senior Judge Ryskamp closed the case based on the recommendations of the magistrate judge Hopkins ,

the magistrate judge Hopkins didn't correct any mistakes then because there are no mistakes concerning the closing of the case against IMPERATO .

The senior judge ordered and ratified affirmed and approved in its entirety " case closed against IMPERATO ".

No ,motions or objections came after the 14 days of closing the case nor did the magistrate judge make any other recommendations or corrections or errors to the order of the judge Ryskamp because the judges ordr rules the court.

Now the plaintiff trying to userp the power of the court states that the defendant IMPERATO is being unreasonable because he was ordered by both the magistrate and the senior Judge that case was closed .

To date IMPERATO stands on the judges orders of the case being closed against Imperato.

For the reopening of the case docket with out any motions or notice or explanation 5 months later would and could only be if legally re opened as an error pertaining to the other defendants imperiali inc and O'Donnell ,but not Daniel IMPERATO . (case is closed against Daniel IMPERATO).

In light of the facts IMPERATO is willing to attend pretrial stipulations while the company imperiali inc is awaiting consul from the insurance company .

Imperato would prefer to wait the insurance company appointment .

Since a former director or officer can attend a pretrial conference then defendant IMPERATO would on behalf of the company.

But since the court and the magistrate judge Hopkins order the company to get consul and not for IMPERATO to represent the company any further ,the defendant is concerned that he should not usurp the court order and the power of the court by attending .

Defendant shall not attend with out a court order allowing him to attend for imperiali inc.

With respect for the court and the judges orders ,when a judge gives orders they are orders not errors and surly not erroneous ones.

Es/ Dr. Fr. Daniel Imperato , km, ssp, gm &ob

Document prepared by _____ 9 / 27 /2013

Daniel Imperato pro se

[redacted]

[redacted]

[redacted]

Affidavit

My name is Daniel Imperato ,I prepared this document [redacted]

I as best I could recollect and that I declare that to the best of my knowledge and belief, that the statements made in this document are true ,correct and complete. As well as all my previous pleading ,filings statements and exhibits that are filed with this court. **Defendant is handicapped, confused and distraught and has been seriously affected and damaged by the reopening of this case and insolvent .**

State of Florida
Palm beach county
Sworn to and subscribed before me the undersigned notary public ,this 27th day of September 2013
My commission expires July 12, 2017
___ personally known X produces identification type produced FL DL # I516-170-58-089-0

Janet L Avolio
Notary public

JANET L. AVOLIO
Notary Public - State of Florida
My Comm. Expires Jul 12, 2017
Commission # FF 022927

[redacted]

From: McCole, Timothy S. [redacted]
To: Dr. Imperato [redacted]
Cc: Justice, Tina [redacted]
Subject: SEC v. Imperato et al.: Pretrial-Stipulation Conference
Date: Thu, Sep 19, 2013 2:38 pm
Attachments: 60_SCHEDULING_ORDER.06.15.12.pdf (95K), 77_Order_Notice_of_Trial_Date_Set.06.22.12.pdf (59K)

Dear Mr. Imperato–

I am writing to schedule a meeting with you to confer on the preparation of a pretrial stipulation as the court's scheduling order requires. I have attached a copy of the scheduling order for your convenience. It provides: " Counsel shall meet at least ONE MONTH prior to the beginning of the trial calendar to confer on the preparation of a pretrial stipulation." The trial calendar begins November 4, as reflected in the attached Notice of Trial.

I propose that we meet and confer in the SEC's Miami Regional Office at 10 AM on one of the following four dates: September 25 or 26 or October 2 or 3. Please let me know which date you prefer. I will arrange to be at the Miami Regional Office on that date.

I look forward to hearing from you soon.

Thanks.

–Timothy

Timothy S. McCole, Trial Attorney
Securities and Exchange Commission
Fort Worth Regional Office
817.978.6453

Exhibit
PRT

United States of America
before the
Securities Exchange Commission
100 f St. Ne Washington D.C. 20549 -1019

Release no. 70959/ Nov. 27th ,2013
Administrative proceeding
File no. 3 - 15628.

Nov. 30th 013
Sent us .mail

In the matter of Daniel Imperato
Respondent.

Dear Elizabeth M. Murphy Secretary

Respondent initial response with in 20 days hereby excepts the opportunity that will clear his name for the allegations made against him dates to be set.

Respondent is great full and thank full for this opportunity and public interest administrative proceedings concerning 1934 acts .

Respondent requires the following information to be received by respondent in order to prepare his briefs for the proceedings and requests that the united states subpoena the witness required for the proceedings that have been presented to the court in the filings .

Respondent is financially broke and with out ink to print even these documents and fighting for his life after the destruction and damages caused by a passionate ,prejudiced execution of false judgments and false statements by the commissions consular's timothy s mc cole at the behest of others on the commissions advisory committed whom authorized such heinous crimes against me and my family and against the united states constitution repugnant to the very judgments and the entire case should be void as a matter of law both procedural and constitutional.

In light of said facts presented in the court the following discovery was not provided amongst all discovery not completed and ignored by the commission.

The respondent requires the following ;

1. The minutes of the meetings minutes (copies) and names of the administrative board of the regions whom authorized the said case to filed against Imperato on jan 9th 2012 .

2. The commission five member boards minutes and meetings of the authorization to approve the settlement agreement with one defendant Charles Fiscina settled and consented to on sept 20th 2011, several months prior to any case being filed against IMPERATO even though he was a defendant in the case . (de 180)

Please provide the minutes and approval of the said consent agreement . (de 11-1). And a copy of the approved agreement notarized and witnessed.

3. The commission five member board minutes that in fact declined the settlement and consent agreement entered into on oct 11th 2012 with IMPERATO at the mediations conference with magistrate judge Palermo which was due to be approved by the commission with on 16. 2 (f) and rule 51 and was never filed and then vacated and with drawn by timothy s mc cole which vacated the settlement agreement. (de 100)

4. The administrative regional board minutes of the declination of the executed declined settlement agreement of oct 11th 2012 .

5. The minutes and the administrative board authorizing the re opening of a closed case against the respondent closed as settled with recommendations for the magistrates with no objections by the plaintiff .(de 101 ,104) Forfeiting the appeal rights as well as breeched the contract settlement consent agreement witnesses and filed with the court which forfeited the federal jurisdiction but was overruled and the court usurped by the power of the administrative boards authority authorizing mc cole esq and the magistrate in concert together to reopen a case with a verbal entry aug. 28th 2013.(no de)

6. Respondent requires a typed copy of that very verbal entry of which he has been denied by the local court and the clerks office at his request in motions.

7. Respondent requires the completed paper works and board minutes concerning the motion under the freedom of information act filed with the court concerning all minutes and correspondences of the commission with third parties as well as the specific request for the entire file of administrative preliminary requests obtained and reviewed on or between the years of 1994 to 2001 at which time meetings took place with the commission and its local representative concerning one of the companies assets (cable Projects) under the old name of new millennium development group. Lead investigator for the commission was

by Mike Banyas financial examiner /analyst ii. Adress dept of banking

[redacted]

8. Respondent requires a copy of the 26 names of the persons who have been stated by the plaintiff that was prior 60 persons on exhibit (A) now changed in accordance with the last hearing to 26 persons . (de transcript de 198). Stated by the plaintiff that are the very 26 persons that can provide proof that Imperato cold called them and sold unregistered securities when a document ppm was circulated by other registered brokers and agents of the company as well as director s of the company which was prepared by laura anothony esq. who now refuses to delivery her copy of the itemized bills and the blue skies registration with her review of the placement based on the 5 year rule she wont cooperate .

9. Please subpoena the records of Charles fiscina and Greenburg Trauig esq. as well as Larry O'Donnell and john chaplic along with Lillian Rodriquez and Hong Mai whom were assistance to fiscina chaplic and to Dan mangru.

10. Please subpoena such records as well as a copy of the private placement exempt from registration that she prepared for the company witnessed by Dan Mangru who was the primary solicitor of the placement along with Fredrick Birks of gryphon management contacted to do so and with Kyle Hauser who are all registered securities dealers which will exonerate IMPERATO .

11. Please provide affidavits from the 26 persons that the plaintiff alleges IMPERATO brokered securities to in order for the respondent to prepare

his brief for the proceedings

12. Please subpoena the records of the commission communications with the company imperiali inc and Charles Fiscina and any other communications with the company as well as the commissions advisory boards minutes that initially opened the investigation in 2005. As well as tapes of the conversations with the sec. with the company .

13. A clear printed copy of all the sworn states made at the wells voluntary interviews which was sent to the respondent (June 012) discarded do to case closed ,settled) as discovery but was unable to open the secured passwords as well as received an incomplete copy filed with the summary judgment (de 105).

Pleased provide the minutes of the advisory board that approved the summary judgment order and the copies of all determinations and correspondences internally under the freedom of information act of the united states of America as well as all documents and copies requested in this response to the administrative proceedings (file no 3- 15628)

Thank you very much for this information which will assist with due process of law that IMPERATO was denied.

Document prepared by _____ nov. / 30 th /2013

[redacted]

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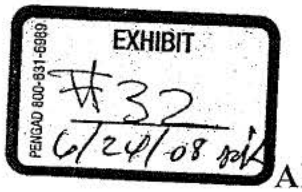

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-KSB

☒ ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended August 31, 2007

☐ TRANSITION REPORT UNDER SECTION 13 OR 15 (D) OF THE EXCHANGE ACT

Imperiali Inc.
(Exact Name Registrant as Specified in Its Charter)

Florida	[redacted]
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

[redacted]
(Address of Principal Executive Offices)

[redacted]
(Issuer's Telephone Number, including Area Code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or such shorter periods as the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. **Yes** ☒ **No** ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, of a non-accelerated filer. See definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the exchange Act.
☐ Large Accelerated Filer ☐ Accelerated Filer ☒ Non-Accelerated Filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). **Yes** ☐ **No** ☒

On August 31, 2007 there were 38,200,986 shares outstanding of the registrant's common stock, $.001 par value.

PART I.

Item 1. Financial Statements and Supplementary Data

IMPERIALI, INC.

Financial Statements

August 31, 2006

IMPERIALI, INC.

Financial Statements

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Larry O'Donnell, CPA, P.C.
[redacted]

	2007	2006
Interest and Related Portfolio Income:	$ -	$ -
Interest and dividends	$ 6,692	$ -
Expenses:		
Employees and Consulting	$ (1,022,630)	$ (520,496)
General and administrative	$ (166,463)	$ (99,624)
Total Expenses	$ (1,189,093)	$ (620,120)
Net investment income before income taxes	$ (1,182,401)	$ (620,120)
Income tax expense	$ -	$ -
Net investment income	$ (1,182,401)	$ (620,120)
Net Realized Gains(losses)	$ -	$ -
Net Change in unrealized appreciation	$ (3,500,000)	$ -
Net increase in net assets resulting from operations (loss)	$ (4,682,401)	$ (620,120)
Earnings (loss) per common share - basic	$ (0.162)	$ (0.029)
Earnings (loss) per common share - diluted	$ (0.162)	$ (0.029)
Weighted avg common shares out. - basic	28,965,486	21,193,524
Weighted avg common shares out. - diluted	28,965,486	21,193,524

IMPERIALI, INC.
Statement of Change in Net Assets

	For the Twelve Months Ended August 31, 2007	For the Twelve Months Ended August 31, 2006
Operations:		
Net Investment Income	$ (4,812,411)	$ (1,008,855)
Net Realized Gains (losses)	$ -	$ -
Net Change in unrealized appreciation	$ 3,500,000	$ -
Shareholder Distributions:		
Common Stock Dividends	$ -	$ -
Capital share transactions:		
Sales of Common Stock	$ 875,389	$ 1,618,396
Total Increase in Net Assets	$ (437,022)	$ 609,541
Net assets at beginning of period	$ 4,109,541	$ -
Net assets at end of period	$ 3,672,519	$ 609,541
Net asset value per common share	$ 0.10	$ 0.02
Common shares outstanding at the end of period	38,200,986	25,358,486

	Shares	Amount	Additional Paid in Capital	Accumulated Deficit	Total
Balance, August 31, 2005	17,995,986	17,996	10,144,467	(10,162,567)	(104)
Issuance of common stock	2,362,500	2,362	1,616,138		1,618,500
Net loss for the year				(1,008,855)	(1,008,855)
Balance August 31, 2006	20,358,486	20,358	11,760,605	(11,171,422)	609,541
Issuance of common stock	17,842,500	18,031	4,357,358		4,375,389
Net gain for the year				(4,812,411)	(4,812,411)
Balance August 31, 2007	38,200,986	38,389	16,117,963	(15,983,833)	172,519

IMPERIALI, INC.
Statement of Investments

Private Finance Portfolio Company	Investment		Cost	Value
Imperiali Organization LLC			$ -	$ -
11Telecom Services Inc	Common Stock	30,000,000 Shares	$ -	$ 30,000,000

I1Connect Inc	Common Stock	40,000,000 Shares	$	3,500,000	$	40,000,000
I1Films Inc	Common Stock	5,000,000 Shares	$	-	$	-
Total			$	33,500,000	$	70,000,000

See Footnotes for Explanation of Valuation
Full value of investments is not recognized on the Balance Sheet.

IMPERIALI, INC.
Statement of Cash Flows

	For the Twelve Months Ended August 31, 2007	For the Twelve Months Ended August 31, 2006
Cash flow from operating activities:		
Net increase (decrease) in net assets from operations	$ (4,812,411)	$ (1,008,855)
Adjustments to reconcile net income (loss) to net cash provided by operation activities:	$ 16,849	$ (104)
Change in net unrealized (increase) decrease of investments	$ 3,500,000	$ -
Net cash used by operating activities	$ (1,295,562)	$ (1,008,959)
Cash flows from investing activities:		
Net cash used in investing activities	$ -	$ -
Cash flows from finanancing activities		
Proceeds from common stock	$ 875,389	$ 1,618,500
Net cash provided by financing activities	$ 875,389	$ 1,618,500
Net increase in cash	$ (420,173)	$ 609,541
Cash at beginning of period	$ 609,541	$ -
Cash at end of period	$ 189,368	$ 609,541

ITEM 2. NOTES TO FINANCIAL STATEMENTS

Basis of presentation:

The accompanying audited financial statements have been prepared in accordance with the accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Form 10-KSB. In the opinion of management, all adjustments, consisting of normal recurring accruals considered necessary for a fair presentation, have been included.

Note 1. Organization: General Development of the Business

We were incorporated in Florida on September 27, 1994 by Daniel J. Imperato under the name Automated Energy Security Inc.

From September 1994 through March 1999, the Company provided energy management services and intelligent security for residential dwellings, commercial buildings and government facilities. In 1994, the Company purchased all of the patented technology, software and patents pending on the Wide Area Energy Savings System known as "TESS" (Total Energy Security System) from Associated Data Consultants, Inc. In 1998, after Bell Atlantic (one of our strategic partners) withdrew from the development of TESS and engaged in litigation with Associated Data, the Company abandoned our business operations related to TESS.

In March 1999, we changed our name to New Millennium Development Group, Inc. and our business operations to media and telecommunications, focusing on connectivity solutions, storage, fiber optic cable systems, security and the international long distance market. Our plan was to spearhead a sub sea fiber optic cable system connecting 70 countries around the globe. In furtherance of the plan the Company entered into Memoranda of Understanding with 30 countries, completed landing party site and ocean surveys, arranged long-term financing and selected vendors and subcontractors for fiber optic cable and equipment. During the process, however, the price of cable systems skyrocketed, forcing us to reconsider our business plans and projections. The Company retained the services of an independent consultant who concluded that not only would increasing cable prices decrease long-term gains, the rapid development of the internet and Intellectual Property systems would render obsolete the market for fiber optic cable. Accordingly, in mid 2001 we shifted our focus away from fiber optic cable systems and concentrated on Voice over Internet Protocol (VOIP) and related services including high-speed wireless standard ISP and broadband services; international calling cards; video conferencing and related IP products.

Failed corporate history, management infighting, the tragedy of September 11, 2001 and the general economic downturn especially related to technology, led us to cease business operations in mid-2002 until mid-2005. However, during this time, Mr. Imperato, the Company's Chairman, at the time, and majority shareholder, worked to maintain management relationships with previous businesses, associates and professionals for the eventual resurrection of business operations.

In November 2005, we changed our name to Imperiali, Inc. and commenced operations as an investment company. To date, the activities of our principals have largely been limited to organizational matters and fund raising. We have commenced the private placement of up to 10 million of the Company's common shares in an offering (the "Offering") exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") pursuant to Section 4(2) thereof and Regulation D ("Regulation D") thereunder. At August 31, 2007, the Company's total assets were $3,699,133 and its net asset value per share ("NAV") was $.10. Upon the closing of the Offering, the Company's common shares will be owned by numerous persons that are both "accredited investors," as that term is defined in Regulation D, and "qualified clients" within the meaning of the Investment Advisers Act of 1940 (the "1940 Act"),

32 Certification of Chief Executive Officer, President furnished pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(b) REPORTS ON FORM 8-K. None

SIGNATURES

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant caused this Report on Form 10-KSB to be signed on its behalf by the undersigned, thereunto duly authorized.

DATE: November 28, 2007

Imperiali Inc

By /s/ Daniel Imperato
Daniel Imperato, Interim Chief Executive Officer

Exhibit 31 - Certification of
Principal Executive Officer

I, Daniel Imperato, certify that:

1. I have reviewed this Annual Report on Form 10-KSB of Imperiali Inc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:

a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c. Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting;

5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date: November 28, 2007

/s/ Daniel Imperato, Interim CEO

Exhibit 32
Section 1350 Certifications

STATEMENT FURNISHED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The undersigned is the Principal Executive Officer of Imperiali Inc. This Certification is made pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. This Certification accompanies the Annual Report on Form 10-KSB of Imperiali Inc for the year ended August 31, 2007.

The undersigned certifies that such 10-KSB Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in such 10-K Report fairly presents, in all material respects, the financial condition and results of operations of Imperiali Inc as of August 31, 2007.

This Certification is executed as of August 31, 2007.

/s Daniel Imperato
Interim CEO
(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to us, Inc. and will be retained by Imperiali Inc and furnished to the Securities and Exchange Commission or its staff upon request.