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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15628

In the Matter of

DANIEL IMPERATO,

Respondent.

DIVISION OF ENFORCEMENT'S RESPONSE AND BRIEF IN OPPOSITION TO RESPONDENT DANIEL IMPERATO'S PETITION FOR REVIEW OF INITIAL DECISION

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The Division of Enforcement (the "Division") files this Response and Brief in Opposition to Respondent Daniel Imperato's Petition for Review (July 28, 2014) and Brief in Support (Oct. 1, 2014) challenging the July 7, 2014 Initial Decision issued in this proceeding.

Summary

Before the Commission is a petition for review in a routine follow-on administrative proceeding against a respondent who has been enjoined by a federal district court and adjudged to have committed egregious securities fraud violations. The Initial Decision, which does not raise any issue warranting further oral or written argument, is well-reasoned, supported by the record, and concludes that it is in the public interest to bar Imperato from the securities industry. The Initial Decision also does not embody an exercise of discretion or decision of law or policy that the Commission should review. Further, no prejudicial error has been committed in the conduct of these proceedings. Based on these straightforward facts, the Division respectfully requests that the Commission summarily affirm the Initial Decision.

Alternatively, if the Commission chooses not to summarily affirm the Initial Decision, then the Division requests that the Commission affirm the Initial Decision in the ordinary course. Imperato fails to offer *any* evidence that the Initial Decision contained errors or was unjustified. He also fails to raise any legitimate factual or legal grounds to justify setting the Initial Decision aside. Instead, Imperato attacks the underlying district court litigation, which is precluded by the doctrine of collateral estoppel. Finally, sanctions are appropriate against Imperato because: (i) a district court enjoined him from future violations of the federal securities laws, and (ii) an analysis of the public interest factors outlined in *Steadman v. SEC* weigh overwhelmingly in favor of barring Imperato from participating in the securities industry.

I. FACTUAL BACKGROUND

A. Brief overview of Imperato's fraudulent conduct.[1]

Over a period of years, Imperato conspired with two co-Defendants to deceive investors into buying stock in Defendant Imperiali, Inc., a company in which he owned a majority of the stock and over which he had complete control. **App. at 12-13**. Imperato deceived investors with a series of lies about Imperiali and its assets by: (i) making false filings with the Commission, (ii) issuing false audit reports on the company's financial statements, and (iii) disseminating false press releases and prospectuses to potential investors. **App. at 13**. Though never registered as a broker or dealer, Imperato directly solicited investors in unregistered stock offerings. *Id.* Further, the Private Placement Memorandum ("PPM") for Imperiali contained false and misleading statements, including identifying individuals as members of Imperiali's board of directors when they, in fact, were not. **App. at 13-14**. Imperiali's "portfolio companies" were also falsely valued as multimillion-dollar enterprises when, in reality, they were merely shell corporations with no operations, no employees, and no revenues. **App. at 14**. These false representations were perpetuated through press releases distributed to investors and potential investors over the internet. *Id.* Imperiali also filed registration statements, quarterly reports, and annual reports with the Commission that contained false and misleading information. **App. at 14-15, 17.**

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[1] Pursuant to Rule of Practice 323, Administrative Law Judge ("ALJ") Cameron Elliot took official notice of the civil proceedings, docket sheet, and record in *SEC v. Imperiali, Inc., et al.*, Civ. No. 9:12-cv-80021 (S.D. Fla. Nov. 8, 2013). *See* Initial Decision, Initial Decision Rel. No. 628 (July 7, 2014), at p. 3 n.5. **App. at 3.** This overview is derived from the Report and Recommendation of Magistrate Judge James Hopkins that was ratified, affirmed, and approved by U.S. District Judge Kenneth Ryskamp in the underlying federal court litigation. *See SEC v. Imperiali, Inc., et al.*, Civil Action No. 9:12-cv-80021-KLR (S.D. Fla.) Doc. 137 (Magistrate Report) [**App. at 12-25**] and Doc. 163 (Order Adopting Report) [**App. at 26-28**].

B. Relevant Litigation History

1. Federal Court Litigation

In January 2012, the Commission sued Imperato and others in federal district court. In October 2013, U.S. District Judge Kenneth Ryskamp "ratified, affirmed, and approved" the recommendation of Magistrate Judge James Hopkins to grant the Commission's motion for summary judgment.[2] *See SEC v. Imperiali, Inc., et al.*, Civ. No. 9:12-cv-80021-KLR (S.D. Fla.), Doc. 137 [**App. at 12-25**] and Doc. 163 [**App. at 26-28**]. The District Court concluded that:[3]

- Imperato violated the antifraud provisions of the federal securities laws by "knowingly making blatantly false and deceptive material statements" in press releases, PPMs, and filings with the Commission. **App. at 18-19.**

- Imperato acted as an unregistered broker in personally soliciting investors, serving as the "closer" to negotiate and complete the sale of Imperiali stock, and receiving a majority of sales proceeds. **App. at 21.**

- Imperato drafted and edited materially misleading reports filed with the Commission. Imperiali, which Imperato controlled, failed to keep "even the most rudimentary records" and to have any "controls in place to prevent Imperato from arbitrarily booking nonexistent assets on its financial statements and assigning those assets multi-million-dollar values without the slightest basis." **App. at 21-22.**

- Imperiali sold unregistered securities, resulting in the sale of more than 2.3 million shares of common stock to at least 26 investors in 18 states. **App. 17-18.**

- Imperato made materially false statements to Imperiali's accountant and signed false certification statements attesting to the accuracy of reports filed with the Commission. **App. at 22.**

- Imperato materially inflated the value of Imperiali's portfolio companies and failed to maintain required company documents. **App. at 23-24.**

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[2] Imperato opposed the Commission's motion for summary judgment – filing a response and a supplemental response – and otherwise actively participated in the district court proceeding.

[3] ALJ Elliot also cited these district court findings. **App. at 4.**

In November 2013, Judge 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 Securities Exchange Act of 1934 ("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. *See SEC v. Imperiali, Inc., et al.*, Civ. No. 9:12-cv-80021-KLR (S.D. Fla.), Doc. 195. **App. at 29-38**. Imperato has appealed the District Court judgment. *See SEC v. Imperiali, Inc., et al.*, Civ. No. 9:12-cv-80021 (S.D. Fla.), *appeal filed*, No.13-14809 (11th Cir. Oct. 21, 2013).

2. Administrative Proceedings

On November 27, 2013, the Commission instituted this follow-on administrative proceeding to determine: (1) whether the allegations set forth in the OIP, including that Imperato had been permanently enjoined from future violations of certain provisions of the federal securities laws, were true, and to afford Imperato an opportunity to establish any defenses to such allegations, and (2) what remedial action was appropriate in the public interest against Imperato. *See* Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing ("OIP") (Nov. 27, 2013), at p. 2. **App. at 40**.

On July 7, 2014, ALJ Elliot issued an Initial Decision, granting the Division's motion for summary disposition and imposing a full collateral bar and a penny stock bar against Imperato. *See* Initial Decision, **App. at 1, 10**. Relying on the record before him and facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice,[4] ALJ Elliot properly concluded that "there is no genuine issue with regard to any material fact and summary disposition is appropriate." **App. at 8**. He also cited the well-established doctrine of collateral estoppel to preclude Imperato

[4] ALJ Elliot took official notice of the proceedings, docket sheet, and record in *SEC v. Imperiali, Inc., et al.*, Civil Action No. 9:12-cv-80021 (S.D. Fla. Nov. 8, 2013). **App. at 3**.

from relitigating in a follow-on administrative proceeding the factual findings or the legal conclusions of an underlying district court action. **App. at 5-7**. On that basis, he concluded that "the underlying injunction 'is finalized for the purposes of this administrative proceeding,' notwithstanding the pendency of Imperato's appeal in the Eleventh Circuit Court of Appeals." **App. at 7**. Then, turning to the appropriateness of a remedial sanction against Imperato, ALJ Elliot addressed and analyzed the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), as well as other factors frequently considered by the Commission. **App. at 8-10**. After assessing all of these factors, ALJ Elliot determined that "the balance of the *Steadman* factors weighs in favor of a full industry bar, given his egregious, recurrent misconduct, the high degree of scienter, and his refusal to recognize his wrongdoing. Moreover, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct." **App. at 10**.

On July 28, 2014, Imperato filed a "notice reserving appeal rights" ("Petition for Review"). On September 3, 2014, the Commission issued its Order Granting Petition for Review and Scheduling Briefs. On October 1, 2014, Imperato filed his "Petition brief not to affirm and void all repugnant judgments as a matter of the law of the land" ("Brief in Support").

II. STANDARD OF REVIEW

Rule 411(a) of the Commission's Rules of Practice authorizes the Commission to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and make any findings or conclusions that in its judgment are proper on the basis of the record." 17 C.F.R. § 201.411(a). The Commission's review of the Initial Decision is *de novo*. See *Richmark Capital Corp.*, 2003 SEC LEXIS 2680, at *3 (Nov. 7, 2003).

III. ARGUMENTS AND AUTHORITIES

A. Summary Affirmance

In its September 2014 Order, the Commission directed the parties to address whether the Initial Decision should be summarily affirmed. Rule of Practice 411(e)(2) authorizes the Commission, on its own initiative, to summarily affirm an Initial Decision. 17 C.F.R. § 201.411(e)(2); *see also Andover Holdings, Inc.*, 2013 SEC LEXIS 548, at *3 n.8 (Feb. 21, 2013); *Eric S. Butler*, 2011 SEC LEXIS 3002, at *1 n.2 (Aug. 26, 2011) (articulating that "the Commission may apply the summary affirmance rule 'in the future where, as here, the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission'").

The Commission has recently reinforced that summary affirmance is appropriate in cases like this one when:

> no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument, [ ] no prejudicial error was committed in the conduct of the proceeding, and [ ] the decision embodies no exercise or decision of law or policy that is important and that the Commission should review.

Joseph Contorinis, 2014 SEC LEXIS 1443, at *4-5 (April 25, 2014) (granting summary affirmance and stating that "the law judge's application of the public interest factors here amply demonstrates that an industry-wide bar is appropriate"); *see also Ross Mandell*, 2014 SEC LEXIS 849, at *3-4 (March 7, 2014) (concluding that the ALJ's findings were correct and did not warrant further argument); *Richard D. Cannistrano*, 1998 SEC LEXIS 15, at *4 n.3 (Jan. 1, 1998) (declaring summary affirmance is appropriate when it is clear that submission of briefs by the parties will not benefit the Commission).

Here, the pertinent facts of this routine follow-on proceeding are undisputed. District Judge Ryskamp permanently enjoined Imperato from future violations of various provisions of

the federal securities laws. *SEC v. Imperiali, Inc., et al.*, Civ. No. 9:12-cv-80021-KLR, Doc. 195 (Final Judgment) [**App. at 29-38**]. ALJ Elliot issued an Initial Decision that identified the injunction, analyzed the public interest factors set forth in *Steadman v. SEC*, 603 F.2d at 1140, and concluded it was in the public interest to impose a full collateral bar and a penny stock bar against an individual such as Imperato who knowingly deceived investors while acting as an unregistered broker in a $2.4 million securities fraud scheme. **App. at 4, 8-10**. Last, Respondent Imperato fails to identify – either in his Petition for Review or his Brief – *any* defect in the Initial Decision, attacking instead the underlying district court litigation.[5] Because Imperato does not identify any prejudicial error in *this* proceeding and the Initial Decision does not embody an exercise of discretion or decision of law or policy that needs to be reviewed, the Commission should summarily affirm the Initial Decision.

B. Alternatively, the Commission should affirm the Initial Decision.

Alternatively, if the Commission does not *summarily* affirm the Initial Decision, it should nevertheless affirm it in the normal course, because (i) sanctions are appropriate against Imperato, and (ii) the analysis of the public interest factors outlined in *Steadman v. SEC* weigh overwhelmingly in favor of barring Imperato from participating in the securities industry.

1. Sanctions are appropriate against Imperato.

Section 15(b)(6)(A) of the Exchange Act 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. §

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[5] Even if Imperato's complaints were justified, which they are not, those arguments would be appropriate, if at all, on appeal of the district court judgment to the Eleventh Circuit Court of Appeals. *See, e.g., James E. Franklin*, 91 SEC Docket 2708, 2713-14, *aff'd*, 285 F. App'x 761 (D.C. Cir. 2008); *Michael Batterman*, 57 S.E.C. 1031, 1039 n.18 (2004), *aff'd*, No. 05-404 (2d Cir. April 28, 2005) (unpublished) ("we will not permit collateral attacks on the decision of a district court). As recited in the Initial Decision, Commission precedent supports the doctrine of collateral estoppel. **App. at 5**. Further, an appeal of a district court judgment does not affect the injunction's status as a basis for administrative action. *Conrad P. Seghers*, 2007 SEC LEXIS 2238, at *10-11 and n.12 (Sep. 26, 2007), *pet. denied*, 548 F.3d 129 (D.D.C. 2008).

78o(b)(6)(A). The Commission also has the authority, pursuant to Section 15(b), to sanction persons, such as Imperato, who act as unregistered brokers. *See Edward J. Driving Hawk*, 2010 SEC LEXIS 2201, at *13 n.4, *notice of finality*, 2010 SEC LEXIS 2570 (Aug. 5, 2010); *see, e.g., Vladislav Steven Zubkis*, 2005 SEC LEXIS 3125 (Dec. 2, 2005), *recon. denied*, 2006 SEC LEXIS 861 (Apr. 13, 2006)).

The relevant considerations in determining whether it is "in the public interest" to sanction an individual include:

> [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 at 1140; *see Gary M. Kornman*, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009) (Commission considers the *Steadman* factors when considering whether an administrative sanction serves the public interest).

As articulated in the Initial Decision, the application of the facts adjudicated in the underlying district court action to the *Steadman* factors conclusively establishes that it is in the public interest to sanction Imperato. **App. at 8-10**. In particular, Imperato's misconduct was egregious – he defrauded at least 26 investors out of more than $2.4 million. **App. at 9**. Imperato's misconduct was not isolated – it occurred at least 26 times over a period of *years*. *Id.* Imperato acted with a high degree of scienter – the district court found that he deceived investors *knowingly*, not merely recklessly. *Id.* Imperato has not recognized the wrongful nature of his conduct – he continues to claim he is a blameless victim of a conspiracy. **App. at 10**. Finally, Imperato's continued association with Imperiali, which he appears to admit in the district court action, will present opportunities for future violations. *SEC v. Imperiali, Inc., et al.*, Civ. No. 12-cv-80021-

KLR, Doc. 140 (Sep. 30, 2013) (Imperato motion). **App. at 42**. For any and all of these reasons, it is in the public interest to sanction Imperato.

2. Full range of bars should be imposed against Imperato.

Based on the egregiousness of Imperato's conduct and the analysis of the public interest factors, the Division asserts that full collateral securities industry bars and a penny-stock bar should be imposed against Imperato, pursuant to 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.[6] *See Omar Ali Rizvi*, 2013 SEC LEXIS 47, at *23-24 (Jan. 7, 2013); *John W. Lawton*, 2012 SEC LEXIS 3855, at *8 (Dec. 13, 2012).

Based on the foregoing, the Commission should affirm the Initial Decision.

IV. CONCLUSION

For all of these reasons, the Commission should summarily affirm the Initial Decision pursuant to Rule of Practice 411(e), or, alternatively, affirm it.

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[6] The Dodd-Frank bar provisions apply to Imperato even though they were enacted after his misconduct. *John W. Lawton*, 2012 SEC LEXIS 3855, at *38 (Dec. 13, 2012) ("[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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ADMINISTRATIVE PROCEEDING
File No. 3-15628

In the Matter of

DANIEL IMPERATO,

Respondent.

DIVISION OF ENFORCEMENT'S RESPONSE AND BRIEF IN OPPOSITION TO RESPONDENT DANIEL IMPERATO'S PETITION FOR REVIEW OF INITIAL DECISION

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DIVISION OF ENFORCEMENT'S RESPONSE AND BRIEF IN OPPOSITION TO RESPONDENT DANIEL IMPERATO'S PETITION FOR REVIEW OF INITIAL DECISION

SUMMARY OF APPENDIX DOCUMENTS

1. Initial Decision, dated July 7, 2014, *In the Matter of Daniel Imperato*, AP File No. 3-15628.

2. Report and Recommendation, dated September 25, 2013, Docket 137, *SEC v. Imperiali, Inc., et al.*, Cause No. 9:12-CV-80021-KLR.

2. Order Adopting Report, dated October 8, 2013, Docket 163, *SEC v. Imperiali, Inc., et al.*, Cause No. 9:12-CV-80021-KLR.

3. Final Judgment As To Defendant Daniel Imperato, dated November 8, 2013, Docket 195, *SEC v. Imperiali, Inc., et al.*, Cause No. 9:12-CV-80021-KLR.

4. Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing, dated November 27, 2013, *In the Matter of Daniel Imperato*, AP File No. 3-15628.

5. Defendant's Motion Response to Plaintiff's Request for Pretrial Stipulation, dated September 27, 2013, Docket 140, *SEC v. Imperiali, Inc., et al.*, Cause No. 9:12-CV-80021-KLR.

ORIGINAL

INITIAL DECISION RELEASE NO. 628
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15628

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

In the Matter of	:	INITIAL DECISION
	:	July 7, 2014
DANIEL IMPERATO	:	

APPEARANCES: Timothy S. McCole for the Division of Enforcement, Securities and Exchange Commission

Daniel Imperato, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition and bars Respondent Daniel Imperato (Imperato) from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock (collectively, collateral bar).

Procedural Background

On November 27, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Imperato, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that a federal district court enjoined Imperato from future violations of Sections 5 and 17 of the Securities Act of 1933 (Securities Act); Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 15(a), 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 (Investment Company Act) (collectively, federal securities laws), in SEC v. Imperiali, Inc., No. 9:12-cv-80021 (S.D. Fla. Nov. 8, 2013) (Imperiali). OIP at 1-2.

At a prehearing conference held on January 2, 2014, I deemed service of the OIP to have occurred on December 18, 2013; directed Imperato to file an Answer by January 22, 2014; and granted the parties leave to file motions for summary disposition pursuant to Commission Rule of Practice (Rule) 250. See Daniel Imperato, Admin. Proc. Rulings Release No. 1142, 2014 SEC

LEXIS 6 (Jan. 3, 2014); Tr. 6-7, 16-17.[1] Imperato filed his Answer six days late, on January 28, 2014, but I found good cause for the delayed filing and accepted the Answer as part of the record. See Daniel Imperato, Admin. Proc. Rulings Release No. 1231, 2014 SEC LEXIS 510 (Feb. 10, 2014).

On February 19, 2014, the Division filed its Motion for Summary Disposition (Division's Motion) and Appendix in support.[2] Also on February 19, 2014, Imperato filed his Motion for Summary Disposition (Respondent's Motion) and supporting exhibits.[3] On March 6, 2014, Imperato filed his Opposition to the Division's Motion (Respondent's Opposition) and supporting exhibits.[4] On March 7, 2014, the Division filed its Response in Opposition to Respondent's Motion (Division's Opposition) with no attached exhibits. On March 20, 2014, Imperato filed a document titled as his "response" to the Division's "false claims" and Motion, which I construe as his Reply to the Division's Opposition.

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[1] Citation ("Tr.") is to the prehearing conference transcript.

[2] In support of its Motion, the Division included the following exhibits: the magistrate judge's report and recommendation (report) on the Commission's motion for summary judgment filed in Imperiali (Div. Ex. 1); the district court's order adopting the report (Div. Ex. 2); the district court's final judgment as to Imperato (Div. Ex. 3); Imperato's September 27, 2013, motion filed in the district court (Div. Ex. 4); Imperato's November 30, 2013, letter to the Secretary of the Commission (Secretary) (Div. Ex. 5); and an excerpt from the Form 10-KSB for the fiscal year ended August 31, 2007, of Imperiali, Inc. (Div. Ex. 6).

[3] In support of Respondent's Motion, Imperato included the following exhibits: a collection of documents, including a December 7, 2013, letter addressed to the Secretary, and exhibits to the letter consisting of documents that appear to have been filed by Imperato in the district court (Resp. Ex. A); and a collection of documents, including a December 11, 2013, letter addressed to the Secretary, and various Imperiali, Inc. (Imperiali) business documents that appear to have been filed in the district court, including Imperiali communications with the Commission, letters and subscription agreements with various Imperiali investors, claims from Imperiali investors, and a news article regarding Eric Skys' mismanagement and fraud involving Imperiali (Resp. Ex. AB).

[4] In support of Respondent's Opposition, Imperato included an exhibit consisting of a collection of documents, including portions of Imperato's supplemental brief to the district court's order adopting the magistrate judge's report, filed in the district court on October 17, 2013, and later stricken on October 18, 2013, because it exceeded the court-ordered ten-page limit. Order Striking Def.'s Imperato's Supplemental Br. (Resp.), Imperiali (Oct. 18, 2013), ECF No. 180; 17 C.F.R. § 201.323 (Official Notice). Imperato refiled a shortened supplemental brief on October 25, 2013. Def.'s Second Resp. Br., Imperiali (Oct. 25, 2013), ECF No. 184. Other documents in the exhibit include what appear to be portions of various filings in the district court, the district court docket, Imperiali insurance documents, Imperiali legal bills, portions of a June 7, 2006, Imperiali private placement memorandum, and portions of various Imperiali filings with the Commission.

Summary Disposition Standard

A motion for summary disposition may be granted if there is no genuine issue with regard 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 him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

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 Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14262-63, pet. denied, 592 F.3d 173 (D.C. Cir. 2010); Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 & nn.21-24 (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." John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002); pet. denied, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323.[5] See 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

Findings of Fact

A. Background

Imperato controlled Florida corporation Imperiali, Inc. (Imperiali), and acted as a broker in securities transactions between Imperiali and investors, resulting in the sale of over two million shares of stock to investors and approximately $2.5 million in profits. Div. Ex. 1 at 2, 5-6, 10; Div. Ex. 2 at 1; Div. Ex. 3 at 8; Answer at 5.

B. Civil Proceeding: SEC v. Imperiali

In 2012, the Commission filed a civil complaint against Imperato, Imperiali, and two other defendants, alleging that Imperato used his company, Imperiali, to carry out a securities fraud scheme targeting Imperiali investors by representing that the company was a "thriving, multinational corporation that owned multiple, valuable subsidiaries," while in reality it was only a shell corporation. Compl. at 1, Imperiali (Jan. 9, 2012), ECF No. 1. As a result of this behavior, Imperato allegedly violated the registration provisions, antifraud statutes, and other requirements of the federal securities laws. Id. at 19-28, 30-31.

[5] Pursuant to Rule 323, I take official notice of the proceedings, docket sheet, and record in Imperiali.

Thereafter, the Commission moved for summary judgment, seeking a permanent injunction against Imperato for future violations of the federal securities laws, disgorgement plus prejudgment interest, a civil penalty, and an officer-and-director bar. See Pl.'s Mot. for Summ. J., Imperiali (May 6, 2013), ECF No. 105. On September 25, 2013, the magistrate judge issued his report, recommending that the district court grant the Commission's summary judgment motion. Div. Ex. 1. On October 8, 2013, the district court granted summary judgment against Imperato, and adopted the magistrate judge's report and findings that:

- Imperato sold unregistered securities in violation of Securities Act Sections 5(a) and (c) by directly soliciting investors and hiring a sales team to "cold call" potential investors, resulting in the sale of more than 2,362,500 shares of common stock to at least twenty-six investors in at least eighteen states;

- Imperato violated the antifraud statutes of the federal securities laws by "knowingly making blatantly false and deceptive material statements" in press releases, private placement memoranda (PPMs), and Imperiali's filings with the Commission;

- Imperato violated Exchange Act Section 15(a) because he acted as an unregistered 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," and received the majority of the proceeds from the stock sales;

- Imperato was liable as a controlling person and/or aider and abettor in violating Exchange Act Section 13(a) as he participated in the drafting and editing of Imperiali's materially misleading reports that were filed with the Commission, and Imperiali violated Exchange Act Section 13(b) by failing to keep "even the most rudimentary records" and failing to have any "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";

- Imperato violated Exchange Act Rules 13b2-2 and 13a-14 by making materially false statements to Imperiali's accountant and signing false certification statements attesting to the accuracy of reports filed with the Commission; and

- Imperato violated Investment Company Act Section 34(b) by materially overstating the value of Imperiali's portfolio companies and failing to maintain required company documents.

Div. Ex. 1 at 6-13; Div. Ex. 2.

On November 8, 2013, the district court entered final judgment against Imperato, permanently enjoining him from future violations of the federal securities laws. Div. Ex. 3 at 1-8. Imperato was also given an officer-and-director bar and ordered to disgorge $2,493,785 plus

$640,703 in prejudgment interest.[6] Id. at 8. Imperato's appeal of this judgment remains pending as of the date of this Initial Decision. See SEC v. Imperato, No. 13-14809 (11th Cir. appeal filed Oct. 21, 2013).

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose a collateral bar on Imperato if: (1) at the time of the alleged misconduct, he was associated with a broker or dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (b)(6)(A)(iii). During the time of his misconduct, Imperato was not associated with a registered broker or dealer, however, the district court found that he acted as a broker in the securities transactions between Imperiali and investors. Div. Ex. 1 at 10; Div. Ex. 2; see Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627 (barring unregistered associated person of an unregistered broker-dealer from association with a broker or dealer), recons. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584. The district court enjoined Imperato from future violations of the federal securities laws, i.e., "conduct . . . in connection with the purchase or sale of any security," within the meaning of Exchange Act Section 15(b)(4)(C). 15 U.S.C. § 78*o*(b)(4)(C); see Div. Ex. 3.

Imperato disputes that the statutory basis for a sanction has been satisfied. Imperato's main arguments that there is a genuine issue of material fact are as follows: (1) contrary to the district court's finding, he did not act as a broker in the securities transactions between Imperiali and investors; (2) the final judgment in the underlying civil proceeding is repugnant to the U.S. Constitution and defective in other respects, and should therefore be overturned; and (3) the Division has not proven that Imperato should be sanctioned under Exchange Act Section 15(b) because evidence from the district court proceeding is inadmissible in this proceeding.[7] See Resp. Mot. at 1, 4; Resp. Opp'n at 1-2; Answer at 2, 7, 12-13; Tr. 15. These arguments lack merit.

First, the doctrine of collateral estoppel precludes Imperato from challenging the district court's finding that he acted as an unregistered broker in the securities transactions between Imperiali and investors. The Commission has consistently applied the doctrine of collateral estoppel to prevent respondents from relitigating in a follow-on administrative proceeding the factual findings or the legal conclusions of an underlying district-court action. See Michael Batterman, 57 S.E.C. 1031, 1039 & n.18 (2004) (collecting cases), aff'd, No. 05-404 (2d Cir. Apr. 28, 2005) (unpublished). Under this doctrine, a party is collaterally estopped from relitigating an issue if a four-part test is met: (1) the issue at stake is identical to the one involved

[6] The district court entered an amended judgment in January 2014, clarifying that Imperato is jointly and severally liable for this amount with Imperiali. See Am. Final J. at 6, Imperiali (Jan. 28, 2014), ECF No. 209.

[7] Imperato also argues that the Exchange Act Section 15(b) charge is a new false charge because it was not included in the original case. Resp. Mot. at 1. I previously addressed this issue. See Daniel Imperato, Admin. Proc. Rulings Release No. 1270, 2014 SEC LEXIS 660 (Feb. 25, 2014).

in the earlier proceeding; (2) the issue was actually litigated in the earlier proceeding; (3) the determination of the issue must have been a critical and necessary part of the earlier judgment; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue. Tampa Bay Water v. HDR Eng'g, Inc., 731 F.3d 1171, 1180 (11th Cir. 2013). This four-part test is met here. The OIP alleges that Imperato was an unregistered broker in the securities transactions between Imperiali and investors, which is identical to the issue determined by the district court. Compare OIP at 1-2 with Div. Ex. 1 at 9-10; see Dailide v. U.S. Attorney Gen., 387 F.3d 1335, 1342 (11th Cir. 2004) (finding that the factual issues at stake in removal proceeding, as set forth in the notice to appear, were the same issues that were the subject of prior denaturalization proceedings). The issue whether Imperato was an unregistered broker was actually litigated in the district court proceeding, as it was squarely presented by the Commission's motion for summary judgment. Pl.'s Mot. for Summ. J. and Mem. of Law in Supp. at 4-5, Imperiali (May 6, 2013), ECF No. 105; see Restatement (Second) of Judgments § 27 cmt. d (1982) ("When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated . . . ."), quoted in Pleming v. Universal-Rundle Corp., 142 F.3d 1354, 1359 (11th Cir. 1998). Further, Imperato had a full and fair opportunity to litigate this issue before the district court, and filed numerous responses to the Commission's summary judgment motion and objections to the magistrate judge's report. See Def.'s Resp. to Commission's Mot. for Summ. J., Imperiali (May 7, 2013), ECF No. 109; Def.'s Objections to Report and Recommendations, Imperiali (Oct. 1, 2013), ECF No. 148.[8] The district court ruled on this issue when it adopted the magistrate judge's report and granted the Commission's motion for summary judgment; under the Federal Rules of Civil Procedure, such a motion shall be granted only when the court finds that "there is no genuine dispute as to any material fact" and "the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); see Div. Exs. 1, 2, 3. The district court's finding that Imperato was an unregistered broker was critical and necessary to its judgment that Imperato violated Exchange Act Section 15(a) by acting as an unregistered broker in the sale of Imperiali stock. Div. Ex. 1 at 9-10; Div. Ex. 2.

Second, Imperato argues that the civil proceeding in the district court was unfair, violated his constitutional rights, and should be overturned. Resp. Mot. at 1, 4; Answer at 1; Tr. 12, 15. Imperato also argues that I "stated that [he] would have a chance to defend the alleged claims against him concerning the entire federal case since the lower court magistrate erred based on

[8] Imperato filed at least five other documents in response to the Commission's motion and at least four other documents in response to the magistrate judge's report. See Def.'s Settlement Agreement in Resp. to Commision's Mot. for Summ. J., Imperiali (May 5, 2013), ECF No. 111; Def.'s Resp. to Commission's Mot. for Summ. J., Imperiali (May 10, 2013), ECF No. 112; Additional Supplemental Resp. to Commission's Mot. for Summ. J., Imperiali (May 13, 2013), ECF No. 113; Am. Filings Settlement Agreement in Resp. to Commission's Mot. for Summ. J., Imperiali (May 20, 2013), ECF No. 116; Additional Supplemental Affirmative Physical Evidence in Resp. to Commission's Mot. for Summ. J., Imperiali (May 20, 2013), ECF No. 120; Secondary Resp. for Def. Imperato Objecting to Report and Recommendations, Imperiali (Oct. 3, 2013), ECF No. 150; Mot. to Strike Report and Recommendations, Imperiali (Oct. 4, 2013), ECF No. 152; Mot. Objecting to Commission's Mot. for Leave to Appear by Telephone and Mot. to Strike Report and Recommendations, Imperiali (Oct. 4, 2013), ECF No. 156; Mot. Objecting to and Striking Report and Recommendations, Imperiali (Oct. 4, 2013), ECF No. 157.

nonconsent and arbitrary recommendations and orders signed by [District Judge] Ryskamp without evidentiary hearings and no trial by jury of peers." Resp. Opp'n at 1 (formatting altered). Regarding Imperato's claims that he would have the opportunity to revisit his federal case, the record does not support this. In fact, I explained the following to Imperato at the January 2, 2014, prehearing conference: "[I]f there are no disputed issues of fact that are material to this case, genuinely disputed, then you will not [be] allowed to essentially relitigate the case before Judge Ryskamp." Tr. 11.

Again, Imperato may not use this administrative proceeding to collaterally attack the district court's judgment or relitigate issues. See Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1108 (D.C. Cir. 1988); James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2713-14, aff'd, 285 F. App'x 761 (D.C. Cir. 2008); Joseph P. Galluzzi, 55 S.E.C. 1110, 1115-16 (2002). Moreover, the underlying injunction is "finalized for the purposes of this administrative proceeding," notwithstanding the pendency of Imperato's appeal in the Eleventh Circuit Court of Appeals. Herbert M. Campbell II, Esq., Initial Decision Release No. 266 (Oct. 27, 2004), 83 SEC Docket 4000, 4008 (citing John Francis D'Acquisto, 53 S.E.C. 440, 444 n.9 (1998)). The Commission has repeatedly held that the pendency of an appeal is not grounds to defer decision in an administrative proceeding. See Jose P. Zollino, Exchange Act Release No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2601 n.4; Joseph P. Galluzzi, 55 S.E.C. at 1116 n.21; Charles Phillip Elliott, 50 S.E.C. 1273, 1277 n.17 (1992), aff'd 36 F.3d 86 (11th Cir. 1994). If the underlying civil judgment is vacated and a statutory basis for the bar is no longer present, the remedy is to petition the Commission for reconsideration of this action. See Jon Edelman, 52 S.E.C. 789, 790 (1996); Charles Phillip Elliott, 50 S.E.C. at 1277 n.17.

Third, Imperato argues that the Division is barred from presenting evidence from the district court proceeding in this administrative proceeding because the district court case is under appeal, and that I have no jurisdiction over the district court case. Resp. Opp'n at 1-2. Under Exchange Act Section 15(b)(6), the question presented in this proceeding is whether Imperato has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C), and whether, based on that injunction, he should be sanctioned. As I explained to Imperato at the January 2, 2014, prehearing conference:

> [T]he only question that's being presented to me in this administrative proceeding is whether or not to bar you from working in the securities industry. . . . All I have the authority to do is issue an initial decision that either dismisses the case or bars you from the securities industry or [censures] you . . . .

Tr. 9. "[T]he mere existence of an injunction may support . . . a bar from participation in the securities industry where the nature of the acts enjoined and the circumstances indicate that it is in the public interest." Marshall E. Melton, 56 S.E.C. 695, 700 (2003). And in assessing whether a bar is in the public interest, "follow-on proceedings have long considered district court findings . . . . Courts have repeatedly approved this practice."[9] Gregory Bartko, Exchange Act

[9] Further, Rule 250 allows me to consider facts officially noticed pursuant to Rule 323, which includes "any material fact which might be judicially noticed by a district court of the United States . . . ." 17 C.F.R. §§ 201.250, .323. Thus, as noted above, I took official notice of the

Release No. 71666, 2014 SEC LEXIS 841, at *43-44 & nn.69-70 (Mar. 7, 2014) (collecting cases).

Imperato's submissions attached to his Answer, Motion, and Opposition, the majority of which appear to have been submitted to the district court, suggest an attempt by Imperato to shift blame to Charles Fiscina (one of his co-defendants in Imperiali) and others. See, e.g., Resp. Ex. AB at 26-39, 41-42, 53-63. Imperato's argument

> betrays a misunderstanding of the basis for, and purpose of, this proceeding. The basis for this proceeding is the action of the district court – in . . . enjoining him – and its purpose is not to revisit the factual basis for that action but, rather, to determine what remedial sanctions, if any, should be imposed in the public interest.

Jose P. Zollino, 89 SEC Docket at 2605 (internal footnote omitted).

Imperato also raises a statute of limitations issue, arguing that the conduct alleged by the Commission occurred more than five years ago. Resp. Mot. at 3-5; Resp. Opp'n at 2; Answer at 2-3. Under 28 U.S.C. § 2462, the five-year statute of limitations, begins to run from the date of the conviction or injunction on which the action is based, not the date of the underlying conduct. See Joseph Contorinis, Exchange Act Release No. 72031, 2014 SEC LEXIS 1443, at *11 & n.17 (Apr. 25, 2014). This proceeding was instituted less than one month after the final judgment was entered in the district court, well within the limitations period of § 2462.

Accordingly, there is no genuine issue with regard to any material fact and summary disposition is appropriate. See 17 C.F.R. § 201.250(b). A sanction will be imposed if it is in the public interest.

Sanctions

The Division seeks a collateral bar against Imperato.[10] Div. Mot. at 5. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, namely: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations (Steadman factors). 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see Gary M. Kornman, 95 SEC Docket at 14255. The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Gary M. Kornman, 95 SEC Docket at 14255. The

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proceedings, docket sheet, and record in Imperiali, which are adjudicative facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2); see supra note 5.

[10] Collateral bars are applicable here regardless of the date of Imperato's violations. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

Commission has also considered the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46; Marshall E. Melton, 56 S.E.C. at 698. Industry bars have long been considered effective deterrence. See Guy P. Riordan, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases).

In Ross Mandell, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). After engaging in such an analysis, I have determined that it is appropriate and in the public interest to collaterally bar Imperato from participation in the securities industry to the fullest extent possible.

Here, the Steadman factors weigh in favor of imposing the full collateral bar. Imperato's conduct was both egregious and recurrent. Imperato acted as a broker on at least twenty-six occasions during the sale of Imperiali shares to investors. Div. Ex. 1 at 6, 10. These twenty-six investors, located across eighteen states, bought more than 2,362,500 shares of Imperiali for almost $2.5 million. Div. Ex. 1 at 6; Div. Ex. 6 at 3;[11] Answer at 5, 10. Additionally, Imperato "knowingly [made] blatantly false and deceptive material statements" in press releases, PPMs, and filings with the Commission. Div. Ex. 1 at 8. As a result of his misconduct, Imperato was enjoined from violating the federal securities laws, including the antifraud provisions. See Div. Ex. 3. The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." Peter Siris, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted); see Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)). Further, "in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions." Marshall E. Melton, 56 S.E.C. at 713.

In committing securities fraud, Imperato acted with scienter, specifically, intent to defraud, an element that was crucial to the district court's finding that Imperato violated Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5; in fact, the district court found that Imperato "knowingly [made] blatantly false and deceptive material statements in press releases and [PPMs] that he himself authored, which were subsequently disseminated to potential investors via the [I]nternet." Div. Ex. 1 at 7-8; see SEC v. Merchant Capital, LLC, 483 F.3d 747, 766 (11th Cir. 2013) (scienter is an element of securities fraud under Exchange Act Section 10(b) and Securities Act Section 17(a)(1)).

[11] Page numbers referenced in Division Exhibit 6 are located at the top of the exhibit.

There is no evidence that Imperato recognizes the wrongful nature of his conduct and he has not offered adequate assurances against future violations. While Imperato maintains the position that he has never sold securities and does not "care to ever sell securities again," the district court found that he controlled Imperiali and acted as a broker. Tr. 10; Div. Ex. 1 at 2, 4-5, 9-10. The mitigating effect, if any, of Imperato's representation that he does not want to sell securities in the future is undermined by his continued denial that he ever sold securities in the first place. Imperato's current profession is somewhat unclear; he has represented that he lacks financial resources and cannot get a job, implying that he is unemployed. Tr. 3, 17.

Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" Tzemach David Netzer Korem, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). Imperato does little to rebut that inference. In his many filings in this proceeding, he has repeatedly attacked the underlying proceeding and places all blame on others.[12] Resp. Mot. at 1, 4; Resp. Opp'n at 1, 3-5; Answer at 2, 5, 7, 13-14; Tr. 15, 22-23, 29. Failure to make assurances against future violations and to recognize wrongdoing demonstrates the threat of future violations. See Christopher A. Lowry, 55 S.E.C. 1133, 1143-44 (2002).

Imperato also asserts that he is handicapped as he is blind in one eye. Tr. 30; Resp. Ex. A at 6. I have taken into account Imperato's financial and personal circumstances, but the balance of the Steadman factors weighs in favor of a full industry bar, given his egregious, recurrent misconduct, the high degree of scienter, and his refusal to recognize his wrongdoing. Moreover, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct.

A penny stock bar is also appropriate because, at the time of the alleged misconduct, Imperato was participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6)(A), (C). Based on the evidence submitted by Imperato, Imperiali shares were sold in the range of $1 to $3 per share, and there is no evidence that one of the other exemptions in the penny stock definition would apply. See Resp. Ex. AB at 13, 16-24; 15 U.S.C. § 78c(a)(51)(A); 17 C.F.R. § 240.3a51-1(d) (defining "penny stock" to include "any equity security other than a security . . . that has a price of five dollars or more"). To the extent that other Imperiali officers or employees directly sold Imperiali shares, the district court found that Imperato controlled Imperiali as well as acted as a broker in its securities transactions with investors. Div. Ex. 1 at 2, 4-6, 10.

In conclusion, it is in the public interest to impose a permanent, direct and collateral bar against Imperato.

[12] Although Imperato is appealing the underlying action and thus arguably maintaining a position in this proceeding consistent with that appeal, a pending appeal is not a mitigating factor. See Ross Mandell, 2014 SEC LEXIS 849, at *21 n.28.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition against Respondent Daniel Imperato is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Daniel Imperato is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Daniel Imperato is permanently BARRED from participating in an offering of penny stock, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. See 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111. See 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

Cameron Elliot
Administrative Law Judge

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. *See* 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]

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[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

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 OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70959 / November 27, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15628

In the Matter of **DANIEL IMPERATO,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), against Daniel Imperato ("Respondent" or "Imperato").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From at least December 2005 through at least 2008, Imperato controlled a Florida corporation called Imperiali, Inc. During this period, Imperiali sold stock to approximately 60 investors, raising approximately $2.5 million. Imperato, who is a 55-year-old resident of West Palm Beach, Florida, was a broker in the securities transactions between Imperiali and investors.

B. ENTRY OF THE INJUNCTION

1. On November 8, 2013, a final judgment was entered 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.

2. The Commission's complaint alleged that, from at least 2005 through 2008, Imperato used Imperiali to carry out a securities-fraud scheme. In documents distributed to investors and in reports filed with the Commission, Imperato portrayed Imperiali as a thriving corporation that owned several valuable subsidiaries. In reality, Imperiali was just a shell corporation, and its subsidiaries were worthless or non-existent. During the scheme, Imperiali sold stock to approximately 60 investors, raising approximately $2.5 million. Imperato used the offering proceeds for purposes other than those promised, including to pay his travel expenses during his 2008 Presidential campaign. In the offering, Imperato was a broker in the transactions between Imperiali and investors, but he was neither registered with the Commission as a broker or dealer nor associated with an entity registered with the Commission as a broker or dealer.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial

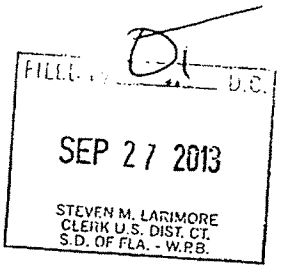
decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

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

Affidavit

My name is Daniel Imperato ,I prepared this document Red

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 Redacted __X__ produces identification type produced FL

Janet L Avolio
Notary public

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

Certificate of service
I hereby certify that the clerks office said efc filing was fine from the court, there is no need to send a true and correct copy of the forgoing by us mail to,
Securities exchange commission based on the efc notice from the court.
Timothy s. Mc Cole
801 cherry st. 19th fl.
Fort worth , tx. 76102
Mccolet@sec.gov.

From: McCole, Timothy S. <McColeT@SEC.GOV>
To: Dr. Imperato Redacted >
Cc: Justice, Tina <JUSTICET@SEC.GOV>
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