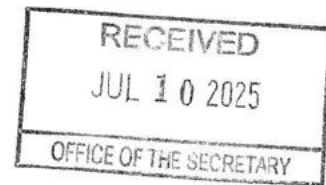


Eugene Giaquinto

[REDACTED]

July 5, 2025



Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

RE: Motion to Vacate – Administrative Proceeding File No. 3-15823

Dear Secretary:

Enclosed for filing please find my Motion to Vacate Final Order and Sanctions, together with my supporting Declaration and Exhibits A through F. This Motion is submitted pursuant to 17 C.F.R. § 201.154(b) and Federal Rule of Civil Procedure 60(b)(2), (4), and (6)

I respectfully request that the Commission consider this Motion, grant the relief requested, and schedule oral argument if deemed appropriate. Although this Motion is filed beyond the ordinary ten-day deadline of 17 C.F.R. § 201.154(b), I believe extraordinary circumstances—including significant changes in constitutional law and the SEC's own enforcement practices—warrant the Commission's consideration and relief at this time.

This motion is based on substantial changes in constitutional law regarding the SEC's administrative adjudication framework, the improper disgorgement of gross commissions without deduction for expenses, the inclusion of time-barred amounts prior to April 2009, and the significant payments I have already made totaling \$34,198.66 through garnishment.

I respectfully request that the Commission vacate the order or, alternatively, deem the monetary judgment satisfied.

Thank you for your time and consideration.

Sincerely,

[REDACTED]

Eugene Giaquinto

## **Declaration of Eugene Giaquinto**

I, Eugene Giaquinto, declare under penalty of perjury as follows:

1. I am the Respondent in SEC Administrative Proceeding File No. 3-15823.
2. The SEC initiated an administrative proceeding against me involving allegations that I received transaction-based compensation without proper registration. There were no allegations of manipulative trading, and there were no identified victims in the matter.
3. My legal counsel advised me to settle because the judge in an SEC administrative hearing would be an employee of the SEC, and the government historically wins nearly all such cases.
4. Based on this advice and fear of an unfair hearing, I agreed to settle the matter in April 2014.
5. As part of the settlement, the SEC ordered me to disgorge gross commissions without permitting me to deduct legitimate business expenses. This resulted in an excessive disgorgement amount not consistent with the standards later clarified in *Liu v. SEC*.
6. The settlement included commissions earned as early as 2008. Under *Kokesh v. SEC*, any amounts tied to commissions before April 2009 are time-barred and should not have been included in the settlement.
7. As of June 2025, the SEC has garnished a total of \$34,198.66 from my wages related to this matter.
8. Continued enforcement through garnishment and liens imposes severe hardship on me and my family, especially given the amounts already paid.
9. I believe that the settlement and resulting order should be vacated or modified in light of recent Supreme Court rulings and the substantial payments already made.
10. In addition to financial hardship, I have suffered significant reputational harm because references to this SEC case appear on the first page of internet search results for my name. I have been passed over for employment opportunities due to this record, and in one instance, a job offer was rescinded after the employer discovered the SEC case online. This has caused ongoing hardship for me and my family.
11. In addition, my legal counsel advised me that defending the matter before an SEC

administrative law judge would be extremely costly and that my chances of success were virtually nonexistent given the SEC's overwhelming win rate in its own forum. The prospect of incurring significant legal expenses, coupled with the near certainty of an adverse result, left me with no realistic choice but to settle. This financial and strategic pressure further demonstrates that my settlement was not the result of a truly voluntary and fair process.

12. I respectfully request the opportunity for oral argument on this Motion. Although this Motion is filed beyond the ordinary ten-day deadline of 17 C.F.R. § 201.154(b), I believe extraordinary circumstances, including significant changes in constitutional law and the SEC's enforcement practices, justify this Motion and warrant relief at this time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 5<sup>th</sup>, 2025 at Monroe Township, New Jersey.



Eugene Giaquinto



# **UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

In the Matter of Eugene Giaquinto – Administrative Proceeding File No. 3-15823

## **MOTION TO VACATE FINAL ORDER AND SANCTIONS**

Respondent Eugene Giaquinto respectfully moves to vacate the final order issued in the above-captioned matter, pursuant to 17 C.F.R. § 201.154(b) and/or Federal Rule of Civil Procedure 60(b)(2), (4), and (6), based on newly established constitutional law, improper disgorgement practices, time-barred claims, substantial payments already made, and ongoing reputational harm.

Although my case did not proceed to a hearing before an SEC administrative law judge (ALJ), my legal counsel advised me to settle because the judge in any administrative hearing would be an SEC employee, and the SEC historically prevailed in approximately 99% of administrative cases. I settled out of fear that I could not receive a fair hearing in the SEC's administrative forum, which recent Supreme Court decisions in *Jarkesy v. SEC* and *Axon Enterprise, Inc. v. FTC* have confirmed to be constitutionally flawed.

Moreover, in October 2013, *The Wall Street Journal* reported that the SEC won 100% of cases it brought before its own administrative law judges in the preceding year, compared with only about 61% in federal court. The article further described concerns from defense counsel that the SEC enjoys a significant "home-court advantage" in administrative proceedings, where it acts as prosecutor, judge, and jury. (See Exhibit E, *Wall Street Journal*, Oct. 21, 2013). This overwhelming success rate contributed to my reasonable belief that I could not receive a fair hearing in the SEC's administrative forum and was compelled to settle under circumstances that recent Supreme Court decisions have now confirmed were constitutionally flawed.

## **II. Unlawful Disgorgement Practices Under *Liu v. SEC***

In *Liu v. SEC*, 591 U.S. \_\_\_\_ (2020), the Supreme Court held that disgorgement imposed by the SEC must be limited to net profits and returned to harmed investors. My case did not involve allegations of manipulative trading, nor were there any identified victims. Despite this, the SEC ordered me to disgorge my gross commissions without permitting me to deduct legitimate business expenses, resulting in a disgorgement figure inconsistent with the standards established in *Liu*.

## **III. Disgorgement Time-Barred Under *Kokesh v. SEC***

In *Kokesh v. SEC*, 581 U.S. 455 (2017), the Supreme Court held that disgorgement is a penalty subject to the five-year statute of limitations under 28 U.S.C. § 2462. My settlement was finalized in April 2014, yet the SEC included commissions I earned as early as 2008. Any amounts related to conduct occurring before April 2009 should have been excluded as time-barred. Inclusion of those amounts renders the disgorgement unlawful and excessive.

## **IV. Substantial Payments Made Toward Disgorgement**

As of June 2025, the SEC has garnished a total of \$34,198.66 from my wages related to this matter. These substantial payments should be credited toward satisfying the judgment. Continued garnishment and the lien on my home impose severe financial hardship and are inequitable given the amounts already collected.

## **V. Settlement Obtained Under Coercive and Unconstitutional Framework**

The settlement in this matter was not purely voluntary. I was advised by my legal counsel that I had no realistic chance of success because the SEC controlled the forum and the adjudicator, and wins nearly all its cases before its ALJs. This fear of a biased administrative process compelled me to settle under circumstances that recent Supreme Court decisions have shown to be unconstitutional. Accordingly, the settlement should be vacated or modified in the interest of justice and due process.

In addition, my legal counsel advised me that defending the matter before an SEC administrative law judge would be extremely costly and that my chances of success were virtually nonexistent given the SEC's overwhelming win rate in its own forum. The prospect of incurring significant legal expenses, coupled with the near certainty of an adverse result, left me with no realistic choice but to settle. This financial and strategic pressure further demonstrates that my settlement was not the result of a truly voluntary and fair process.

#### **VI. Additional Hardship Due to Reputational Harm and Employment Losses**

Beyond the financial hardship of wage garnishment and liens, I have suffered significant reputational harm as a result of the SEC proceedings and resulting order. When prospective employers search my name online, they immediately find references to this enforcement action on the first page of search results. This public record has caused me to be passed over for job opportunities and has even resulted in one instance where I was offered a job only to have the offer rescinded after the employer found the SEC case online. This ongoing damage to my professional reputation constitutes a substantial hardship that warrants vacating or modifying the order in the interest of justice.

#### **PRAYER FOR RELIEF**

WHEREFORE, Respondent respectfully requests that the Commission:

1. Vacate the final order in part or in full;
2. Terminate wage garnishment and release all liens on Respondent's property;
3. Declare the monetary sanctions satisfied based on payments already made and the application of recent Supreme Court rulings;
4. Grant such other and further relief as may be just and proper.
5. Respondent further requests that, should the Commission seek to pursue any future enforcement action or monetary sanctions, such proceedings be referred to an Article III court in accordance with the constitutional principles set forth in *Jarkesy v. SEC*.

Respectfully submitted,

Eugene Giacquinto

July 5<sup>th</sup>, 2025

## **EXHIBITS**

To accompany Motion to Vacate Final Order and Sanctions  
Administrative Proceeding File No. 3-15823

By Eugene Giaquinto

### **TABLE OF EXHIBITS**

Exhibit A – Copy of Final Order / Settlement Agreement

Exhibit B – Proof of Wage Garnishment (\$34,198.66)

Exhibit C – Records of Commissions and Business Expenses

Exhibit D – Case Law Summaries (Jarquesy, Axon, Kokesh, Liu)

Exhibit E – Wall Street Journal Article (SEC Win Rates in Administrative Proceedings)

Exhibit F – Evidence of Reputational Harm and Employment Impact