

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.

Although this Motion is filed beyond the ordinary ten-day deadline of 17 C.F.R. § 201.154(b), extraordinary circumstances, including significant changes in constitutional law and the SEC's own enforcement practices, warrant reconsideration and relief at this time.

Respondent respectfully requests the opportunity for oral argument on this Motion.

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 Giaquinto
July 5th, 2025