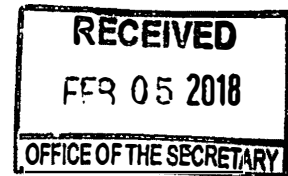


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

HARD COPY

ADMINISTRATIVE PROCEEDING
File No. 3-18252



In the Matter of

JOSEPH VITALE,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR SANCTIONS
AGAINST RESPONDENT JOSEPH VITALE**

I. INTRODUCTION

The Division of Enforcement respectfully moves for the imposition of a permanent industry bar from association and a penny stock bar against Respondent Joseph Vitale pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"). The Division sets forth its grounds below.

II. HISTORY OF THE CASE

As set forth in the January 26, 2018 Order, Vitale was served with the Commission's Order Instituting Proceedings ("OIP") on October 27, 2017, his answer was due November 20, 2017, and he failed to file an answer. Pursuant to that same Order, Vitale was held in default, the facts set forth in the OIP were deemed true, and the Division was ordered to file a motion for sanctions.

III. MEMORANDUM OF LAW

A. Vitale's Criminal Conviction

On March 27, 2017, a federal criminal complaint was filed against Vitale in a criminal action. [Exhibit 1]. On June 6, 2017, Vitale pleaded guilty to one count of mail fraud in violation of Title 18 United States Code, Section 1341 before the United States District Court for the Southern District of Florida, in *United States v. Joseph Vitale*, Case No. 17-60102-CR-BLOOM. [Exhibit 2]. On August 22, 2017, a judgment in the criminal case was entered against Vitale. The Court sentenced Vitale to a prison term of 57 months and ordered him to make restitution in an amount to be determined by the Court. [Exhibit 3].

As set forth in Exhibit 2 hereto, Vitale admitted in connection with his plea that:

(a) From approximately 2015 to 2017, he worked as a broker soliciting investments in LottoNet;

(b) He frequently used the alias of "Donovan Kelly" when speaking to potential investors in LottoNet;

(c) He sent out the LottoNet private placement memorandum to prospective investors, which explicitly stated that: "[n]o commissions or any other form of remuneration will be paid on sales made directly to the public by the company";

(d) In or around December 2016, Vitale met with a Federal Bureau of Investigation cooperating witness ("CW") regarding LottoNet and told the CW that he received 35% commissions on investor money raised. On a conference call with an undercover agent posing as a potential investor, Vitale instructed the CW to falsely represent that no commissions were paid to CW as a broker;

(e) At least one investor that Vitale solicited mailed a \$250,000 check to LottoNet's offices for an investment in LottoNet. Vitale did not tell the investor that he was receiving a 35%

commission on the transaction and the investor would not have invested had he known of this commission;

(f) LottoNet made at least \$700,000 in payments to Vitale or his companies; and

(g) Vitale was responsible for soliciting more than ten investors who made investments in LottoNet. [Exhibit 2].

B. Section 15(b)(6)

The facts in the OIP, which are deemed true, and the facts in Vitale's criminal case warrant the sanctions the Division seeks. The Division seeks relief under Section 15(b)(6)(A) of the Exchange Act, which provides in relevant part:

With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated 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, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

15. U.S.C. § 78o(b)(6)(A).

The requirements of Exchange Act Section 15(b)(6) are satisfied here.

i. The Division Timely Filed This Action

The Division must commence a proceeding under Exchange Act Section 15(b)(6)(A)(ii) within ten years of the criminal conviction. *See Joseph Contorinis*, AP File No. 3-15308, 2014 WL 1665995, *3 (Apr. 25, 2014) (Commission Opinion) (10-year limitations period runs from

date of conviction, not underlying conduct). Here, Vitale's conviction and the issuance of the OIP both occurred in 2017. Therefore, the matter was timely filed.

ii. Vitale Was Convicted of a Qualifying Offense

Vitale's wire fraud conviction constitutes a "felony . . . which . . . involves the violation of section . . . 1341 . . . of Title 18," thus triggering the Commission's ability to sanction him under the Exchange Act. *See* Exchange Act Sections 15(b)(4)(B)(iv), 15(b)(6)(A)(ii), 15 U.S.C. §§ 78o(b)(4)(B)(iv), 78o(b)(6)(A)(ii).

C. Industry and Penny Stock Bars are Appropriate Sanctions

In determining whether an administrative sanction is in the public interest, the Commission considers: (1) the egregiousness of a respondent's actions; (2) the isolated or recurrent nature of the violations; (3) the degree of scienter involved; (4) the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood the respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). "Absent 'extraordinary mitigating circumstances,' an individual who has been convicted cannot be permitted to remain in the securities industry." *Frederick W. Wall*, AP File No. 3-11529, 2005 WL 2291407, *8 (Sept. 19, 2005) (Commission Opinion).

Here, these factors weigh in favor of industry and penny stock bars. First, Vitale's actions were egregious: he solicited investors despite not being registered with the Commission in any capacity; misrepresented to potential investors how their funds would be used; and falsely assured investors he was not receiving a commission for soliciting them – all the while taking commissions from the investors he solicited and lining his pockets to the tune of at least \$700,000.

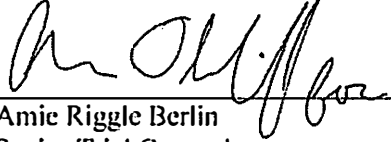
Second, this was not a one-time lapse in judgment. Based on the factual proffer, Vitale solicited investors for approximately two years, from 2015 until 2017. Third, Vitale's level of scienter was extremely high, as he knew he was taking investor funds for himself as commissions while he was assuring investors that he would receive no commissions. Not only did he tell potential investors this lie himself, he directed others to do so. His scienter was so substantial it gave rise to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Vitale has provided no assurances that he will avoid future violations of the law. 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*, AP File No. 3-14208, 2013 WL 3864511, at *23 n.50 (July 26, 2013) (Commission Opinion) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). Vitale has offered no evidence to rebut that inference. Nor can he.

Finally, Vitale was sentenced to imprisonment. However, this has proven to be no obstacle for Vitale to engage in securities violations. Prior to engaging in the conduct at issue in this matter, Vitale was sentenced to prison for operating an unlawful boiler room in Florida (Exhibit 2, Paragraph 2). He was still on probation for that violation when he engaged in the conduct at issue in this case. *Id.* After emerging from prison, he engaged in the current unlawful conduct in violation of the federal securities laws. There is no assurance that Vitale will not repeat this history of misconduct following his current prison sentence. Unless he is barred from the securities industry, he will have the chance to again harm investors. Accordingly, a permanent bar is appropriate.

February 2, 2018

Respectfully submitted,



Amie Riggle Berlin
Senior Trial Counsel
Direct Line: (305) 982-6322
berlina@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by overnight, on this 1st day of February 2018, on the following persons entitled to notice:

The Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Mr. Joseph Vitale
Inmate Number [REDACTED]
[REDACTED]
PO Box [REDACTED]
Miami, FL [REDACTED]


Amie Riggle Berlin
Senior Trial Counsel

EXHIBIT 1

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America
v.

JOSEPH VITALE,

Defendant(s)

)
)
)
)
)
)

Case No. 17-6111-Hunt

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 2015 through February 2017 in the county of Bro ward in the Southern District of Florida, the defendant(s) violated:

Code Section
18 U.S.C. § 1349

Offense Description
Conspiracy to Commit Mail and Wire Fraud

This criminal complaint is based on these facts:

See attached affidavit.

Continued on the attached sheet.


Complainant's signature

Alonzo Palomares, FBI Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 03/27/2017


Judge's signature

City and state: Fort Lauderdale, Florida

Magistrate Judge Patrick M. Hunt
Printed name and title

AFFIDAVIT

I, Alonzo Palomares, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) presently assigned to the Corporate and Securities Fraud Squad the Miami Field Office in 2016. I have received training on federal criminal statutes relating to financial crimes, as well as training in how to conduct investigations of financial crimes. Prior to the FBI, I spent five years as an auditor at a large national public accounting firm conducting audits of private and publicly-traded companies.

2. This affidavit is submitted in support of a criminal complaint charging Joseph Vitale ("Vitale") with a violation of Title 18, United States Code, Section 1349 (conspiracy to commit wire and mail fraud) for his role as a part of a boiler room for LottoNet Operating Corp. ("Lottonet") in Pompano Beach, Florida.

3. This affidavit is based upon information obtained from my personal participation in this investigation, from information received from other law enforcement agents, and from information received from other individuals. Because this affidavit is submitted solely for the purpose of establishing probable cause to support the criminal complaint, it does not include all information known to me concerning the investigation of Vitale.

BOILER ROOMS

4. Investment fraud schemes involve the illegal sale or purported sale of financial instruments. Typical investment fraud schemes are characterized by offers of guaranteed returns, low- or no-risk investments, overly consistent returns, complex strategies, or unregistered securities. Boiler rooms are considered base operations from which con artists often launch their scams using high-pressure sale tactics to swindle investors into believing their promises to yield

high investment returns. Individuals working at the boiler rooms and speaking to investors are often known as “fronters.” The fronters are usually provided a sales script to read to their victims to tout the investment, using fake names to hide their identities and offering unsuspecting investors impossibly high returns. Boiler rooms also employ “closers” who are responsible for closing the deals developed by the fronters.

5. The brokers and operators of the boiler room often knowingly fail to disclose material information such as the fact they are receiving high commission fees. In some cases, these commission fees can exceed 50 percent of the funds collected from the investors. In order to attract investors, the operators of the boiler room mislead the investors by providing fraudulent financial statements and/or private placement memorandums that contain false and misleading information about the company operations and business activities. These misrepresentations are normally made to investors in telephone conversations and, in most cases, the operators of the boiler room send documents to investors through e-mail and by mail.

BACKGROUND/FACTS

6. In October 2015, Lottonet filed a Form D (Notice of Exempt Offering of Securities) with the SEC seeking to offer \$5 million of equity securities. The Form D listed Lottonet’s principal place of business as 49 N. Federal Highway, Suite 240, Pompano Beach, Florida 33062. This address is a UPS store and there are no suites located there.

7. On or about June 27, 2016, R.T. contacted the FBI’s public access line to report an investment fraud being carried out by “Joe Vitale” and “David Gray” involving Lottonet.

8. R.T. stated that Vitale was on probation (criminal database research showed that Vitale had pled guilty in 2013 to a state charge of unlawful operation of a boiler room and is currently on probation until April 2018). R.T. said that Vitale induced victims to invest money

and used the alias “Donovan Kelly” when communicating with victims. R.T. said that Vitale had no telemarketing license. R.T. said that David Gray was the owner of LottoNet.

9. R.T. said that Lottonet investor money was not invested in the business opportunities described to investors, but was instead spent on Lottonet employees. R.T. believed that Lottonet was operating as a boiler room.

10. In or around November 2016, an FBI Cooperating Witness (“CW1”)¹ was introduced to individuals involved with the fraud at LottoNet. CW1 responded to a Craigslist posting seeking “fronters/telemarketing professionals” for an unidentified company. The advertisement offered a “base salary of \$400 per week plus a 10% on money raised bonus.” The phone number listed on the posting was linked to an individual later determined to be involved in sales for Lottonet.

11. In or around November 2016, CW1 met with C.C. (a recruiter for Lottonet) regarding the posting at Lottonet’s offices and subsequently provided the following information to the FBI:

- CW1 said that Lottonet used an online client relationship management application to contact investors and track leads.
- CW1 said that Lottonet wanted to raise \$5 million and they had raised approximately \$3.4 million in six months. CW1 stated that there were approximately ten fronters working at Lottonet who were paid 20% commission on each investment; however, the payments were broken up into separate payments to conceal the commission.
- CW1 said that investors were promised that the company would go public or be sold to a large technology company in the near future.

¹ CW1 has pled guilty to conspiracy to commit mail and wire fraud stemming from an approximately \$20 million telemarketing fraud scheme. CW1 is cooperating with the FBI in an attempt to reduce CW1’s sentence.

CW1 provided your affiant with copies of Lottonet documents, including the private placement memorandum (“PPM”), financial statements, sales scripts, and brochures with executive summaries.

12. The Lottonet PPM stated that: “[n]o commissions or any other form of remuneration will be paid on sales made directly to the public by the Company.”

13. In or around November 2016, C.C. hired CW1 to work at Lottonet as a fronter. CW1 subsequently had the following in-person, recorded conversations with persons from Lottonet:

- C.C. told CW1 that he/she would receive a 10% commission for sales that CW1 “fronted” for Lottonet and a 20% commission on any transaction that CW1 opened and closed.
- Gray told CW1: “Listen, just so you know, this is a super-clean product, I have 3 SEC attorneys, all that don't know each other, everything I do, I bounce off all three, everything I do I have legal opinions for. I didn't know what I was doing for private raises prior to this one, so I've kind of had to learn it all pretty fast to cover my ass and my family...Hope you enjoy yourself, make some money, take care of the babies.”
- Vitale referred to himself as “Donnie” to CW1. Vitale told CW1 that Vitale worked at Lottonet and had “raised most of the uh capital, did like a couple million . . . but uh, it's a good deal right?”

14. In or around December 2016, CW1 set up a meeting with C.C., Vitale, and an FBI undercover agent (the “UC”) who was purportedly interested in investing in Lottonet. Vitale told CW1 prior to the meeting that Vitale received 35% commissions on investor money raised. Further, Vitale told CW1 that they could convince Gray to pay them each a 20% commission if the UC invested \$500,000 with Lottonet. Vitale told CW1 to tell the UC that CW1 had received a \$750,000 block of Lottonet shares to sell within 90 days when no such allocation had actually occurred.

15. In or around December 2016, CC, CW1, and Vitale met with the UC at Lottonet. The UC observed Vitale logging onto an Apple laptop computer using a login name of “Joseph Vitale” and a separate login name of “Donovan Kelly.” Vitale sent multiple emails to the UC while logged onto the “Donovan Kelly” account.

16. At this meeting, Vitale told the UC that Lottonet’s technology provided U.S. persons the ability to purchase lottery tickets from any state using their phone or computer. Vitale told the UC that Lottonet had recently decided to pursue international opportunities in South America and had closed a 10-year contract to partner with a Peruvian company to sell U.S. lottery tickets to Peruvian nationals. Vitale also claimed that Lottonet was licensed to operate a lottery in Peru.

17. Furthermore, at this meeting, Vitale said that investors received dividends based on gross revenue. Vitale told the UC that a \$250,000 investment in Lottonet should provide a \$63,000 monthly dividend (\$756,000 on an annual basis).

18. Subsequently, Vitale had a conference call with CW1 and the UC. The UC asked if a commission would be charged on the UC’s investment. Vitale instructed CW1 to misrepresent that CW1 received a \$1,000 weekly salary and percentage ownership in Lottonet. Vitale also misrepresented to the UC that Vitale received a weekly salary “a little better” than CW1. Vitale did not disclose that Vitale would earn a commission on the investment.

19. After the call ended, Vitale told CW1 he had convinced the UC to make a \$250,000 investment in Lottonet and that Vitale was not concerned about the questions. Vitale further stated: “He’s good. He’s playing the game, he wants to feel like he didn’t just throw his money away, he wants to feel like he put up a fight. When he meets David, he’s going to do a million. Dave’s the f—ing man.”

20. In or around December 2016, the UC had a meeting with Gray, Vitale, A.A., and CW1. Prior to the arrival of the UC, CW1 informed Gray of CW1 and Vitale's arrangement to split the commission on the UC's investment of either \$250,000 or \$500,000. GRAY told CW1 that he approved of the sharing arrangement, specifically stating "it's great, especially in a deal where it really came because you shared it. And we respect that. That's good, man. Good for you guys." Gray further instructed CW1 on how to avoid answering the UC's questions relating to compensation. Gray stated: "you don't want to box...don't box yourself into an answer."

21. On or about February 8, 2017, the undersigned interviewed C.J. who provided the following information:

- C.J. stated that he/she responded to a Craigslist ad for a sales/closer position at Lottonet. C.J. advised that he/she accepted the sales position and solicited prospective investors to purchase shares in Lottonet.
- C.J. further stated that he/she told investors on sales pitches to expect that a \$12,500 investment in Lottonet would yield an \$8,500 monthly dividend payment. C.J. stated that he/she told investors that he/she received a "salary" from Lottonet. C.J. said that he/she never received a salary and Gray was aware of the false and misleading statements made to prospective investors.
- C.J. stated that brokers were paid commissions that cumulatively totaled approximately 35% of prospective investors' funds (15% for the fronter and 20% for the closer). C.J. further stated that high performing salespersons, such as Vitale, received a 40% commission on funds raised from investors.
- C.J. believed that investor funds were used to pay for Gray's lavish lifestyle including an elaborate wedding in Las Vegas, luxury automobiles, and the production of a pornographic film within the Lottonet office (that Gray bragged about).

22. On or about February 20, 2017, C.C. called CW1 and said that he quit Lottonet because it did not seem ethical and it seemed like a "Ponzi" scheme because "no one sees the revenues generating" and that no real company pays commissions of "30, 35 percent." C.C. also expressed concern that Gray treated investor money as "David Gray's money."

23. The FBI has obtained copies of the Lottonet bank records. Lottonet maintained a Bank of America account in South Florida. The SEC has done a preliminary analysis of these records that shows the following:

24. **Inflows:** The bank records show that Lottonet received approximately \$4.8 million from investors via checks and wires from June 2015 through February 2017.² The records show only approximately \$4,000 that appear to come from non-investor proceeds.

25. **Outflows:** The bank records appear to show that less than 1% of funds (approximately \$10,000) have been returned to investors. The records show that a substantial amount of the funds went for the benefit of Gray, Vitale, and other brokers of LottoNet. For example, and as relevant to this case, the records show transfers of approximately \$710,000 from LottoNet to accounts registered in the name of Vitale from August 2015 to January 2017.

26. On or about March 21, 2017, the FBI executed a search warrant at the offices of LottoNet. Vitale was not present for the search warrant.

27. On or about March 25, 2017, the FBI arrested Joseph Vitale at Miami International Airport as Vitale tried to board a flight to Ecuador.


CONCLUSION

28. Based on the foregoing, I respectfully submit that there is probable cause to believe that, in Broward County in the Southern District of Florida, that Vitale did knowingly and

² The bank records show numerous checks and wire transfers that appear to be from investors. For example, there was a J.H. check from a bank account in California on August 19, 2016 for \$150,000 sent to South Florida and cashed in Lottonet's South Florida account. Similarly, there was a wire from a bank account in the name of K.O. in Utah on November 22, 2016 for \$50,000 sent to Lottonet's bank account in South Florida.

willfully, that is, with the intent to further the object of the conspiracy, combine, conspire, confederate, and agree with others known and unknown, to commit mail and wire fraud, in violation of Title 18, United States Code, Section 1341 and 1343, all in violation of Title 18, United States Code, Section 1349, from in or around June 2015 through in or around February 2017.

Respectfully submitted,



Alonzo Palomares
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me
on March 27, 2017



PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NUMBER: _____

BOND RECOMMENDATION

DEFENDANT: JOSEPH VITALE

Pre-Trial Detention

(Personal Surety) (Corporate Surety) (Cash) (Pre-Trial Detention)

By: *Corey Steinberg*
AUSA: COREY STEINBERG

Last Known Address: _____

What Facility: _____

Agent(s): SA Alonzo Palomares, FBI
(FBI) (SECRET SERVICE) (DEA) (IRS) (ICE) **(OTHER)**

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-60102-CR-BLOOM

UNITED STATES OF AMERICA

vs.

JOSEPH VITALE,

Defendant.

FACTUAL PROFFER

Had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

From in or around 2015 through in or around 2017 (the “relevant period”), the defendant Joseph Vitale worked as a broker soliciting investments in a company called Lottonet, Inc. (“Lottonet”) located in Pompano Beach, Florida. The defendant had previously been convicted of unlawful operation of a boiler room in 2013 and was on probation during the relevant period.

During the relevant period, the defendant frequently used the alias of “Donovan Kelly” when speaking to potential investors of Lottonet. The defendant sent out the Lottonet PPM to prospective investors. The Lottonet private placement memorandum (the “PPM”) provided to customers explicitly stated that: “[n]o commissions or any other form of remuneration will be paid on sales made directly to the public by the company.”


In or around December 2016, the defendant met with an FBI cooperating witness (“CW”) regarding Lottonet and told the CW that the defendant received 35% commissions on investor money raised. On a conference call with an undercover agent posing as a potential investor, the defendant instructed the CW to falsely represent that the no commissions were paid to CW as a broker.

In furtherance of the scheme, based on representations by the defendant posing as Donovan Kelly, J.H. mailed a \$250,000 check from Hawaii via U.S. Postal Service or a commercial interstate carrier to Lottonet's offices in Pompano Beach, Florida for an investment in Lottonet. J.H. was not told by the defendant that the defendant was receiving a 35% commission on the transaction and J.H. would not have invested had he known of this commission.


Lottonet bank records show that the company received approximately \$4.8 million from investors via checks and wires from June 2015 through February 2017. The bank records show that less than \$4,000 has been returned to investors. The bank records show substantial payments made to Lottonet's principal and brokers, including approximately \$700,000 in payments made to Vitale or his companies. Lottonet internal records show that the defendant was responsible for soliciting more than 10 investors who made investments.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 6-6-2017

By: 
MICHAEL N. BERGER
ASSISTANT UNITED STATES ATTORNEY

Date: 6-6-2017

By: 
FRANK MAISTER
ATTORNEY FOR DEFENDANT

Date: 6.6.2017

By: 
JOSEPH VITALE
DEFENDANT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-60102-CR-BLOOM

UNITED STATES OF AMERICA

vs.

JOSEPH VITALE,

Defendant.

_____ /

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida ("this Office") and Joseph Vitale (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count 4 of the indictment, which charges mail fraud, in violation of Title 18, United States Code, Section 1341. This Office agrees to seek dismissal of the remaining counts of the indictment at sentencing.

2. The defendant understands and acknowledges that, as to Count 4, the Court may impose a statutory maximum term of imprisonment of up to 20 years and a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000 and may order forfeiture and restitution. The defendant further understands and acknowledges that a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

3. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will

Jv

compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

5. This Office agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section

3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, this Office will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. This Office agrees to recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the Court. This Office, however, will not be required to make this motion and these recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

6. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding

on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his/her plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by the defendant and this Office.

7. This Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the guideline calculation in this case:

Guideline Calculation

- Base Offense Level: 7 (USSG § 2B1.1(a)(2)).
- Loss: +18. The relevant amount of actual, probable, or intended loss resulting from the offense committed in this case is between \$3,500,000 and \$9,500,000. (USSG § 2B1.1(b)(J)).
- Victims: +2. The offense involved 10 or more victims. (USSG § 2B1.1(b)(2)(A)(i)).
- Acceptance of Responsibility: -2. The defendant has clearly demonstrated acceptance of responsibility for his conduct. (USSG § 3E1.1(a)).
- Timely Notification: -1. The defendant has timely notified the Government of his intent to plead guilty. (USSG § 3E1.1(b)).

Total Offense Level: 24

Both parties agree not to recommend any other aggravating or mitigating enhancements in this matter.

8. The defendant agrees that he/she shall cooperate fully with this Office by: (a) providing truthful and complete information and testimony, and producing documents, records and

other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other Court proceeding; (b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and (c) if requested by this Office, working in an undercover role under the supervision of, and in compliance with, law enforcement officers and agents. In addition, the defendant agrees that he will not protect any person or entity through false information or omission, that he will not falsely implicate any person or entity, and that he that he will not commit any further crimes.

9. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make that cooperation, or lack thereof, known to the Court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the advisory sentencing range calculated under the Sentencing Guidelines and/or any applicable minimum mandatory sentence, this Office may make a motion prior to sentencing pursuant to Section 5K1.1 of the Sentencing Guidelines and/or Title 18, United States Code, Section 3553(e), or subsequent to sentencing pursuant to Rule 35 of the Federal Rules of Criminal Procedure, informing the Court that the defendant has provided substantial assistance and recommending that the defendant's sentence be reduced. The defendant understands and agrees, however, that nothing in this agreement requires this Office to file any such motions, and that this Office's assessment of the quality and significance of the defendant's cooperation shall be binding as it relates to the appropriateness of this Office's filing or non-filing of a motion to reduce sentence.

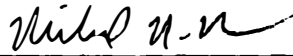
10. The defendant understands and acknowledges that the Court is under no obligation to grant a motion for reduction of sentence filed by this Office. In addition, the defendant further understands and acknowledges that the Court is under no obligation of any type to reduce the defendant's sentence because of the defendant's cooperation.

11. The defendant is aware that Title 18, United States Code, Section 3742 and Title 28, United States Code, Section 1291 afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney.

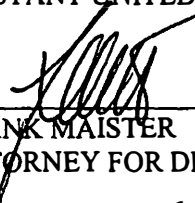
12. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 6/2/17

By: 
MICHAEL N. BERGER
ASSISTANT UNITED STATES ATTORNEY

Date: June 2, 2017

By: 
FRANK MAISTER
ATTORNEY FOR DEFENDANT

Date: June 2, 2017

By: 
JOSEPH VITALE
DEFENDANT

EXHIBIT 3

UNITED STATES DISTRICT COURT
Southern District of Florida
Fort Lauderdale Division

UNITED STATES OF AMERICA
v.
JOSEPH VITALE

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: **17-60102-CR-BLOOM-001**
USM Number: **15859-104**

Date of Original Judgment: 8/22/17
Reason for Amendment: Stipulation to Restitution

Counsel For Defendant: **Frank Maister**
Counsel For The United States: **Michael Berger**
Court Reporter: **Yvette Hernandez**

The defendant pleaded guilty to count 4.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 USC § 1341	Mail Fraud	10/31/2016	4

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Amended Sentence: **10/24/2017**



Beth Bloom
United States District Judge

Date: October 24, 2017

DEFENDANT: JOSEPH VITALE
CASE NUMBER: 17-60102-CR-BLOOM-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **57 months** as to count 4 of the Indictment.

The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be designated to a facility in the Pensacola, Florida and participate in the 500 hour RDAP Program.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSEPH VITALE

CASE NUMBER: 17-60102-CR-BLOOM-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to count 4 of the Indictment.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **JOSEPH VITALE**
CASE NUMBER: **17-60102-CR-BLOOM-001**

SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Related Concern Restriction - The defendant shall not own, operate, act as a consultant, be employed in, or participate in any manner, in any related concern during the period of supervision.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

No New Debt Restriction: The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining written permission from the United States Probation Officer.

DEFENDANT: JOSEPH VITALE

CASE NUMBER: 17-60102-CR-BLOOM-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$2,000,000.00

The defendant must make restitution (including community restitution) to the attached list of payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
All Victims listed in Schedule A, submitted by the Government to U.S. Probation and Clerk of Courts, SDFL.	\$2,000,000.00	\$2,000,000.00	100%
All Victims names and addresses confidential and submitted under seal to protect victims' personal identity information.			

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$2,000,000.00. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: JOSEPH VITALE
CASE NUMBER: 17-60102-CR-BLOOM-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.