

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10691 / September 19, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 87006 / September 19, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19469

In the Matter of

**MONTEBELLO UNIFIED
SCHOOL DISTRICT AND
ANTHONY JAMES
MARTINEZ,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Montebello Unified School District (“Montebello” or the “District”) and Anthony James Martinez (“Martinez”) (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the

Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds¹ that:

Summary

1. This matter involves misleading statements and omissions by Montebello Unified School District in the sale of municipal bonds. Montebello, a school district located in Los Angeles County, California, sold \$100 million in bonds to the public in December 2016 while not disclosing that: (1) its independent audit firm had raised concerns about allegations of fraud and internal controls at the District; (2) the District refused to authorize fees for required audit procedures, which precluded the audit firm from completing its audit; and (3) the District had decided to terminate the firm’s services. Immediately before and contemporaneous with the offering, Montebello’s independent auditor, the Audit Firm, repeatedly raised concerns to Montebello’s management and its Board of Education about allegations of fraud and internal controls issues at the District. The Audit Firm also requested, at additional cost to the District, authorization to perform expanded procedures surrounding its concerns. Under applicable auditing standards, the Audit Firm was required to conduct these procedures before it could complete its audit of the District. During a non-public Board meeting session, Montebello declined to authorize the fees needed for the expanded procedures, which precluded completion of the audit. Montebello also decided to terminate the Audit Firm. In the offering documents for Montebello’s December 2016 bonds, Montebello did not disclose the concerns raised by the Audit Firm, that it had prevented the Audit Firm from performing necessary procedures, or that it had decided to terminate the Audit Firm’s services. Instead, the offering documents misleadingly stated that the Audit Firm “serves as independent auditor to the District.” Montebello also attached to the offering documents an audit report from the Audit Firm from a prior year that contained a clean audit opinion. That statement, and the inclusion of the stale audit report, were materially misleading in light of the omitted information. Montebello also concealed the Audit Firm’s concerns by providing incomplete and misleading updates about the status of its pending fiscal year 2016 financial statement audit to bond and disclosure counsel for the December 2016 offering as well as Montebello’s primary regulator, the Los Angeles County Office of Education (“LACOE”).

2. Martinez, Montebello’s Interim Superintendent of Schools in December 2016, signed one of the misleading bond offering documents, a misleading letter to LACOE, and false closing certificates that were provided to bond and disclosure counsel and the underwriters in connection with the offering.

3. By selling the bonds to investors using the misleading offering documents and by taking other steps that concealed the Audit Firm’s concerns and termination from investors,

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Montebello violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as well as Section 17(a) of the Securities Act. By signing the misleading offering document and the misleading letter to LACOE, and by providing bond and disclosure counsel and the underwriters with false closing certificates, Martinez violated Section 17(a)(3) of the Securities Act.

Respondents

4. **Montebello Unified School District** is a California public school district that was established in 1936. Its territory spans multiple cities located in eastern Los Angeles County, California. It is governed by a five-member elected Board of Education.

5. **Anthony James Martinez**, age 48, is a resident of Palmdale, California. He is the Superintendent of Schools of Montebello, a position he first held on an interim basis beginning in October 2016 and then on a permanent basis in February 2018. Among other things, Martinez's job responsibilities include providing oversight of Montebello's approximately \$300 million annual budget and \$300 million bond program. At the time of Montebello's December 2016 offering, Martinez had been in the role of Interim Superintendent for six weeks.

Other Relevant Individual and Entity

6. **Ruben James Rojas**, age 56, is a resident of Corona, California. From July 2015 to March 2017, he served as the Chief Business Officer of Montebello. In that role he had primary responsibility over Montebello's bond program and also oversaw the District's business operations. Rojas was terminated by Montebello in March 2017.

7. **The Audit Firm** is an independent auditing firm with its principal place of business in Los Angeles, California. It has been registered with the Public Company Accounting Oversight Board since 2003. The Audit Firm served as Montebello's independent auditor and audited the District's financial statements for fiscal years 2014 and 2015. The Audit Firm also served as Montebello's independent auditor for fiscal year 2016, ending on June 30, 2016, but the District terminated its services before it could complete its audit for that year.

Montebello Issued \$100 Million in Bonds in December 2016

8. On November 3, 2016, Montebello's Board voted to approve the issuance of \$100 million in general obligation bonds. The bonds were secured by and payable from *ad valorem* property taxes assessed on taxable properties within the District and collected by the County of Los Angeles. The purpose of the bonds was to fund new facilities construction and maintenance within Montebello.

9. Rojas managed the day-to-day operations of Montebello's bond program and oversaw the \$100 million bond offering, including the preparation of the offering documents for the bonds, which included a Preliminary Official Statement ("POS"), a Supplemented Preliminary Official Statement ("Supplemented POS"), and a Final Official Statement ("FOS") (collectively, "Offering Documents"). Rojas was the primary contact for the bond and disclosure counsel and

municipal advisor retained by Montebello to assist with the bond offering. Rojas was also the primary person through which bond and disclosure counsel, the municipal advisor, the underwriters, and underwriters' counsel received information for inclusion in the Offering Documents for the bonds. Martinez was not directly involved with the preparation of the Offering Documents.

10. On December 7, 2016, Montebello issued the POS. The bonds priced on December 13, 2016. On December 19, 2016, Montebello issued the Supplemented POS, and on December 21, 2016, Montebello issued the FOS. Rojas reviewed and provided edits to the POS, helped prepare the Supplemented POS, and also reviewed the FOS. Martinez signed the FOS.

11. The bond offering closed on December 28, 2016. Montebello received the cash proceeds generated by the offering, less fees paid to the professional firms which provided services in connection with the deal.

The Audit Firm Repeatedly Raised Concerns about Allegations of Fraud and Internal Controls Before and Concurrent with the December 2016 Bond Offering

12. During the first two weeks of December 2016 and in connection with its audit of Montebello's financial statements for the fiscal year 2016, the Audit Firm repeatedly raised concerns to Montebello's Board and management regarding allegations of fraud and internal controls issues at the District. On December 1, 2016, the Audit Firm sent a letter to Montebello noting that it had been made aware of allegations of improprieties at the District as well as questions concerning Rojas's qualifications and integrity, which could impact the firm's ability to complete its pending audit of Montebello's fiscal year 2016 financial statements. Additionally, the Audit Firm requested a closed session meeting with Montebello's Board to discuss its concerns. Martinez and Montebello's Board president received a copy of the letter on December 2, 2016. By the morning of December 7, 2016, Rojas had also received a copy of the letter and discussed it with Martinez. In the late evening of December 7, 2016, Montebello circulated the POS to investors, which did not disclose the existence of the Audit Firm's December 1, 2016 letter or the letter's contents. Rojas reviewed drafts of the POS and approved its circulation before it was sent to investors.

13. On December 9, 2016, the Audit Firm sent a second letter to Montebello, which was circulated to Rojas, Martinez, and each of Montebello's five Board members. The Audit Firm's second letter noted that additional matters had arisen that could potentially prevent the completion of the fiscal year 2016 audit. Among other things, the Audit Firm explained that: (1) certain audit procedures had been delayed due to the actions of Montebello's management; (2) expanded procedures were necessary in order for the Audit Firm to complete the audit and render an audit opinion; and (3) Montebello needed to request an extension of the December 15 deadline for the filing of its audited financial statements with LACOE. The Audit Firm also reiterated its request for a closed session meeting with Montebello's Board to discuss its concerns and to obtain authorization to perform the required additional audit procedures.

14. On or about the same time that the Audit Firm sent its December 9, 2016 letter, the Audit Firm's lead partner working on Montebello's audit spoke by phone with Montebello's General Counsel. During that call, the lead partner noted that the Audit Firm had concerns related to allegations of fraud and misconduct at Montebello, including specifically with respect to Rojas, and that the Audit Firm could not complete its audit without performing expanded procedures related to those concerns.

15. On December 12, 2016, the lead partner sent an email to Montebello's General Counsel further detailing the Audit Firm's concerns as well as laying out specific steps that were required to be completed under governing auditing standards before the Audit Firm could finish its audit work. Montebello's General Counsel forwarded the email to Martinez. Then, on December 13, 2016, Martinez, Montebello's General Counsel, and the lead partner had a call to further discuss the Audit Firm's concerns. Montebello's bonds also priced on that day.

16. On or about December 14, 2016, the lead partner and Rojas had a call where the lead partner reiterated the various issues the Audit Firm had identified for Montebello. Among other things, the lead partner noted that Montebello was now considered at a higher risk level from an audit standpoint, which necessitated the performance of expanded audit procedures before the pending audit could be completed.

17. Montebello's management and Board did not disclose the Audit Firm's communications or their contents to the various securities professionals who were working on the December 2016 bond offering, including bond and disclosure counsel, the underwriters for the bonds, underwriters' counsel, or Montebello's municipal advisor.

Montebello Prevented the Audit Firm From Performing Necessary Audit Procedures and Terminated its Services

18. In a December 15, 2016 non-public Board meeting, Montebello's Board, Rojas, Martinez, and Montebello's General Counsel discussed the Audit Firm's request to perform expanded audit procedures, which would require additional time and fees. During that non-public discussion, Montebello's Board and management decided to deny the Audit Firm's request, which precluded the Audit Firm from being able to complete its pending audit or issue an audit opinion. The publicly available agenda and minutes for the December 15, 2016 Board meeting, including the closed session, do not make any reference to the Audit Firm, any decision made with respect to the Audit Firm, or the status of the pending fiscal year 2016 audit.

19. On or about December 15, 2016, Montebello decided to terminate the Audit Firm's engagement to conduct the audit of the District's fiscal year 2016 financial statements.

20. On December 19, 2016, Montebello issued the Supplemented POS providing additional disclosures to investors, and on December 21, 2016, the District circulated the FOS which was signed by Martinez. Neither document disclosed the Audit Firm's stated concerns, Montebello's denial of fees that were required for the expanded procedures identified by the Audit Firm and the completion of the fiscal year 2016 audit, or the District's decision to terminate the

Audit Firm. Rojas reviewed drafts of the Supplemented POS and FOS, and approved their circulation before they were sent to investors.

21. On December 22, 2016, Rojas informed the Audit Firm by phone that it had been terminated by Montebello and instructed the firm to stop performing all audit work.

In the Offering Documents, Montebello Failed to Disclose the Audit Firm’s Concerns and Termination to Investors

22. Montebello circulated the POS to investors late in the evening on December 7, 2016. By that time, the Audit Firm had sent its December 1, 2016 letter, which raised concerns about Rojas and allegations of impropriety at Montebello, and also indicated that those issues could impact the Audit Firm’s ability to complete its fiscal year 2016 audit. The POS did not disclose this information. Instead, it stated that the Audit Firm “serves as independent auditor to the District” and attached an old audit report covering fiscal year 2015. The old report contained an unmodified or “clean” audit opinion and also noted that the Audit Firm had not identified any material weaknesses in Montebello’s internal controls over financial reporting.

23. Montebello issued the Supplemented POS to investors on December 19, 2016, and circulated the FOS on December 21, 2016. By the time of both of those documents, the Audit Firm had sent its December 9, 2016 letter and December 12, 2016 email further detailing its concerns about allegations of fraud and internal controls, requesting permission to perform expanded audit procedures, and specifically noting that the Audit Firm could not complete the fiscal year 2016 audit under governing auditing standards without the additional procedures. The Audit Firm lead partner had also discussed these same issues by phone with Martinez, Montebello’s General Counsel, and Rojas. Additionally, Montebello had already determined not to approve the fees needed for the Audit Firm to perform the required expanded procedures during a non-public Board meeting discussion and also decided to terminate the Audit Firm. Nevertheless, the Supplemented POS and FOS did not disclose this information. Instead, the documents repeated the POS’s statement that the Audit Firm “serves as independent auditor to the District” and attached the same stale audit report.

24. On or about December 28, 2016, Martinez signed two closing certificates on behalf of the District representing that: (1) he had reviewed the Offering Documents; and (2) the documents did not contain any material misstatements or omissions. Both of those representations were false. Martinez did not review the Offering Documents before signing the certificates. He also did not consult with any other person about the Offering Documents and did not conduct any diligence before signing the certificates. Additionally, as discussed above, the Offering Documents contained misleading statements and omissions regarding the Audit Firm’s stated concerns and termination. The false certifications were provided to bond and disclosure counsel and the underwriters who purchased the bonds from Montebello to facilitate the completion of the bond offering.

Montebello Engaged in Additional Conduct that Concealed the Audit Firm's Concerns and Termination from Gatekeepers and Investors

25. Montebello engaged in additional conduct that concealed the Audit Firm's stated concerns. On December 14, 2016, the District sent a letter to LACOE, which was also provided to the California State Controller's Office, requesting an extension to the December 15 deadline for the filing of its fiscal year 2016 audit report. Among other things, the letter stated that the Audit Firm had "informed the District that an extension should be filed as the Auditors 'require additional supporting documentation in connection with expanded test work in certain areas.'" The letter was misleading, however, because it did not disclose the concerns raised by the Audit Firm or that the Audit Firm's "expanded test work" related to concerns about allegations of fraud and internal controls issues identified by the Audit Firm. Rojas wrote the letter and Martinez signed it.

26. In addition, in December 2016, while Rojas was working with bond and disclosure counsel on the Supplemented POS, counsel asked whether the fiscal year 2016 audit had been completed. Rojas responded on December 19, 2016 by stating only that Montebello had received an extension of the filing deadline for the audit report. Rojas did not also disclose to bond and disclosure counsel the concerns raised by the Audit Firm in its communications, that the Audit Firm had indicated that it needed to perform expanded procedures to address its concerns, or that Montebello had decided to terminate the Audit Firm.

Legal Discussion

27. Section 10(b) of the Exchange Act and Rule 10b-5(a) promulgated thereunder make it unlawful to "directly or indirectly ... employ any device, scheme, or artifice to defraud ... in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(a). Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder make it unlawful to "directly or indirectly ... 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 ... in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(b). Section 10(b) of the Exchange Act and Rule 10b-5(c) promulgated thereunder make it unlawful to "directly or indirectly ... engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person ... in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(c).

28. "For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011).

29. Section 17(a)(1) of the Securities Act makes it unlawful "in the offer or sale of any securities ... directly or indirectly ... to employ any device, scheme, or artifice to defraud." 15 U.S.C. § 77q(a)(1). Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities ... directly or indirectly ... to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the

statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2). Section 17(a)(3) of the Securities Act makes it unlawful “in the offer or sale of any securities ... directly or indirectly ... to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.” 15 U.S.C. § 77q(a)(3).

30. A statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

31. Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as violations of Section 17(a)(1) of the Securities Act, require proof of scienter. *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980). Scienter can be satisfied through recklessness. *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 856 (9th Cir. 2001). “Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an ‘extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.’” *Id.* Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. *See Aaron*, 446 U.S. at 696-97.

32. As a result of the conduct described above, Montebello violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as well as Section 17(a) of the Securities Act.

33. As a result of the conduct described above, Martinez violated Section 17(a)(3) of the Securities Act.

Undertakings

Montebello undertakes to:

34. Within 180 days of the Order, establish appropriate and comprehensive written policies and procedures and periodic training regarding all aspects of Montebello’s municipal securities disclosures, including formal policies and procedures to be followed for the preparation, review and approval of official statements and continuing disclosures, and the designation of an individual officer of Montebello responsible for ensuring compliance by Montebello with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

35. Retain an independent consultant with municipal finance experience (the “Independent Consultant”), not unacceptable to the Commission staff, to conduct a review of Montebello’s policies and procedures as they relate to all aspects of Montebello’s municipal securities disclosures. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, nor had any affiliation with, Montebello during the two years prior to the institution of these proceedings.

36. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Montebello, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Montebello, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Montebello, which shall include the Independent Consultant's recommendations for improvements to Montebello's policies and procedures.

37. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Montebello shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Montebello considers to be unduly burdensome, impractical, or inappropriate. With respect to any such recommendation, Montebello need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures, or system designed to achieve the same objective or purpose. As to any recommendation on which Montebello and the Independent Consultant do not agree, Montebello and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Montebello and the Independent Consultant, Montebello shall require the Independent Consultant inform Montebello and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Montebello considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Montebello may seek approval from the Commission staff to not adopt recommendations that Montebello can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Montebello shall not be required to abide by, adopt, or implement those recommendations.

38. Disclose in a clear and conspicuous fashion the terms of this settlement in any final official statement for an offering by Montebello within five years of the institution of these proceedings.

39. Certify, in writing, compliance with the undertakings set forth above in paragraphs 34-38. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Montebello agrees to provide such evidence. The certification and supporting material shall be

submitted to LeeAnn G. Gaunt, Chief, Public Finance Abuse Unit, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.

40. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

Respondents' Remedial Efforts

41. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondents related to Montebello's securities disclosure practices, including making corrective disclosures and participating in training regarding their disclosure obligations.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Montebello cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Montebello cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

C. Respondent Montebello shall comply with the undertakings enumerated in paragraphs 34 to 39 above.

D. Pursuant to Section 8A of the Securities Act, Respondent Martinez cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

E. Respondent Martinez shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent Martinez may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Martinez may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent Martinez may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Anthony J. Martinez as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn G. Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent Martinez agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Martinez's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent Martinez agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent Martinez by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Martinez, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Martinez under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Martinez of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary