

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

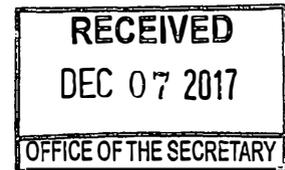
100 F Street, N.E.  
WASHINGTON, D.C. 20549-4010

DIVISION OF  
ENFORCEMENT

Duane K. Thompson  
Assistant Chief Litigation Counsel  
Telephone: (202) 551-7159  
Facsimile: (202) 772-9282

December 7, 2017

**Filed with Hand Delivered**  
**Courtesy Copy to Chambers**



The Honorable Brenda P. Murray  
Chief Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549

**Re: In the Matter of David Lubin, Admin. Proceeding File No. 3-18070**

Dear Chief Judge Murray,

I write on behalf of the Division of Enforcement pursuant to Your Honor's Order Following Prehearing Conference ("Order") dated August 24, 2017. Your Honor issued the Order following a telephonic Prehearing Conference during which the parties jointly proposed deferring the setting of a schedule in this proceeding pending the final disposition of the "Related Action" captioned *United States v. Lubin*, 1:17-cr-20508-MGC (S.D. Fla.). Your Honor directed the parties to notify the Office of Administrative Law Judges once a "final judgment" was entered in the Related Action.

On behalf of the parties, and with the knowledge and consent of counsel to the Respondent, I write to provide notice of the entry of an *initial* judgment in the Related Action on December 1, 2017. See Judgment in a Criminal Case, *United States v. Lubin*, Case 1:17-cr-20508-MGC ("Judgment"), attached hereto as Exhibit 1. The Judgment sentences Respondent Lubin to imprisonment for a term of three years and orders him to pay a \$100 criminal monetary penalty. See Judgment, pp. 2, 5. The Judgment is not a "final judgment," however, because it provides that the determination of restitution is deferred until February 21, 2018, and that an "Amended Judgment" will be entered after such determination. See Judgment, p. 5.<sup>1</sup>

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<sup>1</sup> Although Your Honor's Order called for the parties to provide the ALJ's Office with notice within three business days of the entry of judgment in the Related Action, the Division did not receive a copy of the Judgment from the USAO until December 5, 2017.

Hon. Brenda P. Murray  
Chief Administrative Law Judge  
December 7, 2017  
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In the Matter of David Lubin  
Administrative Proceeding File No. 3-18070

Although the parties deemed it necessary and appropriate to bring the Judgment to Your Honor's attention, we respectfully suggest that Your Honor await the issuance of the Amended Judgment in the criminal case before scheduling a conference to set a schedule in this administrative proceeding. In particular, the determination of restitution in the forthcoming Amended Judgment may have a significant bearing on the determination of disgorgement in this proceeding. The parties also anticipate discussing a possible full resolution of this matter once the Amended Judgment is entered.

We thank Your Honor for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Duane K. Thompson". The signature is written in a cursive style with a large initial "D" and "T".

Duane K. Thompson

Daniel Maher

Counsel to the Division of Enforcement

cc: Charles Ross, Esq.  
Matthew Shroyer, Esq.

Counsel to Respondent David Lubin

# **EXHIBIT 1**

# UNITED STATES DISTRICT COURT

Southern District of Florida

Miami Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

DAVID LUBIN

Case Number: 17-20508-CR-COOKE

USM Number: 16489-104

Counsel For Defendant: Charles Ross, Esq.

Counsel For The United States: Jerrob Duffy, AUSA

Court Reporter: Gizella Baan-Proulx

**The defendant pleaded guilty to count 1 of the Information.**

The defendant is adjudicated guilty of these offenses:

<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18, U.S.C. 371	Conspiracy to unlawfully sell unregistered securities.	01/2014	1

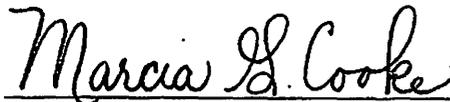
The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**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 Sentence:

11/29/2017



MARCIA G. COOKE

United States District Judge

November 29, 2017

**DEFENDANT: DAVID LUBIN**  
**CASE NUMBER: 17-20508-CR-COOKE**

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 36 months.

The court makes the following recommendations to the Bureau of Prisons: For the defendant to be designated to Otisville FCI in New York.

The defendant shall surrender to the designated facility and/or the US Marshal for this District on or before 12:00 p.m. on March 1, 2018.

**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: DAVID LUBIN**

**CASE NUMBER: 17-20508-CR-COOKE**

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years.

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: DAVID LUBIN**  
**CASE NUMBER: 17-20508-CR-COOKE**

**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.

**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 permission from the United States 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.

**Relinquishment of Licensure** - Upon request of the appropriate regulatory agency, the defendant shall relinquish his/her license to said agency. The defendant is on notice that such relinquishment is permanent and will be considered disciplinary action.

**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.

DEFENDANT: DAVID LUBIN  
CASE NUMBER: 17-20508-CR-COOKE

**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	\$0.00

The determination of restitution is deferred until 2/21/2018. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

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.

**Restitution with Imprisonment – Once restitution is ordered by this Court, the defendant shall pay restitution in the following manner. 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: DAVID LUBIN  
CASE NUMBER: 17-20508-CR-COOKE

**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/fine/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/fine/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.

**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.

CERTIFICATE OF SERVICE

Pursuant to SEC Rule of Practice 151(d), the undersigned hereby certifies that a true and correct copy of the foregoing letter to Chief Administrative Law Judge Brenda P. Murray was served upon Respondent this 7<sup>th</sup> day of December 2017 via electronic mail addressed to his counsel, Charles A. Ross, Esq. at [cross@charlesrosslaw.com](mailto:cross@charlesrosslaw.com).

s/Duane K. Thompson

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Duane K. Thompson