

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

CASE NO.: 0:21-cv-61176-AHS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS LLC, et al.

Defendants.

**PLAINTIFF’S UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT
AGAINST DEFENDANTS LARRY B. BRODMAN AND ANTHONY NICOLOSI**

Plaintiff Securities and Exchange Commission (“Commission”) moves for entry of Final Judgment against Defendants Larry B. Brodman and Anthony Nicolosi (collectively “Defendants”) in the forms attached to this motion as Exhibits A and B. By the signed, sworn Consents attached as Exhibits C and D, Defendants have consented, without admitting or denying the allegations of the Complaint (except as noted within the Consent) to entry of Final Judgment against Defendants. The Final Judgments incorporate the Judgments of Permanent Injunction against Defendants entered on June 14, 2021 (DE 8, 9) and include disgorgement, prejudgment interest, along with civil penalties pursuant to Section 20(d) of the Securities Act of 1933 and Section 21(d)(3) of the Securities Exchange Act of 1934.

Entry of the attached Final Judgments will end the Commission’s litigation against Brodman and Nicolosi, but the Final Judgments provide that the Court retains jurisdiction to enforce the terms of the Final Judgments. The case remains open with respect to the Receivership Entities and the Receiver’s work.

Certificate of Conferral

Pursuant to Southern District of Florida Local Rule 7.1(a)(3), undersigned counsel for the Commission conferred with Defendant Larry B. Brodman and counsel for Anthony Nicolosi, who do not object to the requested relief.

Respectfully submitted,

/s/Alice Sum

Alice Sum, Esq.

Trial Counsel

Fla Bar No.: 354510

Phone: (305) 416-6293

Email: sumal@sec.gov

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on September 19, 2022, I electronically filed the foregoing document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel and parties of record in the manner denoted below.

/s/Alice Sum

Alice Sum

SERVICE LIST

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

CASE NO.: 0:21-cv-61176-AHS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**PROPERTY INCOME INVESTORS LLC,
EQUINOX HOLDINGS INC.,
PROPERTY INCOME INVESTORS 26 LLC,
PROPERTY INCOME INVESTORS 304 LLC,
PROPERTY INCOME INVESTORS 201 LLC,
PROPERTY INCOME INVESTORS 3504 LLC,
PROPERTY INCOME INVESTORS 1361 LLC,
PROPERTY INCOME INVESTORS 4020 LLC,
PROPERTY INCOME INVESTORS 9007 LLC,
PROPERTY INCOME INVESTORS 417 LLC,
PROPERTY INCOME INVESTORS 4450 LLC,
PROPERTY INCOME INVESTORS 3050 LLC,
LARRY B. BRODMAN, AND
ANTHONY NICOLOSI (F/K/A ANTHONY
PELUSO)**

Defendant.

FINAL JUDGMENT AGAINST DEFENDANT LARRY B. BRODMAN

The Securities and Exchange Commission (“SEC” or “Commission”) having filed a Complaint, and Defendant Larry B. Brodman (“Brodman”) having entered a general appearance; consented to the Court’s jurisdiction over Brodman and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

INCORPORATION OF JUDGMENT OF PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Court's Judgment of Permanent Injunction and Other Relief as to Brodman entered on June 14, 2021 (DE 8) is hereby adopted and incorporated by reference with the same force and effect as if fully set forth herein, and that Brodman shall comply with all of the undertakings and agreements set forth therein.

II.

DISGORGEMENT, PREJUDGMENT INTEREST AND CIVIL PENALTY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Brodman is liable for disgorgement of \$1,301,462, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$42,803, and a civil penalty in the amount of \$250,000 pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)]. Brodman shall satisfy this obligation by paying \$1,594,265 to the Court appointed Receiver within 30 days after entry of this Final Judgment.

Brodman shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Brodman relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Brodman.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all

collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Brodman shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Receiver shall hold the funds, together with any interest and income earned thereon (collectively, the “Fund”), pending further order of the Court.

The Commission or the Court appointed Receiver may propose a plan to distribute the Fund subject to the Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment 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, Brodman shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Brodman’s payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Brodman’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Brodman 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 Final Judgment. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Brodman by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Brodman shall comply with all of the undertakings and agreements set forth therein.

IV.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the Complaint are true and admitted by Brodman, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Brodman under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Brodman 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).

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, 2022

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

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

CASE NO.: 0:21-cv-61176-AHS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**PROPERTY INCOME INVESTORS LLC,
EQUINOX HOLDINGS INC.,
PROPERTY INCOME INVESTORS 26 LLC,
PROPERTY INCOME INVESTORS 304 LLC,
PROPERTY INCOME INVESTORS 201 LLC,
PROPERTY INCOME INVESTORS 3504 LLC,
PROPERTY INCOME INVESTORS 1361 LLC,
PROPERTY INCOME INVESTORS 4020 LLC,
PROPERTY INCOME INVESTORS 9007 LLC,
PROPERTY INCOME INVESTORS 417 LLC,
PROPERTY INCOME INVESTORS 4450 LLC,
PROPERTY INCOME INVESTORS 3050 LLC,
LARRY B. BRODMAN, AND
ANTHONY NICOLOSI (F/K/A ANTHONY
PELUSO)**

Defendant.

**FINAL JUDGMENT AGAINST
DEFENDANT ANTHONY NICOLOSI (F/K/A ANTHONY PELUSO)**

The Securities and Exchange Commission (“SEC” or “Commission”) having filed a Complaint, and Defendant Anthony Nicolosi (f/k/a Anthony Peluso) (“Nicolosi”) having entered a general appearance; consented to the Court’s jurisdiction over Nicolosi and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

INCORPORATION OF JUDGMENT OF PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Court's Judgment of Permanent Injunction and Other Relief as to Nicolosi entered on June 14, 2021 (DE 9) is hereby adopted and incorporated by reference with the same force and effect as if fully set forth herein, and that Nicolosi shall comply with all of the undertakings and agreements set forth therein.

II.

DISGORGEMENT, PREJUDGMENT INTEREST AND CIVIL PENALTY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Nicolosi is liable for disgorgement of \$304,789, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$10,024, and a civil penalty in the amount of \$100,000 pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)]. Nicolosi shall satisfy this obligation by paying \$414,813 to the Court appointed Receiver within 30 days after entry of this Final Judgment.

Nicolosi shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Nicolosi relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Nicolosi.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all

collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Nicolosi shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Receiver shall hold the funds, together with any interest and income earned thereon (collectively, the “Fund”), pending further order of the Court.

The Commission or the Court appointed Receiver may propose a plan to distribute the Fund subject to the Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment 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, Nicolosi shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Nicolosi’s payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Nicolosi’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Nicolosi 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 Final Judgment. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Nicolosi by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Nicolosi shall comply with all of the undertakings and agreements set forth therein.

IV.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the Complaint are true and admitted by Nicolosi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Nicolosi under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Nicolosi 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).

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, 2022

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:21-cv-61176-AHS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS LLC,
EQUINOX HOLDINGS INC.,
PROPERTY INCOME INVESTORS 26 LLC,
PROPERTY INCOME INVESTORS 304 LLC,
PROPERTY INCOME INVESTORS 201 LLC,
PROPERTY INCOME INVESTORS 3504 LLC,
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PROPERTY INCOME INVESTORS 417 LLC,
PROPERTY INCOME INVESTORS 4450 LLC,
PROPERTY INCOME INVESTORS 3050 LLC,
LARRY B. BRODMAN, AND
ANTHONY NICOLOSI (F/K/A ANTHONY
PELUSO)

Defendants.

CONSENT OF DEFENDANT LARRY B. BRODMAN TO FINAL JUDGMENT

1. Defendant Larry B. Brodman (“Brodman”) acknowledges having: waived service of a summons and the complaint in this action, entered a general appearance, and admitted the Court’s jurisdiction over Brodman and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as provided herein in Paragraph 12 and except as to personal and subject matter jurisdiction, which he admits), Brodman hereby consents to the entry of the Final Judgment as to Defendant Larry B. Brodman

(“Final Judgment”) in the form attached hereto and incorporated by reference herein, which, among other things:

(a) incorporates the Court’s Judgment of Permanent Injunction entered on June 14, 2021 (DE 8);

(b) orders Brodman to pay disgorgement in the amount of \$1,301,462, plus prejudgment interest thereon in the amount of \$42,803; and

(b) orders Brodman to pay a civil penalty in the amount of \$250,000 under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

3. Brodman acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Brodman agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Brodman’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Brodman 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 action. For purposes of this paragraph, a "Related Investor Action" means a private damages

action brought against Brodman by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Brodman agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts he may be required to pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Brodman further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Brodman pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Brodman waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Brodman waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Brodman enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission, to him or to anyone acting on his behalf, to induce him to enter into this Consent.

8. Brodman agrees this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Brodman will not oppose enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby

waives any objection based thereon.

10. Brodman waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of the Final Judgment's terms and conditions.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Brodman in this civil proceeding. Brodman acknowledges no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Brodman waives any claim of Double Jeopardy based upon the settlement of this proceeding, including imposition of any remedy or civil penalty herein. Brodman further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Brodman understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

12. Brodman understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the

complaint or order for proceedings,” and “a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.” As part of Brodman’s agreement to comply with the terms of Section 202.5(e), he: (a) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; (b) will not make or permit to be made any public statement to the effect that he does not admit the allegations of the Complaint, or that this Consent contains no admission of the allegations, without also stating he does not deny the allegations; (c) upon filing of this Consent, hereby withdraws any papers filed in this action to the extent they deny any allegation in the Complaint; and (d) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the Complaint are true, and further, any debt for disgorgement, prejudgment interest, or civil penalty or other amounts due by Brodman under this Final Judgment or any other judgment, order, consent order, decree, or settlement agreement entered in connection with this proceeding, is a debt for the violation by Brodman 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). If Brodman breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Brodman’s: (i) testimonial obligations; or (ii) the right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Brodman hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official

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PROPERTY INCOME INVESTORS 3050 LLC,
LARRY B. BRODMAN, AND
ANTHONY NICOLOSI (F/K/A ANTHONY
PELUSO)

Defendants.

**CONSENT OF DEFENDANT ANTHONY NICOLOSI
(F/K/A ANTHONY PELUSO) TO FINAL JUDGMENT**

1. Defendant Anthony Nicolosi (f/k/a Anthony Peluso) ("Nicolosi") acknowledges having waived services of a summons and the complaint in this action, entered a general appearance, and admitted the Court's jurisdiction over Nicolosi and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as provided herein in Paragraph 12 and except as to personal and subject matter jurisdiction, which he admits),

Nicolosi hereby consents to the entry of the Final Judgment as to Defendant Anthony Nicolosi f/k/a/ Anthony Peluso ("Final Judgment") in the form attached hereto and incorporated by reference herein, which, among other things:

(a) incorporates the Court's Judgment of Permanent Injunction entered on June 14, 2021 (DE 9);

(b) orders Nicolosi to pay disgorgement in the amount of \$304,789, plus prejudgment interest thereon in the amount of \$10,024; and

(b) orders Nicolosi to pay a civil penalty in the amount of \$100,000 under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

3. Nicolosi acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Nicolosi agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Nicolosi's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Nicolosi 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Nicolosi by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Nicolosi agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts he may be required to pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Nicolosi further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Nicolosi pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Nicolosi waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Nicolosi waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Nicolosi enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission, to him or to anyone acting on his behalf, to induce him to enter into this Consent.

8. Nicolosi agrees this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Nicolosi will not oppose enforcement of the Final Judgment on the ground, if any

exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Nicolosi waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of the Final Judgment's terms and conditions.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Nicolosi in this civil proceeding. Nicolosi acknowledges no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Nicolosi waives any claim of Double Jeopardy based upon the settlement of this proceeding, including imposition of any remedy or civil penalty herein. Nicolosi further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Nicolosi understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

12. Nicolosi understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the

complaint or order for proceedings,” and “a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.” As part of Nicolosi’s agreement to comply with the terms of Section 202.5(e), he: (a) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; (b) will not make or permit to be made any public statement to the effect that he does not admit the allegations of the Complaint, or that this Consent contains no admission of the allegations, without also stating he does not deny the allegations; (c) upon filing of this Consent, hereby withdraws any papers filed in this action to the extent they deny any allegation in the Complaint; and (d) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the Complaint are true, and further, any debt for disgorgement, prejudgment interest, or civil penalty or other amounts due by Nicolosi under this Final Judgment or any other judgment, order, consent order, decree, or settlement agreement entered in connection with this proceeding, is a debt for the violation by Nicolosi 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). If Nicolosi breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Nicolosi’s: (i) testimonial obligations; or (ii) the right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Nicolosi hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official

