

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-80446-CIV-COHN/SELTZER

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ECAREER HOLDINGS, INC., ECAREER,
INC., JOSEPH J. AZZATA, DEAN A.
ESPOSITO, JOSEPH DEVITO, and
FREDERICK J. BIRKS,

Defendants,

VIPER ASSET MANAGEMENT, LLC, ESPO
CONSULTING, LLC, DJC CONSULTING,
LLC, J & D MARKETING, LLC, GRYPHON
ASSET MANAGEMENT, LLC, and CARLA
AZZATA,

Relief Defendants.

**ORDER GRANTING SEC'S MOTION FOR PRELIMINARY
INJUNCTION WITH REGARD TO DEFENDANT JOSEPH J. AZZATA**

THIS CAUSE is before the Court upon Plaintiff's Unopposed Motion for an Order of Preliminary Injunction and Other Relief Against Defendant Joseph J. Azzata [DE 31].

The Court has reviewed the Motion, Azzata's consent thereto, and the record in this case, and is otherwise advised in the premises. It is accordingly

ORDERED AND ADJUDGED that Plaintiff's Unopposed Motion for an Order of Preliminary Injunction and Other Relief Against Defendant Joseph J. Azzata [DE 31] is **GRANTED** as follows:

I.

PRELIMINARY INJUNCTION

A. Section 17(a) of the Securities Act

Defendant Azzata is restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
 - (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;
- by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order of Preliminary Injunction by personal service or otherwise: (a) any of Defendant Azzata's agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

B. Section 10(b) and Rule 10b-5 of the Exchange Act

Defendant Azzata is restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to 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; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

by (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order of Preliminary Injunction by personal service or otherwise: (a) any of Defendant Azzata's agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

C. Section 5(a) and 5(c) of the Securities Act

Defendant Azzata is restrained and enjoined from violating Section 5 of the Securities Act, 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order of Preliminary Injunction by personal service or otherwise: (a) any of Defendant Azzata's agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

D. Section 15(a) of the Exchange Act

Defendant Azzata is hereby restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), by using any means or instrumentality of interstate commerce, the mails, or any facility of any national securities exchange by acting as broker or dealer to effect transactions in securities, or to induce or attempt to induce the purchase or sale of securities, without being associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order of Preliminary Injunction by personal service or otherwise: (a) any of Defendant Azzata's agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

E. Control Person Liability for Section 13(a) of the Exchange Act and Aiding and Abetting Violations of 13(a) of the Exchange Act

Defendant Azzata is restrained and enjoined from, directly or indirectly, controlling any person who violates Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), by failing to timely and accurately file annual and quarterly reports with the Commission regarding its assets, liabilities, and related party descriptions and transactions; omitting information necessary to make the required information, in the light of the circumstances under which they were made, not misleading; and by filing or causing to be filed with the Commission materially false and misleading financial statements, unless Defendant acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

Defendant Azzata is restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), by knowingly or recklessly providing substantial assistance to an issuer that fails to timely and accurately file annual and quarterly reports with the Commission regarding its assets, liabilities, and related party descriptions and transactions; omitting information necessary to make the required information, in the light of the circumstances under which they were made, not misleading; and by filing or causing to be filed with the Commission materially false and misleading financial statements.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraphs also binds the following who receive actual notice of this Order of Preliminary Injunction by personal service or otherwise: (a) any of Defendant Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

F. Exchange Act Rule 13a-14

Defendant Azzata is hereby restrained and enjoined from violating Rule 13a-14 of the Exchange Act, 17 C.F.R. § 240.13a-14, by, directly or indirectly, as an officer or director of an issuer, falsely certifying in annual and quarterly reports that based on his knowledge, disclosure reports did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order of Preliminary Injunction

by personal service or otherwise: (a) any of Defendant Azzata's agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

II.

ASSET FREEZE

Until further Order of the Court:

- A. Defendant Azzata, and his agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, email, facsimile transmission or otherwise, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located; and
- B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendant Azzata, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

III.
SWORN ACCOUNTING

Within 14 calendar days of the issuance of this Order, Defendant Azzata shall:

- (a) make a sworn accounting to this Court and the Commission of all funds, whether in the form of compensation, commissions, income (including payments for assets, shares or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature), of any kind, received from any other Defendant or Relief Defendant;
- (b) make a sworn accounting to this Court and the Commission of all assets, funds, or other properties, whether real or personal, held by any Defendant or Relief Defendant, jointly or individually, or for his direct or indirect beneficial interest, or over which any of them maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and
- (c) provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind and wherever situated) in which (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), any of them has an interest or over which any of them has the power or right to exercise control.

IV.
RECORDS PRESERVATION

Until further Order of the Court, Defendant Azzata, any of his officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of

the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to any of the Defendants or Relief Defendants, wherever located and in whatever form, electronic or otherwise.

V.

OFFICER AND DIRECTOR BAR & BAR FROM VOTING ECAREER'S STOCK

Until further Order of the Court, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), and Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), Defendant Azzata is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

Until further Order of the Court, pursuant to Section 21(d)(5) of the Exchange Act, Section 305(b)(5) of the Sarbanes-Oxley Act of 2002, and the Court's equitable powers, Azzata is barred from voting any shares of eCareer Holdings, Inc. or eCareer, Inc. he directly or indirectly owns or controls.

VI.

RETENTION OF JURISDICTION

This Court retains jurisdiction over this matter and Defendant Azzata in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,
Florida, this 17th day of April, 2015.



JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF