

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

**CASE NO. 17- 21033-CIV-LENARD/GOODMAN**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**LOTTONET OPERATING CORP.,  
DAVID GRAY,  
JOSEPH VITALE A/K/A DONOVAN KELLY,**

**Defendants, and**

**ORACLE MARKETING GROUP INC.,  
CRM INTERACTIVE LLC,  
THE COUNCIL CLUB LLC,**

**Relief Defendants.**

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**ORDER ADOPTING REPORT AND RECOMMENDATION (D.E. 40) AND GRANTING  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND OTHER RELIEF**

**THIS CAUSE** is before the Court on the Report and Recommendation of U.S. Magistrate Judge Jonathan Goodman ("Report," D.E. 40), recommending that Plaintiff Securities and Exchange Commission's Motion for Preliminary Injunction be granted. Receiver Ryan Stumphauzer, on behalf of Defendant LottoNet Operating Corp. and Relief Defendants Oracle Marketing Group Inc., CRM Interactive LLC, and The Council Club, does not object to the relief requested. Defendants David Gray and Joseph Vitale a/k/a Donovan Kelly did not file timely objections to the Report.

Therefore, after an independent review of the Report and record, it is hereby

**ORDERED AND ADJUDGED** that:

1. The Report of the Magistrate Judge (D.E. 40) is **ADOPTED**.
2. Plaintiff's Motion for Preliminary Injunction is **GRANTED** as follows:

I.

**PRELIMINARY INJUNCTION**

**A. Section 17(a)(1) of the Securities Act**

**IT IS ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet, Gray, and Vitale are preliminarily restrained and enjoined from violating Section 17(a)(1) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a)(1), 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: to employ any device, scheme, or artifice to defraud, 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 strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants’ qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of LottoNet, Gray, or Vitale’s officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with LottoNet, Gray, or Vitale.

**B. Section 17(a)(2) of the Securities Act**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet, Gray, and Vitale are preliminarily restrained and enjoined from violating Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), 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: 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 the light of the circumstances under which they were made, not misleading, 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 strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of LottoNet, Gray, or Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with LottoNet, Gray, or Vitale.

**C. Section 17(a)(3) of the Securities Act**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet, Gray, and Vitale are preliminarily restrained and enjoined from violating Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), 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: 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 strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of LottoNet, Gray, or Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with LottoNet, Gray, or Vitale.

**D. Section 10(b) and Rule 10b-5(a) of the Exchange Act**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet, Gray, and Vitale are preliminarily restrained and enjoined from violating Section 10(b) and Rule 10b-5(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), 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, to employ any device, scheme, or artifice to defraud, 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 strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants’ qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of LottoNet, Gray, or Vitale’s officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with LottoNet, Gray, or Vitale.

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

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet, Gray, and Vitale are preliminarily restrained and enjoined from violating Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b), 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, 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, 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 strategy or

investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of LottoNet, Gray, or Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with LottoNet, Gray, or Vitale.

**F. Section 10(b) and Rule 10b-5(c) of the Exchange Act**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet, Gray, and Vitale are preliminarily restrained and enjoined from violating Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c), 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, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, 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 strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that LottoNet and Vitale, their respective directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby restrained and enjoined from:

**G. Aiding and Abetting Section 10(b) and Rule 10b-5 of the Exchange Act**

**- As to Gray -**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendant Gray is preliminarily restrained and enjoined from aiding and abetting any violation of Section 10(b) and Rule 10b-5 of the Exchange Act by knowingly or recklessly

providing substantial assistance to any person or entity in violating, directly or indirectly, Exchange Act Section 10(b), 15 U.S.C. § 78j(b), and Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b), 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 to knowingly provide substantial assistance to another in making any untrue statement of a material fact or omitting 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, by directly or indirectly: creating a false appearance or otherwise deceiving any person, or 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 either relating to a decision by an investor or prospective investor to buy or sell securities of any company or about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Gray's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Gray.

**H. Control Person Liability**  
**- As to Gray -**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendant Gray is preliminarily restrained and enjoined from directly or indirectly, unless he acts in good faith and does not directly or indirectly induce the act or acts constituting the violation, controlling any person who violates Section 10(b) of 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 strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Gray's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Gray.

**I. Violating Section 15(a)(1) of the Exchange Act**  
**– As to LottoNet and Vitale –**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants LottoNet and Vitale are preliminarily restrained and enjoined from violating Section 15(a)(1) of the Exchange Act by to making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of LottoNet, Gray, or Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with LottoNet or Vitale.

**J. Aiding and Abetting Violations of Section 15(a)(1) of the Exchange Act**  
**– As to Vitale and Gray –**

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending further Order of the Court, Defendants Vitale and Gray are preliminarily restrained and enjoined from directly or indirectly aiding and abetting the violation of Section 15(a)(1) of the Exchange Act by knowingly or recklessly providing substantial assistance to anyone making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.

**IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale or Gray's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale or Gray.

**II.**

**ASSET FREEZE**

**IT IS FURTHER ORDERED** that

A. Defendants LottoNet, Gray and Vitale, and Relief Defendants CRM, Council Club, Oracle, and their respective directors, 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, who receive notice of this order by personal service, mail, email, facsimile transmission or otherwise, be and hereby are, preliminarily restrained, until further Order of this Court, 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:

1. LottoNet Operating Corp.;
2. David Gray;
3. Joseph A. Vitale a/k/a Donovan Kelly;
4. CRM Interactive Technologies LLC;



5. The Council Club LLC; and
6. Oracle Marketing Group.

This includes, but is not limited to LottoNet Peru, S.A., LottoNet Colombia Corp., LottoNet Guatamala Corp., CRM Edge, and the following vehicles and watercraft:

- 2013 Jeep Wrangler purchased in 2016 from Chris Bosh (VIN: 1C4BJWDG4DL658912); registered owner is Relief Defendant Council Club.
- 2011 Ferrari California (VIN: ZFF65LJA2B0178422); registered owner is Relief Defendant Council Club.
- Yacht registered to David Gray (Vessel Number: FL1162KP; Hull ID is RGMLA050D203).

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 Defendants LottoNet Holding Corp., David Gray, and/or Joseph Vitale, and/or Relief Defendants CRM Interactive LLC, The Council Club LLC, and/or Oracle Marketing Group Inc., 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, until further Order of this Court, preliminarily 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, including, but not limited to, the following presently known bank accounts:

<b>Financial Institution</b>	<b>Name of Account</b>	<b>Account Number</b>
Bank of America	David Gray	XXXX4242
Bank of America	David Gray	XXXX0599
JP Morgan Chase	David Gray	XXXXXX9167
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX8337
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX8340
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX8106

Bank of America	LottoNet Operating Corp.	XXXXXXXXXX1954
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX1925
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX8114
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX8075
Bank of America	LottoNet Operating Corp.	XXXXXXXXXX8534
Bank of America	The Council Club LLC	XXXXXXXXXX0443
Bank of America	CRM Interactive Technologies LLC	XXXXXXXXXX4919
Bank of America	CRM Interactive Technologies LLC	XXXXXXXXXX1824
PNC Bank	Oracle Marketing Group	XXXXXXX8942
Bank of America	Oracle Marketing Group	XXXXXXXXXX1089

### III.

#### RECORDS PRESERVATION

**IT IS FURTHER ORDERED** that Defendants LottoNet, Gray and Vitale, and Relief Defendants CRM, Council Club and Oracle, their directors, 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 they hereby are preliminarily 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 Defendants LottoNet, Gray and Vitale, and Relief Defendants CRM, Council Club and Oracle wherever located and in whatever form, electronic or otherwise, until further Order of this Court.

IV.

**REPATRIATION ORDER**

**IT IS FURTHER ORDERED** that, until further Order of this Court, LottoNet, its directors, 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, shall:

(a) take such steps as are necessary to repatriate to the territory of the United States all funds and assets of investors described in the Commission's Complaint in this action which are held by them or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of the United States District Court, Southern District of Florida; and

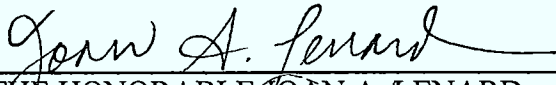
(b) provide the Commission and the Court a written description of the funds and assets so repatriated.

V.

**RETENTION OF JURISDICTION**

**IT IS HEREBY FURTHER ORDERED** that this Court shall retain jurisdiction over this matter and Defendants and Relief Defendants 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 in Miami, Florida, this 5<sup>th</sup> day of April, 2017.

  
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THE HONORABLE JOAN A. LENARD  
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record