INITIAL DECISION RELEASE NO. 598
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15619

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
JOSEPH P. DOXEY and	:	May 15, 2014
WILLIAM J. DANIELS	:	

APPEARANCES: Nina B. Finston and Ryan Farney, for the Division of Enforcement, Securities and Exchange Commission

Joseph P. Doxey, pro se

William J. Daniels, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision grants the Motion for Summary Disposition (Motion) filed by the Division of Enforcement (Division); finds that Respondent Joseph P. Doxey (Doxey) willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 10b-5, and Sections 5(a) and (c) and 17(a)(1), (2), and (3) of the Securities Act of 1933 (Securities Act); and finds that Respondent William J. Daniels (Daniels) violated Sections 5(a) and (c) of the Securities Act. It orders Doxey to cease and desist from violating Exchange Act Section 10(b), Exchange Act Rule 10b-5, and Securities Act Sections 5(a) and (c) and 17(a)(1), (2), and (3); and Daniels to cease and desist from violating Securities Act Sections 5(a) and (c). It orders disgorgement of $57,654 against Doxey and $16,246.46 against Daniels. It bars Doxey from serving as an officer or director of any issuer having a class of securities registered with the Securities and Exchange Commission (Commission) pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d), and orders penny-stock bars against both Respondents.

I. INTRODUCTION

A. Procedural Background

The Commission instituted this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Doxey and Daniels, pursuant to Section 8A of the Securities Act and Sections 15(b)(6)(A) and 21C of the Exchange Act, on November 22, 2013. Doxey and Daniels were served with the OIP on November 26, 2013. Joseph P. Doxey, Admin. Proc. Rulings Release No. 1104, 2013 SEC LEXIS 3950 (Dec. 16, 2013). I held a telephonic prehearing conference on January 9, 2014, which was attended by the Division and Doxey. During the prehearing conference, I set a briefing schedule for motions for summary disposition, while noting the possibility that a hearing might be needed at a later date. Tr. 10-14, 21; see Joseph P. Doxey, Admin. Proc. Rulings Release No. 1157, 2014 SEC LEXIS 93 (Jan. 10, 2014). Daniels later was ordered to follow the same briefing schedule as the Division and Doxey for any motions for summary disposition. Joseph P. Doxey, Admin. Proc. Rulings Release No. 1203, 2014 SEC LEXIS 290 (Jan. 27, 2014).[1]

Doxey and Daniels filed Answers to the OIP on January 24, 2014, and December 12, 2013, respectively. On February 5, 2014, the Division filed a Motion for Summary Disposition (Motion), and a Declaration of Ryan Farney in Support of the Motion, attaching thirty-four exhibits (Division Exhibits), including the transcripts of the Division's investigative testimony of Doxey, Daniels, and other witnesses. On February 27, 2014, Doxey filed a submission in opposition to the Motion, comprising a "Summary" that presents Doxey's view of the relevant events (Summary) and many emails, portions of emails, and documents. The Division filed a Reply in Further Support of the Motion (Reply) on March 7, 2014. Daniels did not file a brief in opposition to the Motion. Because Daniels filed an Answer and responded to my Order to Show Cause, I decline to find Daniels in default. See 17 C.F.R. §§ 201.155(a)(1), .221(f); Joseph P. Doxey, Admin. Proc. Rulings Release No. 1158, 2014 SEC LEXIS 90 (Jan. 10, 2014).

B. Summary Disposition Standard

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. See 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to 17 C.F.R. § 201.323. See id. Having reviewed the pleadings and other filings submitted by the parties, I conclude that there is no genuine issue with regard to any material fact, and the Division is entitled to summary disposition against both Respondents as a matter of law.

[1] I ordered that motions for summary disposition be filed by February 7, 2014, oppositions by February 21, 2014, and any replies by March 3, 2014. Joseph P. Doxey, Admin. Proc. Rulings Release No. 1157, 2014 SEC LEXIS 93 (Jan. 10, 2014). I later extended the deadline for oppositions to February 26, 2014, and for replies to March 7, 2014. Joseph P. Doxey, Admin. Proc. Rulings Release No. 1251, 2014 SEC LEXIS 591 (Feb. 19, 2014).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice (Rules). See 17 C.F.R. § 201.323. The parties' motion papers and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

II. FINDINGS OF FACT

A. Doxey and Pure H20 Bio-Technologies

Doxey is in his late fifties and lives in Boca Raton, Florida. Doxey Answer at 3. In 1989, Doxey founded Pure H20 Bio-Technologies, Inc. (PureH20 or the company), and since its founding, Doxey has controlled PureH20 as president, chief executive officer, and chairman. Doxey Answer at 3; Div. Exs. 2 at 1; 3; 7 at 19, 119; 25 at 88.[2] PureH20 is in the business of developing water purification technology, and between 2007 and 2009 it was specifically focused on developing and bringing to market its water disinfection system designed for use by hospitals and medical facilities (the System). Div. Exs. 6 at 45; 7 at 47; 8 at 19.[3]

Doxey took responsibility for raising money for the company. Div. Ex. 7 at 38. Over its history, PureH20 has had a number of employees and consultants working for it, including Cecil ("Ira") Felkner (Felkner), a microbiologist who worked for the company on a consultant basis and worked on the development of the System between 2004 and 2009, and Dennis Boudreaux (Boudreaux), who was involved in PureH20 as an engineer, director, and officer from sometime in the 1990s to 2011, and worked on the development of the System between 2007 and 2009. Doxey Answer at 10; Summary at 5; Div. Exs. 2 at 1; 3; 8 at 12-13, 15-18, 21; 9 at 13, 77.[4] Felkner and Doxey had a falling-out, while Boudreaux remains close friends with Doxey. Div. Exs. 8 at 119; 25 at 46-47.

[2] Division Exhibit 2 are personnel biographies Doxey produced to the Division; Division Exhibit 3 is PureH20's June 14, 2013, reinstatement filing with the Florida Secretary of State; Division Exhibit 7 is the transcript of Doxey's August 8, 2012, investigative testimony; Division Exhibit 25 is the transcript of Daniels' December 13, 2011, investigative testimony. See Farney Decl. at 1-2, 4.

[3] Division Exhibit 6 is the transcript of Ellen Van Buren's August 10, 2011, investigative testimony; Division Exhibit 8 is the transcript of Dennis Boudreaux's January 13, 2012, investigative testimony. See Farney Decl. at 2.

[4] Division Exhibit 9 is the transcript of Felkner's March 24, 2010, investigative testimony. See Farney Decl. at 2.

B. Daniels

Daniels, who like Doxey lives in Florida, first met Doxey around the summer of 2008, Div. Ex. 25 at 21, 35-36. Daniels was introduced to Doxey by a "Troy" or "Ken" Lowman (Lowman), who Daniels knew when he was a registered representative, and who Doxey had met in New York. Div. Exs. 7 at 137-38, 141-42, 159; 25 at 36-37. Daniels is associated with Observation Capital, LLC (Observation Capital), a business located in Texas that he established to protect himself from personal liability relating to his business activities. Div. Exs. 25 at 18; 26 at SEC002741. Daniels controls Observation Capital and is the only person behind it. Div. Ex. 25 at 18-20. While Daniels was formerly a registered representative associated with broker dealers, he has not been licensed to sell securities since 2000. Id. at 24; Div. Ex. 31 at 1-2.[5]

As discussed in greater detail below, Daniels invested in PureH20 in 2008 and 2009. Div. Ex. 27.[6] After Lowman's introduction, Daniels was interested in PureH20 because he believed its shares were trading at a price under the value of its technology. Div. Ex. 25 at 39. Over the course of Daniels' investment relationship with PureH20, Daniels and Doxey only met in person once, but they talked over the phone regularly. Div. Ex. 7 at 143; 25 at 42-43.

C. Clancy Environmental

PureH20 engaged Clancy Environmental Consultants, Inc. (Clancy), located in Vermont, to test the System's success in filtering out water contaminants. Div. Exs. 7 at 12, 69; 8 at 38; 9 at 16, 50. Among other contaminants, Clancy was testing for the System's ability to eliminate cryptosporidium, a type of water-borne parasite. Div. Ex. 7 at 15-16. By April 2008, Clancy had tested the System, and determined that while it reduced cryptosporidium, it did not reduce it to the three-log level. Doxey Answer at 10; Summary at 3; Div. Exs. 7 at 12, 67-68, 71-72; 8 at 20, 29; 9 at 32, 34, 127-28; Doxey Ex. F13.[7] A three-log reduction is very close to a 100 percent

[5] Division Exhibit 31 is a copy of a Web CRD printout of Daniels' employment history from the website of the Financial Industry Regulatory Authority, Inc. See Farney Decl. at 4.

[6] Division Exhibit 27 is a compilation of Daniels' and Observation Capital, LLC's payments to Pure H20.

[7] Doxey attached emails, portions of emails, and documents – unaccompanied by an affidavit or declaration – to his Summary. There are many indications that Doxey altered the evidence attached to his Summary. Many of the documents have Doxey's commentary on the document interposed within the language of the original document. See, e.g., Doxey Ex. F-2 (below header reading "EXHIBIT F-12 FELKNER WE ARE SO CLOSE GOING TO NSF April 3, 2007 still at 2.0 log reduction?" are emails dated February 21, 2014, from "Joseph P. Doxey" to "Joseph P. Doxey" with subject "Felkner Doxey Mark Dennis Assurances NSF soon 040307," and April 3, 2007, from "Ira Felkner" to "jdox" with subject "Re: Report"). Others have nonsensical recipients and to/from dates, and possible altering of the typeface used in the originals. See, e.g., Doxey Exs. F-5 (June 4, 2007, email from "Ira Felkner" to "jdox" where portions of sentences purportedly written by Felkner are underlined and bolded, and those portions appear connected to Doxey's commentary on email included in the text of a June 18, 2012, string, forwarded by

reduction in the parasite. Div. Ex. 9 at 18-19; see Bausch & Lomb Inc. v. Alcon Labs., Inc., 64 F. Supp. 2d 233, 235 n.1 (W.D.N.Y. 1999).

D. NSF International

i. NSF promulgated standards for water purifiers under P-231

NSF International (NSF) is a private company located in Michigan that performs testing and certification work for product manufacturers. Div. Ex. 6 at 6, 18-20. NSF develops its own standards of testing and certification of products. Id. at 18-19. NSF has gone by "NSF" at least since the end of 2007, but previously conducted business under the name "National Sanitation Foundation." Id. at 80.

To be marketed in the United States, a water purification system is not required to be certified through NSF. Div. Exs. 8 at 40-41; 9 at 29. However, NSF certification is important for developing a market for a water purification system, as NSF certification functions as a quality indicator for buyers. Doxey Answer at 16; Summary at 1; Div. Exs. 6 at 27; 7 at 34; 8 at 41-42; 9 at 29. Although Doxey may have understood otherwise, NSF is not part of or an agent of the U.S. Environmental Protection Agency (EPA). Div. Exs. 6 at 19-20; 7 at 66, 207-08.

One of the testing criteria NSF promulgated is P-231, a protocol NSF developed for microbiological water purification systems. Div. Ex. 6 at 24-25, 27. While P-231 was developed based on an EPA standard for water purifiers, NSF is not and has never served as a contract laboratory for the EPA relating to P-231. Div. Ex. 6 at 24-25, 80-81. But see Div. Ex. 9 at 29. To obtain P-231 certification, a product must go through microbiological performance testing for bacteria and viruses, testing for the safety of the materials used in the equipment, and an audit, performed annually, of the production facility.[8] Div. Exs. 6 at 28-29, 31; 7 at 34; 9 at 28, 91. To conduct certification under P-231, NSF requires certain information including details on the technology used, the materials used in the product's construction, the operation of the

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"Joseph P. Doxey" to "Joseph P. Doxey"); F-8 (Doxey comments that it is "[v]ery disturbing" that he never received this email that he, however, submitted in this proceeding; this April 1, 2008, email is forwarded by "Joseph P. Doxey" to "Joseph P. Doxey" on June 19, 2012, and again forwarded by "Joseph P. Doxey" to "Joseph P. Doxey" on June 30, 2012; the subject of the email changes with each forward). Nonetheless, because Doxey is pro se, his filing relates to his defense of a motion for summary disposition, and the Division never moved to strike any of Doxey's exhibits, I have read Doxey's relevant exhibits liberally and given them as much weight as reasonably possible. See 17 C.F.R. § 201.250(a); see also Banks v. Pennsylvania, 09-cv-1437, 2010 WL 569545, at *2 (W.D. Pa. Jan. 4, 2010) (discussing "general rule" of liberal reading of pro se party's filings); U.S. Sec. & Futures Corp. v. Irvine, 00-cv-2322, 2003 WL 1907877, at *3 (S.D.N.Y. Apr. 16, 2003) (pro se litigant's papers should be read liberally).

[8] Under the audit requirement, NSF had to be allowed to inspect the manufacturing facility prior to the product's obtaining initial certification, and thereafter, to maintain certification, NSF had to be allowed to inspect the facility on an annual basis. Div. Exs. 6 at 28-29, 31, 35-36; 7 at 34.

product, the parameters under which the product operates (such as the flow rate and filtration capacity), and formulation information for all of the water contact materials used in the product. Div. Ex. 6 at 29. Further, the product to be tested must physically be sent to NSF in Michigan for testing. Id. at 30. P-231 was promulgated before 2008. Id. at 26.

P-231 included a three-log criterion for reduction of cryptosporidium. Div. Exs. 9 at 27-28, 32, 155-56; 10 at 1.[9] Doxey was informed of this criterion no later than February 3, 2009, but never actually read P-231, relying instead on Felkner and others to know P-231's requirements. Div. Exs. 7 at 67; 10. The testing conducted by Clancy showed that the System never met P-231's cryptosporidium criterion. Div. Exs. 7 at 67-68; 8 at 20, 43; 9 at 32; see supra § II(C). Doxey knew that Clancy's testing showed reduction that did not meet the three-log criterion. Div. Ex. 7 at 67-68, 71-72.

ii. PureH20 had limited communications with NSF in 2007-09

PureH20 had limited communications with NSF between 2007 and 2009 relating to PureH20's interest in obtaining NSF certification for the System under P-231. See, e.g., Div. Exs. 6 at 54, 71, 77-78; 9 at 158-59; Doxey Exs. NSF15, NSF17. Specifically, Doxey and Felkner had communications with NSF employees Ellen Van Buren (Van Buren), who had sales responsibilities relating to P-231 in 2007 to mid-2009, and Maren Roush (Roush), who was a project manager for P-231, but Roush's communications with PureH20 were limited. Div. Ex. 6 at 28, 37-38, 46-47, 52.

Van Buren corresponded mostly with Felkner and also on a limited basis with Doxey. Id. at 52, 54-55. One such communication involved Felkner's asking Van Buren whether NSF could accept cryptosporidium testing data from Clancy to be used in NSF's certification process. Div. Exs. 6 at 53-54, 59; 9 at 112-13. Van Buren looked into Felkner's question, and told Felkner NSF might be able to use the Clancy data in their own testing. Div. Exs. 6 at 53-54; 7 at 53. Also, per Doxey's request, Felkner asked Van Buren in or around May 2008 whether PureH20 was allowed to use NSF's name on something; Van Buren answered that PureH20 could not. Div. Exs. 6 at 56-57; 7 at 201-02; 9 at 135; Doxey Ex. F-7.

iii. NSF never performed any certification work for PureH20

Despite such conversations, NSF never began any certification testing on the System. Div. Exs. 6 at 51; 8 at 54, 66, 74-75, 78; 12 at 1.[10] The Clancy cryptosporidium data, which Van Buren had discussed with Felkner, was never sent to NSF, nor was the System itself. Div. Exs. 6 at 54, 59; 8 at 49-50; 10 at 1; Doxey Ex. NSF24-25. PureH20 never gave NSF more than a very general description of the System and a link to the company's website, which showed

[9] Division Exhibit 10 begins with a February 3, 2009, email from NSF employee Ellen Van Buren to Doxey, with NSF employee Maren Roush and Felkner copied. See Farney Decl. at 2.

[10] Division Exhibit 12 is a May 12, 2011, letter from NSF's counsel to the Division. See Farney Decl. at 2.

nonspecific information about the product that was not the type NSF needed to commence certification work. Div. Ex. 6 at 45-48; Doxey Ex. NSF17C.

A February 3, 2009, email from Van Buren to Doxey (Div. Ex. 10 at 1) shows that certification work was never commenced:

> I understand that you would like to get started with some initial testing as soon as possible within a budget of $25,000. NSF can certainly begin testing for you, however it is critical to first develop a test plan specific to your technology, so that successful test data can be used towards your end goal of product certification. This email in no way implies that all testing required for P231 certification of your device would be included for a $25,000 fee.

Also supporting the finding that certification work never began are Doxey's own admissions, which include a February 2014 statement that "the current [PureH20] product is not ready for NSF certification" and testimony Doxey gave to the Division in August 2012. Summary at 2; Div. Ex. 7 at 68-70.

PureH20 did submit an application for certification work to NSF. Div. Exs. 6 at 49, 68; 12 at 1. There is a factual dispute between the Division and Doxey regarding whether PureH20 ever actually entered into a contract with NSF for certification work. Doxey Answer at 13-14; Motion at 7; Summary at 2[11]; Reply at 6; see also Div. Exs. 8 at 42, 57; 9 at 140; 12 at 1. However, whether a contract for certification testing existed is immaterial to the outcome of the Initial Decision, because it is clear that NSF never performed any certification work for PureH20.[12] See 17 C.F.R. § 201.250(b) (motion for summary disposition may be granted where no genuine issue with regard to any material fact) (emphasis added).

iv. PureH20 could not afford to certify the System through NSF

PureH20 was struggling financially in 2008 and 2009. E.g., Doxey Answer 12-13; Div. Exs. 6 at 54-55; 8 at 94; 9 at 159. By mid-2008, it was unable to meet debts owed to Clancy. Div. Exs. 7 at 45; 8 at 94; 11.[13] PureH20 never could afford to go through testing with NSF, which would cost at least $25,000, and PureH20 never began certification testing because it never had the money to pay for it. Div. Exs. 6 at 31-32, 51; 7 at 57; 8 at 45, 94; Ex. 10. A company could not obtain certification through NSF until it had paid NSF in full for services

[11] Doxey attached to the Summary a "Contract for Certification Services by NSF International," signed by Doxey and a Michael P. Walsh of NSF and dated April 7, 2008. Doxey Ex. NSF19-21; see also Doxey Ex. NSF24-25. The Division has concerns about the authenticity of the purportedly fully executed contract. Reply at 2, 7.

[12] The Division argues in its Reply that, even if a signed and executed contract existed, it would not change the fact that NSF never performed any work for PureH20. Reply at 7. I agree.

[13] Division Exhibit 11 is an email chain between Clancy's Thomas Hargy and Doxey, with the earliest email dated July 23, 2008, and the latest dated January 21, 2009. See Farney Decl. at 2.

performed. Div. Ex. 6 at 83. In 2008 and 2009, Doxey was aware of and appreciated the company's precarious financial condition. E.g., Doxey Answer at 9; Div. Exs. 7 at 45-46, 104-06, 170, 204-06; 11; 16 at 1.[14] The company eventually was dissolved by the State of Florida for nonpayment of fees, but was later reinstated. Doxey Answer at 15; Div. Ex. 3.[15]

E. Press Releases

i. The Six Press Releases

In 2008 and 2009, Doxey authorized the distribution of the following six press releases (collectively, Six Press Releases). Div. Ex. 7 at 175.

April 1, 2008, Press Release (Div. Ex. 17): This press release (April 2008 Press Release) comprised in relevant part the following language:

> Certification of this system through EPA's contractor, National Sanitation Foundation (NSF) is expected to be completed within a few short months and has a high likelihood for success.

October 22, 2008, Press Release (Div. Ex. 18): This press release (October 2008 Press Release) comprised in relevant part the following language:

> [The company] is proud to announce the successful completion of pre-certification testing of an innovative drinking water treatment system. For several months, Clancy Environmental Consultants, Inc. has been testing the efficacy of a water purification system, using tetrasilvertetraoxide (TTO) for killing pathogenic organisms not killed by the traditional water treatment by halogenated compounds such as chlorine, bromine, and fluorine. The primary goal was to achieve disinfection of Cryptosporidium parvum, a protozoan that has caused worldwide concern, including severe diarrhea in most individuals and even deaths for immunocompromised individuals, and which is especially difficult to eradicate. In addition, tests included disinfection of Escherichia coli, an important enteric pathogenic organism. Both of these pathogens enter the water distribution system due to contamination from animal and human feces.
>
> Certification of this system through EPA's contractor, National Sanitation Foundation (NSF) is expected to be completed within a few short months and has a high likelihood for success.

[14] Division Exhibit 16 is a January 13, 2009, email from Doxey to Felkner. See Farney Decl. at 3.

[15] Doxey also testified that PureH20's Georgia facility had to be closed in 2008 because the company could not afford to keep it open. Div. Ex. 7 at 22.

January 29, 2009, Press Release (Div. Ex. 19)[16]: This press release (January 2009 Press Release) comprised in relevant part the following language:

> [The company] is proud to announce it has retained the law firm of Chastain & Etcheson, LLC, located In Lewistown, Illinois, to assist in the final certification process of its Integrated Hospital Potable Water Disinfection System.
>
> Mr. Gene Chastain, of Chastain & Etcheson, stated, "We are very excited about working with Pure H20 and in assisting them to bring their product to the marketplace. There 'is a growing demand for clean water and it is our opinion that the company's product addresses that demand."
>
> Chastain & Etcheson, LLC is a law firm based out of Lewistown, Illinois. Chastain & Etcheson, LLC has a history of helping corporations with mergers and acquisitions, buyouts, obtaining financing, and all other-corporate issues.
>
> Pure H20 recently completed all pre-certification testing of its innovative drinking water treatment system with outstanding results. Pure H20 is ready to complete final certification through the EPA's contractor, National Sanitation Foundation (NSF). Certification of this system is expected to be completed within this 1st quarter and has a high likelihood for success.
>
> Upon certification, Chastain & Etcheson will assist Pure H20 with its intended $5,000,000 mezzanine financing program. These funds will place the Company in a position to employ skilled workers in all areas of expertise.

March 3, 2009, Press Release (Div. Ex. 20)[17]: This press release (March 2009 Press Release) comprised in relevant part the following quotation attributed to Doxey:

> We are anxiously awaiting final certification of its delivery system through EPA's contractor, National Sanitation Foundation (NSF).

April 1, 2009, Press Release (Div. Ex. 21): This press release (April 2009 Press Release) comprised in relevant part the following language:

> Pure H20 recently completed all pre-certification testing of its innovative drinking water treatment system with outstanding results. Pure H20 is ready to complete final certification through the EPA's contractor, National Sanitation Foundation

[16] Doxey said that Chastain & Etcheson wrote this press release, and Doxey okayed it. Div. Ex. 7 at 184.

[17] Doxey said that Felkner drafted this press release, and Doxey authorized its publication. Div. Ex. 7 at 188. But see Div. Ex. 9 at 133-34.

(NSF). Certification of this system is expected to be completed within this 1st quarter and has a high likelihood for success.

May 4, 2009, Press Release (Div. Ex. 22): This press release (May 2009 Press Release) comprised in relevant part the following language:

> Certification of this system through EPA's contractor, National Sanitation Foundation (NSF) is underway.

Each of these press releases was posted to PureH20's website, and at least some were distributed through newswires. Div. Exs. 7 at 124, 178-79; 17-22. Each comprised the following language (the Disclaimer) at its end:

> The foregoing press release contains forward-looking statements that can be identified by such terminology as "expects," "potential," "suggests," "may," "intends," or similar expressions. Such forward-looking statements involve known and unknown risks, uncertainties, and other factors that may cause the actual results to be materially different from any future results, performance or achievements expressed or implied by such statements. In particular, management's expectations regarding future research, development, and/or commercial results could be affected by, among other things, uncertainties relating to the availability of future financing; unexpected regulatory delays or government regulation generally; the Company's ability to obtain or maintain patent and other proprietary intellectual property protection; and completion in general. Forward-looking statements speak only as to the date they were made.

Div. Exs. 17-22.

ii. Doxey controlled the distribution of the Six Press Releases

There is some dispute between the Division and Doxey regarding whether Doxey controlled the distribution of the Six Press Releases. The Division alleges that:

> [a]s president, chairman and chief executive of Pure H20, Doxey participated in drafting the six press releases at issue, controlled the decision of when to issue the press releases and had ultimate authority over their content, and arranged for their dissemination via the company's website and a news wire service.

Mot. at 20; see also OIP at 3 (alleging that Doxey had final authority and control over the press releases). Doxey maintains that he was not the initial drafter of the Six Press Releases, and "[a]ll information regarding our testing, technology, science, engineering or finance would be initially drafted by the person who had particular knowledge in the different aforementioned areas of the company," while third-party "PR firms" and "news distribution centers" would have some input in drafting. Doxey Answer at 15. Doxey challenges the OIP's allegation that he "controlled the substance of and substantially participated in drafting" the Six Press Releases. Id. at 16.

There is some general evidence that Doxey participated in drafting press releases, and Doxey himself admitted during investigative testimony that he chose at least some of the language used in the Six Press Releases. See Div. Exs. 7 at 165 (Doxey said it was his "dumb mistake" to have included certain language in the April 2009 Press Release), 182 (discussing the October 2008 Press Release, Doxey said, "I guess we grabbed the same paragraph again in a hurry . . . , it's my error that this went out the way it did."); 9 at 60 (Felkner stated that Doxey was the drafter of a company press release dated November 7, 2005). Yet, it is immaterial whether Doxey actually wrote all or any of the text of each of the Six Press Releases. See 17 C.F.R. § 201.250(b) (motion for summary disposition may be granted where no genuine issue with regard to any material fact) (emphasis added). What is significant is that Doxey controlled the Six Press Releases' distribution – a fact he admits and which is corroborated with other evidence. See Doxey Answer at 16 (admission of "ha[ving] final authority over the distribution of each press release"); Div. Ex. 7 at 32 (press releases were never issued without Doxey's consent), 124-25 (Doxey explained he was aware of every company press release that went out, and authorized the publication of each company press release on the company website), 130 (Doxey stated, "I put a press release out when I thought it was material [to] what the company was doing."), 175 (Doxey stated that he "authorized all [press] releases"); see also Div. Exs. 8 at 23 (Boudreaux stated that "the final draft of the press release was through Joe [Doxey]" and that Doxey had the "final say" on press releases), 35 (Boudreaux stated, "[Felkner] would put together some press releases, but the press releases went through Joe Doxey before it went out"); 9 at 87 (Felkner stated that the press releases are "done by Mr. Doxey"). Doxey was familiar with the contents of all press releases the company issued. See Div. Exs. 7 at 124, 175-77, 186, 188; 8 at 23, 35.

iii. PureH20 was not allowed to mention NSF's name in press releases

NSF does not allow customers to reference NSF's name until the customer has received final certification on its product. Div. Ex. 6 at 22-23, 51, 55. Doxey knew that PureH20 was not allowed to use NSF's name prior to certification. Div. Ex. 7 at 201-02. NSF noticed at some point in time that PureH20 was using NSF's name in press releases, and contacted PureH20, asking PureH20 to remove NSF's name from the press releases and stop using NSF's name in marketing materials. Div. Ex. 6 at 55-56.

iv. The Six Press Releases contained false and misleading statements

Each of the Six Press Releases was false and misleading, in that each falsely made NSF appear to be a contractor to a federal regulatory agency with respect to P-231, when NSF was in fact not a contractor of the EPA with respect to P-231.[18] See supra § II(D)(i). Each was further misleading, by suggesting that PureH20 had the funds to complete the NSF certification process on a short timeline. See supra § II(D)(iv); see also Div. Ex. 8 at 74-75. While the January 2009

[18] They were also inaccurate in calling NSF "National Sanitation Foundation," a name that NSF had stopped using. See supra § II(D)(i).

Press Release references Chastain & Etcheson at length, Chastain & Etcheson never obtained financing for the company. Summary at 7; Div. Ex. 7 at 183, 189.

The April and October 2008 Press Releases were false and misleading, because they suggested that NSF certification could have been completed "in a few short months," when NSF certification under P-231 was unlikely to take fewer than three months and the System at the time was not able to reduce cryptosporidium to the level required for NSF certification. Div. Exs. 6 at 34-35; 7 at 51-52; 9 at 126; see supra § II(C). For the same reasons, the January and March 2009 Press Releases, stating that "[c]ertification of this system is expected to be completed within this 1st quarter," were false and misleading.[19] Div. Exs. 6 at 34-35; 7 at 51-52; 9 at 126; see supra § II(C). The March 2009 Press Release was distributed after Doxey received an email from Van Buren (Div. Ex. 10) stating:

> Typical product certification time is 3-4 months from receipt of all required formulation information and test units. This timeline is highly dependent on the lab schedule and test queue, and a firm timeline for testing and certification can be determined at the time of sample submission.

The October 2008, January 2009, and April 2009 Press Releases were false and misleading, because they suggested that pre-certification testing, done by Clancy, was "successful" or produced "outstanding results" when in fact the testing revealed the System did not reduce cryptosporidium to the level required for NSF certification. See supra § II(C). For the same reason, the January 2009 Press Release's statement that the company was ready to complete final certification through NSF was false and misleading. See supra § II(C).

The March 2009 Press Release was misleading because "anxiously awaiting final certification" implies that certification work was already underway, when it was not; and the May 2009 Press Release was false and misleading because it stated that certification work was underway, when it was not. See supra § II(D)(iii).

v. Doxey knew that the Six Press Releases contained false or misleading information

Doxey admitted that aspects of the Six Press Releases did not reflect PureH20's and the System's status at the time. In investigative testimony given to the Division, Doxey said that the Six Press Releases were "forward looking statements," and the events were "going to happen in three to four months" if "money comes in." Div. Ex. 7 at 162. Doxey also pointed to the inclusion of the Disclaimer in each of the Six Press Releases. Id. at 171. He believed that the shareholders "all know we don't have the money," and on the topic of "obtaining NFS certification," stated that "everybody knew the same story, we were trying to get there." Id. at 162, 170. While the Six Press Releases never explained that NSF certification was contingent on obtaining money, Doxey believes that the contingency can be "read between the lines" in the press releases. Id. at 163-64.

[19] The April 2009 Press Release was actually released after the completion of the first fiscal quarter of 2009, even though it referred to "this 1st quarter." Div. Ex. 7 at 165.

Doxey said that the January 2009 Press Release expresses "that the company is trying to get to NSF to get the final certification done, with financing coming through the law firm of Chastain and Etcheson where they promised 500 thousand through a judgment that the company had from a bankruptcy court in Kentucky." Id. at 183. At least one investor did not share Doxey's peculiar interpretation of the January 2009 Press Release. Div. Ex. 25 at 75-76. Regarding the April 2009 Press Release, Doxey acknowledged that he did not address the fact that PureH20 had to conduct further cryptosporidium testing prior to going to NSF for certification testing. Div. Ex. 7 at 194.

Regarding the October 2008 Press Release's statement that certification was expected to be completed in a few short months, Doxey said that it was "just an error" to have included in this press release language from the prior April 2008 Press Release. Id. at 181. Speaking generally about the Six Press Releases, Doxey said, "I could be in error with some of these . . . , I didn't put my underlying attention to it." Id. at 226; see also id. at 198 ("I was a nervous wreck trying to make all ends meet and I probably didn't give enough thought to the [April 2009 Press Release], and that's my error"); id. at 198-99 ("I have to say now reviewing all these press releases I did not give my undivided attention to thoroughly write these things the proper way but there was no intent for me to misrepresent anything.").

Doxey acknowledged that each of the Six Press Releases were "material." Div. Ex. 7 at 126, 160. He said, "[T]hose press releases . . . they're all material to what was going on." Id. at 160.

vi. Some of the Six Press Releases increased PureH20's stock price and/or trading volume

Division Exhibit 24, a summary chart showing price and volume movement of PureH20 stock on the days of and immediately preceding PureH20 press releases, shows that the October 2008, March 2009, and April 2009 Press Releases were associated with increases in PureH20's stock price by 25, 43, and 57 percent respectively. Div. Ex. 24; Farney Decl. at 3. All of the Six Press Releases, with the exception of the March 2009 Release, were associated with significantly increased trading volume in PureH20's stock. Div. Ex. 24. Among the Six Press Releases, the October 2008 and April 2009 press releases were associated with both increased stock price and trading volume. Id.

F. Sales of PureH20 Securities

i. Doxey made false or misleading statements to Daniels before Daniels invested

Doxey visited Daniels in Land O'Lakes, Florida, where Daniels lived, around the summer of 2008, to discuss PureH20. Div. Exs. 7 at 134, 143; 25 at 21, 35-36, 48. This was the only time the two men met in person. Div. Exs. 7 at 143; 25 at 42-43. During this meeting, Doxey told Daniels that: pre-NSF testing on the System was complete; the product was fully developed; NSF certification was underway; and NSF would ultimately certify the product, but

Doxey first needed a little more money to get the System through certification. Div. Ex. 25 at 40-42, 45, 47, 52-54. Doxey also told Daniels that PureH20 already had an inventory of manufactured Systems, which was not true, and that just $25,000 was necessary to finish NSF certification. Div. Exs. 7 at 88-89; 9 at 99, 116; 25 at 44, 74. Before making the decision to invest, Daniels also reviewed information on PureH20 online and reviewed the company's press releases. Div. Ex. 25 at 39-40. Daniels usually read PureH20's press releases. Id. at 70. Daniels believes that Doxey misrepresented NSF's certification status to him. Daniels Answer; Div. Ex. 25 at 138.

ii. Daniels represented that he was an accredited investor

Daniels represented himself and his company Observation Capital as accredited investors, as defined by Rule 501 of Securities Act Regulation D, to Doxey. Div. Exs. 25 at 142-44; 26.[20] Daniels incorrectly believed that both he and Observation Capital were accredited investors because he previously held securities licenses. Daniels Answer; Div. Ex. 25 at 29-31, 130. Doxey believed Daniels and Observation Capital qualified as accredited investors because Daniels had indicated in subscription agreements with PureH20 that Observation Capital was an accredited investor. Doxey Answer at 7; Div. Ex. 7 at 147, 151-52. Doxey understood that, to be accredited, an investor must have $200,000 in income or $1 million in net worth, but did nothing to determine whether Daniels actually met either criterion. Div. Ex. 7 at 145-47, 152-53.

iii. Daniels purchased and resold PureH20 shares

Between August 2008 and July 2009, Daniels made payments totaling $57,654 to PureH20.[21] Div. Exs. 27; 28 at 2. In return for these payments, Daniels was issued over 360 million shares of PureH20 stock. Div. Ex. 28 at 1. Attorney opinion letters (Letters), apparently written by PureH20's now deceased attorney Bruce Keihner (Keihner), were created to support these issuances of unrestricted shares to Daniels.[22] Div. Exs. 7 at 28, 152; 8 at 31; see e.g., Div. Ex. 26 at SEC 002741-42. The Letters (included at Div. Ex. 26) each state that:

[20] Division Exhibit 26 comprises over one hundred pages relating to PureH20's offerings from October 14, 2008, to May 21, 2009, including executed subscription agreements between PureH20 and Observation Capital. See Farney Decl. at 4.

[21] Division Exhibit 28 is a summary chart showing all of Observation Capital's stock subscriptions for PureH20 shares. See Farney Decl. at 4. In the Motion, the Division requests disgorgement of $57,654 against Doxey. Mot. at 29. This is $1 more that the Observation Capital's total payments to PureH20 listed on the second page of Division Exhibit 27. However, Division Exhibit 27's twentieth page (marked with Bates number SEC-002877), demonstrates that there is an error in Division Exhibit 28's second page, and the $474 (March 16, 2009) figure in Division Exhibit 28 should be $475. Likewise, Observation Capital's total payments to PureH20 are $57,654.

[22] Daniels believes he was never shown the attorney opinion letters. Div. Ex. 25 at 57, 133.

- Keihner had reviewed the "Securities Act, Rule 504 of SEC Regulation D, 5.H, 5.T and 7 of the Texas Securities Act and the Texas Administrative Code, Rule 109.3(4) as a basis for [his] opinions";

- Keihner had reviewed a subscription agreement in which Observation Capital represented that it is an accredited investor under Regulation D and resident in or qualified to do business in Texas, and that the transactions occurred within the State of Texas;

- PureH20 is not subject to the reporting requirements of the Exchange Act's Sections 13 or 15(d) and was not subject to these sections at the time of sale;

- PureH20 is eligible to use Regulation D's Rule 504. The offer and sales of the shares sold to Observation Capital were made solely to an accredited investor, resident in or qualified to do business in Texas in transactions that occurred within Texas;

- PureH20's sales of shares were exempt from the registration requirements under Rule 504 of Regulation D, and that, as permitted by Rule 504(b)(1)(iii), the provisions of Rule 502(d) as to limitation on resale do not apply and certificates for the shares may be issued without a legend restricting resale. The lack of resale restrictions is based upon the fact that the offering was exempt from state registration requirement under a state law exemption for registration, so long as sales are made only to accredited investors, as defined in Rule 501(a).

- "[Y]ou are authorized to rely upon the opinion. You may issue certificates for the Shares of the Issuer's Common Stock as set forth above, without restrictive legend."

Doxey sent letters to the transfer agent instructing issuance of shares to Daniels without restrictive legends. E.g., Div. Ex. 26 at SEC000676, SEC000779; see also Div. Ex. 7 at 157.

Each time Daniels received shares in PureH20 stock, he quickly resold the shares to the public. Div. Ex. 25 at 134. He thought he was free to resell them at any time. Id. at 134-36. Daniels generated $73,900.46 by these resales. Div. Ex. 32.[23]

iv. PureH20's reporting history

On April 16, 2009, PureH20 filed a Form D, Notice of Exempt Offering of Securities. Div. Ex. 29.[24] This Form D notes a total offering amount of $1 million, with $129,000 already

[23] Division Exhibit 32 is a summary chart showing Observation Capital's sales of PureH20's securities from October 2008 through May 2009. See Farney Decl. at 5.

[24] Division Exhibit 29 is the printout from the Commission's EDGAR database listing PureH20's EDGAR filings. See Farney Decl. at 4.

sold; claims exemptions under Regulation D's Rule 504(b)(1)(i), (ii), and (iii); and states that the first date of sale was February 19, 2009. Official Notice.[25]

III. DISCUSSION AND CONCLUSIONS OF LAW

The Division contends that Doxey willfully violated Exchange Act Section 10(b) and Rules 10b-5(a), (b), and (c), and Securities Act Sections 5(a) and (c) and 17(a)(l), (2), and (3). Mot. at 2. It contends that Daniels willfully violated Securities Act Sections 5(a) and (c). Id.

In his Answer and Summary, Doxey provides his own view of the relevant facts relating to PureH20 between 2007 and 2009, apparently contending that his actions at that time did not constitute fraud under Exchange Act Section 10(b), Rule 10b-5 thereunder, or Securities Act Section 17(a). Doxey states that he relied upon Securities Act Regulation D as an exemption from filing a Securities Act Section 5 registration statement for sales of PureH20's shares to Daniels. Summary at 8. He admits that Daniels was not an accredited investor. Summary at 7.

In his Answer, Daniels does not dispute that the shares he sold into the market were unregistered, and states that he believed at the time that he was an accredited investor and that he did not intentionally do anything wrong. Daniels Answer at 4.

A. Violations of Antifraud Provisions

Doxey willfully violated Exchange Act Section 10(b), Exchange Act Rule 10b-5, and Securities Act Section 17(a) (collectively, Antifraud Provisions) by making material misstatements and omitting material information in the Six Press Releases.

To prove a violation of Exchange Act Section 10(b) and Rule 10b-5, the Division must prove that Doxey made: (1) a misrepresentation or omission; (2) of material fact; (3) with scienter; (4) in connection with the purchase or sale of securities; and (5) by means of interstate commerce. SEC v. Smart, 678 F.3d 850, 856-57 (10th Cir. 2012); see also SEC v. Steadman, 967 F.2d 636, 641-43 (D.C. Cir. 1992). "Section 17(a)(1)-(3) requires substantially similar proof with respect to the offer or sale of securities." Smart, 678 F.3d at 857; but see Weiss v. SEC, 468 F.3d 849, 855 (D.C. Cir. 2006) (negligence sufficient to establish violation of Section 17(a)(2) or (3)).[26] A violation is willful if the act that constituted the violation was intentional. See Wonsover v. SEC, 205 F.3d 408, 413 (D.C. Cir. 2000); Steadman, 603 F.2d at 1135

[25] I take official notice of PureH20's Regulation D filing made with the Commission available on the public EDGAR database. See 17 C.F.R. § 201.323.

[26] Exchange Act Section 10(b) prohibits the use of any manipulative or deceptive device or contrivance in connection with the purchase or sale of any security. 15 U.S.C. § 78j. Exchange Act Rule 10b-5 makes it unlawful for any person to employ any device, scheme, or artifice to defraud, to make any misstatements or omissions of material fact, or to engage in any act, practice, or course of business which operates as a fraud or deceit. 17 C.F.R. § 240.10b-5. Section 17(a)(1) of the Securities Act makes it unlawful to employ devices, schemes, or artifices to defraud. 15 U.S.C. § 77q(a)(1). Section 17(a)(2) of the Securities Act prohibits material

i. Misrepresentations and Omissions

Doxey through the distribution of the Six Press Releases made numerous misrepresentations and omissions in connection with the sale of securities in interstate commerce. As discussed in § II(E)(iii) of this Initial Decision, above, the Six Press Releases contained numerous false and misleading statements, including that certification of the System through NSF was underway, when it was not, because PureH20 did not have the funds for certification at the time. Each of the Six Press Releases misrepresented PureH20's preparations of the System for distribution in the market, and many omitted that NSF certification was contingent on raising funds, which were seriously lacking. Div. Exs. 7 at 163-64; 16. Doxey's conduct resulted in misrepresentations within the meaning of Securities Act Section 17(a)(2), Exchange Act Section 10(b), and Rule 10b-5 thereunder, and constituted a scheme, artifice, practice, and course of conduct within the meaning of Securities Act Sections 17(a)(1) and 17(a)(3). See Smart, 678 F.3d at 857.

These misrepresentations and omissions were made in press releases for PureH20's stock, and therefore were in connection with the sale of securities. See SEC v. StratoComm Corp., --- F. Supp. 2d ---, 1:11-cv-1188, 2014 WL 689116, at *11-12 (N.D.N.Y. Feb. 19, 2014). They were also made by means of interstate commerce, as the Six Press Releases were posted to PureH20's website and at least some distributed through newswires, and they had the ability to affect the price of shares of stock sold in interstate commerce. Div. Exs. 7 at 124, 178-79; 17-22; see United States v. MacEwan, 445 F.3d 237, 244 (3d Cir. 2006) ("[B]ecause of the very interstate nature of the Internet, once a user submits a connection request to a website server or an image is transmitted from the website server back to user, the data has traveled in interstate commerce."); United States v. Polishan, 3:96-CR-274, 2001 WL 848583 (M.D. Pa. July 27, 2001), at *10 (transmission by wire is in interstate commerce), aff'd, 336 F.3d 234 (3d Cir. 2003); United Egg Producers v. Bauer Int'l Corp., 311 F. Supp. 1375, 1383 (S.D.N.Y. 1970) (false press releases regarding egg importation "tended to affect the price of eggs in interstate commerce").

Despite Doxey's suggestions to the contrary, the Disclaimer neither negates the misleading nature of the Six Press Releases nor shields him from liability. Div. Ex. 7 at 162, 171. Certain safe harbors limit liability for forward-looking statements, but only when they are contained in documents filed with the Commission. See 17 C.F.R. §§ 230.175, 240.3b-6; Securities Offering Reform, Securities Act Release No. 8591 (Aug. 3, 2005), 70 Fed. Reg. 44722, 44736 & n.129; Final Report of Advisory Committee on Smaller Public Companies 104 (Apr. 23, 2006), available at http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf (last visited Apr. 23, 2014). Also, there is a safe harbor for forward-looking statements under the

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misstatements or omissions of material facts, and Section 17(a)(3) of the Securities Act prohibits transactions, practices, or courses of business that operate as a fraud or deceit on the purchaser. 15 U.S.C. § 77q(a)(2)-(3). Sections 17(a)(1)-(3) require a nexus with the offer or sale of securities. 15 U.S.C. § 77q(a)(1)-(3). All of these violations require that interstate commerce be used in committing them. 15 U.S.C. §§ 77q(a)(1)-(3), 78j; 17 C.F.R. § 240.10b-5.

Private Securities Litigation Reform Act of 1995, but it is only available in connection with private legal actions. See 15 U.S.C. §§ 77z-2, 78u-5; In Re SeeBeyond Techs. Corp. Sec. Litig., 266 F. Supp. 2d 1150, 1165 n.7 (C.D. Cal. 2003); Harold F. Harris, Exchange Act Release No. 53122A (Jan. 13, 2006), 87 SEC Docket 362, 370-71 & n.25. These safe harbors are not available to PureH20 because the Six Press Releases were not documents filed with the Commission under the meaning of the relevant provisions of the Securities and Exchange Acts, and this proceeding is not private litigation.

ii. Materiality

The standard of materiality is whether a reasonable investor would have considered the information important in deciding whether to invest, and if disclosure of misstated or omitted facts would have significantly altered the total mix of information available to the investor. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); SEC v. Steadman, 967 F.2d at 643. Materiality does not require proof that accurate disclosure would have caused the reasonable investor to change his/her decision, but only that the omitted fact would have assumed actual significance in the deliberations of the reasonable investor. TSC Indus. v. Northway, Inc., 426 U.S. 438, 449 (1976).

Whether and when PureH20 would have been able to obtain NSF certification was material, as obtaining certification would allow PureH20's first product – the System – to be marketed. Doxey Answer at 16; Summary at 1; Div. Exs. 6 at 27; 7 at 34; 8 at 41-42; 9 at 29. Knowing that PureH20 could not afford NSF certification would be important to investors, in part because it suggests that PureH20 would not be making money from product sales anytime soon. The October 2008, March 2009, and April 2009 Press Releases caused significant increases to PureH20's stock price, and five of the Six Press Releases significantly increased trading volume in PureH20's stock. Div. Ex. 24; see No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp., 320 F.3d 920, 950 (9th Cir. 2003) (fact that stock price did not significantly change undermined allegation that misrepresentations were material); SEC v. Lund, 570 F. Supp. 1397, 1401 (C.D. Cal. 1983) (rapid increase in trading volume and price and purchase of shares following disclosure were indicia of materiality). Doxey himself described the information he was putting out in the Six Press Releases as "material." Div. Ex. 7 at 126, 160.

Doxey was in control of the material misrepresentations and omissions in the Six Press Releases, as he controlled the distribution of press releases. See supra § II(E)(ii). He therefore made the statements for purposes of the Antifraud Provisions. Janus Capital Grp., Inc. v. First Derivative Traders, 131 S. Ct. 2296, 2302 (2011); SEC. v. Wolfson, 539 F.3d 1249, 1261 (10th Cir. 2008).

iii. Scienter

A finding of scienter, defined as a "mental state embracing intent to deceive, manipulate, or defraud," is a key element in violations of Exchange Section 10(b) and its Rule 10b-5 and of Securities Act Section 17(a)(1); by contrast, Sections 17(a)(2) or (3) require a showing of just

negligent conduct. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976); see Aaron v. SEC, 446 U.S. 680, 701-02 (1980). The element of scienter can be satisfied by a showing of recklessness. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990).

Doxey denies that he knew or was reckless in not knowing that his authorizing the Six Press Releases' distribution constituted fraud. Doxey Answer at 17. However, his investigative testimony shows that Doxey acted with a high degree of scienter by knowingly distributing the Six Press Releases containing material misrepresentations and omissions about the company that he controlled. See Rule 250(a) (a party's pleadings may be modified by admissions). Doxey conceded that for an investor to understand from the Six Press Releases that NSF certification was contingent on obtaining money, they would have had to "read between the lines," Div. Ex. 7 at 163-64; he acknowledged that the April 2009 Press Release did not address the fact that PureH20 had to conduct further cryptosporidium testing prior to going to NSF for certification testing, id. at 194; and he generally admitted that aspects of the Six Press Releases did not reflect PureH20's and the System's status at the time, see id. at 162, 170-71. See generally Div. Ex. 7 (showing that Doxey intended to include in the Six Press Releases most of the false and misleading information at issue). I find that Doxey acted with an intent to defraud and with the intent to publish the Six Press Releases, that is, willfully.

B. Violations of Registration Requirements

Securities Act Sections 5(a) and (c) (Registration Requirements) prohibit any person from directly or indirectly selling or offering to sell securities in unregistered transactions unless an exemption from registration applies. 15 U.S.C. §§ 77e(a), (c); see also Jacob Wonsover, 54 S.E.C. 1, 8 (Mar. 1, 1999). A prima facie case for a violation of Section 5 is established by showing that: (1) the respondent directly or indirectly sold or offered to sell securities; (2) through the use of interstate facilities or mail; (3) when no registration statement was in effect. See SEC v. Calvo, 378 F.3d 1211, 1214 (11th Cir. 2004) (citing SEC v. Cont'l Tobacco Co., 463 F.2d 137, 155 (5th Cir. 1972)). With respect to the first element, it must be shown that the respondent was a "necessary participant" or "substantial factor" in the sale. Calvo, 378 F.3d at 1215; SEC v. Elliott, No. 09-cv-7594, 2011 WL 3586454, at *7 (S.D.N.Y. Aug. 11, 2011). Section 5 is a strict liability statute, so a showing of scienter is not required. Calvo, 378 F.3d at 1215. Once the Division has made out a prima facie case, the burden shifts to the respondent to prove entitlement to an exemption. SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953); SEC v. Murphy, 626 F.2d 633, 641 (9th Cir. 1980).

The Division has shown that Doxey and Daniels directly sold or offered to sell PureH20 securities in interstate commerce, and did so willfully. See supra §§ II(F)(iii), III(A)(i). It has further shown that no registration statement justifying Doxey's offering and sale of shares to Daniels or justifying Daniels' offering and sale of shares to the public market was in effect. See Div. Ex. 29. Although PureH20 was the issuer of the securities sold to Daniels, Doxey was a "substantial factor" in the offering and sale of the securities by, at minimum, sending letters instructing issuance of shares without restrictive legends, and he is thus personally liable for violations of the Registration Requirements. See Geiger v. SEC, 363 F.3d 481, 487 (D.C. Cir. 2004) (need not be involved in final step of distribution to be involved in sale in violation of

Registration Requirements). Because Daniels alone controlled Observation Capital, and Observation Capital was the direct reseller of the securities into the market, Daniels was a "necessary participant" in the resale of securities in contravention of the Registration Requirements, and he is thus personally liable. See SEC v. Persaud, 6:12-cv-932, 2013 WL 6478800, *4 (M.D. Fla. Dec. 10, 2013); Div. Ex. 25 at 18.

Doxey has not met his burden of proving that PureH20 was entitled to any exemption from registration – including to exemptions for offerings or sales to accredited investors, or in compliance with state security laws, as claimed in the Letters and in PureH20's April 26, 2009, Regulation D filing – and is thus liable for violating the Registration Requirements. In response to the Division's allegations of violations of the Registration Requirements, Doxey merely states, "The Company was extended certain exemptions under Rule 504, 506 and 144 respectively. The Company always filed a Form D with the [Commission] with other filings if appropriate." Summary at 8. PureH20's April 16, 2009, Form D (the Form D) did not claim an exemption from registration under Rule 506. Official Notice. A Form D does not provide the option to claim an exemption under Rule 144, as Rule 144 does not apply to issuers and thus PureH20 could not have relied on it. 17 C.F.R. § 230.144. Even if Rule 144 had been available to PureH20, the company never filed a Form 144, on which a Rule 144 exemption is claimed. See Div. Ex. 29.

While the Form D claims exemptions under subsections (b)(1)(i), (ii), and (iii) of Rule 504 – for offerings in compliance with certain types of state law exemptions or involving general solicitation or advertising if compliant with state securities laws – there is no evidence that those exemptions were applicable. See generally Doxey Answer; Summary. Specifically, there is no evidence that Daniels was an accredited investor, and Doxey admits as much, foreclosing the ability to claim the Rule 504(b)(1)(iii) exemption. Summary at 7. Also, the Letters only discuss Rule 504(b)(1)(iii), and do not opine that Rule 504(b)(1)(i) or (ii) applied, nor is there any other evidence that Rule 504(b)(1)(i) or (ii) applied.

Moreover, Rule 504 requires that there be compliance with Rule 502, requiring the "exercise of reasonable care" in ensuring the purchaser of the securities is not an underwriter, unless one of the three exemptions under Rule 504(b)(1) is met. 17 C.F.R. §§ 230.502(d), .504(b)(1). The record supports that Doxey neither inquired of Daniels the basis for Observation Capital's claiming accredited investor status, nor inquired whether Observation Capital would be acting as an underwriter of PureH20 securities – i.e., having the intent to resell. Div. Exs. 7 at 145-46; 25 at 130; see Ackerberg v. Johnson, 892 F.2d 1328, 1335 (8th Cir. 1989); 17 C.F.R. §§ 230.144, .501(a), .502(d).

Daniels has not made any argument that Observation Capital's resales of PureH20 shares were exempt from the Registration Requirements. See generally Daniels Answer. Indeed, he apparently concedes that he was not an accredited investor, although he believed that he was at the time. Id. Therefore, Daniels has not met his burden of showing any entitlement to an exemption.

For liability, it is of no consequence that Daniels did not intend to violate the Securities Act. See Calvo, 378 F.3d at 1219 (strict liability for offering or sale of unregistered securities regardless of the seller's degree of fault and intent); Robert L. Burns, Investment Advisers Act of 1940 Release No. 3260 (Aug. 5, 2011), 101 SEC Docket 44807, 44826 n.60 (Commission has "repeatedly held that ignorance of the securities laws is not a defense to liability thereunder"); see also Daniels Answer; Div. Ex. 25 at 22-23. Doxey's argument that he relied on an attorney's advice in offering and selling shares pursuant to Regulation D and without restrictive legends, not in compliance with Regulation D, similarly has no effect on his liability. Doxey Answer at 7; Summary at 8; see Rodney R. Schoemann, Securities Act Release No. 9076 (Oct. 23, 2009), 97 SEC Docket 21726, 21745 (attorney's opinion of "no consequence" to determination of liability under Section 5, as Section 5 is strict liability provision), aff'd, 398 F. App'x 603 (D.C. Cir. 2010) (per curiam). But see D.F. Bernheimer & Co., Inc., 41 SEC 358, 364 n.7 (1963) (reliance on counsel may be mitigating factor in determining sanction).

IV. SANCTIONS

The Division requests cease-and-desist orders against both Doxey and Daniels; disgorgement of $57,654, plus prejudgment interest, from Doxey; disgorgement of $73,900.46, plus prejudgment interest, from Daniels; civil penalties against both Doxey and Daniels[27]; an officer and director bar against Doxey; and penny stock bars against both Doxey and Daniels. Mot. at 27-32.

A. Limitations Period

Neither Respondent raises a defense under the applicable statute of limitations, providing that the Commission has five years from the date a claim first accrued to bring an enforcement proceeding.[28] 28 U.S.C § 2462. The statute of limitations does not apply to this entire proceeding, but only to particular sanctions, specifically, civil penalties and any associational bar.[29] Id.; see Johnson v. SEC, 87 F.3d 484, 492 (D.C. Cir. 1996); Gregory O. Trautman, Exchange Act Release No. 61167 (Dec. 15, 2009), 97 SEC Docket 23492, 23525-26; John A. Carley, Securities Act Release No. 8888 (Jan. 31, 2008), 92 SEC Docket 1693, 1727-29. I may,

[27] The Division does not specify what tier penalty – within the three-tier penalty system – it seeks against each Respondent. Mot. at 29-30.

[28] It is possible that the parties entered into tolling agreements; if so, this was not brought to my attention.

[29] Federal courts have disagreed on whether officer and director bars constitute "penalties" within the meaning of this statute of limitations, and there is limited Commission precedent addressing this subject. Compare SEC v. Bartek, 484 F. App'x 949, 957 (5th Cir. 2012) (officer and director bar subject to § 2462), cert. pet. dismissed, 133 S. Ct. 1658 (2013), with SEC v. Quinlan, 373 F. App'x 581, 588 (6th Cir. 2010) (officer and director bar not subject to § 2462); see Gregory Bartko, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 n.54 (Mar. 7, 2014) (mentioning Quinlan). It is immaterial whether an officer and director bar is subject to § 2462, because I find one warranted based just upon Doxey's post-November 22, 2008 conduct.

however, consider acts outside the limitations period as evidence of a respondent's motive, intent, or knowledge in committing violations within the limitations period. John A. Carley, 92 SEC Docket at 1728.

Because this proceeding commenced on November 22, 2013, the Commission is unable to impose civil penalties or a bar for material misrepresentations or omissions that occurred before November 22, 2008, or for sales of unregistered shares in PureH20 stock that occurred before November 22, 2008. E.g., Edgar B. Alacan, 57 S.E.C. 715, 742-43 (2004); but see Joseph Contorinis, Exchange Act Release No. 72031, 2014 WL 1665995, at *3 (Apr. 25, 2014) (holding that 28 U.S.C. § 2462 does not apply to follow-on proceedings). Each material misrepresentation of PureH20 operations to the investing public was a separate and distinct violation, and any resulting cause of action could not have accrued until each misrepresentation was made. See Gabelli v. SEC, 133 S. Ct. 1216, 1220-21 (2013) (time of accrual when the cause of action becomes enforceable); David Henry Disraeli, Securities Act Release No. 8880 (Dec. 21, 2007), 92 SEC Docket 852, 875 (multiple material misrepresentations and omissions constituted "repeated violations"), aff'd, 334 F. App'x 334 (D.C. Cir. 2009). Similarly, each of Doxey's sales to Daniels and each of Daniels' sales of PureH20 stock was a separate and distinct violation, and any resulting cause of action could not have accrued until the sale occurred. See Ronald S. Bloomfield, Securities Act Release No. 9553, 2014 WL 768828, at *24 n.129 (Feb. 27, 2014).

Accordingly, the Commission can only impose civil penalties or an associational bar or censure against Doxey for the material misrepresentations or omissions in the January 2009, March 2009, April 2009, and May 2009 Press Releases. And the Commission can only impose civil penalties or an associational bar or censure against Doxey for the sales to Daniels, through Observation Capital, between January 6, 2009, and May 21, 2009; and against Daniels for the sales by Daniels, through Observation Capital, between November 24, 2008, and May 21, 2009. See Div. Exs. 28 at 1[30]; 33 at SEC-E-000099, SEC 001951. Although technically Respondents waived statute of limitations defenses by not raising them as affirmative defenses in their Answers, both Respondents are pro se, and I have accordingly afforded them the benefit of the doubt. See 17 C.F.R. § 201.220(c).

B. The Public Interest

The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), namely: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful

[30] I construe the dates of subscription, as provided in this exhibit, as the dates of sale. See Keith v. Lighthouse Sec., Ltd., 5:92-cv-0185, 1997 WL 380430, at *7 (D. Conn. June 17, 1997) (subscription dates treated as dates of securities sales); Winthrop Fin. Co., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) ¶ 77,235 (June 25, 1982) (describing date of sale as either date of acceptance of subscription agreement or date of closing).

nature of his or her conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission also considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46 (citations omitted). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one and no one factor is dispositive. See Gary M. Kornman, 95 SEC Docket at 14255.[31]

i. Doxey

The public interest factors weigh in favor of a robust sanction against Doxey. He violated both the Antifraud Provisions and Registration Requirements numerous times in 2008 and 2009. See Div. Ex. 28; supra § III. Doxey or the company that he controlled made profits of over $57,000 because of this wrongful conduct. See Div. Ex. 28 at 2. By knowingly authorizing the distribution of falsehoods and twisting the facts of PureH20's true state, Doxey "violated bedrock antifraud principles that apply throughout the securities industry, including the philosophy of full disclosure of accurate and non-misleading information to investors." Ross Mandell, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *15 (Mar. 7, 2014) (internal quotation marks omitted). Although his ill-gotten gains are relatively small, Doxey's conduct was recurrent and otherwise egregious.

Doxey's level of scienter was high. As discussed above at § III(A)(iii), Doxey released false and misleading information, with an intent to defraud, through the distribution of the Six Press Releases. He filed a Form D which claimed exemptions that he knew were unsupported by the Letters, and which he knew did not apply to sales to Daniels.[32] See, e.g., Div. Ex. 7 at 143 & 154 (Doxey expected Observation Capital to act in an underwriting role by raising capital for PureH20).

Doxey has shown no recognition of the wrongfulness of his conduct. Although during investigative testimony he acknowledged that he was careless in preparing press releases, he insists that he has done nothing wrong and that Felkner and Daniels, among others, should be blamed. Doxey Answer at 7, 14; Summary at 3, 6-8; Div. Ex. 7 at 198. He diverts blame through confusing accounts of "frauds" of which he was allegedly a victim and the "stress" he experienced managing PureH20. Doxey Answer at 7, 9, 12; Summary at 3, 6-8; Div. Ex. 7 at 198. Despite the proven falsity of the January 29, 2009, Press Release, in his Answer he

[31] Other appropriate factors to determining a sanction include: the age of the violation, Marshall E. Melton, 56 S.E.C. 695, 698 (2003); the degree of harm to investors and the marketplace resulting from the violation, id; and the combination of sanctions against the respondent, KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001), recon. denied, 55 S.E.C. 1, pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

[32] Keihner passed away before 2012, and never gave investigative testimony in the Division's investigation that led to this proceeding. Div. Exs. 7 at 28, 156; 8 at 31.

describes it as accurate, stating, "[It] tells the investors who are watching closely our progress, and know exactly where we are at and where we are intending to go." Doxey Answer at 9. He contends the failure to disclose PureH20's lack of resources was not a material omission, relying on the January 29, 2009, Press Release's representation of intended funding through Chastain & Etchesen – a representation which was itself little more than wishful thinking. Summary at 7; Div. Ex. 7 at 183.

Doxey also has not provided any assurances that he will not commit wrongful conduct in the future. Indeed, he has indicated an intention to remain in the same business, highlighting his commitment to start-up companies and entrepreneurship, and stating that PureH20 "intends to go back to manufacturing and selling our Iodine disinfection systems out of another facility." Doxey Answer at 3-5; Summary at 5. Likewise, he will have the opportunity to commit similar wrongful acts in the future.

ii. Daniels

The public interest factors support a less severe sanction against Daniels. Daniels' conduct was recurrent, in that he sold unregistered shares of PureH20 stock to the investing public numerous times. Div. Exs. 28 at 1; 32-33. Also, Daniels was formerly a registered representative, and has expressed interest in working again in the securities industry, particularly in connection with investments in small companies. Daniels Answer; Div. Ex. 31; Farney Decl. at 5. On the other hand, he made a profit of only about $16,000 by selling shares, where the illegality was merely that they were unregistered; overall, I do not consider this egregious.[33] See Div. Exs. 28, 32. There is no evidence Daniels acted with scienter, a fact highly relevant in determining the remedy. See Steadman, 603 F.2d at 1140. He now sincerely regrets selling unregistered shares. Daniels Answer. His regret is some indication that he is unlikely to repeat such conduct in the future, and demonstrates a recognition of his wrongful conduct.

C. Cease-and-Desist

Securities Act Section 8A and Exchange Act Section 21C provide that the Commission may order a person found to be violating or to have violated a provision of the Securities or

[33] Daniels' actions are considerably less appalling than those of other sellers of unregistered securities whose conduct has been previously deemed egregious. See Charles F. Kirby, Securities Act Release No. 8174 (Jan. 9, 2003), 79 SEC Docket 1081, 1105 (actions facilitating distribution of unregistered securities worth over a million dollars into market were egregious), pet. denied sub nom. Geiger v. SEC, 363 F.3d 481 (D.C. Cir. 2004); Douglas W. Osborne, Initial Decision Release No. 114 (Aug. 18, 1997), 65 SEC Docket 603, 611 (offering and sale of unregistered securities over two years was egregious and respondent "willfully participated in a systemic, organized fraud"); Benjamin G. Sprecher, Initial Decision Release No. 86 (Mar. 11, 1996), 61 SEC Docket 1476, 1483-84 (conduct was egregious where unregistered sales were conspiratorial and criminal).

Exchange Act to cease and desist from such violations. 15 U.S.C. §§ 77h-1, 78u-3(a). While some likelihood of future violation must be present, the required showing is "significantly less than that required for an injunction." KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1191 (2001), recon. denied, 55 S.E.C. 1, pet. denied, 289 F.3d 109 (D.C. Cir. 2002). Absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. Id. In evaluating the propriety of a cease-and-desist order, the Commission considers the Steadman factors, as well as the recency of the violation, the resulting harm to investors in the marketplace, and the effect of other sanctions. Id. at 1192.

As previously noted, the Steadman factors support a robust sanction against Doxey and a lesser sanction against Daniels. However, as to a cease-and-desist order, I place particular weight on Doxey's and Daniels' intended future presence in, or interaction with, the securities industry, and the fact that both Respondents will have some opportunity to repeat their violations. I conclude that it is necessary and appropriate to order Doxey to cease and desist from violations of Securities Act Sections 5(a), (c), and 17(a) and Exchange Act Section 10(b) and its Rule 10b-5, and to order Daniels to cease and desist from violations of Securities Act Section 5(a) and (c).

D. Disgorgement

Securities Act Section 8A(e) authorizes disgorgement of ill-gotten gains, including reasonable interest, in cease-and-desist proceedings. 15 U.S.C. § 77h-1(e). Disgorgement is an equitable remedy, imposed to force a defendant to give up the amount by which he was unjustly enriched. SEC v. Contorinis, 743 F.3d 296, 301 (2d Cir. 2014) (internal quotation omitted). Disgorgement does not serve a punitive function, but is designed to force wrongdoers to return the fruits of illegal conduct. Id.; see also Dolphin and Bradbury, Inc., Securities Act Release No. 8721, 88 SEC Docket 1298, 1321 n.80 (July 13, 2006), pet. denied, 512 F.3d 634 (D.C. Cir. 2008). The public interest factors all weigh in favor of ordering Doxey to disgorge his profits. Although the public interest factors are not so one-sided as to Daniels, they do weigh in favor of disgorgement.

The Division seeks from Doxey disgorgement of $57,654, representing the amount Daniels paid Doxey for PureH20 shares; and from Daniels $73,900.46, representing Daniels' proceeds from his sale of the acquired shares. Mot. at 29; see Div. Exs. 27-28, 32. It does not specify a specific amount of prejudgment interest sought against each Respondent. The Commission is only entitled to "a reasonable approximation of profits causally connected to the violation." SEC v. First City Fin. Corp., 890 F.2d 1215, 1231 (D.C. Cir. 1989) (emphasis added); see also United States v. Contorinis, 692 F.3d 136, 146 (2d Cir. 2012) ("Criminal forfeiture focuses on the disgorgement by a defendant of his 'ill-gotten gains.' Thus, the calculation of a forfeiture amount . . . is usually based on the defendant's actual gain.") (internal citations omitted); SEC v. Video Without Boundaries, Inc., No. 08-cv-61517, 2010 WL 5790684, at *5 (S.D. Fla. Dec. 8, 2010) (court declined to follow proposition that court should not deduct business expenses and losses in determining disgorgement amount; "disgorgement is a tool used to rid a defendant of *total gains*" (emphasis in original)). Since Daniels paid $57,654 to Doxey, by selling shares for $73,900.46, Daniels realized a "profit" of only $16,246.46.

Accordingly, I will order disgorgement of $57,654 against Doxey and of $16,246.46 against Daniels, plus prejudgment interest on those amounts calculated from August 1, 2009, and from June 1, 2009, respectively, to the last day of the month preceding the month in which disgorgement is made, consistent with 17 C.F.R. § 201.600. See Div. Exs. 28 at 2 (Observation Capital's payments to PureH20 ended in July 2009); 32 (Observation Capital's sales of PureH20 shares concluded in May 2009); see also SEC v. Universal Express, Inc., 646 F. Supp. 2d 552, 566 (S.D.N.Y. 2009), aff'd, 438 F. App'x 23 (2d Cir. 2011).

E. Civil Penalties

A three-tier system establishes the maximum civil money penalty that may be imposed for each violation found if in the public interest. Where a respondent's misconduct involved fraud, deceit, or deliberate or reckless disregard of a regulatory requirement and resulted in "substantial losses or created a significant risk of substantial losses to other persons" or "substantial pecuniary gain" to the respondent, the Commission may impose third-tier penalties. Second-tier penalties may be imposed if the misconduct involved fraud, deceit, or deliberate or reckless disregard of a regulatory requirement. First-tier penalties may be imposed simply for each violation. See 15 U.S.C. §§ 77h-1(g), 78u-2(b).

Under these definitions, neither Doxey nor Daniels should be sanctioned with third-tier penalties. The Division has provided no evidence that either Respondent's conduct caused "substantial" losses or created the risk of such losses, nor is each Respondent's profit from his misconduct "substantial." It could, however, be appropriate that each Respondent be sanctioned with second-tier penalties, if doing so would be in the public interest, in that each Respondent acted with at least reckless disregard of the requirements of the securities statutes.

i. Doxey

The Division seeks civil penalties against Doxey under both the Securities Act and the Exchange Act. Mot. at 30. In determining whether civil penalties under the Exchange Act are in the public interest, the following are considerations: whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; the resulting harm to other persons; any unjust enrichment and prior restitution; the respondent's prior regulatory record; the need to deter the respondent and other persons; and such other matters as justice may require. 15 U.S.C. § 78u-2(c). Some of these factors may not be relevant in a given proceeding, and each factor need not be given equal weight. Robert G. Weeks, Initial Decision Release No. 199 (Feb. 4, 2002), 76 SEC Docket 2609, 2671. These factors are not discussed in the Securities Act's civil penalties provision. See 15 U.S.C. § 77h-1(g). Under both Acts, evidence of "ability to pay" may be considered in assessing the public interest. 15 U.S.C. §§ 77h-1(g)(3), 78u-2(d).

I am not convinced that a civil penalty is needed to deter Doxey, in light of the specific facts of this case and giving particular weight to the Exchange Act's final two enumerated public-interest factors – deterrence and "other matters as justice may require" – as well as to the ability to pay factor. The Steadman factors do weigh in favor of imposition of civil penalties against Doxey, and a civil penalty of any amount will have a deterrent effect on Doxey and on

other persons. However, Doxey lacks a prior regulatory record, is in a dismal financial situation, and is in poor physical and mental health. The Division has provided no evidence that Doxey has a tarnished regulatory history prior to this proceeding, while Doxey has provided evidence – corroborated by evidence from elsewhere in the record – that he would not be able to pay even a minimal civil penalty. Doxey Answer at 9-10; Summary at 7-8; see also Div. Exs. 7 at 104-06; 8 at 123-24. This is relevant to the ability to pay factors under the Securities and Exchange Acts, even though Doxey did not file a Disclosure of Assets and Financial Information (a.k.a. Form D-A), because Doxey is pro se and the Division has sought to resolve this proceeding by summary disposition. See 17 C.F.R. § 201.630(b). PureH20 appears to be Doxey's only source of income, and Doxey has had physical and mental health problems, many serious, in the recent past. Doxey Answer at 10; Summary at 7-8; Tr. 5[34]; Div. Exs. 7 at 20, 106; 8 at 119-21. There is even some evidence that Doxey may have included materially false or misleading information in PureH20 press releases at least in part because of irrational responses to mental or emotional stress. See Div. Exs. 6 at 72; 7 at 150, 182, 198, 226.

In these circumstances, the public interest does not support civil penalties as to Doxey. See Peak Wealth Opportunities, LLC, Exchange Act Release No. 69036 (Mar. 5, 2013), 105 SEC Docket 64829, 64840 (respondent's health weighed against civil penalty where health appeared to contribute to violative conduct). Disgorgement, discussed above, and bars, discussed below, are sufficient to deter such securities violations.

ii. Daniels

The Division seeks penalties against Daniels only under the Securities Act.[35] Mot. at 30. Daniels' actions did not involve fraud, deceit, or recklessness, his unjust enrichment was relatively small, and he apparently has a clean regulatory record. Although there was harm to other persons and there is a need to deter Daniels and others, in the totality of the circumstances a civil penalty would be overkill. This is particularly the case because disgorgement and a cease-and-desist order will have a deterrent effect on Daniels and others. I have also considered the fact that Daniels was misled by the press releases Doxey published about PureH20 and by what Doxey told him about PureH20. See Daniels Answer; Div. Ex. 25 at 40, 47, 52-53, 73-74, 136-37. That is, there is a possibility that if Daniels had known the truth, instead of the illusions Doxey presented, Daniels never would have purchased PureH20 stock, or violated Section 5. No

[34] During the prehearing conference, I asked Doxey whether he was feeling alright, and he answered, "I had a triple bypass, five stents. I'm a diabetic. I take 10 meds and two needles a day, and I'm right now losing my voice." Tr. 5.

[35] While the OIP contemplates the Division's seeking penalties against Daniels under Exchange Act Section 21B(a), the Motion only seeks penalties under Securities Act Section 8A(g), which the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) introduced after Daniels' misconduct ended. OIP at 5; Mot. at 30. I note, however, that the Commission has the authority to impose civil penalties on Daniels pursuant to Exchange Act Section 21B(a)(1), which was in existence prior to Dodd-Frank, unlike Securities Act Section 8A(g) and Exchange Act Section 21B(a)(2). Accordingly, there is no retroactivity issue.

civil penalty against Daniels is warranted. I note that I am unaware of authority preventing me from applying the "other matters as justice may require" factor where civil penalties are sought only under the Securities Act. See Johnny Clifton, Securities Act Release No. 9417, 2013 SEC LEXIS 2022, at *62 (July 12, 2013) (Commission opinion not differentiating civil penalties analysis under Securities and Exchange Acts), recon. denied Securities Act Release No. 9486, 2013 SEC LEXIS 3712 (Nov. 25, 2013).

F. Bars

i. Officer and Director Bar

Exchange Act Section 21C(f) authorizes a bar, against a respondent shown to have violated Exchange Act Section 10(b), from acting as an officer or director of any issuer with a class of securities registered pursuant to Exchange Act Section 12 (registered issuer) or that is required to file reports pursuant to Exchange Act Section 15(d) (filer). The bar may be permanent or temporary, and may be conditional or unconditional. 15 U.S.C. § 78u-3(f). Such a bar can be imposed only "if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer." Id.

The Division's approach of seeking such a sanction in an administrative proceeding before an administrative law judge is somewhat novel. In 1990, federal courts' authority to impose officer and director bars was codified in the Securities Enforcement Remedies and Penny Stock Reform Act (Remedies Act). Remedies Act, Pub. L. No. 101-429, §§ 101, 201 (1990) (codified at 15 U.S.C. §§ 77t(e), 78u(d)(2)); see SEC v. First Pacific Bancorp, 142 F.3d 1186, 1193-94 & n.8 (9th Cir. 1998). Then in 2002, the Sarbanes-Oxley Act (Sarbanes-Oxley) extended authority over imposition of officer and director bars to administrative proceedings.[36] Sarbanes-Oxley, Pub. L. No. 107-204, § 1105 (2002) (codified at 15 U.S.C. §§ 77h-1(f), 78u-3(f)). Despite the nearly twelve years' passage of time since this expansion of authority, I have identified no proceeding to date where an administrative law judge actually ruled on a request for an officer and director bar.[37]

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[36] Sarbanes-Oxley also generally lowered the burden in seeking an officer and director bar from showing "substantial unfitness" to merely showing "unfitness." Sarbanes-Oxley § 305, 15 U.S.C. §§ 77t(e), 78u(d)(2); see SEC v. Bankosky, 716 F.3d 45, 48 (2d Cir. 2013); SEC v. Gupta, 11-cv-7566, 2013 WL 3784138, at *3 (S.D.N.Y. July 17, 2013).

[37] There are, however, a number of examples of administrative proceedings resolved through settlement where respondents have accepted officer and director bars under Exchange Act Section 21C(f). See, e.g., John A. Stadler, Securities Act Release No. 9556, 2014 SEC LEXIS 919 (Mar. 11, 2014); Jeffrey Q. Johnson, CPA, Exchange Act Release No. 64278 (Apr. 8, 2011), 100 SEC Docket 39984; Robert John Hipple, Exchange Act Release No. 61688 (Mar. 11, 2010), 97 SEC Docket 26243; Peter Y. Atkinson, Esq., Exchange Act Release No. 60806 (Oct. 9, 2009), 96 SEC Docket 21348. An administrative proceeding brought against Rajat Gupta asked for officer and director bars under both the Securities and Exchange Acts, but the Division ultimately pursued its claims in federal court. See Rajat K. Gupta, Securities Act Release No. 9249 (Aug. 4, 2011), 101 SEC Docket 44355; Rajat K. Gupta, Securities Act Release No. 9192

While there is precedent supporting that the public interest factors set forth in Steadman are applicable to determining whether an officer and director bar is appropriate, many courts consider the six "Patel factors" in assessing whether a party is unfit to act as an officer or director of a registered issuer or filer. Compare SEC v. Alliance Transcription Servs., Inc., 08-cv-1464, 2010 WL 483792, at *2 (D. Ariz. Feb. 8, 2010); SEC v. Abellan, 674 F. Supp. 2d 1213, 1223 (W.D. Wash. 2009); with SEC v. Bakosky, 716 F.3d 45, 47-49 (2d Cir. 2013); SEC v. Metcalf, 11-cv-493, 2012 WL 5519358, at *4 (S.D.N.Y. Nov. 13, 2012); SEC v. Levine, 517 F. Supp. 2d 121, 144-45 (D.D.C. 2007), aff'd, 279 F. App'x 6 (D.C. Cir. 2008). These factors, which significantly overlap with the factors articulated in Steadman and which similarly constitute a non-exclusive list of factors that may be considered, are: (1) the egregiousness of the underlying securities law violation; (2) the defendant's recidivism; (3) the defendant's role or position in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur. Bankosky, 716 F.3d at 48; SEC v. Patel, 61 F.3d 137, 141 (2d Cir. 1995)

In assessing whether an officer and director bar against Doxey is appropriate, I consider only the January 2009, March 2009, April 2009, and May 2009 Press Releases, and the sales of PureH20 stock to Observation Capital between January 6, 2009, and May 21, 2009. See supra § IV(A). In an abundance of caution, I rely on both the Steadman and Patel factors in assessing the propriety of sanctioning Doxey with such a bar. As discussed above, the Steadman factors support imposing sanctions against Doxey. Those Patel factors that are distinct from the Steadman factors – the third and fifth factors – also support sanctioning Doxey. Doxey held a central role in violating the Antifraud Provisions, and thus the third Patel factor weighs in favor of an officer and director bar. Because Doxey's material misrepresentations and omissions positively affected PureH20's stock price and trading volume, Doxey had an economic stake in his violations of the Antifraud Provisions, making the fifth Patel factor also weigh in favor of an officer and director bar. For these reasons, it is appropriate and in the public interest to impose a permanent officer and director bar on Doxey.

(Mar. 1, 2011), 100 SEC Docket 38305. There are also pending administrative proceedings seeking officer and director bars under the Exchange Act. See China Ruitai Int'l Holdings Co., Exchange Act Release No. 70579, 2013 SEC LEXIS 3048, at *16-17 (Sept. 30, 2013); John Thomas Capital Mgmt. Grp. LLC, d/b/a Patriot28 LLC, Securities Act Release No. 9396 (Mar. 22, 2013), 105 SEC Docket 65812, 65827.

ii. Penny Stock Bars

Exchange Act Section 15(b) authorizes the imposition of a penny stock bar against a respondent who, while participating in an offering of penny stock, willfully violated any provision of the Securities Act or its rules. See 15 U.S.C. §§ 78*o*(b)(4)(D), (b)(6)(A). PureH20 is a penny stock, and was a penny stock in 2008 and 2009. See 17 C.F.R. § 240.3a51-1; Doxey Answer at 3.[38] Both Respondents willfully violated provisions of the Securities Act in connection with an offering of PureH20 stock. See supra § III(B). The public interest factors set forth in Steadman are applicable to determining whether a penny stock bar is appropriate. See Metcalf, 2012 WL 5519358, at *4; Vladlen "Larry" Vindman, Securities Act Release No. 8679 (Apr. 14, 2006), 87 SEC Docket 2626, 2646.

In assessing whether a penny stock bar against Doxey is appropriate, I consider only the January 2009, March 2009, April 2009, and May 2009 Press Releases, and the sales of PureH20 stock to Observation Capital between January 6, 2009, and May 21, 2009. See supra § IV(A). For the same reasons that an officer and director bar is imposed against Doxey, it is in the public interest to impose a permanent penny stock bar against Doxey.

In assessing whether a penny stock bar against Daniels is appropriate, I consider only Daniels' sales of PureH20 shares of stock between November 24, 2008, and May 21, 2009. See supra § IV(A). As discussed above, only some public interest factors weigh in favor of imposing a penny stock bar against Daniels, and the factors suggest that Daniels should be sanctioned less harshly than Doxey. However, because Daniels is interested in continuing his involvement in the securities industry and in small companies, and because his conduct in connection with PureH20 exhibits a surprisingly poor understanding of the Securities Act and its rules and regulations for someone who was formerly a registered representative, a bar is plainly called for. I conclude it is in the public interest to impose a five-year penny stock bar against Daniels.

V. ORDER

IT IS ORDERED, pursuant to Rule 250 of the Commission's Rules of Practice, that the Division of Enforcement's Motion for Summary Disposition is GRANTED.

It is FURTHER ORDERED, pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, that Respondent Joseph P. Doxey shall CEASE AND DESIST from committing or causing any violations or future violations of

[38] Also, the Commission's website (http://www.sec.gov/answers/penny.htm, last visited Apr. 23, 2014) explains:

> The term "penny stock" generally refers to a security issued by a very small company that trades at less than $5 per share. Penny stocks generally are quoted over-the-counter, . . . ; penny stocks may, however, also trade on securities exchanges, including foreign securities exchanges. In addition, the definition of penny stock can include the securities of certain private companies with no active trading market.

Sections 5(a) and (c) and 17(a)(1), (2), and (3) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 of the Securities Exchange Act of 1934.

It is FURTHER ORDERED, pursuant to Section 8A of the Securities Act of 1933, that Respondent William J. Daniels shall CEASE AND DESIST from committing or causing any violations or future violations of Sections 5(a) and (c) of the Securities Act of 1933.

It is FURTHER ORDERED, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, that Respondent Joseph P. Doxey is permanently BARRED from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to Section 15(d) of the Securities Exchange Act of 1934, and is permanently BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

It is FURTHER ORDERED, pursuant to Section 15(b) of the Securities Exchange Act of 1934, that Respondent William J. Daniels is BARRED from participating in an offering of penny stock for five years, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

It is FURTHER ORDERED, pursuant to Section 8A of the Securities Act of 1933, that Respondent Joseph P. Doxey shall disgorge $57,654 plus prejudgment interest on that amount, calculated from August 1, 2009, to the last day of the month preceding the month in which disgorgement is made, consistent with 17 C.F.R. § 201.600, and Respondent William J. Daniels shall disgorge $16,246.46 plus prejudgment interest on that amount, calculated from June 1, 2009, to the last day of the month preceding the month in which disgorgement is made, consistent with 17 C.F.R. § 201.600.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Disgorgement payments shall be made on the first day following the day this Initial Decision becomes final. See 17 C.F.R. § 201.601. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. See 17 C.F.R. § 201.601. The payment, and a cover letter identifying Respondent and Administrative Proceeding No. 3-15619, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, OK 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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Cameron Elliot
Administrative Law Judge