

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77162 / February 17, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3745 / February 17, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17121**

**In the Matter of**

**Julieta Favela Barcenas,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Julieta Favela Barcenas (“Favela” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Favela has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over her and the subject matter of these proceedings, which are admitted, Favela consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misstated revenues and filings at Marrone Bio Innovations, Inc. ("MBI" or "the Company"), a Davis, California-based company that manufactures and sells biological-based pest management and plant health products. The misstatements were the result of a scheme led by Hector M. Absi, Jr. ("Absi"), MBI's former Chief Operating Officer and Head of Sales, to direct MBI's sales employees to offer various sales concessions to MBI's distributors in order to meet sales targets and analysts' revenue expectations, but simultaneously conceal those concessions from MBI's finance and accounting personnel. As a result, from March 2013 through June 2014 (the "relevant period"), MBI improperly and prematurely recognized more than \$4 million in revenue, including approximately \$2 million in revenue that will never be recognized because the distributors returned the product to MBI. Additionally, Absi engaged in expense report fraud, which rendered MBI's definitive proxy statement filed with the Commission in April 2014 materially false and misleading.

2. As a result, MBI reported materially false and misleading financial results in its financial statements filed with the Commission during the period July 1, 2013 through May 15, 2014. On September 3, 2014, MBI announced that its previously filed financial statements could not be relied upon. On November 10, 2015, MBI filed restated financial statements for its 2013 quarterly and annual periods, as well as the quarterly periods ended March 31, 2014 and June 30, 2014.

3. Respondent served as MBI's Customer Relations Manager from March 2013 through January 2015 and reported to Absi. During that time, she was responsible for, among other things, communicating all the terms of MBI's sales transactions to MBI's accounting department to ensure MBI properly accounted for those sales. At Absi's direction, however, Respondent on multiple occasions hid critical information from MBI's accounting department, including: (1) failing to provide a side letter, which gave a distributor the right to return product; (2) causing others to backdate a shipping document to make it appear as though MBI shipped products earlier than it actually did; and (3) causing the removal of an important sales term from a purchase order so as to divert attention away from the fact that return rights were part of the sales transaction. Respondent also provided false information to MBI's accounting department about MBI's shipment of incorrect products, which the Company then communicated to its independent auditors.

4. At Absi's direction, Respondent also altered Absi's bank and credit card statements to make it appear as though several of Absi's personal expenses were legitimate business expenses

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

that MBI should reimburse. As a result, MBI's proxy statement also materially understated the amount of perquisites MBI disclosed that it paid to Absi as executive compensation.

### **Respondent**

5. **Favela**, age 36, resides in Davis, California. Favela was MBI's Customer Relations Manager from approximately March 2013 until the Company terminated her employment in January 2015.

### **Other Relevant Entity and Individual**

6. **MBI** is a public company incorporated in Delaware and headquartered in Davis, California. At all relevant times, MBI's common stock has been registered under Section 12(b) of the Exchange Act. MBI had its initial public offering ("IPO"), in August 2013, after which it traded on the Nasdaq Global Market under the symbol "MBII." On June 6, 2014, MBI undertook a secondary and a follow-on offering in which it netted \$29,959,000. On November 10, 2015, MBI restated its financial statements for its year ended December 31, 2013, as well as its quarterly results for the periods ended March 31, 2013, June 30, 2013, September 30, 2013, March 31, 2014, and June 30, 2014.

7. **Hector M. Absi, Jr.**, age 47, resides in Las Vegas, Nevada. Absi served as MBI's Chief Operating Officer from January 2014 until his resignation in August 2014. From October 2012 to January 2014, Absi served as MBI's Vice President of Commercial Operations. In connection with this matter, the Commission has charged Absi with committing fraud and other violations of the federal securities laws.

### **Facts**

8. On or about September 12, 2013, MBI held its first quarterly earnings call where it announced that revenues for the first six months of 2013 totaled \$7.2 million and that MBI expected revenues for 2013 to double those of 2012 (which were \$7.1 million). After that, MBI's senior leaders consistently urged MBI's employees to ensure the Company met its goal; the doubling of revenue became a key financial metric for MBI's senior executives. Absi was well aware of MBI's desire to double its revenue by the end of 2013.

9. MBI primarily sold its products to distributors who would then sell the product to growers and other end users. MBI historically recognized revenue on a "sell-in" basis, which meant that it recognized revenue upon sale to a distributor rather than waiting to recognize revenue until products were sold to the ultimate grower or end user. This was appropriate under MBI's revenue recognition policy as long as persuasive evidence of an arrangement existed, delivery and transfer of title occurred or services rendered, the price was fixed and determinable, and collectability was reasonably assured and no contingencies existed. Under MBI's revenue recognition policy, the Company could not recognize revenue at the time of sale if any contingencies—such as rights of return, or extended payment terms—were offered; rather, MBI

could only recognize revenue once the contingencies expired. During the relevant period, Absi was aware of MBI's revenue recognition policy.

**Absi Offered and Hid, and Directed MBI Sales Employees to Offer and Hide, Numerous Sales Concessions to Meet Previously-Announced Revenue Targets**

10. Towards the end of 2013, Absi became aware that MBI might not meet its goal of doubling its 2012 revenue because its distributors did not have any more capacity to buy MBI's products. To close the gap, Absi instructed his sales employees to offer inventory protection on deals to sell as much product as they could by the end of the year. The inventory protection offered took three general forms: (1) rights to return unsold product; (2) credit and re-bill arrangements, which extended payment dates beyond the originally agreed-upon terms; and (3) allowing payment for products upon sales to the end-user, rather than pursuant to stated payment terms with the distributor.

11. In addition to offering inventory protection on certain deals in the first and second quarters of MBI's 2013 fiscal year, Absi and other MBI sales employees offered significantly more inventory protection towards the end of the year. During the relevant period, Absi offered, and directed others to offer, inventory protection on at least eleven sales transactions totaling approximately \$4 million.

12. On or about March 25, 2014, MBI filed its 2013 Form 10-K with the Commission. Revenue, as reported, more than doubled from \$7.1 million in 2012 to \$14.5 million in 2013. Without offering inventory protection, MBI would have missed its doubling-of-revenue target for 2013. In 2014, MBI was unable to sustain its 2013 sales rate so Absi continued to authorize his sales employees to offer inventory protection and other sales concessions in order to close as many sales transactions as possible.

13. Absi also engaged in other fraudulent conduct to maximize revenue and allow MBI to recognize revenue earlier than allowed under GAAP. During 2013, Absi instructed employees in MBI's supply chain department to ship the wrong product to a distributor and in early 2014, Absi directed Respondent to backdate a shipping document in order to book revenue in a particular quarter. In an additional attempt to book certain sales transactions, Absi authorized MBI to pay a distributor's freight costs and storage fees, and then directed Respondent to mischaracterize these expenses in the Company's books and records as promotional marketing expenses.

**Respondent Helped Absi Provide False and Misleading Information to MBI's Accounting Department**

14. As MBI's Customer Relations Manager, Respondent served as an important intermediary between MBI's sales organization and accounting department. On several occasions, Respondent helped Absi hide information from, and provide false and misleading information to, MBI's accounting department.

15. First, during the fourth quarter 2013, Respondent, at Absi's direction, helped Absi conceal the presence of inventory protection from MBI's accounting department. In late December 2013, MBI was engaged in negotiations with a distributor to sell the distributor approximately \$870,000 worth of product. To close the deal, the distributor requested inventory protection so that it could return any unsold product. Absi agreed to provide inventory protection on the deal and included it on a term sheet that memorialized the terms of the agreement between MBI and the distributor. At Absi's instruction, Respondent put the term sheet in her office desk drawer and did not inform MBI's accounting department of the document's existence or that the sales transaction included inventory protection. On another occasion, in January 2014, when a central California distributor submitted a purchase order with inventory protection, Absi lied to MBI's accounting department by falsely telling them that inventory protection was not a term of the deal, when, in fact, inventory protection was an important term in the sales transaction. Respondent, at Absi's direction, obtained a revised purchase order from the distributor without inventory protection on it and she did not tell MBI's accounting department that the transaction continued to include inventory protection. Both of these instances led to recognition of revenue on each of the transactions in violation of GAAP (*Accounting Standards Codification 605-15-25-1*).

16. Second, Respondent altered a shipping document to facilitate the recognition of revenue. Specifically, on the last day of the first quarter of 2014, MBI completed a sale to a distributor, but needed to ship the product on that day for the Company to recognize revenue in the quarter. At Absi's instruction, Respondent, who owns a 20% interest in a freight shipping company, arranged for the shipping company to ship MBI's product and backdate a bill of lading to make it appear that the shipment occurred on the last day of the quarter. Respondent did not inform MBI's accounting department that the shipping documents contained false information. MBI recognized revenue on the transaction during the first quarter of 2014, in violation of MBI's revenue recognition policy and sooner than it should have under GAAP (*Accounting Standards Codification 605*).

17. Third, Respondent provided false and misleading explanations to MBI's accounting department about why the Company's supply chain shipped the wrong product to an MBI distributor. In or around September 2013, Absi, attempting to recognize revenue on a sale, directed supply chain personnel to ship the wrong product to a Midwest distributor because MBI did not have sufficient quantities of the ordered product available. In or around October 2013, the distributor contacted MBI's accounting department inquiring if MBI had shipped it the wrong product. At Absi's direction, Respondent reported to MBI's accounting department that the distributor received the correct product. In or around March 2014, however, the distributor returned the product to MBI. Notwithstanding the fact that Respondent knew that MBI had intentionally shipped the wrong product so that it could record and report the associated revenue, she told MBI's accounting department that the shipment resulted from the supply chain department mistakenly shipping the wrong product to the distributor. In or around May 2014, Absi gave similarly false explanations to MBI's independent auditors when they asked why the supply chain department shipped the wrong product. MBI ultimately deferred the revenue on the transaction, however, until payment came due and was successfully collected, which occurred in the second quarter of 2014. Based on Absi's and Respondent's claims, MBI's first quarter 2014 Form 10-Q improperly disclosed a material weakness in controls and characterized its material weakness as

the result of a supply chain department “shipping error,” rather than an intentional override of MBI’s internal accounting controls for the purpose of prematurely recognizing revenue.

18. At Absi’s direction, Respondent engaged in additional conduct, which resulted in falsified books and records and caused MBI’s filing of false annual and periodic reports, including: (1) requesting and receiving an invoice from a distributor that mischaracterized freight charges as sales promotional meetings; (2) in connection with a different distributor, charging warehousing fees on Respondent’s personal credit card but expensing them as promotional sales meetings; and (3) creating a phony invoice, purporting to be from a distributor, for a promotional sales meeting to provide support for one of Absi’s personal expenses that Absi charged to MBI as business expenses. Instances (1) and (2) resulted in the violation of GAAP (*Accounting Standards Codification* 605-50-45-2).

19. Finally, Respondent helped Absi falsify his personal bank and credit card statements in connection with MBI’s internal audit of Section 16 Officer expense reports. During the 2013 year-end close process, MBI’s accounting department tested Section 16 Officer expense reports. MBI’s accounting department noticed what appeared to be duplicate expense submissions when reviewing Absi’s expense report information. MBI’s accounting department randomly selected sixty report line items and asked Absi to provide bank and credit card statements supporting each line item. To support the sixty selections, Respondent, working with Absi, altered Absi’s bank and credit card statements to hide personal and duplicate expenses, thereby misleading MBI’s accounting department into thinking that these expenses were legitimate business expenses.

### **MBI’s Restatement**

20. Due in part to Respondent’s conduct, MBI materially overstated its revenue in several filings filed with the Commission (*i.e.*, Form S-1s, Form S-8, Form 10-K and Form 10-Qs) during the relevant period. On November 10, 2015, MBI filed with the Commission restated financial results, for its quarterly periods ending March 31, 2013, June 30, 2013, September 30, 2013, March 31, 2014, and June 30, 2014, as well as its annual results for the year ended December 31, 2013.

21. In its restated Form 10-K, MBI disclosed that its Audit Committee had determined that, as a result of the failure of certain former employees to share with the Company’s accounting department or external auditors important transaction terms with distributors, including inventory protection agreements that would permit the distributors to return to the Company certain unsold products, the Company improperly recognized revenue for certain historical sales transactions prior to satisfying the criteria for revenue recognition required under GAAP.

22. MBI’s restatement included transactions for which Respondent hid, or otherwise provided false and misleading information to MBI’s accounting department, as discussed above. This included hiding the side letter in connection with the approximately \$870,000 sales transaction, causing the removal of inventory protection language from a purchase order issued by a central California distributor, and causing the backdating of a bill of lading on a shipment of product to a Midwest distributor. MBI permanently reversed approximately \$2 million in

previously reported revenue because some distributors who received inventory protection later returned product to MBI. This included the approximately \$870,000 sales transaction, referenced above.

### **Violations**

23. As a result of the conduct described above, Favela violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, which prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account that an issuer is required to maintain, and from directly or indirectly falsifying, or causing the falsification of, any book, record, or account required by Exchange Act Section 13(b)(2)(A).

24. Additionally, Favela caused violations of Section 13(b)(2)(A) by MBI, which requires issuers to make and keep books and records that accurately and fairly reflect their transactions and assets. Because of the conduct described above, MBI's books and records did not accurately reflect the Company's transactions and assets during the relevant period.

### **IV.**

Respondent acknowledges that the Commission is not at this time imposing a civil penalty based on her agreement to cooperate in a related enforcement action. However, pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 21B(a) of the Exchange Act against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that she will be precluded from arguing that she did not violate the federal securities laws as described in this Order; (b) Respondent agrees that she may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

### **V.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Favela's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Favela shall cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

B. IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party, that

a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110, following the entry of a final judgment against the last remaining defendant in *Securities and Exchange Commission v. Hector M. Absi, Jr., (E.D. Cal.)* (the "Related Action").

If Respondent fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against her upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

C. IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party, that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of the entry of a final judgment in the Related Action.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary