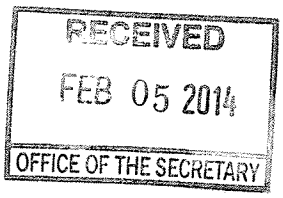
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15619

In the Matter of

JOSEPH P. DOXEY and
WILLIAM J. DANIELS,

Respondents.



DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT

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The Division of Enforcement ("Division"), by counsel, pursuant to Rule 250 of the Commission's Rules of Practice, moves for an order of summary disposition of the claims in the Order Instituting Proceedings ("OIP") in this matter against respondents Joseph P. Doxey ("Doxey") and William J. Daniels ("Daniels"), as there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Rule 250(b).

BRIEF IN SUPPORT

From April 2008 through May 2009, Doxey, as president and chairman of the board of Pure H20 Bio-Technologies, Inc. ("Pure H20" or the "Company"), drafted and caused Pure H20 to disseminate six materially false and misleading press releases concerning independent certification of a water purification system that the Company was purportedly developing. Doxey also made material misstatements and omissionsin soliciting direct investment in Pure H20 over a nine month period ending in May 2009 from Daniels, who relied on those

misstatements and omissions in purchasing Pure H20 stock. From October 2008 through May 2009, Doxey also orchestrated Pure H20's unregistered offering and sale of nearly 360 million shares to Observation Capital, LLC ("Observation Capital"), Daniels' investment company, through a series of twelve private placements, generating illicit proceeds to the Company of $57,654. Daniels, in turn, directed Observation Capital's unregistered resales of over 258 million Pure H20 shares, generating illicit proceeds of $73,900.46.

Through their actions, Doxey willfully violated Sections 5(a), 5(c) and 17(a)(1), (2) and (3) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5(a), (b) and (c) thereunder, and Daniels willfully violated Sections 5(a) and 5(c) of the Securities Act.

I. Statement of Facts

A. Respondents and Relevant Entity

1. Doxey, age 59, founded Pure H20 in 1989 and has served as its chairman, chief executive officer, president and director since its inception. (OIP ¶ II.A.1; Certification from Florida Department of State dated April 23, 2008, attached as Exhibit 1 to the Declaration of Ryan Farney in Support of Division's Motion for Summary Disposition ("Farney Dec."); Biography of Joseph P. Doxey produced by the Company to Division staff, Farney Dec. Ex. 2; Investigative Testimony Transcript of Joseph Doxey ("Doxey Tr."), Farney Dec. Ex. 7 at 19:24-25; 20:17-18)

2. Daniels, age 44, was the sole officer, director and shareholder of Observation Capital during the relevant period. During the period 1991 through 2000, he worked as a registered representative at broker dealers and held Series 7 and 63 licenses. He is currently unemployed but has expressed a desire to return to the securities industry by helping small

companies solicit investors for Rule 506 offerings under Regulation D of the Securities Act. (Investigative Testimony Transcript of William James Daniels ("Daniels Tr."), Farney Dec. Ex. 25, at 18:14-23; 19:22-20:3; 24:10-12; Daniels CRD report, Farney Dec. Ex. 31; Farney Dec. ¶ 36)

3. Pure H20 was incorporated in Florida in 1989 and headquartered during the relevant period in Boca Raton, Florida. It purported to be developing the Integrated Hospital Potable Water Disinfection System ("IHPWDS"), a water disinfection system that would be used for residential, commercial, hospital, and medical facilities. (Doxey Answer to OIP at p. 15, ¶ B; Farney Dec. Ex. 2; Doxey Tr., Farney Dec. Ex. 7 at 86:11-22) The State of Florida dissolved Pure H20 in 2011 for non-payment of fees; the company was revivified in 2013 and is currently listed as active by the Florida Department of State. (Company reinstatement form, Farney Dec. Ex. 3.) During the relevant time period, the company's common stock was quoted on the OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc.; the Commission suspended trading in Pure H20 securities on November 22, 2013 for a period of ten business days pursuant to Section 12(k) of the Exchange Act. (Trading suspension order, Farney Dec. Ex. 4)

B. Pure H20 Seeks Certification of its Water Purification System

4. Pure H20 determined to seek certification of the IHPWDS from NSF International ("NSF"), a non-profit, non-governmental organization that tests and certifies products in accordance with standards developed by NSF itself and by others. Specifically, NSF had developed a protocol for certifying water purifiers, called P231, that was based on U.S. Environmental Protection Agency ("EPA") standards. (NSF Protocol P231, Farney Dec. Ex. 5; Investigative Testimony Transcript of Ellen Van Buren ("Van Buren Tr."), Farney Dec. Ex. 6, at 24:12-20, 25:9-14, 60:17-25, 61:1-17)

5. Certification pursuant to P231 was not legally required, but was regarded by Pure H20 personnel, including Doxey, as critical to marketing a water purification system to hospitals and medical facilities, as NSF certification was widely recognized in the water treatment industry as providing third-party quality assurance. (Van Buren Tr., Farney Dec. Ex. 6 at 27:9-17; 28:10-13; 34:1-16; Doxey Tr., Farney Dec. Ex. 7, at 72:13-15 ("NSF says you don't need our certification, you can put the system out there if you want"); 34:9-10 ("No hospital would take the system [IHPWDS] until we had the NSF stamp on it"); Investigative Testimony Transcript of Dennis Boudreaux ("Boudreaux Tr."), Farney Dec. Ex. 8, at 41:7-14; Investigative Testimony Transcript of Dr. Ira Felkner ("Felkner Tr."), Farney Dec. Ex. 9, at 29:2-5; Doxey Answer to OIP at p. 16)

6. Pursuant to the protocol, NSF would test a product to ensure that it reduced potentially harmful contaminants and organisms; did not leach contaminants into the water; generated drinkable water; and was structurally sound and would not leak or burst during use. As part of the certification, NSF would also visit the production facility to ensure that the product was being manufactured in a manner consistent with information submitted to NSF. (Farney Dec. Ex. 5; Van Buren Tr., Farney Dec. Ex. 6 at 28:14-29:2; Doxey Tr., Farney Dec. Ex. 7 at 34:11-13; Felkner Tr., Farney Dec. Ex. 9 at 28:1-12)

7. The general process for obtaining certification from NSF involved submitting an application and then providing detailed information concerning the product to be tested, along with the product itself and a test sample, so that NSF could prepare a testing plan and develop a price quote. A contract would then be entered into, and once the P231 certification process began, NSF would send invoices as the process progressed. Critically, certification would not be

granted until full payment was complete. (Van Buren Tr., Farney Dec. Ex. 6 at 29:10-30:5; 31:16-25; 38:23-39: 20; 48:5-10; 49:23-25; 82:1-5; 83:4-14)

8. NSF communicated these requirements to Doxey and Pure H20 personnel, and further advised Doxey that P231 certification typically took three to four months and that a firm timeline for testing and certification would be determined at the time samples were submitted for testing. (Van Buren Tr., Farney Dec. Ex. 6 at 34:24-35:2; 39:18-25; Doxey Tr., Farney Dec. Ex. 7 at 92:24-93:10; Email from Ellen Van Buren to Joseph Doxey, Farney Dec. Ex. 10; Boudreaux Tr., Farney Dec. Ex. 8 at 52:23-53:17))

C. Pure H20's Hampered Efforts at Developing the IHPWDS

9. Designing and calibrating the IHPWDS to meet P231's requirements demanded considerable effort and funds. According to the Company's Chief Operating Officer and the structural engineer, Dennis Boudreaux ("Boudreaux"), and microbiology consultant designing the IHPWDS, Dr. Ira Felkner ("Dr. Felkner"), only a product that was market-ready would be submitted to a certifying entity like NSF. Accordingly, the Company retained the services of an independent laboratory, Clancy Environmental Consultants, Inc. ("Clancy"), to conduct tests to make sure that the IHPWDS met all the requirements of P231 before submitting the IHPWDS to NSF. (Felkner Tr., Farney Dec. Ex. 9 at 30:23-32:3; Boudreaux Tr., Farney Dec. Ex. 8 at 18:7-17)

10. According to Dr. Felkner, Clancy was one of the few labs capable of handling and testing for cryptosporidium, a water-borne pathogen that the IHPWDS sought to reduce. NSF indicated that that it would be willing to consider relying on Clancy's findings with respect to the IHPWDS's reduction of cryptosporidium, but would have to see Clancy's testing protocols and the relevant data before making that determination. Thus, the successful completion of testing

by Clancy was critical to Pure H20's submitting the IHPWDS to NSF for certification. (Felkner Tr., Farney Dec. Ex. 9 at 59:12-60:9; Doxey Tr., Farney Dec. Ex. 7 at 50:9-13; 53:1-14)

11. By April 2008, Clancy had tested the IHPWDS and determined that while it reduced the levels of cryptosporidium, it did not reduce cryptosporidium to levels required by P231. (Doxey Tr., Farney Dec. Ex. 7 at 67:24-68:5; Boudreaux Tr., Farney Dec. Ex. 8 at 20:4-17)

12. Although Doxey, Boudreaux and Dr. Felkner were confident that the IHPWDS could be modified to satisfy the requirements of P231, Pure H20 was running out of funds by mid-2008. The Company could not pay Clancy for tests already conducted, let alone pay for any additional testing that Boudreaux and Felkner deemed essential, such as tests to ensure that the IHPWDS killed certain viruses and tests of the toxicity level of the water that the system generated. (Doxey Tr., Farney Dec. Ex. 7 at 90:25-91:8; 95:16-96:18; Boudreaux Tr., Farney Dec. Ex. 8 at 16:3-14; 38:8-24; 43:22-44:6; Felkner Tr., Farney Dec. Ex. 9 at 36:4-11; 42:16-44:3; 47:4-19; Email thread between Doxey and Thomas Hargy at Clancy concerning past due invoices, Farney Dec. Ex. 11; Doxey Answer to OIP at p. 11, ¶ 1 (An $8,500 Clancy invoice from 2008 remains unpaid))

13. As a result, even though the Company submitted an initial application to NSF for certification in April 2008 (Farney Dec. Ex. 34), Pure H20 lacked the funds to pay NSF and was never able to take the next step of submitting product information necessary for NSF to prepare a test plan and cost quote. (Doxey Answer to OIP at p. 16, ¶ 6; Van Buren Tr., Farney Dec. Ex. 6 at 53:6-11; 54:22-55:2)

14. In addition, until at least March of 2009, the Company lacked the funds to construct a manufacturing facility, the inspection of which was a requirement for NSF

certification. (Doxey Tr., Farney Dec. Ex. 7 at 190:16-193:3; Doxey Answer to OIP at p. 13 (Appalachian Community Bank approved a new loan in March 2009))

15. Accordingly, Pure H20 never entered into a contract with NSF, and the certification process for the IHPWDS never commenced. (Letter from NSF counsel stating that NSF received an application for certification but no signed certification contract from Pure H20 and "never conducted any services for Pure H20 and NSF never received any monies from Pure H20", Farney Dec. Ex. 12; Van Buren Tr., Farney Dec. Ex. 6 at 47:19-20, 68:5-9; Boudreaux Tr., Farney Dec. Ex. 8 at 54:2-9)

D. Doxey's Awareness of IHPWDS Testing Issues and Pure H20's Deteriorating Financial Condition

16. In the spring of 2008, Doxey knew that Clancy's initial testing revealed that the IHPWDS did not reduce cryptosporidium to levels required by P231. (Doxey Tr., Farney Dec. Ex. 7 at 74:20-75:4, 80:3-16; 85:7-15; 90:7-23)

17. Throughout the relevant period, Doxey also knew that the IHPWDS had not yet been subjected to other essential pre-certification tests and that further refinements to the system were necessary. (Doxey Tr., Farney Dec. Ex. 7 at 68:8-70:3; Email from Felkner to Doxey, Farney Dec. Ex. 13; Letter from Felkner to Doxey, Farney Dec. Ex. 14 (as of April 21, 2009, "...there still remain significant issues to be solved before the system goes to [NSF] for certification"); Boudreax Tr., Farney Dec. Ex. 8 at 92:11-93:20)

18. Finally, as president and CEO, Doxey was intimately familiar with the Company's deteriorating financial condition throughout 2008 and into 2009, and was acutely aware of Pure H20's inability to pay for further pre-certification testing by Clancy, for construction of a manufacturing facility, and for NSF certification. (Doxey Tr., Farney Dec. Ex. 7 at 38:20-22; 95:16-96:18 (as of March 2008, Pure H20 owed Clancy $8,500 and required

another $30,000 to finish pre-certification testing); Farney Dec. Ex. 14; Pure H20 Balance Sheet showing $1,533.03 cash on hand and total liabilities of nearly $770,000 as of December 31, 2008, Farney Dec. Ex. 15; Doxey Answer to OIP, at pp. 8-9, 11-13)

19. Indeed, an email chain from December 9, 2008 attached to Doxey's Answer to the OIP includes an inquiry from NSF as to whether Pure H20 still intended to seek NSF certification of the IHPWDS. As shown in the chain, Dr. Felkner responded that the "delay is because Mr. Doxey has to generate the funds to do the NSF testing/certification under [P]231." (Email attached to Doxey Answer to OIP, at p. 21)

20. In short, Pure H20's financial situation was desperate. In an email to Dr. Felkner on January 13, 2009, Doxey wrote, "I am out on the street in less than 10 days unless a miracle comes through the door! .... [I have been] trying to find the angel investor to pay for the NSF certification. .... If we do not find someone soon my finger is on the BANKRUPTCY RED line .... [W]e ran out of funds .... I do not have the funds and I may never get the funds [for NSF certification]." (Farney Dec. Ex. 16) When asked in testimony what he meant by this email, Doxey stated that he had "called two attorneys to file bankruptcy. I thought we were out of business. If we didn't get the funds or I didn't sell the shell, by backup was to sell the shell for $150 thousand..." (Doxey Tr., Farney Dec. Ex. 7 at 206:8-16)

E. Doxey Issues Materially Misleading Press Releases

21. Despite knowing that the IHPWDS was not ready to be submitted to NSF and despite knowing that the Company lacked the funds to continue with pre-certification testing, let alone NSF certification, Doxey issued a series of six press releases that indicated that certification of the IHPWDS by NSF was in fact "underway" or was expected in three to four months or within the quarter in which the release was issued. The releases were issued on April

1, 2008; October 22, 2008; January 29, 2008; March 3, 2009; April 1, 2009; and May 4, 2009 and are attached as Farney Dec. Exs. 17-22.

22. The April 1, 2008 release (Farney Dec. Ex. 17) -- issued less than a month after Doxey learned that Clancy's pre-certification results did not meet P231 standards for cryptosporidium reduction -- falsely stated that "certification of [the IHPWDS] through EPA's contractor National Sanitation Foundation (NSF) is expected to be completed within a few short months and has a high likelihood of success." In fact, as noted above in section I.D, Doxey knew that the Company had yet to make adjustments to the IHPWDS to achieve the required cryptosporidium kill rate (Doxey Tr., Farney Dec. Ex. 7 at 90:7-23); had yet to undergo further pre-certification testing (Doxey Tr., Farney Dec. Ex. 7 at 85:7-15); and had yet to raise the funds necessary to pay Clancy's and NSF's fees (Doxey Tr., Farney Dec. Ex. 7 at 90:25-91:8; 95:16-96:18; 169:25-170:3). He further knew that NSF had not sent any required information to NSF and that NSF had not begun any testing. (See also Boudreaux Tr., Farney Dec. Ex. 8, at 66:2-13)

23. The press release also misidentified the certifying entity in two respects. First, the entity ceased using the name "National Sanitation Foundation" in the 1990s when it adopted the name "NSF International." Second, in referencing "certification through the EPA's contractor," the release implied that the certification met a regulatory requirement or, at a minimum, had the EPA's imprimatur. (Van Buren Tr., Farney Dec. Ex. 6 at 80:6-81:9) As mentioned above, however, the EPA did not contract NSF to perform P231 certification; P231 certification was an NSF-devised protocol and not a regulatory requirement. (See also Doxey Tr., Farney Dec. Ex. 7 at 72:13-15 (acknowledging that NSF told Doxey that he was free to market the IHPWDS without NSF certification)

24. The Company issued another press release on October 22, 2008 (Farney Dec. Ex. 18), falsely stating again that Pure H20 "successfully completed Pre-Certification Testing" for the IHPWDS and that certification of the system through "EPA's contractor, National Sanitation Foundation" was "expected to be completed within a few short months and has a high likelihood for success." When asked in testimony where the Company was going to obtain the revenue to complete the referenced NSF certification, Doxey stated that this press release was issued "shortly after the market crashed. I would think at that point there was no way to raise money or accept money. I would not accept money when the stock market crashed." (Doxey Tr., Farney Dec. Ex. 7 at 180:20-181:8.

25. The misleading releases continued into the next year. The January 29, 2009 press release (Farney Dec. Ex. 19), issued just two weeks after Doxey had emailed Boudreaux and Dr. Felkner that he needed an "angel investor" to pay for NSF certification or the company would face bankruptcy, falsely claimed that the Company had "recently completed all pre-certification testing of [the IHPWDS] with outstanding results" and that certification through "EPA's contractor, National Sanitation Foundation" is expected to be completed with this 1st quarter and has a high likelihood of success." This release also discussed retention of a law firm and a potential new source of financing for the Company.

26. Additional releases followed with variations on the same misleading theme: "[w]e are anxiously awaiting final certification... through EPA's contractor, National Sanitation Foundation" (March 3, 2009, Farney Dec. Ex. 20); Pure H20 was "ready to complete certification through EPA's contractor, National Sanitation Foundation" and "is expected to be completed with this 1st quarter and has a high likelihood of success" (April 1, 2009, Farney Dec.

Ex. 21). The April 1, 2009 release contained additional information about approval from Appalachian Community Bank for financing for a new manufacturing facility.

27. When asked in testimony why the April 1, 2009 release did not reflect the Company's need to go back to Clancy for additional pre-certification testing, Doxey stated "I was a nervous wreck trying to make all ends meet and I probably didn't give enough thought to the press release, and that's my error." (Doxey Tr., Farney Dec. Ex. 7 at 197:5-198:4)

28. Finally, May 4, 2009 (Farney Dec. Ex. 22), the Company issued a press release that stated that "certification of [the IHPWDS] through EPA's contractor, National Sanitation Foundation, is underway." The very next day, NSF personnel acknowledged in an email to Dr. Felkner that, contrary to the press release, NSF had not even begun testing the IHPWDS. (Farney Dec. Ex. 23)

29. Doxey had final authority over the distribution of each of these six press releases and directed their dissemination via a wire service and by having them posted on the Company's web site. (Doxey Tr., Farney Dec. Ex. 7 at 175:3-24; 32:3-20; 123:21-125:3; 130:1-13; Doxey Answer to OIP at p.16, ¶ 11)

30. Doxey also participated in drafting, if not drafted in their entirety, all six releases. (Doxey Tr., Farney Dec. Ex. 7 at 30:23-31:15; 188:12-189:13; 190:16-191:9; 199:4-13)

31. When asked under oath in investigative testimony why he persisted in announcing in the releases over the course of a year that Pure H20 would obtain NSF certification within a fixed period and omitted to mention that its ability to do so was contingent on raising the necessary funds, Doxey dismissively said that investors "know we don't have the money" (Farney Dec. Ex. 7 at 170:4-12); that investors can "read between the lines" in the releases that certification was delayed for a lack of resources (Farney Dec. Ex. 7 at 163:19-164:7); and that

the releases were merely forward-looking statements essentially reflective of his hope that the necessary funds would be found (Farney Dec. Ex. 7 at 171:14-172:12).

32. Doxey understood the potential impact of positive press releases on the investing public, having expressly stated to Boudreaux that press releases mollified existing investors anxious about the progress of the company and induced others to invest directly in the company. (Boudreaux Tr., Farney Dec. Ex. 8 at 23:24-24:24; 69:13-70:2)

33. Indeed, each press release had the effect of materially increasing either Pure H20's stock price and/or trading volume over the prior day's trading. For example, in response to the releases issued on October 22, 2008, March 3, 2009 and April 1, 2009, Pure H20's closing price increased 25%, 43% and 57%, respectively; the releases issued on January 29, 2009, April 1, 2009 and May 4, 2009 prompted trading volume to increase over the prior trading day from 0 shares to 11.3 million shares, 100,000 shares to 9.6 million shares, and 920,000 shares to 4.57 million shares, respectively. A chart summarizing Pure H20's price and volume changes, along with a Bloomberg price/volume printout, is attached as Farney Dec. Ex. 24.

F. Doxey's Misrepresentations and Omissions to Daniels

34. Doxey met with Daniels in late summer 2008 to discuss the possibility of Daniels investing in Pure H20 through Observation Capital. (Daniels Tr., Farney Dec. Ex. 25 at 18:14-23; 19:22-20:3; 20:10-13; 35:35-36:2)

35. At that meeting, Doxey disclosed to Daniels that Pure H20 needed funds to finance NSF certification, but falsely represented to Daniels that the IHPWDS was completely built; than an inventory of product had been amassed; and that the IHPWDS was then undergoing NSF certification. (Daniels Tr., Farney Dec. Ex. 25 at 43:24-45:17; 52:19-54:8; Doxey Tr., Farney Dec. Ex. 7 at 158:12-160:15)

36. Doxey acknowledged in testimony that he did not disclose to Daniels any information about the Clancy tests, but left him to glean what information he could from the Company's press releases. (Doxey Tr., Farney Dec. Ex. 7 at 160:17-20; 162:19-25) Doxey further testified that only three prototype IHPWDS units existed at the time, and that the Company's inventory consisted solely of filters. (Doxey Tr., Farney Dec. Ex. 7 at 86:11-15; 88:1-89:14)

37. Based on Doxey's representations and the representations in Pure H20's press releases, Daniels decided to invest. (Daniels Tr., Farney Dec. Ex. 25 at 39:3-41:7) Daniels further told Doxey that he would "create a market" for Pure H20 stock. (Doxey Tr., Farney Dec. Ex. 7 at 143:20-22)

G. Unregistered Offers and Sales of Pure H20 Stock

38. Observation Capital wired $12,500 to Pure H20 on or about August 11, 2008, with the parties subsequently entering into an agreement dated October 14, 2008 pursuant to which Pure H20 made an unregistered sale of nearly 2 million shares of its common stock. Over the next seven months, through May of 2009, Observation Capital entered into another eleven subscription agreements with Pure H20 pursuant to which Pure H20 would make unregistered sales of its common stock. (All of the subscription agreements, along with corresponding attorney opinion letters and instructions from Doxey to the transfer agent, have been collected as Farney Dec. Ex. 26; Observation Capital's wire transfers and payments to Pure H20 have been collected as Farney Dec. Ex. 27.) Daniels continued to monitor the Company's press releases during this time, which further influenced his decision to invest. (Daniels Tr., Farney Dec. Ex. 25 at 68:9-69:23)

39. All told, Daniels, through Observation Capital, paid Pure H20 $57,654 for nearly 360 million shares. A chart summarizing these sales (the "Offerings") is attached as Farney Dec. Ex. 28.

40. Doxey handled every aspect of the Offerings, including negotiating the terms with Daniels as detailed above; documenting or having the transactions documented (Daniels Tr., Farney Dec. Ex. 25 at 126:16-127:9); being the sole officer and director of the Company to sign the agreements on behalf of Pure H20 (Farney Dec. Ex. 26); procuring the legal opinions that the sales were exempt from registration and should be issued without restrictive legend (Doxey Tr., Farney Dec. Ex. 7 at 155:16-23); and instructing Pure H20's transfer agent to issue the shares to Observation Capital (Instruction letters included with subscription agreements collected at Farney Dec. Ex. 26; Doxey Tr., Farney Dec. Ex. 7 at 152:6-7; 157:5-8).

41. Each of the twelve Offerings was effected purportedly pursuant to Rule 504(b)(1)(iii) of Regulation D of the Securities Act. (Farney Dec. Ex. 26; Doxey Answer to OIP, at p. 17, Section D.3) At no time was a registration statement pertaining to any of the Offerings on file or in effect with the Commission. (EDGAR printout of Pure H20's filings during the relevant period, Farney Dec. Ex. 29)

42. Doxey and Daniels purported to believe that the Offerings qualified for a Rule 504(b)(1)(iii) exemption based on each man's assumption, albeit for different reasons, that Observation Capital was an "accredited investor" as that term is defined in Regulation D. Daniels purportedly assumed that he was a qualified investor based on his having been a licensed registered representative until 2000 and that, by extension, this made Observation Capital an accredited investor. It is for this reason that he indicated that Observation Capital was an

accredited investor in the subscription agreements. (Daniels Tr., Farney Dec. Ex. 25 at 30:5-31:18)

43. Doxey, alternately, assumed that Observation Capital had indicated in the subscription agreements that it was an accredited investor because it met the income and/or asset tests under the Securities Act to qualify as an accredited investor. Doxey stated in testimony that he understood these tests to require $1,000,000 in assets or $200,000 in annual income, but that he did not pursue the issue because it was of secondary importance to bringing much-needed capital into Pure H20. (Doxey Tr., Farney Dec. Ex. 7 at 144:8-149:13; 150:9-15; 152:21-153:18; 157:9-14)

44. Doxey was incorrect in his assumption. Critically, according to Daniels, no one from the Company inquired of Daniels the basis for his representing in the subscription agreements that he was an accredited investor (Daniels Tr., Farney Dec. Ex. 25 at 130:7-22).

45. Neither Daniels nor Observation Capital had a net worth of $1,000,000 or annual income of $200,000 in 2005 through 2009. (Daniels individual tax return for 2008, Farney Dec. Ex. 30; Farney Dec. ¶ 32)

46. Additionally, Daniels' securities licenses had expired and he had not been a registered representative since 2000. (Daniels Tr., Farney Dec. Ex. 25 at 24:10-12; Farney Dec. Ex. 31)

47. Within days of receiving each allotment of shares, Observation Capital, at Daniels' direction and under his control, began selling the shares into the market, ultimately selling over 258 million of those shares over the course of six months ending in May 2009 and generating $73,900.46 in illicit proceeds. (Summary chart, Farney Dec. Ex. 32; Collected

Observation Capital brokerage statements, Farney Dec. Ex. 33; Daniels Answer to OIP ("I would like to take this opportunity to express my sincere regret for adding shares to the market that were unregistered"))

II. Argument

Rule 250(a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. Rule 250(b) provides that a hearing officer may grant a motion for summary disposition 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. 17 C.F.R. § 201.250(b); *see Michael Puorro*, Initial Decision Rel. No. 253, 2004 SEC LEXIS 1348, at *3 (June 28, 2004). In this proceeding, no genuine issue of fact exists materially contesting that Doxey and Daniels violated the statutes and rules as alleged.

A. Doxey's False Statements Violated Exchange Act Section 10(b) and Rule 10b-5 thereunder and Securities Act Section 17(a)

i. Exchange Act Section 10(b) and Rule 10b-5

Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of any security, a) the use of any device, scheme, or artifice to defraud; b) the making of material misrepresentations or omissions; and c) any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. A finding of scienter is required to establish a violation. *Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007). The Commission has stated that the three subdivisions of Rule 10b-5 should be considered mutually supportive, rather than mutually exclusive. *See Cady, Roberts & Co.*, 40 S.E.C. 907, 913 (1961) (noting that "a breach of duty of disclosure may be viewed as a device or scheme, an implied misrepresentation, and an act or

practice, violative of all three subdivisions"); *see also VanCook v. SEC,* 653 F.3d 130 (2d Cir. 2011) (holding that late trading in a mutual fund was actionable under all three subdivisions of Rule 10b-5, including as a material misstatement or omission, as the late trades themselves constituted an implied misrepresentation that the orders were received before the market closed).

"For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Group, Inc. v. First Derivatives Traders*, 131 S. Ct. 2296, 2302 (2011).

Courts construe the "in connection with" requirement flexibly to effectuate its remedial purposes. *SEC v. Zandford*, 535 U.S. 813, 819 (2002). Any statement that is "reasonably calculated to influence the investing public" satisfies the "in connection with" requirement. *SEC v. Tex. Gulf Sulphur Co.,* 401 F.2d 833, 861-62 (2d. Cir. 1968). When the fraud alleged involves public dissemination in a press release or any other document on which an investor would presumably rely, the "in connection with" requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation. *SEC v. Huff*, 758 F. Supp. 2d 1288, 1353 (S.D. Fla. 2010) (citing *SEC v. Rana Research*, 8 F.3d 1358, 1362 (9th Cir. 1993)).

Information is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Market impact and shareholder reaction provide a measure for assessing the materiality of information. *See Elkind v. Liggett & Myers, Inc.*, 635 F.2d 156, 166 (2d Cir. 1980); *SEC v. Lund*, 570 F.Supp. 1397, 1401 (C.D. Cal. 1983). Additionally, case law has established that claims about the status of United States government regulatory certifications, including EPA certifications, are material.

See SEC v. Pallais, 2010 U.S. Dist. LEXIS 69594, at *12 (S.D.N.Y. July 9, 2010) (recommendation of U.S. Magistrate Judge finding a material omission when a company issued a press release claiming an EPA certification was two months away without disclosing that it lacked the funds to pay for it); *SEC v. Coates*, 137 F. Supp. 2d 413, 424 (S.D.N.Y. 2001) (finding EPA testing to be material information). *See also SEC v. Schiffer*, 1998 U.S. Dist. LEXIS 8579, at *11 (S.D.N.Y. 1998); *SEC v. Global Telecom Services, LLC*, 325 F. Supp. 2d 94, 112 (D. Conn. 2004) (finding Food and Drug Administration approval to be material information). Moreover, Pure H20 made the NSF certification process relevant by promoting its importance in the press releases. *See Coates*, 137 F. Supp. 2d at 425 (finding that though EPA approval was not required for the product at issue, the defendant made EPA standards relevant by promoting their importance in correspondence with shareholders).

Scienter is the "mental state embracing the intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter can be established by showing knowing misconduct or severe recklessness, which is defined as "an extreme departure of the standards of ordinary care... which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982).

ii. Securities Act Section 17(a)

Section 17(a) of the Securities Act prohibits fraud in the offer or sale of securities. Section 17(a)(1) prohibits the use of any device, scheme, or artifice to defraud. *SEC v. Lee*, 720 F. Supp 2d 305, 334 (S.D.N.Y. 2010) (Section 17(a)(1) imposes liability on any person who "substantially participates in a manipulative or deceptive scheme by directly or indirectly employing a manipulative or deceptive device..."); *see also Simpson v. AOL Time Warner*, Inc.

452 F.3d 1040, 1048 (9th Cir. 2006) ("the defendant must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme"), *vacated on other grounds by Simpson v. Homestore.com, Inc.*, 519 F.3d 1041 (9th Cir. 2008). Section 17(a)(2) makes it unlawful to obtain money or property through material misstatements or omissions. *SEC v. Softpoint, Inc.*, 958 F.Supp. 846, 861 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 1348 (2d Cir. 1998). Section 17(a)(3) prohibits engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. While proof of scienter is a necessary element of liability under Section 17(a)(1) of the Securities Act, only negligence is required for liability under Sections 17(a)(2) and 17(a)(3). *Aaron*, 446 U.S. at 701.

Courts have held that Section 17(a)(2)'s requirement of obtaining money or property is satisfied when the individual's employer or other related entity is the direct recipient of the money or property. *See SEC v. Stoker,* 2012 WL2017736, at *5-6 (S.D.N.Y. June 6, 2012) and *SEC v. Delphi*, 2008 WL 4539519, at *9, *20 (S.D. Mich. Oct. 8, 2008) (finding no personal receipt necessary); *but see SEC v. Daifotis*, 2011 WL 4714250, at *3 (N.D. Cal. Oct. 7, 2011) (so requiring).

As with Exchange Act Rule 10b-5 discussed above, the three subdivisions of Securities Act Section 17(a) have been considered by the Commission to be mutually supportive rather than mutually exclusive, and thus a material misstatement may be violative of all three subdivisions. *See, e.g., Cady, Roberts & Co.*, 40 S.E.C. at 913.

Finally, because the language of Section 17(a) of the Securities Act does not include the word "make," the Supreme Court's decision in *Janus,* discussed above, does not apply to it. *See SEC v. Pentagon Capital Mgmt. PLC*, No. 08-cv-3224, 2012 U.S. Dist. LEXIS 18504, at **116-17 (S.D.N.Y. Feb 14. 2012); *SEC v. Mercury Interactive*, LLC, 2011 WL 5871020, at *3 (N.D.

Cal. Nov. 22, 2011); *SEC v. Geswein*, 2011 WL 4565861 (N.D. Ohio Sept. 29, 2011); *but see SEC v. Kelly*, Case No. 08 Civ. 4612(CM), 2011 WL 4431161 (S.D.N.Y. Sept. 22, 2011) (applying *Janus* to claims under Section 17(a)(2)); *In the Matter of John P. Flannery*, Initial Decision Release No. 3-14081, 43 (ALJ Oct. 28, 2011) (same).

iii. Doxey Violated the Antifraud Provisions

As 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. He is therefore the "maker" of the statements for purposes of Exchange Act Section 10(b) and Rule 10b-5(b).

The press releases misrepresented the status and timing of NSF certification of the IHPWDS by falsely stating that certification was "underway" or expected to be completed "within a few short months" or within the current quarter, as outlined above. These statements were false and misleading because the NSF certification process never commenced; Pure H20, lacking funds to pay either Clancy or NSF or to construct, at least until late March 2009, a manufacturing facility, never submitted necessary information to NSF and never entered into a contract with NSF. Moreover, even if NSF had actually begun testing the IHPWDS, the time required to complete certification was beyond that referenced in the press releases.

These misrepresentations and omissions were material because the releases had the effect of dramatically increasing Pure H20's stock price and/or trading volume, as noted above. For example, in response to the press releases issued on April 1, 2008, March 3, 2009 and April 1, 2009, Pure H20's closing price increased 25%, 43%, and 57% over the prior reported closing price, respectively. Furthermore, the releases greatly exaggerated or falsified the status of an

implied governmental regulatory certification for Pure H20's product. Granted, two of the press releases were not limited to discussing NSF certification and contained additional information: the January 29, 2009 release (Farney Dec. Ex. 19) discussed retention of a law firm and potential new financing for the Company, and the April 1, 2009 release (Farney Dec. Ex. 21) mentioned financing for a new manufacturing facility. However, the four remaining press releases dealt solely with the purportedly impending NSF certification, and the fact that those releases significantly moved the Company's stock price and/or volume demonstrates that the investing public regarded NSF certification of the IHPWDS as material.

In addition to misrepresentations and omissions to the general public made through press releases, Doxey misrepresented the facts to Daniels in inducing him to purchase Pure H20 securities. Although he did disclose to Daniels that the company needed funds to finance the NSF certification, he misrepresented to Daniels that all pre-certification tests were complete and that the IHPWDS was undergoing the certification process with NSF, and falsely stated that an inventory of the product had been amassed despite knowing that the Company's inventory consisted solely of filters and that only three prototypes of the IHPWDS existed. He also expected Daniels to glean what information he could from the Company press releases, which Daniels continued to read over the course of the seven months Observation Capital purchased shares from Pure H20.

Doxey acted with scienter because he knew, or was severely reckless in not knowing, that the press releases and statements made to Daniels were materially misleading. The evidence outlined above shows Doxey's awareness of material facts which he either misrepresented or omitted, making those statements he did make materially misleading. Moreover, Doxey understood the potential impact of positive press releases on the investing public and on the

Company's stock price. Through this conduct, Doxey violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder.

Additionally, by means of Doxey's misrepresentations to Daniels, Pure H20 obtained an investment of over $57,000 from Observation Capital, in violation of Securities Act Section 17(a)(2).

For all of the foregoing reasons, Doxey also employed a device, scheme or artifice to defraud, and engaged in acts, practices and a course of business which operated as a fraud upon Daniels and upon the investing public in violation of Exchange Act Rules 10b-5(a) and (c) and Securities Act Sections 17(a)(1) and 17(a)(3).

B. Doxey and Daniels Violated Sections 5(a) and 5(c) of the Securities Act

Sections 5(a) and (c) of the Securities Act prohibit any person from directly or indirectly selling or offering to sell securities in unregistered transactions unless an exemption from registration applies. *Zacharias v. SEC*, 569 F.3d 458, 464 (D.C. Cir. 2009).

To prove a violation of Section 5, the SEC must demonstrate that (1) no registration statement was on file or in effect as to the securities; (2) the defendant sold or offered to sell the securities; and (3) interstate means were used in connection with the offer or sale. *SEC v. Cont'l Tobacco Co. of South Carolina, Inc.*, 463 F.2d 137, 155-56 (5th Cir. 1972). "Once participation in an unregistered sale has been shown, the [defendant] has the burden of proving an exemption to the registration requirements." *Zacharias*, 569 F.3d at 464.

Section 5(a) and (c) "imposes strict liability on offerors and sellers of unregistered securities . . . regardless of . . . any degree of fault, negligent or intentional, on the seller's part." *Swenson v. Engelstad,* 626 F.2d 421, 424 (5th Cir. 1980). *Accord SEC v. Universal Major Indus.*

Corp., 546 F.2d 1044, 1046-47 (2d Cir. 1976); *SEC v. Current Fin. Servs., Inc.*, 100 F. Supp. 2d 1, 6 (D.D.C. 2000).

"The term 'distribution' refers to the entire process in a public offering through which a block of securities is dispersed and ultimately comes to rest in the hand of the investing public." *Geiger v. SEC*, 363 F.3d 481, 487 (D.C. Cir. 2005) (quoting *In re Wonsover*, 69 SEC Docket 608, Exchange Act Release No. 34-41123, 1999 WL 100935 at *7 n.25 (Mar. 1, 1999), *aff'd*, 205 F.3d 408 (D.C. Cir. 2000)). Doxey does "not have to be involved in the final step of the distribution to have participated in it." *Geiger* at 487.

In this case, a violation of Section 5 can be established for two sets of transactions: (1) Pure H20's twelve initial offers and sales of shares to Observation Capital; and (2) Observation Capital's resales, which resulted in over 258 million unregistered shares ending up in the hands of the investing public.

i. Doxey's Direct Participation in Pure H20's Offers and Sales

Doxey, acting as president of Pure H20, was the sole officer and director who signed and accepted all twelve subscription agreements to sell the shares. He obtained twelve opinion letters stating the shares should be issued "without restrictive legend" so they could be resold immediately. Furthermore, he was the sole Pure H20 representative to instruct the transfer agent to issue the shares to Observation Capital, specifically instructing that the shares be issued "without restrictive legend," and supported this instruction with the opinion letters he procured. Within days of each unregistered sale, and indeed, often times on the same day, Doxey instructed the transfer agent to deliver the shares to Observation Capital. Thus, Doxey is liable under Section 5(a) and (c).

ii. No Exemption Applies to Pure H20's Initial Offers and Sales

Once participation in an unregistered sale has been shown, the burden shifts to the defendant to establish that he is entitled to an exemption from registration. *See, e.g., SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953) ("[k]eeping in mind the broadly remedial purposes of the federal securities legislation, imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable"). Courts narrowly construe exemptions from the registration provisions against the claimant. *SEC v. Murphy*, 626 F.2d 633, 641 (9th Cir. 1980). The opinion letters submitted to Pure H20's transfer agent claimed that Pure H20 relied on Rule 504 of Regulation D for all twelve offers and sales. Not only were the offers and sales not exempt under Regulation D, no other exemption applied.

Rule 504 generally provides a limited exemption from registration for offers and sales of securities that do not exceed $1 million, and requires the issuer to comply with Rule 502, which limits resales and requires the issuer to "exercise reasonable care" to ensure the purchaser is not an underwriter. This rule limiting resales does not apply, and shares may be issued without restriction, if the issuer qualifies for Rule 504(b)(1)(iii). To qualify for Rule 504(b)(1)(iii), the offer and sale must be made exclusively according to a state law exemption from registration that permits general solicitation and general advertising so long as the sales are made only to "accredited investors" as defined in Rule 501(a).

Pure H20 sought to rely on Rule 504(b)(1)(iii) to issue shares to Observation Capital "without restrictive legend" by citing "Texas Exemptions," namely, Sections 5(H), 5(T) and 7 of the Texas Securities Act, and Rule 109.3(4) of the Texas Administrative Code (*see* opinion letters of Bruce Keihner, included with subscription agreements at Farney Dec. Ex. 26). Neither Daniels nor Observation Capital, however, qualified as an "accredited investor" under Securities Act Rule 501(a). Neither Daniels nor Observation Capital met the asset or income tests of

Securities Act Rules 501(a)(5), 501(a)(6) and 501(a)(8) because neither Daniels nor Observation Capital had a net worth of $1,000,000 or annual income of $200,000 for the period 2005 through 2009. Furthermore, Daniels could not rely on his prior status as a registered representative; his Series 7 and 63 licenses had expired eight years before the Offerings, thus making him ineligible to rely on Securities Act Rule 501(a)(1). Neither he nor Observation Capital qualified under any of the other defined categories of accredited investor. These circumstances rendered Rule 504(b)(1)(iii) unavailable.

Even assuming that Observation Capital or Daniels qualified as an accredited investor, none of the Texas state law provisions cited by Pure H20 satisfies the requirements of Rule 504(b)(1)(iii) because none of these provisions expressly permits general solicitation or general advertising:

- Texas Securities Act Section 5(H) does not apply and is silent on the issue;
- Texas Securities Act Section 5(T) does not apply because it merely permits the Texas State Securities Board to allow other exemptions through rules, regulations, or orders;
- Texas Securities Act Section 7 does not apply because it concerns registration, rather than an exemption; and
- Rule 109.4 (which in 2005 superseded Rule 109.3(4) referenced in the Pure H20's offering documents) does not expressly permit general solicitation or general advertising.

No other potential Regulation D exemptions are available for Pure H20's offer and sale of securities: Rules 505 and 506 are not available because Pure H20 failed to "exercise reasonable care" to limit resales (*e.g.*, by placing a restrictive legend on the shares) pursuant to

Rule 502(d). Securities Act Rules 505(b)(1), 506(b)(1), and 502(d). Not only did Pure H20 or Doxey not "exercise reasonable care" to limit resales, they took steps to ensure the shares would be free-trading and unrestricted. These steps are evidenced in Doxey's letters to the transfer agent specifically directing that the shares be issued "without a restrictive legend." For these reasons, Regulation D is not an available exemption. Furthermore, no other exemptions from registration apply, and the Respondents have offered none.

Finally, Doxey cannot argue that he was merely relying on the advice of the attorney who drafted the opinion letters for Pure H20's transfer agent (Doxey Answer to OIP at p.17, ¶ D.3). As discussed above, Section 5 has no scienter requirement. The advice of counsel "provides no protection against a violation of a strict liability statute like Section 5." *SEC v. Cavanagh,* 2004 WL 1594818, at *17 (S.D.N.Y. July 16, 2004), *aff'd,* 445 F.3d 105 (2d Cir. 2006); *see also SEC v. Friendly Power Co. LLC*, 49 F.Supp.2d 1363, 1368 (S.D. Fla. 1999).

iii. Daniels' Direct Participation in Observation Capital's Resales

Daniels was Observation Capital's sole owner, officer and director at the time of the offerings. He communicated directly with Doxey regarding Observation Capital's providing funding to the company; negotiated the terms of each agreement; signed each subscription agreement on behalf of Observation Capital; and directed Observation Capital to resell over 258 million of those shares. Daniels is therefore liable under Section 5(a) and (c).

iv. No Exemptions Apply to Observation Capital's Resales

There is no exemption available for Observation Capital's resales of Pure H20 stock. Daniels cannot claim that Observation Capital's resales were proper because the securities were issued to it pursuant to Rule 504(b)(1)(iii) of the Securities Act and were therefore unrestricted;

as discussed above, Pure H20's offer and sale did not meet the requirements of Rule 504, and this exemption is unavailable.

Observation Capital's resales also do not qualify for Section 4(1) of the Securities Act, which exempts transactions by any person other than an issuer, underwriter, or dealer, because Observation Capital meets the definition of "underwriter" in Section 2(a)(11) of the Securities Act. To be an underwriter, the purchaser (1) must have acquired the securities "with a view to" distribution, and (2) must have made the sale "for an issuer in connection with" a distribution. *Id.* In determining whether securities were bought "with a view to distribution," courts ask the objective question: did the securities "come to rest in the hands of the securities holder?" *Ackerberg v. Johnson*, 892 F.2d 1328, 1335 (8th Cir. 1989); *see also In re Wonsover*, 1999 WL 100935, at *6 n.25 (distribution of securities within a relatively short time of acquisition is evidence of intent to distribute). Moreover, the safe harbor, Rule 144 of the Securities Act, which delineates "persons deemed not to be engaged in a distribution and therefore not underwriters," is not available to Observation Capital because the shares it received were of a non-reporting issuer and were not held for at least one year. Securities Act Rule 144 (d)(2).

III. Relief

A. Cease-and-Desist Orders

Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to impose an order requiring any person who is violating, has violated or is about to violate any provision of that respective title or any rule or regulation thereunder to cease and desist from committing or causing such violation and any future violation of the same provision, rule or regulation. In evaluating whether a cease-and-desist order is necessary and appropriate, the following factors are considered: the egregious nature of the respondent's actions; the degree

of scienter; the isolated or recurrent nature of the infraction; the respondent's recognition of the wrongful nature of his conduct; and the likelihood of future violations. *Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of OptionsXpress, Inc. et. al,* Admin Proc. File No. 3-14848, 2013 WL 2471113, at *80-81 (June 7, 2013) (applying *Steadman* factors in determining cease-and-desist orders were appropriate). The Division must show some risk of future violations; however, "a single past violation ordinarily suffices to establish a risk of future violations." *In the Matter of Gordon Brent Pierce et. al,* Admin Proc. File No. 3-13927, 2011 WL 1790467, at *4 (May 11, 2011).

Application of the *Steadman* factors demonstrates that cease-and-desist orders against Doxey and Daniels are necessary and appropriate for the protection of investors. Doxey brazenly issued six materially false and misleading press releases over the course of 13 months despite knowing that pre-certification testing of the IHPWDS was not complete and that certification by NSF never even commenced. He was a direct participant in Pure H20's twelve unregistered offers and sales of securities, and Daniels was a direct participant in Observation Capital's immediate unregistered resales, over the course of eight months. These violations were not isolated, but recurrent. Additionally, Doxey has shown no remorse and refused to acknowledge the wrongful nature of his conduct. Given Doxey's position as president and chairman of Pure H20 and Daniels' past experience as a registered representative and stated desire to find employment again in the securities industry (Farney Dec. Ex. ¶ 36), both respondents are in positions that present opportunities for future violations. Cease-and-desist orders are necessary and appropriate.

B. Disgorgement and Prejudgment Interest

Section 8A(e) of the Securities Act authorizes the Commission to enter an order requiring an accounting and disgorgement, including reasonable interest, in any cease-and-desist proceeding. Disgorgement is an equitable remedy "designed to deprive [respondents] of all gains flowing from their wrong." *OptionsXpress, Inc.,* 2013 WL 2471113 at *82 (*citing SEC v. AMX International, Inc.*, 872 F.Supp. 1541, 1544 (N.D. Tex 1994). Disgorgement need only be a "reasonable approximation of profits causally connected to the violations." *OptionsXpress, Inc.,* 2013 WL 2471113, at *83 (*citing First City Financial Corp., Ltd,.* 890 F.2d 1215, 1231 (D.C. Cir. 1989). Once the Division shows that its disgorgement figure reasonably approximates the unjust enrichment, the burden shifts to the respondents to demonstrate clearly that the Division's figure is not a reasonable approximation. *Gordon Brent Pierce,* 2011 WL 1790467 at *5.

The Division respectfully requests disgorgement of $57,654, plus prejudgment interest, from Doxey for his direct participation in Pure H20's unregistered offers and sales of securities; this figure represents the total amount received from Observation Capital for nearly 360 million shares of Pure H20. The Division respectfully requests disgorgement of $73,900.46, plus prejudgment interest, from Daniels for his direct participation in Observation Capital's unregistered resales of Pure H20 securities; this figure represents Daniels' illicit proceeds from those resales.

C. Civil Penalties

Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act authorize the Commission to impose civil monetary penalties. The statutes set out a three-tiered system for determining the maximum civil penalty for each act or omission; in addition, Section 21B(c) of

the Exchange Act specifies the following as further public interest considerations: 1) whether the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; 2) the harm to other persons resulting directly or indirectly from the act or omission; 3) the extent to which any person was unjustly enriched; 4) prior violations; 5) deterrence; and 6) such other matters as justice may require. *See also OptionsXpress, Inc.*, 2013 WL 2471113, at *84-87 (applying factors to determine Second and Third Tier penalties).

Doxey's violations were egregious, repeated, and carried a high degree of scienter. He does not admit the wrongful nature of his conduct or give any assurance against future violations, and his actions constitute fraud and, at best, showcase a reckless disregard for the federal securities laws and for investors in his company. Accordingly, the Division respectfully requests civil penalties against Doxey pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and a civil penalty against Daniels pursuant to Section 8A(g) of the Securities Act.

D. Officer and Director Bar

Section 21C(f) of the Exchange Act authorizes the Commission to bar anyone who has violated Section 10(b) of the Exchange Act or the rules and regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file periodic reports pursuant to Section 15(d) of the Exchange Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer. The *Steadman* factors discussed in III.A, above, are applicable in determining whether a bar is appropriate. *See In the Matter of Ran H. Furman,* Admin. Proc. File No. 3-14532, 2012 WL 2339281, at *7 (June 20, 2012).

Based on the conduct described herein and the egregious and recurring nature of Doxey's violations, it is likely that the misconduct will recur. Doxey exploited his role as president and CEO of Pure H20 to authorize false and misleading press releases and to make false and misleading statements to an investor in a misguided attempt to secure additional funding for his cash-strapped company. Therefore, an officer and director bar against Doxey is appropriate.

E. Penny Stock Bars

Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to impose a penny stock bar on any person who committed any of certain enumerated violations while participating in an offering of penny stock. During the relevant period, the securities of Pure H20 qualified as a "penny stock" because they did not meet any of the exceptions from the definition of a "penny stock," as defined by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. Among other things, the securities were equity securities: (1) that were not an "NMS stock," as defined in 17 CFR 242.600(b)(47); (2) traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets and average revenue below the thresholds of Rule 3a51-1(g)(1); and (4) did not meet any of the other exceptions from the definition of "penny stock" contained in Rule 3a51-1 under the Exchange Act. Doxey and Daniels were "person[s] participating in an offering of penny stock" because they engaged in activities for the purpose of issuing, trading and/or inducing or attempting to induce the purchase or sale of securities, each of which was a penny stock.

The standard for imposing a penny stock bar mirrors that for imposing an officer and director bar, and Law Judges generally apply the *Steadman* factors discussed in III.A, above. *See In the Matter of Stanley C. Brooks and Brookstreet Securities Corp.,* Admin. Proc. File No. 3-14983, 2012 WL 6132660, at *3-4 (December 11, 2012) (applying *Steadman* factors in

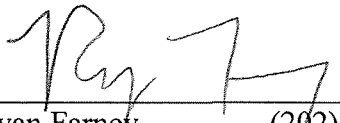
imposing a penny stock bar). In this case, penny stock bars are appropriate against both Doxey and Daniels due to the egregious and recurrent nature of their violations and the likelihood of future penny stock violations, given Doxey's age and position as president and chairman of Pure H20 and Daniels' age, past experience as a registered representative and stated desire to help small companies solicit investors for Securities Act Rule 506 offerings.

CONCLUSION

For the reasons stated herein, the Division respectfully requests that the Court grant its motion for summary disposition of this action against Respondents Doxey and Daniels pursuant to Rule 250 of the Commission's Rules of Practice; grant the relief requested; and grant such other and further relief as this Court may deem just and proper.

Dated: February 5, 2014

Respectfully submitted,



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