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
BRIEF IN OPPOSITION TO RESPONDENT'S PETITION FOR REVIEW

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The Division respectfully submits this memorandum of law in opposition to the petition for review filed by Respondent Joseph P. Doxey ("Doxey" or "Respondent").

INTRODUCTION AND PROCEDURAL HISTORY

On November 22, 2013, the Commission instituted proceedings against Respondent Joseph P. Doxey, the founder, chairman, chief executive officer, president and director of Pure H20 Bio-Technologies, Inc. ("Pure H20" or the "Company"), pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b)(6)(A) and 21C of the Securities Exchange Act of 1934 ("Exchange Act").[1]

The Order Instituting Proceedings ("OIP") alleged that from April 2008 through May 2009, Doxey drafted and caused Pure H20 to disseminate six materially false and misleading press releases concerning independent certification of a water purification system (the "System") that Pure H20 was purportedly developing. The OIP further alleged that Doxey made material misstatements and omissions in soliciting direct investment in Pure H20 over a nine month period ending in May 2009 from William J. Daniels ("Daniels"), who relied on those misstatements and omissions in purchasing Pure H20 stock. The OIP also alleged that Doxey orchestrated Pure H20's unregistered offering and sale of nearly 360 million shares to Observation Capital, LLC, Daniels' investment company, through a series of twelve private placements, generating illicit proceeds to the Company of $57,654.

On the Division's Motion for Summary Disposition, the Administrative Law Judge ("ALJ") issued an Initial Decision on May 15, 2014 finding that Doxey willfully violated Section 10(b) of the Exchange Act; Exchange Act Rule 10b-5 thereunder; and Sections 5(a), 5(c) and

[1] In the same Order Instituting Proceedings, the Commission instituted proceedings against William J. Daniels pursuant to Section 8A of the Securities Act and Section 15(b)(6)(A) of the Exchange Act. Daniels did not file a petition for review of the Initial Decision in this proceeding, and the Commission issued a finality order with respect to him on July 14, 2014.

17(a)(1), (2) and (3) of the Securities Act. Initial Decision ("ID") at 1. After considering all of the record evidence and the parties' arguments, the ALJ found that Doxey made "numerous" misrepresentations and omissions in the six press releases (ID at 17); that the misrepresentations concerning certification of the water purification system were material (by, among other things, Doxey's own admission, ID at 18); that Doxey exhibited a "high degree of scienter" by knowingly distributing the six false press releases (ID at 19); and that Doxey failed to prove that Pure H20 was entitled to any exemption from registration with respect to the unregistered offerings and sales of stock to Observation Capital (ID at 20). The ALJ also determined that it was appropriate and in the public interest to impose against Doxey a cease-and-desist order; disgorgement of $57,654; an officer and director bar; and a penny stock bar. ID at 30-31.

In his brief to the Commission, Doxey states vaguely that he "disagrees" with the ALJ's Initial Decision (Doxey Brief at 2) and that the Division's "statements" (and presumably, the Initial Decision's findings of fact) are "argumentative" and "inaccurate" (Doxey Brief at 4), but offers nothing in the way of specifics beyond a bald assertion that Pure H20 actually had the financial resources to pay for certification testing of the System despite significant and compelling evidence to the contrary. Doxey also claims that he was "promised" an opportunity to present an "item by item" argument personally before the ALJ (Doxey Brief at 6), while ignoring the fact that he knowingly waived his right to an in-person hearing within the time frame contemplated by the OIP. Simply stated, Doxey has had ample opportunity to submit evidence and put on his case. He cannot now claim otherwise just because he is dissatisfied with the Initial Decision.

For the reasons stated herein, the Initial Decision should be affirmed.

ARGUMENT

I. Standard of Review

Pursuant to Rule 411(a) of the Commission's Rules of Practice, in reviewing an Initial Decision, the Commission may "affirm, reverse, modify, set aside or remand for further proceedings, in whole or part, an Initial Decision" and it "may make any findings or conclusions that in its judgment are proper and on the basis of the record." 17 C.F.R. § 201.411(a). The scope of the Commission's review is limited by "the issues specified in the petition for review" and "the issues, if any, specified in the briefing schedule order"[2] or "any other matters" that the Commission deems material provided that the parties receive notice from the Commission. 17 C.F.R. § 201.411(d).

Doxey was required, pursuant to Rule 410(b), to set forth in his petition for review the specific findings and conclusions of the Initial Decision to which he takes exception, with supporting reasons for each exception. His petition of June 10, 2014 falls far short of this standard; in it, Doxey merely states that he filed his petition to "correct numerous errors of fact" in the Initial Decision without identifying what any of those purported errors were.[3] The only specific issue outlined in Doxey's petition is a conclusory and unsupported statement that Doxey was offered, and is relying on, an opportunity to present his case in person before the ALJ. The Division will respond to this argument and other assertions made by Doxey in his brief in support of his petition for review.

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[2] The Commission's Order Granting Petition for Review and Scheduling Briefs dated June 18, 2014 stated that, on its own initiative, the Commission has determined to review what sanctions, if any, are appropriate in this matter.

[3] Pursuant to Rule 410(b), the Commission may, in its discretion, deem Doxey to have waived any exception to the Initial Decision not stated in the petition for review.

II. Pure H20's Dire Financial Condition Left it Unable to Pay for Pre-Certification Testing of the System, Let Alone Actual Certification

In his brief, Doxey claims that Pure H20's financial condition in 2008 and 2009 was stable and that the Company had the funds to proceed with certification of the System by NSF International ("NSF").[4] Doxey Brief at 3. This claim ignores substantial evidence to the contrary which proves that Pure H20 was actually in perilous financial shape at the time and lacked funds to pay for the completion of certain pre-certification tests, let alone pay for NSF certification or the construction of a manufacturing facility (a necessary prerequisite for NSF testing). Furthermore, even if Pure H20 had the financial resources to pay, as Doxey claims, that does not change the fact that NSF never performed any work for Pure H20 and that the System was never close to being certified, despite Doxey's repeated fraudulent press releases claiming that it was.

Doxey's only support for his assertions about Pure H20's finances comes in the form of conclusory statements that Pure H20 "closed an equity loan in early 2009" from Appalachian Bank. Offering no specific citations to the record, he instead refers generally back to what he terms his "OIP," which is actually his Opposition to the Division's Motion for Summary Disposition, filed on February 27, 2014. This Opposition was filed as one enormous document which commingles prepared text with unauthenticated exhibits, such that it is difficult to tell where certain exhibits stop and Doxey's editorializing begins. Indeed, the ALJ found "many indications that Doxey altered the evidence" submitted with his Opposition (ID at 4, n.7), and Doxey himself admits that he "intentionally marked and highlighted" emails that he submitted with his Opposition. Doxey Brief at 6.

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[4] *See* pages 5-6 of the Initial Decision for a discussion of NSF and the importance to Pure H20 of its potential certification of the System.

In any event, nothing to which Doxey cites can overcome the overwhelming evidence that Pure H20 was nearly bankrupt during the relevant time period and had nowhere near the financial capability to pay for the NSF certification that Doxey's press releases repeatedly and falsely claimed was imminent. The Initial Decision, citing extensive underlying evidence, makes this clear, finding that "Pure H20 was struggling financially in 2008 and 2009" and "never could afford to go through testing with NSF... because it never had the money to pay for it." ID at 7. Doxey himself was acutely aware of this. In a January 13, 2009 email to a Pure H20 consultant, 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]." (Ex. 16 to Division of Enforcement's Motion for Summary Disposition ("Div. Ex.")) When asked in investigative 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, my backup was to sell the shell for $150 thousand..." (Div. Ex. 7 at 206:8-16); *see also* Doxey Opposition to Division's Motion for Summary Disposition ("Doxey Opposition") at 47-48 ("The financial crisis [in the fall of 2008] was the end for [Pure H20]... We need help. We were looking for money to pay NSF.") The Company's purported loan from Appalachian Bank in 2009 does not help Doxey on this point, as Doxey admitted that at the time the loan monies came in, the funds were already spoken for due to other outstanding debts and never reached NSF. Div. Ex. 7 at 192:1-193:3. Moreover, since the construction of a manufacturing facility was a necessary prerequisite for NSF certification, the April 1, 2009 press release touting the Appalachian Bank loan for construction of such a facility (Div. Ex. 21) is an

implicit admission that the Company was not ready to proceed with NSF certification at that time at all.

Even assuming Pure H20 could actually pay NSF certification, NSF never actually performed any work for Pure H20, and thus the certification process never began. ID at 6-7. An email sent by an NSF administrator on May 5, 2009—the day after the last of the six press releases at issue was distributed—reveals that as of that date, NSF had "not yet advanced to the testing stage" with respect to the System. Div. Ex. 23. As the Initial Decision notes, Doxey himself admitted that as of February 2014, five years after most of the relevant conduct transpired, the System was still not ready for NSF certification. ID at 7.

As he admitted in his investigative testimony and in his Opposition, Doxey knew that NSF certification was critical. (Div. Ex. 7 at 34:9-10; Doxey Opposition at 48; Initial Decision at 18) His repeated false statements in the press releases that NSF certification was imminent demonstrate that he knew that investors would view that development as material as well. *See, e.g., 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, 424-25 (S.D.N.Y. 2001) (finding that though EPA approval was not required for the product at issue, the defendant made EPA standards relevant and material by promoting their importance in correspondence with shareholders).

III. Doxey Waived His Right to an In-Person Hearing; Even if Such a Hearing Had Been Held, it Would Not Have Changed the Outcome of the Initial Decision

In his petition for review, Doxey claims that at the parties' initial prehearing conference, he was "awarded and offered" an opportunity to present his case in person before the ALJ. In so

doing, Doxey appears to be arguing that the ALJ committed prejudicial error by proceeding with a summary disposition briefing schedule in lieu of a live hearing. The transcript of the prehearing conference, however, shows that Doxey waived his right to an in-person hearing after the ALJ carefully explained the relevant procedures to Doxey and informed him of the consequences of waiving that right and proceeding with summary disposition. Even if Doxey was unsure as to what rights he was waiving, an in-person hearing would not have changed the outcome of the Initial Decision, as Doxey's own admissions in investigative testimony and in filings with the ALJ overwhelmingly confirm his violations.

The OIP ordered a public hearing for the purpose of taking evidence on the Division's allegations to be convened between 30 and 60 days from service of the OIP on the respondent. OIP at 5. The record demonstrates that service was effected on Doxey on November 26, 2013. *See, e.g.,* Order Postponing Hearing and Scheduling Prehearing Conference dated December 16, 2013. The hearing was originally scheduled to take place on December 31, 2013 pursuant to the November 25, 2013 Order Scheduling Hearing and Designating Presiding Judge; with Doxey's consent, the Division moved to postpone the hearing date and schedule a prehearing conference, which was held on January 9, 2014 by telephone.[5]

At the prehearing conference, the ALJ, mindful that Doxey was appearing pro se, explained carefully to Doxey his rights and obligations. The ALJ confirmed that Doxey had been served with the OIP (Prehearing Transcript ("PT") at 6:18-7:12); explained the significance of the OIP (PT at 5:11-6:1); and repeatedly stressed Doxey's obligation to file an answer to the OIP (PT at 5:11-9:17, 16:5-18:22) while also extending Doxey's deadline for filing his answer (PT at 16:18-17:5).

[5] Daniels did not participate in the prehearing conference.

Critically, the ALJ explained that pursuant to the OIP, Doxey had the right to have a hearing between 30 and 60 days of service of the OIP, unless Doxey waived that right and consented to proceeding with the summary disposition process according to Commission Rule of Practice 250. The ALJ said:

> Now, let me just say, Mr. Doxey, you have the right, because this is what we call a cease and desist proceeding, to have a hearing in this case no later than, well, January 24th, which is when your answer's due. Most of the time, not always, but most of the time Respondents in these cases waive that requirement, because they feel like they need more time to respond to the OIP. Sometimes they don't waive it. Sometimes they insist on a hearing. What do you want to do?

PT at 18:23-19:9. Doxey's response was mixed. After initially stating that he "wouldn't mind coming to Washington to talk to you in the court," Doxey then told the ALJ that he would simply "send you my work by January 24th" instead, implying that he would not be ready for an in-person hearing by the 60-day deadline imposed by the OIP. PT at 19:10-11; 20:2-3. The ALJ asked Doxey to clarify what he was requesting:

> Now, let me go back a little bit and say you have the right, if you want to, to do things differently. If you want by the 24th to come to Washington and have a hearing with me, where you put on witnesses and evidence, and I sit in the courtroom and I hear your witnesses and your evidence and the Division puts on its witnesses, and you cross examine the Division's witnesses and all that stuff, we can do that, if that's what you want to do.

PT at 20:14-22. After Doxey asked when that would happen, the ALJ explained again that because of the 60-day deadline in the OIP, the in-person hearing would have to be by January 24, 2014:

> Okay. Well, let me just say there's two possibilities. One possibility, if you demand your right to do that [have an in-person hearing] within 30 and 60 days after service of the OIP, then we would have to do it no later than January 24th. Okay. That's one possibility. The other possibility is if you're willing to waive your right to doing it on the 24th, then we can have these [summary disposition] motions that I've talked about. And if I determine that we ought to have a hearing, a live, in-person hearing, where you cross examine the Division's witnesses and you put on your own witnesses and so forth, then that would be

> sometime down the road some months from now. So what I'm asking you is, do you want to do it within the next two weeks, or do you want to wait and see?

PT at 20:25-21:13. Doxey, wanting more time to prepare his case, replied "I want to wait and see, because I have to do this work, which I have to get to you by the 24th." PT at 21:14-16. The ALJ then confirmed that there would be no hearing between 30 and 60 days after service of the OIP. PT at 22:4-6.

As the transcript shows, the ALJ asked Doxey three separate times if he wanted to hold an in-person hearing by January 24, and explained the consequences to Doxey of waiving that right. At no time did the ALJ "promise" an in-person hearing; to the contrary, the ALJ made clear that if Doxey waived his right, then a trial was not assured and would be held only at the ALJ's discretion. *See* PT at 12:18-24 ("So what's happening here is this is a case where we can have a trial. It's possible that we will have a trial, and it's possible that we will not have a trial. And I will determine whether or not we have a trial after I review some motions filed by, in this case, [the Division] or you, if you want to"); PT at 19:22-20:1 ("If after I review the motions... if I determine that we have to have a hearing, then I'll give you a hearing and you can come to Washington and you can make your case to me"); PT at 7-12. Doxey ultimately waived his right to an in-person hearing, and the ALJ properly granted the parties leave to file motions for summary disposition.

Even assuming that Doxey was unsure of what rights he was waiving by agreeing to the summary disposition process, an in-person hearing would not have changed the Initial Decision because the record evidence and, tellingly, Doxey's own admissions conclusively show that he violated the provisions of the federal securities laws at issue here. Doxey admitted that he controlled the distribution of the six press releases and had final authority over their content. ID at 11; Div. Ex. 7 at 175:3-24; 32:3-20; 123:21-125:3; 130:1-13; Doxey Answer to OIP at 16.

Doxey insisted that Pure H20's shareholders "all know we don't have the money" to proceed with NSF certification and could "read between the lines" that certification was delayed for a lack of resources. ID at 12-13; Div. Ex. 7 at 170:4-12; 163:19-164:7; 171:14-172:12. Doxey admitted in February 2014—almost six years after he began claiming in the press releases that NSF certification was imminent—that the System was still not ready for NSF certification, ID at 7, and confirmed throughout the Division's investigation and this proceeding that the System had never even finished all pre-certification testing and was never sent to NSF. Div. Ex. 7 at 67:24-68:5; 68:8-70:3; 74:20-75:4; 95:16-96:18; Doxey Opposition at 46; Doxey Answer to OIP at 16. Doxey admitted that he met with Daniels to secure Daniels' investment in the Company and admitted that he sent the letters to Pure H20's transfer agent directing the issuance of shares without restrictive legend. Div. Ex. 7 at 143:2-145:3; 157:5-8. Doxey admitted that he assumed that Daniels and Observation Capital were accredited investors but that he did not pursue the issue and simply took Daniels at his word. Div. Ex. 7 at 144:8-149:13; 150:9-15; 152:21-153:18; 157:9-14.

Doxey cannot argue that he was denied an opportunity to present his case. The ALJ thoroughly considered all of Doxey's evidence, reading Doxey's exhibits "liberally" and giving them "as much weight as reasonably possible" despite concerns about their reliability and authenticity. ID at 4, n.7. The ALJ then properly concluded that there was no genuine issue with regard to any material fact and that the Division was entitled to summary disposition as a matter of law pursuant to Rule of Practice 250(b). Having waived his right to an in-person hearing (and having received the corresponding benefit of additional time in which to prepare his case), Doxey cannot now complain when the summary disposition process did not work out to his liking. *See In the Matter of Russo Securities, Inc. and Kimberly Kent,* 2001 WL 379064, at *8

(Apr. 17, 2001), *citing In the Matter of David T. Fleischman, et al.,* 43 SEC 518, 1967 WL 87757, at *3 (Nov. 1, 1967) ("Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action"); *In the Matter of Joseph P. Galluzzi,* 78 SEC Docket 906, 2002 WL 1941502, at *3 (Aug. 23, 2002) (summary disposition properly granted against pro se respondent who was advised by the ALJ to demand an in-person hearing in his opposition to Division's motion for summary disposition if he wanted such a hearing, but who did not so demand).

IV. The Sanctions Against Doxey Are Appropriate

The Initial Decision properly concluded that Doxey willfully violated Section 10(b) of the Exchange Act; Exchange Act Rule 10b-5 thereunder; and Sections 5(a), 5(c) and 17(a)(1), (2) and (3) of the Securities Act. Applying the factors identified in *Steadman v. SEC*, 603 F.2d 1126 (5th Circuit 1979), *aff'd*, 450 U.S. 91 (1981), the ALJ found that "the public interest factors weigh in favor of a robust sanction against Doxey," whose level of scienter was "high," whose conduct was "recurrent and otherwise egregious," who has "shown no recognition of the wrongfulness of his conduct," and who "has not provided any assurances that he will not commit wrongful conduct in the future." ID at 22-24. The ALJ determined that: (i) a cease-and-desist order is appropriate; (ii) Doxey should be ordered to disgorge $57,654, plus prejudgment interest, representing his proceeds from his unregistered offers and sales of Pure H20 shares; (iii) Doxey should be permanently barred from acting as an officer or director pursuant to Exchange Act Section 21C(f); and (iv) Doxey should be permanently barred from participating in an offering of penny stock pursuant to Exchange Act Section 15(b). ID at 30-31.

A. Doxey's Violations Were Willful

A violation is willful if the act that constituted the violation was intentional. ID at 16 (*citing Wonsover v. SEC*, 205 F.3d 408, 413 (D.C. Cir. 2000); *Steadman*, 603 F.2d at 1135. Willfulness "means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law." *Wonsover,* 205 F.3d at 414 (citing *Hughes v. SEC,* 174 F.2d 969, 977 (D.C. Cir. 1949)); *see also Tager v. SEC,* 344 F.2d 5, 8 (2d Cir. 1965) ("There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.")

Here, Doxey admitted that he controlled the distribution of, and had final authority over, the six press releases. ID at 11; Doxey Answer to OIP at 16; Div. Ex. 7 at 175:3-24; 32:3-20; 123:21-125:3; 130:1-13. In addition, Doxey met with Daniels personally and directly offered and sold Pure H20 shares to Daniels. ID at 13-14; Div. Ex. 25 at 18:14-23; 19:22-20:3; 20:10-13; 35:35-36:2; 3:24-45:17; 52:19-54:8. Finally, Doxey sent letters to Pure H20's transfer agent directing the issuance of shares to Daniels without restrictive legend. ID at 15; Div. Ex. 7 at 157:5-8; Div. Ex. 26. This record evidence supports the Initial Decision's finding of willfulness.

B. A Cease-and-Desist Order is Appropriate

Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to impose a cease-and-desist order against any person who is violating, has violated or is about to violate any provision of those Acts or any rule or regulation thereunder. The Division must show some risk of future violations; however, "it need not be very great." *KPMG Peat Marwick LLP,* 74 SEC Docket 357, 2001 WL 47245, at *24 (Jan. 19. 2001). Indeed, as the Commission has stated, "[a]bsent evidence to the contrary, a finding of a violation raises a sufficient risk of future violation. To put it another way, evidence showing that a Respondent violated the law once probably shows a risk of repetition that merits our ordering him to cease

and desist." *Id.* In evaluating whether a cease-and-desist order is necessary and appropriate, the *Steadman* 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. *Id.* At *23-24.

The Initial Decision identified the following facts, among others, which the Court appropriately considered in determining that a cease-and-desist order against Doxey was appropriate:

> 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." [citation omitted] Although his ill-gotten gains are relatively small, Doxey's conduct was recurrent and otherwise egregious.

ID at 23. The Initial Decision further found that Doxey exhibited a high level of scienter; that Doxey has shown no recognition of the wrongfulness of his conduct; and that Doxey has not provided any assurances that he will not violate the federal securities laws in the future. ID at 23-24. Moreover, Doxey's continued status as president and chairman of Pure H20 places him in a position that presents opportunities for future violations. A cease-and-desist order is appropriate and in the public interest.

C. Disgorgement of Doxey's Ill-Gotten Gains is Appropriate and Reasonable

Securities Act Section 8A(e) authorizes disgorgement of ill-gotten gains, including reasonable interest, in cease-and-desist proceedings. Disgorgement is an equitable remedy, imposed to force a defendant to give up the amount by which he was unjustly enriched. ID at 25 (*citing SEC v. Contorinis*, 743 F.3d 296, 301 (2d Cir. 2014)). The calculated disgorgement "need only be 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). Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden shifts to the respondent to demonstrate clearly that the Division's disgorgement figure is not a reasonable approximation. *See SEC v. Lorin,* 76 F.3d 458, 462 (2d Cir. 1996); *SEC v. Patel,* 61 F.3d 137, 140 (2d Cir. 1995). Any risk of uncertainty as to the disgorgement amount falls on the wrongdoer whose illegal conduct created the uncertainty. *First City*, 890 F.2d at 1232.

The undisputed record evidence shows that Daniels made payments of $57,654 to Pure H20 between August 2008 and July 2009 in exchange for nearly 360 million shares in the Company. ID at 14; Div. Ex. 27 (collected wire transfers and payments from Daniels to Pure H20). The ALJ appropriately ordered Doxey to disgorge this entire amount, representing the sum by which Doxey was unjustly enriched by the unregistered sales of shares. ID at 25-26. Doxey has offered no challenge to this amount and has not met his burden of demonstrating that this disgorgement figure is unreasonable.

D. An Officer and Director Bar is Appropriate

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. In determining that an officer and director bar against Doxey was appropriate and in the public interest, the ALJ applied both the *Steadman* factors, listed above, and the factors articulated in *SEC v. Patel*, 61 F.3d 137 (2nd Cir. 1995), which substantially overlap with the *Steadman* factors and include: (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. ID at 28-29.

Doxey appears to challenge the application of the *Patel* factors to his conduct, particularly the 5th factor regarding the defendant's economic stake in the violation. Doxey argues that he received no economic benefit from any of the conduct at issue in this proceeding since neither he nor any other Pure H20 officer or director has sold any of their shares in the Company since September 11, 2001, and further claims that Pure H20's stock price "never exceeded $.0001" in 2008-09. Doxey Brief at 7. In so doing, Doxey completely ignores the $57,654 that Pure H20 received from its sales of unregistered shares to Daniels during the relevant time period, a significant economic benefit reflected in the amount of disgorgement ordered by the ALJ. In fact, many of Daniels' payments for Pure H20 shares went directly to Doxey and not to any of Pure H20's corporate accounts. *See, e.g.,* Div Ex. 27 at SEC-003363-64 (wire transfer of $925 from Daniels directly to Doxey dated February 27, 2009). Additionally, Doxey's claim that Pure H20's stock price never rose above $0.0001 in either 2008 or 2009 is simply not true. The stock closed at $0.25 the day of the first of the six press releases was issued (April 1, 2008), and closed at $0.0001 or significantly higher on the dates of all six releases. Div. Ex. 24. Moreover, Doxey ignores the very real impact his press releases had on the stock price itself: Pure H20's share price jumped 25%, 43% and 57% on the days of the October 22, 2008, March 3, 2009 and April 1, 2009 releases, respectively. *Id.*

Based on the record evidence, Doxey's violations were egregious, recurring, 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 the Company. 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, and his position with Pure H20 leaves him with an opportunity to commit similar wrongful acts in the future. An officer and director bar against Doxey is appropriate and in the public interest.

E. A Penny Stock Bar is Appropriate

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 C.F.R. § 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 *Steadman* factors described above are applicable to determining the appropriateness of a penny stock bar. ID at 30 (*citing SEC v. Metcalf,* 2012 WL 5519358, at *4 (S.D.N.Y. Nov. 13, 2012)).

The ALJ found that the same record evidence that supported an officer and director bar against Doxey also supported the imposition of a penny stock bar. ID at 30. Given the egregious

and recurrent nature of Doxey's violations and the likelihood of future violations, a penny stock bar is appropriate and in the public interest.

CONCLUSION

For all of the foregoing reasons, the Division respectfully requests that the Commission affirm the Initial Decision and grant such other and further relief as may be just and proper.

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Respectfully submitted,

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