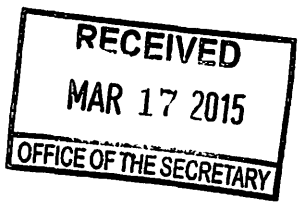
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15974

In the Matter of

JAMES E. COHEN and
JOSEPH A. CORAZZI,

Respondents.

DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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INTRODUCTION

From August 2009 through late 2011, Respondents James Cohen ("Cohen") and Joseph Corazzi ("Corazzi") engaged in a scheme to defraud in violation of Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (the "Securities Act"). More specifically, as the Division proved at the February 2015 hearing by a preponderance of the evidence, beginning in early 2009, Cohen and Corazzi founded and controlled Natural Blue Resources as a private company ("Natural Blue") and a short time later, orchestrated its reverse merger into the public company Datameg. From the time it was founded, and at all times when it was a public company, Cohen and Corazzi controlled the company, acting as *de facto* officers, and obtained substantial money and stock. They made the strategic management decisions at Natural Blue, but always first and foremost serving their own interests. And most importantly, Cohen and Corazzi obscured their actual roles at Natural Blue, eventually papering their supposed roles with "consulting" agreements, despite Cohen's blatant admission, on audiotape, that Natural Blue was "his company." Through their fraudulent scheme, Cohen and Corazzi avoided public disclosure of the major roles they played at Natural Blue, and concealed from the investing public Cohen's conviction for crimes of fraud and Corazzi's statutory bar from serving as an officer or director of a public company, in violation of Section 17(a)(1) and 17(a)(3) of the Securities Act of 1933.

As a result of Cohen and Corazzi's conduct, the Division of Enforcement ("Division") requests that the Administrative Law Judge ("ALJ"):

(i) Make findings that Cohen and Corazzi willfully violated Section 17(a)(1) and Section 17(a)(3) of the Securities Act;

(ii) Based on such findings, issue an order pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 21B of the Exchange Act and/or Section 21C of the Exchange Act, as appropriate, (a) requiring Cohen and Corazzi to cease and desist from committing or causing violations of and any future violations of Sections 17(a)(1) and (a)(3) of the Securities Act; (b) requiring Cohen and Corazzi to disgorge their ill-gotten gains, with interest; (c) requiring Cohen and

Corazzi to pay a civil penalty; (d) imposing a permanent bar prohibiting Cohen and/or Corazzi from acting as an officer or director for any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and (e) imposing such other remedial relief as the ALJ deems appropriate.

STATEMENT OF FACTS

Cohen and Corazzi's Relationship and Disciplinary Histories

Respondents James Cohen and Joseph Corazzi have had a professional and personal relationship spanning at least the last two decades.[1] See Tr. 51-52; 797-799; 805-806. Both Cohen and Corazzi previously faced allegations of financial fraud, and both had been sanctioned in connection with such conduct. Among other things, Cohen had been incarcerated in New York in the mid-2000's, and Corazzi had been barred in 2002 as an officer or director of a public company. Div. Ex. 300 at ¶¶41-43, ¶¶46-47.

Prior to founding Natural Blue in 2009, Cohen was a registered representative for various broker-dealers from 1987 to 1997 and subsequently was barred from association by the National Association of Securities Dealers ("NASD"). Div. Ex. 300 at ¶ ¶ 39-40. On April 5, 2004, the Supreme Court of the State of New York sentenced Cohen to prison for a term of one to three years and ordered him to pay $545,000 in restitution following his guilty pleas to attempted enterprise corruption and attempted grand larceny in the first degree. Div. Ex. 300 at ¶43.

From 1990 to 1999, Corazzi served as Chairman and Chief Executive Officer of Las Vegas Entertainment Network, Inc., a public company registered with the Commission that was sued by the Commission for fraudulently overstating its assets. Div. Ex. 300 at ¶45. On October 24, 2002, the Commission obtained a final judgment by consent against Corazzi that permanently enjoined him from violating the antifraud provisions, imposed a civil penalty of

[1] Citations to the transcript will be noted herein as "Tr. __." Citations to trial exhibits will be noted as Div. Ex. __ or Cohen Ex. ___. Respondent Corazzi did not offer any exhibits in connection with the hearing.

$75,000, and barred him permanently from acting as an officer or director of a public company. Div. Ex. 300 at ¶ 44-45.

Cohen and Corazzi Scheme to Conceal Their Disciplinary Histories and Roles as *De Facto* Officers at Natural Blue from the Investing Public

Natural Blue went through three stages as a public company – first, the initial reverse merger, second, its day-to-day operations and shift in corporate mission from water purification to steel recycling, and finally, the Atlantic Dismantling transaction. During all three stages of the company's existence, Cohen and Corazzi served as *de facto* officers of Natural Blue, setting corporate strategy and policies, and making day-to-day management decisions for the company. Among other things, Cohen and Corazzi founded Natural Blue as a private company, see Tr. 393, 476, 798, orchestrated its reverse merger into the public company Datameg, see Tr. 41-45, 56, 132-133, 288-295, 810, helped to run the company both before and after entering into "consulting" contracts with Natural Blue beginning in November 2009, see Div. Exs. 43, 44, and then independently negotiated a major transaction with Atlantic in January 2011 when Natural Blue's financial prospects were foundering, see Tr. 671-702, 1329-1341.

The evidence shows that Cohen and Corazzi fulfilled the core economic functions of officers of a public company, as defined by Division expert witness Professor Robert Daines. See Div. Ex. 301 (Daines direct testimony). Both before and after Natural Blue became public,[2] Cohen and Corazzi managed senior executives, controlled and managed day-to-day operations, and controlled strategic decisions. See, inter alia, Tr. 41-45, 56, 132-133, 218, 222-223, 290,

[2] While the OIP alleges that the Respondents' scheme began when Natural Blue became public, the OIP also explicates the conduct in which Cohen and Corazzi engaged in furtherance of the scheme prior to the reverse merger. This Court has already ruled that before-time evidence is admissible in this case. See Tr. 780-81; See City of Anaheim, Exchange Act Release No. 42140, 1999 SEC LEXIS 2421, at *4 (Nov. 16, 1999). Moreover, such evidence is directly relevant as to both the fraudulent scheme itself and the Respondents' scienter. See David Montanino, Release No. 1961, 2014 SEC LEXIS 4086 at *2 (Oct. 30, 2014) (admitting evidence of conduct prior to statute of limitations and ruling that if relevant such "acts... may be considered to establish [Respondent's] motive, intent, or knowledge with respect to violations that are alleged to have occurred within the statute of limitations.") Cf., Fed. R. Evid. 404(b) ("evidence of a crime, wrong, or other act is ... admissible [to prove] motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.")

294, 334, 403, 447, 801-803, 807, 823, 832-833, 842-843, 852-853, 856, 1598-1607, 1615-16; Div. Exs. 43, 44, 69, 264. In addition, Cohen had substantial responsibility for Natural Blue's financial operations, including custody of the books and records, approving the payment of invoices and making key financial decisions – and both Cohen and Corazzi had significant roles in drafting SEC filings for Natural Blue. See, inter alia, Tr. 346, 349, 352-353, 465, 576, 579-581, 828-830, 824-826, 830-831, 869; Div. Exs. 55, 80, 161, 266; Cohen Exs. 31, 413. Corazzi ran Natural Blue Steel, see Tr. 741, 891-893, 907-908, 962-963, Div. Exs. 44, 116, and managed the Natural Blue website, see Tr. 885, 959; Cohen Ex. 227; Corazzi Answer to OIP ("Corazzi Answer") at §3(c). Corazzi orchestrated a complete change in management for Natural Blue in January 2011, when it combined with Atlantic – just as Cohen had done in negotiating the reverse merger that took Natural Blue public. See Tr. 667-676, 732, 1337-1341; Div. Exs. 149, 150.

The evidence shows that Cohen and Corazzi ultimately obtained "consulting" agreements in November 2009 as part of a scheme to mask their roles as *de facto* officers at Natural Blue. They avoided disclosure of their disciplinary histories, which -- had Cohen and Corazzi been officers or directors -- would quickly have become public knowledge. Cohen and Corazzi's scheme to conceal their disciplinary backgrounds and roles as *de facto* officers afforded them the ability to raise substantial funds. Had potential investors known of Cohen's conviction and/or Corazzi's officer/director bar -- particularly given Cohen and Corazzi's roles as *de facto* officers -- they would never have invested funds with Natural Blue.

Stage One: Natural Blue Becomes a Public Company Through a Reverse Merger Structured and Negotiated by James Cohen

In early 2009, the CEO of the public company Datameg, James Murphy, received a telephone call from Leonard Tocci. See Tr. 39-40. Tocci, who was the President of American

Marketing and Sales, a plastics business based in Massachusetts and a subsidiary of Datameg, reported that he had received a telephone call from James Cohen, expressing interest in a business transaction with Tocci's company. See Tr. 39-40; 283-285. Murphy immediately called Cohen, and although Murphy expressed his negative reaction to Cohen having solicited Tocci in the first place, the two men began a dialogue about a possible business transaction involving Datameg. See Tr. 40-42.

After Cohen and Murphy first spoke by phone, the two men met face to face at the Florida offices of the public company Blue Earth Solutions ("Blue Earth"). See Tr. 40-42. During the initial meeting at Blue Earth, Cohen got Joseph Corazzi on the line so that Corazzi could "explain" to Murphy the details of a project relating to extraction of water in New Mexico by the private company Natural Blue Nevada. See Tr. 42-43. At that time, Cohen and Corazzi "proposed a type of merger" between Datameg and Natural Blue Nevada, which would result in Natural Blue becoming a public company. See Tr. 43-44. While Murphy did not know at that time the nature of Cohen's role with Blue Earth or Natural Blue, he and Datameg's counsel[3] negotiated a deal with Cohen over the following weeks, through which Blue Earth would acquire American Marketing and Sales, and Natural Blue Nevada would simultaneously reverse merge into Datameg, becoming a public company. See Tr. 53-54. According to the parties involved in this deal, Cohen ultimately planned to "sell Blue Earth back to what would then be Natural Blue [the public company]." Tr. 133-134; Div. Ex. 69 at 24 (Vuksich legal bills referencing "conference with Jim Cohen, Leonard Tocci and Jim Murphy re potential 3 part breakup of Datameg.").

[3] In April 2009, Vuksich began representing both Natural Blue and Datameg in these corporate negotiations, at Cohen's request. See Tr. 289-290; Div. Ex. 20 (April 28, 2009 letter from Vuksich to Datameg and Natural Blue Boards of Directors stating, *inter alia*: "*As I have discussed with James Cohen, Sr.*, I have been asked to immediately begin providing corporate counsel legal services to Natural Blue Resources, Inc."[.]) (*Emphasis added.*)

While Cohen did not have a formal position with either Natural Blue Nevada or Blue Earth (for which Cohen's wife, Patricia, allegedly served as CEO[4]), he nonetheless proposed the Blue Earth/Natural Blue transactions with Datameg and then led negotiations with Datameg on behalf of both companies. See Tr. 22-24, 53-56. Former Datameg CEO Murphy testified:

> Q. [W]ho negotiated the transaction on behalf of Natural Blue with Datameg?
> A. Jim Cohen.
> Q. Anybody else?
> A. Most of my dealings were with [Cohen].
> Q. And what about the transaction between American Marketing and Sales and Blue Earth Solutions? Who was negotiating on behalf of Blue Earth?
> A. Jim Cohen.
> Q. Anybody else?
> A. No.
>
> ...
>
> Q. [T]he reverse merger between Datameg and Natural Blue Resources, who first proposed that transaction?
> A. Jim Cohen.
> Q. And the transaction between American Marketing and Sales and Blue Earth Solutions, who first proposed that transaction?
> A. Jim Cohen.
> Q. When?
> A. It was early 2009.
> Q. And the ideas for those transactions didn't come from you, correct?
> A. No.
> Q. And were those transactions mentioned together?
> A. Yes.
> Q. By Mr. Cohen or separately?
> A. Together.

Tr. 53-56.

As all of those involved with these negotiations clearly understood,[5] and as the evidence plainly demonstrated at the hearing, Cohen controlled both Natural Blue and Blue Earth, despite

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[4] As the record reflects, Cohen's control over Blue Earth precisely mirrored his control of Natural Blue – i.e., he ran the public company without a formal title. While Cohen's wife was nominally "the CEO, a director, and the largest shareholder of Blue Earth," see Div. Ex. 300 ¶21, *Mrs. Cohen had no office at Blue Earth – only Cohen and his son worked there.* See Tr. 1604 (former Blue Earth and Natural Blue CFO testimony). Indeed, Cohen served as the CFO's liaison with Mrs. Cohen. Id. ("[M]ost of the things I did, I passed on to Cohen and he would take it to [Mrs. Cohen] if he needed a signature and he would bring it back to me.") Cohen's actions at Blue Earth are stark evidence of his intent as to Natural Blue – because they demonstrate Cohen's *modus operandi.*

[5] Paul Vukisch's assessment of Cohen's role at Blue Earth was typical of the witnesses at the hearing. "Because Mr. Murphy was dealing directly with him, I thought [Cohen] had a paramount role at Blue Earth." Tr. 465-466.

having no formal role at either, and functioned at all times as a *de facto* officer of Natural Blue.

Corazzi and Cohen Recruit Paul Pelosi and Toney Anaya to Serve as Officers of Natural Blue, in Furtherance of Their Scheme to Defraud Investors

While James Cohen negotiated the reverse merger with Natural Blue, Joseph Corazzi recruited Toney Anaya to serve as the CEO of the prospective public company. At that time, in early 2009, Anaya -- a former governor and attorney general of New Mexico -- was overseeing the implementation of stimulus funding for New Mexico at the request of then-Governor Bill Richardson, as well as practicing law through his own private firm. See Tr. 783-784. In 2008, Anaya had (unsuccessfully) invested about $60,000 in a "high-yield" investment program with Corazzi and gave him another $60,000 for a real estate investment, which he ultimately lost. See Tr. 787, 791-795. Prior to soliciting Anaya's investments, Corazzi had convinced Anaya that they knew each other for "many years" – and although Anaya did not specifically recall having met Corazzi previously, he knew that Corazzi's relative was an official in Anaya's administration in the 1970's. See Tr. 795-796. Anaya was also aware as of 2008, as reflected in his cooperation agreement with the Division and his settlement to negligence-based fraud in violation of Section 17(a)(2) of the Securities Act, that Corazzi was barred from serving as an officer or director of a public company because of a settlement with the Commission. See Tr. 786, 790-792; Div. Exs. 8, 286, 295.

In or about February/March 2009, Anaya received a phone call from Corazzi about Natural Blue. See Tr. 797. At the outset of the call, Corazzi praised his long-time business associate Cohen, with whom he claimed to have reestablished contact after a long period of absence, and described in detail the company that would become Natural Blue. See Tr. 798. Among other things, Corazzi told Anaya that the company would be "investing in green companies and bringing them under the umbrella of Natural Blue" and that Cohen was "one of

the best he had met in terms of being able to develop businesses." Tr. 798-799. Corazzi then got Cohen on the line with Anaya, and they explained that Paul Pelosi, Jr., who had already been recruited to serve as President of Natural Blue Resources, would be serving as the President of Natural Blue. See Tr. 474-474; 800-802. Anaya was acquainted with Pelosi's "well-known mother [former speaker of the U.S. House of Representatives Nancy Pelosi] both personally and by reputation" (Tr. 484, 800) and Cohen and Corazzi explained on this initial call that Pelosi was known "nationally [and] internationally as an environmentalist." Tr. 803-04.

During this initial call, Cohen and Corazzi invited Anaya to serve as CEO of Natural Blue (see Tr. 800), and offered him a monthly salary of $10,000 (see Tr. 803), along with a percentage of shares in the company (see Tr. 854).[6] Anaya, who was already working on the stimulus funding project and running a law firm, was informed that Pelosi "would be responsible for the day-to-day operations" and that Anaya would work part-time as the CEO. See Tr. 802-803. Anaya eventually accepted the position of CEO, which Corazzi explained would be a good opportunity for two primary reasons. See Tr. 803. First, Corazzi acknowledged that Anaya had lost money investing with Corazzi, and he indicated that "this would be a way that he [Corazzi] would be able to help repay the funds that [Anaya] had lost." Tr. 804. Second, Corazzi complimented Anaya, describing him as "particularly well suited" to serve as CEO in light of his "reputation and ... experience, particularly as governor, as an executive." Id.

In fact, Anaya and Pelosi's reputations were critical to Cohen and Corazzi's scheme, as the testimony of both investors and potential business associates of Natural Blue made plain. For example, James Cohen sent an e-mail to James Murphy shortly after negotiations began that was entitled "water"; the e-mail was devoid of content, simply attaching Anaya and Pelosi's resumes.

[6] Cohen and Corazzi informed Anaya that he would receive 24% of the shares as part of his compensation as CEO, which was later reduced to "18 or 19 percent" and Anaya believed that it was Cohen who determined the initial allocation of shares, with some input from Paul Pelosi. See Tr. 853-855.

See Div. Ex. 269. Cohen and Corazzi also began soliciting investors,[7] relying heavily on the involvement of Anaya and Pelosi as a selling point, and investors reacted favorably and enthusiastically. See, e.g., Tr. 233-234 (investor was "most impressed" about Anaya and Pelosi and that he "was excited to see that they were involved in Natural Blue. ... [I]t just looked like that these two people were great leaders that would take us forward where all the shareholders would make a lot of money"); Tr. 754 (another investor describing Anaya and Pelosi's public profiles as "important" in her decision to invest).

While Natural Blue was still a private company at the time Anaya and Pelosi were recruited, both men were explicitly told by Cohen and Corazzi from the outset that the company would become public. See Tr. 481, 807. On March 6, 2009, the Natural Blue board ostensibly "authorized" Cohen to "investigate and report alternatives to the board ... concerning funding and becoming a reporting public company." Div. Ex. 9. However, the board's "authorization" was essentially a fiction, since in reality, Cohen *was already in the final stages* of negotiating the transaction with Datameg and American Marketing and Sales, on behalf of *both* Natural Blue and Blue Earth. See Div. Ex. 69 at 24-25 (Vuksich bills showing calls with Murphy and Cohen on February 26 and March 2-3, under section titled "Blue Earth Matters"); Tr. 286 (Vuksich testimony that Murphy and Cohen were negotiating in late February and early March).

Neither Anaya nor Pelosi played a meaningful role in conceiving or negotiating Natural Blue's reverse merger with Datameg. While the Natural Blue board minutes[8] on March 17, 2009

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[7] Investors Robinson and Flaherty testified that they understood the Respondents to be involved in Natural Blue's management, that they did not know of their disciplinary backgrounds, and that those disciplinary backgrounds would have been material to their investment decision. See Tr. 237, 761-762. That being said, Robinson also testified on direct that he "actually invested quite a bit of money ... a substantial amount of money" before meeting Corazzi and Cohen in person, after which he invested more. See Tr. 234. Counsel for Respondent later claimed to have elicited this fact on cross – but indeed, Robinson's direct testimony was quite clear as to the timing of his investments.

[8] From March 2009 to June 2011, Cohen -- despite his lack of formal role with Natural Blue -- attended virtually every board meeting and is routinely listed in the formal minutes in the category "others present". See, e.g., Div.

reflect that there was a vote approving the Datameg transaction, the reverse merger -- like so many of Natural Blue's later financial transactions -- was a *fait accompli* long before the board voted. Compare Div. Ex. 10 (March 17, 2009 board minutes) to Tr. 814 (Anaya testimony that the Datameg transaction was "an accomplished fact, and I accepted it as such."); see also Tr. 1477 (Daines testimony that in assessing the economic function of a CEO authorizing a reverse merger, he "would want to know ... is that direction formal or is it real, that is, are you really calling me and telling me to do XYZ or is that just like a check mark... when X, Y and Z have already been done[.]").

Notably, as reflected in the legal bills prepared by Paul Vuksich, Esq., Datameg's board of directors approved the "Blue Earth and Natural Blue sales" on the very same date of March 17, 2009. See Div. Ex. 69 at 27. The timing is revealing. Just as Murphy had authority from Datameg as CEO to negotiate a transaction that resulted in change in corporate control, so too did Cohen have that same full authority at Natural Blue, notwithstanding the fact that he lacked a formal title. Cohen and Corazzi founded Natural Blue, and had full control from the beginning about how the company would be structured and operated (i.e., as a public company). As Anaya testified, he understood from his very first call with Cohen and Corazzi

> that they had formed the company, that they were selecting the Board of Directors, that they were designating Paul Pelosi as president and me as CEO, and that Mr. Cohen, with the assistance of Mr. Corazzi, that Mr. Cohen, who had, according to Mr. Corazzi, had a substantial background in putting together companies either from scratch or from helping reinvigorate companies that needed additional management experience or assistance[.]

Tr. 805-806.

Ex. 9 (March 6, 2009 board meeting); Div. Ex. 10 (March 17, 2009 board meeting), Div. Ex. 13 (April 4, 2009 board meeting); Div. Ex. 19 (April 14, 2009 board meeting); Div. Ex. 24 (August 1, 2009 board meeting, Corazzi also in attendance). In certain instances, Cohen's attendance was undocumented, as with the June 3, 2011 meeting where Cohen orchestrated the ouster of CEO Erik Perry. See Div. Ex. 219 (June 3, 2011 board meeting minutes); see also Div. Ex. 218 (audio recording of June 3, 2011, documenting Cohen's silent attendance at the meeting).

Cohen and Corazzi Position Natural Blue to Become a Public Company

Not only did Cohen and Corazzi select Anaya and Pelosi as the company's nominal officers and directors, but they hand-picked additional members board of directors, identified the companies (virtually all of which were tied to Cohen) in which Natural Blue would invest, and performed other critical management tasks to enable Natural Blue to go public, with Cohen and Corazzi in control.[9] As to the board, Cohen specifically proposed Samir Burshan and Daryl Kim as board members for Natural Blue. See Tr. 822-823; see also Tr. 490 (Pelosi met Kim through Cohen). Burshan was already a board member at Blue Earth before he joined the board of Natural Blue. See Tr. 490.

As to the companies that Natural Blue decided to invest in and/or to acquire, Cohen was "the one that was out front trying to identify the companies ... to bring in to Natural Blue Resources to invest in and grow the company." Tr. 1027. Many of those companies were directly tied to Cohen. For example, one target company in which Natural Blue invested heavily was Prism One Group, controlled by board member Samir Burshan, an associate of Cohen's. See Div. Ex. 268 (2/26/09 email from Cohen to Murphy, attaching Prism One business plan and private placement memorandum). Between May 2009 and June 2010, Natural Blue directed $408,405 to Prism One. See Div. Ex. 253 at 4; see also Div. Ex. 75 (2009 Form 10-K for Natural Blue Resources, disclosing as a related party transaction that "[o]n May 22, 2009, Natural Blue made a loan ... of $200,000 to Samir Burshan ... secured by the assignment of a promissory note ... of $200,000 made by Prism One to Burshan.") Moreover, Prism One was a public company in which Cohen held a significant number of shares in his personal account, and

[9] Among other things, Cohen was working closely with Natural Blue's counsel on the private placement memorandum for investors (see Div. Ex. 69) and on the Form D (id.), along with a stock purchase agreement, board minutes, revisions to stock ledger, and communications with investors (id.). Also in April 2009, Cohen obtained an EIN for Natural Blue (Div. Ex. 11) and a bank account (Div. Ex. 16), while Corazzi reviewed organizational documents prepared by counsel (Div. Ex. 14) and drafted a press release on behalf of Datameg (Div. Exs. 12, 18).

after Natural Blue had already invested in Prism One, Cohen was selling his shares. As reflected in Division Exhibit 296 (Alpine Securities statement for Cohen), on August 10, 2009 alone, Cohen sold nearly 30,000 shares of Prism One, and sold more than 40,000 shares the next day. Cohen ultimately made $265,000 in profits from his investment in Prism One. See Div. Ex. 296.

In addition, Cohen arranged for Natural Blue to "loan" $100,000 to Blue Earth -- a company that Cohen controlled -- in connection with the purported acquisition of Blue Earth by Natural Blue; however, the acquisition never occurred and the "loan" was never repaid by Blue Earth. See Tr. 1613-1614 (former CFO's testimony about loan to Blue Earth). See also Tr. 1606 (Natural Blue paid $4,000 in monthly rent to Blue Earth).

Cohen in particular was instrumental in Natural Blue's day-to-day financial decision-making. See, e.g., Div. Ex. 23 (July 2009 e-mail from Anaya noting that "our current procedure requires approval by both Jimmy [Cohen] and Paul Pelosi for me to pay invoices."); see also Div. Ex. 266 (8/26/09 email from Anaya to Murphy after Natural Blue became public, advising that "the established procedure within NBR (NV) is that both Paul Pelosi and Jim Cohen Sr. have to approve invoices before I pay them.") And, Cohen and Corazzi were the primary fundraisers and contacts with the investing public. Cohen was "responsible for soliciting investors for Natural Blue" and Corazzi "was assisting him." Tr. 823. As a result, and as evidenced in the later ouster of Pelosi from Natural Blue, Cohen "had the ability to control the majority of shareholders." Tr. 1027.

Significantly, Cohen and Corazzi's plans for Natural Blue's structure as a public company did not include formal roles for themselves – despite the fact that Pelosi, Cohen, Corazzi and Anaya had "founded the company," and despite the fact that neither Anaya nor Pelosi had any prior experience as officers of public companies. See Tr. 473, 476, 785. None of the witnesses testified about Corazzi seeking to join the board or serve as an officer at any stage

of Natural Blue's existence; Corazzi was statutorily prohibited from serving such a role, even if many of the Natural Blue principals[10] were not aware of the formal bar. Cohen, however, did discreetly inquire with corporate counsel about joining the board of Natural Blue. As Paul Vuksich testified, he received an email from James Cohen shortly before traveling to Orlando for the kickoff board meeting of Natural Blue. In a tersely worded email, Cohen asked Vukisch on July 30, 2009: "[A]ny word on my ability to be on the board without public disclosure." Div. Ex. 299; Tr. 315-321. Vuksich did not recall obtaining any specific details from Cohen about exactly what would be subject to "public disclosure" but Vuksich testified that he had little difficulty locating Cohen's disciplinary and criminal histories on the Internet. See Tr. 321. Vuksich reported back to Cohen that his "crimes are known on the message boards. From those clues I could find your state criminal record and your ban from the NASD membership. The SEC never took action against you so no court ever banned you from serving on a public board." Div. Ex. 299. Based on his review of the then-applicable regulation (17 C.F.R. 229.401) that only required disclosure of criminal convictions less than five years old, Vuksich advised that Cohen could serve on the board of Natural Blue without disclosing his criminal conviction, assuming "that [his] state criminal sentence or plea agreement didn't include any kind of a ban from being a director of a public company." Div. Ex. 299.

Notwithstanding Vuksich's advice – which was rendered moot just a few months later, when the SEC revised the regulation to require board members to disclose to the investing public any prior legal proceedings less than ten years old[11] – Cohen did not, according to witness

[10] The only witness who testified to his knowledge of Corazzi's bar prior to any involvement with Natural Blue was Anaya, who acknowledged that he became aware of the bar in 2008 when investing with Corazzi. Tr. 788-792.

[11] On December 16, 2009, the Commission adopted an amendment to Item 401(f) of Regulation S-K that changed the time period for disclosing prior legal proceedings concerning public company officers and directors. See Proxy Disclosure Enhancements, §11.E, SEC Release No. 33-9089 (December 16, 2009). The amendment became effective on February 28, 2010, prior to the filing date of Natural Blue's 2009 Form 10-K, and increased the

testimony, make any further attempts to solicit a position on the board of directors. Moreover, Vuksich did not recall communicating with CEO Toney Anaya about Cohen's conviction and/or bar, instead "treat[ing it] as a private communication." Tr. 433.

Instead of joining the board, or taking on formal roles as officers, Cohen and Corazzi concealed the nature and extent of their roles with Natural Blue from investors, with the help of sham "consulting" agreements. As the record reflects, once the company became public, Cohen and Corazzi continued to do exactly what they had done when Natural Blue was private – which was to dominate and control every aspect of policy-making – while assiduously avoiding any public disclosure of their roles and/or disciplinary backgrounds to the investing public.

Stage Two: After Natural Blue Became Public, Cohen and Corazzi Functioned as *De Facto* Officers of the Company, Despite Their Lack of Formal Roles at Natural Blue

Natural Blue formally became a public company in late July 2009, and the initial meeting of the board of directors was held in early August 2009. Div. Ex. 300. Cohen was instrumental in organizing this meeting, held at Prism One, outside of Orlando, Florida. See Tr. 334-335. Vuksich, then counsel to Natural Blue, sent materials to Cohen at Blue Earth for distribution to the board in advance of the meeting. See Tr. 313-314; Div. Ex. 69 at 35-36. Vuksich then flew to Orlando for the board meeting, where he was "picked up at the airport by Mr. Cohen and Mr. Corazzi in Mr. Cohen's white pickup truck." Tr. 326. At that time, Natural Blue's mission was to create, acquire or otherwise invest in "green" companies, with a focus on locating, purifying and selling water recovered from underground aquifers in New Mexico. Div. Ex. 300 ¶1. However, shortly after he landed in Orlando, Cohen and Corazzi took Vuksich on a tour of a local concrete recycling facility, and discussed potential steel recycling deals for Natural Blue. See Tr. 326-327. During these discussions, Vuksich observed that Cohen and Corazzi were

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disclosure period from five years to ten years. See id C.F.R. 229.401.

"friendly ... [and] [t]hey were talking about these deals a mile a minute[.]" Tr. 328.

At the August 2009 meeting, Cohen addressed the board of directors on various issues, including the acquisition of EcoWave, LLC ("EcoWave"). See Tr. 65-66. Although Anaya recalled that Cohen "recommended it to the company as ... a good investment opportunity for the ... company to pursue[,]" the August 1, 2009 board minutes reflect that EcoWave *had already been acquired.* See Tr. 849; Div. Ex. 24 (noting that "James Cohen, Sr. advised the board *that the Corporation had acquired EcoWave, LLC* for organizational shares of the Corporation.") *(emphasis added).* EcoWave was a company tied to Burshan and Kim, who were recommended for the board by Cohen largely because "they were bringing the technology" to Natural Blue. See Tr. 850. Burshan "had an ongoing relationship, business and personal, with Mr. Cohen prior to this Board meeting." Tr. 1120. After the board meeting, Anaya accepted Cohen's recommendation that his son, James Cohen Jr., lead the EcoWave division for Natural Blue. See Tr. 826.

From the moment Natural Blue became public, Cohen and Corazzi had substantial influence over virtually all management decisions, and asserted control over Natural Blue almost immediately. As a fundamental matter, the Natural Blue office was located in the same Florida offices as Blue Earth, where Cohen worked, and the corporate books and records were maintained there, while the CEO and President were located in the western United States.[12] Anaya tried in vain early on to move the bookkeeping to New Mexico. See Tr. 831; see also Div. Ex. 55 (12/11/09 e-mail from Anaya to Kim, Murphy and Pelosi noting that Anaya "wanted to have this bookkeeping handled here in Santa Fe from the outset: but, Jim [Cohen, Paul [Pelosi], and Joe [Corazzi] didn't respond favorably to my proposal to hire someone here.")

[12] Notably, defense witness Jeffrey Decker testified that the only people he ever observed in the Natural Blue office in Florida were Cohen, Corazzi, Cruickshank, and on one occasion Nancy Hennessey, an outside consultant. See Tr. 1549. In addition, in conducting a conflict check for the law firm, Decker vetted Corazzi and Cohen's names along with Blue Earth Solutions -- but not board member Daryl Kim. See Div. Ex. 36 (BakerHostetler engagement letter).

Further, as the record reflects, Cohen and Corazzi performed the following core functions of officers that the Division's expert witness Robert Daines identified in his direct testimony:

> ***Cohen and Corazzi controlled and managed day-to-day operations at Natural Blue,*** including (1) the selection (and/or removal) of Natural Blue's officers and directors for the company, including the negotiation of their compensation; see Tr. 222-223, 798-803, 805, 822-824, 852-854, 1602-1609; Div. Ex. 59, 264 (2) the hiring of service providers, including those located in Cohen's hometown of Orlando, see Tr. 289-290; 832-833; Div. Exs. 20, 55 (3) Cohen's supervision of Natural Blue employees in Florida, where the books and records were housed; see Tr. 852-853, 1607-1608, Div. Exs. 23, 53; (4) Cohen and Corazzi's role as the primary fundraisers, with Cohen serving as a liaison to Natural Blue investors; see Div. Exs. 34, 37, 85, 87, 89, 90, 124, 177; Tr. 230-238, 888; and (5) Cohen and Corazzi's management of the Natural Blue steel subsidiary and related steel transactions. See Div. Exs. 73, 77, 78, 94, 113, 118, 129, and 150.
>
> ***Cohen and Corazzi controlled strategic decisions at Natural Blue,*** including (1) negotiating a reverse merger with Datameg; see Tr. 41-45, 56, 132-133, 347-348, 476, 801, 810, Div. Ex. 269; (2) changing the corporate mission from water purification to steel recycling, and creating Natural Blue Steel as a subsidiary; see Tr. 12-13, 82; Div. Exs. 43, 81, 82, 83, 118; (3) dictating that the company sign consulting agreements with Cohen and Corazzi, even threatening to cancel a company fundraising trip if the agreements were not immediately signed, see Tr. 218-220, 857-858, Cohen Ex. 89; (4) Corazzi's negotiation of a complete change of management through a transaction with Atlantic, with no oversight by Natural Blue's nominal officers; see Tr. 671-672, 675-676, 683, 686, 691, 702, 730-732, 971, 1329, 1337-41; Div. Exs. 149, 150, 160, 161, and 169; (5) Cohen's ouster of CEO Erik Perry in June 2011 and installation of Montalto as CEO, see Tr. 1343-1344, 1352-1353, Div. Exs. 218, 219.
>
> ***Cohen and Corazzi managed senior executives (including Natural Blue's CEO),*** including (1) directing CEO Toney Anaya, see Tr. 65-66, 218, 798-803, 857-858, 842-843, 852-853, 856, 888-889; Div. Ex. 117; (2) organizing a shareholder vote to oust Pelosi from the board, see Div. Exs. 59, 264, and, as noted supra, (3) Cohen hired and effectively supervised CFO Walter Cruickshank in the Blue Earth office.
>
> ***Cohen and Corazzi had responsibility for books, records and financial statements,*** including (1) involvement in drafting SEC filings for Natural Blue, Tr. 346, 352-353, 465, 869, 885, 959-960, Div. Exs. 69, 95, 98, 267 (2) communicating directly with lawyers and auditors about financial matters without management present; see Tr. 869, 1088, 1516; Div. Ex. 95, and (3) Cohen recommended and arranged for Blue Earth employee Bill McPherson to be the bookkeeper at Natural Blue, see Tr. 825-826.

Cohen oversaw the treasury functions and key financial decisions.
Among other things, it was company protocol that all invoices be approved by both Pelosi and Cohen before they were paid by Anaya, see Tr. 828-830, Div. Exs. 23, 266 moreover, Cohen had formal authority over the brokerage account for Natural Blue; see Div. Exs. 25 and 27. See also Div. Ex. 80 (4/26/10 email from Pelosi to Anaya and Decker regarding, inter alia, Cohen having custody of NTUR stock certificates).

Indeed, one of the many key decisions made unilaterally by Cohen -- the initial hiring of Natural Blue's Chief Financial Officer, Walter Cruickshank -- is particularly illustrative of Cohen's role as a *de facto* officer of Natural Blue. Cruickshank, who testified as a defense witness, was interviewed and hired by Cohen as the controller of Blue Earth in 2008. See Tr. 1602. Cruickshank's office was on the first floor, and Mr. Cohen's office was on the second floor. Shortly after Natural Blue became public, Cruickshank testified that another Blue Earth employee congratulated him "on becoming the CFO of Natural Blue ... because he saw it on the Internet somewhere." Tr. 1607. Cruickshank then went to Cohen, who assured him that Natural Blue was a "startup company" and was "not going to be that much work" and further, that he would be paid by Natural Blue. Tr. 1608-1609. Having spoken with no one at Natural Blue but Cohen,[13] Cruickshank commenced his service as CFO of Natural Blue, until his resignation in or about August 2010. See Tr. 1598. Cruickshank was assisted by another Blue Earth employee named Bill McPherson, who provided bookkeeping services to Natural Blue at the direction of Cohen. Tr. 825-826. Corazzi frequently called Cruickshank for information about the finances of Natural Blue , including "when [Natural Blue was] filing the 10-Ks or Qs." Tr. 1615. Cruickshank complained to Cohen about Corazzi asking him to "drop everything ... and work on Natural Blue" and questioned Corazzi's authority, since he "wasn't an officer ... [and] only worked ... as a consultant." Tr. 1616. (Oddly, Cruickshank did not evince similar concern about reporting to Cohen, who was also technically a consultant.)

[13] For his part, Anaya learned that Cruickshank was the new CFO of Natural Blue from Cohen and Corazzi. See Tr. 824.

The billing records of Natural Blue Resources counsel Paul Vuksich further underscore the central role Cohen and Corazzi played in the management of Natural Blue. See Div. Ex. 69. Immediately after Natural Blue became public, excerpts from the bills (August 10-September 11, 2009) show frequent interaction with Cohen and Corazzi on critical management decisions:

> 8/10/09 – 3/4 Filing: Receipt and review of emails from and preparation and transmission of emails **to directors and James Cohen** re: additional data. [...] Telephone conference with Cohen and Murphy re budget planning.
>
> 8/11/09: 14F1: Begin preparation of preferred shares designation. Telephone conference with Coh(e)n Sr. re same.
>
> 8/12/09: EcoWave USA: Draft/revise LLC and license purchase agreement. Telephone conference with **Cohen Sr. and Burshan**. Receipt and review of emails from and preparation and transmission of emails to same and Anaya re: draft agreement. EcoWave USA: Continue preparation of preferred shares designation. Telephone conference with Cohen Sr. re same.
>
> 8/13/09: EcoWave USA: Final preparation of preferred shares designation. Telephone conference with Cohen Sr. re same.
>
> 8/17/09: 10Q Filings: Telephone conference with... Cohen. Preparation of Series A1 and A2 certificates of designation.
>
> 8/18/09: Telephone conference with ... Cohen. Preparation of amendments to Series A1 certificates of designation and plan for merger.
>
> 8/19/09: EcoWave USA: **Telephone conference with ... Cohen and Corazzi re: revisions to plan for merger and certificate of designation.** Preparation of revisions to the same.
>
> 8/24/09: **Telephone conference with Anaya, Cohen, Joe [Corazzi], and Sebright brothers re: transaction documents.** ... SeBright Acquisition: Receipt and review of emails from and preparation and **transmission of emails to Anaya, Cohen and Murphy re: misc matters and activity coordination.** American Marketing: Telephone conference with Cohen Sr. re: revisions to purchase documents.
>
> 8/25/09: Preparation of revisions to merger plan. Telephone conference with Cohen re: same.
>
> 8/28/09: **Telephone conferences with James Cohen and Walter Cruickshank re: tax return filing, AMS 2007 end of year WTB, other accounting matters.** Receipt and review of emails from and preparation and transmission of emails to

> Walter Cruickshank and Jim C[ohen] re: accounting records and sending attachments.
>
> 8/31/09: Receipt and review of emails from and preparation and transmission of **emails to Anaya, Murphy and Cohen re: PPM shares raised to 1 for 1.**
>
> 9/3/09: General Legal: Preparation of mail merge to private placement investors re stock conversion. Preparation and transmission of emails to Bill McPherson re: certain investor inquiries and telephone number for letter. **You prepared a draft. It was reworked by Anaya, Cohen and Joe [Corazzi].**
>
> 9/10/09: Accounting Matters: Telephone conference with Anaya and Joe re getting Kim and Heather's cooperation to file amended 10Q. **Heated exchanges with Joe re not knowing about debts ... Joe [Corazzi] claims correct closing date cannot be either or but that is what the auditors said.**[14]
>
> 9/11/09: **Telephone conference with Anaya, Cohen and Murphy re: bookkeeper settlement.** Heated discussion with Cohen who claimed settlement and release was indemnification. ... Cohen attacked me saying I had to serve only the company.

Div. Ex. 69 (**emphasis added**). As these excerpts from Vuksich's bills reflect, from the moment Natural Blue became a public company, Cohen and Corazzi were key decision-makers on major policy issues at Natural Blue. Id.

In fact, shortly after Natural Blue became public in August 2009, Anaya was already sufficiently frustrated with Cohen's involvement that he threatened to resign. See Tr. 843. Relatedly, Pelosi – whom Anaya was told would handle day-to-day management of Natural Blue – began a full-time job in the securities business in August 2009, i.e., as soon as the company went public. See Tr. 509. As common sense dictates, Pelosi's new full-time job meant that he was not in a position to run the day-to-day operations of Natural Blue. See Tr. 510. Thus, as Anaya recalled, he advised Corazzi that he "needed to step down, that [he] simply could not operate as a figurehead and that ... Mr. Cohen was just meddling too much in the day-to-day

[14] Vuksich also testified that at this time, there was a significant dispute at Natural Blue about filing an amended 10-Q with a revised closing date. Tr. 347-350. Vuksich recalled that Cohen told him that "we were going to refile as of July 1." He also recalled that the "heated exchanges" related to Corazzi and Cohen "challeng[ing] what was being represented in the Q ... for the second quarter" and that he "acquiesced" to Corazzi and Cohen. Tr. 351-353.

operations." Tr. 843. In Anaya's view, neither he nor "Mr. Pelosi ... were really being able to play the roles that [their] titles would otherwise suggest." Tr. 842. However, after a lengthy phone call with Mr. Cohen during a family birthday party, Anaya's concerns were sufficiently allayed that he "agreed not to resign at that point" as the CEO of Natural Blue. Tr. 844. As Anaya testified, Cohen continued to control day-to-day management decisions, and in Anaya's estimation "was running the company" again as of September 2009. Tr. 856. Anaya, while acknowledging his responsibility as CEO, repeatedly described Cohen's control over Natural Blue, and the great difficulties Anaya faced in asserting his authority as the nominal CEO. As Anaya described it:

> [Cohen] founded ... the private company. He took the leadership in forming the public company, in doing the reverse merger, and selecting the first Board of Directors and selecting the president, selecting me as CEO. [H]e was very involved in the accounting[.] (Tr. 961.)
>
> [Cohen] had the loyalty and the following of the CFO, of the bookkeeper, of a couple of the Board members. He wasn't ... to be taken lightly in my position as CEO. (Tr. 1027-1028.)
>
> [Cohen] founded these companies, the Natural Blue private and Natural Blue public. He appointed the Board of Directors. He identified them. He identified the staff. And in one or two cases, he actually hired the staff. He was a force to be reckoned with. I couldn't just shove him aside. (Tr. 1029.)
>
> Cohen on a day-to-day basis supervised the employees that we had. In fact, he had selected them. ... They worked part-time for his other company, Blue Earth Solutions. That's the CFO, the accountant, his close relationship with Samir Burshan and the EcoWave rollout.... [E]verything had been put into place by Mr. Cohen with some assistance from Mr. Corazzi. (Tr. 1136-1137.)
>
> [Cohen] was acting in the capacity as president, CEO or the combination. He was running the company. [E]verything ... that the Board approved ... [was being generated by or through Mr. Cohen[.][15] (Tr. 1145-1146.)

[15] Anaya's testimony about Cohen's control is further evidence that Cohen was a *de facto* officer. Indeed, Anaya's description of Cohen is virtually identical to the hypothetical described by Professor Daines during cross-examination at the hearing. Daines testified that if a shareholder had a control block or controlled the board, and gave the CEO "directions .. [to] do X, Y and Z, and you don't then have discretion except under the threat of termination or your pay being cut[, t]hen [he] might be assuming the economic function of a CEO." Tr. 1470; see also Tr. 1481 (Daines' testimony that an activist shareholder could fill the economic function of an officer or

Cohen and Corazzi Demand Lucrative Consulting Agreements with Natural Blue, While Their Roles as *De Facto* Officers Remain Unchanged and Undisclosed

In November 2009, Natural Blue entered into an Advisory Agreement with Cohen's family corporation JEC. Corp., pursuant to which JEC Corp. purportedly agreed to research and present potential merger and acquisition targets for Natural Blue (even though Cohen and Corazzi had already been proposing investment targets since the first board meeting in August 2009). See Div. Ex. 43. Also in November 2009, Natural Blue entered into a separate Management Agreement with JEC Corp. to organize and manage a new steel subsidiary called Natural Blue Steel ("NBS"). See Div. Ex. 44. Both the Advisory and Management agreements specified that JEC Corp. would provide services through Cohen and Corazzi. See id.

Cohen and Corazzi placed substantial pressure on the board of directors to approve these consulting agreements with JEC Corp. Pelosi received a call from Anaya that a board meeting would need to be held about the consulting agreements, and described Anaya's related email as "saying this is the most urgent thing in the world, out of nowhere, we have to get together on the Board." Tr. 501; see also Div. Ex. 42 (11/4/09 e-mail from Pelosi to Anaya, Murphy and Kim complaining about lack of notice on Cohen consulting agreement and describing it as "one of the most important documents in our company history.") Anaya also recognized the urgent nature of Cohen and Corazzi's demand that Natural Blue approve consulting agreements with JEC Corp., with Corazzi calling Anaya to advise that Cohen refused to attend a fundraising trip in West Virginia because "he was tired of being so active in the company and not getting any compensation for it." Tr. 857-858. Anaya called an emergency board meeting to discuss the proposed contracts, and had a "two-hour discussion in which Mr. Pelosi was very strenuously objecting" to the contracts. See Tr. 859; see also Div. Ex. 46 (e-mail from Anaya to board

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director, and that the two roles – i.e., activist shareholder and officer/director – are not mutually exclusive).

members). After the contracts were approved, Anaya called Corazzi, who told him that "Cohen wants to see the signed contracts before he boards the plane [for West Virginia]." Tr. 859. Anaya then faxed the contracts as Corazzi directed, so that the fundraising trip could proceed as planned. See Tr. 859.

As Pelosi continued to object to the consulting agreements in the following weeks,[16] arguing that they were "excessive," Cohen and Corazzi garnered sufficient shareholder votes to force Pelosi off of the board by January 2010. See Tr. at 501-502, 505; see also Div. Ex. 59 (December 29, 2009 e-mail from Corazzi to Jane Bartell attaching shareholder consent to remove Pelosi from board of directors and directing Bartell to sign); Div. Ex. 264. Pelosi learned about the purported dissatisfaction of the Natural Blue "shareholders" in a call with Cohen, who informed him that "the shareholders [we]ren't happy with [Pelosi's] performance." Tr. 508.

While the "consulting" agreements with JEC Corp. may have caused discord amongst the directors and nominal officers, what the consulting agreements did not do was to change the reality that Cohen and Corazzi controlled Natural Blue. Indeed, just days after the agreements were signed, Murphy e-mailed Cruickshank, copying Pelosi and Anaya, to express his concern that correspondence from the SEC had been ignored, and warned that Natural Blue needed to respond to a comment letter sent almost a month earlier. See Div. Ex. 54 (11/30/09 e-mail from Murphy to Cruickshank). Cohen (who had not been copied on Murphy's email, but evidently got wind of it) wrote an aggressive e-mail to the board that afternoon, complaining about the "old guard throwing stones" and claiming that forwarding of documents to the Florida mailing address "only occurred recently." Div. Ex. 53. Murphy's reaction to Cohen was angry and

[16] Anaya and Pelosi differed in their recollection as to the board vote: Anaya recalled the vote being unanimous, and Pelosi recalled voting against the consultancy agreements. See Tr. 502 (Pelosi); 866 (Anaya). However, the witnesses (including Murphy) agreed that Pelosi expressed substantial concerns about the proposed consulting agreements, and that his objection ultimately resulted in his departure from Natural Blue. See Div. Ex. 50 (11/19/09 e-mail from Pelosi advising Anaya that he could not agree with the contracts, with Anaya replying: "Incredible!")

almost immediate. He responded:

> Jim C, I'm sorry you take this so personal but it seems this is more of your camouflaging and bully tactics[.] ... I was trying to make sure [Cruickshank] knew the seriousness of responding to the SEC in a timely fashion and if no one was paying attention to the mail then someone in new management would be called on the carpet for not responding ... **you sit and throw accusations and you won't even sit on the board,[17] you shouldn't even be addressing these issues as you are not an officer or director of NTUR**[.]

Div. Ex. 53 **(emphasis added)**.

By January 2010, Pelosi had been forced off the board, Murphy had resigned, see Div. Ex. 273, and Anaya's ongoing efforts to function as the CEO of the company were largely ineffectual. Principal among Anaya's concerns was the fact that he was unable to obtain the books and records for Natural Blue. See Tr. 934. From the time Natural Blue became a public company, the corporate records were maintained "in Florida, under the supervision of [Cruickshank], the CFO, with the assistance of Bill McPherson ... in the same building, the same offices as Blue Earth Solutions[.]" Tr. 931. Despite repeated requests, Anaya was never able to obtain accounting records for Natural Blue. See Tr. 934, 948, 1034, 1035; see also Div. Ex. 112 (9/16/10 e-mail from Anaya to Cohen requesting assistance in obtaining accounting records), Div. Ex. 125 (10/3/10 e-mail from Anaya to Cohen asking what records Cohen "can send electronically as well as what physical accounting records are available that can be provided[.]")

Further compounding Anaya's difficulties was Cohen and Corazzi's steadfast refusal to share information. In Anaya's view, he "never knew what [he] wasn't being told, primarily by Mr. Cohen and Mr. Corazzi" and that Cohen in particular was very "cryptic" in his e-mails. Tr. 1033, 1112. See, e.g., Div. Ex. 83 (4/29/10 e-mail from Cohen to Corazzi, forwarding term sheet from attorney, with note saying "here is the list of what else we need... *lets not let Toney know we sent it already*") (emphasis added). For example, Cohen and Corazzi routinely dealt directly

[17] Murphy testified that he recalled some "talk on the board" about Cohen taking a formal position with Natural Blue, and that Anaya asked Cohen to serve as a director. Tr. 99-100. Cohen advised that "he would check with his attorney." Tr. 100. None of the witnesses testified about any further discussions by the board about this issue.

with corporate counsel Jeffrey Decker, without consulting Anaya, and ultimately their directives to counsel generated enormous bills for the company. See Div. Ex. 78 (4/12/10 e-mail from Anaya to Corazzi and Cohen, warning them to be "judicious in how we utilize Jeff Decker and his firm[.]") Another example was an incident in April 2010, when -- having invited him to attend an investor meeting at which Cohen's criminal background was evidently known to those present-- Cohen belatedly disclosed to Anaya that he had been incarcerated. Cohen provided no other relevant details (nor did Anaya press him further or raise the issue with other officers and directors of Natural Blue). See Tr. 895-897; see also Tr. 888-889 (Anaya testimony that Cohen and Corazzi were actively involved in raising funds from investors but refused to share information about the meetings with Anaya).

This problem of Cohen and Corazzi "silo-ing" information came to a head in or about late April of 2010, when Anaya learned from Natural Blue Steel consultant Mike Cenit that Corazzi and Cohen had created a separate company to purchase the "so-called Hoover building ... and they had purchased the building themselves ... instead of bringing it to ... Natural Blue Resources." Tr. 902-903. Anaya was furious, and threatened to take action to terminate the contracts, leading to an ever-growing rift with Cohen and Corazzi. See Tr. 903-904.

Cohen and Corazzi's outsized influence over the company, which belied the facial scope of the "consulting" agreements, continued throughout 2010. Indeed, Natural Blue's former auditing firm resigned in April 2010 because the firm was concerned about the high level of control that Cohen exercised over the company, and had learned that Cohen had been barred by FINRA. See Tr. 590-630. Former audit partner Paul Horowitz called Cohen directly after learning from public records about the FINRA bar, and found Cohen's answers to his questions incredible. See Tr. 590-591. In the call, Cohen denied that the public records referred to him and falsely claimed that his middle initial was not "E". Cohen then tried to persuade Horowitz

that even if "this person" were barred by FINRA from dealing with broker-dealers, "[t]his person is not barred from being involved with public companies." Id. Horowitz also described the authority exercised by Cohen at Natural Blue, in that the employees deferred to Cohen and furthermore, that Cohen himself negotiated with the auditors as to the language for the Natural Blue 10-K regarding related party transactions involving JEC Corp. – *his own family-owned company*. Tr. 625-627. Cohen even attempted to convince Horowitz to water down the related party transaction language so that it did not specifically identify Cohen's company, JEC Corp. Id.

In September of 2010, Anaya again clashed with Cohen and Corazzi after, among other things, Cohen demanded that Anaya provide him with a budget for Natural Blue. See Tr. 944. As Anaya explained in an email to Cohen in mid-September 2010, his principal issue with Cohen was "not the 20% fee [under the JEC Corp. contracts]... it is the management of NTUR (i.e., what authority you think you should have over me and the Board as to management decisions, and, why; and, how [Natural Blue Steel] will report to and respond to NTUR." Div. Ex. 115. Anaya reiterated his acute concerns about his inability to manage the company to Corazzi, saying

> [Y]our email suggests that the three of you (Hunt, Cohen, Corazzi) run the company (i.e., he is an "equal" and not "President"). ... It is the same story: consultants get taken care of; the company doesn't.... *[I] don't want to give up legal authority of NTUR to someone who claims to "only" be a "consultant" when it suits him; and, to be the "founder" when convenient to him.*

Div. Ex. 116 (*emphasis added*). Just a few days later, Anaya complained to Corazzi that

> It is sheer lunacy to have a consulting firm dictate, through me, to the parent company that owns 100% of the subsidiary what it can and cannot do with revenues flowing in. That is neither smart and probably not legal for me to do that in that I would be trying to usurp power that is left to the Board (and, maybe power no one in the company has, including shareholders). ... Honestly, Joe, this reminds me of the negotiations on all contracts with JEC; namely, I either bend over and take one for JEC or JEC takes a walk.

Div. Ex. 119.

As Anaya grew increasingly frustrated with his inability to manage Natural Blue and/or Cohen and Corazzi -- and as the company was running out of money -- in late 2010, Corazzi and Cohen began discussions with Massachusetts-based Atlantic Dismantling. See Tr. 1336-37. From there, Corazzi, assisted by Cohen, negotiated a business transaction between Atlantic and Natural Blue that resulted in a complete change in management. See Tr. 671-702, 1329-1341.

Stage Three: Corazzi Orchestrated a Change of Management for Natural Blue in January 2011, and in June 2011, Cohen Stage-Managed the Ouster of CEO Perry

In January 2011, Natural Blue announced that it had entered into an agreement with Massachusetts-based Atlantic Acquisitions and its wholly-owned subsidiary, Atlantic Dismantling (collectively, "Atlantic"). See Div. Ex. 300 ¶31; see also Div. Ex. 168 (agreement between Natural Blue and Atlantic, signed January 23, 2011). According to press releases issued by Natural Blue in January and February 2011, the agreement resulted in a dramatic change in Natural Blue's business prospects. See Div. Ex. 300 ¶32, see also Initial Decision Release No. 710 (File No. 3-15974) (Nov. 26, 2014) at 2. In fact, the Atlantic transaction was orchestrated primarily by Corazzi, assisted by Cohen, with only belated and limited input from CEO Anaya.

In late October or early November of 2010, Eric Ross, the principal of newly formed venture firm Watch Harbor Asset Management ("Watch Harbor"), agreed to meet Atlantic Dismantling principals Sal Tecce and Joseph Montalto in New York, regarding a potential business venture between Watch Harbor and Atlantic.[18] Tr. 648-650. Ross was particularly interested in investing in companies where there "would be high cash flow outcomes, such as ... green energy projects." Tr. 646. After discussing with Tecce and Montalto a potential business venture between Watch Harbor and Atlantic, Ross mentioned that he had an investor (later

[18] Atlantic Dismantling and Atlantic Acquisitions were related companies. See Tr. 655. Atlantic Dismantling dismantled buildings and structures and then did site work for the new buildings and structures at those locations. See Tr. 1326. Atlantic Acquisitions was formed to purchase power plants. See Tr. 1326. In describing the facts related to the negotiations with Natural Blue, these entities are referenced collectively herein as "Atlantic."

identified as Bob Christoff) who had "some interest in" the dismantling work, and as a result, Tecce directed Ross to Erik Perry, whom Ross understood "handled all the business aspects and was the president or CEO of Atlantic Acquisitions." Tr. 650, 671.

In late 2010, Ross and Perry spoke on several occasions. Tr. 657. During one of those calls, Perry referenced a company called Natural Blue, which Ross learned was "a small public company" and that part of the company's value was "a scrap steel business that Joe Corazzi was building." Tr. 657, 680. Perry informed Ross that Natural Blue was interested in acquiring Atlantic. Tr. 658. After conducting some limited research on Natural Blue, Ross advised Perry against such a transaction, based on his view that there were "so many regulations involved with being a small public company, particularly if you don't have a very consistent and stable business model that's already in place." Tr. 665.

However, by November of 2010, Perry had already touted to Atlantic's management the wisdom of a business transaction with Natural Blue, which he claimed "could help ... raise money to acquire [] plants and help ... with ... cash flow problems." Tr. 1336. In November 2009, Montalto was introduced to Cohen and Corazzi on a conference call, and then had several conference calls with Cohen and Corazzi. See Tr. 1337. Montalto understood that Cohen and Corazzi "had originally formed the company. It was their baby. They got it started. Toney was the CEO, but [the Respondents] were the ones trying to bring in the projects to the company to keep it going." Tr. 1338-1339.

In early January 2011, Montalto, Tecce and Perry traveled to Miami to meet with Corazzi and Cohen, along with investor Bob Christoff, who hosted the first part of the group meeting. See Tr. 1339. The five others then left Christoff's office and continued discussing the potential transaction between Atlantic and Natural Blue, including the potential board members to be selected and the terms of the contract. See Tr. 1340. At some point during this meeting, Cohen

and Corazzi expressed their desire for Perry to serve as president and CEO of the newly formed entity, and Tecce discouraged it, describing Perry as a "loose cannon" and "irrational." Tr. 1341. Cohen and Corazzi[19] replied that they thought Perry would be "a good person to use as a ..."puppet" to be [at] the forefront of the company." Tr. 1341.

Also in early January 2011, Perry told Ross that he was again talking with Natural Blue "and that they had some interesting things to say." Tr. 667. Shortly thereafter, Ross received a phone call from Erik Perry, who indicated that he was in a car with Bob Christoff (Ross' investor) and Joe Corazzi, and possibly Jim Cohen as well (although Ross did not recall with certainty if Cohen was present.) See Tr. 671. At some point, Perry handed the phone to Corazzi, who told Ross that he would love to have Watch Harbor on board in a transaction with Natural Blue. See Tr. 671-672. In the wake of this phone call, Ross began communicating with Corazzi via email about the potential terms of an agreement between Atlantic and Natural Blue, including a consulting agreement with Watch Harbor. See Tr. 675-676. Ross understood that Perry would be the CEO of the new entity. See Tr. 722.

From that point forward, virtually all of the negotiations with Natural Blue and Watch Harbor were exclusively between Eric Ross and Joseph Corazzi. Ross believed that Corazzi had the authority to negotiate on behalf of Natural Blue, because Corazzi "was the representative of the company. ... He was the one making the deal." Tr. 682-83; see also Tr. 732 (Ross "thought that terms were being negotiated by Joe Corazzi"). While Ross recognized that "as the CEO, Toney Anaya would have to sign the documents ... [he] did not have negotiations with Toney Anaya." Tr. 730-731. Shortly after the phone call with Corazzi, Christoff and Perry, Ross wrote to Corazzi to advise that he was "interested in the offer" to join Natural Blue and potentially to

[19] Montalto testified that he did not recall specifically whether the description of Perry as a potential "puppet" came from Cohen and Corazzi, but was certain that one of the two men said it during the meeting in Miami. See Tr. 1359.

receive shares, but sought "modifications" to the draft agreement that had been forwarded by Erik Perry. Tr. 682; Div. Ex. 149. Corazzi wrote back to Ross via e-mail to advise that the modifications seemed "fair" but that the financing needed "to move in days not months" because "[s]teel is on the water." Div. Ex. 149; see also Div. Ex. 150 (1/14/11 email from Corazzi to Ross, cc to Perry and Cohen, detailing the weight and cost of the "steel that is on the water" and proposing financing terms for Ross' investors).

By January 21, 2011, the proposed transaction between Natural Blue and Atlantic was close to completion, and the agreement with Watch Harbor was close to being finalized, along with a non-compete, non-disclosure agreement with Ross. See Tr. 686; Div. Ex. 165. At that stage in the negotiations, Ross had not spoken to CEO Toney Anaya or "to anyone at Natural Blue, other than Joe Corazzi, and .. once with Jim Cohen, maybe twice." Tr. 686; see also Div. Ex. 169 (1/24/11 e-mail from Anaya to Corazzi and Cohen, advising that he would "need to meet, at least by telephone, the principals of Atlantic and, separately, Watch Harbor."). In his e-mails to Ross, Corazzi represented that he was in communication with Anaya about the terms of the proposed agreement with Watch Harbor, and that Anaya "was more than pleased to hear the changes ... he will be back in his office later today and will get the copy sent to the board and executed once he quickly reviews the language. There are no further issues[.]" Div. Ex. 160. (1/21/11 e-mail from Corazzi at 5:19PM to Ross, cc to Cohen and Perry titled "all ok"). Later that day, Corazzi and Cohen, along with Ross and Perry, participated in a call with a potential source of funding identified by Ross, in which Corazzi described the "steel on the water" transaction for Natural Blue. Tr. 691; Div. Ex. 161. Anaya was not on the call.

In reality, Anaya was not "more than pleased" with the proposed Watch Harbor agreement at that time, as reflected in his comments to Cohen and Corazzi in an e-mail sent earlier that day. Having raised concerns via e-mail about the Watch Harbor agreement, Anaya

immediately received a response from Cohen that "the window time wise is by 9:30 am est Friday on this agreement" (i.e., that day) and Cohen both cautioned that "we cannot build up the payable or this deal will go elsewhere" and complained of Anaya's proposed changes that "much more this deal cannot stand." Div. Ex. 159. Anaya responded at 1:54 AM:

> "Guys, I want this deal to go through as I can't take any more of what the last several months have been. ... I just raised points that seemed pretty obvious to be raised. Negotiate whatever you think is the best deal that can be negotiated and I will go along with it for the reasons you have stated in your email below; namely that we have nothing to offer anyone. ... Also, please recognize that it is typical to ask me to sign something immediately, under the gun or the world is going to cave in. A little more advance notice to me or involvement would certainly be beneficial. ... I want to close this deal or close my involvement with the company."

Div. Ex. 159. As Anaya testified, "Joe [Corazzi...] presented the [Atlantic/Natural Blue] contract to me that had already been negotiated." Tr. 971. Anaya harbored no illusions that he was getting full information about the transaction, as he explained to director Paul Whitford:

> It would be so great – and, the normal way of doing business – to have full facts in front of us before we make any decisions regarding the future of NTUR. The reality, however, is that I/we will be at the mercy of whatever Joe chooses to tell us about this negotiations (*sic*) with Atlantic which, I suspect, will only be part of the truth and by no means the full facts. He will not disclose what he and Jim are getting from Atlantic, though I will press for this. ... The relationship – or, lack of – with Jim & Joe is [not] one I can sustain.

Div. Ex. 260.

Meanwhile, Cohen and Corazzi continued to orchestrate the final details of the transaction with Natural Blue and Atlantic. On January 24, 2011, Cohen sent an email – copying no one else at Natural Blue or Atlantic -- to an investor relations firm providing authorization to issue a press release "on Tuesday 1-25-2011 to the public on beha[lf] of Natural Blue Resources." Div. Ex. 170. The same day, Cohen also e-mailed CFO Jehu Hand advising that "we need an 8-k for release this afternoon." On January 27, 2011, Perry emailed a later iteration of a press release to Corazzi and Cohen, copying Ross, and observing that he was "not sure about the word 'robust'" as used in the draft press release. Div. Ex. 183.

On January 27, 2011, Atlantic and Natural Blue consummated the transaction that assigned all of Atlantic's contracts to Natural Blue, as well as approving the consulting agreement with Watch Harbor. See Div. Ex. 168 (agreement between Atlantic and Natural Blue Resources); Div. Ex. 166 (Watch Harbor agreement); Div. Ex. 184 (unanimous consent of Natural Blue board of directors Anaya and Whitford). The principals of Atlantic and Watch Harbor dealt exclusively with Cohen and Corazzi throughout the negotiations. As Ross noted, his "impression was that Joe Corazzi was making decisions for the company." Tr. 702. Similarly, Montalto met and negotiated extensively with Cohen and Corazzi, but spoke with Anaya only once prior to the completion of the Atlantic/Natural Blue transaction. See Tr. 1329.

The Atlantic transaction fell far short of Natural Blue's expectations, and did not result in improved financial prospects for the company. See Tr. 1342-1343. Instead,[20] Natural Blue (under Perry's direction) made misrepresentations to investors beginning in January 2011 about its financial condition, including the value and existence of contracts purportedly entered into by Atlantic/Natural Blue.

On February 11, 2011, Natural Blue issued a press release announcing that it had incorporated a wholly-owned subsidiary, NBS/Atlantic. The press release announced that NBS/Atlantic "has entered into two new environmental restoration/demolition contracts totaling $2.5 million dollars... involving remediation of contaminated soil and ground water as part of a major infrastructure project taking place with the transit authority in Boston, MA." The February 11, 2011 release further quoted CEO Perry as saying: "This is a great beginning to our revenue stream and I'm thrilled that our team [has] secured these contracts so quickly given the

[20] See Initial Decision Release No. 710 (File No. 3-15974) (Nov. 26, 2014) (finding Natural Blue Resources, Inc. in default, and issuing findings of fact and law) ("Initial Decision"); see also Release No. 9696 (File No. 3-15974) (Jan. 7, 2015) (initial decision is the final decision of the Commission). Since this Court has made findings of fact with regard to misrepresentations by Natural Blue and Perry, the non-existence of the MBTA contracts and/or the misrepresentations made to investors or on the Natural Blue website are facts deemed established as a matter of law.

rough weather we've all experienced." These statements were false and misleading because NBS/Atlantic had not entered into these or any other contracts with the transit authority in Boston (the Massachusetts Bay Transit Authority or MBTA), nor had Natural Blue or Atlantic.

None of the misrepresentations by Natural Blue during Perry's tenure resulted in improved financial prospects for the company. Rather, the company continued to founder, and in June 2011, Perry was abruptly dismissed as the CEO of Natural Blue. See Tr. 1342-1353.

Yet again, the change in Natural Blue management was directed by James Cohen. Cohen secretly attended the telephonic board meeting during which Perry was ousted and replaced with Joseph Montalto, the founder of Atlantic. Tr. 1343-1344; see also Div Ex. 218 (audio recording of June 2011 board meeting attended by Cohen as well as post-board meeting discussions). As the recording of the meeting reveals, Cohen directed Perry's ouster because a plan Perry proposed would have significantly decreased Cohen's and Corazzi's influence over Natural Blue and their stock ownership. See Div Ex. 218. Cohen commented after the board meeting that by ousting Perry "we keep this company and, you know what, [Perry] can't turn around and arbitrarily say that the guys who created [Natural Blue] . . . we're going to zero you out . . . like Erik Perry has threatened multiple times . . .[ ]." Div. Ex. 218 at 28. Montalto confirmed Cohen's motivation: "The contract that was in question, and one of the main reasons why we got rid of Erik Perry was the contract with Eric Ross. If that had gone through, it would have been . . . Erik Perry, Eric Ross, and Christoff running the company, and everybody else would have been out." Tr. 1352-53.

Lest there be any doubt as to whom Cohen was referring to when he said "the guys who created [Natural Blue]," earlier in the recorded conversation he emphatically claimed ownership over the company:

And it is to my detriment always and I say that because if you look at Pelosi and Anaya

this was my company so you know. And I – and I say my company, not Joe's, not anyone else's, and I'm not trying to – this is not ego, it's my – it was my company . Joe came to me . . . with a water deal . . . . I bought a division of [Datameg] Jim Murphy's company, his operating company. He was left with a shell and I turned around and put the water company into the shell that Joe brought me . . . . And we gave Anaya and Pelosi . . . so much stock away stupidly, because I believe in giving people – I trust people on what they say they're going to do.

Div. Ex. 218 at 25.

Cohen and Corazzi Made More Money Than Any Others at Natural Blue, When the Company Was Barely a Going Concern.

Cohen and Corazzi profited financially from Natural Blue through money and shares of stock.[21] From May 2009 through March 2011, Cohen and his affiliate (JEC Corp.) received $189,188 from Natural Blue. See Tr. 1388-91; Div. Ex. 253. During the same period, Corazzi and his affiliates (Izzaroc LLC and CA Capital Associates) received $251,720 from Natural Blue. See Tr. 1388-91; Div. Ex. 253. As calculated by the Division, between August 14, 2009 and June 11, 2011, Cohen's family members and affiliates[22] owned between 8% and 18% of the outstanding shares of Natural Blue stock, while Corazzi and his affiliates[23] owned between 2% and 7%. See Div. Ex. 254 (illustrative charts). Corazzi sold many of his shares and realized profits of approximately $77,500 from those transactions. See Div. Ex. 259; see also Corazzi Answer at 33.

The monies paid by Natural Blue to Cohen and Corazzi were substantial, and the profits

[21] Ms. Hussain testified that, given the limited documentation, certain payments to Cohen and Corazzi could have been expense reimbursements, see id. at 1388; 1391, but that the bank records revealed that Natural Blue itself paid directly "a large amount of travel-related expenses." Id. at 1418-19. Accordingly, the record reflects that a portion of Cohen and Corazzi's travel expenses were paid by Natural Blue. See also Div. Ex. 119 (9/21/10 email from Anaya to Corazzi stating that a "number of 'expenses' (e.g., some travel) w[ere] paid for separately by NTUR[.]").

[22] Cohen did not own a single share of Natural Blue stock in his name. See Tr. 1399-1400; Div. Ex. 254 at 2.

[23] While the Division did not attribute the Modaz shares to Corazzi, Corazzi had a personal relationship with Modaz's President, Jane Bartell – indeed, the name "Modaz" is derived from their nicknames "Mo" (Bartell) and "Daz" (Corazzi). See Div. Ex. 302. If the Division attributed to Corazzi the shares owned by Modaz, Inc. as of August 2009, Corazzi's percentage ownership as of that date substantially increases. See Div. Ex. 254 at 2. On February 10, 2010, Modaz transferred 1.7 million shares to Corazzi for $150 (or a fraction of a penny per share). See Div. Exs. 254 at 2; 66 (stock transfer agreement); 259 and 272 (stock transfer records); and Tr. 1424-25.

that they stood to realize from their ownership of Natural Blue were real. Natural Blue was barely a going concern through its entire existence as a public company, and routinely defaulted on its financial obligations to both employees and outside providers. See Div. Ex. 75 (2009 10K for Natural Blue Resources, filed April 2010, noting that the company's financial situation "raise[s] substantial doubt about [its] ability to continue as a going concern"); Tr. at 1558, 1563 (former counsel's testimony that Natural Blue had no revenue and was barely a going concern, and that his firm ultimately wrote off approximately $100,000 in unpaid bills); Tr. at 1600 (former CFO testimony that Natural Blue failed to pay him his salary); Tr. at 617 (former auditor's testimony that Natural Blue owed his firm tens of thousands of dollars). Yet time and time again, Cohen and Corazzi managed to get themselves paid, ultimately earning more than the CEO and President of Natural Blue combined. See Div. Ex. 253 at1-3 (charts summarizing payments to Cohen, Corazzi, Anaya and Pelosi). Whether their earnings were deemed "consultant payments" or "compensation," Cohen and Corazzi obtained hundreds of thousands in investor funds (the source of more than 90% of Natural Blue's total income) from a company that never generated any revenue. Id. at 1; see also Tr. at 1386-87 (Hussain testimony that 0.3%, or approximately $10,000, of total Natural Blue inflows constituted actual revenue).

THE DIVISION PROVED BEYOND A PREPONDERANCE OF THE EVIDENCE THAT COHEN AND CORAZZI WERE *DE FACTO* OFFICERS OF NATURAL BLUE

The Division proved beyond a preponderance of the evidence that Cohen and Corazzi were *de facto* officers of Natural Blue. According to Professor Robert Daines, the Division's expert witness, there are several factors to be considered in evaluating whether an individual is functioning as an officer of a public company,[24] including whether that individual is, among

[24] While Professor Daines' direct testimony breaks down the responsibilities of corporate officers by specific job descriptions (e.g., CEO, CFO, COO), the Division is not required to prove that either Cohen or Corazzi served in a particular role in showing that they functioned as *de facto* officers. Indeed, the proof adduced at the hearing demonstrated that Cohen and Corazzi had numerous responsibilities in the corporate affairs of Natural Blue, and

other things: managing senior executives (Div. Ex. 301, Daines Dir. ¶25); controlling and managing the company's day to day operations (Div. Ex. 301, Daines Dir. ¶¶25, 27); controlling strategic decisions (Div. Ex. 301, Daines Dir. ¶25); having responsibility for books, records and financial statements (Div. Ex. 301, Daines Dir. ¶28); overseeing treasury functions and key financial decisions (Div. Ex. 301, Daines Dir. ¶28); and, leading technology infrastructure (Div. Ex. 301, Daines Dir. ¶29). In explicating the considerations in evaluating whether one was acting as a director of a public company, Professor Daines noted that the Board would make decisions "such as the approval of mergers or major corporate transactions, change of control transactions, periodic financial reporting under the securities laws, and the hiring and firing of executive officers." Div. Ex. 301, Daines Dir. ¶24. Daines elaborated on the economic function of a CEO and other corporate officers in his cross-examination testimony, noting that

> the economic function of the CEO is ... to exercise discretion and authority over the firm's internal assets, to be the boss of the firm, have discretion over what that means, to represent the firm to third parties and make binding commitments to third parties, and to oversee the day-to-day stuff of the whole firm. Officers have a smaller sphere, but would serve that same economic function within that smaller sphere, that is, if I'm an officer, I may have some discretion over a particular area or subdivision or subsidiary.

Tr. 1463.

Cohen and Corazzi served all of the core officer functions described by Professor Daines. As the evidence at the hearing proved, Cohen and Corazzi were the individuals who were truly running the company and controlling its day-to-day affairs, leaving the nominal officers and directors unable to independently make significant decisions on behalf of the company.

THE DIVISION PROVED BEYOND A PREPONDERANCE OF THE EVIDENCE THAT COHEN AND CORAZZI EFFECTED A SCHEME TO DEFRAUD

As the Division proved beyond a preponderance of the evidence, by concealing their

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thus to slot either Respondent into a single job description would be an artificial exercise and is unnecessary to show that Cohen and Corazzi were *de facto* officers. Moreover, as the Court noted at the hearing, a *de facto* officer need not function as a CEO, but may serve as another type of officer, like a vice-president. See Tr. at 1016-1017.

roles at Natural Blue (and thus their disciplinary histories) from the general investing public, Cohen and Corazzi effected a scheme to defraud. Had the investors known that Cohen and Corazzi had primary roles in managing Natural Blue and that they had been previously sanctioned (and in Cohen's case, incarcerated) in cases involving allegations of fraud, those facts together would unquestionably have been material to their investment decision. Instead, investors were in the dark, because Cohen and Corazzi made the conscious decision to conceal their roles, and thus their disciplinary histories, to avoid public scrutiny. In sum, Cohen and Corazzi were *de facto* officers, effected a scheme to defraud by concealing their role and their disciplinary histories, and should be held liable by this Court for violating the securities laws.

LEGAL ANALYSIS

I. Cohen and Corazzi Are Liable For Their Fraudulent Scheme To Conceal Their Roles As *De Facto* Officers of Natural Blue

Cohen and Corazzi are liable for their fraudulent scheme under Sections 17(a)(1) and 17(a)(3) of the Securities Act. These provisions make it unlawful to employ any device, scheme, or artifice to defraud, or to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchaser in the offer or sale of securities.[25] Establishing scheme liability under Section 17(a)(1) of the Securities Act requires a showing of scienter, which is defined as a state of mind embracing intent to deceive, manipulate, or defraud. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193-94 n.12 (1976). Scienter "includes recklessness, defined in this context as 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it.'" Gregory O. Trautman, Exchange Act Release No.

[25] Both Cohen and Corazzi engaged in the offer or sale of securities by, among other things, directly soliciting investors in and exercising controlling over Natural Blue, the ultimate purpose of which was to issue and induce or attempt to induce the purchase or sale of Natural Blue securities. See Findings of Fact ¶ 36, 55(a).

61167A, 2009 WL 6761741, at *16 (Dec. 15, 2009) (quoting Makor Issues & Rights, Ltd. v. Tellabs Inc., 513 F.3d 702, 704 (7th Cir. 2008)). "Scienter may be inferred from circumstantial evidence." Brian A. Schmidt, Exchange Act Release No. 45330, 2002 SEC LEXIS 3424, at *31 (Jan. 24, 2002) (relying on Herman & MacLean v. Huddleston, 459 U.S. 375, 390 n.30 (1983)).[26]

As set forth in detail above, Cohen and Corazzi engaged in a scheme and fraudulent course of business to create and operate Natural Blue as a vehicle for them to control and profit from the company. They concealed their roles as *de facto* officers and their past criminal and regulatory violations from potential investors. From the creation of Natural Blue through its business relationship with Atlantic, Cohen and Corazzi acted as high-level officers of the company while calling themselves "consultants" to hide their past violations and mislead investors. They were able to profit through "consulting" contracts and other payments for failed efforts during a time when the company had no revenue. Both Cohen and Corazzi knew or were reckless in not knowing that they committed deceptive acts in furtherance of a fraudulent scheme. Had Cohen and Corazzi's identities and roles been properly disclosed, their disciplinary histories also would have had to be disclosed and otherwise would have been readily discoverable.

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[26] Because Cohen and Corazzi violated the provisions of the Securities Act providing for scheme liability, and their fraudulent conduct went well beyond misrepresentations and omissions, the issue of whether they are "makers" of statements under Janus Capital Group, Inc. v. First Derivative Traders, 131 S. Ct. 2296, 2302 (2011) is not relevant here. Further, with respect to scheme liability, the Commission has stated that "The three main subdivisions of [Securities Act] Section 17 and [Exchange Act] Rule 10b-5 have been considered to be mutually supporting rather than mutually exclusive." Cady Roberts & Co., 40 S.E.C. 907, 913 (1961); Cf. U.S. v. Naftalin, 441 U.S. 768, 774 (1979) ("Each succeeding prohibition [in Section 17(a)] is meant to cover additional kinds of illegalities – not narrow the reach of the prior sections."). These actions went beyond misrepresentations and omissions. See SEC v. Kovzan, 2013 WL 5651401 (D. Kan. Oct. 15, 2013) (on summary judgment motion, following appellate rulings that plaintiff must show evidence of deceptive acts beyond misrepresentations and finding that it had done so); SEC v. Alternative Green Tech., Inc., 11-cv-9056, slip op. at 5 (S.D.N.Y. Sept. 24, 2012) (where complaint specifically alleges "inherently deceptive" conduct in addition to misrepresentations, scheme liability may be invoked); SEC v. Brown, 878 F. Supp. 2d 109, 117 (D.D.C. 2012) (where officer alleged to have taken affirmative steps to ensure that records concealed omissions in corporate filings, such acts construed as deceptive conduct to satisfy requirement of scheme liability).

II. Cohen And Corazzi Were *De Facto* Officers Of Natural Blue

A. *De Facto* Officers Perform Policy-Making Functions Of Corporate Officers

In order to determine whether one is serving as an officer of a public company, courts look beyond the corporate title to the individual's functional role with the company, including the person's duties, responsibilities, and level of influence over company policy and affairs. See SEC v. Prince, 942 F. Supp. 2d 108, 133-34 (D.C. 2013) ("functional, fact-intensive analysis of an alleged officer's duties and responsibilities, adopted by the Second, Fourth, Sixth, and Ninth Circuits, is a fair and reasonable approach" in determining whether one is a *de facto* officer); SEC v. Solucorp Industries, Ltd., 274 F. Supp. 2d 379, 382-87 (S.D.N.Y. 2003) (individual "consultant" was an officer because he performed a policymaking function and duties analogous to those of an officer); SEC v. Enterprises Solutions, 142 F. Supp. 2d 561, 574 (S.D.N.Y. 2001) (executive officers include "not only those formally designated as such, but also any person who performs a similar role for the company"); CRA Realty Corp. v. Crotty, 878 F.2d 562, 563 (2d Cir. 1989) (employee's functions, rather than title, determine whether he is an officer). See also Wolf v. Weinstein, 372 U.S. 633 n.19 (1963) (observing that in the context of Section 16(b), "it is clear that a determination of who is a corporate 'officer' within the meaning of the statute requires a flexible assessment of particular powers and responsibilities rather than a rigid rule of thumb."). Companies are not permitted to "hide a significant figure in the management of a company" behind a vague title, such as "consultant." Enterprises Solutions, 142 F. Supp. 2d at 574. See also U.S. Diagnostic Inc., S.E.C. Release No. 7928, 2000 WL 1920604, at *4 (Dec. 20, 2000) (citing CRA Realty Corp. v. Crotty, 878 F.2d at 563 (2d Cir. 1989) and noting that company "cannot avoid liability by characterizing [defendant] as a 'consultant' while allowing him to function as an officer).

Regulations promulgated under the Exchange Act define the "officer" title and are, thus, instructive in identifying the various functions of corporate officers for purposes of determining *de facto* officer status. See Prince, 942 F. Supp. 2d at 133. Exchange Act Rule 3b-7 defines an "executive officer" as a company's "president, any vice president . . . in charge of a principal business unit, division or function . . ., any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." 17 C.F.R. § 240.3b-7. Similarly, Exchange Act Rule 16a-1 defines an "officer" to include a company's "president, principal financial officer, principal accounting officer . . ., any vice-president of the issuer in charge of a principal business unit, division or function . . ., any other officer who performs a policy-making function, or any other person who performs similar policy-making functions of the issuer." 17 C.F.R. § 240.16a-1(f).

Cohen and Corazzi each functioned as a *de facto* officer of Natural Blue, as that role is defined by Exchange Act Rules 3b-7 and 16a-1 and as that role is described in the above-referenced cases. They performed policy-making functions similar to corporate presidents, chief executive officers, vice presidents in charge of principal business units or divisions, chief financial officers, chief operating officers, chief information technology officers, officers overseeing a particular business unit or division, and other personnel typically tasked with policy-making functions.[27]

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[27] The Court in Prince concluded that the defendant did not have sufficient control over the subject company to be deemed to have exercised the policy-making function of a typical public company president. See Prince, 942 F. Supp. 2d at 134-35. However, the Court noted that it was not reaching the issue of whether the defendant had exercised the policy-making functions of other types of corporate officers, such as subordinate officers who are responsible for smaller business units, because the Division had not made that allegation. See id. at 135 n.13. It should be noted that Prince is distinguishable from this case both because (i) Cohen and Corazzi exercised significantly more authority and control over Natural Blue than did the defendant in *Prince* over his company, and (ii) the Division here has demonstrated that Cohen and Corazzi performed the policy-making functions not only of a public company president, but also that of other types of officers, including subordinate officers overseeing particular business units or divisions.

B. Cohen and Corazzi Exercised Policy-Making Functions of Various Types of Public Company Officers

Cohen and Corazzi exercised policy-making functions of public company officers. In determining whether Cohen and Corazzi fulfilled such policy-making functions with respect to Natural Blue, the testimony of Professor Robert Daines, an expert in corporate governance is compelling. Professor Daines described generally the functions of various public company corporate officers. Specifically, applying principles of economics, Professor Daines identified factors that can be used in determining whether one has stepped into the shoes of a corporate officer, such as a public company chief executive officer ("CEO"), president, chief operating officer ("COO"), chief financial officer ("CFO"), chief information technology officer ("CIO"), and other officers (such as vice presidents) in charge of business units or divisions.

The same factors identified by Professor Daines can be used to assess whether one is fulfilling the policy-making functions of corporate officers and thus meets the legal standard for *de facto* officer status. According to Professor Daines:

- Chief Executive Officers are "hired to run the firm's business on shareholders' behalf and the Board monitors and advises the CEO in that task . . . . The CEO . . . is responsible for the firm's operations and strategy and for managing the firm's senior executives." Div. Ex. 301, Daines Dir. at 9;

- Chief Operating Officers are "typically responsible for the day to day internal operations of their company . . . . ." Div. Ex. 301, Daines Dir. at 10;

- Chief Financial Officers are "typically responsible for the books and records and official financial statements of the company, interacts with the audit committee of the Board of Directors and with the company's independent auditors. The Chief Financial Officer of a public company generally oversees the treasury functions of the corporation and the company's key financial decisions." Div. Ex. 301, Daines Dir. at 10;

- Chief Information Officers are "typically responsible for the decisions and strategy surrounding the company's product technology or technology infrastructure." Div. Ex. 301, Daines Dir. at 11; and

- other officers who are subordinate to a company's CEO (*e.g.*, a vice president), but nevertheless have responsibility for a discrete business division or unit, serve the "same economic function within that smaller sphere . . . ." Tr. 1463. Such officers "may have some discretion over a particular area or subdivision or subsidiary . . . . [a]nd the ability . . . to supervise the ongoing operations of one division or subsidiary." *Id.*

As set forth in greater detail in the Findings of Fact, Cohen and Corazzi assumed responsibility for Natural Blue's operations and engineered most, if not all, significant strategic plans and actions by the company, including the reverse merger with Datameg, capital raises and other solicitation of investors, the transaction with Atlantic resulting in a change of corporate management, and the ouster of Pelosi, Natural Blue's then-President and director. See Findings of Fact ¶¶ 22, 55(a)-(e), 56-60, 66. They exercised control over Natural Blue's senior executives, including the CEO (Anaya), whom Corazzi recruited, and the CFO (Cruickshank), who was hired by Cohen. See Findings of Fact ¶¶ 55(c), 56-57. Throughout their association with Natural Blue, Cohen and Corazzi assumed responsibility for the company's day to day internal operations. See Findings of Fact ¶¶ 22, 55(a)-(e), 56-60, 66. Cohen, in particular, had dominion over Natural Blue's books and records, directed Natural Blue's auditor, and worked extensively on the company's financial statements and other disclosures in its annual and quarterly reports. See Findings of Fact ¶¶ 55(d)-(e). Corazzi too exerted control over Natural Blue's financial statements. Vuksich's testimony and billing records (Div. Ex. 69) reveal Corazzi and Cohen's deep involvement in the preparation of the company's Forms 10-K and 10-Q. See Findings of Fact ¶ 58. Natural Blue's CFO, Walter Cruickshank, testified that Corazzi angrily pressured him to finalize the filings and to cease working on other matters. See Findings of Fact ¶ 58 n.9. Cohen also directed Natural Blue's investments in particular companies and oversaw its financial affairs, including approving invoices as part of company policy. See Findings of Fact ¶¶ 55(d)-(e). Among other conduct, Corazzi managed Natural Blue's website.

See Findings of Fact ¶¶ 22. He also initiated and negotiated (with Cohen) the Atlantic deal, which resulted in the issuance of 35 million shares to Atlantic and its designees and the resignations of Natural Blue's directors and officers. See Findings of Fact ¶¶ 21, 22, 55(b). And both Cohen and Corazzi formally managed Natural Blue Steel, a Natural Blue subsidiary, as well as exercised control and authority over other discrete business areas such as acquisitions and investor relations. See Findings of Fact ¶¶ 55(b).

Cohen and Corazzi engaged in conduct even exceeding the typical authority of a CEO or president, often assuming the functional roles of typical directors as well. As Professor Daines testified, board members set and communicate the firm's priorities and strategic plans, evaluate management performance and compensation, approve mergers or major corporate transactions, hire and fire executive officers, and recruit directors. Cohen and Corazzi engaged in all of this conduct on behalf of Natural Blue. See Findings of Fact ¶¶ 55(a)-(e).

Accordingly, Cohen and Corazzi served as *de facto* officers of Natural Blue because they exercised policy-making functions similar to that of a public company CEO, president, COO, CFO, CIO, or other officer overseeing a business unit or division.

III. The Sham Consultant Designations Orchestrated By Cohen and Corazzi Shielded Cohen's Criminal History and Corazzi's Disciplinary History From Investors

The Securities Act of 1933 imposes a number of obligations on public companies and individuals who serve as officers and directors. Where, as here, a public company registers securities pursuant to the Securities Act, the company must file with the Commission the same reports and other information required of companies that register securities under Section 12 of the Exchange Act. See Exchange Act Section 15(d)(1), 15 U.S.C. § 78o(d)(1).[28] Among the

[28] Beginning in September 1999, Datameg's securities were registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, and the company made periodic filings with the Commission in accordance with Section 13(a), 15 U.S.C. § 78m(a). See Form 10-K filed with the Commission on September 28, 1999, sec.edgar.gov. In August 2004, Datameg withdrew its securities registration by filing a Form 15. See Form 15, filed with the Commission on

required filings are annual reports on Forms 10-K, which must contain specific types of information that are deemed relevant to the investing public. See Exchange Act Section 13(a)(2), 15 U.S.C. 78m(a)(2); Regulation S-K, Item 401(b), (e)(1), and (f); 17 C.F.R. § 229.401(b), (e)(1), and (f). For example, annual reports must include the identity of all "executive officers" and describe their business experience. See Regulation S-K, Item 401(b) and (e)(1); 17 C.F.R. § 229.401(b) and (e)(1). Annual reports also must disclose certain legal proceedings involving executive officers and directors and occurring within the prior 10 years that are "material to an evaluation of the ability or integrity" of the directors and officers. See Regulation S-K, Item 401(f); 17 C.F.R. 229.401(f).[29]

Natural Blue's annual report on Form 10-K for the year ended December 31, 2009 was the first (and last) annual report filed by the company after its reverse merger. It should have disclosed Cohen's role as a (*de facto*) officer and his criminal conviction, which occurred within the prior 10 years of its filing. See Findings of Fact ¶16. Corazzi's role as a *de facto* officer also should have been disclosed, which immediately would have revealed him to be in violation of his permanent officer and director bar. Although public companies are not required, as a general matter, to identify officers and disclose their backgrounds in Forms 10-Q, such disclosures were required here in order to make other statements in Natural Blue's Forms 10-Q not misleading. Once a party makes a disclosure, even if it is one that it had no duty to make, there is a duty to

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August 31, 2004, sec.edgar.gov. Thereafter, Datameg, subsequently Natural Blue, was required to continue making periodic filings pursuant to Exchange Act Section 15(d) and to continue to comply with the applicable disclosure requirements, because its securities had been registered pursuant to the Securities Act. See Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

[29] On December 16, 2009, the Commission adopted an amendment to Item 401(f) of Regulation S-K that changed the time period for disclosing prior legal proceedings concerning public company officers and directors. See Proxy Disclosure Enhancements, §II.E., SEC Release No. 33-9089 (December 16, 2009). The amendment became effective on February 28, 2010, prior to the filing date of Natural Blue's 2009 Form 10-K, and increased the disclosure period from 5 years to 10 years. See id.; C.F.R. 229.401.

disclose all information necessary to make the statement not misleading, including information that would not otherwise have been required to be disclosed. See Caiola v. Citibank, *N.A*, 295 F.3d 312, 331(2d Cir. 2002) (when a party speaks, it has a "duty to be both accurate and complete"); Ellenburg v. JA Solar Holdings Co., No. 08 Civ. 10475, 2010 U.S. Dist. LEXIS 49220 (S.D.N.Y. May 17, 2010) (once the CFO disclosed the substance of a financial transaction, a duty to fully disclose all the risks arose, even though there was no duty to disclose the transaction in the first place); In re Bristol Myers Squibb Co. Sec. Litig., 586 F. Supp. 2d 148, 160 (S.D.N.Y. 2008) ("[E]ven an entirely truthful statement may provide a basis for liability if material omissions related to the content of the statement make it . . . materially misleading.").

Natural Blue's 2009 Form 10-K and Forms 10-Q for the first three quarters of 2010 disclose that, in November 2009, Natural Blue entered into the Management Agreement and the Advisory Agreement with JEC. See Findings of Fact ¶ 18.[30] However, the Forms 10-Q state only that JEC "is owned by one of our shareholders and the shareholder is related to one of our consultants." *See* Findings of Fact ¶ 18. They do not name either Cohen or Corazzi as officers or disclose their past criminal and regulatory violations. Id. The JEC contract with Natural Blue involved both Cohen and Corazzi and thus by mentioning JEC in the filings but failing to disclose anything further about Cohen and Corazzi, the filings were materially misleading. An investor reading the filings would not have understood that the so-called "consultants" at JEC Corp. actually helped to run Natural Blue as *de facto* officers. Second, an investor reading the filings had no way of knowing that these so-called consultants, actually *de facto* officers, were respectively, a convicted felon (Cohen) and a former defendant in a Commission enforcement

[30] Natural Blue's last periodic report was a Form 10-Q for the quarterly period ended September 30, 2010, filed in November 2010 and amended in February 2011. The company is now delinquent as to its Form 10-K for the year ended December 31, 2010, and all subsequent periodic reports.

action barred from serving as an officer or director of a public company (Corazzi).[31] Although Item 401 of Schedule S-K only applies to Forms 10-K, disclosure of the roles and backgrounds of Cohen and Corazzi was required in the 10-Q Forms, as well as the Form 10-K, in order to render the statements about JEC Corp. not misleading.

Affirmative disclosure obligations aside, as a practical matter Corazzi could not have been acknowledged as an officer because he was statutorily precluded from serving as an officer or director of a public company. Further, mere identification of Corazzi and Cohen as officers likely would have led to the discovery of their pasts. Both Cohen and Corazzi's backgrounds are readily discoverable through easy internet searches. Vuksich testified, for example, that he had little difficulty locating Cohen's broker-dealer bar and criminal history on the internet. See Findings of Fact ¶ 48. As for Corazzi, the SEC's case (including the officer and director bar) against him was announced by the Commission in an October 9, 2002 litigation release and, thereby made widely available to investors.[32] In addition, under Rule 201 of the Federal Rules of Evidence and judicial precedent, this Court may take judicial notice of the fact that internet searches reveal Cohen's prior conviction and Corazzi's officer and director bar. See Fed. Rule Evid. 201 (court may take judicial notice at any stage of the proceeding if the noticed fact can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned); Pahls v. Thomas, 718 F.3d 1210, 1216 n. 1 (10th Cir.2013) (taking judicial notice of a map provided by Google); Citizens for Peace in Space v. City of Colorado Springs, 477 F.3d 1212, 1218 n. 2 (10th Cir.2007) (taking judicial notice of distance calculation which relied on

[31] Notably, Natural Blue's filings were entirely silent about the other significant advisory contract between JEC Corp and Natural Blue.

[32] The 12th entry resulting from a search on www.google.com for "James E. Cohen" during the years 2000 through 2012 reveals information about Cohen's criminal conviction for financial fraud. The first two of three entries resulting from a Google search for "Joseph A. Corazzi" during the same time period pertain to the SEC lawsuit against Corazzi in which he was permanently barred from serving as an officer or director of a public company.

information provided by Google); Access 4 All, Inc. v. Boardwalk Regency Corp., No. Civ. A. 08–3817 RMB, 2010 WL 4860565, at *6 n. 13 (D.N.J. Nov. 23, 2010) (taking judicial notice of information obtained from Google); Southern Grouts & Mortars, Inc. v. 3M Co., No. 07-61388-CIV, 2008 WL 4346798, at *16 (S.D. Fla. Sept. 17, 2008) (court took judicial notice of the results of an internet search showing registration of domain names).

As Cohen and Corazzi unquestionably knew, in light of their prior experience working with public companies, investors and potential investors would have considered it important to know that individuals with histories of criminal or regulatory violations had a critical role in managing a public company. See Enterprises Solutions, 142 F.Supp.2d at 574 ("A company cannot lawfully hide a significant figure in the management of the company behind the vague title 'consultant.' [Defendant's] activities ...were sufficiently similar to the duties of an officer or director ... that his involvement, along with his history of criminal and regulatory violations, ought to have been disclosed."); see also US Diagnostic Inc., 2000 WL 1920604, at *4 (company "cannot avoid liability by characterizing [defendant] as a 'consultant' while allowing him to function as an officer")).

Cohen and Corazzi deliberately avoided official titles at Natural Blue in an effort to prevent public disclosure of their central roles with the company. They knew that if they became officers or directors of Natural Blue they would have to be identified as such, which would have triggered additional disclosures about Cohen's disciplinary history and would otherwise easily have led to the discovery of both of their pasts. To avoid that fate, Cohen and Corazzi hid behind "consultant" agreements while functioning in reality as Natural Blue's management.

IV. The Court Should Grant the Requested Relief Against Cohen and Corazzi, Including Disgorgement of Their Ill-Gotten Gains

Cohen and Corazzi held large amounts of Natural Blue stock and profited from their

fraudulent scheme. Indeed, they made much more money than any other Natural Blue employee and multiple times that of Anaya and Pelosi. From predominantly investor funds, Natural Blue paid Cohen and Corazzi $189,188 and $251,720, respectively. At all points, Natural Blue was barely a going concern and largely unable to pay its own bills.

As remedial relief for Cohen and Corazzi's fraudulent conduct, the Division respectfully requests that the Court order Cohen and Corazzi to

A. Pay disgorgement and interest under Section 8A(e) of the Securities Act, which authorizes the Commission to order disgorgement, including reasonable interest, in any cease-and-desist proceedings and proceedings in which it may impose civil penalties. See 15 U.S.C. §§ 77h-1(e) and 78u-3(e).[33] Disgorgement is an equitable remedy designed to deprive wrongdoers of their unjust enrichment and to deter others from violating the securities laws by making violation unprofitable. SEC v. Huffman, 996 F.2d 800, 802 (5th Cir. 1993); SEC v. First City Fin. Corp., Ltd., 890 F.2d 1215, 1230-31 (D.C. Cir. 1989); Gregory O. Trautman, 2009 WL 6761741 at *21. The amount of disgorgement ordered "need only be a reasonable approximation of profits causally connected to the violation." Montford & Co., Advisors Act Release No. 3829, 2014 SEC LEXIS 1529, at *94 (May 2, 2014) (internal quotation marks omitted). The Division need only show but-for causation between a defendant's violations and profits. See SEC v. Teo, 746 F.3d 90, 105-07 (3d Cir. 2014). At that point, "the burden shifts to the respondent to show that the amount of disgorgement is not a reasonable approximation." Id. It is thus the case that

[33] "Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement." Rules of Practice Rule 600(a). "Prejudgment interest, like disgorgement, prevents a defendant from profiting from his securities violations." SEC v. Moran, 944 F. Supp. 286, 295 (S.D.N.Y. 1996); SEC v. Cross Fin. Servs., 908 F. Supp. 718, 734 (C.D. Cal. 1995). The amount of prejudgment interest shall be computed at the IRS underpayment rate set forth at 26 U.S.C. § 6621(a)(2). See J.W. Barclay & Co., Inc., Release No. 239, 81 SEC Docket 1156, 2003 WL 22415736, at *42 (Oct. 23, 2003) (citing same); see also *SEC v. First Jersey*, 101 F.3d 1450, 1476 (2d Cir. 1996) (applying same rate).

"[t]he risk of uncertainty in calculating disgorgement . . . fall[s] on the wrongdoer whose illegal conduct created that uncertainty." Id. (internal quotation marks omitted);[34]

B. Pay a civil penalty under Section 8A(g) of the Securities Act, which authorizes the Commission to impose civil monetary penalties against any person where such penalties are in the public interest and the person has violated certain provisions of the securities laws. See 15 U.S.C § 77h-1(g). Six factors may be considered in determining whether a penalty is in the public interest. These include: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require. 15 U.S.C. § 77h-1(g). There is a three-tiered system for determining the maximum civil penalty for each violation. See 15 U.S.C. §§ 77h-1(g). For the time period at issue, the maximum first, second, and third-tier penalty for each violation for a natural person is $7,500, $75,000 and $150,000, respectively. See 15 U.S.C. §§ 77h-1(g); 17 C.F.R. § 201.1004 & Subpt. E, Table IV (adjusting the statutory amounts for inflation). A maximum third-tier penalty is appropriate where (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such acts or omissions directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other

[34] The Division has offered, at a minimum, a reasonable approximation of Cohen and Corazzi's ill-gotten gains. Natural Blue's payments to Cohen and Corazzi were calculated by Ms. Hussain, who testified at trial about her work on this matter. Ms. Hussain explained that she identified two Natural Blue bank accounts in the investigative record. See Tr. 1384; Div. Ex. 258. She reviewed every transaction reflected in the bank accounts and calculated the total payments to Cohen and JEC Corp., and to Corazzi, CA Capital Associates, and Izarroc. See id. at 1385-88. Ms. Hussain acknowledged that certain payments may have been expense reimbursements, see id. at 1388; 1391, but also noted that Natural Blue paid directly "a large amount of travel-related expenses." Id. at 1418-19. Although it was their burden to rebut the Division's evidence, Cohen and Corazzi did not do so.

persons or resulted in substantial pecuniary gain to the person who committed the acts or omissions. See 15 U.S.C. § 77h-1(g)(2)(C);

C. Cease and desist from violations or future violations of Securities Act Section 17(a), pursuant to Section 8A(a) of the Securities Act, which authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. In deciding whether to issue a cease-and-desist order, courts consider: (1) whether future violations are reasonably likely; (2) the seriousness of the violations at issue; (3) whether the violations are isolated or recurrent; (4) respondents' state of mind; (5) whether respondents recognizes the wrongful nature of their conduct; (6) the recency of the violations; (7) "whether the violations caused harm to investors or the marketplace"; (8) "whether [respondents] will have the opportunity to commit future violations"; and (9) the "remedial function [a] cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding." Gordon Brent Pierce, Securities Act Release No. 9555, 2014 SEC LEXIS 4544, at *82-83 (Mar. 7, 2014); KPMG Peat Marwick LLP, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001), recon. denied, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002). "Absent evidence to the contrary," a single past violation ordinarily suffices to establish a risk of future violations. KPMG Peat Marwick LLP, 2001 SEC LEXIS 98, at *102; see id. at 102-03 ("evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist"). The showing necessary to demonstrate the likelihood of future violations is "significantly less than that required for an injunction." Id. at *114; and

D. Permanently refrain, pursuant to Securities Act 8A(f) and the Court's remedial powers, from acting as an officer or director for any issuer that has a class of securities registered

pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

E. Imposing such other remedial relief as the ALJ deems appropriate.

All of the requested relief is warranted here. The payments to Cohen and Corazzi were made pursuant to their spurious consulting agreements, which arose directly from their fraudulent scheme to operate and control Natural Blue while concealing from the investing public the nature and extent of their involvement. A third tier civil penalty is needed to deter Cohen and Corazzi's future violations of law and is in the public interest. Cohen and Corazzi are recidivists with serious disciplinary histories, and they have shown no appreciation for the wrongfulness of their conduct. Here, they acted with a high degree of scienter, concealing their true roles with Natural Blue because they knew they could not openly run the company as officers. As Natural Blue's supposed "consultants," they received the vast majority of the payments the company made to its personnel and held large amounts of its stock. Cohen and Corazzi's unjust enrichment ultimately came at the expense of the company, which failed, and its investors, who lost their investments.

CONCLUSION

As a result of the conduct described above, Cohen and Corazzi willfully violated Section 17(a)(1) and 17(a)(3) of the Securities Act, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities, by engaging in a device, scheme and/or artifice to defraud and/or engaging in a transaction, practice and/or course of business which operated or would have operated as a fraud or deceit upon the purchaser. Cohen and Corazzi violated these laws and regulations by creating and operating Natural Blue as a vehicle for Cohen and Corazzi to control and profit from the company, while failing to disclose their roles as *de facto* officers or their past criminal and regulatory violations to potential

investors. Both Cohen and Corazzi knew or were reckless in not knowing that they committed deceptive acts in furtherance of this fraudulent scheme.

Accordingly, this Court should find both Cohen and Corazzi liable for the violations set forth in the Order Instituting Proceedings, and impose sanctions including a cease-and-desist order, disgorgement, civil penalties, and such other relief as the Court deems appropriate.

Respectfully submitted,

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