

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

ADMINISTRATIVE PROCEEDING  
File No: 3-17548

In the Matter of

**Microcap Management LLC;  
Bayside Realty Holdings LLC; and  
Meadpoint Venture Partners, LLC;**

Respondents.

**MOTION TO DISMISS  
FURTHER PROCEEDINGS**

The Division of Enforcement moves the Commission to dismiss the further proceedings to determine disgorgement and penalties in this matter.<sup>1</sup>

Background of the Proceeding

This administrative proceeding was instituted on September 16, 2016. The Order Instituting the Proceeding noted that respondents had submitted an offer of settlement which the Securities and Exchange Commission had determined to accept. Accordingly, the Commission made certain findings and ordered respondents to cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5. The OIP also found that respondents agreed to additional proceedings to determine what, if any, disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act and/or civil penalties pursuant to

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<sup>1</sup> The ALJ's May 1, 2020 Order stated: "The Division represented that it does not intend to seek further sanctions against those Respondents. The Division should therefore move the Commission to dismiss the further proceedings to determine civil penalties and disgorgement as to them." Order at 2.

Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act against it are in the public interest. OIP § IV. In connection with such additional proceedings respondents agreed that (a) they will be precluded from arguing that they did not violate the federal securities laws described in the OIP; (b) they may not challenge the validity of the OIP; (c) the findings of the OIP shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence. *Id.*

#### Motion to Dismiss Further Proceedings

The Division is moving to dismiss further proceedings against respondents to determine what disgorgement and penalties, if any, are in the public interest.

##### A. Factual Background

Respondents Mirocap Management LLC (“Microcap”), Bayside Realty Holdings LLC (“Bayside”), and Meadpoint Venture Partners LLC (“Meadpoint”), were Nevada Limited Liability companies controlled by William J. Sears (“Sears”). OIP at 2. From approximately April 2011 to May 2014, Fusion Pharm Inc. (“FSPM”), through its chief executive officer, Scott M. Dittman (“Dittman”), and its undisclosed de facto officer and control partner, Sears, engaged in an approximately \$12.2 million fraudulent scheme in violation of the registration and anti-fraud provisions of the federal securities laws. *Id.* The scheme essentially involved four steps. *Id.* First, utilizing backdated convertible notes and preferred FSPM stock, FSPM issued common stock to Microcap, Bayside, and Meadpoint. *Id.* Second, Sears, through these entities, sold the FSPM stock into the market. *Id.* Third, Sears transferred over \$1 million of the proceeds from the illegal stock sales back to FSPM,

where the money was fraudulently recognized and reported as revenue. *Id.* Fourth, FSPM issued press releases and financial reports claiming the false revenues, and failed to disclose Sears' identity, role, and background in FSPM's quarterly and annual reports posted on the OTC Markets Group, Inc.'s website. *Id.*

Sears and Dittman plead guilty to criminal conduct relating to the sale of FSPM stock. Specifically, in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.), Sears and Dittman each plead guilty to conspiracy to commit violations of Section 5(a) of the Securities Act, violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, wire fraud, and mail fraud. Sears also plead guilty to filing a false federal individual income tax return for calendar year 2011.

On February 10, 2020, Judgments in a Criminal Case were entered against Sears and Dittman in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.). Sears was sentenced to ninety-six months of imprisonment, ordered to forfeit \$8,896,867.42, and ordered to pay a money judgment in the amount of \$1,914,049.49. Dittman was sentenced to sixty months of imprisonment, ordered to forfeit \$921,094.29 to the United States, and ordered to pay a money judgment in the amount of \$1,160,160.81.

#### B. Further Relief

The Division is satisfied that all ill-gotten gains received by respondents have been attributed to Sears and Dittman. They have been ordered to pay those sums in the criminal case against them. Similarly, the Division will seek disgorgement of those amounts in related administrative proceedings against Sears and Dittman. Because Sears

and Dittman are liable to pay all ill-gotten gains received by respondents, the Division requests that further proceedings concerning disgorgement be dismissed.

The Division understands that respondents are defunct. None of the three respondents have a location, business, or assets that the Division has been able to identify. As a result, it appears to the Division that a civil penalty against respondents would serve no purpose and the Division requests that further proceedings concerning such a penalty be dismissed.

Conclusion

The Division of Enforcement respectfully requests that the Commission dismiss all further proceedings in this matter.

Dated: May 19, 2020,

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served on the following on this 19<sup>th</sup> day of May, 2020, in the manner indicated below:

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