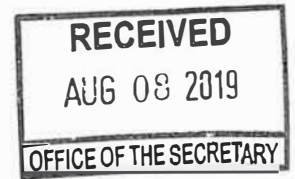


HARD COPY

**COURTESY
COPY**

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



In the Matter of

UPPER STREET MARKETING, INC.

**Administrative Proceeding
File No. 3-19250**

**INFORMATION BEFORE THE COMMISSION
AT THE TIME OF THE TRADING SUSPENSION**

Pursuant to the Commission's Order Requesting Additional Written Submissions ("Order"), the Division of Enforcement has attached the Affidavit of Roberto A. Tercero, dated August 7, 2019, setting forth the substantive facts before the Commission at the time of trading suspension of Upper Street Marketing, Inc. Pursuant to footnote 5 of the Order, the Affidavit does not disclose privileged analysis or sensitive information about the staff's investigation methods. The Division additionally is not filing information if the disclosure of which would otherwise violate applicable federal law or regulations.

Dated: August 7, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy Jane Longo".

Amy Jane Longo
Regional Trial Counsel
Douglas M. Miller
Senior Trial Counsel
Securities and Exchange Commission
Division of Enforcement
444 South Flower Street, Suite 900
Los Angeles, CA 90071
T: (323) 965-3835 (Longo)
T: (323) 965-3837 (Miller)
longoa@sec.gov
millerdou@sec.gov

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

UPPER STREET MARKETING, INC.

Administrative Proceeding
File No. 3-19250

AFFIDAVIT OF ROBERTO A. TERCERO

I, Roberto A. Tercero, hereby swear:

1. I am a Senior Counsel with the United States Securities and Exchange Commission (“Commission”) and have been employed by the Commission as an attorney since 1995 in the Los Angeles Regional Office.

2. I submit this Affidavit in compliance with the Commission’s July 24, 2019 Order Requesting Additional Written Submissions (“Order”) ordering that the Division of Enforcement file all information that was before the Commission as of June 27, 2019, the date the Commission ordered a suspension of trading in the securities of Upper Street Marketing, Inc. (“UPPR” or the “company”).

3. Pursuant to footnote 5 of the Order, the Division is not filing information which would disclose privileged legal analysis or sensitive information about the staff’s investigative methods. The Division additionally is not filing information the disclosure of which would otherwise violate applicable federal law or regulations.

Background

4. UPPR is a non-reporting company incorporated in Oklahoma in 2013 as Knox Nursery, Inc. The company was renamed UPPR in January 2014.

5. UPPR is headquartered in San Diego, California.
6. Joseph Earle (“Earle”) is UPPR’s CEO. Gordon McDougall (“McDougall”) is UPPR’s sole member of the board of directors.
7. On October 1, 2018, UPPR acquired Growing Springs Holding Corp., providing UPPR a way into the cannabis and hemp-related product and services sector. UPPR claimed that it was a “provider of industrial and commercial applications of unique cannabis and hemp-related products and services.”
8. UPPR’s stock has been quoted under the ticker symbol UPPR on OTC Link (previously “Pink Sheets”), operated by OTC Markets Group, Inc. (“OTC Markets”). As of June 24, 2019, UPPR had about seventy-nine (79) million shares outstanding, and its market capitalization was about \$98 million.
9. UPPR makes quarterly, annual, and other submissions to OTC Markets, which are publicly available.
10. UPPR’s stock had eleven market makers and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

The Unregistered and Undisclosed Stock Offering

11. On June 20, 2019, the Financial Industry Regulatory Authority (“FINRA”) conducted an unrecorded interview of Earle as part of its inquiry into trading in UPPR’s stock. During the interview, Earle stated that UPPR had hired Project Growth International to help the company conduct an offering of restricted UPPR stock and that the offering began in November 2018 (“Restricted Stock Offering”). Earle also stated that UPPR had raised about \$3 million in the Restricted Stock Offering by selling 40 million restricted UPPR shares to 80 investors. The

Restricted Stock Offering was not registered with the Commission. The Division did not have copies of the offering documents.

12. On April 30, 2019, UPPR made an annual submission to OTC Markets (“April 30 Submission”). UPPR used an OTC Markets form for periodic submissions that requires that the submitting company describe all offerings of securities, including both public and private offerings, for the last two years. The Restricted Stock Offering is not disclosed in UPPR’s April 30 Submission.

The \$10.55 Million in Financing

13. On May 8, 2019, UPPR announced in a submission to OTC Markets that on April 23, 2019 it had secured \$10.55 million (“May 8 Submission”) in financing by issuing notes that are convertible to stock. UPPR’s May 8 Submission stated that UPPR entered into the financing transactions with a private entity and the transactions were structured like lines of credit that permitted UPPR to draw down funds at UPPR’s discretion, such as for business development. The May 8 Submission stated that funds advanced to UPPR under the financings could be repaid with UPPR stock.

14. On May 23, 2019, UPPR made a quarterly submission to OTC Markets for the quarter ending March 31, 2019 (“May 23 Submission”). The May 23 Submission states that UPPR had \$273,000 in cash. UPPR’s May 23 Submission does not disclose the \$10.55 million in financing transactions in the quarterly submission, including in the description of UPPR’s operations or in the accompanying financial statements.

15. In its May 8 Submission, UPPR stated that the transactions were entered into on April 23, 2019, which is after the relevant reporting period covered by the May 23 Submission, namely the quarter ending March 31, 2019.

The Colorado Hemp Processing Facility

16. UPPR announced in a May 3, 2019 press release that it acquired a Colorado hemp processing facility for \$1.1 million. According to a June 19 press release, UPPR claims it is sixteen weeks away from being able to process hemp at the facility.

17. Property records show that UPPR acquired the Colorado facility on April 4, 2019 through a quit claim deed and that there is a mortgage on the property. The mortgage lender was a private entity, not a bank.

18. UPPR used an OTC Markets form for periodic submissions, including quarterly submissions, that requires that the submitting company identify all property that it owns, uses, or leases. In its May 23 Submission, UPPR does not disclose the acquisition of the Colorado facility, which took place after the reporting period. However, in its May 23 Submission, UPPR did disclose that it acquired a facility in San Diego, California, which also took place after the reporting period.

Telephone Calls by Investor Relations Firms

19. Since at least April 2019, at least two calls centers have been telephoning representatives (“brokers”) at registered broker-dealers, recommending that the brokers purchase shares of UPPR stock. Bluesheet data shows that at least twenty (20) brokers have purchased UPPR shares in their personal accounts. Earle told FINRA during the June 20, 2019 interview that his company had hired an investor relations firm in February or March 2019 to cold-call brokers and recommend that they buy UPPR shares for their own accounts.

A. Windermere Media Group

20. Since at least May 2019, one broker (“Broker A”) has received telephone calls recommending that he buy UPPR stock from a person (“Caller A”) who identified herself as

from Windermere Media Group (“Windermere”). Approximately nine (9) years ago, Broker A began receiving telephone calls from Caller A during which Caller A recommended microcap stocks that Broker A should buy. When Caller A first began to contact Broker A, Caller A worked at The Ritman Agency (“Ritman”). Approximately five (5) years ago, Caller A informed Broker A that Caller A had left Ritman to start Windermere and has called him since then from Windermere.

21. In telephone calls with Broker A regarding UPPR, Caller A told Broker A that the company was in the hemp and cannabinoid business and had a processing plant and a contract to sell processed cannabinoids. Broker A purchased shares of UPPR stock. Pursuant to Caller A’s instructions, Broker A called Caller A after Broker A purchased the shares and told Caller A the date, time, price, and amount of the trades. Broker A would not have purchased the UPPR shares had Broker A known about any stock sales by company insiders because it suggested that something was wrong at the company.

B. Ritman

22. Ritman is the dba of Bay Hill Partners. It is an investor relations firm that runs a call center. Ritman has claimed to be a “full service advertising firm, dedicated to aiding the success of emerging public companies” that works “to communicate your company’s story to our vast network of brokers.” Ritman has provided its services in promotional campaigns of penny stocks. Some of the campaigns have become the subject of Commission enforcement actions. *See, e.g., SEC v. Zouvas, et al.*, Case No. 3:16-cv-00988-CAB-DHB (S.D. Cal.), Lit. Rel. 23526 (Apr. 26, 2015).

23. Earle told FINRA during the June 20, 2019 interview that McDougall introduced him to Venado Media (“Venado”) about obtaining investor relations services. Earle stated that,

based upon the recommendation of Venado, UPPR hired Ritman to increase awareness of UPPR as an investment to the broker community.

24. Earle informed FINRA that Venado informed him that Ritman has a list of 10,000 brokers at registered broker-dealers that it could contact through its call center.

25. Ritman charges \$100,000 per month for its call center services. UPPR paid Ritman \$150,000, indicating that the call center began to contact brokers no later than May 2019.

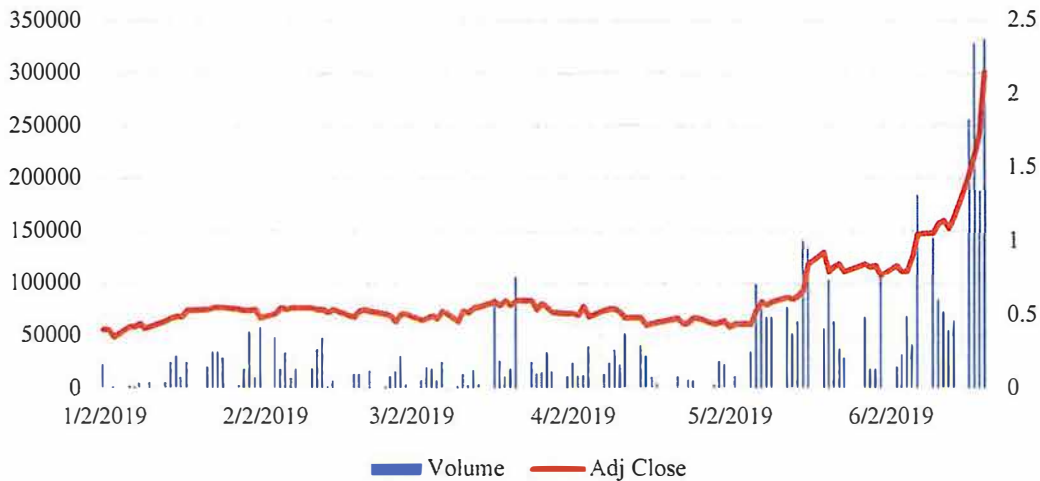
C. UPPR's OTC Markets Submissions Regarding an Investor Relations Firm

26. The OTC Markets form for UPPR's April 30 annual and May 23 quarterly Submissions has a section which specifically requires the company making the submission to list its investor relations firms. Despite having hired at least one investor relations firm, UPPR stated "None" in each of the two OTC Markets submissions.

UPPR's Share Price and Trading Volume

27. From May 3, 2019 to June 20, 2019, after UPPR hired Ritman to promote its stock, the share price of UPPR's stock increased 412% from an adjusted close of \$0.42 to \$2.15 per share. Daily trading volume of UPPR stock during the same time period increased 2,600% from about 12,300 to 332,000 shares per day for an average of about 94,000 shares. Previously, from January 1, 2019 to May 2, 2019, the share price of UPPR stock ranged from \$0.40 to \$0.42 per share, and average daily trading volume during the same time period was about 20,000 shares. A chart reflecting the share price and trading volume for UPPR stock from January 2, 2019 to June 20, 2019 is below:

UPPR 2019 Stock Price & Trading Volume



Sales of UPPR Stock by Entities Associated with the Business Partner of UPPR's Sole

Board Member

28. UPPR's May 23 Submission states that McDougall, UPPR's sole member of the board of directors, beneficially owns about 15 million UPPR shares of stock through an entity named Tezi Advisory Inc. ("Tezi"). McDougall's business partner, William Clayton, is Tezi's managing member. Clayton also runs two other entities, Natal Holdings, LLC ("Natal") and F.A. Ventures, Inc. ("F.A. Ventures"). Tezi and Natal share the same business address. Natal and F.A. Ventures are UPPR shareholders, holding respectively, approximately 1 million and 1.4 million shares, which they received by converting convertible promissory notes on March 28, 2017. On November 9, 2018, Clayton deposited 1 million UPPR shares into each of Natal's and

F.A. Ventures's brokerage accounts. Since February 27, 2019, Natal and F.A. Ventures have sold a combined total of just over 1 million UPPR shares for total proceeds of about \$844,000.

Dated: August 7, 2019



Roberto A. Tercero
Senior Counsel
Securities and Exchange Commission
Division of Enforcement
444 South Flower Street, Suite 900
Los Angeles, CA 90071
T: (323) 965-3891
TerceroR@sec.gov

On 8/17, 2019, Roberto Tercero, a person known to me, personally appeared before me and swore under oath the foregoing Affidavit.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On 8/7/2019 before me, Ray A. Ward, Notary Public
(Here insert name and title of the officer)

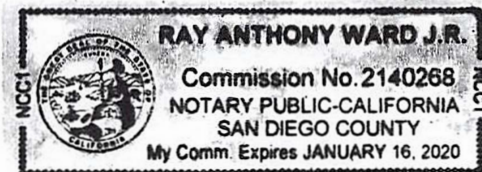
personally appeared Robert A. Terceiro,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
Affidavit: Upper Street
(Title or description of attached document)
Marketing, Inc. File No. 3-19250
(Title or description of attached document continued)
 Number of Pages 9 Document Date 8/7/2019

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CERTIFICATE OF SERVICE

In the Matter of Upper Street Marketing, Inc., A.P. File No. 3-19250

I hereby certify that, on August 7, 2019, I served copies of the foregoing, the Division of Enforcement's submission entitled Information Before the Commission at the Time of the Trading Suspension and Affidavit of Roberto A. Tercero, by UPS upon the below parties and additionally by facsimile transmission upon the Commission:

The Commission

Office of the Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549
(fax) 703-813-9793

Upper Street Marketing, Inc. and Joseph Earle

c/o Foley & Lardner LLP
Pamela L. Johnston
555 South Flower Street, Suite 3300
Los Angeles, CA 90017

and

c/o Krueger LLP Group
Blair Krueger
7486 La Jolla Blvd.
La Jolla, CA 92037

Dated: August 7, 2019
Los Angeles, California



Amy Jane Longo
Regional Trial Counsel
Douglas M. Miller
Senior Trial Counsel
Securities and Exchange Commission
Division of Enforcement
444 South Flower Street, Suite 900
Los Angeles, CA 90071
T: (323) 965-3835 (Longo)
T: (323) 965-3837 (Miller)
longoa@sec.gov
millerdou@sec.gov