

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10594 / December 21, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 84910 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17104

In the Matter of

**BioElectronics Corp.,
IBEX, LLC,
St. John's, LLC,
Andrew J. Whelan,
Kelly A. Whelan, CPA, and
Robert P. Bedwell, CPA**

Respondents.

**CORRECTED ORDER MAKING FINDINGS
AND IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

On February 5, 2016, the Securities and Exchange Commission (“Commission”) instituted proceedings pursuant Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against BioElectronics Corp. (“BioElectronics”), IBEX, LLC (“IBEX”), St. John’s, LLC (“St. John’s”), Andrew J. Whelan (“A. Whelan”), and Kelly A. Whelan, CPA (“K. Whelan”) (collectively, “Respondents”).¹ After an initial decision had issued in this matter and while an appeal to the Commission was pending, the Commission remanded the case to Chief Judge Brenda Murray for reassignment to a new administrative law judge (“ALJ”) pursuant to the Supreme Court’s decision in *SEC v. Lucia*, 138 S. Ct. 2044 (2018).

¹ The proceeding has ended as to Respondent Robert P. Bedwell, CPA.
BioElectronics Corp., Exchange Act Release No. 79176, 2016 SEC LEXIS 4034 (Oct. 27, 2016).

II.

Respondents have submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and Desist Order Pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act (“Order”), as set forth below.

Respondents and the Division recognize that, according to *Lucia v. SEC*, 138 S. Ct. 2044 (2018), Respondents are entitled to a “new hearing” before “another ALJ (or the Commission itself).” 138 S. Ct. at 2055. Respondents knowingly and voluntarily waive any claim or entitlement to such a new hearing before another ALJ or the Commission itself. Respondents also knowingly and voluntarily waive any and all challenges to the administrative proceedings or any and all orders that were issued during or at the conclusion of those proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of ALJ Cameron Elliot.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds that:

Summary

1. These proceedings arise out of: (a) Respondents’ participation in the offer and sale of securities of BioElectronics Corp. (“BioElectronics”) stock in unregistered transactions, in violation of Sections 5(a) and 5(c) of the Securities Act; and (b) Respondents BioElectronics and Andrew Whelan (“A. Whelan”)’s recording of revenue on two “bill and hold” transactions in a Form 10-K that BioElectronics filed with the Commission on March 31, 2010.

2. Specifically, in dozens of unregistered transactions between 2009 and 2014, BioElectronics issued millions of dollars’ worth of convertible notes to IBEX in exchange for loans, some of which notes IBEX converted into BioElectronics stock and sold to third parties, or, alternatively, sold to third parties without conversion. BioElectronics likewise issued millions of dollars’ worth of convertible notes to St. John’s in exchange for services, some of which notes St. John’s converted into over 91 million shares of BIEL stock and sold to the market in 2013 and 2014. Also, for its 2009 fiscal year, BioElectronics improperly recognized \$366,000 in revenue on two “bill and hold” transactions.

Respondents

3. **BioElectronics Corp.** (“BioElectronics”) is a Maryland corporation incorporated in 2000, with a sole location in Frederick, Maryland. The company is engaged in the business of making inexpensive, drug-free, anti-inflammatory medical devices and patches which use

electromagnetic energy. During the relevant period, BioElectronics shares were a penny stock as that term is defined in Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. *See* 15 U.S.C. § 78c(a)(51) and 17 C.F.R. § 240.3a51-1.

4. **Andrew J. Whelan** (“A. Whelan”) is the founder, Chief Executive Officer, president, and Chief Financial Officer of BioElectronics. He is 76 years old and resides in Frederick, Maryland.

5. **IBEX, LLC** (“IBEX”) is a Virginia limited liability company. K. Whelan founded IBEX in 2005 and is its sole member.

6. **Kelly A. Whelan** (“K. Whelan”), a certified public accountant, is the founder, owner, and sole member of IBEX. She resides in Ashburn, Virginia, and is A. Whelan’s daughter.

7. **St. John’s, LLC** (“St. John’s”) is a Virginia limited liability company. A. Whelan’s wife formed St. John’s in 2009. At the time of its formation, St. John’s was 99% owned by A. Whelan’s wife and 1% owned by K. Whelan. K. Whelan served as its registered agent, and, on at least one occasion, signed a document for St. John’s as its “Manager.” On December 21, 2011, A. Whelan’s wife purchased K. Whelan’s 1% interest and became St. John’s sole owner.

Procedural History

8. The Commission commenced this proceeding on February 5, 2016, with an order instituting administrative and cease-and-desist proceedings (“OIP”) pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act.

9. Respondents filed their answers on March 14, 2016.

10. The matter was assigned to ALJ Cameron Elliot.

11. Ten witnesses testified during a hearing held in Washington, D.C. the week of September 19-23, 2016. The admitted exhibits are listed in the record index issued by the Office of the Secretary on November 23, 2016.

12. The Division of Enforcement and Respondents filed post-hearing briefs, and briefing was complete on November 18, 2016.

13. On December 12, 2016, the ALJ issued an initial decision, which: (1) found that Respondents violated Section 5 of the Securities Act; (2) found that BioElectronics violated Section 13 of the Securities Exchange Act, BioElectronics and A. Whelan violated Rules thereunder, and that A. Whelan caused some of BioElectronics’s violations; (3) ordered Respondents to cease and desist from committing and causing any violations; (4) ordered Respondents to disgorge a total of approximately \$1,820,000 in ill-gotten gains, plus prejudgment interest; (5) permanently barred A. Whelan and K. Whelan from participating in offerings of penny stock; and (6) imposed civil penalties of \$650,000 against St. John’s and

\$130,000 against A. Whelan.

14. Respondents filed a petition to the Commission, and the Division of Enforcement and Respondents filed briefs with the Commission.

15. While Respondents' petition was pending, the United States Supreme Court decided *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), which held that "any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued. 137 S. Ct. at 1645; *see* 28 U.S.C. § 2462.

16. On November 30, 2017, the Commission remanded the case to the ALJ. *See Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 WL 5969234 (Nov. 30, 2017).

17. Consistent with the Commission's remand order, the parties were given the opportunity to submit, by January 12, 2018, new evidence that they deemed relevant to the ALJ's reexamination of the record, as well as opening and responsive briefs. *BioElectronics Corp.*, Admin. Proc. Rulings Release Nos. 5296, 2017 SEC LEXIS 3899 (ALJ Dec. 6, 2017); *BioElectronics Corp.*, Admin. Proc. Rulings Release Nos. 5425, 2017 SEC LEXIS 4222 (ALJ Dec. 27, 2017).

18. Respondents filed an opening brief with eleven exhibits—which were briefs, declarations, and orders previously filed in this proceeding—and a supplemental brief.

19. The Division filed an opening letter brief and a responsive brief.

20. On February 14, 2018, the ALJ issued an Order Ratifying in Part and Revising in Part Prior Actions. *BioElectronics Corp.*, Admin. Proc. Rulings Release No. 5591 (ALJ Feb. 14, 2018). The ALJ revised the initial decision to reduce the disgorgement ordered jointly and severally for BioElectronics, IBEX, A. Whelan, and K. Whelan from \$1,580,593 to \$767,593, and ordered that prejudgment interest shall be calculated from the revised amount. In all other respects, the ALJ ratified the initial decision and all other prior actions taken by an ALJ in the proceeding.

21. On April 27, 2018, the Commission gave the parties the opportunity to file simultaneous supplemental briefs addressing any matters they deemed pertinent in light of the ratification order by May 28, 2018. They were also given the opportunity to file simultaneous response briefs by June 11, 2018. Respondents filed a supplemental brief on May 25, 2018. The Division of Enforcement filed a response brief on June 11, 2018.

22. On June 19, 2018, the Commission granted Respondents' request to file a reply brief in response to the Division of Enforcement's response brief, and ordered that any such reply brief be submitted by June 25, 2018.

23. On June 21, 2018, before the submission of Respondents' reply, the United States Supreme Court decided *Lucia v. SEC*, 138 S. Ct. 2044 (2018), in which the Court held, *inter alia*, that the Commission's ALJ's were not constitutionally appointed, and respondents impacted by the constitutional infirmity, such as Respondents here, are entitled to a "new hearing" before "another

ALJ (or the Commission itself).” 138 S. Ct. at 2055.

24. On that same date, the Commission issued an order staying, for thirty days, any pending administrative proceeding initiated by order instituting proceedings that commenced the proceeding and set it for hearing before an ALJ, including any such proceeding currently pending before the Commission. *In re Pending Administrative Proceedings*, Securities Act of 1933 Release No. 10510, Securities and Exchange Act of 1934 Release No. 83495, Investment Advisers Act Release No. 4946, Investment Company Act Release No. 33135 (June 21, 2018).

25. On July 20, 2018, the Commission issued an order further staying administrative proceedings for an additional thirty days to August 22, 2018. *In re Pending Administrative Proceedings*, Securities Act of 1933 Release No. 10522, Securities and Exchange Act of 1934 Release No. 83675, Investment Advisers Act Release No. 4974, Investment Company Act Release No. 33164 (July 20, 2018).

26. On August 22, 2018, the Commission issued an order reaffirming its November 30, 2017 ratification of the appointments of Chief Administrative Law Judge Brenda Murray and Administrative Law Judges Carol Fox Foelak, Cameron Elliot, James E. Grimes, and Jason S. Patil to the office of administrative law judge in the Securities and Exchange Commission, and allowed the stay to expire. *In re Pending Administrative Proceedings*, Securities Act of 1933 Release No. 10536, Securities and Exchange Act of 1934 Release No. 83907, Investment Advisers Act Release No. 4993, Investment Company Act Release No. 33211 (Aug. 22, 2018).

27. The Commission also ordered, with respect to any such proceeding currently pending before an ALJ or the Commission, including this matter, that respondents be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter.

28. The Commission remanded all proceedings currently pending before the Commission, including this matter, to the Office of Administrative Law Judges for this purpose and vacated any prior Commission opinion.

29. On September 12, 2018, this case was reassigned to ALJ James E. Grimes. *In re Pending Administrative Proceedings*, Chief Administrative Law Judge’s Order Assigning Proceedings Post *Lucia v. SEC*, Admin. Proc. Release No. 5955 (ALJ Sept. 12, 2018).

30. Shortly thereafter, the Division of Enforcement and Respondents reached a settlement in principle, in lieu of the unique procedural circumstances that would require a rehearing of this matter, which the Division of Enforcement recommends that the Commission approve. Accordingly, on September 14, 2018, the parties jointly requested a stay of these proceedings, which ALJ Grimes granted. *BioElectronics Corp.*, Admin. Proc. Release No. 5976 (ALJ Sept. 14, 2018).

Conclusions of Law

31. As a result of the conduct set forth above in the Summary and based in the findings of fact detailed in the initial decision and ratification order, which Respondents neither admit nor deny:

- a. BioElectronics, IBEX, and St. John's violated, and A. Whelan and K. Whelan willfully violated, Securities Act Sections 5(a) and 5(c), which generally prohibit selling securities in unregistered transactions;
- b. BioElectronics violated Exchange Act Section 13(a) and Rule 13a-1 thereunder, which require issuers to file accurate annual reports, and A. Whelan caused BioElectronics's violation;
- c. BioElectronics violated Exchange Act Section 13(b)(2)(A) and (B), which requires issuers to make and keep accurate books and records and to design and maintain adequate internal controls, and A. Whelan caused BioElectronics's violation;
- d. A. Whelan willfully violated Exchange Act Rule 13a-14, which requires certifications by an issuer's principal executive and financial officers of the accuracy of the issuer's Form 10-K; and
- e. A. Whelan willfully violated Exchange Act Rule 13b2-1, which prohibits falsification of an issuer's books and records and false statements by an issuer's officer or director to the issuer's accountant

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, it is hereby ORDERED that, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Securities Exchange Act of 1934:

A. Respondents BioElectronics, IBEX, St. John's, A. Whelan, and K. Whelan cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent BioElectronics cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rule 13a-1 thereunder.

C. Respondent A. Whelan cease and desist from committing or causing any violations of Rules 13a-1, 13a-14, and 13b2-1.

D. Respondent A. Whelan be, and hereby is, barred, for a period of **five years**, from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

E. Respondent K. Whelan be, and hereby is, barred, for a period of **1 year**, from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

F. Respondents BioElectronics, IBEX, A. Whelan, and K. Whelan shall, pay jointly and severally, disgorgement of **\$166,640** to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3), as follows: (i) within **30 days** of the entry of this Order, **\$16,640**; (ii) within **180 days** of the entry of this Order, **\$16,640**; and (iii) within **365 days** of the entry of this Order, **\$133,360**. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

G. Respondents BioElectronics, St. John's, and A. Whelan shall, pay jointly and severally, disgorgement of **\$25,000** to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3), as follows: (i) within **30 days** of the entry of this Order, **\$2,500**; (ii) within **180 days** of the entry of this Order, **\$2,500**; and (iii) within **365 days** of the entry of this Order, **\$20,000**. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

H. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BioElectronics Corp., IBEX, LLC, St. John's, LLC, Andrew J. Whelan, and/or Kelly A. Whelan, CPA as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549 (BandyA@sec.gov), Paul Kisslinger, Assistant Chief Litigation Counsel, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549 (KisslingerP@sec.gov), and Sarah Heaton Concannon, Trial Counsel, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549 (ConcannonS@sec.gov).

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary