

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

**REED J. KILLION,
JEFFREY W. TOMZ, and
UNI-PIXEL, INC.,**

Defendants. :

Civil Action No.:

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. Uni-Pixel, Inc. ("Uni-Pixel" or the "Company") is a publicly traded Delaware Corporation originally headquartered in The Woodlands, Texas, and now headquartered in Santa Clara, California. Uni-Pixel develops and sells display and touch screen technologies for use in phones, tablets, notebooks, and other devices. During the period relevant to this Complaint, one such technology in development was a touch sensor film the Company called "UniBoss."

2. Between December 7, 2012 and February 26, 2014 ("Relevant Period"), Uni-Pixel and its CEO, Reed J. Killion¹, and CFO, Jeffrey W. Tomz, made materially misleading statements and omissions about the Company's touch screen manufacturing technologies, including that it had shipped 50 UniBoss products from its touted high-volume roll-to-roll manufacturing process when, in fact, it had not.

3. During the same time, Uni-Pixel entered into several agreements with major technology companies regarding the UniBoss technology. While they touted these agreements to

¹ Killion resigned from Uni-Pixel on December 30, 2013. As to Killion's personal conduct, therefore, the Relevant Period is limited to the period before his resignation.

the public, Killion, Tomz, and Uni-Pixel failed to disclose material terms and conditions of the agreements, including the identities of the counterpart companies and the contingent nature of the agreements. Accounting standards and securities laws require that such items be disclosed in public filings.

4. Defendants' false and misleading statements about Uni-Pixel's manufacturing accomplishments and capabilities, and their repeated failure to sufficiently disclose the terms of material agreements, were part of a scheme to materially mislead the investing public about Uni-Pixel's manufacturing capabilities and business prospects in violation of the securities laws of the United States.

5. Defendants' false and misleading statements and accounting omissions had the cumulative effect of artificially inflating Uni-Pixel's stock price during the Relevant Period, defrauding shareholders but benefitting Killion and Tomz. During the first half of 2013, for example, Uni-Pixel's stock price soared from less than \$15 to more than \$35 per share. Also during the Relevant Period, Killion and Tomz personally realized approximately \$770,000 and \$1,202,000 in net sales of Uni-Pixel stock, respectively.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under Sections 20(b), and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77u(a)] and Section 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78u(e) and 78aa].

7. Defendants have, directly and indirectly, made use of the means or instrumentalities of interstate commerce and the mails in connection with the transactions described in this Complaint.

8. Venue is proper in this Court under Section 22(a) of the Securities Act [15 U.S.C. §77u(a)] and Section 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa] because certain of the acts and transactions described herein took place in The Woodlands, Texas, where the Company was headquartered during the Relevant Period.

DEFENDANTS

9. Uni-Pixel is a Delaware corporation that has been headquartered in Santa Clara, California, since August 2015. Uni-Pixel was headquartered in The Woodlands, Texas, during the Relevant Period. Uni-Pixel's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and the Company is subject to the reporting requirements of the Exchange Act. Uni-Pixel's common stock is traded, and was traded during the Relevant Period, on the NASDAQ exchange under the ticker symbol "UNXL." Uni-Pixel's fiscal year coincides with the calendar year.

10. Killion, age 53, is a resident of Spring, Texas. He served as Uni-Pixel's CEO from May 1, 2008 through December 30, 2013. Killion served as Uni-Pixel's President from September 2004 until December 30, 2013, and prior to that, as Vice President of Business Development beginning in April 2002.

11. Tomz, age 44, is a resident of The Woodlands, Texas, and is a Certified Public Accountant ("CPA") licensed in Texas. He served as Uni-Pixel's CFO and Corporate Secretary from July 1, 2010 through May 27, 2015. Tomz served as Uni-Pixel's Vice President of Finance from June 2005 until May 27, 2015. Tomz previously acted as CFO for a publicly traded medical technology company and served in accounting and financial capacities for different private entities.

FACTS

FALSE AND MISLEADING STATEMENTS TO THE PUBLIC ABOUT MANUFACTURING CAPABILITIES

A. Defendants' False Public Statements about Uni-Pixel's Manufacturing Capabilities

12. In the spring of 2013, Uni-Pixel was in the early stages of developing a high-volume roll-to-roll (or continuous flow) manufacturing process for touch screens using the UniBoss technology. Perfecting its roll-to-roll manufacturing capability was critical to the commercial viability of Uni-Pixel's products, as it would allow touch sensors to be printed and plated in a continuous process. As of May 20, 2013, Uni-Pixel had produced no functioning UniBoss products using any large-scale manufacturing process, including its high-volume roll-to-roll process. Rather, the Company had only produced a few sample touch screen units by hand under more costly laboratory conditions on a small scale.

13. In the years leading to the events in this case, Uni-Pixel engaged in a pattern of announcing supposedly cutting-edge technologies and pivotal business relationships, which then failed to achieve commercial quality, generated little to no revenues, and ultimately disappeared.

14. In the case of the UniBoss technology, even though Uni-Pixel had produced no functioning products outside of the laboratory, the Company issued an April 8, 2013 press release in which Killion stated that the Company's printing and plating lines were "qualified and production ready" and that the Company was "on track to meet the capacity target of sixty thousand square feet per month by the end of April." Killion and Tomz knew these statements were untrue. These statements were material to investors because they related directly to the Company's ability to conduct its core business.

15. On April 30, 2013, Uni-Pixel issued a press release in which Killion further stated that Uni-Pixel had "begun shipping initial batches of sensors to our PC maker licensee. The

initial shipment quantities on the production line started at fifty moving to hundreds and then thousands over the next several months” and that the Company “reached [its] target production equipment capacity of 60,000 square feet per month.” Killion and Tomz knew this statement was also untrue. Tomz reviewed and attached the April 30, 2013 press release to Uni-Pixel’s Form 8-K that he filed with the Commission on April 30, 2013.

16. Also on April 30, 2013, Uni-Pixel held its fiscal year 2013 first quarter earnings call, a telephonic conference in which Killion, Tomz, and other Company employees discussed the state of the company with investors and potential investors. During this call, in connection with shipping 50 units – purportedly from the Company’s “production line” – Killion stated that “[w]e had to qualify our lines internal with respect to production level process, so we had to qualify the printing line, we had to qualify the plating line, and we had to qualify our film . . . it’s a situation where we’ve qualified our process.”

17. As Killion and Tomz knew, statements in Uni-Pixel’s two April 2013 press releases and first quarter earnings call were false and misleading in that Uni-Pixel had yet to successfully produce a single functioning touch screen using the Company’s touted high-volume, roll-to-roll process but had, in fact, made the Company’s few functioning UniBoss units by hand plating them under costlier, small-scale lab conditions that could not be used for commercial manufacturing.

18. Killion and Tomz misled the public about the Company’s manufacturing capabilities because revealing the true state of its ability to utilize its own much-publicized process would have jeopardized business and customer relationships and investment prospects.

19. In late May 2013, a Uni-Pixel employee confronted Killion and Tomz, separately, about the fact that they had misrepresented the Company's manufacturing capabilities. But they never retracted or amended Uni-Pixel's April 2013 statements.

B. Uni-Pixel's False Public Statements about a So-Called "Purchase Order"

20. On November 7, 2013, Uni-Pixel issued a press release stating that it had "received its first purchase order from their lead PC OEM partner for its revolutionary InTouch Sensors."² Killion helped draft the press release and approved its issuance. Tomz reviewed and attached the press release to Uni-Pixel's Form 8-K that he filed with the Commission on November 7, 2013.

21. The "lead PC OEM partner" was Dell. In reality, Dell only ordered 1,000 Uni-Pixel Sensors at \$0.01 per unit – for a total price of \$10 – to review as sample products.

22. Uni-Pixel's November 7, 2013 press release and Form 8-K were false and misleading because they led the public to believe that the "lead PC OEM partner" had made a commercial purchase of Uni-Pixel's products by disclosing neither the extremely small purchase price per unit nor the status of the order as a sample for a potential customer.

23. Before Uni-Pixel issued the press release or Form 8-K, a Dell employee specifically requested of Killion that, "if UniPixel discloses any purchase orders, please refer to them as conditional purchase orders." Killion, and thus Uni-Pixel, did not comply with this request.

C. Uni-Pixel Misled the Market at the End of 2013.

24. Also in the November 7, 2013 press release and Form 8-K, Uni-Pixel stated that it "expect[ed] to ship an initial commercial run of InTouch Sensors in the fourth quarter of 2013."

² InTouch was a brand name that Uni-Pixel used to market products using its UniBoss technology.

25. In fact, Uni-Pixel's management did not expect that the Company would ship a commercial run of products in 2013. In early December 2013, Uni-Pixel's Vice President of Manufacturing recommended to Killion and Tomz that the Company remove its shipment prediction from an investor relations presentation. Despite this red flag from the Company's head of manufacturing, Uni-Pixel did not, during the Relevant Period, withdraw or clarify its claim, or disclose its true manufacturing capabilities to the public.

26. On December 20, 2013, Killion informed Uni-Pixel's Board of Directors that "the Company is looking to be able to ship commercial product no later than end of second quarter 2014" and the Uni-Pixel sales employee responsible for Dell told the Board that "the Company is looking to fulfill the 1000 unit Dell purchase order in Q1 2014." Still, despite these red flags, Uni-Pixel failed to withdraw, correct, or clarify its claims to the public during the Relevant Period, nor did it inform the public about this material change in plans.

**UNI-PIXEL FAILED TO INFORM THE PUBLIC IN
CONNECTION WITH ITS BUSINESS AGREEMENTS**

27. During the Relevant Period, Uni-Pixel engaged in a pattern of touting its purportedly cutting-edge UniBoss technology and related business relationships while neither the technology nor the relationships were as the Company described them to the public.

A. Defendants Failed to Disclose Material Terms of the Dell Agreement.

28. Effective on November 20, 2012, Uni-Pixel entered into a "preferred price and capacity license" agreement with Dell to introduce products to the market using UniBoss technology (the "Dell Agreement"). The Dell Agreement contemplated Uni-Pixel satisfying three potential deliverables or milestones. At the completion of each milestone, contingent upon the mutual agreement of the parties, Dell would pay Uni-Pixel \$5 million, for a potential total of \$15 million. Uni-Pixel received the first milestone payment of \$5 million in March 2013, but did

not receive any additional amounts under the Dell Agreement.

29. The Dell Agreement – a preferred price and capacity license – was the first contract of its kind for Uni-Pixel. It granted Dell an exclusive license in the notebook market segment for Uni-Pixel’s technology, and the potential revenue of \$15 million dwarfed not only Uni-Pixel’s 2012 revenues of \$76,000 but also the Company’s lifetime total revenue of \$1.67 million.

30. The Dell Agreement was a material definitive agreement that was not entered into in the ordinary course of Uni-Pixel’s business and otherwise called for Uni-Pixel to acquire property, plant, or equipment for consideration exceeding 15 percent of Uni-Pixel’s fixed assets.

31. On December 7, 2012, Uni-Pixel issued a press release announcing the Dell Agreement to the public. But Uni-Pixel did not identify Dell or disclose the terms and conditions of the agreement, including its contingent nature. Rather, the Company touted a “multi-million dollar” agreement with an unnamed “Major PC Maker.” Killion helped draft the press release and approved its issuance. Tomz reviewed and attached the press release to Uni-Pixel’s Form 8-K that he filed with the Commission on December 7, 2012.

32. In neither identifying Dell nor disclosing the material terms and conditions of the Dell Agreement, Uni-Pixel failed to comply with the requirements of Item 1.01 of Form 8-K.

B. Defendants Failed to Disclose Material Terms of the Intel Agreement.

33. Effective March 21, 2013, Uni-Pixel entered into an agreement with Intel in connection with the development and production of Uni-Pixel’s touch sensor technology (the “Intel Agreement”). The Intel Agreement contemplated two potential milestones requiring deliverables from Uni-Pixel. At the completion of each milestone, contingent upon the mutual agreement of the parties, Intel would pay Uni-Pixel \$5 million, for a potential total of \$10

million. Uni-Pixel received an initial payment of \$5 million in May 2013 to assist with the purchase of certain equipment, and this was classified as deferred revenue until completion of the first required deliverable. Uni-Pixel never reached the first milestone contemplated by the Intel Agreement and did not receive any additional payments from Intel.

34. The Intel Agreement was a material definitive agreement that was not entered into in the ordinary course of Uni-Pixel's business and otherwise called for Uni-Pixel to acquire, from third parties, property, plant, or equipment for consideration exceeding 15 percent of Uni-Pixel's fixed assets.

35. On April 8, 2013, Uni-Pixel issued a press release announcing the Intel Agreement to the public. But Uni-Pixel did not identify Intel or disclose the terms and conditions of the agreement, including its contingent nature. Rather, the Company once again touted a "multi-million dollar" agreement with an unnamed "Major Ecosystem Partner." Killion helped draft the press release and approved its issuance. Uni-Pixel did not file this press release with the Commission, but Killion and Tomz caused Uni-Pixel to file a Form 8-K before the Commission on April 8, 2013 stating that the company had "engaged a touch-screen ecosystem partner" and granted the partner a "preferred price and capacity license."

36. The Intel Agreement also provided a remedy in the event of specified breaches that would require, if triggered, Uni-Pixel to either relinquish to Intel the purchased equipment or pay Intel several million dollars. Uni-Pixel also failed to disclose this material aspect of the Intel Agreement to either the public or the Commission.

37. In neither identifying Intel nor disclosing the material terms and conditions of the Intel Agreement, Uni-Pixel failed to comply with the requirements of Item 1.01 of Form 8-K.

C. Defendants Failed to File Uni-Pixel's Agreement with Kodak.

38. On April 15, 2013, Uni-Pixel entered into an agreement with the Eastman Kodak Company in connection with a proposed joint manufacturing facility to be located in Rochester, New York (the "Kodak Agreement"). The Kodak Agreement contemplated both Uni-Pixel and Kodak providing operating capital and equipment. For Uni-Pixel, the Kodak Agreement was the Company's first and only business relationship in which it committed large amounts of its own money: approximately \$12 million.

39. The Kodak Agreement was a material definitive agreement that was not entered into in the ordinary course of Uni-Pixel's business and otherwise involved the acquisition of property, plant, or equipment for consideration exceeding 15 percent of Uni-Pixel's fixed assets.

40. On April 16, 2013, Uni-Pixel and Kodak issued a joint press release announcing the Kodak Agreement to the public. The companies stated that they had entered into a "manufacturing and supply agreement to produce next-generation touch sensors based on UniPixel's UniBoss multi-touch sensor film." Killion drafted and Tomz reviewed the joint press release before Uni-Pixel issued it. Killion and Tomz further caused Uni-Pixel to file a Form 8-K with the Commission on April 16, 2013 stating that the Company had "entered into a supply agreement with Eastman Kodak Company."

41. Uni-Pixel failed to timely file, as an exhibit to its Form 8-K or subsequent periodic report, the Kodak Agreement contract and therefore failed to comply with the requirements of Item 1.01 of Form 8-K.

UNI-PIXEL'S ACCOUNTING OMISSIONS

42. Generally accepted accounting principles ("GAAP") require an entity engaged in a research and development arrangement to disclose the following:

- a. The terms of significant agreements under the research and development arrangement (including royalty arrangements, purchase provisions, license agreements, and commitments to provide additional funding) as of the date of each balance sheet presented; and
- b. The amount of compensation earned and costs incurred under such contracts for each period for which an income statement is presented. (Accounting Standards Codification ("ASC") 730-20).

43. GAAP further requires such entities to disclose the following for each arrangement that includes milestones:

- a. A description of the overall arrangement;
- b. A description of each milestone and related contingent consideration;
- c. A determination of whether each milestone is considered substantive; and
- d. The factors that the entity considered in determining whether the milestone or milestones are substantive. (ASC 605-28).

44. The Dell Agreement and the Intel Agreement are research and development arrangements under GAAP. Reporting on activity during the Relevant Period, Uni-Pixel filed with the SEC quarterly reports on Forms 10-Q on April 30, August 8, and November 7, 2013 and annual reports on Forms 10-K on February 26, 2013 and February 26, 2014. In each of these reports, Uni-Pixel failed to provide necessary disclosures in connection with the Dell Agreement. In each report covering a period after March 21, 2013, Uni-Pixel failed to provide necessary disclosures in connection with the Intel Agreement.

45. Item 601(b)(10) of Regulation S-K required that Uni-Pixel attach the Dell Agreement, Intel Agreement, and Kodak Agreement as an exhibit to the Form 10-K or 10-Q

covering the reporting period in which the agreement was executed or became effective. Uni-Pixel failed to file the Dell Agreement as an attachment to its February 26, 2013 Form 10-K, the Intel Agreement and the Kodak Agreement as an attachment to its August 8, 2013 Form 10-Q.

46. Both Killion and Tomz signed the Forms 10-Q and 10-K described in the preceding paragraph. Killion signed in his role as CEO, Principal Executive Officer, and Director. Tomz signed in his role as CFO, Secretary, and Principal Accounting Officer.

47. Uni-Pixel's lack of disclosure allowed the Company to conceal the fact that it not only missed, but also did not even have the capability to meet, contractually defined milestones required under both the Dell and Intel Agreements.

48. GAAP required Uni-Pixel to disclose, among other things, the terms of significant agreements and the amount of compensation earned and costs incurred under such contracts. Specifically for contracts including milestones, accounting standards required Uni-Pixel to disclose a description of the overall arrangement, a description of each milestone and related contingent consideration, and a determination of whether each milestone is considered substantive, including the factors relevant to that determination.

49. Uni-Pixel failed to make the foregoing disclosures in connection with the Dell and Intel Agreements. Uni-Pixel also failed to attach the Dell, Intel, and Kodak Agreements to SEC filings. These omissions of required disclosures were material and deprived investors of information about the only agreements from which Uni-Pixel recognized or had the future potential to recognize any significant revenues.

FIRST CAUSE OF ACTION
Violations of the Antifraud Provisions of the Securities Act
(Section 17(a) [15 U.S.C. § 77q(a)])
[against Defendants Uni-Pixel, Killion, and Tomz]

50. The Commission realleges and incorporates by reference Paragraphs 1 through 49.

51. Defendants Uni-Pixel, Killion, and Tomz, in public statements and public filings with the Commission during the Relevant Period, misrepresented, failed to disclose, and/or made misleading omissions regarding the Company's manufacturing capabilities and business relationships.

52. By engaging in the foregoing misconduct, Defendants Uni-Pixel, Killion, and Tomz, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities, knowingly or with severe recklessness, employed devices, schemes, or artifices to defraud.

53. By engaging in the foregoing misconduct, Defendants Uni-Pixel, Killion, and Tomz also, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities, and with negligence: (i) obtained money or property by means of untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (ii) engaged in transactions, practices, and/or courses of business which operate as a fraud or deceit upon purchasers, prospective purchasers, and other persons.

54. By reason of the foregoing, Defendants Uni-Pixel, Killion, and Tomz violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q].

55. Killion and Tomz knowingly or with severe recklessness provided substantial assistance to Uni-Pixel's violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q].

56. By reason of the foregoing, Killion and Tomz aided and abetted Uni-Pixel's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 17(a) of the Securities Act [15 U.S.C. § 77q].

SECOND CAUSE OF ACTION
Violations of Antifraud Provisions of the Exchange Act
(Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5])
[against Defendants Uni-Pixel, Killion, and Tomz]

57. The Commission realleges and incorporates by reference Paragraphs 1 through 49.

58. Defendants Uni-Pixel, Killion, and Tomz, in public filings with the Commission during the Relevant Period, knowingly or with severe recklessness, misrepresented, failed to disclose, and/or made misleading omissions regarding manufacturing capabilities and business relationships.

59. Defendants Uni-Pixel, Killion, and Tomz knowingly and intentionally issued public statements touting manufacturing capabilities that they knew the Company did not possess at the time. Similarly, Defendants knowingly omitted material terms and conditions of agreements with Dell and Intel that would have informed the public about the true nature of those arrangements.

60. By engaging in the foregoing misconduct, Defendants Uni-Pixel, Killion, and Tomz, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly: (i) employed devices, schemes or artifices to defraud; (ii) made untrue statements of material facts and omitted to state material facts necessary in order

to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices and courses of business which operate as a fraud or deceit upon persons, including purchasers and sellers of securities.

61. By reason of the foregoing, Uni-Pixel, Killion, and Tomz violated, and unless enjoined, will continue to violate, Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

62. Killion and Tomz knowingly or with severe recklessness provided substantial assistance to Uni-Pixel's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

63. By reason of the foregoing, Killion and Tomz aided and abetted Uni-Pixel's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THIRD CAUSE OF ACTION

Violations of the Reporting Provisions of the Exchange Act (Section 13(a) and Rules 12b-20, 13a-1, 13a-11 and 13a-13) [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] [against Defendant Uni-Pixel, aided and abetted by Killion and Tomz]

64. The Commission realleges and incorporates by reference Paragraphs 1 through 49.

65. Defendant Uni-Pixel, in public filings with the Commission during the Relevant Period, misrepresented, failed to disclose, and/or made misleading omissions regarding manufacturing capabilities and business relationships.

66. By engaging in the foregoing misconduct, Uni-Pixel, whose securities are registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78]), failed to file annual and

quarterly reports (on Forms 10-K, 10-KSB, 10-Q and 10-QSB) with the Commission that were true and correct, and failed to include material information in its required statements and reports as was necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

67. By reason of the foregoing, Uni-Pixel violated, and unless enjoined, will continue to violate, Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

68. Defendants Killion and Tomz knowingly or with severe recklessness gave substantial assistance to Uni-Pixel in its violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

69. By reason of the foregoing, Killion and Tomz aided and abetted Uni-Pixel's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

FOURTH CAUSE OF ACTION

Violation of the Books and Records and Internal Control Provisions of the Exchange Act (Sections 13(b)(2)(A) and 13(b)(2)(B))

[15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]

[against Defendant Uni-Pixel, aided and abetted by Killion and Tomz]

70. The Commission realleges and incorporates by reference Paragraphs 1 through - 49.

71. By engaging in the foregoing misconduct during the Relevant Period, Uni-Pixel, whose securities are registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l]:

- Failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and

- Failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances that: (i) transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability of assets.

72. By engaging in the foregoing misconduct, Uni-Pixel violated, and unless enjoined, will continue to violate, Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

73. Killion and Tomz knowingly or with severe recklessness provided substantial assistance to Uni-Pixel in its failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of Uni-Pixel.

74. By reason of the foregoing, Killion and Tomz aided and abetted Uni-Pixel's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A)].

75. Killion and Tomz knowingly or with severe recklessness provided substantial assistance to Uni-Pixel in its failure to devise and maintain a sufficient system of internal accounting controls.

76. By reason of the foregoing, Killion and Tomz aided and abetted Uni-Pixel's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78(m)(b)(2)(B)].

REQUEST FOR RELIEF

For these reasons, the Commission respectfully requests that the Court enter a final judgment:

- a) permanently enjoining Uni-Pixel from violating Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder;
- b) permanently enjoin Killion from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder;
- c) permanently enjoin Tomz from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder;
- d) ordering all Defendants to disgorge all ill-gotten gains, with prejudgment interest;
- e) ordering Killion and Tomz to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78uA];
- f) prohibiting Killion and Tomz, under Section 20(e) of the Securities Act [15 U.S.C. § 77t(d)(4)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. §78], from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports under Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)]; and

g) granting such other relief as the Court may deem just and appropriate.

Dated this 9th day of March, 2016

Respectfully submitted,



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