

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
HENRY B. SARGENT,	)	JURY TRIAL DEMANDED
FREDERICK M. MINTZ,	)	
ALAN P. FRAADE,	)	
JOSEPH J. TOMASEK and	)	
PATRICK GIORDANO,	)	
	)	
Defendants.	)	
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**COMPLAINT**

Plaintiff Securities and Exchange Commission (“the Commission”) alleges the following against defendants Henry B. Sargent, Frederick M. Mintz, Alan P. Fraade, Joseph J. Tomasek, and Patrick Giordano, and demands a jury trial.

**PRELIMINARY STATEMENT**

1. This enforcement action involves a fraudulent and deceptive scheme to disguise public stock sales by corporate affiliates that should have been registered with the Commission. The scheme involved the issuance of stock to nominee shareholders, the filing of a fraudulent Form S-1 registration statement, the transfer of stock from the nominee shareholders to three persons who were affiliated with the issuer, and the submission of attorney opinion letters falsely claiming that the shares acquired by the affiliated persons were “free-trading” shares that could be sold to the public without restriction.

2. Defendant Henry Sargent, an attorney in Connecticut, formed BMP Holdings, LLC (“BMP”) in the fall of 2014. He recruited thirty-two friends, family, and co-workers who paid a total of \$1,680 – at the nominal price of 1¢ per share – for 168,000 shares of BMP stock. The issuance of BMP stock to the nominee shareholders was a charade. Sargent did not provide the shareholders with any offering materials and did not tell them anything about the business of BMP (it had no ongoing business). In May 2015, Sargent continued the charade by causing BMP to file a Form S-1 registration statement with the Commission, ostensibly so that the nominee shareholders could sell their BMP stock to the public. Sargent hired defendant Joseph Tomasek, an attorney in New Jersey, to help with drafting and filing the Form S-1. The Form S-1 was materially false and misleading, because it claimed that the nominee shareholders were not affiliates of BMP and that they had acquired the BMP stock for investment purposes.<sup>1</sup> In reality, the nominee shareholders were controlled by Sargent and had no investment purpose – they were going to sell the BMP stock whenever Sargent told them to do so.

3. In April 2016, Francis Reynolds, the president and chief executive officer of a biotechnology company in Massachusetts called PixarBio Corp. (“PixarBio”), hired defendant Patrick Giordano to help him locate a shell company for PixarBio to acquire and use as a vehicle for unregistered sales of PixarBio stock that would generate illicit funds for the company and for himself.<sup>2</sup> Giordano identified BMP and suggested that Reynolds hire defendants Frederick

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<sup>1</sup> SEC Rule 144(a)(1) [17 C.F.R. §230.144(a)(1)] defines an “affiliate” of an issuer as “a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such issuer.”

<sup>2</sup> In April 2018, the Commission filed a civil enforcement action against Reynolds and PixarBio concerning the activity alleged in this Complaint and other fraudulent activity. The case is pending in this District as *SEC v. PixarBio Corp. et al.*, Case No. 1:18-cv-10797-WGY.

In May 2018, Reynolds was indicted on securities fraud charges concerning some of the fraudulent activity alleged in the Commission’s enforcement action against him. The criminal case is pending in this

Mintz and Alan Fraade, partners at a law firm in New York, to provide legal services for the acquisition of BMP.

4. In August 2016, Sargent sold his controlling interest in BMP to PixarBio for \$325,000. As part of the transaction, Sargent and Reynolds arranged for the nominee shareholders to sell their BMP stock to Sargent, Giordano, and Jay Herod (a long-time friend of Reynolds).<sup>3</sup> The shares that Sargent, Giordano, and Herod acquired were restricted securities that could not be sold to the public unless the three waited the mandatory one-year holding period for stock sales by corporate affiliates or filed a new registration statement for their sale of the BMP stock.<sup>4</sup>

5. On October 30, 2016, Reynolds caused PixarBio to merge with BMP. As a result, the restricted shares of BMP stock held by Sargent, Giordano, and Herod became restricted shares of PixarBio stock. To help Giordano and Herod evade the restrictions on selling their PixarBio stock to the public, Mintz and Fraade prepared attorney opinion letters to be sent to PixarBio's transfer agent and several brokerage firms.<sup>5</sup> The opinion letters falsely claimed that

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District as *U.S. v. Reynolds et al.*, Case No. 1:18-cr-10154-DPW. A trial is scheduled to begin on October 7, 2019.

<sup>3</sup> Herod is a defendant in the Commission's enforcement action and the parallel criminal case identified in note 2. Herod pled guilty in the criminal case on February 7, 2019. He has not yet been sentenced.

<sup>4</sup> "Restricted" stock is stock of a publicly traded company (the "issuer") that is acquired from the issuer, or an affiliate of the issuer, in a private transaction that is not registered with the Commission. Absent an exemption under the federal securities laws and rules, restricted stock cannot legally be offered or sold to the public unless a securities registration statement has been filed with the Commission (for an offer) or is in effect (for a sale).

SEC Rule 144 [17 C.F.R. §230.144] imposes a holding period for an affiliate who holds restricted shares. For an issuer like PixarBio, which was not required to file periodic reports with the Commission, the affiliate must wait at least one year after fully paying for the shares before selling the shares to the public.

<sup>5</sup> A "transfer agent" is a company that, among other things, issues and cancels certificates of a company's stock to reflect changes in ownership. (A stock certificate provides physical proof of ownership.) If a shareholder's ability to sell the shares is restricted under the federal securities laws, the transfer agent typically places a restrictive legend on the certificate.

the shares of PixarBio stock held by Giordano and Herod were “free-trading” shares that could be sold to the public without restriction.

6. Between October 31, 2016 and January 23, 2017, Sargent, Giordano, and Herod sold restricted shares of PixarBio stock to the unsuspecting public. The sales were unlawful, because Sargent, Giordano, and Herod did not file a registration statement for the sales. Sargent’s proceeds were approximately \$631,000, Giordano’s proceeds were approximately \$117,000, and Herod’s proceeds were approximately \$910,000 (of which he funneled \$500,000 to PixarBio and \$300,000 to Reynolds himself).

7. Through the activities alleged in this Complaint, the defendants: (a) engaged in fraud in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b5]; (b) engaged in fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §77q(a)]; and (c) offered and sold unregistered securities, in violation of Section 5 of the Securities Act [15 U.S.C. §77e].

8. Accordingly, the Commission seeks: (a) a permanent injunction prohibiting the defendants from further violations of the relevant provisions of the federal securities laws; (b) disgorgement of the defendants’ ill-gotten gains, plus pre-judgment interest; (c) civil penalties due to the egregious nature of the defendants’ violations; (d) a permanent injunction prohibiting the defendants from issuing, trading, and/or inducing or attempting to induce the purchase or sale of a penny stock; (e) a permanent injunction prohibiting Mintz, Fraade, and Tomasek from directly or indirectly providing professional legal services (including the issuance of opinion letters) to any person or entity in connection with the offer or sale of securities

claiming an exemption from the registration provisions of the Securities Act; and (f) an order requiring Sargent and Giordano to surrender to PixarBio or its transfer agent, with instructions to cancel, all shares of PixarBio stock in their possession, custody or control.

### **JURISDICTION AND VENUE**

9. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §§78u(d)].

10. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78aa].

11. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], and Section 27 of the Exchange Act [15 U.S.C. §78aa], because at all relevant times PixarBio was based in Massachusetts, and because the Commission's enforcement action against PixarBio, Reynolds, and Herod and the parallel criminal proceeding against Reynolds and Herod – which involve the same nucleus of operative fact and much of the same evidence as this case – are pending in this District.

12. In connection with the conduct alleged in this Complaint, the defendants directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, the facilities of a national securities exchange, or the mails.

13. The defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

**DEFENDANTS**

14. **Henry B. Sargent**, age 51, lives in Ridgefield, Connecticut. He is an attorney licensed in New York and a chartered financial analyst. He has been the in-house counsel at Southridge Capital Management (“Southridge”), a financial services company in Ridgefield, since 1999.

15. **Frederick M. Mintz**, age 83, lives in Rockville Centre, New York. He is an attorney and a partner at The Mintz Fraade Law Firm, P.C., which is located in New York City.

16. **Alan P. Fraade**, age 67, lives in New Rochelle, New York. He is an attorney and a partner at The Mintz Fraade Law Firm, P.C.

17. **Joseph J. Tomasek**, age 71, lives in Verona, New Jersey. He is an attorney with an office in Somerville, New Jersey. He is identified as “of counsel” to The Mintz Fraade Law Firm, P.C. and exchanges referrals and information with Mintz and Fraade.

18. **Patrick Giordano**, age 60, lives in Brooklyn, New York. He is a licensed real estate agent. He also operates a website called “Shell Exchange” through which he advertises shell corporations that are for sale.

**FACTUAL ALLEGATIONS**

**Fraudulent Registration of Shares of BMP Holdings**

19. In August 2014, Sargent incorporated BMP Holdings, LLC (“BMP”) in Delaware. Sargent was the chief executive officer, chief financial officer, and sole director of BMP. At the time, BMP was a shell company with no business activities.

20. Between September and December 2014, Sargent recruited thirty-two people to buy common stock of BMP for the nominal amount of 1¢ per share. The nominee shareholders included members of Sargent’s family, personal friends, business contacts, and employees of

Southridge. Sargent asked these individuals to become shareholders of a corporation, but he did not tell them anything about the business of BMP (it had no business at that time) or about how BMP would use their money. He did not provide them with any offering materials. The nominee shareholders paid a total of \$1,680 (an average of \$52.50 per person) for 168,000 shares of BMP common stock. Sargent did not bother to provide many of the nominee shareholders with stock certificates. He did not deposit their checks in a BMP bank account until April 2015.

21. In January 2015, Sargent contributed to BMP his interest in a small yoga studio that he frequented and that consistently operated at a loss. In exchange, Sargent caused BMP to give him 5 million restricted shares of BMP stock.

22. On May 11, 2015, Sargent caused BMP to file a Form S-1 registration statement with the Commission. The stated purpose of the Form S-1 was to register the nominee shareholders' sale of 168,000 shares of BMP common stock to the public at 15¢ per share. (The Form S-1 did not concern the restricted shares that BMP had issued to Sargent.) Sargent signed the Form S-1 as President of BMP.

23. BMP's Form S-1 stated:

***None of the selling security holders are affiliates or controlled by our affiliates.*** None of the selling security holders hold, or at any time in the past, held any position or office with us or any of our predecessors or affiliates, nor are any of the selling security holders associates or affiliates of any of our officers or directors. ***Each of the selling security holders has acquired his, her or its shares pursuant to a private placement solely for investment and not with a view to or for resale or distribution of such securities.*** [Emphasis added.]

Sargent knew or was reckless in not knowing that the highlighted statements in the Form S-1 were materially false and misleading. The nominee shareholders were controlled by Sargent and were thus affiliates of BMP. The nominee shareholders did not buy BMP stock “solely for investment purposes” and without “a view to or for resale or distribution.” On the contrary, they

paid the nominal amount of 1¢ per share for BMP stock because Sargent asked them to, and they were going to sell the BMP stock whenever Sargent told them to do so.

24. Sargent hired Tomasek as an attorney to help prepare the Form S-1 and file it with the Commission. (Sargent had previously worked with Tomasek on several transactions for Southridge.) The cover page of the Form S-1 identified Tomasek as “Of Counsel” to “Mintz Fraade L.L.P., P.C.” – a reference to The Mintz Fraade Law Firm, P.C. The Form S-1 stated, “We have engaged Joseph J. Tomasek, Esq., as Legal Counsel for the preparation of this prospectus.”

25. Tomasek knew or was reckless in not knowing that the statements in the Form S-1 quoted in the paragraph 23 were materially false and misleading. Tomasek did not speak with any of the nominee shareholders when preparing the Form S-1. He did nothing to determine whether they had any relationship with Sargent or were otherwise affiliated with BMP. He ignored several “red flags” that should have alerted an attorney with his many years of experience working on similar offerings involving micro-cap issuers.<sup>6</sup> For one thing, Tomasek knew that a private placement of securities to unaffiliated investors is typically conducted with an offering memorandum that describes the business of the issuing company and the potential risks of the investment, and yet Sargent had not provided him with an offering memorandum for BMP. (No such document existed.) The size of the original “offering” to the nominee shareholders was another red flag, because a bona fide private placement for a start-up company would have raised far more than \$1,680. These facts should have alerted Tomasek that the nominee shareholders had no real economic interest in the BMP stock, that their original

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<sup>6</sup> The term “micro-cap” typically refers to public companies in the U.S. with a market capitalization of between \$50 million and \$30 million.

“purchases” of BMP stock and their proposed “sales” pursuant to the Form S-1 were just a charade, and that the nominee shareholders and “their” shares were actually controlled by Sargent.

26. On August 12, 2015, the Commission’s Division of Corporation Finance (which was not aware that the Form S-1 contained materially false and misleading statements) notified BMP that the registration of the sale of the 168,000 shares of its common stock was effective.

27. On September 3, 2015, BMP’s transfer agent prepared stock certificates for the 168,000 shares in the names of the thirty-two nominee shareholders. BMP’s transfer agent did not place a restrictive legend on the stock certificates. The absence of a restrictive legend made it possible to deposit the shares with a brokerage firm for sale on the public markets.

28. On September 22, 2015, a brokerage firm that Sargent retained (hereafter, “Brokerage Firm A”) submitted a Form 211 application to the Financial Industry Regulatory Authority (“FINRA”), so that the 168,000 shares of BMP stock ostensibly owned by the nominee shareholders could be quoted for public sale on the OTC market.<sup>7</sup> Sargent did not notify the nominee shareholders when the brokerage firm filed the application. On October 1, 2015, FINRA requested additional information, including whether there was any relationship between BMP and its current shareholders (*i.e.*, the nominee shareholders). FINRA and Brokerage Firm A exchanged further correspondence about the application. On November 2, 2015, Sargent sent a letter to Brokerage Firm A with his answers to the latest round of questions from FINRA. In the letter, Sargent stated:

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<sup>7</sup> The “over-the-counter” (“OTC”) securities market is an inter-dealer quotation and reporting service through which certain securities are available for public trading and are purchased and sold through orders handled by a brokerage firm. OTC Markets Group Inc. is the owner and operator of the largest U.S. electronic quotation and trading system for OTC securities.

There is no past, present or future arrangement between or among any person or entity and any named shareholder with respect to the voting or investment control of any of the shares of common stock of BMP Holdings Inc. beneficially owned by the named shareholders.

Sargent knew that the quoted sentence was materially false and misleading. He knew that the nominee shareholders were simply following his directions and were going to sell the BMP stock whenever he directed them to do so. Indeed, he had not bothered to tell the nominee shareholders that BMP was filing the Form S-1, even though the ostensible purpose of the Form S-1 was to enable them to sell their BMP stock to the public. In reality, the nominee shareholders and “their” shares were controlled by Sargent, and the nominee shareholders were affiliates of BMP. On November 16, 2015, Brokerage Firm A sent a letter to FINRA repeating the statement in Sargent’s November 2, 2015 letter and enclosing Sargent’s letter itself.

29. On January 21, 2016, FINRA (which was not aware that the nominee shareholders were controlled by Sargent and were affiliates of BMP) notified Sargent that BMP stock could now be quoted and traded on the OTC market. Sargent did not tell the nominee shareholders that they were now free to sell their shares. As a result, the nominee shareholders made no effort to sell any BMP stock to the public.

#### **Sargent’s Sale of BMP Holdings to PixarBio**

30. In the spring of 2016, Sargent began discussions with a potential buyer about the sale of BMP. Once again, Tomasek provided assistance. Tomasek, who was affiliated as “of counsel” with The Mintz Fraade Law Firm, P.C., discussed with Fraade that Tomasek had a client who would sell his controlling interest in BMP. Fraade, in turn, referred Tomasek to Giordano, who operated a website called “Shell Exchange” and claimed to be in the business of helping clients to buy and sell shell companies.

31. Also in the spring of 2016, Reynolds began looking for a shell company that PixarBio could acquire. Reynolds wanted a shell company with common stock that was unrestricted, because its sale to the public had already been registered with the Commission, and whose shares were already eligible for trading on the OTC market. His plan was for PixarBio to acquire and then merge with the shell company. By reason of the merger, the purportedly unrestricted shares of the shell company's common stock would become purportedly unrestricted shares of PixarBio common stock that could be sold to the public on the OTC market.

32. In late April 2016, Reynolds hired Giordano as a consultant to help him identify a suitable shell company for PixarBio to acquire. At Giordano's suggestion, Reynolds hired Mintz and Fraade for legal assistance in connection with the acquisition.

33. On May 11, 2016, Tomasek emailed Fraade with a "confidential abstract" about BMP. The abstract included the following information:

Shares Outstanding:	5,167,000 common outstanding
Deliverable:	99.9%: 5,000,000 owned by control person
Current with SEC filings:	Form S-1 registration statement declared effective August 13, 2015
State of Incorporation:	Delaware
Shareholders:	33

(The number of BMP shares outstanding was slightly off: the correct figure was 5,168,000 shares – the 5 million restricted shares held by Sargent and the 168,000 purportedly unrestricted shares held by the nominee shareholders.)

34. On May 20, 2016, Giordano emailed Fraade to ask if BMP common stock could be traded through the DTC system.<sup>8</sup> Fraade responded, using information supplied by Tomasek,

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<sup>8</sup> The Depository Trust Company ("DTC") provides electronic record-keeping of securities balances and acts as a clearinghouse to process and settle trades in securities. However, shares may not be traded electronically through the DTC system until at least one shareholder submits an application to "deposit" his or her shares with DTC.

that BMP had not yet paid the fee for registration with DTC. Fraade also identified Brokerage Firm A as the firm that was going to handle BMP's application to DTC. On May 23, 2016, Fraade provided Giordano with the name and phone number of a contact at Brokerage Firm A.

35. On May 31, 2016, Giordano emailed Fraade to report on his conversation with the contact person at Brokerage Firm A. Giordano stated, "The potential buyer [Reynolds] also expressed concern about not having any shares in the system." Giordano asked Fraade, "Can you find out if the company is willing to have a shareholder deposit shares? This deposit will confirm DTC eligibility." Fraade forwarded Giordano's email to Tomasek.

36. Later on May 31, 2016, Tomasek emailed Fraade, "Tell Mr. Giordano that we are in the process of having a non-affiliate shareholder deposit 'some' shares in the [DTC] system!" As reflected in this email, Tomasek knew that "we" (i.e., Sargent) had the power to ensure that one of the nominee shareholders deposited shares of BMP stock with DTC. Fraade forwarded Tomasek's email to Giordano, who told Reynolds that BMP was in the process of depositing shares with DTC.

37. On June 6, 2016, Sargent formally retained Brokerage Firm A to act as BMP's agent in connection with the deposit of BMP shares with DTC.

38. On June 9, 2016, Tomasek emailed Fraade, "FYI, we have submitted the application to enter the DTC system with 20,000 shares to deposit and expect approval by July 4th (30 days). Please pass this on to your contact (Giordano?)." Fraade forwarded Tomasek's email to Giordano, who responded, "That is good news."

39. On June 15, 2016, Tomasek emailed Fraade, "Henry [Sargent] can get shareholders owning @ 60,000 of the 163,000 [sic] free-trading shares, almost immediately, with each selling privately these shares to 'friends' pursuant to Private Non-Affiliate Stock Purchase

Agreements. More shares can be obtained, if necessary! Henry would like to be paid \$375k for this deal.” As reflected in this email, Tomasek knew that Sargent had the power to ensure that at least 60,000 of the supposedly free-trading shares of BMP stock would be sold to “friends” (i.e., persons designated by Reynolds). Indeed, Tomasek’s use of quotation marks reflected his understanding that any appearance of independence on the part of the persons holding BMP stock (the nominee shareholders) was pure fiction.

40. Later on June 15, 2016, Fraade emailed Tomasek, “You originally said the price was \$300,000 which we discussed. Is the additional cost for the free trading shares?” Tomasek responded, “Henry [Sargent] establishes the ‘ask’ price! No, the 60,000 shares can be purchased for nominal consideration, say \$0.10 to \$0.25 per share.” One minute later, Tomasek sent a second email to Fraade, stating, “I believe that Henry got a competing bid, that is the only reason for the increase: confidentially, I think \$350k counter would do it.” As reflected in these emails, Tomasek knew that Sargent had the power to determine the price at which the supposedly free-trading shares of BMP stock would be sold.

41. Because Reynolds insisted that shares of BMP stock be deposited with DTC, Sargent directed one of the nominee shareholders (an accountant at Southridge who owned 5,000 shares of BMP stock) to acquire more BMP shares and then deposit the shares with DTC. On June 20, 2016, the accountant bought 13,000 shares from three of the nominee shareholders (his wife, another family member, and an administrative assistant at Southridge) for a total of \$130 (or 1¢ per share).

42. On June 21, 2016, Sargent asked BMP’s transfer agent to issue a new certificate for the 18,000 shares of BMP stock now owned by the Southridge accountant. Sargent told the transfer agent that the current holders of BMP stock “are all non-affiliates.” Sargent knew that

the statement was materially false and misleading, because he controlled the supposedly independent shareholders of BMP (the nominee shareholders) for the reasons set forth in paragraph 23 and, therefore, those shareholders were affiliates of BMP. One week later, as Sargent requested, the transfer agent issued a new certificate in the accountant's name for 18,000 shares of BMP stock.

43. On June 22, 2016, Reynolds caused PixarBio to pay \$20,000 to The Mintz Fraade Law Firm, P.C. At that point, Mintz, Fraade, and Tomasek were working together on the proposed transaction in which Sargent would sell his controlling interest in BMP to PixarBio and would also ensure that the 168,000 supposedly free-trading shares of BMP stock would be sold to persons designated by Reynolds.

44. On June 30, 2016, Tomasek emailed Giordano, stating, "I am counsel for BMP Holdings, Inc. Yesterday, my colleague, Alan Fraade, Esq., mentioned that you are coordinating a potential acquisition of BMP Holdings, Inc. on behalf of your client. Please advise status. If you require any additional information or documents, please let me know." Giordano responded, "Yes I am looking for a 'shell' for my client and have been reviewing the filings for BMP. Can you help with any of the following: Who is the transfer agent for the company? ... Is it DTC eligible? Are there any shares in the [DTC] 'system'? How many of the registered shares are available for purchase?"

45. Later on June 30, 2016, Tomasek emailed Giordano with answers to his questions about BMP. Tomasek identified BMP's transfer agent, indicated that BMP had submitted an application to DTC, and added, "I believe that there are 18,000 shares 'in the system'. Registered shares available: 60,000 immediately and more if required." (The 18,000 shares "in

the system” were the shares owned by the Southridge accountant that had been deposited with DTC.)

46. On July 7, 2016, as directed by Sargent, the Southridge accountant sent a letter drafted and signed by Sargent to BMP’s transfer agent. The letter stated that the accountant “is not now, nor ever has been considered an officer, director, or ‘affiliate’ of BMP Holdings, Inc.” Sargent knew that the statement was materially false and misleading, because the accountant was controlled by Sargent and was an affiliate of BMP for the reasons set forth in paragraph 23. As directed by Sargent, the accountant deposited the new certificate for 18,000 shares of BMP stock at Brokerage Firm A, which subsequently registered the shares with DTC.

47. On July 8, 2016, Reynolds asked Giordano for information about BMP. Giordano sent Reynolds a table of information that included:

Number of Shares Outstanding	250,168,000
Number of Shares Deliverable	250,000,000
Number of Restricted Shares Delivered	250,000,000
Free Trading Shares	168,000
Free Trade Shares Delivered	168,000

48. On July 12, 2016, Tomasek emailed Giordano about Sargent’s role with respect to the 168,000 supposedly free-trading shares of BMP stock:

I had a long conversation with Henry Sargent, the principal and control shareholder of BMP. Henry, of course, is “facilitating” the transfer of 100,000 of the 168,000 free-trading shares from “friendly” shareholders to the “outside” purchaser: Henry will have personal expenses for this; Henry can and will facilitate the additional transfer of approximately 35,000 of the remaining 68,000 shares but cannot guarantee that the “other” shareholders will agree to sell/transfer their shares. That would leave approximately 32,000 shares: Henry is willing to “push” the transfer of this balance but would like to retain some of these shares because of his expenses, etc. reasonable people should be able to work this out!

As reflected in this email, Tomasek knew that Sargent had the power to direct the transfer of stock ownership from the nominee shareholders to persons designated by Reynolds. Once again,

Tomasek's use of quotation marks reflected his understanding that Sargent would "facilitate" the transfer of most of the 168,000 supposedly free-trading shares of BMP stock from "friendly" shareholders (*i.e.*, the nominee shareholders) to a supposedly "outside" purchaser (*i.e.*, a person designated by Reynolds who would not actually be an "outside" third party).

49. On July 15, 2016, Giordano spoke with Tomasek and then emailed Reynolds about the status of the 168,000 supposedly free-trading shares of BMP stock. Giordano told Reynolds:

I just got off the phone with him [Tomasek]. He said he confirmed with me yesterday that they can deliver 143,000 shares. I never got that message. That leaves 25,000 shares. I told him those shares would need to be locked up. He agreed... He wants me to get back to him with what we want him to do.

(A "lock-up" agreement prevents a shareholder from selling his or her shares for a specified period of time without the issuer's consent.) As reflected in this email, Giordano knew that Sargent had the power to ensure that 143,000 of the supposedly free-trading shares of BMP stock would be sold to persons designated by Reynolds, and that the remaining 25,000 supposedly free-trading shares would become subject to a lock-up agreement.

50. On July 18, 2016, Giordano emailed Reynolds with Tomasek's contact information and stated, "To confirm, the purchase price is \$325k for 250 million restricted shares and 143,000 registered shares. The purchase price does not include me [*i.e.*, Giordano's fee]. The remainder of the 25,000 registered shares will be 'locked-up' for a period of 6 months commencing at closing." Later that day, Giordano sent a second email to Reynolds with a breakdown indicating that the proposed price of Sargent's restricted shares was \$324,807.60 and the proposed price of the 143,000 registered shares was a mere \$192.40.

51. On July 19, 2016, an attorney representing Reynolds who was not affiliated with The Mintz Fraade Law Firm, P.C. sent a draft letter of intent to Tomasek. (Reynolds was

temporarily using a different law firm in New York.) The draft letter, which was on PixarBio letterhead and addressed to Sargent, offered to pay \$325,000 for Sargent's 250 million restricted shares of BMP stock. The draft letter also proposed that BMP would "enter into lock-up agreements" with holders of 25,000 registered shares of BMP stock "to be identified by the Buyer" (i.e., Reynolds).

52. On July 21, 2016, Tomasek sent Reynolds's new attorney a marked-up version of the letter of intent that reflected comments by Sargent and himself. Sargent and Tomasek had revised the letter of intent to provide that PixarBio would pay \$325,000 to Sargent for 5 million restricted shares of BMP stock and "100,000 shares of free-trading shares currently held by other shareholders." The proposed revisions confirmed that Sargent had the power to ensure that at least 100,000 of the supposedly free-trading shares of BMP stock would be sold to PixarBio or its designees. In addition, Sargent revised the letter of intent to propose that 25,000 supposedly free-trading shares of BMP stock would be covered by lock-up agreements, and that BMP would "use its best efforts to have the shareholders of the remaining 43,000 free trading shares transfer those shares to a third party purchaser at a price of ten cents per share." In the version of the revised letter of intent that he sent to Reynolds's new attorney, Tomasek crossed out Sargent's language about the "43,000 free-trading shares". Tomasek knew that an explicit reference in the letter of intent to the disposition of the other supposedly free-trading shares would have made explicit that Sargent had the power to direct the sale of those shares to persons designated by Reynolds. Reynolds's new attorney forwarded the marked-up letter of intent to Giordano with the comment, "They should not refer to the transfer of 100,000 shares of free-trading shares."

53. The final letter of intent was dated July 25, 2016, signed by Reynolds, and counter-signed by Sargent. It provided that PixarBio would pay \$325,000 to Sargent for

5 million restricted shares of BMP stock. (The other 245 million restricted shares that BMP had issued to Sargent would be canceled as part of the transaction.) The letter also provided that BMP “shall obtain lock-up agreements with the holders” of 25,000 registered shares in a “form acceptable to the Buyer.”

54. Although the final letter of intent referred to only 25,000 of the supposedly free-trading shares of BMP stock, the disposition of all 168,000 of those shares was an essential part of the agreement between Sargent and Reynolds. They decided that Giordano would buy 10,000 of the shares, Reynolds’s friend Herod would buy 130,000 of the shares, and Sargent himself would buy the remaining 28,000 shares subject to a lock-up agreement with PixarBio. To implement this arrangement, Sargent told the nominee shareholders that they were going to be selling their BMP stock. He rewarded them with checks in an amount equal to or greater than three times their nominal investment in BMP.

55. In early August 2016, Reynolds fired the second New York law firm he had been using and retained Mintz and Fraade once again.

56. On August 9, 2016, Reynolds directed Herod to buy 130,000 shares of BMP stock and told him that BMP was going to merge into PixarBio. Reynolds emailed Mintz to say that Herod needed legal assistance with the acquisition of BMP stock. Reynolds told Mintz that Sargent was the chief executive officer of BMP, and that Tomasek was representing Sargent. When Fraade contacted him, Tomasek indicated that Mintz and Fraade could deal directly with Sargent. Later that day, Sargent emailed Fraade with a list of the twenty-nine remaining nominee shareholders. On the list, Sargent indicated whether each shareholder was going to sell his or her shares of BMP stock to Giordano, to Herod, or to Sargent himself. Sargent did not

bother to ask the nominee shareholders themselves whether they wanted to sell their shares to Giordano, Herod, himself, or anyone else, and if so, for how much.

57. On August 10, 2016, Fraade emailed Sargent with a draft stock purchase agreement between Herod and many of the nominee shareholders. The draft agreement provided that Herod would buy a total of 130,000 shares of BMP stock for \$2,600 (or 2¢ per share).

58. On August 15, 2016, two of the nominee shareholders sold a total of 10,000 shares of BMP stock to Giordano for a total of \$200 (or 2¢ per share). Sargent told the two shareholders that they were going to sell their shares, he drafted the assignment agreement for the transaction, he filled out the paperwork for the selling shareholders (including putting the necessary language on the stock certificates), and he collected signatures from the selling shareholders. The same day, Sargent bought 10,000 shares of BMP stock from a third nominee shareholder (his own sister) for \$1,000 (or 10¢ per share – five times the price per share that the other nominee shareholders were receiving from Herod and Giordano). Sargent drafted the assignment agreement and filled out the stock certificate for the transaction with his sister as well.

59. On August 18, 2016, Sargent and Reynolds completed PixarBio's acquisition of Sargent's controlling interest in BMP for \$325,000, of which Tomasek received \$25,000 for his legal services for BMP. As part of the transaction, Sargent (who then owned 10,000 shares of BMP stock) and the accountant at Southridge (who then owned 18,000 shares) signed lock-up agreements precluding them from selling their BMP stock without PixarBio's consent for a period of six months. Also, Sargent entered into a management agreement whereby he would continue to run BMP's small yoga studio in Connecticut.

60. Later on August 18, 2016, Reynolds emailed Sargent, “Congratulations. We appreciate the attentiveness over the last few days.” The next day, Sargent responded, “Congrats to you as well. I’m glad to be a part of the process and happy to help make the effort a success for everyone.” Sargent told Reynolds that he was sending stock certificates to BMP’s transfer agent to be reissued in Giordano’s name. Sargent also told Reynolds that he “will work with Alan [Fraade] to get Jay [Herod] his shares asap.”

61. On August 19, 2016, Reynolds told PixarBio’s controller that Giordano “earned his \$10,000 fee when we signed the deal yesterday.” Later that day, PixarBio paid \$10,000 to Giordano.

62. On August 23, 2016, Herod executed a stock purchase agreement whereby he bought a total of 130,000 shares of BMP stock from twenty-five of the nominee shareholders for a total of \$2,600 (or 2¢ per share). Sargent handled the transaction on behalf of the nominee shareholders, none of whom communicated directly with Herod. Sargent also filled out the transfer instructions on the back of the shareholders’ BMP stock certificates.

63. On September 30, 2016, Sargent bought 18,000 shares of BMP stock from the accountant at Southridge. The shares were already registered for electronic trading through DTC. Sargent paid \$2,000, which more than covered the accountant’s out-of-pocket expenses (\$180 to buy the shares plus a \$1,000 registration fee for DTC).

64. As of October 1, 2016, the 168,000 supposedly free-trading shares of BMP stock were held by Sargent (28,000 shares), Giordano (10,000 shares), and Herod (130,000 shares). In reality, the shares were restricted, because, among other reasons, the sales to Sargent, Giordano, and Herod were non-public sales by affiliates (the nominee shareholders) and the sales were not registered with the Commission.

**Use of Fraudulent Means to Conduct Unregistered Sales of PixarBio Stock**

65. On October 11, 2016, Reynolds (as the chief executive officer of PixarBio, which now controlled BMP) caused BMP to declare a stock dividend of nine shares of common stock for each share outstanding. On October 30, 2016, Reynolds caused PixarBio to merge with BMP. As a result of the stock split and merger, the 28,000 shares of BMP stock that Sargent acquired in August 2016 became 280,000 shares of PixarBio stock, the 10,000 shares of BMP stock that Giordano acquired in August 2016 became 100,000 shares of PixarBio stock, and the 130,000 shares of BMP stock that Herod acquired in August 2016 became 1.3 million shares of PixarBio stock.

66. In September 2016, Herod opened an account at a brokerage firm (hereafter, “Brokerage Firm B”) that Reynolds had previously used to sell over-the-counter securities. To ensure that Brokerage Firm B would allow Herod to sell his PixarBio stock, Reynolds directed Mintz and Fraade to prepare an opinion letter that Herod could send to Brokerage Firm B. Mintz and Fraade prepared an opinion letter that was addressed to Brokerage Firm B and dated October 11, 2016. Herod sent the letter to Brokerage Firm B on October 12, 2016. Fraade and Herod also asked Sargent to collect documentation for Herod’s purchase of stock from the nominee shareholders. Mintz and Fraade did not bill Herod for preparing the opinion letter. Instead, on October 14, 2016 – only two days after Herod sent the letter to Brokerage Firm B – Reynolds caused PixarBio to pay \$25,000 to The Mintz Fraade Law Firm, P.C.

67. In the October 11, 2016 opinion letter, Mintz and Fraade stated that the 130,000 shares of BMP stock belonging to Herod (which became 1.3 million shares after the stock dividend) were “free trading shares without any restrictions upon sale.” Mintz and Fraade knew or were reckless in not knowing that the opinion letter was materially false and misleading. By

reason of their previous legal representation of PixarBio, Reynolds, and Herod, as well as their recent communications with Sargent and Tomasek, Mintz and Fraade knew that: (a) the disposition of the 168,000 supposedly free-trading shares of BMP stock was an integral part of the agreement whereby PixarBio acquired Sargent's controlling interest in BMP; (b) Reynolds made the decision that Herod was going to buy 130,000 shares of BMP stock; (c) Sargent deposited all the checks from the nominee shareholders on the same day in April 2015; (d) Sargent identified the twenty-three nominee shareholders who were going to sell their BMP stock to Herod; (e) Sargent handled all communications on behalf of the nominee shareholders; (f) Sargent arranged for the nominee shareholders to sign a single, consolidated purchase agreement with Herod; and (g) Reynolds, not Herod, requested the opinion letter needed for Herod to deposit and sell his shares. Given these circumstances, Mintz and Fraade knew or were reckless in not knowing that the nominee shareholders and "their" shares were controlled by Sargent, that Herod was controlled by Reynolds and was thus an affiliate of PixarBio, and, as a result, that the 130,000 shares of BMP stock that Herod acquired from the nominee shareholders were restricted shares that could not lawfully be sold to the public without the filing of a new registration statement.

68. On October 31, 2016 (the day after the reverse merger and name change), public trading in PixarBio common stock began on the OTC market under the "PXR B" symbol. (As set forth in paragraph 29, BMP stock had been available for trading on the OTC market since January 21, 2016, but Sargent never told the nominee shareholders that they could now sell their shares to the public.) The opening price of PixarBio stock on October 31 was \$3 per share. At \$3 per share, the BMP stock that Sargent acquired for \$3,000 was now PixarBio stock with a market value of \$840,000, the BMP stock that Giordano acquired for \$200 was now PixarBio

stock with a market value of \$300,000, and the BMP stock that Herod acquired for \$2,600 was now PixarBio stock with a market value of \$3.9 million.

69. On October 31, 2016, the closing price of PixarBio stock was \$4.77 per share, with 77,400 shares traded. The closing price jumped to \$11 per share on November 1, 2016, with 32,000 shares traded. At \$11 per share, the 168,000 shares of BMP stock that Sargent, Giordano, and Herod acquired for a total of \$4,800 was now PixarBio stock with a market value of nearly \$18.5 million.

70. On October 31 and November 1, 2016, Herod sold approximately 70,000 shares of PixarBio stock to the public for approximately \$330,000. On November 2, 2016, when the price soared to \$30 per share, Brokerage Firm B suspended Herod's trading in the stock. Herod asked Reynolds for help so that he could keep selling PixarBio stock. Reynolds directed Mintz and Fraade to prepare another opinion letter, which they addressed to Brokerage Firm B and mailed that afternoon.

71. In the November 2, 2016 opinion letter sent to Brokerage Firm B, Mintz and Fraade stated that "the shares may be sold by Mr. M. Jay Herod free from any restrictive legend," and that "although Mr. M. Jay Herod owns a significant portion of the free-trading Shares, he is not an affiliate or control person of the Company." Mintz and Fraade knew or were reckless in not knowing that the opinion letter was materially false and misleading, for the reasons set forth in paragraph 67. The fact that the request for a second opinion letter came from Reynolds (the CEO of PixarBio) rather than from Herod himself (whom they nevertheless characterized as "not an affiliate"), and the fact that PixarBio, not Herod, had paid for the October 11, 2016 opinion letter, further put Mintz and Fraade on notice that Reynolds was calling the shots and that he controlled Herod's trading in PixarBio stock.

72. As the trading price soared on November 2, 2016, Reynolds became worried that OTC Markets might suspend public trading in PixarBio stock unless more shares were sold into the marketplace to bring the price down. He contacted Sargent and terminated the lock-up agreement so that Sargent could start selling his shares without delay. Sargent made his first sale of PixarBio stock on November 3, 2016.

73. Also on November 2, 2016, Reynolds directed Giordano to deposit his shares of PixarBio stock at a brokerage firm and start selling the shares as soon as possible. Giordano emailed Fraade asking for an opinion letter that he could send to Brokerage Firm B, the firm that Reynolds had recommended. Giordano told Fraade that “Frank [Reynolds] is really anxious for me to get this resolved.” On November 3, 2016, Fraade sent Giordano an opinion letter addressed to Brokerage Firm B.

74. In the November 3, 2016 opinion letter, Mintz and Fraade stated that “the shares may be sold by Mr. Patrick Giordano free from any restrictive legend” and that “Mr. Patrick Giordano is not an affiliate or control person of the Company.” Mintz and Fraade knew or were reckless in not knowing that the opinion letter was materially false and misleading. By reason of their previous legal representation of PixarBio and Reynolds, Giordano’s statement in his November 2, 2016 email that Reynolds was anxious for Giordano to start trading, and Reynolds’s role in requesting and paying for the October 11, 2016 opinion letter written on behalf of Herod, Mintz and Fraade were on notice that Giordano had acquired restricted BMP stock from the nominee shareholders and that Giordano was controlled by Reynolds and was thus an affiliate of PixarBio.

75. Mintz and Fraade did not bill Herod and Giordano for preparing the November 2 and November 3, 2016 opinion letters. Instead, on November 8, 2016 – only five days later –

Reynolds caused PixarBio to make another payment of \$25,000 to The Mintz Fraade Law Firm, P.C.

76. When Brokerage Firm B (which had already blocked Herod's trading) refused to accept Giordano's shares for deposit and trading, Giordano turned to Brokerage Firm A (which had handled BMP's application to DTC). On November 8, 2016, Reynolds sent Giordano a letter from PixarBio that Giordano forwarded to Brokerage Firm A. The letter stated, "Patrick Giordano has never been an officer or an affiliate of PixarBio Corporation in our history so he has not been an officer or affiliate in the last 90 days." Giordano knew or was reckless in not knowing that the letter he sent to Brokerage Firm A was materially false and misleading, because he was controlled by Reynolds and was thus an affiliate of PixarBio. Brokerage Firm A also declined to accept Giordano's PixarBio stock for trading.

77. On November 16, 2016, a brokerage firm where Giordano had once worked accepted 10,000 shares of PixarBio stock for deposit into Giordano's account. Giordano made his first sale of PixarBio stock the next day.

#### **Sales of PixarBio Stock by Sargent, Giordano, and Herod**

78. On January 23, 2017, the Commission suspended public trading in PixarBio stock pursuant to Section 12(k) of the Exchange Act [15 U.S.C. §78l(k)]. The Commission's order stated:

The Commission temporarily suspended trading in the securities of PixarBio because the market for the security appears to reflect manipulative or deceptive activities and because of questions regarding the accuracy of assertions by PixarBio in press releases and its Form S-1 concerning, among other things: (1) the company's business combinations and current shareholders; (2) the identity and qualifications of key shareholders and employees; and (3) the company's current and prospective development efforts.

79. Prior to the trading suspension, Sargent sold a total of 109,187 shares of PixarBio stock for \$630,979 – which represented an enormous windfall, given that he had paid only \$3,000 to acquire the shares of BMP stock that were ultimately converted into 280,000 shares of PixarBio stock.

80. Prior to the trading suspension, Giordano sold a total of 27,700 shares of PixarBio stock for \$116,957 – which represented an enormous windfall, given that he had paid only \$200 to acquire the shares of BMP stock that were ultimately converted into 100,000 shares of PixarBio stock.

81. Prior to the trading suspension, Herod sold 211,901 shares of PixarBio stock for approximately \$910,000 – which represented an enormous windfall, given that he had paid only \$2,600 to acquire the shares of BMP stock that were ultimately converted into 1.3 million shares of PixarBio stock. Out of his sale proceeds, Herod funneled \$500,000 to PixarBio and \$300,000 to Reynolds.

**FIRST CLAIM FOR RELIEF**  
**(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)**

82. The Commission repeats and incorporates by reference the allegations in paragraphs 1-81 above.

83. The shares of common stock of BMP and PixarBio constitute “securities” for purposes of Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)].

84. 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] make it unlawful for any person, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) to employ devices, schemes or artifices to defraud; (b) to make untrue statements of material fact or omit to

state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) to engage in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

85. As set forth above, (a) Sargent made materially false and misleading statements in BMP's Form S-1 registration statement and in communications with BMP's transfer agent; (b) Tomasek prepared and filed a Form S-1 for BMP that contained materially false and misleading statements; (c) Giordano submitted materially false and misleading information to two brokerage firms; and (d) Mintz and Fraade made materially false and misleading statements in three opinion letters submitted to brokerage firms. The defendants knew or were reckless in not knowing that these statements were materially false and misleading.

86. As set forth above, (a) Sargent and Tomasek engaged in a fraudulent and deceptive scheme to register sales of BMP stock by concealing the fact that the current BMP shareholders (the nominee shareholders) were controlled by Sargent and were thus affiliates of BMP; and (b) Sargent, Giordano, Tomasek, Mintz, and Fraade engaged in a fraudulent and deceptive scheme with Reynolds and Herod to conceal the fact that Sargent, Giordano, and Herod were affiliates of PixarBio and to disguise their public sales of restricted PixarBio stock – sales that should have been registered with the Commission – as ordinary sales of free-trading stock.

87. The defendants' misconduct was in connection with the purchase or sale of a security.

88. Based on the foregoing: (a) Sargent, Mintz, and Fraade violated Section 10(b) of the Exchange Act and Rule 10b-5; (b) Tomasek violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder; (c) Tomasek aided and abetted Sargent's violation of Section

10(b) of the Exchange Act and Rule 10b-5(b) thereunder; (d) Giordano violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder; and (e) Giordano aided and abetted Mintz and Fraade's violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

**SECOND CLAIM FOR RELIEF**  
**(Violation of Section 17(a) of the Securities Act)**

89. The Commission repeats and incorporates by reference the allegations in paragraphs 1-81 above.

90. The shares of common stock of BMP and PixarBio constitute "securities" for purposes of Section 2(a)(1) of the Securities Act [15 U.S.C. §77b(a)(1)].

91. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] makes it unlawful for any person, directly and indirectly, acting intentionally, knowingly or recklessly, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities: (a) to employ devices, schemes or artifices to defraud; (b) to obtain money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) to engage in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

92. As set forth above, (a) Sargent made materially false and misleading statements in BMP's Form S-1 registration statement and in communications with BMP's transfer agent; (b) Tomasek prepared and filed a Form S-1 for BMP that contained materially false and misleading statements; (c) Giordano submitted materially false and misleading information to two brokerage firms; and (d) Mintz and Fraade made materially false and misleading statements

in three opinion letters submitted to brokerage firms. The defendants knew or were reckless in not knowing that these statements were materially false and misleading.

93. As set forth above, (a) Sargent and Tomasek engaged in a fraudulent and deceptive scheme to register sales of BMP stock by concealing the fact that the current BMP shareholders (the nominee shareholders) were controlled by Sargent and were thus affiliates of BMP; and (b) Sargent, Giordano, Tomasek, Mintz, and Fraade engaged in a fraudulent and deceptive scheme with Reynolds and Herod to conceal the fact that Sargent, Giordano, and Herod were affiliates of PixarBio and to disguise their public sales of restricted PixarBio stock – sales that should have been registered with the Commission – as ordinary sales of free-trading stock.

94. The defendants' misconduct was in the offer or sale of a security.

95. Based on the foregoing: (a) Sargent, Mintz, and Fraade violated Section 17(a) of the Securities Act; (b) Tomasek violated Section 17(a) of the Securities Act; (c) Tomasek aided and abetted Sargent's violation of Section 17(a)(2) of the Securities Act; (d) Giordano violated Section 17(a) of the Securities Act; and (e) Giordano aided and abetted Mintz and Fraade's violation of Section 17(a)(2) of the Securities Act.

**THIRD CLAIM FOR RELIEF**  
**(Violation of Sections 5(a) and 5(c) of the Securities Act)**

96. The Commission repeats and incorporates by reference the allegations in paragraphs 1-81 above.

97. Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a), (c)] make it unlawful for any person, directly or indirectly: (a) to make use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been in

effect and for which no exemption from registration has been available; or (c) to make use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been filed and for which no exemption from registration has been available.

98. Section 4(a)(1) of the Securities Act [15 U.S.C. §77d(a)(1)] provides an exemption from the registration requirements for “transactions by any person other than an issuer, underwriter, or dealer.” Rule 144 [17 C.F.R. §230.144] provides that the exemption in Section 4(a)(1) is available for sales by an affiliate of a public company if, among other conditions: (a) the affiliate held the restricted shares for at least one year after fully paying for the shares;<sup>9</sup> (b) the affiliate does not sell more than 1% of the outstanding shares in a three-month period; and (c) the affiliate files a notice on Form 144 if the sale involves more than 5,000 shares or the aggregate dollar amount is greater than \$50,000 in any three-month period.

99. The sales of PixarBio stock by Sargent, Giordano, and Herod through OTC on and after October 31, 2016 constituted an unregistered offering of securities for which no exemption was available. Sargent, Giordano, and Herod cannot rely on the exemption in Section 4(a)(1) of the Securities Act, because they are underwriters as defined in Section 2(a)(11) of the Securities Act [15 U.S.C. §77b(a)(11)].<sup>10</sup> They are underwriters for this purpose, because they acquired the shares from affiliates of the issuer with a view to distribution by almost immediately

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<sup>9</sup> As noted above, the one-year holding period applies if the issuer is a company like PixarBio that did not have a reporting obligation.

<sup>10</sup> Section 2(a)(11) of the Securities Act defines an “underwriter” as “any person who has purchased from an issuer with a view to ... the distribution of any security.” Section 2(a)(11) also provides that, for this purpose, “the term ‘issuer’ shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.”

beginning to sell the stock once they obtained it. Sargent, Giordano, and Herod cannot rely on the safe harbor from the definition of underwriter set forth in Rule 144, because they acquired restricted stock and did not hold it for one year before they sold it, as required by Rule 144(d)(1)(ii). Sargent, Giordano, and Herod held restricted stock, because, among other reasons, the sales to them were non-public sales by affiliates (the nominee shareholders) that were not registered, as required by Rule 144(a)(3)(i). The sales to Sargent, Giordano, and Herod were not registered, because the Form S-1 that BMP filed in May 2015 registered a transaction (the sale by the nominee shareholders to the public at \$0.15 per share) that was different from the transaction that actually occurred (the sale by the nominee shareholders to Sargent, Giordano, and Herod for a total of \$4,800, or less than \$0.03 per share). The defendants all participated in the scheme for unregistered sales of PixarBio stock by Sargent, Giordano, and Herod.

100. Mintz, Fraade, and Tomasek were necessary participants and substantial factors in the unregistered sale of restricted BMP and PixarBio securities: (a) Tomasek drafted the initial Form S-1 for BMP, responded to two rounds of comments from the Commission's Division of Corporation Finance, and drafted and filed three amendments to the Form S-1; (b) Tomasek helped a brokerage firm retained by BMP to respond to comments from FINRA on the Form 211 application for BMP; (c) Mintz, Fraade, and Tomasek worked closely to facilitate PixarBio's acquisition of BMP by exchanging numerous emails concerning the terms of the deal, the deposit of BMP shares with DTC (to facilitate electronic trading in the shares), and the determination by Sargent as to which of the nominee shareholders would sell their shares to each of the three persons designated by Reynolds; (d) at Tomasek's request, Mintz and Fraade prepared the stock purchase agreement that was used to transfer more than three-quarters of the supposedly free-trading BMP shares from twenty-five of the nominee shareholders to Herod; and (e) Mintz and

Fraade prepared and signed opinion letters that made it possible for Herod and Giordano to deposit the PixarBio shares at brokerage firms and sell the shares to the public.

101. Based on the foregoing, the defendants violated Sections 5(a) and (c) of the Securities Act.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining the defendants, as well as their agents, servants, employees, attorneys, and other persons in active concert or participation with them, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. 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];
2. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)]; and
3. Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a), (c)];

B. Require the defendants to disgorge their ill-gotten gains, plus prejudgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

C. Order the defendants to pay appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

D. Enter an order permanently enjoining the defendants from issuing, trading, and/or inducing or attempting to induce the purchase or sale of a “penny stock”, as that term is defined in Section 3(a)(51) of the Exchange Act [15 U.S.C. §78c(a)(51)] and Rule 3a51-1 thereunder [17 C.F.R. §240.3a51-1];

E. Enter an order permanently enjoining Mintz, Fraade, and Tomasek from directly or indirectly providing professional legal services to any person or entity in connection with the offer or sale of securities pursuant to, or claiming, an exemption under Section 4(a)(1) of the Securities Act predicated on Securities Act Rule 144, or any other exemption from the registration provisions of the Securities Act, including, without limitation, participating in the preparation or issuance of any opinion letter relating to such offer or sale;

F. Enter an order requiring Sargent and Giordano to surrender to PixarBio or its transfer agent, with instructions to cancel, all shares of PixarBio stock in their possession, custody or control; and

G. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

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