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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**THEODORE J. FARNSWORTH,
J. MITCHELL LOWE, and
KHALID ITUM,**

Defendants.

COMPLAINT

22 Civ. _____ ()

JURY TRIAL DEMANDED

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Theodore J. Farnsworth (“Farnsworth”), J. Mitchell Lowe (“Lowe”), and Khalid Itum (“Itum”) (collectively, “Defendants”), alleges as follows:

SUMMARY

1. On August 15, 2017, Helios and Matheson Analytics Inc. (“HMNY”) announced that it had agreed to acquire a majority interest in MoviePass, Inc. (“MoviePass”), a movie subscription service (the “Acquisition”). From August 2017 to at least March 2019, Farnsworth and Lowe, the CEOs of HMNY and MoviePass, respectively, intentionally and repeatedly disseminated to the public materially false or misleading statements concerning MoviePass and key aspects of

MoviePass's business model.

2. Farnsworth and Lowe made misstatements in HMNY Commission filings, press releases, and in the press (including during in-person media appearances) regarding whether MoviePass could be profitable at its new, \$9.95 per month subscription price (which MoviePass introduced in connection with the Acquisition); purported ways in which MoviePass could become profitable (including through HMNY's purported data analytics capabilities); and HMNY's ability to fund MoviePass's operations. Faced with debilitating negative cash flows—rather than tell the public the truth—Farnsworth and Lowe devised fraudulent tactics to prevent MoviePass's heavy users from using the service, and falsely and misleadingly informed the public that usage had declined naturally or due to measures the company had employed to combat subscribers' purported violations of MoviePass's terms and conditions of service.

3. Ultimately, MoviePass's business model proved unsustainable, resulting in HMNY and its subsidiaries, including MoviePass, filing Chapter 7 liquidation bankruptcy petitions in January 2020.

4. In addition to the above fraud, between January and April 2018, Farnsworth and Lowe approved false invoices that Itum, a MoviePass executive, submitted to HMNY and MoviePass. Consequently—and through Itum's submission of additional false documents—Itum wrongfully obtained more than \$310,000 from HMNY and MoviePass for his personal benefit.

VIOLATIONS

5. By virtue of the foregoing conduct and as alleged further herein, Defendants Farnsworth and Lowe have violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Defendant Lowe further aided and abetted Farnsworth's and HMNY's violations of Section 17(a) of the Securities Act [15 U.S.C.

§ 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

6. By virtue of the foregoing conduct and as alleged further herein, Defendants Farnsworth, Lowe, and Itum have violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2] thereunder and aided and abetted HMNY's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

7. Unless Defendants are restrained and enjoined, they will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or in acts, practices, transactions, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

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

9. The Commission seeks a final judgment: (a) permanently enjoining Defendants from violating the federal securities laws and rules this Complaint alleges they have violated; (b) ordering Defendants to disgorge all ill-gotten gains they received as a result of the violations alleged herein and to pay prejudgment interest thereon pursuant to Sections 21(d)(3) [15 U.S.C. § 78u(d)(3)], 21(d)(5) [15 U.S.C. § 78u(d)(5)], and 21(d)(7) [15 U.S.C. § 78u(d)(7)] of the Exchange Act; (c) ordering Defendants to pay civil money penalties pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; (d) permanently prohibiting Farnsworth and Lowe from serving as an officer or director of any company that has a class of securities registered under Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports under Exchange Act Section 15(d) [15 U.S.C. § 78o(d)], pursuant to Securities Act

Section 20(e) [15 U.S.C. § 77t(e)] and Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)]; (e) permanently enjoining Farnsworth and Lowe from directly or indirectly promoting any issuer of any security, causing the promotion of any issuer of any security, or deriving compensation from the promotion of any issuer of any security; and (f) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

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

11. Defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

12. Venue lies in this District under Securities Act Section 22(a) [15 U.S.C. § 77v(a)] and Exchange Act Section 27 [15 U.S.C. § 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District, where HMNY and MoviePass maintained their principal places of business.

DEFENDANTS

13. **Farnsworth**, age 60, is a resident of Miami, Florida. Farnsworth was the CEO and Chairman of HMNY from January 2017 until his resignation in September 2019.

14. **Lowe**, age 70, is a resident of Miami Beach, Florida, and Puerto Vallarta, Mexico. From 2016 to 2020, Lowe was the CEO of MoviePass.

15. **Itum**, age 42, is a resident of Los Angeles, California. In approximately October 2017, Itum was hired by MoviePass as Vice President, Business Development. As Vice President, Business Development, Itum was part of MoviePass's leadership team. In October 2018, Itum, was promoted to Executive Vice President. As Executive Vice President, Itum was responsible for

MoviePass's day-to-day operations. Itum resigned from MoviePass effective as of March 19, 2019.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

A. HMNY

16. HMNY is a Delaware corporation with its principal place of business in New York, New York.

17. HMNY's common stock is registered pursuant to Section 12(g) of the Exchange Act. Until January 2019, HMNY's stock traded on the Nasdaq; today, it is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker symbol "HMNY."

18. HMNY filed a Chapter 7 bankruptcy proceeding in January 2020.

B. MoviePass

19. MoviePass is a privately held Delaware corporation with its principal place of business in New York, New York. MoviePass is a subsidiary of HMNY, and MoviePass's financial statements were consolidated into HMNY's financial statements.

20. MoviePass's primary product offering was a movie subscription service, whereby subscribers could pay a fixed monthly fee to see a certain number of movies each month. Subscribers were issued a MoviePass debit card that would be credited with the funds to buy one ticket for a specific movie, theater, and show time that they selected through the MoviePass application on their phones.

21. MoviePass filed a Chapter 7 bankruptcy proceeding in January 2020.

C. Kaleidoscope

22. Kaleidoscopic Ventures, LLC ("Kaleidoscope") is a California limited liability company with its principal place of business in Los Angeles, California. Until July 2021, the company was known as Kaleidoscope Productions, LLC.

23. Kaleidoscope describes itself as an experiential marketing firm.

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