UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 22-20521-CR-LEIBOWITZ(s)

UNITED STATES OF AMERICA

v.

J. MITCHELL LOWE,

Defendant
_______________________________________/

AGREED FACTUAL BASIS FOR GUILTY PLEA

1. Beginning in or around August 2017, and continuing through in or around March 2019, within the Southern District of Florida and elsewhere, the defendant, J. MITCHELL LOWE ("LOWE"), the Chief Executive Officer of MoviePass Inc. ("MoviePass"), knowingly and willfully conspired and agreed with Coconspirator 1, the Chief Executive Officer and Chairman of the Board of Helios & Matheson Analytics Inc. ("HMNY"), to commit securities fraud, in violation of Title 18, Section 371.

2. MoviePass was a privately held company that offered a subscription service through which subscribers paid a flat monthly fee in exchange for a certain number of movie tickets per month. To use the service, a subscriber would select a movie, theater, and show time through the MoviePass application on the subscriber's smartphone, and then use a MoviePass-branded debit card that was loaded with the cost of the movie ticket to pay at the selected theater.

3. HMNY was a public company that purported to be a leader in data analytics and artificial intelligence. HMNY's common stock traded on NASDAQ.

4. By the summer of 2017, MoviePass was running out of money. LOWE was on the

verge of shutting down MoviePass's business operations when he met Coconspirator 1. In the course of discussions about a potential deal between HMNY and MoviePass, Coconspirator 1 told LOWE that he was an expert in promoting stock and had access to large sums of capital from sources on Wall Street.

5. Coconspirator 1 and LOWE agreed on a plan to use MoviePass to artificially inflate HMNY's stock price and fraudulently raise new money. As part of the agreed on plan, on August 15, 2017, HMNY and MoviePass jointly announced that:

a. HMNY had acquired a majority ownership interest in MoviePass (the "Acquisition").

b. The Acquisition allowed MoviePass to introduce a new "unlimited" plan that purported to allow subscribers the opportunity to watch "any movie any theater any day" for $9.95 per month.

c. HMNY would "increase shareholder value" by using HMNY's "big data" and "artificial intelligence" capabilities to monetize MoviePass's subscriber data, including from the new subscribers MoviePass expected to sign up as a result of its newly-announced $9.95 "unlimited" plan.

6. Coconspirator 1 and LOWE then agreed on a series of false and misleading talking points, which Coconspirator 1 and LOWE repeated in press releases, SEC filings, interviews on podcasts and on television, and in print and online media, all of which were intended to reach, and at times did in fact reach, investors and the general public throughout the United States, including within the Southern District of Florida and elsewhere. Coconspirator 1 and LOWE appeared in the media and reviewed and approved the press releases and SEC filings. Coconspirator 1 and LOWE communicated regularly throughout the conspiracy – in-person, by telephone and by text message – to discuss what they would say in joint and solo media appearances to make misleading positive statements about HMNY and MoviePass to artificially inflate HMNY's stock price and attract new investors.

7. Specifically, Coconspirator 1 and LOWE agreed on the following talking points:

a. MoviePass's new $9.95 "unlimited" plan was tested, sustainable, and would be profitable or break even on subscription fees alone;

b. HMNY had technology and capabilities it would use, and was using, to generate revenue by analyzing and monetizing MoviePass's subscriber data;

c. MoviePass also had multiple non-subscription revenue streams that would make MoviePass profitable and even self-sufficient rather than dependent on HMNY for funding; and

d. MoviePass's cost of goods, as reflected in the number of tickets each subscriber purchased using his or her subscription, was naturally declining over time consistent with Coconspirator 1's and LOWE's stated expectations.

8. All of these representations, which were made to artificially inflate HMNY's stock price and fraudulently attract new investors, were materially false and misleading. In truth and in fact, and as Coconspirator 1 and LOWE knew:

a. The $9.95 "unlimited" plan was a temporary marketing gimmick to drive subscriber growth, and MoviePass was losing money as a result;

b. HMNY did not possess the technology or capabilities to generate revenue by analyzing MoviePass's subscriber data and had not integrated any HMNY technology or capabilities into the MoviePass application;

c. MoviePass did not have non-subscription revenue streams that would make MoviePass self-sufficient or otherwise offset the losses MoviePass experienced as a result of the unprofitable $9.95 "unlimited" plan; and

d. Behind the scenes, MoviePass was actively preventing subscribers from using the purportedly "unlimited" service for which they had paid because Coconspirator 1 and LOWE personally directed MoviePass employees to "throttle" subscribers who most frequently used the service to buy movie tickets and then Coconspirator 1 and LOWE concealed the true nature of their "tactics" from investors and subscribers.

9. As a result of the conspiracy, HMNY fraudulently raised hundreds of millions of dollars from debt and equity offerings. This included money raised from three sets of convertible notes in November 2017, January 2018, and June 2018, as well as from three sets of equity offerings in February 2018, April 2018, and October 2018.

10. Coconspirator 1 and LOWE stood to personally benefit from the conspiracy in multiple ways. Among other things, Coconspirator 1's and LOWE's employment agreements provided for the payment of multi-million-dollar milestone bonuses based on a percentage increase in the public market valuation of HMNY.

11. The U.S. Securities & Exchange Commission ("SEC") later investigated Coconspirator 1 and LOWE for securities fraud. On July 25, 2022, to conceal the existence of the conspiracy from the SEC, LOWE made materially false and misleading statements during sworn testimony. For example, when asked about whether certain actions – like password resets and ticket verification – targeted subscribers based on their usage, LOWE falsely claimed that usage was not a factor when, in truth, it was the sole reason.

Examples of Materially False and Misleading Representations About MoviePass's Subscription Model

12. Believing that HMNY's stock price was tied, in part, to MoviePass's subscriber count, Coconspirator 1 and LOWE launched the $9.95 "unlimited" plan as a marketing gimmick to attract new subscribers and increase the price of HMNY stock. In response to questions about whether the $9.95 "unlimited" plan was "too good to be true," Coconspirator 1 and LOWE made materially false and misleading representations that the plan had been tested and was a profitable and sustainable business model, when in fact they knew it had not been tested and was neither profitable nor sustainable.

13. For example, on or about August 16, 2017, Coconspirator 1 and LOWE appeared for a joint interview on *Fox Business*, during which they were specifically asked whether MoviePass would lose money on the $9.95 "unlimited" plan. LOWE promoted the materially false narrative that the $9.95 "unlimited" plan would not lose money even though he knew it would lose money:

> LOWE: We have figured out a way to give people a deal where they cannot believe we can even afford to give.
>
> Interviewer: Yea, because you lose money.
>
> LOWE: Yea, no, we actually don't. Uh, and.
>
> Interviewer: How do you not lose money?
>
> LOWE: We have built a system that attracts people - a price point that attracts people that only go three to six times a year.

14. LOWE's representations were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, neither HMNY nor MoviePass had tested the $9.95 "unlimited" plan, which had only been proposed for the first time internally only weeks before. Coconspirator 1 and LOWE also knew LOWE's representations were materially false and misleading because, in truth, Coconspirator 1 and LOWE knew the $9.95 "unlimited" plan would lose money.

15. On or about August 16, 2017, LOWE appeared for a print interview for *Variety.com*, which HMNY filed with the SEC on Form DEF 14A, and again promoted the materially false narrative that the $9.95 "unlimited" plan was profitable and sustainable:

> Interviewer: You are operating at a loss and subsidizing the tickets your customers buy. AMC claims that at some point you will have to raise your prices or you'll go out of business. Are they correct?
>
> LOWE: The answer is no. They don't understand our business model.

16. LOWE's representation was materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, the $9.95 "unlimited" plan was a temporary measure that was unprofitable.

17. On or about September 22, 2017, Coconspirator 1 appeared for a print interview with Pipeline Data, LLC ("Pipeline Data"), which HMNY filed with the SEC on Form DEF 14A.

Coconspirator 1 repeated the materially false claims that the $9.95 "unlimited" plan had been tested and proven profitable:

> Interviewer: How is the $9.95 pricing going to work within your business model?
>
> Coconspirator 1: MoviePass has been around for five years, so we have a wealth of historical data. At $39, the average customer would go to four movies a month. At $29, the average dropped to three movies a month. When MoviePass went to $19, the average customer went to two movies a month. So we think we can be profitable on the subscriptions at $9.95 and then make the real money from the additional revenue sources. The size of our customer base will give us a lot of leverage.
>
> Interviewer: So, you think you can break even on the subscriptions alone?
>
> Coconspirator 1: I'm confident that we will. We already see it in our first 30 days at $9.95. Usage was even lower than we anticipated.

18. Coconspirator 1's representations were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, no testing had been done on the $9.95 "unlimited" plan and it was a temporary gimmick that was unprofitable.

19. On or about January 9, 2018, Coconspirator 1 and LOWE appeared for a joint interview on *Yahoo! Finance*. When asked during that interview whether $9.95 was "too low of a price point," Coconspirator 1 falsely responded, "No," while LOWE misleadingly added that the price point attracted moviegoers who only attended movies five times a year.

20. On or about January 26, 2018, LOWE appeared for a print interview with *The Hollywood Reporter*, and again promoted the materially false narrative that the $9.95 "unlimited" plan was tested, sustainable, and profitable:

> Interviewer: Is there a point when you'll just not be able to afford more subs [*i.e.*, subscribers] because you're buying them too many tickets?
>
> LOWE: No. I don't know why everybody believes that our customers are watching so many movies. At some point we'll share more data with you and you'll be shocked. …

***

> Interviewer: Is there a point where you'll need to raise the price of a sub?
>
> LOWE: We don't need to raise the price. I spent a year studying how I can get people who spend $50 a year going to movies to spend $120 a year, and $9.95 is the price point that gets them into the theaters more often.

21. LOWE's representations were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, no testing had been done on the $9.95 "unlimited" plan and it was a temporary measure that was unprofitable. By the time of this interview, Coconspirator 1 and LOWE had already agreed privately to abandon the $9.95 "unlimited" plan.

22. On or about February 18, 2018, while appearing on an episode of the *Recode Media* podcast, LOWE again falsely represented that MoviePass "tested like crazy until we were ready to roll out the $9.95 plan." At the time LOWE made this representation, he knew that MoviePass had not tested the $9.95 "unlimited" plan.

23. On or about April 13, 2018, MoviePass announced it was retiring the $9.95 "unlimited" plan. Coconspirator 1 and LOWE, however, continued to make materially false and misleading representations about MoviePass's subscription plan to artificially inflate the price of HMNY's stock. For example, on or about April 27, 2018, LOWE texted Coconspirator 1 to suggest MoviePass reintroduce the $9.95 "unlimited" plan to artificially inflate HMNY's stock price and cause investors who speculated that the price of HMNY would decline (commonly referred to as "short sellers" or "shorts") to "panic". On or about May 2, 2018, fewer than three weeks after it was retired, the $9.95 "unlimited" plan was reintroduced for this fraudulent purpose.

Examples of Materially False and Misleading Representations About HMNY's Data Analytics and Artificial Intelligence Technology and Capabilities

24. Coconspirator 1 and LOWE repeatedly made the materially false claim that the strategic rationale behind HMNY's acquisition of MoviePass was to enable HMNY to leverage its

data analytics technology and artificial intelligence capabilities to increase shareholder value by monetizing MoviePass's subscriber data.

25. For example, in HMNY's August 15, 2017, press release, which was disseminated to investors through *Business Wire* and filed with the SEC on Form 8-K, Coconspirator 1 was quoted as saying: "I believe the technology platforms that Helios and Matheson has built over the years are a perfect fit for the MoviePass family[.] With our big data and artificial intelligence platforms and other technologies that we own, we will be able to bring a significant technological advantage to MoviePass."

26. These representations in HMNY's August 15, 2017, press release were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, HMNY did not possess or otherwise "own" the types of technologies described in the press release, including "big data" and "artificial intelligence" platforms or any other technologies capable of monetizing MoviePass's subscriber data.

27. Following the Acquisition, Coconspirator 1 and LOWE repeatedly made the materially false claim that HMNY's technologies were being used to analyze MoviePass's subscriber data and integrated into the MoviePass application. For example, on or about September 14, 2017, HMNY issued a press release that was disseminated to investors and the market online through *Business Wire*, *The Miami Herald* website, and a Form 8-K filed with the SEC, among other means. The press release stated:

> Using the Helios and Matheson Analytics resources, MoviePass Inc. analyzes consumer trends, patterns and activities to engage subscribers with movie related merchandise, advertising, and concessions relevant to their MoviePass experiences. Helios and Matheson believes its technology stack combined with the MoviePass business model will transform the movie going experience and create great value for both companies. … Helios and Matheson's technology learns individual moviegoer's tastes and makes recommendations based on recorded preferences for specific genres, actors and even the opinions of friends with similar likings. …

Also in the press release, Coconspirator 1 was quoted as saying: "This explains our sustainable business model: Helios and Matheson is incorporating advertising models with the MoviePass application using artificial intelligence, algorithms, and machine learning so we can provide studios with more precise data for their advertising efforts."

28. These representations in HMNY's September 14, 2017, press release were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, HMNY did not possess the types of technologies described in the press release, HMNY had not used any of its technologies to analyze MoviePass's subscriber data, and HMNY had not integrated any of its technologies into the MoviePass application.

29. On or about October 24, 2017, HMNY issued a press release that was disseminated to investors and the market online through *Business Wire*, *The Miami Herald* website, and an 8-K filed with the SEC, among other means. The press release stated:

> Following HMNY's purchase of a majority stake in MoviePass, which remains subject to the approval of HMNY's stockholders, HMNY plans to further integrate its data analytics capabilities with the MoviePass service to analyze moviegoer's behaviors and preferences, with the goal of helping the film industry better understand what audiences want. With HMNY's capabilities, HMNY believes that MoviePass can bridge an intelligence gap for the movie theater industry so the entire film ecosystem can better serve audiences in areas ranging from production to advertising.

In the press release, Coconspirator 1 was quoted as saying: "When you apply computer science and machine learning to an industry that we believe has lacked significant innovation, useful patterns start to emerge. ... Together, I believe HMNY and MoviePass can offer important analytics to movie studios and exhibitors while serving the interests of moviegoers in the process."

30. These representations from HMNY's October 24, 2017, press release were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE

both knew, HMNY did not possess the types of technologies described in the press release, HMNY had not used any of its technologies to analyze MoviePass's subscriber data, and HMNY had not integrated any of its technologies into the MoviePass application.

31. Coconspirator 1 and LOWE also repeatedly made the materially false representation that HMNY's technologies were being integrated into the MoviePass application to create a revenue stream based on a "Night at the Movies" concept whereby MoviePass integrated data about subscribers' activities before and after they attended a movie into its business model. For example, on or about October 16, 2017, LOWE appeared for an interview on *Fox Business* during which he explained the "Night of the Movies" initiative.

32. LOWE's representations were materially false because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, neither HMNY nor MoviePass tracked or collected data on the location of MoviePass subscribers at any point when the MoviePass application was not active for the purpose of searching for a nearby theater or checking into a theater. Moreover, as Coconspirator 1 and LOWE also knew, HMNY had not used any of its technologies to analyze MoviePass's subscriber data, and HMNY had not integrated any of its technologies into the MoviePass application.

33. During their January 9, 2018, joint interview on *Yahoo! Finance*, Coconspirator 1 and LOWE were specifically asked about the source of HMNY's and MoviePass's revenues. Coconspirator 1 and LOWE promoted the materially false and misleading narrative that HMNY's monetization of MoviePass's subscriber data was driving the companies' revenues:

> Interviewer: How are you possibly making money?
>
> Coconspirator 1: Sure. Well, I think, people ask us that all the time. And we've known from day one, Helios is a ... analytics company. So when I first got together with Mitch, and we looked at all the data, the analytics, what it was, that's really what made us make the decision to invest in MoviePass.

* * *

> Interviewer: Let's work our way through a couple of the short arguments out there. The idea of selling data is totally overvalued. There so much data out there, nobody wants to buy it. You can't monetize the data part."
>
> Coconspirator 1: "When we look at the data side, it's a different story … that's where you're making your money, on, on the data, the advertising.

* * *

> Interviewer: So, what does Helios & Matheson do? Because we report on the stock all the time, and we joke 'they should just change their name to MoviePass…'
>
> Coconspirator 1: …Helios is really a data analytics company, which really made the perfect marriage of MoviePass and the data analytics of how we're driving the revenues of the company right now. …

34. These representations were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, HMNY did not possess the types of technologies that could be used to monetize MoviePass's subscriber data, HMNY had not used any of its technologies to analyze MoviePass's subscriber data, and HMNY had not integrated any of its technologies into the MoviePass application.

35. Coconspirator 1 and LOWE also knew these representations were materially false and misleading because, in truth, data analytics were not driving the companies' revenues.

36. On or about March 2, 2018, LOWE spoke at the Entertainment Finance Forum, giving a speech titled, "Data is the New Oil: How Will MoviePass Monetize It?" LOWE repeated his materially false claim that MoviePass gathered data about its subscribers by tracking them through their smart phones as part of its "Night at the Movies" initiative. After the interview, when it was pointed out that tracking subscribers violated MoviePass's privacy policy, a media backlash ensued.

37. On or about March 12, 2018, LOWE issued an email apology to MoviePass's

subscribers, partners, and employees. LOWE admitted that MoviePass "does not track and has never tracked or collected data on the location of our members at any point when the app is not active," and "does not use and has never used [background tracking capabilities]." LOWE claimed that he was "joking around" when he stated otherwise. LOWE, however, had not been "joking around." Rather, LOWE had intentionally misrepresented HMNY and MoviePass's technological capabilities in order to artificially inflate HMNY's stock price and attract new investors.

38. On or about March 13, 2018, Coconspirator 1 privately texted LOWE, admitting: "Our stock is tanking on that letter that went out. They're saying the exact thing I was afraid of that we are not a big data company and we just admitted it in the letter. We got to get you on CNBC start changing the narrative." Coconspirator 1 also telephoned LOWE to admonish LOWE for telling the truth about HMNY's lack of data analytics and artificial intelligence capabilities. Coconspirator 1 reiterated to LOWE that a critical part of the conspiracy was promoting the false claim that HMNY had, and was using, data analytics and artificial intelligence technologies to monetize MoviePass's subscriber data.

39. Throughout the remainder of 2018, through at least March 2019, Coconspirator 1 and LOWE continued to promote the materially false narrative that HMNY possessed data analytics and artificial intelligence that it was using to monetize MoviePass's subscriber data when, in truth and in fact, and as Coconspirator 1 and LOWE knew, HMNY did not possess any such technology and capabilities.

Examples of Materially False and Misleading Representations About Non-Subscription Revenue

40. In addition to materially misrepresenting that data analytics was a revenue stream for MoviePass, Coconspirator 1 and LOWE promoted a materially false and misleading narrative about the existence of multiple other non-subscription streams of revenue to help persuade

investors that MoviePass could build a sustainable and profitable business. For example, when asked during the September 22, 2017, interview with Pipeline Data how MoviePass would be profitable with the $9.95 "unlimited" plan, Coconspirator 1 responded:

> We'll generate revenue from many sources. Tickets, concessions, advertisements… We already have deals in place. We can also sell soundtracks, posters, and other movie-related products, right from their phones. As soon as they're walking out of the theater, we'll contact them. We tested it and 5-8% of people buy product from us.

41. Coconspirator 1's representations in this interview were materially false and misleading. In truth and in fact, and as Coconspirator 1 and LOWE both knew, at this point in time, Coconspirator 1 and LOWE still did not have a plan for how to bridge the gap between the cost of goods associated with the $9.95 "unlimited" plan and achieving profitability.

42. During the January 9, 2018, *Yahoo! Finance* joint interview, Coconspirator 1 falsely stated that, "within the next sixty days, [MoviePass] should be self-sufficient on its own." When asked what revenue streams would make that possible, LOWE misleadingly claimed that there were "Multiple revenue streams. We're signing deals with studios. We're getting discounts from exhibitors."

43. Coconspirator 1 and LOWE knew that the claim that MoviePass should be self-sufficient within 60 days was materially false and misleading because, in truth and in fact, around the same time that Coconspirator 1 and LOWE were publicly claiming that MoviePass was 60 days from being self-sufficient, they were privately discussing in text messages the fact that, every week, MoviePass required millions of dollars from HMNY to survive. As Coconspirator 1 and LOWE also knew, the few deals that MoviePass had signed could not close the company's multi-million-dollar weekly cash shortfall. And Coconspirator 1 privately acknowledged to LOWE that HMNY was not prepared to cover the growth in costs resulting from the millions of subscribers

attracted by the $9.95 "unlimited" plan.

44. On or about March 23, 2018, HMNY and MoviePass issued a joint press release that was disseminated to investors through *Business Wire* and the *South Florida Business Journal* website, among other means. The press release announced that, for a limited time, MoviePass was offering its annual subscription to new subscribers for $6.95 per month. The press release stated: "MoviePass has gained momentum in diversifying its revenue streams due to a series of marketing agreements with studios and distributors, as well as partnerships with a number of theater exhibitors. This recent success in forming relationships with studios, exhibitors, and marketing partners has encouraged MoviePass to offer an even more attractive deal to consumers." Also in the press release, LOWE was quoted as saying: "With the current growth and support that we've seen within the last several months, our studio and exhibitor revenues and other marketing partnerships have motivated us to lower the price once again, offering movie lovers greater access to MoviePass."

45. These representations were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, Coconspirator 1's and LOWE's reason for lowering the price was not MoviePass's ability to generate non-subscription revenue but, rather, its need to receive the full year's subscription payments up front in order to try to ease HMNY's and MoviePass's cash shortfalls.

Examples of Materially False and Misleading Representations About the Nature and Cause of MoviePass Subscribers' Lower Usage Rates and Associated Drop in Cost of Goods

46. Coconspirator 1 and LOWE repeatedly publicly assured investors that, based on historical data, subscriber usage of the $9.95 "unlimited" plan would naturally decline over time as subscribers settled into a predictable, low rate of usage. Their talking points were intended to

reconcile for investors how MoviePass's subscriber growth rate could increase at breakneck speed without the company running out of money. As Coconspirator 1 and LOWE knew, however, this explanation lacked any basis in fact, and subscriber usage did not naturally decline as Coconspirator 1 and LOWE had falsely claimed it would.

47. Beginning in or around January 2018, Coconspirator 1 and LOWE agreed to artificially reduce subscriber usage through behind-the-scenes tactics aimed at reducing the amount of money that MoviePass spent buying movie tickets.

48. In or around April 2018, as MoviePass's cash-flow situation worsened, Coconspirator 1 and LOWE directed MoviePass employees to reset the passwords of the highest volume users to disrupt or slow their usage of the MoviePass application to buy movie tickets. In addition, Coconspirator 1 and LOWE also added a requirement that the top 7% of the highest volume users be required to verify their purchases by requiring them to take a picture of the movie ticket they purchased.

49. Coconspirator 1 and LOWE subsequently made materially false and misleading representations reporting that the first quarter reduction in subscriber usage was the result of a maturation of the subscriber base and natural decline over time as subscribers settled into a predictable, low rate of usage. For example, on or about May 16, 2018, HMNY and MoviePass issued a joint press release titled "[HMNY] and MoviePass Report First Quarter Earnings" that was disseminated to investors through *Business Wire*, the *South Florida Business Journal* website, and an 8-K filed with the SEC, among other means. The press release announced that HMNY and MoviePass had their "biggest quarter" in their combined history and stated:

> Our core strategy has always been to provide a compelling value proposition to consumers that vastly improves their movie-going experience. As our subscriber base rapidly grows and matures, our financial goal is to breakeven on subscribers and generate alternative revenue streams … Recent trends related to average ticket

> purchases, churning net growth and reducing abuse has bolstered our confidence in our economic model being viable and shows significant improvement in achieving our objectives. MoviePass is releasing key metrics that demonstrate significant improvements to its economic model and strong appeal to customers. The trendline based on our data suggests this figure will be reduced further in the coming months. As our subscriber base matures, we are also naturally seeing significantly reduced usage over time.

50. These representations were materially false and misleading because, in truth and in fact, and as Coconspirator 1 and LOWE both knew, the reduction in subscribers' usage and movie consumption was attributable to a forced reduction in subscriber usage, not a maturation of the subscriber base or natural cycle of use. These representations were also materially false and misleading because they omitted mention of the fact that, as Coconspirator 1 and LOWE also knew, MoviePass had selected paying subscribers for involuntary inclusion in programs to prevent or slow use of the service to buy movie tickets based exclusively on the fact that, in the past, these subscribers had used the service the most.

Materially False and Misleading Representations to the SEC

51. On or about July 25, 2022, LOWE provided sworn testimony to the SEC. Several answers that LOWE provided in response to the SEC's questions were materially false and misleading and intended to conceal the existence of the conspiracy and LOWE's role in the conspiracy. For example, in response to the SEC's questions about how LOWE selected the subscribers whose passwords were reset, LOWE falsely represented that he did not select the subscribers based on the volume of movie tickets that they purchased but for other reasons:

> SEC: [I]isn't it true though that you were selecting the subscribers whose passwords would be reset based on the heaviest users of the MoviePass product?
>
> LOWE: No, … And of course, I had many people ask me, well, isn't that why you targeted those people. And that's absolutely not how those people got into that group. They got into the group because they were changing their phone more than what seemed reasonable over a short period of time.

LOWE knew his representation was materially false because LOWE targeted subscribers for the password reset based on their usage.

52. Similarly, in response to the SEC's questions about how LOWE targeted subscribers for ticket verification, LOWE falsely represented that he did not select them based on the amount of movie tickets that they purchased but for other reasons:

> SEC: So for ticket verification, is it your testimony like the password reset, there's a list out there with subscribers that you believe are violating MoviePass's terms of service and that should be subject to the ticket verification tactic?
>
> LOWE: Yes. … And again, this is an imperfect science, we would look at various indicators that at least gave us the belief that it was possible that this individual was violating the Ts and Cs, …

Like LOWE's sworn testimony about the password reset, this representation was materially false because LOWE targeted subscribers for ticket verification based on the volume of movie tickets that they purchased.

53. When asked by the SEC about representations made in a draft Form 10-Q, LOWE falsely stated "I don't even know what a 10Q is." In truth and in fact, LOWE not only had knowledge of particular HMNY 10-Qs about which he corresponded by email, but he also had knowledge of the terminology more generally.

* * *

54. LOWE agrees that he received at least $388,224.13 in salary payments during and in furtherance of the conspiracy in 2017, 2018, and 2019, which constitute proceeds traceable to the commission of the offense.

55. LOWE agrees that LOWE committed all the essential elements of the offense, namely Conspiracy to Commit Securities Fraud in violation of Title 18, Section 371. This statement is not intended to be a complete accounting of all the facts and events related to the

offense charged in this case. The limited purpose of this statement is to demonstrate that a factual basis exists to support LOWE's guilty plea to the Information.

GLENN S. LEON, CHIEF
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

MARKENZY LAPOINTE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

Date: 9/5/24

By: Matt Reilly
CHRISTOPHER FENTON
LAUREN ARCHER
MATTHEW REILLY
TRIAL ATTORNEYS
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

Date: SEP 3, 2024

By: JM Lowe
J. MITCHELL LOWE
DEFENDANT

Date: 9/3/2024

By: Margot Moss
DAVID O. MARKUS, ESQ.
MARGOT MOSS, ESQ.
COUNSEL FOR DEFENDANT