IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

C.A. No. 2:99-1861-18

JOE H. MILLER and
ROBERT W. PEARCE, JR.,

Plaintiffs,

vs.

MANUEL P. ASENSIO
ASENSIO & COMPANY, INC.,
ASENSIO CAPITAL MANAGEMENT, INC.
and JOHN DOE 1 THROUGH 20

Defendants.

AFFIDAVIT OF MANUEL P. ASENSIO IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT.

1. I am the Chairman, President and Chief Executive Officer of asensio.com, inc. and its wholly owned subsidiary Asensio & Company, Inc. ("Asensio", "we" or "our"). I am the controlling shareholder of asensio.com and I am authorized to make this affidavit on behalf of all defendants. I am 46 years old, a resident of the State of New York, and a graduate of the University of Pennsylvania Wharton School and Harvard University Graduate School of Business Administration.

2. I have been a member of the National Association of Securities Dealer, Inc. ("NASD") and registered with the U.S. Securities and Exchange Commission ("SEC") since 1982 as a General Securities and a Financial and Operational Principal. Under my securities licenses Asensio & Company, Inc., a Delaware company, was registered with the SEC as a securities broker-dealer and was admitted into the NASD as a member authorized to conduct a full range of investment banking business in 1993. Since its inception, Asensio has only had offices and has conducted all of its business in the State of New York.

3. Neither I nor any employee of Asensio has ever received a single customer complaint of any kind. Asensio has never been accused or charged by any industry, local, state or federal authority with any illegal act concerning any matter including any allegations of illegal short selling or any other illegal securities trading activities conducted either in its own or its customers' accounts.

I. Asensio's Short Selling Research and Investments

4. Asensio was incorporated on February 10, 1993 and began to issue its short selling reports and short selling activities on January 19, 1996. Asensio is the only SEC and NASD registered investment banking firm that regularly publishes research on fraudulent stock promotions. From 1996 until 1999,

Asensio issued Strong Sell and Short Sell recommendations on twenty-two (22) publicly traded companies. All of these companies declined sharply after Asensio issued its reports with an average decline of over 80%. Ten (10) of these companies' stock price declined over 90% after Asensio issued its report. Twelve (12) of these companies' stock price declined over 80% after Asensio issued its report, including Chromatics Color Sciences, Inc. ("Chromatics"). Of the twenty-two (22) companies ten (10) have dropped below $2 per share.

5. Four (4) of the twenty-two (22) short sold companies have elected to sue Asensio. All of the suits were dismissed or settled. Asensio has never paid any amount in any settlement and has never retracted a single statement.

6. All of the companies that sued Asensio have now been exposed as stock frauds. Hemispherx Biopharma, Inc. ("Hemispherx) has been charged with issuing false press releases and the U.S. Government has criminally charged four of Hemispherx's stock promoters with fraud. Hemispherx has also been charged with issuing statements containing illegal medical safety and efficacy claims by the U.S. Food and Drug Administration ("FDA") and is under fraud investigation for fraud by the SEC and a congressional committee. Hemispherx's long-time attorneys, who on numerous occasions during their representation of Hemispherx have acted in a highly unethical manner, also represent the plaintiffs in this case.

7. The three (3) other companies, Zonagen, Inc., Turbodyne Technologies, Inc. and Solv-Ex Corp., filed suits shortly after Hemispherx but these suits were dismissed or settled without significant expense. Each of the four stocks of the company's that sued Asensio are in the over 90% decline group. Solv-Ex went bankrupt, has been charged by the SEC with fraud, found guilty and de-listed by the NASD. Turbodyne was formally charged by the NASD and EASDAQ with issuing false statements and was de-listed. Turbodyne's shareholders charged it with fraud. Zonagen's drug failed to get FDA approval as it claimed, in fact, the FDA halted further testing, and its shareholders filed class action suits claiming fraud.

II. Asensio's Short Selling Research Methodology

8. Asensio conducts a preliminary analysis of public companies when it believes that a company's stock is trading at a price that is wholly unjustified when compared to its peers and/or its own future prospects. Asensio's preliminary analysis candidates come from its following the activities of known fraudulent stock promoters and industry sources. These sources include medical researchers, executives of companies in the subject company's industry and financial experts with extensive research experiences, which are either well known to Asensio or investigated to confirm their experience and knowledge with the subject matter.

9. The above preliminary analysis may yield evidence that the subject company is either worthless or so over-valued that its shares are highly likely worth less than 20% of their current market value. If so, Asensio performs a background check on the subject's underwriters, promoters, directors and officers, and a fact-checking analysis of its disclosures to public investors.

10. The background check may yield documented factual evidence of past involvement in fraudulent public stock promotions. If so, Asensio performs a complete valuation analysis to independently calculate the subject's fair stock price. This includes an investigation of the subject company's business or scientific claims through research with highly specialized industry experts. This procedure varies from securities industry standards that rely on company statements and use in-house employees who are responsible for researching entire industries. These in-house industry generalists often lack actual first hand personal operating knowledge of the subject matter. Instead, Asensio relies only on individuals with specific personal experience and knowledge directly related to the subject company's claims.

11. Asensio then compares the subject company's own public disclosures made in its SEC Form 10Qs, Form 10Ks, proxy statements and prospectus filings and its press releases with Asensio's independently generated facts and analysis.

12. Simultaneously with this fact checking, Asensio investigates the subject company's historical methods for using the public markets to sell stock to investors to determine if it is "dumping" stock. Companies that sell options, warrants and/or stock privately at below market prices to private buyers and then file documents with the SEC that allow those private insiders to sell their "cheap" stock to the public often are engaged in disseminating misleading and false information to create buying interest. This distribution of false or misleading information is known as "pumping." The stock selling by promoters is known as "dumping." These "dump" sales occur while the company is disseminating false positive information and without notice to the public buyer that he is buying shares obtained by insiders "cheaply" directly from the company.

13. In a stock fraud the private buyers are compensated for their involvement with the fraudulent promote and often share their compensation with brokers who are paid to "chop" the stock. "Chopping" a stock is the process of selling or "placing" large amounts of the stock for "cash." The stock is often sold, or "chopped," in small amounts to a large number of small retail investors. This process is also known as "burying" the stock. Brokers "bury" stock in cash accounts to prevent short sellers from obtaining the stock through a "borrow" and then selling it short. This eliminates the supply short sales create, the need to re-bury or re-box to stock the short seller would resell, and the incentive of the short seller to expose and combat the fraud.

14. A subject company must be both widely disseminating misleading positive statements of substantial importance to investors and omitting material negative information ("pumping") and "dumping" stock on the public by using prior private stock sales before Asensio will consider short selling and initiating coverage of its shares. Asensio will only issue Strong Sell and Short Sell reports on companies that it believes are over-valued, that are actually engaged in "pump and dump" transactions, and that, based on its factual analysis, it believes is disseminating false positive information about material alleged developments.

III. Asensio publishes its opinion on Chromatics' stock value.

15. On June 5, 1998, Asensio initiated coverage of Chromatics. All of the facts and opinions rendered in the initial and subsequent reports were gathered from information normally used by financial analysts to issue recommendations on a security and Asensio relied in good faith on that information in issuing its reports. Further, the conclusions and facts contained in those reports were all developed from that information.

16. All of the statements pertaining to Chromatics included in this affidavit were uncovered during Asensio's due diligence and led Asensio to the conclusions in its Chromatics reports and have been taken from public documents. These conclusions were reached in good faith.

IV. No Business In South Carolina Or Any Contact With The Plaintiffs.

17. Neither I nor anyone at Asensio has or has had any business relationships in South Carolina. Neither I nor anyone at Asensio has ever had any relationship of any kind or any contact with Plaintiffs Joe H. Miller or Robert W. Pearce.

V. Plaintiffs Avoid Total Loss Despite Alleged Large Purchases Of Penny-Stock Scam

18. Chromatics' shareholders suffered losses due to Chromatics' fraudulent stock promotion. Asensio has received from the plaintiffs their alleged trading records in Chromatics stock. Asensio initially received certain alleged trading information that we determined allegedly showed the Plaintiffs' combined monetary loss of approximately $235,000. Two months later, Asensio received further alleged trading information. The trading information provided by the Plaintiffs was incomplete. However, based on the combined alleged trading information provided to us, we have determined the Plaintiff's alleged combined monetary loss to be approximately $450,000. Asensio has no direct knowledge and has no way of knowing what the Plaintiffs' actual profits or losses in Chromatics stock trading have been.

VI. Asensio's Offer Of A Settlement

19. On December 14, 2000, based on the initial trading information provided by the Plaintiffs, a letter was sent to the Plaintiffs offering a settlement. To date we have not received any response to our offer. (See Exhibit 21)

VII. No Contact With Chromatics

20. Asensio has a policy never to contact any employee or representative of a company it is investigating. Neither I nor anyone at Asensio has ever spoken with any employee or representative of Chromatics.

VIII. Plaintiffs' ties to other fraudulent stock promotions

21. David C. Franceski and Keith R. Dutill of Stradley, Ronon, Stevens & Young, LLP who appear pro hac vice currently represent the Plaintiffs. David Franceski also represents Hemispherx. Franceski has a history of representing Hemispherx and its Chairman, William A. Carter, against individuals such as a dying AIDS patient, and companies such as DuPont, that over the last 14 years have sued Hemispherx based on allegations of stock fraud. Hemispherx is a fraudulently promoted company that is currently under investigation by the SEC for fraud. (See Exhibit 1) Asensio has issued research reports concerning Hemispherx's fraudulent activity. Hemispherx filed a lawsuit in the U.S. District Court in the Eastern District of Pennsylvania. The complaint has been dismissed. The complaint in the Pennsylvania matter is almost identical to the complaint filed by the Plaintiffs.

IX. Chromatics Background And Initial Public Offering

22. On February 12, 1993, Chromatics raised $5,750,000 through an initial public offering ("IPO") of 1,150,000 units consisting of shares and warrants at $5 per share. (See Exhibit 2, Page 1)

23. Chromatics was formed in 1984 and claims to be in the business of color science. In fact, Darby Macfarlane, Chromatics' co-founder and Chairman, President and Chief Executive Officer, began research, development and mass-marketing efforts in color science technology over twenty (20) years ago. (See Exhibit 2 pg. 38) At the time of the IPO, Chromatics' principal product was the Colormate II System ("Colormate II"). Chromatics also stated it believed Colormate II could be used in certain color measurement applications in the medical and dental fields. (See Exhibit 2, pg. 8) However, Chromatics had never generated any revenues from its bilirubin product prior to the time of its IPO or when Asensio issued its opinion or to date. (See Exhibit 2 pg. 8; Exhibit 25 pg. 37; Exhibit 29 pg. 9, 14)

X. Investors Associates Underwrites Chromatics IPO

24. Chromatics' IPO was underwritten by Investors Associates, Inc., ("Investors Associates") a fraudulent and now defunct penny-stock broker-dealer. (See **Exhibit 3**) In 1997, Investors Associates' securities license was revoked in numerous states, including Florida, California, Connecticut, and New Jersey. (See Exhibits 4, 5, 6, 7) Its principals, including the author of Chromatics' first BUY report, Herman Epstein (See **Exhibit 8**), were barred from the securities industry. State and federal regulators charged Investors Associates with unauthorized trading, covering up customer complaints and fraudulent sales practices. (See **Exhibit 5**) Ultimately, twenty (20) state securities regulators filed civil actions against Investors Associates and the attorneys general for New York and New Jersey commenced a criminal investigation. (See **Exhibit 7**)

25. On September 2, 1999, the SEC filed a lawsuit against principals of Investors Associates "arising from a massive securities fraud that was conducted through Investors Associates." The SEC charged Investors Associates' owners with obtaining illegal profits totaling over $33 million by underwriting fraudulent public offerings. (See **Exhibit 3**)

XI. Chromatics Fails and Becomes a Defunct Public Shell

26. After the IPO, Chromatics continued to fail to report any significant revenue from its products or from the licensing of its products. Chromatics operated with cash from its IPO, however, without any revenue or potential revenue from its products, Chromatics operated at a loss and by December 31, 1994 had become a defunct corporate public shell.

27. As of December 31, 1994, just 22 months after Investors Associates used massive securities fraud to raise $5.7 million in cash for Chromatics, Chromatics had only $858,300 in cash left and had $804,100 in debt and liabilities. (**Exhibit 9 pg. 37**)

28. By then, Chromatics had only $54,200 in cash net, a $1 per share stock price and was known to be the product of an Investors Associates' fraudulently sold stock offering. A new group of fraudulent stock promoters then obtained control of the Chromatics defunct shell and used it in a second stock fraud. (See **Exhibits 22, 26 and 27**)

XII. Chromatics enters agreement with Janssen-Meyers.

29. On September 27, 1994, Chromatics entered into a Sales Agency Agreement with Janssen-Meyers Associates, L.P. ("Janssen-Meyers") to sell up to 2,700,000 shares of its common stock at a price up to

50% below the market. (See Exhibit 10) Chromatics' stock closed at $1 11/16 on that date. This offering represented almost one half of the company. Ultimately, Janssen-Meyers sold the 2.7 million shares in four different closings that occurred between January 6, 1995 and June 8, 1995. The shares were sold privately in a classic conversion of a defunct corporate shell into a "pump" and "dump" operation by a group of fraudulent stock promoters.

30. Chromatics paid Janssen-Meyers $770,200 in offering costs. (See Exhibit 12 pg. 41) Under a separate agreement dated January 6, 1995, the date of the first closing, Chromatics also agreed to pay Janssen-Meyers a $75,000 consulting fee. (See Exhibit 11) In addition, management took a $262,400 cash payment, Janssen-Meyers a $150,000 fee, and $30,000 of demand registration expenses were paid from the net proceeds of the offering. (See Exhibit 12 pg. 35) A total of $1,287,600 in expenses was paid by Chromatics from the offering proceeds. These payments equal an astonishing 39.5% of the net proceeds. This left Chromatics with $3,260,200, or $1.21 per share in net proceeds.

31. In addition to the cash payments, Chromatics also granted Janssen-Meyers a warrant to purchase one share of Chromatics stock for every share Janssen-Meyers sold. As a result, upon the completion of the private placement, Janssen-Meyers owned 2.7 million warrants at no cost. These 2.7 million free warrants represented approximately 37.5% of the company at the time they were issued. In other words, in order to raise less than $3.3 million, Chromatics made cash payments of $1.3 million and gave away the right to buy 37.5% of the company for free. Furthermore, Janssen-Meyers and its investors now controlled approximately 50% of Chromatics' fully diluted shares.

32. The terms of the Janssen-Meyers offering prove Chromatics had no asset or earnings potential to make its stock attractive to legitimate investors. Because Chromatics had no other financing alternative, Janssen-Meyers was able to obtain control of Chromatics defunct public shell cheaply, extract large cash fees and free ownership from Chromatics. Janssen-Meyers got free stock in a thinly traded company with a management that had experience with the creation of a stock promotion and working with fraudulent securities firms. As a result, Chromatics was converted from a defunct public shell to a "chop" stock. Normally, Janssen-Meyers would be forced to sell its "chop" stock to unsophisticated, small, retail investors. In the Chromatics case, Janssen-Meyers found another outlet.

XIII. Dreyfus And Michael Schonberg Become Involved In Chromatics Stock Fraud And Are Exposed.

33. Michael Schonberg ("Schonberg") was one of the Janssen-Meyers' clients that purchased shares in the Chromatics private placement. Schonberg personally purchased 20,000 Chromatics shares though Janssen-Meyers in December 1994. (See Exhibit 22 pg. 1) On May 6, 1996 these shares were

registered for sale by Chromatics, allowing Schonberg to "dump" his shares to the public without notice. (See **Exhibit 13 pg. 25**)

34. In August 1995, The Dreyfus Corporation ("Dreyfus") hired Schonberg eight months after his purchase of Chromatics stock. Schonberg served as the portfolio fund manager for the Dreyfus Aggressive Growth Fund and the Dreyfus Premier Aggressive Growth Fund ("Dreyfus Funds"). By January 1996, Schonberg had already begun using investors' money deposited in the Dreyfus Funds to buy 260,000 shares of Chromatics stock. (See **Exhibit 23 pg. 2**) Ultimately, by January 1998, Mr. Schonberg bought a total of 1,250,000 Chromatics shares for the Dreyfus Funds. (See **Exhibit 14 pg. 1-3**)

35. All of Schonberg's purchases for the Dreyfus accounts were executed after Chromatics had been converted from a 3-year-old failed Investors Associates, Inc.'s initial public offering into a Janssen-Meyers in-house "chop" stock.

36. While Mr. Schonberg was buying stock, Janssen-Meyers was exercising its free Chromatics warrants and selling stock. According to Chromatics' SEC filings, Janssen-Meyers exercised a total of at least 1,257,573 of these free warrants to purchase Chromatics stock at $1.67 during the time that Mr. Schonberg bought for the Dreyfus Funds. (See **Exhibit 15**) During this same period, Dreyfus went from owning no Chromatics shares to owning 13.6% of the company. (See **Exhibits 15 and 24 pg. 2**) Mr. Schonberg went so far as making Chromatics his largest holding in one of his funds, accounting for 12.5% of the entire fund. (See **Exhibit 16**) During this same period Janssen-Meyers reduced its Chromatics holdings from 37.5% to 8.9%. (See **Exhibit 25 pg. 60**)

all
disclose
to
SEC

37. After Asensio issued its report on Chromatics and disclosed this information, Business Week, The Wall Street Journal and Barron's reported extensively on the transactions of Chromatics stock by Schonberg, Dreyfus and Janssen-Meyers. (See **Exhibits 22, 26 and 27**)

38. On May 11, 2000, the New York Times disclosed that Dreyfus agreed to pay $2.95 million to settle charges with the New York Attorney General's office and the SEC. The charges state that Dreyfus had not adequately informed investors of the risks associated with its Dreyfus Aggressive Growth Fund, particularly regarding investments in initial public offerings and small, illiquid companies in 1995 and 1996. In addition, Dreyfus did not adequately ensure that personal securities transactions by Mr. Schonberg did not pose a potential conflict of interest. (See **Exhibit 17, 30**)

39. In a press release from the New York Attorney General's office, Dreyfus agreed to pay $1.6 million for an investor education program and pay the Attorney General's office $400,000 for the cost of the investigation. (See **Exhibit 30**)

40. Dreyfus also agreed to pay a $950,000 fine to the SEC. (See Exhibit 17)

41. Schonberg agreed to a nine-month suspension from the investment management business and to pay a $50,000 fine. (See Exhibit 17)

XIV. Chromatics' Colormate III Product Promotion

42. Chromatics claimed to have developed a proprietary technology using a non-invasive bilirubinometer called Colormate III, a device used to test for infantile jaundice. Investors were being told to buy Chromatics shares based on claims that the Colormate III had unique advantages in the bilirubin testing market and that the market was large and growing. These representations are and were completely false.

43. There were hundreds of comparable and superior products. Non-invasive bilirubinometers are inexpensive colormeters adapted to generate estimates of bilirubin blood levels. Colormeters have been in use since the 1950's. Transcutaneous non-invasive bilirubin measurement devices are easily manufactured and are available worldwide. There have been hundreds of studies as early as 1981 analyzing the use of non-invasive color measuring devices as transcutaneous bilirubinometers. While these studies have shown that these devices can serve as a useful screening test, most conclude that an accurate determination of serum bilirubin concentration is not obtainable. (See Exhibit 28)

XV. Chromatics' FDA Marketing Clearance

44. On July 30, 1997 the Colormate III received FDA marketing clearance. (See Exhibit 20 pg. 3) In fact, the Chromatics III itself is over 10 years old (See Exhibit 25 pg. 5) and was approved by the FDA based on Chromatics' claim that its product was an identical to another FDA approved device from the 1950's. (See Exhibit 31 pg. 4)

45. Chromatics' stock price doubled within two weeks of the announcement of FDA approval. The stock rose in anticipation of the marketing and potential sales of the Colormate III product. In fact, Chromatics had not reported any sales of its product at the time Asensio issued its first report, almost one-year later. Now 3 1/2 years after FDA approval and 2 1/2 years after the Asensio report, Chromatics has still failed to generate any sales.

XVI. Chromatics' Exaggeration of Market Size

46. On September 15, 1997, Chromatics announced it estimated that approximately $330 million is spent annually on monitoring bilirubin infant jaundice in the United States. (See Exhibit 18) In fact, according to a 1995 report titled "Forecasts of the World Bilirubinometer Market" by Frost and Sullivan, the world market for bilirubinometers in 1994 was $2.22 million and growth was expected to continue at a slow and gradual rate. (See Exhibit 19 pg. 3) Chromatics used their announcement in order to continue to mislead investors into believing that Chromatics had a marketable product and would soon report sales.

XVII. Asensio's Report Publication and Chromatics' Subsequent Stock Trading

47. Asensio published its first report on Chromatics on June 8, 1998. Chromatics' stock closed at $10 3/4 the day prior to our report. Upon issuance of our report the stock dropped to a low of $4 1/2 in two days. Asensio issued a total of seven reports on Chromatics and its fraudulent promotion. On June 26, 1998, the date Asensio published its last report on Chromatics, the stock closed at $4 5/8.

48. After Asensio's last report, Chromatics' stock price recovered to a high of $14 7/16 per share on May 14, 1999, less than one year later. This price is almost 35% higher than Chromatics' stock price on the date Asensio issued it first report. After reaching this new high, Chromatics' stock steadily traded downward and on August 24, 2000 the stock dropped from almost $4 to $2 1/4 per share. This drop occurred over two years after Asensio's last report. On January 24, 2001 Chromatics' stock closed at $5/8 or $0.625 per share. To date, Chromatics has not reported any significant sales of its product.

XVIII. Conclusion

49. Chromatics' IPO was sold to the public by Investors Associates, an underwriter that was found by the U.S. Federal securities authorities to have used fraudulent sales and trading practices in IPO sales. Within 22 months after its IPO, Chromatics was out of cash, in debt and losing money. Chromatics was then taken-over by Janssen-Meyers, a new group of fraudulent stock promoters who teamed-up with Schonberg, who was a Dreyfus employee, to use Chromatics stock to defraud investors in two Dreyfus mutual funds. Both of these stock promotion operations were structured as classic "pump and dump" scams, using certain product and sales potential claims that have now been shown to have been at best wrong and in our opinion deliberately misleading.

50. Asensio's research reports contained relevant facts to form a basis for its opinions that Chromatics' sales and earnings projections were baseless and highly unlikely to be met. Chromatics has not only

failed to meet its projections, but also failed entirely to generate any sales of its alleged revolutionary bilirubinometer product.

51. Asensio's reports (See Exhibit 32) were freely distributed and contained protected fact based opinions with the following disclaimer: Copyright 1998 by Asensio & Company, Inc. All rights reserved. This report should not be construed as an offer to sell or solicitation of an offer to buy any securities. Opinions expressed are subject to change without notice. This report has been prepared from original sources and data, which we believe to be reliable but accuracy is not guaranteed. This research report was prepared by Asensio & Company, Inc. whose stockholders, officers and employees may from time to time acquire, hold or sell a position in the securities mentioned herein. Asensio & Company, Inc. may act as principal for its own account or may sell or buy to or from its customers the securities described herein. Asensio & Company, Inc., may from time to time perform investment banking or other services for, or solicit investment banking or other business from, any company mentioned in this report or its affiliates.

52. Asensio has not and never had any business or contact with the Plaintiffs or their Chromatics trading. The Plaintiffs' trading were not and can not be known to Asensio. The Plaintiffs could have received payments and free stock in accounts or traded profitably in accounts that would be impossible to detect. Furthermore, the Plaintiffs were unusually large shareholders in an exposed penny-stock scam, and their out-of-town attorneys happen to be very deeply involved with Hemispherx, known as one of the most malicious and notorious AIDS medical stock frauds of the late 1990's. The Plaintiff's attorneys are also involved in identical litigation with Asensio.

53. Based on my initial due diligence and the information obtained and set forth herein, I have no question that Asensio's reports are correct and accurate. I have no reason to question the truthfulness of the facts set forth herein or the reasonableness of the conclusions.

Manuel P. Asensio

Sworn to before me this
13th day of ~~January~~ FEBRUARY 2001

Ellen Hutchinson

Notary Public

NOTARIAL SEAL
ELLEN HUTCHINSON, Notary Public
City of Philadelphia, Phila. County
My Commission Expires Nov. 20, 2004