

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

June 3, 2022

Admin. Proc. File No. 3-19787

<p>In the Matter of  Nano Magic, Inc.                      Petitioner.</p>	<p>OPPOSITION TO AND INCORPORATED MOTION TO STRIKE DIVISION OF ENFORCEMENT'S MOTION TO SEEK LEAVE TO RESPOND TO NANO MAGIC, INC.'s SUPPLEMENTAL BRIEFING IN FURTHER SUPPORT OF NANO MAGIC'S MOTION TO COMPEL PRODUCTION OF INFORMATION BEFORE THE COMMISSION AT TIME OF TRADING SUSPENSION ISSUED PURSUANT TO SECTION 12(k)(1)(A) OF THE SECURITIES EXCHANGE ACT OF 1934</p>
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The language of the Commission's Order Denying Motion to Compel ("Denial Order") could not have been more clear: "[b]y May 19, 2022, the parties may, but need not, file supplemental briefs...."<sup>1</sup> Despite this Order, and fully in line with its blatant disregard for Commission Orders as exemplified by its previous failure to "file all the information that was before the Commission at the time of the Trading Suspension Order's issuance,"<sup>2</sup> the Division of Enforcement, through its Philadelphia Regional Office ("PRO"), now seeks unjustified leave to respond to Petitioner Nano Magic Inc.'s timely filed May 16, 2022 Supplemental Briefing. Yet again, the PRO cannot explain

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<sup>1</sup> *Nano Magic Inc.*, Exchange Act Release No. 94818, 2022 WL 1288188 at \*2 (April 28, 2022) ("the parties may ... file supplemental briefs ... addressing any matter directly implicated by the resolution of Nano Magic's motion...."). The only matter directly implicated by the Commission's decision was production of the redacted Action Memorandum.

why it is unable in this matter to comply with express briefing instructions from the Commission. Accordingly, the Commission not only should deny the PRO's Motion but also should Strike the PRO's Motion from the record.

Arguably, the question before the Commission is a simple one. How many times can one office patently violate Commission Orders in an Administrative Proceeding and count on the Commission to countenance such behavior? Even more presumptuous is the PRO's assertion that it, not the Commission, determines what information before the Commission actually had "bearing on the trading suspension" when the Commission has not yet ruled. Or presented in the true light of the PRO's briefing language, the Staff of the PRO had every right to make false representations in its Action Memorandum to obtain the trading suspension, and, after withholding such information from its Declaration to enable Petitioner to challenge such material false statement, now may seek to recharacterize its having misled the Commission as a fact not relevant to the Commission's consideration of the Action Memorandum.<sup>3</sup> In fact, the Commission respectfully should again review the Action Memorandum to determine if the unsupportable and untrue representation about Ron Berman's having traded Nano Magic stock was qualified as having been conveyed "only to communicate to the Commission that the Division intended to further investigate a separate issue." It is reasonable to believe that the PRO's back tracking to cover its – at a minimum – grossly negligent

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<sup>2</sup> 17 C.F.R. § 201.550(b); Nano Magic Inc., Exchange Act Release No. 88841, 2020 WL 2310946 at \*1 (May 8, 2020).

<sup>3</sup> The PRO claims NMGX chose not to address the merits of the trading suspension and "instead focus its attention on accusing the staff of baseless accusations of ethical violations." If the PRO considers Candor to the Tribunal inapplicable to its staff such that it can make false representations with impunity, then the Commission has an even more

misrepresentation is not similarly qualified in the Action Memorandum. If there is no such qualification in the Action Memorandum, then that further casts doubt on the credibility of the PRO's original submission. The PRO's Motion to Seek Leave only reinforces the approach of Nano Magic to its Supplemental Submission in reiterating justification for production of the Action Memorandum. Nothing in the Denial Order appeared to invite re-briefing of the underlying trading suspension; and Nano Magic addressed clearly in its Supplemental Briefing the material false statement and mischaracterizations by the PRO.

The PRO also attempts to double down on its misinformation to the Commission as justification for pursuing the trading suspension in the first place. To suggest that "NMGX failed to address the merits of the trading suspension in its Supplemental Brief" or "steers clear of addressing the actual merits" is itself a deceit, as NMGX addressed the meritless trading suspension in its detailed 31-page petition filed on May 6, 2020,<sup>4</sup> its comprehensive 31-page closing submission filed on May 28, 2020,<sup>5</sup> and its 13-page supplemental filing addressing prejudice with accompanying expert opinion.<sup>6</sup> Moreover, it is preposterous to claim that Nano Magic "also has never disputed [that the] spike in both the price and volume of NMGX stock, or the fact that the significant increase in NMGX's stock price and trading volume was coincident with the misinformation in the marketplace." Nano Magic has reiterated its belief that the nominal stock price increase

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serious issue on its hands when its Enforcement staff expresses indifference to each lawyer's ethical obligation to adhere to the Code of Professional Responsibility.

<sup>4</sup> <https://www.sec.gov/litigation/apdocuments/-19787-event-2020-05-07-petition-to-terminate-trading-suspension.pdf>.

<sup>5</sup> <https://www.sec.gov/litigation/apdocuments/3-19787-event-2020-05-27-petitioners-closing-submission-in-support-of-termination-of-trading-suspension.pdf>.

was because of the ‘up-listing’ back to the OTCQB, becoming current in its periodic reporting with the Commission, and a new impressive management team.

Nano Magic recognizes that this submission opposes a request to permit a dilatory non-accretive filing, one that embraces a cavalier attitude condoning submitting false information to the Commission. Therefore, Nano Magic will not repeat or even attempt to summarize its approximately 100 pages of substantive briefing in this matter. Nevertheless, in light of the PRO’s narrative, several points warrant mention. In reviewing the message board after the fact, the favorable corporate developments -- that is information entirely in the public domain -- were the subject of posts on an internet message board. The company and its officers and directors had nothing to do with the posts. Next, the company has multiple patents, and merely 60 of hundreds of message board posts – possibly one out of every 10 – made factual reference to the patents. Ron Berman reiterated a number of these points in his Declaration.<sup>7</sup> Regarding any stock price movement, the trading was nominal. Not one insider sold stock. Any capital raised by the company occurred prior to any stock price movement of unwarranted concern. That capital raise was a friends and family round; there was neither a broader exempt capital raise nor reliance on the issues of apparent concern to the PRO to enable a capital raise. Major retailers now sell Nano Magic’s products. And, Tom Berman, the company’s CEO, acknowledged in his conversations with FINRA and the SEC that the company was accelerating its efforts to bring a product to market. The Staff has an obligation to look at

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<sup>6</sup> <https://www.sec.gov/litigation/apdocuments/3-19787-2021-09-01-supplemental-filing-of-petitioner-nano-magic.pdf>.

<sup>7</sup> Ex. A., Para. 20, <https://www.sec.gov/litigation/apdocuments/3-19787-2022-05-16-supplemental-briefing.pdf>.

all information and present facts to the Commission fairly; here, it clearly cherry-picked and placed the cherry atop the false trading allegation made against a director.

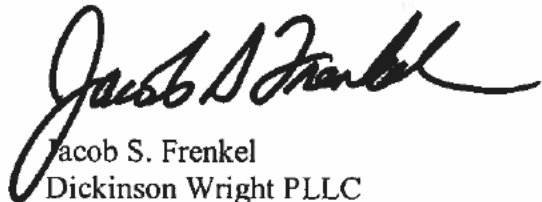
The PRO's Motion to Seek Leave is a veiled attempt to disparage Nano Magic with the hope that the company will die and thereby moot the inevitable and warranted setting aside of the trading suspension. The PRO now seeks to attribute to an unnamed third-party provider of information, more appropriately deserving to be characterized as "the defamation enabler," responsibility for irreparably impugning and disparaging the reputation of an accomplished and well-respected lawyer, only after the Commission published the Denial Order. The Commission should ask, given that the PRO does not hesitate to speak for the Commission in its administrative adjudicative capacity, whether once between April 2020 and Nano Magic's Supplemental Brief the PRO came back to the Commission and admitted it provided false information in a mandated sworn Declaration as part of this administrative, non-Enforcement action. Moreover, what should be informative to the Commission is the PRO's admission in its Motion that the information it provided to the Commission was untrue, which calls into question the reliability of the threadbare basis, if any, extant in late April 2020 for ordering the trading suspension in the first place.

It should not go unnoticed that the PRO submitted its Motion on the same day as President Biden's speech in which the President used the word "enough" 12 times to discuss a serious issue facing America. "Enough" is apt here too. For the Commission now to reopen briefing serves no legitimate or meaningful purpose. Moreover, for the Commission to allow the untimely – and unjustified for its untimeliness – Motion and sought Supplemental Briefing adds nothing to the only issue before the Commission,

which is whether the information before the Commission in April 2020 warranted a trading suspension. Nano Magic has briefed fully that a trading suspension was not warranted.

WHEREFORE, Nano Magic respectfully requests that the Commission deny the PRO's Motion for Leave and issue an ORDER striking the Motion for Leave from the record.

Dated: June 3, 2022, Washington, DC



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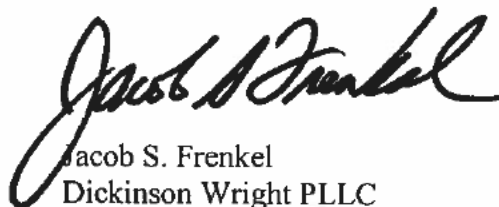
Certificate of Service

The undersigned filed with the Commission this Opposition to and Incorporated Motion to Strike Division of Enforcement's Motion to Seek Leave to Respond to Nano Magic, Inc.'s Supplemental Briefing in Further Support of Motion to Compel Production of Information before the Commission at Time of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 via the eFap filing system and served or delivered courtesy copies to the following parties and other persons entitled to notice in the manner set forth to the right of each served party:

Securities and Exchange Commission  
c/o Hon. Vanessa A. Countryman, Secretary (via e-mail)  
100 F St., N.E.  
Washington, DC 20549

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Philadelphia Regional Office  
Securities and Exchange Commission  
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Attn: Christopher Kelly, Esq. (via e-mail)  
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OS Received 06/03/2022