

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of**

**NANO MAGIC INC.**

**Administrative Proceeding**  
**File No. 3-19787**

**DIVISION OF ENFORCEMENT'S OPPOSITION BRIEF  
TO NANO MAGIC INC.'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**

Respectfully submitted,  
DIVISION OF ENFORCEMENT  
By its attorneys:

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Dated: May 19, 2020

The Division of Enforcement (“Division”) hereby submits this brief in opposition to Nano Magic Inc.’s (“NMGX’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, and Declaration of Cecilia B. Connor, dated May 19, 2020 (the “May 19 Connor Decl.”). For the following reasons, NMGX is not entitled to the relief it seeks.

As an initial matter, the Commission’s Order Requesting Additional Written Submissions dated May 8, 2020 (the “Commission Order”), provides: “No briefs in addition to those specified in this order may be filed without leave of the Commission.” Commission Order at 2. Notwithstanding this prohibition, NMGX neither sought nor received leave of the Commission to file its Motion to Compel. May 19 Connor Decl. ¶ 2. Moreover, NMGX’s Motion to Compel covers topics beyond its request for the redacted action memorandum and serves as supplemental briefing supporting NMGX’s Petition to overturn the trading suspension, which is clearly in violation of the Commission Order. The Division does not respond to those improper portions of the Motion to Compel, and files this Opposition only in the event and to the extent the Commission considers NMGX’s Motion to Compel the action memorandum and discovery.

Next, NMGX bases its demand for discovery on the simple fact that the Declaration of Cecilia B. Connor, dated May 14, 2020 (the “First Connor Declaration”), stated that it set forth the “substantive facts before the Commission,” instead of “**all** the information that was before the Commission.” NMGX Br. at 3-4. As made clear to defense counsel on May 15, 2020, in response to the meet-and-confer email, the Division— through the First Connor Declaration—set forth all factual information related to the trading suspension that was before the Commission at the time of the Trading Suspension Order’s issuance. May 19 Connor Decl. ¶ 3. As used here, the term “substantive facts before the Commission” equates to all factual information related to the trading suspension that was before the Commission at the time of the Trading Suspension

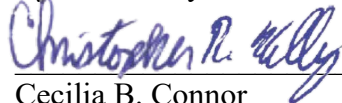
Order's issuance. *Id.* ¶ 4. Contrary to NMGX's suggestion that the Commission submitted "cherry-picked facts," the Division did not use its subjective judgment as to which of these facts to include in its submission. *Id.* ¶ 5. Moreover, the presentation of "all substantive facts before the Commission" in the First Connor Declaration is consistent with Declarations accepted by the Commission in the context of prior Rule 550 Petitions. *See, e.g., In the Matter of No Borders, Inc.*, Administrative Proceeding File No. 3-19745; *In the Matter of EFUEL EFN CORP.*, Administrative Proceeding File No. 3-18420; *In the Matter of Striper Energy, Inc.*, Administrative Proceeding File No. 3-17250. Accordingly, the Division fully complied with its obligations under the Commission Order, and NMGX's entire argument is based on a distinction without a difference.

Finally, as NMGX concedes, there is no legal support for its Motion to Compel or discovery demand in this proceeding because a trading suspension is neither an enforcement action nor an enforcement proceeding. *See* NMGX Br. at 9. This alone is reason enough to deny the Motion. But even assuming, *arguendo*, NMGX is entitled to discovery, NMGX cannot justify its requested disclosure of the action memorandum—even a redacted one—given that it is protected by various privileges, including the attorney-client privilege, deliberative process privilege, and work product. Although "the attorney-client privilege 'extends only to communications and not to facts,'" when a defendant in a recent criminal action sought discovery of an action memorandum, the Court: (1) "[found] that the Action Memorandum [was] protected, *in its entirety*, by both the attorney-client and deliberative process privileges"; and (2) "conclude[d] that [defendant] ha[d] not demonstrated a need sufficient to overcome either the deliberative process privilege or the work product doctrine." *United States v. Klein*, Case No. 16-cr-442 (JMA), 2017 WL 782326, at \*1, 3, 5 (S.D.N.Y. Feb. 28, 2017) (citation omitted and emphasis added). NMGX's arguments that the Division disclose the action

memorandum in this matter similarly fail. Indeed, NMGX has not even attempted to argue against the action memorandum's protection from disclosure based on the attorney-client privilege.

For the reasons stated above, the Division requests that the Commission deny NMGX's Motion to Compel.

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**DECLARATION OF CECILIA B. CONNOR**

I, CECILIA B. CONNOR, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Counsel with the United States Securities and Exchange Commission (“Commission”) and have been employed by the Commission as an attorney in the Division of Enforcement since 2016. I submit this Declaration in conjunction with the Division of Enforcement’s brief in opposition to Nano Magic Inc.’s (“NMGX’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 (“Motion to Compel”) *In the Matter of Nano Magic Inc.*

2. NMGX neither sought nor received leave of the Commission to file its Motion to Compel.

3. As made clear to defense counsel on May 15, 2020, in response to the meet-and-confer email, the Division of Enforcement—through the Declaration of Cecilia B. Connor, dated May 14, 2020—set forth all factual information related to the trading suspension that was before the Commission at the time of the Trading Suspension Order’s issuance.

4. As used here, the term “substantive facts before the Commission” equates to all factual information related to the trading suspension that was before the Commission at the time of the Trading Suspension Order’s issuance.

5. Contrary to NMGX's suggestion that the Commission submitted "cherry-picked facts," the Division did not use its subjective judgment as to which of these facts to include in its submission.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of May, 2020 in Haddonfield, New Jersey.

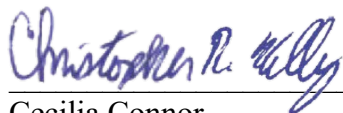
*Cecilia B. Connor*

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CECILIA B. CONNOR

**STATEMENT OF FILING BY EMAIL**

I hereby certify that, on this 19<sup>th</sup> day of May, 2020, with respect to In the Matter of Nano Magic Inc., Administrative Proceeding File No. 3-19787, I caused a true and correct copy of the foregoing brief in opposition to Nano Magic Inc.'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 and the supporting Declaration of Cecilia B. Connor, dated May 19, 2020, to be filed via email with the Office of the Secretary of the U.S. Securities and Exchange Commission pursuant to the SEC's March 8, 2020, Order in In re Pending Administrative Proceedings. The filing was sent to the email address: APFilings@sec.gov.



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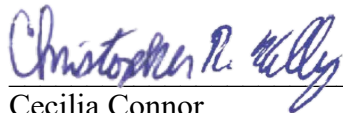
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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 19th day of May, 2020, with respect to In the Matter of Nano Magic Inc., Administrative Proceeding File No. 3-19787, I caused a true and correct copy of the foregoing brief in opposition to Nano Magic Inc.'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 and the supporting Declaration of Cecilia B. Connor, dated May 19, 2020 (together with the accompanying Statement of Filing by Email) to be served upon the following by email:

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