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FEB 11 2016

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11  
12 Plaintiff,  
13 v.  
14 HECTOR ABSI,  
15 Defendant.  
16  
17  
18

CASE NO. **2:16 - CR - 0027 WBS**

18 U.S.C. § 1349 – Conspiracy to Commit Mail  
Fraud, Wire Fraud, and Securities Fraud; 18 U.S.C.  
§ 1341 – Mail Fraud (6 counts); 18 U.S.C. § 1343 –  
Wire Fraud (6 counts); 18 U.S.C. § 1348 – Securities  
Fraud; 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. §  
240.10b-5 – Fraud and False Statement in Connection  
with Purchase or Sale of Securities; 15 U.S.C.  
§§ 78m(b)(2)(A), 78m(b)(5), and 78ff; and 17 C.F.R.  
§ 240.13b2-1 – Falsifying Books or Records of a  
Corporation; 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5),  
and 78ff; and 17 C.F.R. § 240.13b2-2 – False  
Statement to Accountant of a Publicly Traded  
Company; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C.  
§ 2461(c) – Criminal Forfeiture

19  
20  
21 INDICTMENT

22 COUNT ONE: [18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud, Wire Fraud, and Securities  
Fraud]

23 The Grand Jury charges:

24 HECTOR ABSI,

25 defendant herein, as follows:

26 1. Beginning in or about March 2013, and continuing through at least July 2014, in the  
27 County of Yolo, State and Eastern District of California, and elsewhere, defendant HECTOR ABSI did  
28

1 knowingly and intentionally conspire with at least one other employee of Marrone Bio Innovations,  
2 Incorporated (“MBI”) to commit mail fraud in violation of Title 18, United States Code, Section 1341;  
3 to commit wire fraud in violation of Title 18, United States Code, Section 1343; and to commit  
4 securities fraud in violation of Title 18, United States Code, Section 1348.

5 I. PARTIES AND RELEVANT ENTITIES

6 At all relevant times,

7 2. MBI was incorporated in the State of Delaware in 2006, and was headquartered in Davis,  
8 California. MBI produced and sold “bio-based” pesticides. These products were manufactured using  
9 naturally occurring microorganisms, such as bacteria and fungi, and plant extracts. These products were  
10 marketed as an alternative to chemically-manufactured pesticides.

11 3. Defendant HECTOR ABSI worked for MBI from September 2012 through August 2014.  
12 ABSI was responsible for the management of MBI’s global sales, marketing, and business development  
13 teams throughout the period of his employment. In January 2014, ABSI was promoted to Chief  
14 Operating Officer of MBI and maintained that position as an officer of the company until his resignation  
15 in August 2014. As part of his employment with MBI, ABSI was eligible for performance-based  
16 bonuses and was awarded stock options which vested on a set schedule.

17 4. MBI conducted its accounting on calendar year ending December 31, and recorded its  
18 revenue, along with other fiscal information, on a quarterly basis.

19 5. In public filings, MBI represented that its financial reports were prepared in accordance  
20 with generally accepted accounting principles (“GAAP”), and that it recorded revenues only after its  
21 products were delivered and title was transferred to its customers and payment from the customers was  
22 reasonably assured. These requirements had to be met before the last day of the quarter or year in order  
23 for MBI to record the revenue for that respective quarter or year.

24 6. MBI’s sales department provided information to MBI’s accounting department with  
25 respect to MBI’s sales, including the amount of product sold, the price at which the product was sold,  
26 and the terms of delivery, transfer of title, and payment, among other information, in order for MBI’s  
27 accounting department to prepare MBI’s financial statements.



1 means of materially false and fraudulent pretenses, representations and promises, money and property in  
2 connection with the purchase and sale of securities issued by MBI, in violation of Title 18, United States  
3 Code, Section 1348.

4 III. THE MANNER AND MEANS OF THE CONSPIRACY

5 The objects of the conspiracy were carried out, in substance, as follows:

6 13. ABSI participated in at least one earnings call in which he represented that MBI's sales  
7 revenue in 2013 would double from 2012.

8 14. ABSI repeatedly instructed and directed individuals in MBI's sales department of the  
9 need to complete sales within a particular period in order to meet MBI's sales forecast.

10 15. Beginning in at least March 2013, ABSI and others acting at his direction or instruction  
11 offered and caused to be offered to MBI's customers "inventory protection," by which MBI would agree  
12 to either re-purchase its product from its customers or allow a customer to extend the terms of its  
13 payment to MBI if the customer was still in possession of MBI's product after a specified time period.  
14 ABSI instructed others to offer inventory protection in order to induce customers to purchase MBI's  
15 products by the end of a fiscal quarter and/or the end of the fiscal year.

16 16. ABSI and others acting at his direction and instruction concealed from, caused to be  
17 concealed from, or otherwise omitted reporting to MBI's accounting department-controller and its  
18 external auditors that the sales of MBI's products included inventory protection.

19 17. ABSI and others acting at his instruction and direction also created and caused to be  
20 created documents that falsely and fraudulently stated that MBI's products were shipped and title  
21 transferred to its customers on dates prior to the actual date of delivery and transfer of title where the  
22 actual delivery and transfer of title occurred after the fiscal quarter or fiscal year. ABSI and others  
23 acting at his instruction and direction provided this false and fraudulent information and otherwise  
24 misrepresented and caused to be misrepresented to MBI's accounting department-controller the date of  
25 delivery or transfer of title.

26 18. Because of ABSI's concealment from MBI's accounting department-controller and from  
27 MBI's external auditors of the inventory protection agreements with customers in connection with their  
28 purchase of MBI products, and because of the false and fraudulent information ABSI provided to the

1 accounting department and MBI's external auditors as to the date of delivery and transfer of title, MBI's  
2 accounting department recorded millions of dollars of revenue in MBI's financial statements that should  
3 not have been recorded in accordance with GAAP or with MBI's accounting principles, and MBI filed  
4 with the SEC a Form 10-K that materially misstated MBI's actual revenues for 2013.

5 IV. OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

6 In furtherance of the conspiracy and to accomplish its objects, defendant HECTOR ABSI and  
7 others known and unknown to the Grand Jury, committed and caused to be committed the following  
8 overt acts, among others, in the State and Eastern District of California and elsewhere:

9 19. In or about March 2013, ABSI promised inventory protection to a customer of MBI  
10 ("Customer A").

11 20. In or about March 2013, MBI caused an invoice to be sent by United States mail to  
12 Customer A after Customer A purchased the products based on an offer from ABSI, or individuals  
13 acting at his direction, that MBI would provide inventory protection for the products.

14 21. On or about August 29, 2013, ABSI falsely and fraudulently represented to MBI's  
15 controller and others at MBI that he was not aware of any side agreements involving inventory  
16 protection.

17 22. On or about September 25, 2013, ABSI, through interstate email correspondence, offered  
18 inventory protection to a customer of MBI ("Customer B").

19 23. On or about October 9 and October 10, 2013, ABSI, through interstate email  
20 correspondence, requested Customer B to provide false information regarding the date on which  
21 Customer B received MBI's product.

22 24. On or about October 29, 2013, ABSI falsely and fraudulently represented to MBI's  
23 controller and others at MBI that he was not aware of any side agreements involving inventory  
24 protection.

25 25. On or about November 7, 2013, MBI representatives, including ABSI, reported during a  
26 public call with investors that MBI expected its 2013 annual revenue number to approximately double in  
27 comparison to 2012.

1           26.     On or about December 20, 2013, ABSI, through interstate email correspondence, offered  
2 inventory protection to Customer B.

3           27.     On or about December 20, 2013, a person acting at the direction and instruction of ABSI,  
4 offered, through interstate email correspondence, inventory protection to a customer of MBI (“Customer  
5 C”).

6           28.     On or about December 23, 2013, a person acting at the direction and instruction of ABSI  
7 sent to Customer C a written side agreement to provide inventory protection to Customer C.

8           29.     On or about December 26, 2013, a person acting at the direction and instruction of ABSI  
9 confirmed inventory protection for Customer C.

10          30.     On or about December 27, 2013, MBI caused, by a common carrier operating in  
11 interstate commerce, its products to be shipped to Customer C after Customer C purchased the products  
12 based on an offer from ABSI, or individuals acting at his direction, that MBI would provide inventory  
13 protection for the products.

14          31.     On or about December 27, 2013, a person acting at the direction and instruction of ABSI  
15 offered, by an interstate telephone call, inventory protection to a customer of MBI (“Customer D”).

16          32.     On or about December 27, 2013, ABSI or individuals acting at his direction, caused, by a  
17 common carrier operating in interstate commerce, a shipment of MBI products to be shipped to  
18 Customer D after Customer D purchased the products based on an offer from ABSI, or individuals  
19 acting at his direction, that MBI would provide inventory protection for the products.

20          33.     On or about December 30, 2013, an individual acting at the direction and instruction of  
21 ABSI offered inventory protection to a customer of MBI (“Customer E”).

22          34.     On or about December 31, 2013, , or individuals acting at his direction, caused, by a  
23 common carrier operating in interstate commerce, a shipment of MBI products to be shipped to  
24 Customer E after Customer E purchased the products based on an offer from an individual acting at the  
25 direction of ABSI that MBI would provide inventory protection for the products.

26          35.     On or about December 30, 2013, after a customer of MBI (“Customer F”) sent a purchase  
27 order that included a reference to “inventory protection,” ABSI instructed others to contact Customer F  
28 and have Customer F send a revised purchase order that omitted any reference to inventory protection.

1           36.     On or about December 31, 2013, ABSI, or individuals acting at his direction, caused, by a  
2 common carrier operating in interstate commerce, MBI products to be shipped to Customer F after  
3 Customer F purchased the products based on an offer from ABSI, or individuals acting at his direction,  
4 that MBI would provide inventory protection for the products.

5           37.     In or about December 2013, ABSI instituted a plan to sell all or most of ABSI's shares of  
6 MBI stock that had vested as of December 2013.

7           38.     On or about January 2, 2014, ABSI falsely and fraudulently misrepresented to MBI's  
8 controller that MBI did not offer inventory protection to Customer F and that the language on the  
9 purchase order sent by Customer F was erroneous.

10          39.     On or about January 9, 2014, ABSI instructed another individual to withhold from MBI's  
11 accounting department-controller the written side agreement with Customer C that provided inventory  
12 protection after the accounting department-controller requested information about the sale of products to  
13 Customer C.

14          40.     On or about January 20, 2014, ABSI signed a letter in connection with the audit by  
15 MBI's external auditor in which ABSI falsely and fraudulently attested and certified that he had no  
16 knowledge of any side agreements with any MBI customer or distributor which would or did involve  
17 inventory protection.

18          41.     On or about January 29, 2014, ABSI executed an order to sell 26,500 shares of MBI  
19 stock, which was all or the majority of ABSI's stock in MBI that had vested as of December 2013.

20          42.     On or about January 27 and/or 30, 2014, ABSI falsely and fraudulently represented to  
21 MBI's controller and others that he was not aware of any side agreements involving inventory  
22 protection.

23          43.     On or about March 6, 2014, MBI announced in a press release and on a public call with  
24 investors that MBI had strong sales in the fourth quarter of 2013

25          44.     On or about March 25, 2014, MBI filed a Form 10-K with the SEC reporting total  
26 revenue of \$7.1 million in 2012 and \$14.5 million in revenue in 2013.

27          45.     On or about March 27, 2014, ABSI inquired about options to execute another plan to sell  
28 his additional shares of MBI that had vested.

1 46. On or about March 31, 2014, ABSI instructed another individual to offer inventory  
2 protection to a customer of MBI ("Customer G").

3 47. On or about March 31, 2014, ABSI, or individuals acting at his direction, caused, by a  
4 common carrier operating in interstate commerce, MBI products to be shipped to Customer G after  
5 Customer G purchased the products based on an offer from ABSI, or individuals acting at his direction,  
6 that MBI would provide inventory protection for the products.

7 48. On or about March 31, 2014, ABSI instructed and directed an individual to cause to be  
8 created a bill of lading that would falsely indicate that MBI's product was shipped to Customer G on a  
9 date prior than the actual shipment date.

10 49. On or about May 6, 2014, ABSI falsely and fraudulently represented to MBI's controller  
11 and others at MBI that he was not aware of any side agreements involving inventory protection.

12 50. On or about June 30, 2014, MBI caused an invoice to be sent by United States mail to  
13 Customer A after Customer A purchased the products based on an offer from ABSI, or individuals  
14 acting at his direction, that MBI would provide inventory protection for the products.

15 51. On or about July 29, 2014, ABSI falsely and fraudulently represented to MBI's controller  
16 and others at MBI that he was not aware of any side agreements involving inventory protection.

17 All in violation of Title 18, United States Code, Section 1349.

18 COUNTS TWO THROUGH SEVEN: [18 U.S.C. § 1341 – Mail Fraud]

19 The Grand Jury further charges:

20 HECTOR ABSI,

21 defendant herein as follows:

22 I. PARTIES AND RELEVANT ENTITIES

23 1. Paragraphs 1 through 11 of Count One are incorporated by reference.

24 II. SCHEME TO DEFRAUD

25 2. Beginning in or about March 2013, and continuing through at least July 2014, in the  
26 County of Yolo, State and Eastern District of California, and elsewhere, defendant HECTOR ABSI  
27  
28



1 knowingly devised, intended to devise, participated in, and executed a material scheme to defraud MBI,  
2 investors, and others, and to obtain money and property by means of materially false and fraudulent  
3 pretenses, representations, promises, omissions, and the concealment of material facts.

4 III. WAYS AND MEANS

5 3. Paragraphs 13 through 18 of Count One are incorporated by reference.

6 IV. MAILINGS

7 4. On or about the dates set forth below, in the State and Eastern District of California and  
8 elsewhere, for the purpose of executing and attempting to execute the aforementioned scheme and  
9 artifice to defraud, defendant ABSI did knowingly cause to be placed in a post office or authorized  
10 depository for mail matter to be delivered by the Postal Service, did knowingly cause to be deposited for  
11 sending or delivery by a private and commercial interstate carrier, and did knowingly cause to be  
12 delivered by the United States mail or such commercial interstate carrier, according to the directions  
13 thereon, the items more specifically set forth below:

14

<u>Count</u>	<u>Date</u>	<u>Origin</u>	<u>Destination</u>	<u>Mailing</u>
15 2.	3/26/2013	Davis, CA	Woodland, CA	Invoice of sale of MBI product to 16 Customer A
17 3.	6/12/2013	Davis, CA	Woodland, CA	Invoice of sale of MBI product to 18 Customer A
19 4.	12/30/2013	Lima, OH	Woodland, CA	Shipment of MBI product to 20 Customer A
21 5.	12/31/2013	Mulberry, FL	Delano, CA	Shipment of MBI product to 22 Customer E
23 6.	12/31/2013	Mulberry, FL	Delano, CA	Shipment of MBI product to 24 Customer F
25 7.	6/30/2014	Davis, CA	Woodland, CA	Invoice of sale of MBI product to 26 Customer A

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1 All in violation of Title 18, United States Code, Sections 2 and 1341.

2  
3 COUNTS EIGHT THROUGH THIRTEEN: [18 U.S.C. § 1343 – Wire Fraud]

4 The Grand Jury further charges:

5 HECTOR ABSI,

6 defendant herein as follows:

7 1. Paragraphs 1 through 11 and 13 through 18 of Count One and Paragraph 2 of Counts  
8 Two through Seven are incorporated by reference.

9 THE INTERSTATE WIRE COMMUNICATIONS

10 2. On or about the dates set forth below, in the State and Eastern District of California, and  
11 elsewhere, for the purpose of executing and attempting to execute the aforementioned scheme and  
12 artifice to defraud, defendant HECTOR ABSI did knowingly transmit and cause to be transmitted by  
13 means of wire communication in interstate commerce, certain writings, signs, and signals, to wit,  
14 interstate wire transmissions further described below:

15

<u>Count</u>	<u>Date</u>	<u>Content of Wire</u>
16 8.	9/25/13	Email correspondence from ABSI in California to Customer B in Iowa re: sale
17		of MBI products with "price protection"
18		
19 9.	10/9/13	Email correspondence from ABSI in California to Customer B in Iowa re:
20		delivery of MBI products
21 10.	10/10/13	Email correspondence from ABSI in California to Customer B in Iowa re:
22		delivery of MBI products
23 11.	10/10/13	Email correspondence to ABSI in California from Customer B in Iowa re:
24		delivery of MBI products
25 12.	12/20/13	Email correspondence from ABSI in California to Customer B in Iowa re: sale
26		of MBI products with inventory protection
27		
28		

1 All in violation of Title 18, United States Code, Sections 2 and 1343.

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3 COUNT FOURTEEN: THIRTEEN JAR WPK BP

[18 U.S.C. § 1348 – Securities Fraud]

4 The Grand Jury further charges:

5 HECTOR ABSI,

6 defendant herein as follows:

7 1. Paragraphs 1 through 11 and 13 through 18 and 21 through 51 of Count One are  
8 incorporated by reference.

9 2. Beginning no later than August 2013, and continuing through at least July 2014, in the  
10 County of Yolo, State and Eastern District of California, and elsewhere, defendant HECTOR ABSI  
11 knowingly devised, devised, intended to devise, participated in, and executed a material scheme to  
12 defraud persons in connection with securities of MBI, an issuer of securities that was registered under  
13 Section 12 of the Securities and Exchange Act of 1934, and to obtain, by means of materially false and  
14 fraudulent pretenses, representations and promises, money and property in connection with the purchase  
15 and sale of securities issued by MBI, an issuer of securities that was registered under Section 12 of the  
16 Securities and Exchange Act of 1934, in violation of Title 18, United States Code, Section 1348.

17  
18 COUNT FIFTEEN: FOURTEEN JAR WPK BP

[15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5 – Fraud and False  
Statement in Connection with Purchase or Sale of Securities]

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20 The Grand Jury further charges:

21 HECTOR ABSI,

22 defendant herein as follows:

23 1. Paragraphs 1 through 11, 13 through 18, and 21 through 51 of Count One are  
24 incorporated by reference.

25  
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28 //



SIXTEEN  
bif WPC

1 COUNT SEVENTEEN: [15 U.S.C. §§ 78(b)(2)(B), 78m(b)(5), and 78ff; and 17 C.F.R. § 240.13b2-2 –  
2 False Statements to Accountant of a Publicly Traded Company]

3 The Grand Jury further charges:

4 HECTOR ABSI,

5 defendant herein as follows:

6 1. Paragraphs 1 through 11, 13 through 18, 21 through 36, 38 through 40, 42 through 44,  
7 and 46 through 51 of Count One are incorporated by reference.

8 2. As a publicly traded company, MBI was required to devise and maintain a system of  
9 internal accounting controls sufficient to provide reasonable assurances that, among other things,  
10 transactions were executed in accordance with management’s general or specific authorization and  
11 transactions were recorded as necessary to permit preparation of financial statements in conformity with  
12 generally accepted accounting principles, or any other criteria applicable to such statements.

13 3. Beginning in or about January 2014, and continuing through in or about June 2014, in  
14 the County of Yolo, State and Eastern District of California, and elsewhere, defendant HECTOR ABSI,  
15 as an officer of MBI, did willfully and knowingly make and cause to be made materially false and  
16 misleading statements to MBI’s auditors in connection with the audit, review, and examination of MBI’s  
17 financial statements, and in connection with the preparation of documents and reports required to be  
18 filed with the SEC, and did knowingly and willfully omit to state material facts necessary in order to  
19 make statements made, in light of the circumstances in which such statements were made, not  
20 misleading, in violation of Title 15, United States Code, Sections 78m(b)(2)(B), 78m(b)(5), and 78ff;  
21 Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

23 FORFEITURE ALLEGATION: [18 U.S.C. §981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal  
24 Forfeiture]

25 bif 1. Upon conviction of one or more of the offenses alleged in Counts One through  
26 ~~Seventeen~~ <sup>Sixteen</sup> <sup>bif WPC</sup>, defendant HECTOR ABSI shall forfeit to the United States pursuant to 18 U.S.C. §  
27 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, which constitutes or is derived  
28 from proceeds traceable to such violations, including but not limited to the following:

1 a. A sum of money equal to the total amount of proceeds traceable to such offenses, for  
2 which the defendant is convicted.

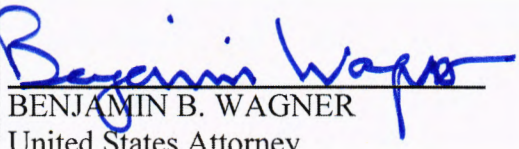
3 2. If any property subject to forfeiture, as a result of the offenses alleged in Counts One  
4 through <sup>Seven</sup> ~~Seventeen~~ of this Indictment, for which the defendant is convicted:

- 5 a. cannot be located upon the exercise of due diligence;
- 6 b. has been transferred or sold to, or deposited with, a third party;
- 7 c. has been placed beyond the jurisdiction of the court;
- 8 d. has been substantially diminished in value; or
- 9 e. has been commingled with other property which cannot be divided without  
10 difficulty;

11 it is the intent of the United States, pursuant to 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(p), to  
12 seek forfeiture of any other property of defendant, up to the value of the property subject to forfeiture.

14 A TRUE BILL.

15  
16 **/s/ Signature on file w/AUSA**  
**FOREPERSON**

17   
18 BENJAMIN B. WAGNER  
19 United States Attorney