

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10626 / April 2, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19129

In the Matter of

CHAD STARKEY,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against Chad Starkey (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings, Pursuant To Section 8A Of The Securities Act Of 1933, Making Findings, And Imposing Remedial Sanctions And A Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

This matter involves Respondent Chad Starkey's negligence in connection with a fraudulent scheme to provide false financial information to prospective investors in Jumio, Inc., a private, mobile payments start-up company, in order to convince those investors to purchase shares from Jumio employees – including Jumio's senior executives – in a private, secondary market transaction. The scheme was carried out by Jumio's founder and former Chief Executive Officer, Daniel Mattes, who overstated Jumio's revenues by more than \$90 million by including revenue that Jumio did not earn, causing Jumio to enter into a round-trip transaction that had no economic substance, and causing Jumio to recognize revenue sooner than it should have under Generally Accepted Accounting Principles ("GAAP"). From March 2014 through February 2015, Mattes used the false financial statements to sell Jumio shares owned by Jumio employees – including Mattes – to investors in the private market.

Starkey, Jumio's former Chief Financial Officer, accepted Mattes' inclusion of the round-trip revenue in Jumio's financial statements, even though he knew or should have known that it was not appropriate. Starkey also accepted Mattes' practice of immediately recognizing as revenue the full amount of possible revenue under certain contracts, regardless of whether the services had been rendered or collectability of any amounts due, even though he knew, or should have known, that this did not comply with GAAP. Starkey also knew Mattes was putting the false financial statements into an electronic data room for prospective investors to review before they purchased Jumio shares, and signed stock purchase agreements that falsely represented that Jumio had waived its refusal rights over the shares (which enabled the shares to be sold to private market investors). Starkey sold some of his own shares in Jumio during this period, profiting \$364,000. Jumio ultimately filed for bankruptcy in 2016, and all the shares bought by the secondary market purchasers became worthless.

Respondent

1. Chad Starkey, the former CFO and general counsel of Jumio, Inc., is 47 years old and lives in Los Altos, California. He is a licensed attorney in California and currently works as a solo practitioner, representing early stage Silicon Valley startups. He is not a CPA.

Other Relevant Entity and Individual

2. Jumio, Inc. was a private mobile payment processing start-up incorporated in Delaware, with its main office in Palo Alto, California. The company had an Austrian subsidiary with its office in Vienna. The company filed for Chapter 11 bankruptcy in 2016 and is currently defunct. Its successor, Jumio Corporation, has received several rounds of funding and continues to operate with some of the same employees.

3. Daniel Mattes, the founder and former CEO of Jumio, Inc., is 46 years old and currently lives in Wels, Austria. Mattes is an entrepreneur who has founded several companies. In 2005, he founded Jajah, a company funded by Silicon Valley venture capital firms, which he later sold. Currently, he is the founder and CEO of an Austrian artificial intelligence startup, 42.cx. Mattes is also a “business angel” on the Austrian version of Shark Tank (2 Minuten 2 Millionen). The Commission charged Mattes with violating the federal securities laws in a separate action filed in federal district court.

Facts

4. Starkey became Jumio’s CFO and general counsel when the company was founded in 2010. Starkey was a lawyer who had no training or background in finance or accounting. Mattes prepared the company’s financial statements and dictated the company’s revenue recognition policies. Starkey held himself out as Jumio’s CFO. In a Jumio investor presentation, under the heading “Experienced Management,” Starkey was listed prominently as the CFO. At Mattes’ direction, he sent financial reports prepared by Mattes to institutional investors, and often responded to investors’ questions about Jumio’s financial statements by asking Mattes for answers and, at times, passing them off to investors as his own.

Starkey Failed to Exercise Reasonable Care Concerning Jumio’s Revenue

5. Jumio had two separate business lines. One business line, which was run out of Jumio’s US office in Palo Alto where Starkey worked, was selling technology that enabled smartphones to scan credit cards and IDs for the purpose of facilitating consumer payments (“product revenue”). The other business line, which was run out of Jumio’s Austrian subsidiary, purportedly involved facilitating “processing” of payments by merchants, but Jumio actually only referred merchants to a licensed payment processor and got paid a referral fee (“processing revenue”).

6. Mattes prepared Jumio’s financial statements, some versions of which explicitly stated on their face that they were prepared in accordance with U.S. GAAP. This was false, because Mattes overstated Jumio’s revenues by millions of dollars in 2013 and 2014.

7. First, Mattes overstated Jumio’s US product revenue by causing Jumio to enter into a large round-trip revenue deal designed to show more product business revenue and therefore induce investors to put more money into the company.² In 2013, Mattes negotiated a deal by which Jumio and another company agreed to pay each other \$710,000 a quarter indefinitely. This appeared to be a significant deal for Jumio as it purportedly represented approximately half of

² Mattes also overstated Jumio’s processing revenue by more than \$85 million (1000%) in 2013 and more than \$126 million (2000%) in 2014. Although the processing revenue was about 90% of Jumio’s total revenue, the remaining 10% attributable to its product revenue was even more important to some investors because the product business had the highest margin and most growth potential.

Jumio's product-based revenue. However, Mattes had no intention of paying the other company for its services and no expectation that the other company would pay Jumio for its product.

8. Starkey knew, or should have known that it was inappropriate to recognize the revenue associated with this deal. As an initial matter, Mattes told Starkey in an email at the time he made the deal that Starkey should not get excited about the contract because, "it's more a deal to get our numbers straight for the upcoming round"—that is, for Jumio's then-impending "Series C" financing round for institutional investors. At Mattes' direction, Starkey also backdated the invoice for the deal so that revenue could be included in financial results for the first quarter of 2013, which he knew Mattes would show to the Series C investors. In approximately mid-2013, Mattes told Starkey not to pay the other company because it was a "barter" transaction. Around the same time, Starkey also came to know that the other company had not paid Jumio. By this time, Starkey suspected that the revenue associated with the deal should not be included in Jumio's financial statements because neither party intended to perform under the arrangement and it had no economic substance. Starkey failed, however, to take any steps to ascertain whether it was appropriate, and continued to accept Mattes' inclusion of the revenue in Jumio's financial statements. By the end of 2013, Jumio had falsely recorded \$2.84 million in revenue in connection with the round-trip transaction.

9. Mattes also overstated Jumio's US product revenue by immediately recognizing as revenue the entire amount of money due under certain of its contracts, even if Jumio had not yet provided its services to the customer, or at times even after it was clear that the customer would not pay its bill. In 2013 and 2014, most of Jumio's product revenue contracts were subscriptions with customers for a period of time. Under GAAP, Jumio should have recognized the revenue over the period of the subscription as the revenue was earned, and not recognized it all at the outset. Moreover, Jumio should not have recognized revenue from deals where collectability was not reasonably assured. At some point in 2014, Jumio's in-house accountant told Starkey that Jumio should not be recording all of its subscription revenue up-front but instead should be recognizing it ratably over the relevant period. Starkey responded that "that's the way Daniel [Mattes] wants it," and failed to take any steps to determine whether Jumio appropriately recorded its subscription revenue.

Jumio's False Financial Statements Facilitated Sales of Jumio Stock

10. In early 2014, Mattes proposed to Jumio's Board of Directors a program by which Jumio employees would be able to sell their Jumio shares to investors on the secondary market. The purpose of this program was to provide liquidity for Jumio employees, so they could take advantage of an important part of their compensation. Based on a prior conversation with one of Jumio's Board members, Mattes knew that the Board would not allow him to sell any more of his shares because it wanted Mattes to be strongly incentivized to maximize the company's value. Accordingly, Mattes directed Starkey to write ambiguous language in a Board presentation slide proposing the employee stock sale program that was designed to hide the fact that Mattes planned to sell his shares as part of the employee program. At the time Starkey drafted the slide, Starkey understood that Mattes didn't want the Board to know that Jumio's senior executives planned to

sell their shares. Mattes told the Board orally at the April 2014 Board meeting where the slide was presented, in Starkey's presence, that none of Jumio's senior executives would be selling.

11. With Mattes' approval, Starkey worked with outside counsel to create an electronic data room for potential secondary market purchasers to view information about Jumio, including its 2013 financial statements. Starkey passed on Mattes' instructions that particular investors be allowed access to the data room to the data room administrator. Starkey knew, or should have known, that these financial statements were materially misstated, and he even warned Mattes in an email, "As we have discussed, the more people who access the data room, the more risk we have of a problem down the road if someone challenges the information provided therein." Many potential investors accessed the data room and reviewed the false financial statements. Some of these investors ultimately purchased Jumio shares from Jumio employees, including both Mattes and Starkey.

12. Starkey also signed the sale documents for secondary market sales of Mattes' and his stock on behalf of Jumio as its general counsel. In doing so, Starkey represented to the purchasers that Jumio had waived its rights of first refusal ("ROFR") over the shares. Starkey also followed Mattes' instructions to explicitly assure one potential secondary purchaser in writing that Jumio had waived its ROFR over the shares. However, Starkey knew that Jumio could only waive its ROFR rights in writing through its Board of Directors. He also knew the Board of Directors had not approved either his or Mattes' secondary sales in writing. Mattes did tell Starkey that Jumio's Board informally had approved the sales and would ratify them in writing at some point in the future. However, based on the fact that Starkey knew that Mattes was trying to hide his sales from Jumio's Board, it was unreasonable for Starkey to accept this explanation.

13. Starkey sold some of his shares in April 2014 for a profit of \$364,000. Mattes sold shares throughout 2014 and continued to sell shares until February 2015, for a profit of over \$14 million.

14. In October 2014, Jumio hired a new CFO (Starkey remained in his role as Jumio's general counsel). The CFO quit after just a few days. He told Jumio's Board of Directors that Jumio's revenue numbers were grossly inaccurate, pointing out the large round-trip revenue deal in particular. The company then hired an accounting firm to restate its financials for 2013 and 2014. The round-trip revenue deal and the subscription revenue recognized up front constituted the vast majority of Jumio's purported 2013 revenue for its US-based product business. For 2013, that revenue had been booked as more than \$6 million. In the restated financials, it was less than \$500,000. Even after Starkey knew that Jumio's financials would have to be restated, he continued to sign closing documents on behalf of Jumio for Mattes' continued stock sales, even though he knew or should have known that the sales were based on Jumio's materially misstated financial statements.

Violations

15. As a result of the conduct described above, Starkey violated Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

16. As a result of the conduct described above, Starkey violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person, in the offer or sale of any securities, directly or indirectly, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) (2) and (3) of the Securities Act.

B. Respondent shall pay disgorgement of \$364,000 and prejudgment interest of \$56,894.97 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). Payment shall be made in the following installments: \$6,249 shall be paid within 10 days from the entry of this Order; seven more payments of \$6,249 each shall be paid every three months thereafter; and \$370,902.97 shall be paid no later than two years and 10 days from the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Chad Starkey as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Division of Enforcement, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery St., Ste 2800, San Francisco, CA 94104.

D. Respondent acknowledges that the Commission is not at this time imposing a civil penalty based on his agreement to cooperate in a related enforcement action. However, pursuant to this Order, Respondent agrees to additional proceedings pursuant to Section 8A of the Securities Act in this matter to determine what, if any, civil penalties against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws as described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by

Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Acting Secretary