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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 SECURITIES AND EXCHANGE COMMISSION, 15 Plaintiff, 16 v. 17 MARK SCHENA, 18 Defendant.	Case No. COMPLAINT
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20 Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

21 **SUMMARY OF THE ACTION**

22 1. From in or about October 2018 to in or about April 2020, Mark Schena, the president
23 of Arrayit Corporation (“Arrayit”), a biotechnology company, misled investors by making false and
24 misleading statements about the status of Arrayit’s delinquent financial reports and – during the
25 COVID-19 pandemic – the status of the development of Arrayit’s COVID-19 test. These
26 misstatements led to surges in the price and trading volume of Arrayit’s stock.

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1 or in the “grey market.” Arrayit has had as many as twenty-four employees, but currently has a
2 workforce of only approximately six employees and seven consultants.

3 **FACTS**

4 **A. Arrayit Failed to File Required Periodic Reports and Audited Financial**
5 **Statements with the Commission**

6 10. On or about March 1, 2001, Arrayit’s common stock (under its previous name) was
7 registered with the Commission pursuant to Section 12(g) of the Exchange Act. Pursuant to Section
8 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, Arrayit is required to file
9 quarterly and annual reports with the Commission.

10 11. On or about November 20, 2015, Arrayit filed with the Commission its quarterly
11 report on Form 10-Q, for the period ended September 30, 2015. After that filing, Arrayit has filed no
12 other quarterly or annual reports with the Commission.

13 12. On or about November 1, 2016, Arrayit hired a financial auditing firm (the “Auditing
14 Firm”) to audit Arrayit’s 2015 financial statements. The initial engagement letter, signed by the
15 CEO, provides in pertinent part: “[the Auditing Firm] will audit the balance sheet of the Company as
16 of December 31, 2015, and the related consolidated statements of operations, stockholders’ equity
17 (deficit) and cash flows for the year then ended. Based on our audit, we will issue a written report on
18 Arrayit Corporation’s consolidated financial statements to be included in the annual report (Form 10-
19 K) proposed to be filed by Arrayit Corporation under the Securities Exchange Act of 1934.”

20 13. On or about January 4, 2017, Arrayit executed a second engagement letter, signed by
21 the CEO, which expanded the Auditing Firm’s scope of work to include Arrayit’s financial
22 statements for 2014.

23 14. Although there were some discussions for the Auditing Firm to audit Arrayit’s
24 financial statements for subsequent years, Arrayit never executed a formal letter of engagement for
25 the Auditing Firm to conduct an audit for years 2016, 2017, or 2018. Accordingly, the Auditing Firm
26 performed virtually no work with respect to Arrayit’s financial statements for these years.

1 15. The CEO was the primary contact at Arrayit for the audit engagements with the
2 Auditing Firm. However, Mark Schena was often copied on e-mail correspondence between the
3 Auditing Firm and the CEO regarding the status of the audits.

4 16. The Auditing Firm experienced many problems in conducting its audits for Arrayit.
5 Arrayit failed to provide the Auditing Firm with documents and information necessary for the
6 Auditing Firm to complete its audits. The CEO failed to respond to the Auditing Firm’s
7 communications, for up to several months. Investors emailed and called the Auditing Firm and stated
8 that Mark Schena was on social media blaming the Auditing Firm for delays in the completion of
9 Arrayit’s audit. Also, Arrayit was late in its payments to the Auditing Firm for its work in auditing
10 Arrayit’s 2014 and 2015 financial statements. The Auditing Firm expressed these problems in
11 several emails to Mark Schena and the CEO.

12 17. On or about October 3, 2018, the Auditing Firm sent an email to Mark Schena (cc’ing
13 the CEO) requesting that he explain “why we received an e-mail from an investor (below) indicating
14 per a ‘mark email’ that the financials are completed and have been submitted to the SEC?”

15 18. On or about October 26, 2018, the Auditing Firm sent an email to the CEO (cc’ing
16 Mark Schena) indicating that the Auditing Firm had not “heard back from anyone in a while” and
17 asked whether Arrayit was making progress in providing the Auditing Firm with specific documents
18 necessary for their audit work. Neither the CEO nor Mark Schena responded to the Auditing Firm.

19 19. On or about October 30, 2018, the Auditing Firm sent an email to the CEO which
20 stated, “We have not heard from you for quite some time” and inquired whether Arrayit had
21 completed the documents needed for the Auditing Firm’s audits. The Auditing Firm also noted that
22 Arrayit was past due on its payments to the Auditing Firm. The CEO did not respond.

23 20. On or about December 26, 2018, the Auditing Firm’s staff discussed internally their
24 concern that Arrayit had “gone silent” and had not responded to the Auditing Firm’s
25 communications. The Auditing Firm’s staff also noted that they had been waiting for many weeks on
26 certain documents from Arrayit and that Arrayit was past due over \$100,000 on its payments to the
27 Auditing Firm. The Auditing Firm’s staff noted “the ball has been in their [Arrayit’s] court to
28 finalize the 10-K for some time, so we haven’t touched the job.”

1 21. On or about January 4, 2019, the Auditing Firm sent an email to the CEO again asking
2 for the documents needed to complete the pending audits and requested, “Please respond.”

3 22. On or about January 7, 2019, the CEO finally responded to the Auditing Firm, but did
4 not provide the documents requested by the Auditing Firm. Soon thereafter, Arrayit engaged the
5 Auditing Firm to conduct an audit of Arrayit’s inventory, but Arrayit never provided the Auditing
6 Firm the documents necessary for the firm to complete its audits of Arrayit’s 2014 and 2015 financial
7 statements.

8 23. On or about March 29, 2019, the Auditing Firm’s staff discussed internally that “Mark
9 Schena is still telling investors the filing is imminent, but I’ve been waiting on a 10-K for several
10 months.”

11 24. Because of Arrayit’s failure to provide necessary documents and information, the
12 Auditing Firm never completed its audits of Arrayit’s 2014 and 2015 financial statements. The
13 Auditing Firm also performed virtually no work on Arrayit’s financial statements for 2016, 2017, and
14 2018.

15 **B. Defendant Mark Schena Made False and Misleading Statements about the**
16 **Status of Arrayit’s Financial Statements**

17 25. In 2018, Mark Schena and the CEO received numerous inquiries from investors asking
18 when Arrayit’s financial statements would be filed with the Commission and made public.

19 26. Despite knowing the stalled status with the Auditing Firm, Mark Schena and the CEO
20 made numerous statements to investors falsely assuring them that Arrayit would soon become current
21 with its required periodic reports, including the filing of audited financial statements, at times
22 specifying the first quarter of 2019.

23 27. On or about October 31, 2018, Mark Schena drafted and posted a statement on
24 Arrayit’s Twitter account that stated: “Arrayit provides an update to shareholders. We are currently
25 [in] a quiet period regarding our financials. Our next financial announcement will be the filing of our
26 10-K and 10-Q forms through 2018. Thanks everyone for your continued support and patience!”

27 28. On or about December 31, 2018, the CEO, Mark Schena, and other Arrayit personnel
28 drafted and issued a press release titled “Arrayit Corporation CEO Letter to Shareholders” stating, in

1 pertinent part: “At year end, we implemented a new electronic medical billing solution and we
 2 expect to bill \$1 million per week for our health and wellness tests. The actual contribution of
 3 medical reimbursement to our revenues and earnings will be detailed in financial reports, which we
 4 anticipate filing in the coming quarter.”

5 29. In or about March 2019, the CEO authored a statement posted on Arrayit’s webpage
 6 that stated, in pertinent part: “Arrayit Corporation (ARYC) complies with federal rules and
 7 regulations governing public companies, including making disclosures with the United States
 8 Securities and Exchange Commission (SEC). We will resume quarterly and annual financial filings
 9 during the first quarter of 2019.”

10 30. In or about March 2019, Mark Schena responded to numerous emails from investors
 11 inquiring about the status of Arrayit’s financial reports. Mark Schena falsely stated in his emails that,
 12 as previously announced in the December 2018 “CEO Letter to Shareholders,” Arrayit’s financial
 13 reports would be filed in the first quarter of 2019. For example, some of the emails state, in pertinent
 14 part:

Investor Email Date	Investor Email Inquiry	Mark Schena Email Response Date	Mark Schena Response
3/25/2019	“Also, will we see a tweet this week regarding the release date of the financials?”	3/25/2019	“We are reiterating Q1-2019 for the financials. The filing will be announced in a formal press release and via Twitter.”
3/27/2019	“I’m sure this question had been asked many times, but a lot of us are increasingly getting nervous about the financials still not yet filed and there are only 2 more business days left in this quarter. Per the last letter to shareholders it was stated financials will be filed in Q1. Are we still on time with filing?”	3/27/2019	“We are reiterating our Q1-2019 guidance for financials per the CEO Letter to Shareholders.”

1 2 3 4	3/27/2019 “I am a long-term [loyal] investor of Arrayit since 2015, and just want to know if the financials will be released on schedule for Q1, 2019 per letter to shareholders.”	3/27/2019	“We are reiterating Q1-2019 for the financials.”
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6 31. Many investors posted the text of Mark Schena’s emails on InvestorsHub.com, a
7 public internet message board for investors. For example, some of these posts include, in pertinent
8 part:

10	Date of Post	Investor Inquiry	Mark Schena Response
11	2/26/2019	“Mark,...I was wanting to know if you are guaranteeing the financials will be released this year?”	“We are reiterating Q1-2019 for the financials per the recent CEO Letter to Shareholders....Because of the excellent progress, we are releasing FY2014-FY2015 in a single filing.”
13	3/14/2019	“Mark,...is there anything that you can provide to us shareholders that can relieve us of the doubt of Arrayit not releasing FY2014-2018 financial report this time again”	“We are reiterating Q1-2019 for filing per the CEO Letter to Shareholders....All fiscal years will be released at once, which explains the current timeline.”
17	3/29/2019	“With 2 days left in this Q1, hoping to see them soon!”	“Dear [XXX], We appreciate your ongoing support and feedback, and yes we are reiterating our Q1-2019 guidance for financials. Thanks, Mark.”

19 32. However, Arrayit did not file any of the required quarterly or annual reports with the
20 Commission in the first quarter of 2019, or anytime thereafter.

21 33. On August 19, 2019, Arrayit submitted a Form 15 which gave notice of its suspension
22 of a duty to file financial reports with the Commission.

23 34. Mark Schena’s false and misleading statements affected the price and trading volume
24 of Arrayit’s stock. From January 1, 2019 to March 26, 2019, the closing share price of Arrayit
25 securities increased 313% from \$0.0477 to \$ 0.1969, and the daily trading volume increased 674%
26 from 708,719 to 5,485,236 shares. As the end of the first quarter of 2019 approached and periodic
27 reports, including audited financial statements, were not filed, the closing share price of Arrayit
28 securities declined. From March 26, 2019 to April 2, 2019, the closing share price declined 73%

1 from \$0.1969 to \$0.0541, and the daily trading volume increased 558% from 5,485,236 to 36,107,809
2 shares. The surge in Arrayit's share price and trading volume was stark in comparison to the
3 security's price and trading volume prior to the false and misleading statements regarding the
4 company's purported preparations to file updated periodic reports and audited financial statements
5 with the Commission. Overall, the market response to this news of purported preparations of
6 periodic reports and financial statements was significant.

7 35. Mark Schena knew, or was reckless in not knowing, that his statements about the
8 status of Arrayit's financial statements were false and misleading. He also knew, or was reckless in
9 not knowing, that he omitted material facts when making statements about the status of Arrayit's
10 financial statements, including the fact that Arrayit had failed to provide necessary documents to its
11 independent auditor.

12 **C. Defendant Mark Schena Made False and Misleading Statements about Arrayit's**
13 **COVID-19 Test**

14 36. In early 2020, the COVID-19 virus was spreading rapidly in the United States.
15 Arrayit made the decision to develop its own COVID-19 test. However, in March and April 2020,
16 Mark Schena made a series of false and misleading statements in emails to investors about the status
17 of the development of Arrayit's COVID-19 test.

18 37. Mark Schena made false and misleading statements in emails to investors claiming
19 that Arrayit had a COVID-19 test before Arrayit possessed all the essential components for such a
20 test. Arrayit did not order the reagents for a COVID-19 test until March 17, 2020, and these reagents
21 were not shipped to Arrayit until March 19, 2020. Accordingly, Mark Schena's statements to
22 investors that Arrayit had a COVID-19 test before March 19, 2020, were false.

23 38. Mark Schena also made false and misleading statements in emails to investors
24 claiming that Arrayit's COVID-19 test was pending emergency approval. Arrayit did not apply for
25 Emergency Use Authorization with the U.S. Food and Drug Administration ("FDA") until April 13,
26 2020. Accordingly, Mark Schena's statements to investors that Arrayit's COVID-19 test was
27 pending emergency approval before April 13, 2020, were false.

1 39. Mark Schena made false and misleading statements in emails to investors when
 2 replying to those investors’ inquiries by omitting material facts. Investors asked whether Arrayit had
 3 a COVID-19 test that was “approved” or “was approved by the FDA.” Mark Schena responded, “we
 4 have a test,” while omitting the fact that the test was not approved by the FDA or any other
 5 regulatory entity.

6 40. Examples of Mark Schena’s misstatements in emails to investors include, in pertinent
 7 part:

Investor Email Date	Investor Inquiry	Mark Schena Response date	Mark Schena Response
3/9/2020	“Is your company working on anything to help the nation with this crisis?”	3/9/2020	“Dear XXX, Confirming that we have a test for COVID-19. Thanks, Mark”
3/13/2020	“Can you corroborate that Arrayit has developed the SARS-COV-2 (COVID-19) test and that it is being considered for emergency approval?”	3/13/2020	“Dear XXX, Confirming that we have a SARS-Cov-2 test and that the test has been submitted for emergency approval. Thanks, Mark”
3/14/2020	“Do you have a Covid-19 test of which the government will utilize in the near future? If so, is it being reviewed by the FDA for emergency approval?”	3/14/2020	“Dear XXX, Confirming that we have a SARS-Cov-2 test and that the test is pending emergency approval. Thanks, Mark”
3/16/2020	“Does Arrayit have a finger prick test for Covid-19?”	3/16/2020	“Dear XXX, “Confirming that Arrayit has a finger stick test for SARS-CoV-2. Thanks Mark”
3/17/2020	“Are you working on a vaccine or just creating a test for the FDA approval?”	3/17/2020	“Dear XXX, Confirming that we have a test for SARS-CoV-2 (Covid-19) and will make the test available as soon as possible. Thanks, Mark.”

1 41. Mark Schena eventually drafted a specific email response that he sent to numerous
 2 investors who inquired about Arrayit’s COVID-19 test. The email stated: “Dear Valued Customer,
 3 We received more than 50,000 requests for our finger stick blood test for SARS-CoV-2, the virus that
 4 causes coronavirus disease 2019 (COVID-19). Our team is coordinating with local, state and federal
 5 agencies and with our distributors to make this test available to as many patients as possible on an
 6 expedited timeline. Please consult our website and press releases for update. Best regards, Arrayit
 7 Corporation.” (“Dear Valued Customer email”). This email was false and misleading with respect to
 8 its claim that Arrayit “received more than 50,000 requests” for Arrayit’s COVID-19 test and that
 9 Arrayit was “coordinating with local, state and federal agencies.”

10 42. Mark Schena sent this email to multiple investors on multiple dates. For example,
 11 some of the emails state, in pertinent part:

Investor Email Date	Investor Inquiry	Mark Schena Response date	Mark Schena Response
3/16/2020	“Good evening, I’m sure you guys are working around the clock. Thank you in advance for any help you are providing to our country at this time.”	3/21/2020	“Dear Valued Customer” email
3/16/2020	“Could you please let me know if the ARYC lab is in the list of 2000 approved labs.”	3/21/2020	“Dear Valued Customer” email
3/16/2020	“Recently, it was stated on the Internet that ARYC submitted an EUA for the Corona Virus, has a response been received and was it approved, can you comment?”	3/21/2020	“Dear Valued Customer” email
3/17/2020	“has the test been validated and will Arrayit be distributing the test to help with the crisis?”	3/21/2020	“Dear Valued Customer” email
3/18/2020	“I saw the link to Arrayit’s COVID-19 testing instructions on the website yesterday. Has Arrayit been given approval for the test?”	3/21/2020	“Dear Valued Customer” email

1 43. Mark Schena's false and misleading statements about the status of Arrayit's COVID-
2 19 test were posted and shared by investors on the public internet forum InvestorsHub.com.

3 44. Mark Schena's false and misleading statements affected the price and trading volume
4 of Arrayit's stock. Beginning in March 2020, Arrayit's share price began to climb. From March 9,
5 2020 to March 16, 2020, the closing share price of Arrayit securities increased 14% from \$0.0218 to
6 \$0.0249, and the daily trading volume increased 6% from 1,719,315 to 1,816,604 shares.

7 Corresponding with Mark Schena's emails claiming that Arrayit had received over 50,000 requests
8 for its test and was coordinating with government agencies, from March 17, 2020 to March 19, 2020,
9 Arrayit's closing share price spiked 55% from \$0.0242 to \$0.0374 and its trading volume increased
10 99% from 1,480,455 to 2,943,365 shares.

11 45. Mark Schena knew, or was reckless in not knowing, that his statements regarding the
12 status of Arrayit's COVID 19 test were false and misleading.

13 **CLAIM FOR RELIEF**

14 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)**

15 46. Paragraph numbers 1 through 45 are re-alleged and incorporated herein by reference.

16 47. By engaging in the conduct described above, Mark Schena directly or indirectly, by
17 use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national
18 security exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made
19 untrue statements of material fact or omitted to state material facts necessary in order to make the
20 statements made, in light of the circumstances under which they were made, not misleading; and (c)
21 engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit
22 upon other persons, in connection with the purchase or sale of securities, in violation of Section 10(b)
23 of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and
24 unless restrained and enjoined will continue to violate these provisions.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court:

3 I.

4 Permanently enjoin defendant Mark Schena from directly or indirectly violating the
5 applicable provisions and rules of the federal securities laws as alleged and asserted above.

6 II.

7 Enter an Order requiring defendant Mark Schena to pay civil money penalties pursuant to
8 Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

9 III.

10 Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], prohibit defendant
11 Mark Schena from acting as an officer or director of any issuer that has a class of securities registered
12 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports
13 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

14 IV.

15 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
16 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
17 may be entered, or to entertain any suitable application or motion for additional relief within the
18 jurisdiction of this Court.

19 V.

20 Grant such other and further relief as this Court may determine to be just, equitable, and
21 necessary.

22
23 Dated: September 25, 2020

Respectfully submitted,

24
25 _____
26 FITZANN R. REID
27 Attorney for Plaintiff
28 SECURITIES AND EXCHANGE
COMMISSION