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Investors Sue MoviePass Owners As Stock Bottoms Out

By **Darcy Reddan**

Law360 (August 14, 2018, 2:56 PM EDT) -- Helios and Matheson Analytics Inc. investors filed a putative class action suit against the company alleging that it misled the public on the profitability of moviegoing subscription service MoviePass Inc. before the stock bottomed out, according to a filing in New York federal court Monday.

Shareholder Jeffrey Braxton alleges that Helios, which offers information technology consulting, software and training services and solutions, made various statements in filings with the U.S. Securities and Exchange Commission that misled the public in regard to MoviePass' profitability as it increased ownership up to 81.2 percent before its stock dropped more than 96 percent when the company's financial condition was called into question.

The complaint alleges that Helios touted the company's path to profitability despite there being "no reasonable basis to believe that MoviePass could monetize the model to a degree that could be maintained before being too buried in debt to survive," according to the complaint.

Braxton says in the complaint that Helios filed an 8-K on Aug. 15, 2017 stating that it had entered into an agreement to acquire a majority stake in MoviePass, which at the time offered a \$9.95-a-month subscription allowing customers to go to unlimited movies.

On Sept. 15, Helios stated in a filing that MoviePass had more than 400,000 monthly subscribers and outlined the company's "sustainable" business model. In early October, Helios stated in a filing that it had increased ownership to 53.71 percent and later that month stated that the service had more than 600,000 subscribers.

In early January, the complaint alleges that Helios stated the company had surpassed 1.5 million subscribers. On March 14, 2018, Helios and MoviePass entered into a new agreement that saw Helios take MoviePass common stock as repayment for \$240 million that MoviePass had borrowed, increasing Helios ownership to 81.2 percent.

The complaint alleges that the statements made during this time period were false and misleading and alleges that it became evident on July 27, 2018 when Helios filed an 8-K stating that it had issued a demand note of \$6.2 million because it could not make payments to merchants, which resulted in a service interruption.

As a result of this revelation, Helios stock dropped 70.72 percent from \$6.83 on July 26 to \$2.00 July 27 before settling at \$0.228 on Aug. 1.

Braxton seeks damages from the company and its executives, president and CEO Theodore Farnsworth and CFO Stuart Benson, for allegedly misleading the public through a deceptive scheme that caused the stock price to become artificially inflated.

Representatives for Braxton declined to comment Tuesday.

Representatives for Helios did not return a request for comment Tuesday.

Braxton is represented by Mark Levine of Stull Stull & Brody.

Counsel information for Helios was not available Tuesday.

The case is Braxton v. Benson et al, case number 1:18-cv-07242, in the U.S. District Court for the Southern District of New York.

--Editing by John Campbell.

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