

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4122/September 2, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17228

In the Matter of

DAVID S. HALL, P.C.
d/b/a THE HALL GROUP CPAs,
DAVID S. HALL, CPA,
MICHELLE L. HELTERBRAN COCHRAN, CPA,
and SUSAN A. CISNEROS

ORDER ON MOTIONS FOR
SUMMARY DISPOSITION

The Securities and Exchange Commission issued an order instituting proceedings (OIP) in this matter on April 26, 2016. In relevant part, the OIP alleges that: between 2010 and 2013, Respondents collectively failed to conduct sixteen annual audits and thirty-five quarterly reviews in accordance with the standards of the Public Company Accounting Oversight Board (PCAOB); as a result, David S. Hall, P.C. d/b/a The Hall Group CPAs (Hall Group) violated, and David S. Hall, CPA (Hall), and others aided and abetted and caused the Hall Group's violations of, Section 10A(j) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 2-02(b)(1) of Regulation S-X. *See* OIP at 3, 9, Appendix. The OIP further alleges that Hall and the Hall Group (collectively, the Hall Respondents) and others aided and abetted and caused issuers to violate Section 13(a) of the Exchange Act and rules thereunder, and engaged in improper professional conduct subject to Exchange Act Section 4C(a) and Commission Rule of Practice 102(e)(1). *Id.* at 9-10. Lastly, the OIP alleges that Hall violated Exchange Act Rule 13a-14. *Id.* at 9.

The Hall Respondents jointly filed their answer in June 2016, denying many key allegations. *See generally* Answer. In July 2016, the Division filed a motion for partial summary disposition (Div. Motion), against the Hall Respondents only, that included 24 exhibits (Div. Exs. 1-24). The Hall Respondents timely filed an opposition (Hall Opp.) with no attached exhibits, and the Division timely filed a reply (Div. Reply) with no attached exhibits.

Also in July 2016, the Hall Respondents filed their own motion for summary disposition (Hall Motion). The Hall Motion included no exhibits, and I previously denied it in part as to their collateral estoppel argument. *See David S. Hall, P.C.*, Admin Proc. Rulings Release No. 3970, 2016 SEC LEXIS 2364 (ALJ July 7, 2016). The Division timely filed an opposition (Div.

Opp.) that included two exhibits (Div. Opp. Exs. 1-2), and the Hall Respondents timely filed a reply (Hall Reply) that included one exhibit (Hall Ex. A).

I. Summary Disposition Standard

The parties' motions for summary disposition are procedurally proper because the respondents have filed answers and the investigative file has been available for inspection and copying. *See* 17 C.F.R. § 201.250(a); Div. Motion at 2 (noting that investigative file has been made available). Summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts on summary disposition must be viewed in the light most favorable to the non-moving party. *Jay T. Comeaux*, Securities Act of 1933 Release No. 9633, 2014 SEC LEXIS 3001, at *8 (Aug. 21, 2014). However, if the moving party establishes that it is entitled to summary disposition on the factual record, the opposing party may not rely on bare allegations or denials, but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing. *Id.* Thus, summary disposition may be appropriate in non-follow-on proceedings. *E.g.*, *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *9 (Dec. 5, 2014).

In considering the Division's motion for summary disposition, the Hall Respondents' answer has been taken as true, except as modified by stipulations or admissions made by them, by uncontested affidavits, and by facts officially noticed pursuant to Rule of Practice 323, which include any matter in the Commission's public official records. *See* 17 C.F.R. §§ 201.250(a), .323. Thus, the OIP's allegations that were not denied in the answer have been deemed true. *See* 17 C.F.R. § 201.220(c). A statement by a party, by a party's agent, or that a party agrees is true, constitutes an admission within the meaning of Rule of Practice 250. *See Wheat, First Sec., Inc.*, Exchange Act Release No. 48378, 2003 WL 21990950, at *12 & n.55 (Aug. 20, 2003) (citing Federal Rule of Evidence 801(d)(2)). The Hall Respondents, through counsel, made numerous admissions at a prehearing conference held on August 17, 2016. *See generally* Prehearing Conference Tr.

The parties' motion papers and all documents and exhibits of record have been fully reviewed and carefully considered. All arguments and proposed findings and conclusions that are inconsistent with this order were considered and rejected. The findings and conclusions herein apply to the Hall Respondents only.

II. Factual Background

Hall is 58 years old, resides in Lewisville, Texas, and is licensed as a CPA in Texas. *See* OIP at 2; Answer at 1. Hall owns the Hall Group, which was previously registered with the PCAOB as a public accounting firm. *See* OIP at 2; Answer at 1.

Prior to February 2012, Hall was the Hall Group's sole partner. *See* OIP at 7; Answer at 5. The Hall Respondents do not dispute that prior to February 2012, Hall served as lead auditor or lead partner on at least five consecutive annual audits of three issuers: Surface Coatings, Inc.,

from 2006 to 2010; Latitude 360 f/k/a Kingdom Koncrete, Inc.,¹ from 2005 to 2010; and 360 Global Investments, Inc. f/k/a 360 Global Wine, Inc., from 2005 to 2009. *See* Div. Motion at 3; Prehearing Conference Tr. at 34.

From at least 2009 to February 2012, Respondent Michelle L. Helterbran Cochran, CPA, (Helterbran) was “the functional equivalent of a partner” of the Hall Group, but was formally named a non-equity partner only in February 2012. *See* Answer at 5. The Hall Respondents do not dispute that Helterbran then served as lead partner on the audits of Surface Coatings, Latitude 360, and 360 Global Wine, for the year ending December 31, 2011. *See* Div. Motion at 3; Prehearing Conference Tr. at 34; OIP at Appendix.

Helterbran resigned from the Hall Group in July 2013, after which Hall was the firm’s only partner. *See* Answer at 5. The Hall Respondents do not dispute that Hall thereafter served as lead partner on all audits and reviews by the Hall Group, including reviews of Surface Coatings, Latitude 360, and 360 Global Wine, until the firm’s sale to Thakkar CPA, PLLC. *See* Div. Motion at 3-4; Prehearing Conference Tr. at 34-36. Between August 2013 and December 2013, the Hall Group also “did not have the staffing to perform” engagement quality reviews “on approximately 10 review engagements performed during that time frame.” Answer at 5.

Thakkar purchased certain assets of the Hall Group on or about January 6, 2014. *See* OIP at 2; Answer at 1. The terms of purchase included a cash payment at closing and a two-year promissory note with a face value of \$313,516, payable to the Hall Group. *See* OIP at 2; Answer at 1. Hall assisted Thakkar in retaining the Hall Group’s audit clients, including DynaResource, Inc. *See* OIP at 8; Answer at 6. On April 15, 2014, after the filing of DynaResource’s audit report, Hall became the company’s CFO and a contact for Thakkar on review issues. *See* OIP at 2; Answer at 1, 6.

Thakkar provided DynaResource with review services until March 5, 2015, including reviews of DynaResource’s Forms 10-Q for the first, second, and third quarters of 2014. *See* OIP at 8; Answer at 6. Hall signed DynaResource’s management representation letters in connection with these reviews, and made the certifications required under Exchange Act Rule 13a-14 in the associated Forms 10-Q. *See* OIP at 8; Answer at 6.

I take official notice that on April 26, 2016, the PCAOB issued an Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions (PCAOB Order) against the Hall Respondents. *See The Hall Group, CPAs and David S. Hall, CPA*, PCAOB Release No. 105-2016-015, <https://pcaobus.org/Enforcement/Decisions/Documents/105-2016-015-Hall.pdf> (last accessed August 31, 2016); Div. Opp. at 2-4. The PCAOB Order encompassed some of the same conduct encompassed by the OIP. *Compare* OIP at Appendix *with* PCAOB Order at 3.

III. Discussion

A. The Hall Respondents Waived Res Judicata as a Defense

¹ The parties refer to this entity interchangeably as either Latitude 360 or Kingdom Koncrete, as does this order.

“Res judicata bars litigation of any claim for relief that was available in a prior suit between the parties or their privies, whether or not the claim was actually litigated.” *Gordon Brent Pierce*, Securities Act of 1933 Release No. 9555, 2014 WL 896757, at *9 (Mar. 7, 2014) (internal quotation marks omitted), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015). Res judicata requires proof of: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits. *Id.*; *see also Russell v. SunAmerica Sec., Inc.*, 962 F.2d 1169, 1172-73 (5th Cir. 1992) (adding requirement that the prior judgment must have been rendered by a court of competent jurisdiction). The Division does not dispute that the PCAOB Order constitutes a final judgment on the merits for res judicata purposes. *See Div. Opp.* at 2-4.

But res judicata does not bar this proceeding because the Hall Respondents waived the defense. *See generally Div. Opp.* at 9. On February 11, 2016, Hall and the Hall Group signed separate offers of settlement in connection with the PCAOB’s anticipated disciplinary proceeding against them, both containing the following provision:

Respondent waives any claim that the settlement of this proceeding, including the imposition of any sanction herein, precludes any government entity from imposing liabilities, sanctions, or penalties on Respondent for the violations alleged in this proceeding or identified in the attached Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions (“Order”).

Div. Opp. Ex. 1 at 1; *Div. Opp. Ex. 2* at 1. Because the Commission is such a “government entity,” the Hall Respondents’ waiver applies here.

The Hall Respondents’ arguments against this finding are unpersuasive. They contend, without elaboration, that construing the quoted provision as a waiver would be “unconscionable and against public policy.” *Hall Reply* at 18 n.21. In fact, there is nothing improper or unusual about giving effect to a clear and voluntary waiver of a res judicata defense. *See Arrow Gear Co. v. Downers Grove Sanitary Dist.*, 629 F.3d 633, 638 (7th Cir. 2010) (“an agreement to split claims” is a “commonplace” defense to res judicata). And because the offers of settlement clearly waived the Hall Respondents’ right to assert res judicata by expressly reserving the right of “any government entity” to bring an action based on the violations alleged in the PCAOB proceeding or identified in its Order, it was unnecessary for the PCAOB Order or the offers of settlement to specifically reserve the Commission’s right to bring the present proceeding. *See Pactiv Corp. v. Dow Chemical Co.*, 449 F.3d 1227, 1231 (Fed. Cir. 2006) (res judicata does not apply when “the defendant has acquiesced” to claim splitting (quoting Restatement (Second) of Judgments § 26(1)(a) (1982))); *Hall Opp.* at 16-18. That the offers of settlement have no preclusive effect themselves is beside the point, because they became legally binding contracts when the PCAOB accepted them. *See Pactiv Corp.*, 449 F.3d at 1231 (“[T]he parties can, in a separate agreement . . . reserve the right to litigate a claim that would otherwise be barred by res judicata.”); *Hall Reply* at 19. Further, as the waiver expressly provided that settlement would not preclude government actions based on the violations alleged in the PCAOB proceeding or identified in its Order, claims based on other conduct are, *a fortiori*, not barred by res judicata, even if they could have been resolved via the PCAOB Order.

The Hall Respondents argue that the present proceeding amounts to “multiple governmental actions to vindicate single wrongful conduct.” Hall Reply at 19. They also argue that if the waiver provision were “read as literally as the SEC contends, the PCAOB itself could bring another action against [Hall] for the same violations.” *Id.* at 20. Again, though, the defense of res judicata may be waived, so a second PCAOB action for the same violations would not necessarily be improper. In any event, the term “government entity” in the offers of settlement cannot be fairly construed as encompassing the PCAOB itself. Whether the PCAOB is a government entity depends on the context. *See, e.g., Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 392, 397, 399 (1995) (although a statute disclaiming an entity’s status as a government agency may be dispositive “for purposes of matters that are within Congress’s control,” a government-created corporation can be considered a government entity for constitutional purposes if certain conditions are met); *Paslowski v. Standard Mortg. Corp. of Ga.*, 129 F. Supp. 2d 793, 802 n.12 (W.D. Pa. 2000) (“[A]n entity simultaneously can be a federal instrumentality for some purposes but not a federal agency or entity for others.”). To be sure, the PCAOB Board members have been held to be officers of the United States in one such context. *See Free Enter. Fund v. PCAOB*, 561 U.S. 477, 510 (2010); Hall Opp. at 6-9. But the PCAOB is, by statute, a “nonprofit corporation,” not a government entity. 15 U.S.C. § 7211(a), (b). And the PCAOB’s rulemaking and enforcement authority is subject to close supervision by the Commission, that is, by a separate government entity. *See* Hall Reply at 9-13. As such, if the term “government entity” in the settlement documents was intended to encompass the PCAOB – which is separately referred to in those documents as the “PCAOB” or the “Board” – so as to permit a second PCAOB action based on the same violations, such language should have been more explicit.

In short, the Hall Respondents voluntarily waived the defense of res judicata. In the alternative, the defense is barred by both precedent and statute. The holding of *Jones v. SEC*, 115 F.3d 1173, 1180-81 (4th Cir. 1997), that privity was lacking between NASD and the Commission, was based on reasoning that seemingly applies with equal force to the PCAOB and the Commission. And the statute creating the PCAOB, the Sarbanes-Oxley Act of 2002, states unequivocally that nothing in that act or in the PCAOB’s rules “shall be construed to impair or limit” the Commission’s ability to initiate administrative or disciplinary action against any registered public accounting firm or associated person. 15 U.S.C. § 7202(c). The Hall Respondents’ motion must therefore be denied.

B. The Hall Respondents Committed Some of the Misconduct Alleged

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Exchange Act Section 12 to file periodic reports with the Commission. *See* 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13. More specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports. *See* 17 C.F.R. §§ 240.13a-1, .13a-13. An issuer violates these provisions if it files reports with the Commission that contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975); *Russell Ponce*, 54 S.E.C. 804, 812 n.23 (2000), *pet. denied*, 345 F.3d 722 (9th Cir. 2003). Financial statements included with annual reports must be audited by an independent public accountant in accordance with generally

accepted auditing standards (GAAS). *See* 17 C.F.R. § 210.1-01(a)(2), .1-02(a), .1-02(d), .3-01(a). The accountant's report must state whether the audit was made in accordance with GAAS. *See* 17 C.F.R. § 210.2-02(b)(1). GAAS, in this context, means "the standards of the PCAOB plus any applicable rules of the Commission." Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1, Exchange Act Release No. 49708, 69 Fed. Reg. 29064, 29065 (May 14, 2004). Interim financial statements included with quarterly reports must be reviewed by an independent public accountant using professional standards and procedures. *See* 17 C.F.R. § 210.8-03, .10-01(d).

An accountant is not independent of an audit client if he performs the services of a lead partner for more than five consecutive years. *See* 17 C.F.R. § 210.2-01(c)(6)(i)(A)(1). Once an audit partner reaches the five-year limit, he is not independent if he performs the services of a lead partner or concurring partner within the following five-year period. *See* 17 C.F.R. § 210.2-01(c)(6)(i)(B)(1). This is known as the "partner rotation" rule, which was promulgated under the authority of Exchange Act Section 10A(j). *See* 15 U.S.C. § 78j-1(j); 17 C.F.R. § 210.2-01(c)(6); Strengthening the Commission's Requirements Regarding Auditor Independence, Exchange Act Release No. 47265, 68 Fed. Reg. 6006, 6017-18, 6046 (Feb. 5, 2003). A lead partner is one who has primary responsibility for the audit or review. *See* 17 C.F.R. § 210.2-01(c)(7)(ii)(A).

The Division asserts that Hall violated the partner rotation rule for, and was not independent of, Surface Coatings, Latitude 360, and 360 Global Wine with respect to the Hall Group's reviews of those issuers for the periods ended June 30, 2013, and September 30, 2013. *See* Div. Motion at 6-7. The Hall Respondents do not dispute that Hall violated the partner rotation rule as to these three issuers for their second and third quarter 2013 reviews, and I so find. *See* Prehearing Conference Tr. 33-34. In its motion, the Division does not assert a violation of the partner rotation rule with respect to any other engagements recited in the OIP, and also does not assert a violation of Section 10A(j) as alleged in the OIP, and I make no findings as to those allegations. *Compare* Div. Motion at 6-7 with OIP at 6-7, 9.

PCAOB Auditing Standard No. 7, *Engagement Quality Review* (AS 7), requires an engagement quality review (EQR) and concurring approval of issuance for each audit and review engagement for fiscal years beginning on or after December 15, 2009. *See* PCAOB Release 2009-004 at 22, A1-1 (July 28, 2009), effective pursuant to Public Company Accounting Oversight Board; Order Approving Proposed Rules on Auditing Standard No. 7, Engagement Quality Review, and Conforming Amendment, Exchange Act Release No. 61363, 2010 SEC LEXIS 153 (Jan. 15, 2010). The Division asserts that the Hall Respondents "failed to obtain an EQR for any of the [Hall Group's] review and audit engagements for fiscal periods ended June 30 and September 30, 2013." Div. Motion at 8 (emphasis omitted).

The Hall Respondents concede that between August and December 2013, the Hall Group "did not have the staffing to perform" engagement quality reviews "on approximately 10 review engagements performed during that time frame," and I so find. Answer at 5. The identities of these engagements, however, and even their quantity, are not clear from the record. The OIP identifies eight reviews in which Hall served as engagement partner, for the second and third quarters of 2013, that were allegedly not conducted in accordance with PCAOB standards. *See*

OIP at Appendix. The Hall Respondents state that for “one audit conducted at June 30, 2013 year end,” the Hall Group “did not have the staffing to perform EQRs but . . . the firm attempted to engage an outside firm to do so.” Answer at 5. The only such audit identified in the OIP for the year ended June 30, 2013, is that of Kingdom Concrete, and the OIP asserts that Hall acted as both engagement partner and EQR for that audit. *See* OIP at Appendix. But the OIP also asserts that the Hall Respondents conducted a review (not an audit) for Kingdom Concrete for the quarter ended June 30, 2013, for which Hall was engagement partner and for which there was no EQR at all. *See id.* The Division’s exhibits include a Supervision, Review, and Approval Form for Kingdom Concrete’s June 30, 2013, balance sheets, but they pertain to a review, not an audit. *See* Div. Ex. 11 at 1. And although the Division discussed, and supplied evidence of, an audit of Seven Arts Entertainment, Inc., for the year ended June 30, 2013, that audit is not recited in the OIP. *Compare* Div. Motion at 4, 8, 11 *and* Div. Exs. 14-16 *with* OIP at Appendix. I therefore find that some reviews for the second and third quarters of 2013 were not conducted in accordance with PCAOB standards, because they lacked EQR; any other engagements that allegedly violated EQR for the same reason must be addressed at the hearing.

An accountant is not independent if, during the professional engagement period, the accounting firm has a loan from, or a direct business relationship with, an officer of an audit client. *See* 17 C.F.R. § 210.2-01(c)(1)(ii)(A), (c)(3). It is undisputed that Thakkar, DynaResource’s auditor, and Hall, DynaResource’s CFO as of April 15, 2014, had a business relationship in the form of a loan as consideration for the sale of the Hall Group to Thakkar. *See* Answer at 6; OIP at 8; Prehearing Conference Tr. 32-33, 36-37. It is also undisputed that the business relationship and loan continued to exist between April 15, 2014, and March 5, 2015, the period that Thakkar conducted reviews of DynaResource’s financial statements for the first, second, and third quarters of 2014. *See* Answer at 6; OIP at 8. I therefore find that Thakkar was not independent of DynaResource between April 15, 2014, and March 5, 2015.

Because Hall helped Thakkar keep DynaResource as a client, signed DynaResource’s management representation letters to Thakkar in connection with its 2014 reviews, and made the certifications required under Exchange Act Rule 13a-14 in the associated Forms 10-Q, Hall affirmatively caused Thakkar’s lack of independence. *See* OIP at 8-9; Answer at 6-7. Because Thakkar was not independent for three quarters in 2014, DynaResource failed to comply with the requirement that it file those quarters’ reports containing interim reviews conducted by an independent public accountant. *See* 17 C.F.R. § 210.8-03, .10-01(d). DynaResource thereby violated Exchange Act Section 13(a) and Rule 13a-13 thereunder as to its reports for the first, second, and third quarters of 2014. Hall’s liability for causing DynaResource’s violations requires proof that: (1) DynaResource committed the primary violations; (2) Hall was a cause of the violations; and (3) Hall knew or should have known that his acts would contribute to DynaResource’s violations. *See* 15 U.S.C. § 78u-3(a); *Robert M. Fuller*, Exchange Act Release No. 48406, 2003 WL 22016309, at *4 (Aug. 25, 2003), *pet. denied*, 95 F. App’x 361 (D.C. Cir. 2004). As a CPA, Hall should have known that DynaResource’s quarterly reports had to be reviewed by an independent accountant; as a creditor of DynaResource, Hall knew that Thakkar was not independent; and, as noted, Hall was a cause of DynaResource’s lack of independence. Hall therefore caused DynaResource’s violations of Exchange Act Section 13(a) and Rule 13a-13 thereunder, as to its quarterly reports for the first, second, and third quarters of 2014.

The Hall Respondents also caused Surface Coatings, Latitude 360, and 360 Global Wine to violate Exchange Act Section 13(a) and Rule 13a-13 thereunder. As noted, the Hall Group's reviews of those issuers for the periods ended June 30, 2013, and September 30, 2013, violated the partner rotation rule. I take official notice that Form 10-Q requires the filing of financial statements that comply with 17 C.F.R. § 210.10-01, which includes the requirement that they be reviewed by an independent accountant. *See* 17 C.F.R. § 210.10-01(d); Form 10-Q, Item 1, <https://www.sec.gov/about/forms/form10-q.pdf> (last accessed August 31, 2016). Surface Coatings, Latitude 360, and 360 Global Wine therefore did not file proper Forms 10-Q for the periods ended June 30, 2013, and September 30, 2013, in violation of Exchange Act Section 13(a) and Rule 13a-13 thereunder. Because the Hall Group conducted those reviews, and Hall was the lead partner, the Hall Respondents "engaged in an act that contributed to [the issuers'] primary violation" as to each Form 10-Q. *Gregory M. Dearlove*, Exchange Act Release No. 57244, 2008 WL 281105, at *31 (Jan. 31, 2008), *pet. denied*, 573 F.3d 801 (D.C. Cir. 2009). And because the Hall Respondents knew or should have known that their acts would contribute to their clients' violations, the Hall Respondents caused those clients' violations of Exchange Act Section 13(a) and Rule 13a-13 thereunder.

But the Division is not entitled to summary disposition on its allegation that the Hall Respondents caused their clients to violate Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder by filing financial statements that lacked EQR. *See* Div. Motion at 11. The Seven Arts audit for the year ended June 30, 2013, is not referenced in the OIP, and the audit of Medient Studios, Inc., for the year ended December 31, 2012, was complete no later than April 2013 – meaning it occurred before July 2013, in contravention of the Division's representation at the August 17, 2016, prehearing conference that its motion was limited to alleged violations occurring in or after July 2013. *See* Div. Motion at 10-11; Div. Ex. 12; Prehearing Conference Tr. 37-38, 44. And the financial statements filed after the "approximately 10" reviews the Hall Respondents conducted without EQR did not necessarily violate the requirement of review by an independent public accountant using professional standards and procedures. *See* 17 C.F.R. § 210.10-01(d); Div. Motion at 11; Answer at 5. This is because the definition of "professional standards and procedures" is not evident from the record. Certainly such standards and procedures may include those promulgated by the PCAOB, which requires EQR for both audits and reviews. *See* AS 7 ¶ 1. But they may instead refer to, say, guidance promulgated by the American Institute of Certified Public Accountants. Resolution of this issue would be aided by additional legal authority, or expert testimony.

Exchange Act Rule 13a-14 requires, among other things, that each Form 10-Q must include a certification signed by the issuer's principal financial officer that the associated quarterly report does not contain a material omission "necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading." 17 C.F.R. § 229.601(b)(31); *see* 17 C.F.R. § 240.13a-14. It is undisputed that Hall signed such certifications for DynaResource on its Forms 10-Q for the first, second, and third quarters of 2014. *See* OIP at 8; Answer at 6. Those Forms 10-Q were not filed with the Division's motion, but I take official notice that each of Hall's three certifications – dated May 13, 2014, August 11, 2014, and December 10, 2014 (in a Form 10-Q/A) – omit mention of Thakkar's lack of independence. An omission is material if there is a substantial likelihood that a complete disclosure would have been viewed by a reasonable investor as having "significantly altered the total mix of information made available." *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27,

38 (2011) (internal quotation marks omitted). Thakkar's lack of independence – in actuality, a glaring conflict of interest – was plainly material, and in any event because Hall as DynaResource's CFO "personally certified the false statements in this case, they can be seen as 'impugn[ing] the integrity of management,' which in itself would be material to investors." *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008) (alteration in original); see *United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("It is well-settled that information impugning management's integrity is material to shareholders."). Hall therefore violated Exchange Act Rule 13a-14 as to DynaResource's Forms 10-Q for the first, second, and third quarters of 2014.

C. Remaining Issues

As noted, the Division is entitled to summary disposition as to certain OIP allegations. However, some allegations discussed in the Division's motion are not supported by the record. One example is the OIP's silence on the audit of Seven Arts Entertainment, Inc., for the period ended June 30, 2013. See Div. Motion at 4; OIP at Appendix. As another example, the Division suggests that Helterbran acted as the lead partner for the Hall Group's audit of Surface Coatings for the year ending December 31, 2012. See Div. Motion at 3. But the OIP lists Hall as the lead partner for that audit. See OIP at Appendix. And as noted, there is a discrepancy between the parties' apparent agreement at the August 17, 2016, prehearing conference – to the effect that the Division's motion was limited to alleged violations occurring in or after July 2013 – and the Division's discussion of a violation that allegedly took place no later than April 2013, in connection with the audit of Medient Studios, Inc., for the year ended December 31, 2012. See Div. Motion at 9-10; Div. Ex. 12.

Because of the lack of support for these allegations, the lack of certainty over whether some are even asserted in the Division's motion, and the Hall Respondents' lack of response to them (which may simply have been an oversight), I have not addressed them. In particular, I have not addressed the Division's assertions based on the Seven Arts Entertainment and Medient Studios audits, specifically, that the Hall Group violated Rule 2-02(b)(1) of Regulation S-X and Hall aided and abetted and caused the violations, and that the Hall Respondents thereby caused those issuers to violate Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder. See Div. Motion at 9-11. Nor have I addressed the OIP allegations not discussed in the Division's motion, most of which pertain to audit and review work predating July 2013.

Therefore, numerous issues remain to be addressed at the hearing, namely, everything encompassed within the OIP not resolved by this Order. The Division is entitled to present evidence as to all violations and all audits and reviews, but it need not, and I encourage it to streamline its case as much as reasonably possible. Also, it is impossible to evaluate the public interest factors, especially scienter, without a fuller understanding of all the facts and circumstances. The question of sanctions, if any, can therefore be resolved only after a hearing.

In sum, to the extent the Division has proven the allegations addressed in this Order the Division's motion is granted. The Division's motion is otherwise denied, including as to sanctions. In view of the parties' lack of dispute over those allegations arising from the Hall Respondents' conduct in and after July 2013, the parties may be able to reach a comprehensive

stipulation about such allegations. The Division and the Hall Respondents are therefore directed to make every reasonable effort to do so.

IV. Order

The motion for summary disposition filed by the Division of Enforcement is GRANTED IN PART, as outlined above. The motion for summary disposition filed by Respondents David S. Hall, P.C. d/b/a The Hall Group CPAs, and David S. Hall, CPA, is DENIED.

It is ORDERED that the Division of Enforcement and the Hall Respondents shall confer in good faith to reach stipulations, which shall be filed no later than October 17, 2016.

Cameron Elliot
Administrative Law Judge