Initial Decision Release No. 1407
Administrative Proceeding
File No. 3-18292

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

In the Matter of **Anton & Chia, LLP**, **Gregory A. Wahl, CPA**, **Michael Deutchman, CPA**, **Georgia Chung, CPA**, and **Tommy Shek, CPA**	**Initial Decision** **as to Gregory A. Wahl, CPA,** **Michael Deutchman, CPA,** **and Georgia Chung, CPA** February 8, 2021

Appearances: Alyssa A. Qualls, Daniel J. Hayes, Ariella O. Guardi, John E. Birkenheier, Donald Searles, Jennifer Calabrese, Leslie Kazon, and David Van Havermaat for the Division of Enforcement, Securities and Exchange Commission

Lahdan Rahmati, in a limited capacity, for Respondents Gregory Wahl and Georgia Chung[1]

Gregory Wahl and Georgia Chung, *pro se*

John R. Armstrong and Vanoli V. Chander, Horwitz & Armstrong, APC, for Respondent Michael Deutchman

Before: Jason S. Patil, Administrative Law Judge

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1 Rahmati appeared for Respondents Wahl and Chung in the limited capacity of conducting their direct examinations at the hearing. Respondents otherwise represented themselves at the hearing and in the post-hearing phase. Additional attorneys appeared for Respondents in prior phases of the proceeding.

Introduction

This case involves multiple violations of the federal securities laws and improper professional conduct by accountants associated with Anton & Chia, LLP, an audit firm registered with the Public Company Accounting Oversight Board (PCAOB). The misconduct relates to audit or interim review engagements for three companies: Accelera Innovations, Inc., Premier Holding Corporation, and CannaVEST Corp.

Respondent Gregory A. Wahl, CPA, was majority owner and managing partner of Anton & Chia, and served as the engagement partner for Accelera's 2013 and 2014 year-end audits and five interim reviews from the first quarter of 2014 through the third quarter of 2015 (with the exception of the third quarter 2014 review, in which he was not involved), Premier's 2013 year-end audit, and CannaVEST's 2013 interim reviews. Respondent Michael Deutchman, CPA, was an audit partner at Anton & Chia and served as the engagement partner during the interim review of Accelera for the third quarter of 2014 and engagement quality reviewer for Accelera's 2014 year-end audit and the interim reviews for 2015.[2] Respondent Georgia Chung, CPA, co-owned Anton & Chia with Wahl and served as the engagement quality reviewer for CannaVEST's first quarter of 2013 interim review.

Accelera vastly inflated its financial position and results by treating another company's revenues, assets, and liabilities as its own. Premier inflated and provided an unsupported valuation of an otherwise worthless promissory note and further improperly allocated the entire purported value of an acquired company to goodwill. CannaVEST greatly overstated its assets due to its improper valuation of an acquired company. In performing the audits or interim reviews of these companies, Respondents egregiously deviated from multiple PCAOB standards[3] and ignored numerous red flags indicating the

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[2] My findings regarding the timeframe of Wahl and Deutchman's involvement in the Accelera interim reviews and their respective position titles differ somewhat from the allegations in the order instituting proceedings (OIP). *See* OIP at 5, 16. The discrepancy has no bearing on their degree of culpability or the sanctions imposed.

[3] In this initial decision, in line with Securities and Exchange Commission interpretive guidance, I use the term "PCAOB standards," not the older term "GAAS" (generally accepted auditing standards), to mean the auditing standards required by the Commission's rules when dealing with public company financial statements. Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1, 69 Fed. Reg. 29,064, 29,065 (May 20, 2004)

companies' financial statements and public filings contained material misstatements. Moreover, Wahl and Deutchman were reckless in not knowing that the statements in Anton & Chia's reports for Accelera and Premier were false and misleading. In its audit reports, the firm egregiously misrepresented that it had conducted its work in accordance with PCAOB standards and that the companies' financial statements fairly presented their financial positions according to generally accepted accounting principles (GAAP).

In connection with work related to Accelera, Deutchman aided and abetted Anton & Chia's violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(b)'s antifraud provisions; Wahl and Deutchman aided and abetted and were a cause of Accelera's violation of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13's requirement that an issuer file accurate reports; Wahl and Deutchman aided and abetted and were a cause of Anton & Chia's violation of Rule 2-02(b) of Regulation S-X due to the misrepresentations in the firm's reports; and Wahl and Deutchman willfully violated or willfully aided and abetted violations of the federal securities laws or rules within the meaning of Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, and engaged in improper professional conduct within the meaning of Section 4C(a)(2) and Rule 102(e)(1)(ii).

In connection with his work related to Premier, Wahl violated Exchange Act Section 10(b) and Rule 10b-5(b), aided and abetted Anton & Chia's violations of Section 10(b) and Rule 10b-5(b), aided and abetted and was a cause of Premier's violation of Exchange Act Section 13(a) and Rule 13a-1, aided and abetted and was a cause of Anton & Chia's violation of Rule 2-02(b) of Regulation S-X, willfully violated or willfully aided and abetted violations of the federal securities laws or rules within the meaning of Section 4C(a)(3) and Rule 102(e)(1)(iii), and engaged in improper professional conduct within the meaning of Section 4C(a)(2) and Rule 102(e)(1)(ii).

In connection with their work related to CannaVEST, Wahl and Chung engaged in improper professional conduct within the meaning of Section 4C(a)(2) and Rule 102(e)(1)(ii).

The following sanctions are warranted in the public interest: cease-and-desist orders against Wahl and Deutchman; $160,000 in civil penalties against Wahl and $40,000 against Deutchman; Wahl and Deutchman are permanently

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("[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission.").

denied the privilege of appearing or practicing before the Commission as accountants, and Chung is denied the privilege of appearing or practicing before the Commission as an accountant with the right to reapply after one year.

Procedural History

On December 4, 2017, the Commission issued an OIP against Wahl, Deutchman, and Chung under Exchange Act Sections 4C and 21C and Rule of Practice 102(e).[4] The Commission also instituted proceedings against Anton & Chia and Tommy Shek, CPA, but later settled as to those parties.[5] *Anton & Chia, LLP*, Exchange Act Release No. 87033, 2019 WL 4572716 (Sept. 20, 2019) (Anton & Chia); *Anton & Chia*, Exchange Act Release No. 83622, 2018 WL 3388553 (July 12, 2018) (Shek).

On January 5, 2018, Respondents answered by generally denying the allegations and asserting affirmative defenses. *See* Wahl Answer; Deutchman Answer.[6] The affirmative defenses contain assertions against the elements of

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4 The proceeding was instituted under Section 21C as to Wahl and Deutchman, but not Chung.

5 Allegations in the OIP about the failure to maintain an adequate system of quality controls pertained only to Anton & Chia, and thus I do not address them in this decision. For the same reason, I do not address the 2015 year-end audit of Accelera.

6 Citations to the answer filed by Anton & Chia, Wahl, and Chung are noted as "Wahl Answer at __"; citations to Wahl and Chung's post-hearing brief, proposed findings of fact and conclusions of law, and response to the Division of Enforcement's proposed findings of fact, are noted as "Wahl Post-hr'g Br. at __," "Wahl PFOF at __," and "Wahl Resp. to Div. PFOF at __," respectively. When referring to arguments made in Wahl and Chung's post-hearing briefing, I state "Wahl and Chung argue" only when the argument is relevant to both of them; otherwise I merely state "Wahl argues." Citations to Respondent Deutchman's answer and his proposed findings of fact and conclusions of law are noted as "Deutchman Answer at __" and "Deutchman Post-hr'g Br. at __," respectively. Citations to the Division's post-hearing brief, proposed findings of fact, response to Wahl's PFOF, response to Deutchman's PFOF, and post-hearing reply brief, are noted as "Div. Post-hr'g Br. at __," "Div. PFOF at __," "Div. Resp. to Wahl PFOF at __," "Div. Resp. to Deutchman PFOF at __," and "Div. Post-hr'g Reply Br. at __," respectively. Citations to the hearing transcript are noted as "Tr. __." When exhibits lack both consistent internal pagination and Bates style numbering, I cite to the page of the PDF and follow the PDF page number with "(PDF)."

the allegations and also raise constitutional issues, reliance on professionals, and various other defenses that were not supported by further briefing, such as the doctrines of laches and estoppel. *See* Wahl Answer at 27–30; Deutchman Answer at 22–24. All three Respondents were initially represented by counsel, but Wahl and Chung's attorneys withdrew; Wahl and Chung now defend themselves.

This proceeding was initially assigned to another administrative law judge, but after the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), it was reassigned to a different judge, and then was reassigned to me prior to the hearing. *See Pending Admin. Proc.*, Admin Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *1–3 (ALJ Sept. 12, 2018) (reassignment post-*Lucia*); *Anton & Chia*, Admin Proc. Rulings Release No. 6690, 2019 SEC LEXIS 3410, at *1 (ALJ Sept. 27, 2019) (assigning proceedings to me).

The evidentiary portion of the hearing took place in Los Angeles, California, over the course of 25 days: October 15–18, November 4–8 and 18–22, and December 2–6 and 16–18, 2019, and January 6–8, 2020. Closing arguments were conducted through videoconference on January 15, 2020.

After the hearing, I admitted multiple exhibits into evidence and rescinded the inclusion of one exhibit. *See Anton & Chia*, Admin Proc. Rulings Release No. 6726, 2020 SEC LEXIS 2622, at *1 (ALJ Jan. 28, 2020) (admitting Ex. 772); *Anton & Chia*, Admin Proc. Rulings Release No. 6727, 2020 SEC LEXIS 3143, at *1 (ALJ Jan. 29, 2020) (admitting Exs. 432 and 1119); *Anton & Chia*, Admin Proc. Rulings Release No. 6741, 2020 SEC LEXIS 658, at *1 (ALJ Mar. 9, 2020) (admitting Ex. 839.8); *Anton & Chia*, Admin Proc. Rulings Release No. 6766, 2020 SEC LEXIS 3435, at *2–3 (ALJ June 10, 2020) (admitting Exs. 13, 14, 15, 1203, 1281, 1283, and 1284; rescinding admission of Ex. 44.1); *Anton & Chia*, Admin Proc. Rulings Release No. 6801, 2020 SEC LEXIS 5066 (ALJ Dec. 3, 2020) (admitting Ex. 1285). Post-hearing briefing closed on August 10, 2020, and the matter is now ripe for decision. All arguments inconsistent with this decision have been considered and rejected.

Preliminary Issues

Before my findings of fact and legal conclusions on the merits, I address two preliminary issues: Respondents' constitutional arguments, and the weight that I give to expert evidence, which includes the resolution of pending motions in limine.

1. Respondents' constitutional arguments are moot or unsuccessful.

Wahl, Chung, and Deutchman raise several constitutional arguments: (1) the proceeding violates the Appointments Clause, Wahl Answer at 28;

Deutchman Answer at 22–23; (2) disgorgement is unlawful on unspecified constitutional grounds, Wahl Answer at 30; Deutchman Answer at 24; Wahl Post-hr'g Br. at 75; *see* Wahl PFOF at 768–69 (PDF); (3) having an administrative law judge preside over this proceeding violates Respondents' right to due process, Wahl Answer at 28; Deutchman Answer at 22–23; and (4) the proceeding violates Respondents' right to jury trial, Wahl Answer at 30; Deutchman Answer at 24; *see* Wahl PFOF at 184 (PDF).

Further, Wahl and Chung assert that (5) the issuance of a press release regarding the OIP and the filing of proof of claim in Wahl's bankruptcy proceeding deprived them of due process of law, Wahl Post-hr'g Br. at 76; Wahl PFOF at 54–58, 631–33, 639–41, 643–45, 673–75, 680–85, 705, 749 (PDF); and (6) the press release and claim constituted an unconstitutional taking of their property, Wahl Post-hr'g Br. at 76–77; Wahl PFOF at 680–88, 765, 797, 805 (PDF). Finally, although not a constitutional claim, Wahl and Chung assert that this proceeding is time-barred. Wahl Post-hr'g. Br. at 71–72.

The first argument is mooted by the reassignment of this proceeding to a different, properly appointed administrative law judge for a new hearing following the Supreme Court's decision in *Lucia*. *Pending Admin. Proc.*, Exchange Act Release No. 83907, 2018 WL 4003609, at *1 (Aug. 22, 2018); *Anton & Chia*, 2019 SEC LEXIS 3410; *Pending Admin. Proc.*, 2018 SEC LEXIS 2264, at *2–3; *see Pending Admin. Proc.*, Exchange Act Release No. 82178, 2017 WL 5969234, at *1 (Nov. 30, 2017) (ratifying the appointment). The second is mooted by the Division's decision to abandon its request for disgorgement. Div. Post-hr'g Reply Br. at 1. The remaining constitutional arguments are unsuccessful for the reasons discussed below.

1.1. A proceeding before an administrative law judge does not deprive Wahl, Chung, and Deutchman of due process.

Wahl, Chung, and Deutchman argue, without elaboration, that having a Commission administrative law judge adjudicate this proceeding violates the Due Process Clause. Wahl Answer at 28; Deutchman Answer at 22–23. However, courts have long rejected the argument that adjudication before an agency deprives a respondent of due process. *See Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104–08 (D.C. Cir. 1988). The Commission has the authority to preside over administrative proceedings involving alleged securities law violations and may delegate that authority to an administrative law judge as it has done here. 15 U.S.C. § 78d-1(a); 17 C.F.R. § 201.110; *see* OIP at 42. Respondents have been given the opportunity to be heard, put on evidence, and make arguments. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). They have been provided the required process.

1.2. Wahl, Chung, and Deutchman are not entitled to a jury trial in this administrative proceeding.

Wahl, Chung, and Deutchman assert as affirmative defenses that "[d]etermination of this proceeding by an ALJ violates [their] right to a jury trial pursuant to the Seventh Amendment." Wahl Answer at 30; Deutchman Answer at 24. But it is well established that "the Seventh Amendment is not applicable to administrative proceedings." *Tull v. United States*, 481 U.S. 412, 418 n.4 (1987); *see John Thomas Capital Mgmt. Grp.*, Securities Act Release No. 10834, 2020 WL 5291417, at *27 (Sept. 4, 2020) ("[The Commission] ha[s] repeatedly rejected claims that [its] administrative proceedings violate the Seventh Amendment."). Respondents in administrative proceedings are not entitled to a jury trial. *See Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 450, 460–61 (1977); *Kabani & Co.*, Exchange Act Release No. 80201, 2017 WL 947229, at *20 (Mar. 10, 2017), *pet. denied*, 733 F. App'x 918 (9th Cir. 2018).

1.3. The press release and bankruptcy claim did not deny Wahl and Chung due process.

Wahl and Chung argue that they were denied due process by a press release announcing the issuance of the OIP against them and by the Commission's filing of a proof of claim in Wahl's personal bankruptcy proceeding. Wahl Post-hr'g Br. at 76. They imply that this proceeding must be dismissed because these two statements defamed them "without ANY actual evidence," resulting in their "financial ruin" by "steal[ing] away their livelihoods," and inflicted emotional distress. *Id.*; Wahl PFOF at 680–85 (PDF). But both actions were lawful. Neither deprived them of due process in this proceeding; rather, this proceeding provided them the process to which they were entitled. *See Jonathan Feins*, Exchange Act Release No. 41943, 1999 WL 770236, at *7 (Sept. 29, 1999) ("Administrative due process is satisfied where the party against whom the proceeding is brought understands the issues and is afforded a full opportunity to meet the charges during the course of the proceeding.").

The press release issued by the Commission on December 4, 2017, states that the OIP was filed, summarizes its allegations, and quotes statements of opinion by the two co-directors of the Division. Ex. 1285. The Exchange Act authorizes the Commission to make this type of release, "in its discretion, to publish information concerning any … violations" of the securities laws. 15 U.S.C. § 78u(a)(1); *see SEC v. Rivlin*, No. 99-1455, 1999 WL 1455758, at *3 (D.D.C. Dec. 20, 1999). Moreover, Commission proceedings—like the majority of government adjudications in the United States—are presumptively public, so even without a press release some reputational harm may be unavoidable.

17 C.F.R. §§ 201.301, .322(b); *cf.* Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission, 53 Fed. Reg. 26,427, 26,429 (July 13, 1988) ("recogniz[ing] that any public proceeding may involve reputational damage to the respondent," but concluding that proceedings under the predecessor to 17 C.F.R. § 201.102(e) should be public like other administrative proceedings). A press release that does little more than repeat the allegations in an already public OIP is well within the discretion granted by the Exchange Act to publish information about securities law violations.

Similarly, the proof of the Commission's contingent, unliquidated claim that was filed in Wahl's bankruptcy proceeding on December 20, 2018, stated only that this proceeding had been brought and that it might result in a judgment payable to the Commission in an unspecified amount. Proof of Claim, *In re Gregory Anton Wahl*, No. 8:18-bk-12449 (Bankr. C.D. Cal. Dec. 20, 2018), Claim 16-1. The amended proof of claim filed on May 20, 2019, merely valued the claim at $456,000 based on the Division's claims for disgorgement (which the Division was then seeking), civil penalties, and prejudgment interest. Ex. 1283 at 2. The proofs of claim did not decide the issues in this proceeding or imply that they had already been decided. Rather, both the claim and amended claim fall within the bankruptcy code's broad definition of "claim," which includes "unliquidated" and "contingent" rights to payment. 11 U.S.C. § 101(5)(a); *accord In re Castellino Villas, A.K.F. LLC*, 836 F.3d 1028, 1033–34 (9th Cir. 2016) (observing that a claim—such as one for attorneys' fees not yet earned—can arise when it can fairly or reasonably be contemplated even if the cause of action had not accrued under nonbankruptcy law). The Commission was not just entitled, but was required to file a proof of claim for potential recovery in pending pre-bankruptcy-petition litigation if it wished to preserve its right to recovery. *Bendall v. Lancer Mgmt. Grp.*, 523 F. App'x 554, 558 (11th Cir. 2013); *see* Fed. R. Bankr. P. 3003(c)(2) (requiring any creditor "whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated" to file a proof of claim). Moreover, like the press release, the proofs of claim did not make this already public proceeding any more public than it already was.

Thus, neither of these routine actions by the Commission deprived Wahl and Chung of due process of law in this proceeding. And although the release and the proof of claim may have caused them "reputational and professional harm," their arguments "do not give rise to due process relief unless they prejudiced the hearing process," which they did not do. *Kevin Hall, CPA*, Exchange Act Release No. 61162, 2009 WL 4809215, at *23 (Dec. 14, 2009); *accord United States v. Black*, 733 F.3d 294, 302 (9th Cir. 2013) (holding that to completely invalidate a criminal prosecution based on investigative conduct, the government's actions must have "'violate[d] fundamental fairness' and [been] 'so grossly shocking and so outrageous as to violate the universal sense of justice'" (quoting *United States v. Stinson*, 647 F.3d 1196, 1209 (9th Cir. 2011))); *United States v. Smith*, No. CR-13-14, 2014 WL 1744253, at *2–3 (E.D. Wash. Apr. 30, 2014) (rejecting defense based on allegedly defamatory press release calling defendants "snake oil salesmen"). This is because "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Matthews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *cf. Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1972) (holding that the remedy for unconstitutional defamation is "an opportunity to refute the charge"). The OIP in this proceeding began the process before a neutral adjudicator. *See Rivlin*, 1999 WL 1455758, at *3; *see also Concrete Pipe & Prod. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 618 (1993); *cf. Hall*, 2009 WL 4809215, at *23 & n.111 (citing *Hannah v. Larche*, 363 U.S. 420, 443 (1960)). I have served as that neutral adjudicator in this proceeding, and whatever reputational harm may have been caused by the press release and proof of claim does not undermine my neutrality. *See FTC v. Cinderella Career & Finishing Schs., Inc.*, 404 F.2d 1308, 1312–15 (D.C. Cir. 1968); *Bowman v. U.S. Dep't of Agric.*, 363 F.2d 81, 86 (5th Cir. 1966).

Finally, insofar as Wahl and Chung are attempting to assert an affirmative claim for damages based on unconstitutional defamation or some other theory, I must deny this claim. The Rules of Practice do not permit respondents to assert counterclaims for damages against the Commission. *See* 17 C.F.R. § 201.220(c) (detailing the permitted contents of an answer to the OIP).

1.4. The press release and bankruptcy claim did not take Wahl and Chung's property without compensation.

Along with their due process arguments, Wahl and Chung contend that the Commission "unconstitutionally took Respondents property without compensation" by issuing the OIP and accompanying press release and filing the proof of claim. Wahl Post-hr'g Br. at 76; *see* Wahl PFOF at 683 (PDF). Under the theory that Respondents' professional licenses were rendered "worthless"—as opposed to being actually revoked or taken by the Commission—they characterize the press release and proof of claim as a "regulatory taking of property." Tr. 6190; Wahl PFOF at 684 (PDF). But "diminution of property values caused by government action is not a regulatory taking." *Eagletech Commc'ns, Inc.*, Exchange Act Release No. 54095, 2006 WL 1835958, at *3 & n.12 (July 5, 2006); *see Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 131 (1978). And, as noted above, insofar as Wahl and Chung seek money from the Commission in this proceeding, the Rules of

Practice do not permit respondents to assert counterclaims for damages. *See* 17 C.F.R. § 201.220(c); Wahl Post-hr'g Br. at 76–77.

1.5. The proceeding is not time-barred.

Wahl and Chung assert that the statute of limitations on the charges against them has expired because, under 28 U.S.C. § 1658(b)(1), the proceeding cannot be brought more than "2 years after the discovery of the facts constituting the violation." Wahl Post-hr'g Br. at 71–72. But this is incorrect. Section 1658 applies to "a private right of action," 28 U.S.C. § 1658(b), not a Commission proceeding, which under Section 2462 has a five year statute of limitations. 28 U.S.C. § 2462; *see Gabelli v. SEC*, 568 U.S. 442, 444–45 (2013) (holding that Section 2462 applies to Commission proceedings seeking civil penalties). The proceeding commenced in December 2017, less than five years after the audit engagements at issue.

2. Weight given to expert testimony

Two experts testified at the hearing: Harris Devor for the Division and John M. Misuraca for Wahl and Chung. William W. Holder prepared an expert report for Wahl and Chung during the Commission's investigation but he was not engaged and did not prepare a report or testify in this proceeding.

2.1. The Division's accounting and auditing expert Harris Devor

The Division offered Harris Devor as an expert in accounting and auditing. Tr. 1120. Respondents conducted a voir dire of Devor regarding his qualifications, especially as it concerned audits of public companies and microcap public companies. Based on Devor's education, experience, and credentials, I found him qualified to opine about those topics in this proceeding. Tr. 1140–41. As I explained at the hearing, I would consider arguments from Respondents in determining what weight to give Devor's opinions. Wahl and Chung have argued that I should generally not give weight to Devor's opinions because (1) there is no legal standard for expert testimony in Commission administrative proceedings, (2) Devor lacks the experience and credentials to opine about public company audits or PCAOB standards, (3) Devor is biased in favor of the Commission, and (4) his expert testimony has been excluded four times in federal court.

2.1.1. Standard for expert testimony in Commission proceedings

Wahl and Chung assert that "there is no legal standard for an expert" in Commission administrative proceedings, which allows supposed experts to act in a "lawless and reckless" manner. Wahl Post-hr'g Br. at 43. This is untrue. Although the standard for admitting expert testimony in Commission administrative proceedings differs from the standard in federal court, like all other admissible evidence in Commission proceedings, an expert's testimony must be relevant and cannot be immaterial, unduly repetitious, or unreliable. 17 C.F.R. § 201.320(a). In addition, an expert witness must prepare a written report and submit a statement of qualifications and other initial disclosures. 17 C.F.R. § 201.222(b).

Expert testimony in federal court is subject to the *Daubert* standard, codified in Federal Rule of Evidence 702, under which the district court performs a "gatekeeping" role to ensure that only reliable expert evidence reaches the jury. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999); *see* Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993). The *Daubert* standard does not apply in administrative proceedings, however. *Ralph Calabro*, Securities Act Release No. 9798, 2015 WL 3439152, at *11 (May 29, 2015). This is because the "gatekeeping" role is unnecessary in a nonjury proceeding such as this one. *See City of Anaheim*, Exchange Act Release No. 42140, 1999 WL 1034489, at *2 (Nov. 16, 1999) ("Administrative agencies such as the Commission are more expert fact-finders, less prone to undue prejudice, and better able to weigh complex and potentially misleading evidence than are juries."). The Commission has thus seen "no reason why a law judge, if he deems it appropriate, cannot hear expert testimony (and cross-examination) and then determine what weight to give that testimony." *Calabro*, 2015 WL 3439152, at *11 n.66.

This is why I allowed Devor, as well as Wahl and Chung's expert Misuraca, to testify at the hearing while reserving ruling on the weight to give their testimony. In weighing this expert testimony, I will consider the "spirit of *Daubert*." *Niam v. Ashcroft*, 354 F.3d 652, 660 (7th Cir. 2004) ("'Junk science' has no more place in administrative proceedings than in judicial ones."); *Calabro*, 2015 WL 3439152, at *11 n.67 (citing *Niam*). I will not give any weight to unreliable or misleading expert testimony, just as I will give no weight to unreliable or misleading factual testimony. Wahl and Chung's argument that there is no standard for expert testimony is incorrect, and I do not give diminished weight to any expert on that basis.

2.1.2. Experience and credentials

Wahl and Chung argue that Devor lacks the expertise to opine about public company accounting and PCAOB auditing standards. Wahl Post-hr'g Br. at 42–45. Wahl and Chung point out, and Devor candidly acknowledges, that he has not personally audited a public company since 1990, has not conducted an audit subject to PCAOB standards, and has no experience auditing microcap companies or companies in the cannabis industry. Wahl PFOF at 102, 126–27 (PDF).

Performing public company audits is one way to gain auditing expertise, but it is not the only method. *Cf.* Fed. R. Evid. 702 (expert may be qualified based on "knowledge, skill, experience, training, or education"); *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004) ("[E]xperts may be qualified in various ways."). Since he stopped auditing public companies, Devor has maintained his knowledge of public company auditing issues and has testified extensively as an expert witness about public company accounting. Tr. 1112, 1114–17. He has testified as an expert in high-profile accounting cases such as the WorldCom securities litigation, litigation related to the collapse of Lehman Brothers, and the Petrobras securities litigation. Tr. 1116, 1118. Devor's testimony on both direct and cross-examination showed his competence and understanding of the subject matter.

Devor's body of training and experience is also sufficient for him to qualify as an expert in accounting and auditing. Devor is a certified public accountant and has forty-six years of experience in administering and supervising audits. Ex. 88, Resume at 1. Although his recent experience is with private companies, to the degree there are differences in accounting issues and standards between private and public companies, no pertinent differences were identified that would disqualify Devor testifying. Tr. 1112–13, 1118–20; *see* Crowdfunding, 80 Fed. Reg. 71,388, 71,414 (Nov. 16, 2015) ("As the standards for non-public business entities are new, there are currently very few distinctions between U.S. GAAP for public and non-public business entities.").

2.1.3. Bias

Wahl and Chung argue that because the Commission is Devor's largest client for his services as an expert witness, Devor is biased. Wahl PFOF at 121–22 (PDF). This argument is unpersuasive. The potential for bias exists for any expert retained and compensated by a party. The remedy is for the expert's opinions to be tested by cross-examination and weighed by the trier of fact. *Calabro*, 2015 WL 3439152, at *38 & n.179. I did not see any evidence of improper bias during Devor's testimony. Devor has testified as an expert on behalf of many clients, including for defendants against the Commission. *See, e.g.*, *SEC v. Guenthner*, 395 F. Supp. 2d 835, 843–44 (D. Neb. 2005). His expert services are only one aspect of his business. *See* Tr. 1114 ("I can go years without testifying."). Even if the Commission is his largest client with respect to expert engagements, it does not appear to be such a large portion of his work as to presume bias that would require discounting his testimony in this proceeding.

2.1.4. Exclusion of Devor's testimony in other proceedings

Wahl and Chung point to several instances in which Devor's testimony was allegedly excluded in federal district court. Although it is permissible to impeach an expert based on the exclusion of testimony in other proceedings, the cases cited by Wahl and Chung are not persuasive. Wahl and Chung assert that "Devor's testimony was dismissed four times in Federal Court." Wahl Post-hr'g Br. at 42. They do not list these four cases. Of the cases that they cite in their filings, I have identified five in which Devor served as an expert witness. *See id.* at 42–43, 45; Wahl PFOF at 734–47 (PDF). None of these five cases support their contention.

In citing *Lawrence E. Jaffe Pension Plan v. Household International, Inc.*, No. 02-cv-5893 (N.D. Ill.), for example, Wahl and Chung quote a party's brief—not the court—criticizing Devor. *See* Wahl Post-hr'g Br. at 42 (quoting Defs.' Reply *Daubert* Mot. at 5, *Jaffe Pension Plan* (Feb. 13, 2009), ECF No. 1456, 2009 WL 464036). The court in that case limited Devor's testimony in one area but otherwise found his opinions to be "permissible expert testimony." Minute Order at 2, *Jaffe Pension Plan* (Mar. 23, 2009), ECF No. 1528.

The district court in *Acceptance Insurance Cos., Inc. Securities Litigation*, 352 F. Supp. 2d 940, 948 (D. Neb. 2004), excluded an affidavit by Devor from the summary judgment record, finding that it failed to "describe the analytical processes he went through to reach his opinions." The court noted, however, that it resolved the summary judgment motions before the close of expert discovery and disclosure, which may have provided additional foundation for expert opinions. *Id.* at 947–48. And unlike the affidavit in *Acceptance Insurance*, I find Devor's lengthy expert report to be supported satisfactorily in this case.

Devor's proposed testimony was also excluded in *L&M Beverage Co. v. Guinness Import Co.*, No. 94-cv-4492, 1996 WL 368327 (E.D. Pa. June 24, 1996). In that case, Devor offered an opinion about the plaintiff's lost profits, but the district court determined that the proper measure of damages was the diminution in value of distribution rights, not lost profits. Devor's lost profits opinion was excluded as not relevant. *Id.* at *3–4. Here, Devor's opinions are relevant to the allegations.

The fourth case in which Wahl and Chung allege Devor's testimony was excluded from is *SEC v. Cole*, No. 12-cv-8167 (S.D.N.Y.). Wahl and Chung assert that Deutchman, who was an expert for defendant Timothy Quintanilla, "beat" Devor in that case and that the district judge "saw through" Devor's testimony. Wahl Post-hr'g Br. at 43. But the court did not exclude Devor. Quintanilla objected to Devor's expert report as hearsay, irrelevant, improper opinion testimony, and lacking foundation. Def.'s Objections to Decl. Supp'g Summ. J. at 22, *Cole* (June 5, 2014), ECF No. 130. The court rejected Quintanilla's objections to Devor's report and other evidence as "unsupported boilerplate assertions presented in a clumsy attempt to strike the entirety of the SEC's evidence." *Cole*, 2015 WL 5737275, at *4 (Sept. 19, 2015). In denying the parties' cross motions for summary judgment, the court did not reference Devor's opinions positively or negatively. *See generally id.* at *4–10. The case was ultimately resolved by a settlement.

Finally, Devor served as a *defense* expert witness in *SEC v. Guenthner*. Devor's testimony was not excluded by the court. Instead, the court heard the testimony of Devor during a bench trial and included Devor's expert opinions in its findings of facts. 395 F. Supp. 2d at 837, 843–44. Although the court granted the defendants' motion for judgment as a matter of law on other grounds, it noted that, in the alternative, "it would find in favor of defendants based on all the evidence adduced in this case," including Devor's testimony. *Id.* at 848 & n.8.

The cases cited by Wahl and Chung about Devor's work in other proceedings do not convince me to give diminished weight to Devor's testimony here.

2.1.5. Devor's opinions are generally helpful but those about specific violations will not be considered.

Devor's testimony helped provide a general understanding of some of the accounting and auditing issues in this case. His testimony also provided a vehicle for many of the relevant documents the Division introduced in its case-in-chief. I have considered his opinions for this general background information.

I have not relied, however, on Devor's opinions about specific violations of GAAP or PCAOB standards. Whether a specific accounting or auditing standard is violated is often a mixed question of fact and law. *See Russell Ponce*, Exchange Act Release No. 43235, 2000 WL 1232986, at *8 n.33 (noting that whether an activity is manufacturing or research and development under GAAP "is a mixed question of law and fact"), *pet. denied*, 345 F.3d 722 (9th Cir. 2003); *cf. In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1421 (3d Cir. 1997) ("[I]t is a factual question whether BCF's accounting practices were consistent with GAAP."); *SEC v. Caserta*, 75 F. Supp. 2d 79, 91 (E.D.N.Y. 1999) ("Whether GAAP has been violated is a fact-specific issue."). Although it may be appropriate to rely on expert testimony for thorny fact-bound issues related to GAAP or PCAOB standards, I have not done so here. Instead, I have considered the documentary evidence and testimony of percipient witnesses.

And I have not relied on Devor's testimony to resolve legal questions. *See optionsXpress, Inc.*, Securities Act Release No. 10125, 2016 WL 4413227, at *27 (Aug. 18, 2016) ("[W]e do not defer to expert testimony about the meaning of the law."); *Robert D. Potts, CPA*, Exchange Act Release No. 39126, 1997 WL 690519, at *10 n.56 (Sept. 24, 1997) ("The testimony of expert witnesses on questions of law may be precluded, because adjudicators—courts and administrative law judges—are themselves qualified to determine and interpret the law."), *pet. denied*, 151 F.3d 810 (8th Cir. 1998).[7]

2.2. Wahl and Chung's valuation expert John M. Misuraca

John M. Misuraca is a certified public accountant who specializes in forensic accounting and business valuation. Ex. 1036 at 2; Tr. 3391–92. Misuraca prepared two expert reports. One dealt with CannaVEST's purchase of PhytoSphere Systems, LLC, and the valuation and subsequent impairment of goodwill from that purchase. Ex. 1036. The second report discussed the valuation of a promissory note held by Premier. Ex. 1122. At the hearing, I admitted the Premier report, and noted that the CannaVEST report would come into the record in some fashion, but I deferred ruling on its admissibility. Tr. 3398–99, 3437–38, 3631–32. I turn to that question now, and I also consider the evidentiary weight to give to either report.

2.2.1. CannaVEST report

This report relied on information Misuraca received from Wahl that purported to be financial projections prepared for CannaVEST management, but Wahl misled Misuraca about the origins of those projections. For this reason, although I admit the report (Exhibit 1036) as an exhibit, its admission is to provide context only, and I give Misuraca's opinions in it no weight. In addition, and more troubling, Wahl submitted a perjurious declaration in support of his opposition to the Division's motion to exclude Misuraca's testimony and lied about the projections under oath at the hearing.

Misuraca advanced three opinions in the CannaVEST expert report: (1) the internal rate of return for CannaVEST at the time of the purchase was 20.48%, (2) this rate of return was reasonable, and (3) there was no impairment of goodwill as of the purchase date of Phytosphere. Ex. 1036 at 6. These opinions were based on "the forecast provided by Greg Wahl from an email he sent to Tommy Shek and Richard Koch on November 8, 2013." *Id.* at 5; *see*

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[7] Wahl and Chung also raise various arguments about the reliability of Devor's opinions regarding specific violations. Because I have not relied on Devor's opinions about specific violations, I do not address those arguments here.

Tr. 3476–77. Misuraca accepted this forecast as true and did not independently verify or test the figures. Ex. 1036 at 6.

Unbeknownst to Misuraca, his reliance on these figures was misplaced. Wahl altered the email he provided Misuraca—it was not the original email he sent to Shek and Koch. The actual CannaVEST financial projections were attached to the original email. Wahl did not forward the attachment to Misuraca; instead, he typed different figures into the email he forwarded to Misuraca. The numbers Wahl typed in looked like they were part of the original email, and Misuraca accepted them as genuine. *Compare* Ex. 824 (original email), *with* Ex. 823 (email forwarded to Misuraca adds, "Below is what we had for original projections, etc." and Wahl's typed projections).

Wahl provided shifting and incredible explanations for his alteration of the email. When the Division moved to exclude Misuraca's testimony and pointed out the discrepancies, Wahl's opposition called the Division's allegation "a preposterous theory" that is "half baked and factually erroneous." Opp'n to Mot. to Exclude Misuraca at 3 (Oct. 1, 2019). Wahl declared, in support of the opposition and under penalty of perjury, that he had simply "pasted" into the body of the email the actual projections that were attached to the original email. *Id.* at 7. Those projections, he claimed, were from page 36 of projections prepared by a valuation firm, Vantage Point Advisors, Inc., and were what he had considered during the CannaVEST review engagement. *Id.*

Wahl's declaration is untrue. The Vantage Point projections attached to the original email differ from the figures Wahl sent to Misuraca. *Compare* Ex. 824, ASC 718 IRC 409A Report at 36, *with* Ex. 823, *and* Ex. 1036 at 11.[8] The figures for the five categories Wahl provided Misuraca—revenue, cost of goods sold, gross profit, operating expenses, and pre-tax net profit—are significantly different from the numbers in the Vantage Point report. For four of the five years of figures that Wahl provided, he reduced total revenue between 55% and 33% and decreased gross revenue between 48% and 13%. *Compare* Ex. 824, ASC 718 IRC 409A Report at 36, *with* Ex. 823. He increased operating expenses for three of the five years of data and decreased it in the other two years. *Compare* Ex. 824, ASC 718 IRC 409A Report at 36, *with* Ex. 823. Wahl even sent Misuraca quarterly data for 2013 that was not included at all in the Vantage Point report. *See* Tr. 5503–05. *Compare* Ex. 824, ASC 718 IRC 409A Report at 36, *with* Ex. 823. Thus, in addition to altering actual data by wide margins, Wahl also fabricated data for periods for which no data was ever reported previously.

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[8] A chart comparing the projections in the original attachment to the figures Wahl emailed Misuraca is in the appendix to this initial decision.

When the Division questioned Wahl about the email at the hearing, Wahl at first maintained his story that he had "copied and pasted" the valuation report into the email. Tr. 5498. He claimed he meant to paste the financial projections at the top of the email and that it was a mistake that they ended up at the bottom, where they looked like part of the original email. Tr. 5501–02. When the Division informed Wahl that the revenue figure for the second quarter of 2013 he sent Misuraca did not match actual revenue, Wahl testified that he "could have done a typo." Tr. 5505. When the Division pressed him on why other numbers did not match, Wahl said he was in a hurry and "ballparked" the numbers. Tr. 5506. Wahl then contradicted his sworn declaration and his testimony from just minutes earlier and denied that he had copied and pasted the numbers—he now testified that he had to type the numbers in because the original was a PDF. Tr. 5507. When asked whether the figures in the Vantage Point report were the same as what he typed, Wahl first said, "I believe it's pretty close to what I typed in." Tr. 5507. Then he almost immediately backtracked and said the figures he provided Misuraca were lower than those in the Vantage Point report. Tr. 5507. Not slightly lower but lower by half, he claimed. Tr. 5508–09. Wahl did this, he averred, because he wanted Misuraca's analysis to be "conservative" and not overstate the value of CannaVEST's goodwill. Tr. 5508–09. He testified that he did not lie but had forgotten that he had reduced the figures. Tr. 5515. In his post-hearing filings, Wahl claimed that he did not intentionally "doctor" the email he sent to Misuraca but "made a harmless error in copying and pasting the numbers from the valuation and reduced them by approximately 50% which would reduce the discount rate by 50%." Wahl Resp. to Div. PFOF at 239–40 (PDF).

Wahl's conduct and testimony was neither harmless nor merely an error. As Wahl's explanations disintegrated under cross-examination, he changed his story again and again, often in contradictory ways. First he said that he copied and pasted the numbers, then that he made a typo, then that he was in a hurry and only estimated the numbers, then that he intentionally reduced the numbers by about half to be conservative. His claim that he had simply forgotten that he altered the projections is not credible. The only reasonable conclusion from his dissembling testimony is that Wahl intentionally misled Misuraca and repeatedly lied about it under oath.

As a result, I cannot give Misuraca's CannaVEST opinions any weight. Misuraca was under the false impression that he was reviewing financial projections prepared for CannaVEST management. Ex. 1036 at 5. Wahl never told him that he reduced those figures by half. Tr. 5511 ("I could have trued it up with him, but I didn't have time."), 5512 ("I should have sent the Excel spreadsheet to him and had a discussion with him, but I didn't have time."). Wahl claimed that he was not misleading Misuraca because if he wanted to mislead Misuraca, he would have increased the projections to make CannaVEST's goodwill look stronger rather than reduce the projections to be conservative. Tr. 5512, 5516. While decreasing the projections could make CannaVEST's goodwill appear smaller, evaluating CannaVEST's goodwill was not the only topic Misuraca addressed. He also calculated CannaVEST's internal rate of return and opined on its reasonableness. Ex. 1036 at 4, 6. Wahl himself testified that he believed CannaVEST's projections were "a little overstated." Tr. 5510. Moreover, Wahl altered the figures he provided Misuraca by varying amounts, not by a simple division in half. Misuraca thus analyzed figures that had no relationship to CannaVEST management's projections. Misuraca's resulting opinions are not tied to the facts and are entitled to no evidentiary weight. *See Ira Weiss*, Securities Act Release No. 8641, 2005 WL 3273381, at *6 n.21 (Dec. 2, 2005) (giving "such weight to the expert testimony as [the Commission] consider[s] is indicated by the relevant facts in the record"), *pet. denied*, 468 F.3d 849 (D.C. Cir. 2006).

That leaves Wahl's false statements under oath. Perjury is troubling in any context, and giving false testimony in Commission proceedings can in itself constitute improper professional conduct. Exchange Act Section 4C and Rule of Practice 102(e) allow the Commission to bar from practicing before it those who are "lacking in character or integrity." 15 U.S.C. § 78d–3(a)(2); 17 C.F.R. § 201.102(e)(1)(ii); *see William A. Dougherty*, Public Utility Holding Company Act of 1935 Release No. 13567, 1957 WL 52386, at *3 (Oct. 18, 1957) (finding that an attorney's false testimony in a Commission investigation was improper professional conduct and barring the attorney from practicing before the Commission).[9] But the OIP in this case did not reference the "character or integrity" part of Section 4C or Rule 102(e) as a basis for this proceeding. OIP at 1 nn.1–2; *id.* at 3–4, 20–21, 31, 40–42. Because Wahl's false testimony does not come within the scope of the OIP, I do not rely on it to find any violations.[10] *See* OIP at 40–42 (charging violations based on "the conduct described" in the OIP, and directing for a determination as to whether the "allegations set forth

[9] In *Dougherty*, the Commission considered whether the attorney committed improper professional conduct under former Rule 2(e) of the Rules of Practice. Rule 102(e) is the successor to Rule 2(e), and the text of Rule 2(e)(2) is identical to Rule 102(e)(1)(ii). *See Steven C. Wolfe, Sr., CPA*, Exchange Act Release No. 39589, 1998 WL 28039, at *1 n.1 (Jan. 28, 1998) ("While we revised comprehensively our Rules of Practice in 1995, we made no substantive changes to Rule 2(e), other than to renumber it as Rule 102(e)."). *Compare* 17 C.F.R. § 201.2(e)(2) (1949), *with* 17 C.F.R. § 201.102(e)(1)(ii).

[10] This decision has no bearing on whether the Commission or another authority takes subsequent action based on Wahl's perjury.

in Section II [of the OIP] are true" and whether sanctions should be imposed); *see also Russell W. Stein*, Exchange Act Release No. 47504, 2003 WL 1125746, at *8 n.34 (Mar. 14, 2003), *recons. granted on other grounds*, Exchange Act Release No. 50168, 2004 WL 1778889 (Aug. 9, 2004). Nevertheless, I consider Wahl's misconduct in the context of whether a sanction is in the public interest. *See infra* Sanctions §§ 2, 2.11.

2.2.2. Premier report

Misuraca opined in his Premier report that the valuation of an unsecured promissory note that Premier received was reasonable and "in conformity with GAAP" and that Wahl's work as engagement partner on Anton & Chia's audit of Premier for 2013 materially complied with GAAS and GAAP. Ex. 1122 at 6. The Division argues that these opinions should not be given any weight because Misuraca has never worked as an auditor or audited a public company and is not an expert in GAAS or GAAP. Div. Mot. to Exclude Misuraca at 11–12 (Sept. 16, 2019); *see* Tr. 3392, 3466–67.

The scope of Misuraca's review of the Premier audit and his opinions is limited. He focused on valuation issues and the method of valuing the note. Tr. 3469–70. He has the requisite expertise to opine on valuation issues, and I will consider his opinion on the issue of the valuation of the promissory note. Misuraca stated in his report that, "[b]ased on [his] review of Greg Wahl's work in this action," it was his opinion that Wahl's work materially complied with GAAP and GAAS. Ex. 1122 at 6. In his hearing testimony, however, Misuraca clarified that his review of Wahl's work was limited. Tr. 3446–47 (testifying that he looked at various Anton & Chia workpapers but did not read them line by line). He testified that he was not offering an opinion about whether Premier complied with GAAP or Anton & Chia's audit complied with GAAS. Tr. 3467. As with Devor's testimony, I do not rely on Misuraca's testimony to decide whether specific conduct complied with the PCAOB standards or GAAP. *See optionsXpress,* 2016 WL 4413227, at *27; *Potts*, 1997 WL 690519, at *10 n.56.

2.3. Wahl's valuation expert William W. Holder

Wahl engaged William W. Holder as an expert during the Commission's investigation before this proceeding began, and Holder prepared an expert report. Holder was not retained as an expert for the proceeding, and I provisionally granted the Division's motion to exclude him from testifying as an expert witness at the hearing. *Anton & Chia*, Admin. Proc. Rulings Release No. 6694, 2019 SEC LEXIS 3758, at *3 (ALJ Oct. 7, 2019). I reserved ruling on the admissibility of Holder's report because Misuraca may have relied on it in forming the opinions in his Premier report. *Id.* at *4. At the hearing, however, Misuraca testified that he did not rely on Holder's report. Tr. 3594, 3627. For this reason, Holder's report, Exhibit 1113, is not admitted.

Findings of Fact and Violations of Accounting Standards

1. Legal standard for factual findings

I base the findings of fact herein on the entire record; the parties' stipulations, *see* 17 C.F.R. § 201.324; and on facts officially noticed from publicly available court filings, *see id.* § 201.323; *Global Network Commc'ns Inc. v. City of New York*, 458 F.3d 150, 157 (2d. Cir. 2006). I apply preponderance of the evidence as the standard of proof. *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

2. Respondents

Anton & Chia, LLP, was a PCAOB-registered audit firm with three offices in California that was founded in 2009. Ex. 840 ¶ 21 (stipulations). The firm filed for bankruptcy in July 2018, and the case was converted to Chapter 7 liquidation in August 2018. Tr. 4912. Anton & Chia's audits and interim reviews of Accelera Innovations, Inc., Premier Holding Corporation, and CannaVEST Corp. are the subject of this proceeding. *See id.*; OIP at 8–40.

Gregory Wahl is a certified public accountant who was the managing partner of Anton & Chia during the relevant period and also owned 90% of the firm. Ex. 839.6 at 156 (PDF) (designated portions of Wahl's deposition). Wahl was the engagement partner for Accelera's 2013 and 2014 year-end audits and five 2014 and 2015 interim reviews, Premier's 2013 year-end audit, and CannaVEST's 2013 interim reviews. Wahl Answer at 5.

Michael Deutchman was a non-equity partner at Anton & Chia and was either the engagement partner or engagement quality review partner on multiple reviews of Accelera's financial statements in 2014 and 2015 and the 2014 audit. Tr. 638–39.

Georgia Chung is a certified public accountant who helped set up Anton & Chia in 2009 and served as the engagement quality reviewer for CannaVEST's 2013 first quarter interim review. Ex. 840 ¶ 23; Tr. 5143, 5153. She is married to Wahl. Tr. 4926.

3. Accelera facts and accounting violations

3.1. Introduction and summary

Accelera Innovations, Inc., a Delaware corporation doing business in Frankfort, Illinois, was incorporated in April 2008 as a shell company in the business of acquiring and managing other companies, primarily in the healthcare and information technology service industries. Ex. 840 ¶¶ 24, 35; Tr. 54.

On November 11, 2013, Accelera signed a stock purchase agreement with Behavioral Health Care Associates, Ltd., a health care provider in Schaumberg, Illinois, specializing in psychiatry and substance abuse treatment. Tr. 193–94; Ex. 184; Ex. 840 ¶ 25. The agreement provided for Accelera to acquire Behavioral's stock once it paid $1 million as consideration 90 days after closing, with the rest of the $4.55 million purchase price to be paid in installments over time. Ex. 184 §§ 1.1, 1.1.1, 1.1.1.1.

Despite never making any of the payments due under the agreement, Accelera consolidated Behavioral's revenues, assets, and liabilities with those of its own in its Commission filings from 2013 through 2015. Consolidation did not comply with GAAP, which requires the acquirer to have obtained control of the acquired company and for consideration to change hands. By consolidating Behavioral's finances with its own, Accelera's revenues were overstated by 90% in 2013 and 2014.

Relevant here are the six interim reviews and two year-end audits for Accelera from year-end 2013 through the third quarter of 2015 that Anton & Chia performed. *See* Ex. 840 ¶ 18. In 2013 and 2014, Anton & Chia issued an unqualified audit opinion for Accelera's financial statements. Wahl was the engagement partner on both year-end audits and all but one of the other engagements. Ex. 1.1 at 3; Ex. 1.4 at 3; Ex. 1.6 at 3; Ex. 136 at 5; Ex. 152 at 3; Ex. 166 at 3; Ex. 171 at 5; Ex. 178 at 3. Deutchman was the engagement quality reviewer (EQR) for the 2014 audit and the three quarterly reviews in 2015, and was engagement partner for the third quarter interim review in 2014. Ex. 1.4 at 3; Ex. 1.6 at 3; Ex. 152 at 3; Ex. 171 at 5; Ex. 178 at 3.

Wahl and Deutchman did not comply with the PCAOB's auditing standards in their respective roles during the audits and quarterly reviews of Accelera. As detailed below, both failed to note several red flags indicating that consolidation was inappropriate. Both failed to exercise due professional care and professional skepticism, failed to gather appropriate audit evidence, and did not adequately question the representations of Accelera's management in the year-end audits and the interim reviews. Both insufficiently documented issues concerning the Behavioral acquisition. Wahl failed to properly supervise one of the staff accountants during the 2013 audit, and Deutchman failed to act appropriately in carrying out the engagement quality review during the 2014 audit.

3.2. Accelera's consolidation of Behavioral

3.2.1. Accelera signed agreements to acquire Behavioral upon initial payment of $1 million.

Accelera's common stock was quoted on OTC Link operated by OTC Markets Group, Inc., under the ticker symbol ACNV, starting in January 2014. Ex. 840 ¶ 24. John Wallin was the company's CEO, and Cynthia Boerum was its chief strategic officer. Tr. 55, 378. From September 2014 through March 2015, Daniel Freeman was Accelera's CFO. Tr. 54–55. Dr. Blaise Wolfrum was the president and CEO of Behavioral. Tr. 194.

The stock purchase agreement signed November 11, 2013, provided that Behavioral will "become a wholly owned subsidiary of [Accelera] upon receipt of [the] purchase price set forth in Section 1.1.1.1" of the agreement. Ex. 184 at 1 (recitals). Section 1.1.1.1 in turn states that ninety days after closing (which, as defined in Section 2.1, was the date the agreement was signed), Accelera was to pay Wolfrum $1 million, and would pay the full purchase price of $4.55 million over time. *Id.* § 1.1.1.1; *see also id.* §§ 1.1.1.2–.3, 2.1. The operative paragraphs of the agreement reiterated the language from the recitals that Behavioral's stock would transfer only upon its receipt of the initial $1 million payment. *Id.* § 1.1. Both Wolfrum and Boerum understood these clauses to indicate that Behavioral would not be owned by Accelera until the $1 million payment was made. Tr. 199, 382. Accelera never made any payments to Wolfrum under the agreement, and thus never acquired its stock. Tr. 62–63, 202–03, 212, 382–83.

Sections 2.2, 2.3, and 2.4 of the agreement required deliveries of certain documents by Accelera, Wolfrum, and Behavioral at closing. These documents' terms are consistent with the stock purchase agreement in that they indicate that Behavioral's stock would not transfer until payment of $1 million 90 days later. The bill of sale stated that Wolfrum will convey Behavioral's stock to Accelera once the $1 million payment is paid. Ex. 194. A stock powers certificate said the same. Ex. 189. Accelera signed a promissory note for $3.55 million, effective once the $1 million was paid, to cover the rest of the $4.55 million purchase price the parties had agreed upon. Ex. 186 at 1. According to a stock pledge and escrow agreement (also effective upon payment of the $1 million), Behavioral's shares would be placed in escrow and held as security until the entire purchase price was paid. Ex. 188 at 142959–60. A security agreement added that Wolfrum would retain a security interest in Behavioral's assets until Accelera paid Wolfrum the full purchase price. Ex. 1207 §§ 1, 2, 7(d), Ex. A. An operating agreement provided for the creation of an entity called Accelera Healthcare Management Service Organization LLC, and a shareholder action agreement said that Wolfrum would become the manager of the new management service organization and the president of Behavioral, which was to become a wholly owned subsidiary of Accelera. Ex. 185; Ex. 191 at 143275. But the shareholder agreement stated that Wolfrum would remain CEO of Behavioral until Accelera made the $1 million payment. Ex. 191 at 143275. And no assets were ever moved to the management service organization. Tr. 70–71, 214–16. Finally, the parties signed an employment agreement providing that Wolfrum would become president of Accelera's Behavioral unit, would report to Wallin, and would receive $300,000 in annual salary. Ex. 190 at 1. Although the employment agreement said nothing about when it would become effective, Wolfrum understood that like the other agreements, its effectiveness was dependent on Accelera's payment of the initial $1 million. Tr. 218. Further, it was a "condition of employment" that Wolfrum sign a confidentiality agreement, and that agreement was only effective upon the payment of the initial $1 million. Ex. 190 at 2, 18. In any event, Wolfrum never reported to Wallin or collected a salary from Accelera. Tr. 216–17, 388.

In addition to all these agreements which never took effect, Accelera never made any management decisions for Behavioral or entered into contracts on its behalf; never paid its expenses or controlled its bank accounts; never supervised Wolfrum or decided his salary; never directed or made employment decisions about Behavioral's employees; never directed Behavioral's day-to-day operations; and never received any of Behavioral's revenues. Tr. 73–74, 77–78, 245–46, 387.

Recognizing that Accelera had not made its initial $1 million payment, Wolfrum and Accelera entered into four amendments to the stock purchase agreement between February 2014 and May 2015. Exs. 197, 201, 205, 257. Each amendment substituted a new Section 1.1.1.1 of the stock purchase agreement for the old one. The new Section 1.1.1.1's provided more time for Accelera to pay the $1 million. Ex. 197 at 1; Ex. 201 at 1; Ex. 205 at 2; Ex. 257 at 2. Each amendment also provided Wolfrum with shares of Accelera as consideration for the extension of time. Ex. 197 at 1–2; Ex. 201 at 2; Ex. 205 at 2–3; Ex. 257 at 2–3. But none of the amendments altered the fundamental nature of the transaction, namely, that Behavioral's stock would only transfer to Accelera upon Accelera's payment of the initial $1 million.

3.2.2. Accelera consolidated Behavioral's financials with its own despite never making the initial $1 million payment to acquire Behavioral.

Despite never making the initial $1 million payment to acquire Behavioral, Accelera consolidated Behavioral's revenues, assets, and liabilities with those of its own in its publicly filed financial statements from its 2013 10-K through its 2015 10-K. *E.g.*, Ex. 105 at F-3–4 (Accelera 2013 Form 10-K); Ex. 114 at F-3–4 (Accelera 2014 Form 10-K) (consolidating Behavioral but writing off the goodwill); Ex. 132 at F-21 (Accelera 2015 Form 10-K) (consolidating Behavioral but counting it as a discontinued operation from January 1, 2016, and onward because of the termination of the stock purchase agreement); Ex. 135 at 7 (Accelera 2016 Form 10-K) (explaining that "[t]he 2015 financial statements included elsewhere in this Form 10-K have been restated to remove [Behavioral] from our consolidated financial statements").

Freeman testified that Accelera decided to consolidate Behavioral's financials with its own because it had no other operations and would otherwise have been considered a shell company. Tr. 81. Indeed, in its Form 10-Q directly preceding the stock purchase agreement with Behavioral, Accelera reported no revenues and only $50 of assets. Ex. 840 ¶ 35. Once Accelera consolidated Behavioral, Behavioral comprised 90% of its revenue in 2013 and 2014. Ex. 105 at F-4; Ex. 175 (2014 consolidated trial balance worksheet); Tr. 2321–23 (Shek explaining how the trial balance supports his earlier statement that 90% of Accelera's 2014 revenue came from Behavioral).

3.2.3. Accelera's agreement to purchase Behavioral was terminated, and a new auditor restated Accelera's 2015 Form 10-K.

In mid-October 2015, Wolfrum emailed Accelera, reiterating his belief that Accelera did not own Behavioral until he was paid for the shares. Ex. 307 at 1340–41. On March 31, 2016, Wolfrum and Accelera terminated the stock purchase agreement, effective as of January 1, 2016. Ex. 133, Ex. 10.1 at 1, 6 (termination agreement); Ex. 840 ¶ 37. An earlier draft of the termination agreement included a paragraph that would have required Accelera to file a Form 8-K disclosing that it "should not have recognized on its books and records the revenue and expenses of" Behavioral. Ex. 264 § 4. But Accelera did not agree to put that paragraph in the final version of the termination agreement. Tr. 288–89.

In November 2016, Accelera terminated its relationship with Anton & Chia and engaged AJ Robbins CPA, LLC, as its auditor instead. Ex. 134 at 2. Accelera specifically wanted an auditor who would restate the reports where Behavioral had been consolidated. Tr. 409–10. Robbins told Boerum that

Accelera should not have been recognizing revenue based on the stock purchase agreement. Tr. 409–10. In its 2016 Form 10-K, Accelera restated its 2015 financial statements because it "determined that the financial statements of [Behavioral] should have never been consolidated with those of the Company since the Company was never able to take control of [Behavioral] due to non-payment of the purchase price." Ex. 135 at F-19.

3.3. Accelera's consolidation of Behavioral's financials with its own did not comply with GAAP.

Accelera's consolidation of Behavioral did not comply with GAAP. The Financial Accounting Standards Board (FASB) establishes the financial accounting and reporting standards for public and private companies that follow GAAP. FASB Accounting Standards Codification (ASC) 805 covers business combinations, or, in other words, a "transaction or other event in which an acquirer obtains control" of a business. ASC 805-10-20. Control is the "direct or indirect ability to determine the direction of management and policies through ownership, contract, or otherwise." *Id.* A business combination must be accounted for using the acquisition method, which requires, as its second step, "[d]etermining the acquisition date." ASC 805-10-05-4. The acquisition date is "the date on which [the acquirer] obtains control of the acquiree" and "generally is the date on which the acquirer legally transfers the consideration, acquires the assets, and assumes the liabilities of the acquiree—the closing date. However, the acquirer might obtain control on a date that is either earlier or later than the closing date." ASC 805-10-25-6–7. Further, ASC 810 discusses when financial statements should be consolidated. *See* ASC 810-10-05. It provides that "[f]or legal entities other than limited partnerships, consolidation is appropriate if a reporting entity has a controlling financial interest in another entity" and that "[t]he usual condition for a controlling financial interest is ownership of a majority voting interest." ASC 810-10-25-1; *see* ASC 805-10-20 (defining "control" as having the same meaning as "controlling financial interest" in ASC 810).[11]

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11 ASC 810 also discusses the variable interest entity (VIE) model for consolidation, according to which "a controlling financial interest may be achieved other than by ownership of shares or voting interests" when the acquiring company has both the "power to direct the activities that most significantly impact the VIE's economic performance" and "[t]he obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE." ASC 810-10-05 (General Note on Consolidation). But there is no indication that VIE accounting would have been appropriate here. The

Accelera entered into an agreement to purchase Behavioral's shares. But because it never paid for the shares, it never obtained them. Ex. 184 §§ 1.1, 1.1.1.1. Accelera thus did not have a "controlling financial interest" in Behavioral that would make consolidation appropriate under ASC 810-10-25-1. Further, the acquisition date as defined in ASC 805-10-05-4 never came to pass. Although the closing date of the stock purchase agreement was the day it was signed on November 11, 2013, consideration—which was the initial $1 million payment—never transferred. As ASC 805 recognizes, sometimes control passes only after the closing date. ASC 805-10-25-7. Finally, Accelera never controlled Behavioral by other means either. As Boerum, Freeman, and Wolfrum testified, Accelera had no ability to "determine the direction" of Behavioral's "management and policies." ASC 805-10-20. Accelera was not following GAAP when it consolidated Behavioral's financial statements with its own.

3.4. Wahl and Deutchman's arguments that consolidation was appropriate are unpersuasive.

Wahl argues that consolidation was appropriate because the stock purchase agreement defined the date it was signed as the "closing" date and said it was "effective" as of the closing. Wahl Post-hr'g Br. at 62. Yet as explained above, the fact that the closing date of the transaction was the date it was signed does not mean control transferred on that date. *See* ASC 805-10-25-7. To the contrary, the agreement made it clear that Behavioral's stock would not transfer until $1 million was paid, and that even then, it would be held in escrow until the rest of the purchase price was paid. Ex. 184 §§ 1.1, 1.1.1.1; Ex. 188 at 142959–60. The same is true regarding other documents such as the promissory note documenting Accelera's liability and the shareholder action agreement; the note became effective only once the $1 million was paid, and the shareholder agreement stated that Wolfrum would remain Behavioral's CEO until the $1 million was paid. Ex. 186 at 1; Ex. 191 at 143275; *see* Wahl Post-hr'g Br. at 62, 68.

Wahl further argues that Accelera had control because the operating agreement, which was effective as of November 2013, called for the creation of

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transaction was a straightforward stock purchase in which controlling financial interest would be achieved once Accelera paid for Behavioral's stock. Further, as noted, Accelera had no power to direct Behavioral's activities, which would be required for consolidation under the VIE model. To the extent that Wahl attempts to claim in his proposed findings that VIE accounting is applicable, *see* Wahl PFOF at 534–38 (PDF), his arguments are unclear. Moreover, I will not consider arguments made only in a party's proposed findings of fact.

a management service organization with Wolfrum at its head, and the security agreement spoke of the purchase of Behavioral's stock in the past tense, as if it had already occurred. Wahl Post-hr'g Br. at 63; *see* Ex. 1207 § 2; Ex. 185 at 1; Tr. 4658–59 (Wahl, speaking about the operating agreement's creation of the new organization, wondered, "if the business intent isn't to close a transaction, why go through all this trouble and why have this clause in the agreement?"). But these agreements did not provide Accelera with control of Behavioral. They were ancillary documents; neither consummated the stock purchase. No assets were ever moved to the management service organization created by the operating agreement. Tr. 70–71, 214–15. And the security agreement was relevant only once Accelera had paid Wolfrum the initial $1 million; it gave him a continued security interest in Behavioral's assets until he was paid in full by Accelera. *See* Ex. 1207 §§ 1, 2, 7(d), Ex. A.

Similarly, although Wahl argues that the employment agreement between Accelera and Wolfrum was effective as of November 2013, Wahl Post-hr'g Br. at 63–64, the agreement alone provides no basis for control. Wolfrum was never actually employed by Accelera in any meaningful way. Tr. 216–17, 388 (Wolfrum never reported to Wallin or collected a salary from Accelera).[12] Pointing to both the language of the employment agreement and an April 2016 document from Accelera's board of directors following the termination agreement, Wahl maintains that Wolfrum must have been an employee because he received 600,000 shares of Accelera as compensation pursuant to the employment agreement. Wahl Post-hr'g Br. at 63–65, 68; Ex. 190 at 1–2; Ex. 1259 at 2 (PDF) (Accelera's board in 2016 "confirms that the 600,000 shares were earned as compensation under the November 20, 2013 Employment Agreement in increments of 200,000"). However, the Division disputes that Accelera granted Wolfrum the shares under the terms of the employment agreement, noting that Wahl's assertion is belied by the termination agreement itself and that Wolfrum and Boerum testified to a different reason for his receipt of the shares. Div. Resp. to Wahl PFOF at 563–64, 570 (PDF); Ex. 133, Ex. 10.1 at 2 ("The Parties agree that the transfer of Shares from the Purchaser to Seller shall not be deemed to be consideration

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[12] The fact that several of Accelera's 10-Ks call Wolfrum an "executive officer" of Accelera also does not demonstrate that Accelera had control of Behavioral. *See* Wahl Post-hr'g Br. at 63, 65; Ex. 105 at 49–50; Ex. 114 at 26–27; Ex. 132 at 29–30. The 10-Ks stating that Wolfrum was actually employed by Accelera were as mistaken as they were in other respects; indeed, the 2014 10-K is equally mistaken when it refers to Behavioral as a 100% owned subsidiary of Accelera, and its statements alone cannot be used to support consolidation. Ex. 114 at F-7; *see* Wahl Post-hr'g Br. at 65.

under or pursuant to any of the Stock Sale Agreements."); Tr. 285, 404–05 (Wolfrum and Boerum testified the shares were compensation for the hassle of allowing Behavioral to be audited in early 2016 for the 2015 audit while the termination agreement was already being negotiated). Regardless of whether the shares granted were compensation contemplated by the original agreement, the fact remains that Wolfrum never worked for Accelera in any way that could support Accelera's control of Behavioral for accounting purposes.[13]

Wahl appears to assert that the amendments to the stock purchase agreement somehow created a new means of transferring control of Behavioral to Accelera. He notes that each amendment deleted the outdated Section 1.1.1.1 of the agreement—the provision requiring Accelera to pay Wolfrum $1 million 90 days after closing to obtain Behavioral's stock. Wahl Post-hr'g Br. at 65–67. Wahl argues the amendments instead provided for a different type of consideration: "an obligation to pay Wolfrum $4.5MM and … compensat[e] him with shares at each event of default." *Id.* at 66 n.75 (emphasis omitted); *see also* Wahl PFOF at 520 (PDF). He explains that since the first two amendments became effective in February and March 2014, respectively, during the 2013 audit, the amendments overrode the original stock purchase agreement for that period. Wahl Post-hrg Br. at 65–67. But the amendments merely substituted a different Section 1.1.1.1 with new payment deadlines in place of the old one. Ex. 197 at 1; Ex. 201 at 1. The terms of the agreement never changed in principle; Accelera would control Behavioral only after it paid for its stock. Moreover, the 2013 audit was about Accelera's 2013 finances; the 2014 amendments were not retroactive and could not have changed the

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13 Insofar as Accelera's 2016 board resolution purports that the transfer of shares was compensation under the employment agreement, that resolution cannot alter the terms of the termination agreement, which made clear that: the transfer of shares was not consideration under prior agreements including the original stock purchase agreement, employment agreement, or any subsequent amendments (collectively referred to as the stock sale agreements in the termination agreement); Accelera did not make payments required by the stock sale agreements; and the termination agreement constituted the entire agreement among the parties and superseded any prior understandings, agreements, or representations. *See Farmers Auto. Ins. Ass'n v. Wroblewski*, 887 N.E.2d 916, 923 (Ill. App. Ct. 2008) (indicating that under Illinois law, contracts are interpreted by first considering the contractual language and that extrinsic evidence cannot modify unambiguous terms in a written contract); Ex. 133, Ex. 10.1 at 1, 2, 5. Thus, the transfer of shares did not fulfill the purchase price requirement and do not show that Accelera employed Wolfrum in any meaningful way that established control over Behavioral.

accounting for 2013. No better is Wahl's argument that consolidation was appropriate because the first amendment removed the provision allowing either party to terminate the agreement before the payment of the purchase price, and the second amendment restricted Accelera's ability to cancel. Wahl Post-hr'g Br. at 65, 67; Ex. 197 at 1; Ex. 201 at 2. The lack of an ability to terminate does not mean that the agreement was actually consummated.

Wahl asserts that Wolfrum never said that the transaction had not closed, and to the contrary, he confirmed the debt Accelera owed him each year upon Anton & Chia's request and he cooperated with the audits. Wahl Post-hr'g Br. at 68–69. But these points have little to do with who actually controlled Behavioral. That Wolfrum cooperated with the audit does not mean Accelera actually controlled his company or even that he believed it did. And the fact that Wolfrum confirmed that the full $4.55 million was still owed to him indicates that control never passed to Accelera.

Deutchman, for his part, points out that ASC 805 provides many ways of obtaining control, even "without transferring consideration," including "by contract alone." ASC 805-10-25-11; *see* Deutchman Post-hr'g Br. at 18. He asserts that there was "common control" between Behavioral and Accelera because the agreements had been signed, Wolfrum was a contractual employee of Accelera, he was paid Accelera shares, and the parties wanted to merge. Deutchman Post-hr'g Br. at 19. In such a situation, according to Deutchman, consolidation was appropriate even though no consideration transferred as long as the Accelera's debt to Behavioral was booked on its balance sheet and Accelera did not recognize any goodwill from the transaction. *Id.* But Deutchman's theory has no basis. The transaction between Accelera and Behavioral was a stock purchase agreement, and the agreement was quite clear that Behavioral's shares would not transfer until the stock was paid for. This was not a situation where the contract provided for control without payment of consideration.

Next, Deutchman argues that consolidation was permitted by Commission regulations. Rule 3-05 of Regulation S-X concerns "[f]inancial statements of businesses acquired or *to be* acquired," and states that "[f]inancial statements prepared and audited in accordance with this regulation should be furnished" if a "business combination has occurred *or is probable*," or "[c]onsummation of a combination between entities under common control *is probable*." 17 C.F.R. § 210.3-05(a)(1)(i)–(ii) (emphasis added). Further, Rule 3-05 provides: "Acquisitions of a group of related businesses that *are probable* or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the registrant have been filed shall be treated under this section *as if they are a single business combination*." 17 C.F.R. § 210.3-05(a)(3) (emphasis added). Deutchman asserts that these regulations demonstrate that consolidation of two companies' financial statements is permissible even before the combination has occurred, as long as it is probable that it will occur. Deutchman Post-hr'g Br. at 15–17. Nothing, however, shows that the auditors, when reviewing Accelera's financial statements, considered this supposed rationale or the degree of probability in which Accelera's transaction with Behavioral would be consummated. The information available to the auditors should have raised serious concerns undercutting that probability.

Moreover, Rule 3-05 merely requires the financial statements of a soon-to-be subsidiary to be "furnished" to investors. *See* 17 C.F.R. § 210.3-05(a)(1). It does not support the notion that the financials of two entities should be consolidated in the situation presented by this case. *See* Instructions for the Presentation and Preparation of Pro Forma Financial Information and Requirements for Financial Statements of Businesses Acquired or To Be Acquired, 47 Fed. Reg. 29,832, 29,834–35 (July 9, 1982) (recognizing, in the adopting release, the distinction between furnishing an acquired or to-be-acquired business's financial statements and consolidating those financials with the acquiree after the acquisition). Indeed, Commission rules found elsewhere provide guidance on when consolidation is appropriate. *See* 17 C.F.R. § 210.3A-02(a) (stating, with exceptions, "[g]enerally, registrants shall consolidate entities that are majority owned and shall not consolidate entities that are not majority owned").

Deutchman also points to Rule 4-08 of Regulation S-X, which provides that "[a]mounts of related party transactions should be stated on the face of the balance sheet" and that when separate financial statements are presented for the entity or its subsidiaries, "intercompany profits or losses resulting from transactions with related parties and the effects thereof shall be disclosed." 17 C.F.R. § 210.4-08(k). He therefore argues that he was required to disclose Accelera's contractual relationship with Behavioral, and that his failure to do so could also have been the basis for fraud charges. Deutchman Post-hr'g Br. at 19–20. But again, Rule 4-08 is talking about disclosure, not consolidation. Accelera could have drafted financial statements disclosing the relationship between Accelera and Behavioral without consolidating the entities.

Finally, Anton & Chia's audit file never referenced any of the preceding Regulation S-X rules as a basis for consolidation, and Deutchman never mentioned any of them in his testimony as something he considered at the time. *See Gregory M. Dearlove, CPA*, Exchange Act Release No. 57244, 2008 WL 281105, at *10 n.39 (Jan. 31, 2008) ("We consider the absence of work papers to be evidence that the audit team did not devote substantial, if any, effort to review the areas in question."), *pet. denied*, 573 F.3d 801 (D.C. Cir. 2009).

3.5. Anton & Chia's audits and interim reviews of Accelera

3.5.1. 2013 audit

For the 2013 year-end audit, Wahl served as the engagement partner, and Yu-Ta Chen was one of two staff accountants. Ex. 136 at 5. In its planning memorandum, the firm stated that it would examine the agreements surrounding Accelera's purchase of Behavioral and would request a purchase price allocation. *Id.* at 3.

The team was aware that their main correspondent at the company, Timothy Neher—who was the founder of Accelera and was doing the accounting at the time—had poor financial and accounting abilities. Tr. 56–57, 474, 559–60. Anton & Chia documented that it would not rely on Accelera's internal controls because it had no significant operations and a small board of directors. Ex. 1, 2013 Audit Annual, WP 1105 at 2. Neher did not provide Anton & Chia with a draft Form 10-K or draft financials until March 24, 2014, just six days before the filing deadline. Ex. 202 at 22969.

Anton & Chia, including Wahl, received all of the agreements concerning Accelera's purchase of Behavioral. Exs. 302–04; Tr. 499–504. Wahl signed off as having reviewed several of them (including the stock purchase agreement). Ex. 138 at 1–2, 4. Accelera's Form 10-K also noted that pursuant to the stock purchase agreement, Accelera was required to pay $1 million 90 days from the date of closing. Ex. 105 at F-7. Thus, it would have been obvious to the auditors, either from the Form 10-K itself, or certainly through review of the agreements, that payment was required to consummate the acquisition. At the hearing, Wahl admitted that Accelera had never paid Wolfrum the initial $1 million. *See* Tr. 5216.

Chen prepared a memo to document the Behavioral acquisition, which Wahl signed off on as having reviewed. Ex. 142; Ex. 138 at 4 (sign off for WP 2503); Tr. 508. Chen did not have any auditing experience at the time and had just been hired earlier that month. Tr. 468, 471; *see* Ex. 280 (Chen's resume). He had never worked on business combinations before and had never drafted anything like the acquisition memo previously. Tr. 514–15. He based the memo largely on a template. Tr. 510, 513.

The memo identified ASC 805 as the relevant GAAP standard. Ex. 142 at 2–3. It also acknowledged that it is key to determine if, in the transaction, "someone gain[ed] control." *Id.* at 2. And it noted that "the usual condition for controlling interest is the ownership of the majority voting interest in the entity." *Id.* at 4. After setting forth the basics of control, the memo then explained that one must identify the acquisition date, which is "not necessarily the date of an agreement or reaching binding terms." *Id.* Yet curiously, the memo did not attempt to determine the acquisition date, and turned instead to other topics. It is not entirely clear whether Chen believed that the acquisition had even gone through yet. The memo noted, for example, that Accelera *will* pay Behavioral $4.55 million, and that "[a]s a result, [Behavioral] would become a wholly owned subsidiary of the Issuer." *Id.* at 1–2. And it further stated that per the agreement, Accelera "*will* obtained [sic] 100% of the ownership" of Behavioral. *Id.* at 2 (emphasis added). The memo concluded with another ambiguous remark, that "[r]evenue will begin to accrue to the Issuer from Target operations prospectively from the date the Issuer obtains control." *Id.* at 9. In sum, the memo failed to explain if and when Accelera obtained control of Behavioral.

Anton & Chia performed no fieldwork for the 2013 audit. Tr. 497–98. There is no evidence in the workpapers that the team questioned Wolfrum about whether Accelera controlled Behavioral. Chen did not recall having any such conversations with Wolfrum. Tr. 536–37.

Accelera's 2013 Form 10-K had an unqualified audit opinion from Anton & Chia. The firm opined that Accelera's financial statements, "present fairly, in all material respects, the consolidated financial position of Accelera Innovations, Inc. as of December 31, 2013 and 2012, and the consolidated results of their operations and their cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America." Ex. 105 at F-2. Anton & Chia further represented that it had "conducted [its] audits in accordance with the standards of the Public Company Accounting Oversight Board." *Id.* The report included a going concern disclosure, noting "substantial doubt about [Accelera's] ability to continue as a going concern" because of, among other things, the company's "recurring operating losses and negative cash flow." *Id.*

In its report to Accelera's board of directors related to its 2013 audit, Anton & Chia "identified a lack of sufficient personnel" for accounting and financial reporting "with appropriate skills, training, and experience" to ensure compliance with GAAP. Ex. 143 at 927. The firm recommended Accelera "hire a full time CFO with relevant experience." *Id.*

3.5.2. 2014 interim reviews and year-end audit

Anton & Chia continued to audit Accelera in 2014, and Wahl remained the engagement partner on all engagements (including year-end) except for the third quarter review, in which he was not involved. Ex. 1.1 at 3; Ex. 1.4 at 3; Ex. 166 at 3; Ex. 171 at 5. Tommy Shek was the audit manager for the year-end audit. Ex. 171 at 5.

No additional analysis of Behavioral's consolidation was undertaken in 2014. *See* Tr. 548 (Chen testified that the issue did not come up again in the reviews he worked on). No additional workpapers analyzed the issue. *See* Tr. 1162 (confirmed by Devor's review). Chen and others, however, wondered on a couple of occasions whether Accelera had ever paid off its debt to Behavioral. Ex. 206 at 27229 (August 2014 email from Chen to Neher asking whether "the Company paid off [Behavioral]"); Ex. 207 at 27237 (draft Q2 10-Q with Richard Koch's handwritten notes asking whether the purchase price installments had even been paid); Tr. 560–63.

Anton & Chia auditors visited Behavioral to perform fieldwork three times. Tr. 248. In mid-April 2014, Wolfrum instructed Anton & Chia staff by email to remain confidential and keep a low profile during the audit, and not to mention anything about the sale to Accelera to anyone but himself. Ex. 204 at 15069. At the hearing, Wolfrum claimed he sent this email because he "didn't want people in the office to think that we had sold the business, because we hadn't." Tr. 253. Wolfrum then told the staff who came for fieldwork that he still "owned Behavioral, and that no one's made any payments yet, … although I was hoping they would soon." Tr. 255. He further told the auditors that he paid the taxes, wrote the checks, and managed the bank accounts, because "it's totally separate from Accelera. They haven't purchased us yet." Tr. 256. Similarly, during field work at Behavioral in 2015, Wolfrum told the auditors that "Accelera hasn't paid yet, and I still own a hundred percent of the company." Tr. 258–59, 264. Indeed, during both audits, the auditors had access on site to Behavioral's bank records, which, had the auditors looked at them, would have showed that Behavioral had not paid any of its revenues to Accelera. Tr. 258, 266.

Anton & Chia was hired to complete an acquisition audit for Behavioral. Ex. 839.6 at 110 (PDF). But, as of September 2014, Accelera had not completed the required filings on its end. *Id.* at 494 (PDF); Tr. 2345. Anton & Chia never completed the acquisition audit. Tr. 538–39.

Deutchman was staffed as the engagement partner on Accelera in the third quarter of 2014. Ex. 1.4 at 3; Tr. 729. For the year-end audit, on the other hand, he was listed as the EQR in the planning memo. Ex. 171 at 5. But while Deutchman maintained that he was indeed EQR, Tr. 769–70, a draft of the planning memo for the year-end audit and the engagement summary memo instead listed Deutchman as the engagement partner and Wahl as the EQR. Ex. 176 at 48171; Ex. 237 at 13485; Tr. 768–70. Moreover, in several emails from the time of the year-end audit, Deutchman was referred to as the "EP," the "partner in charge," or by other terms indicating he was engagement partner. Ex. 228 at 24839; Ex. 229 at 1475; Ex. 233 at 25660. Deutchman also took on roles that were more appropriate for an engagement partner: he communicated directly with Accelera, proposed calls, organized field work, and was involved in the audit planning meeting as well as other decisions at an early stage. Ex. 229 at 1475; Ex. 231 at 93380; Ex. 234 at 25680; Ex. 235 at 25729; Ex. 237 at 1 (PDF); Ex. 311; *see* Ex. 88.1 at 65 (Devor opined in his report that communicating with the company to be audited is a duty "typically performed by the Engagement Partner"). Wahl was not even copied on some of these emails. *See* Ex. 231 at 93380; Ex. 235 at 25729. Freeman testified that he thought Deutchman was the engagement partner because Deutchman was working with him to get ready for the audit. Tr. 132–33.

Once Freeman became the CFO of Accelera in September 2014, he was concerned that Behavioral was inappropriately consolidated. Tr. 54, 79–80. Freeman raised his concerns to Deutchman on a number of occasions. On a phone call in October 2014, Freeman opined that consolidation was inappropriate. *See* Ex. 214 at 492. Freeman followed up by email in December, and asked Deutchman to forward Anton & Chia's basis for consolidation, including any research and analysis the firm had done supporting consolidation. *Id.* Not receiving any response, Freeman pressed Deutchman again for a copy of the research in early January 2015. Tr. 102–03; Ex. 217 at 22132–33. Deutchman, however, again did not provide any research. Tr. 103. On February 2, 2015, Freeman sent a draft agenda for a call to Deutchman and others, one discussion point being whether Behavioral should be consolidated for the 2014 audit. Ex. 223 at 1283. Freeman also emailed Deutchman directly, telling him that the issue of Behavioral's consolidation would come up on the conference call, and that he did not agree with Neher's rationale for consolidation, because Accelera's "subsidiary never controlled" Behavioral. Ex. 222 at 1. At some point, Freeman also told Deutchman that he had called the hotline for the American Institute of Certified Public Accountants (AICPA), and that they had told him that Behavioral had been inappropriately consolidated. Tr. 111, 119–21.

During the conference call on February 9, Freeman again explained his problems with consolidation. Tr. 121–23; *see* Ex. 225. Accelera's attorneys, although on the call, expressed no opinion on the matter, as they felt it was an accounting matter, not a legal one. Tr. 122. According to Freeman, Deutchman opined that the previous financial statements were fine and did not need restatement, but did not offer any reason for his opinion. Tr. 123; *but see* Tr. 712 (Deutchman could not recall much about the call). Also according to Freeman, the parties on the call agreed to have Accelera's attorney Bob Acri meet with Wolfrum and enter into a supplemental agreement that would say that Behavioral "would be under the control of Accelera to get around the issue of consolidation." Tr. 123. No such agreement, however, was ever entered into. Tr. 123–24. Freeman resigned from Accelera on March 20, 2015, in part because of "the inappropriate consolidation of Behavioral with Accelera." Tr. 125–26; *see* Ex. 124; Ex. 227 at 1.

Deutchman never acted on any of Freeman's concerns. *See* Tr. 707–08, 711, 941. There is no evidence in the workpapers that Deutchman documented Freeman's questions or told the other members of the engagement team about them. *See* Tr. 698–700, 2336 (Shek, the audit manager for 2014, testified that he would have liked to have known), 2346 (Shek testified there were no discussions about Accelera's control of Behavioral during the 2014 audit). Moreover, it seems likely that Deutchman did not go back and review Chen's consolidation memo. Tr. 1050–54.

Deutchman testified that he did not take Freeman's concerns seriously for several reasons. For one, he and Wahl had a low opinion of Freeman's work; the firm needed to make many audit adjustments to the financial statements Freeman prepared. Tr. 702–03, 917, 4620, 5292. Second, he thought that if Freeman had real concerns about consolidation, it was his job to prepare a proper memo documenting them. Tr. 707–08, 719, 892. Third, he felt that providing Freeman with Chen's consolidation memo was inappropriate and would compromise his independence as an auditor. Tr. 938–39. Fourth, Deutchman believed that if Freeman had wanted an opinion on the legality of consolidation, it should have come from the Commission or another accounting firm that audited public companies, not the AICPA, which only worked with private companies. Tr. 870, 902. Finally, to a certain extent, he did not consider it to be his place to challenge his own firm's prior determination. Tr. 762, 1060–61; Ex. 839.6 at 480, 491 (PDF) (Deutchman's 2018 and 2019 deposition testimony in the Commission's district court case against Accelera). Anton & Chia had signed off on Accelera's financial statements back in 2013, and Deutchman was not "reordering the work or replanning the work"; he instead assumed that consolidation had been "done correctly." Tr. 762, 1061 ("I deferred to the firm's opinion and I still do.").

Despite the fact that Deutchman deferred to Anton & Chia on consolidation and did not formulate his own opinion, he testified (at the hearing at least) that he accepted the firm's position because he had seen the stock purchase agreement, Wolfrum's employment agreement, the promissory note, and the operating agreement—documents which convinced him that the firm's position was at least reasonable. Tr. 1097–98; *but see* Tr. 1062 (Deutchman impeached with 2016 investigative testimony where he said he could not recall whether he read any of the agreements). Deutchman was aware, however, that none of the purchase price for Behavioral had been paid. Among the workpapers for the 2014 audit on which Deutchman signed off was a confirmation signed by Wolfrum that Accelera had not paid him any of the $4.55 million purchase price for the company. *See* Ex. 239 at 1–2; Ex. 1, 2014

Audit Annual, WP 5303; Ex. 147 at line 453; *see also* Ex. 247; Ex. 840 ¶ 36 (Deutchman reviewed and signed off on the amendments to the stock purchase agreement extending the payment deadline). Further, Deutchman never asked Wolfrum about the status of the stock purchase agreement or whether Accelera had actually acquired Behavioral. Tr. 1066.

On March 31, 2015, Brian Rusywick, the chief operating officer of Anton & Chia, asked Deutchman to speak to an Accelera attorney and confirm which entities should be audited in 2014. Tr. 475; Ex. 240 at 1287. Deutchman did not think this was a legal question, however, and it appears he did not follow up with an attorney. *See* Tr. 796–99. On April 6, 2015, in an email titled "Legal - Accelera," Shek asked Deutchman "to call the attorney and obtain written representation for the entity to be consolidated in 2014." Ex. 241 at 1290. Deutchman did not follow up on this request either. Tr. 2333. The Division suggests that these incidents are further evidence Deutchman was put on notice that Behavioral's consolidation may have been inappropriate and was in fact told to obtain a legal opinion on the matter. *See* Div. Post-hr'g Br. at 8–10, 34; *see also* Div. PFOF at 88–89; Tr. 800–01, 2330.

But this is a stretch. The emails do not ask Deutchman to obtain a legal opinion about Behavioral's consolidation. Rusywick told him to ask Accelera's attorneys "what entities need to be audited," but there is no indication that his query was related to the appropriateness of Behavioral's consolidation. Similarly, there is no indication in Shek's request that Deutchman obtain an attorney's "written representation for the entity to be consolidated in 2014" is a representation *about* the appropriateness of Behavioral's consolidation with Accelera. Shek's subsequent email listing audit matters still outstanding, which asks for "[l]egal representation for business [Accelera] acquired in 2013 and 2014," is not questioning Behavioral's consolidation; in a routine manner, the email also asks for other information from Behavioral such as revenue testing and confirmation about the $4.55 million not yet paid. Ex. 249 at 30160–61. This suggests that the issue of consolidation was not the target of Shek's emails. In any event, if Deutchman had asked Accelera's attorneys about consolidation, it is not clear it would have been particularly illuminating. On the February 2015 call with Accelera—just a couple months before the emails from Rusywick and Shek—Accelera's attorneys saw the matter as an accounting question and not a legal one. *See* Tr. 122.

Earlier, on November 25, 2014, Accelera entered into a stock purchase agreement with Grace Home Health Care, Inc. *See* Ex. 113. The same day, Accelera entered into an asset purchase agreement with Watson Health Care, Inc., and Affordable Nursing, Inc. *Id.* On January 5, 2015, Accelera entered into a stock purchase agreement with Traditions Home Care, Inc. *See* Ex. 116. Accelera never made any payments toward completing these acquisitions.

Tr. 415. Unlike with Behavioral, however, Accelera did not consolidate these companies' financials with its own. Tr. 416. Wahl and Deutchman signed off as having reviewed the purchase agreements for Grace, Watson, and Traditions. Ex. 1, 2014 Audit Annual, WP 0418.01 (Grace and Watson 8-K) and WP 0419.01 (Traditions 8-K); Ex. 147 at lines 62, 66, 76, and 80 (Wahl and Deutchman's sign offs on 0418.01 and 0419.01). But the fact that these companies were not consolidated did not cause the team to rethink whether Behavioral's consolidation was appropriate. Shek testified that he reviewed the agreements and decided Accelera "didn't have control." Tr. 2340. He did not reevaluate the Behavioral transaction because he expected that the 2013 audit team had looked into it. *See* Tr. 2340–41.

Although Accelera was required to prepare a goodwill impairment analysis and purchase price allocation for Behavioral within one year of the acquisition, it had not done so by the time of the 2014 audit. Tr. 2342–43. Shek therefore drafted a goodwill impairment analysis, which was reviewed by both Wahl and Deutchman. Ex. 146; Ex. 147 at lines 409 and 412; Tr. 898–99. Shek and Deutchman decided to impair the entire amount of goodwill, over $4 million, because of Accelera's losses and because it did "not have sufficient support to validate the goodwill for [Behavioral]." Ex. 146 at 1487–88.

In addition to writing down all of the goodwill from the Behavioral acquisition, Anton & Chia proposed a number of other adjustments to Accelera's financials for the 2014 audit. Ex. 1204 at 5; Tr. 4612–17. In total, the firm made eight adjustments, which increased Accelera's losses by over $18 million and just about doubled the company's reported losses for the year. Tr. 4612, 4616–17. Wahl testified that this showed that Accelera's management was "not taking their job seriously," and that conversely, Anton & Chia was taking its job seriously. Tr. 4614. Deutchman testified that by making Accelera's losses worse, and especially by impairing all of the goodwill for Behavioral, Anton & Chia presented Accelera's financials to investors in the most conservative way. Tr. 703–04, 911.

Anton & Chia's unqualified audit report for 2014, like its 2013 report, stated that Accelera's financials had been presented in accordance with GAAP and that Anton & Chia's audit had complied with PCAOB standards. Ex. 114 at F-2. It also contained a going concern disclosure. *Id.*

3.5.3. 2015 interim reviews

Not much changed during Anton & Chia's quarterly reviews in 2015. The engagement team was similar; Wahl was the engagement partner and

Deutchman was the EQR. Ex. 1.6 at 3; Ex. 152 at 3; Ex. 178 at 3.[14] Although the firm noted in the second quarter of 2015 that Accelera still had not made any payments to Behavioral, no reassessment of the transaction was conducted. Tr. 582–84; Ex. 1.7. No one asked whether Accelera really controlled Behavioral. Tr. 2354–55. During the course of the 2015 reviews, Wahl continued to note that Accelera's internal controls were very poor. Ex. 258 at 2214; Ex. 261 at 115024. By July 2015, Anton & Chia was aware that Accelera was being investigated by the Commission for its financial reporting related to the Behavioral consolidation. Ex. 840 ¶ 40.

3.6. Wahl and Deutchman failed to follow PCAOB standards.

In their respective roles in the Accelera engagement, Wahl and Deutchman did not adhere to several PCAOB standards in effect at the time.[15]

3.6.1. Inadequate audit evidence, insufficient professional skepticism, and improper acceptance of management representations

"The auditor must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion," and appropriateness is measured by "relevance and reliability." PCAOB Auditing Standard (AS) No. 15.4, .6. But in 2013, the team did not perform field work at Behavioral or ask Wolfrum any questions to determine whether

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[14] Deutchman's testimony that he did not believe he was involved in the 2015 third quarter review is contradicted by the planning memo for that quarter. *Compare* Tr. 639, *with* Ex. 178 at 3.

[15] Wahl and Chung make a global argument pertaining to all three engagements, suggesting that many of the professional standards the Division claims they violated are not obligatory, as the standards use words like "shall" and "should" instead of "must." *See* Wahl Response to Div. PFOF at 2–3, 823 (PDF). But the PCAOB considers "shall" to denote an "unconditional responsibility" and "should" a "presumptively mandatory" responsibility "unless the auditor demonstrates that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard." PCAOB Rule 3101(a)(1)–(2), https://pcaobus.org/Rules/Pages/Rule_3101.aspx. Similarly, FASB considers the words "shall" and "should" to be comparable, and notes that both represent "the requirement to apply a standard." FASB Accounting Standards Codification, About the Codification (v 4.10), at 23 (Dec. 2014), https://asc.fasb.org/imageRoot/71/58741171.pdf. The fact that neither Wahl or Chung understood the meaning of "shall" or "should" in the professional standards that were obliged to follow—either then or now—lends further credence to the proposition that they engaged in improper professional conduct.

Accelera was actually controlling Behavioral. The memo prepared by Chen and reviewed by Wahl failed to properly interpret the stock purchase agreement, and did not even opine on whether the acquisition had actually taken place. Wahl thus also failed to "consider the competency and sufficiency of the evidence." PCAOB AU § 230.08.

Further, "[i]f a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made." AU § 333.04. However, the engagement team improperly accepted management's representation in its financial statements that Behavioral should be consolidated without properly evaluating the obviously contrary evidence in the legal agreements. All these failures contradict "an attitude that includes a questioning mind and a critical assessment of audit evidence" and demonstrate that they did not exercise due professional care and professional skepticism. AU §§ 230.01, 230.07.

In 2014, these failures were compounded. The engagement team stuck to their earlier position despite numerous red flags and additional evidence that consolidation was improper. Deutchman, as EQR, also failed to address several red flags of which he was aware. (1) On more than one occasion during fieldwork at Behavioral, Wolfrum told the team that he had never sold his company and that he did not work for Accelera. (2) Both Wahl and Deutchman knew that Accelera did not consolidate Grace, Watson, and Traditions because Accelera had never paid for those companies, but they did not reevaluate Behavioral's consolidation even though they knew Accelera had not paid for it either. (3) Accelera failed to complete its paperwork to support Anton & Chia's acquisition audit of Behavioral, but this did not cause the team to wonder whether Accelera had actually acquired the company. (4) Deutchman ignored Freeman's repeated concerns that Behavioral was inappropriately consolidated, and did not question former management representations in light of the arguments Freeman made. (5) Deutchman impaired all of the goodwill from Accelera's purchase of Behavioral, but then failed to take a closer look at the transaction itself and whether control had been obtained and consolidation was appropriate. All of these matters demonstrate a failure to obtain appropriate audit evidence, a failure to exercise due professional care and skepticism, and unreasonable acceptance of management representations in light of conflicting evidence. Accelera's transaction with Behavioral, which accounted for 90% of Accelera's revenues in 2013 and 2014, demanded much more scrutiny than it received.

The Division further alleges based primarily on AU § 230's requirement to exercise due professional care and professional skepticism that Anton & Chia and Wahl also failed to properly plan the 2013 and 2014 audits. *See* Div. Post-hr'g Br. at 8–10; *see also* Div. PFOF at 56–57, 60–61, 81–82. For example, the team noted at the outset of the 2013 audit that they could not rely on Accelera's internal controls, which means that they should have exercised heightened skepticism. But whether one characterizes the problems as being in the planning or in the execution, it is unquestionable that Wahl and Deutchman failed to exercise due professional care in conducting the audits.

3.6.2. Failure to document significant issues and findings

In 2013, Wahl failed to prepare audit documentation "in sufficient detail to provide a clear understanding of its purpose, source, and the conclusions reached" with appropriate organization "to provide a clear link to the significant findings or issues." AS No. 3.4. Chen's memo exploring Accelera's stock deal with Behavioral, which Wahl reviewed, did not sufficiently support the conclusion that Accelera had acquired Behavioral. To the contrary, it was vague on essential points such as when the acquisition date was and whether Accelera actually exercised control over Behavioral. The engagement team prepared no other documentation concerning the purported acquisition. AS No. 3.6 requires audit documentation to "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement: [t]o understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached." But from the memo alone, an auditor unconnected to the engagement would not have been able to determine Accelera's basis for consolidation.

Deutchman failed to document the concerns raised by Freeman about improper consolidation. Instead, he did nothing. His approach was inconsistent with AS No. 3 because the auditor must retain "records documenting consultations on, or resolutions of, differences in professional judgment … between the engagement team and others consulted," and "audit documentation must include information the auditor has identified relating to significant findings or issues that is inconsistent with or contradicts the auditor's final conclusions." AS No. 3.8. Further, if correct, Freeman's concerns indicated that Accelera's financial statements were misstated, and the auditor must document the actions taken to address significant findings, which include "the existence of material misstatements." AS No. 3.12(b). But this was not done.

3.6.3. Insufficient experience and supervision

"The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor," and "[t]he junior assistant, just entering upon an auditing career, must obtain his professional experience with the proper supervision and review of his work by a more experienced superior." AU §§ 210.01, .03. Likewise, "[a]n auditor should possess 'the degree of skill commonly possessed' by other auditors'" and "should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining." AU §§ 230.05, .06. The Division maintains that Wahl should not have assigned Chen, who had no auditing experience, to the Accelera audit, or, at the very least, should not have tasked him with drafting the acquisition memo for Behavioral.

Given that Chen had no experience in business combinations and the Behavioral acquisition was a significant part of the audit, it is indeed questionable whether Wahl should have assigned him to draft the memo. Yet regardless, Wahl failed to adequately supervise Chen. "[T]he engagement partner is responsible for proper supervision of the work of engagement team members" and must "[r]eview the work of engagement team" taking into account "[t]he knowledge, skill, and ability of each engagement team member." AS No. 10.3, .5(c), .6(d); *see* AU § 230.06. Wahl reviewed the memo, but did not catch its glaring errors, including the fact that it failed to determine when Accelera had actually acquired Behavioral. If anything, Wahl had a heightened requirement to carefully supervise Chen given his lack of experience.

In light of Deutchman's disciplinary history and performance issues at Anton & Chia, the Division argues that Wahl should not have assigned him to be the EQR for the 2014 Accelera audit. *See* Div. Post-hr'g Br. at 9–10; *see also* Div. PFOF at 79–80. In 2008, Deutchman was censured by the Commission for auditing a public company without being registered with the PCAOB. Tr. 643; *Michael Deutchman*, Exchange Act Release No. 58240, 2008 WL 2902011, at *1–2 (July 29, 2008). In 2015, the PCAOB found he participated in an effort to alter audit files in an attempt to deceive PCAOB inspectors in 2008. Tr. 647; *Kabani & Co.*, PCAOB File No. 105-2012-002, at 4–6, 18–19 (PCAOB Jan. 22, 2015), https://pcaobus.org/Enforcement/Adjudicated/Documents/105-2012-002-Kabani.pdf. And while at Anton & Chia, in February 2015, Deutchman was written up for "[s]ubstandard job performance." Ex. 226 at 51112. The warning was never signed or made effective, however, and Deutchman testified he was never presented with it. Tr. 659–61, 876; *see* Tr. 5593 (Wahl testified that he had wanted the document destroyed but that it was put in Deutchman's file against his wishes). At one point in March or April of 2015, Wahl told Deutchman that he was too old to be an engagement partner. Tr. 661–62, 664. But Deutchman "didn't take it personally," and moved to San Diego to do marketing work for the firm instead. Tr. 662–63. After learning of Deutchman's resignation in August 2016, Wahl wrote in an email that there were a "number of issues with Mike" and that he had hoped to "properly retire him in October," but did not specify what the issues were. Ex. 271 at 50868; Tr. 5130.

Yet, despite these issues, Deutchman was an experienced auditor who had once worked for the Commission, Tr. 662, and there is no evidence that he was incapable of being an EQR or that he was inadequately supervised. His censure by the PCAOB was years prior, and the PCAOB's decision about his second offense—the allegation that he altered documents—came out in the middle of the 2015 audit, and was promptly appealed. *Kabani*, 2017 WL 947229 (Commission decision on appeal released in March 2017). It is not clear that Wahl should have been required to remove Deutchman from the audit at that time. In terms of his performance at Anton & Chia, the warning drafted was never placed in his record, and Wahl's comments about Deutchman's age or other issues were vague. These matters are insufficient to show that Wahl violated PCAOB standards by having Deutchman work on the Accelera audit.

3.6.4. Lack of independent and appropriate engagement quality review in 2014

"To maintain objectivity, the engagement quality reviewer and others who assist the reviewer should not make decisions on behalf of the engagement team or assume any of the responsibilities of the engagement team." AS No. 7.7. But Deutchman, as the EQR for the 2014 audit, assumed several engagement team responsibilities, such as communicating with Accelera. In fact, due to Deutchman's extensive involvement in communicating about and planning the audit, Freeman thought Deutchman was the engagement partner and not the EQR.

Further, "the engagement quality reviewer should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report." AS No. 7.9. But Deutchman did not properly do so. As discussed above, he failed to acknowledge several red flags about Behavioral's consolidation, including: (1) the fact that the agreements themselves indicated consolidation was inappropriate until the initial $1 million payment was made; (2) Accelera's disparate treatment of Behavioral and Grace, Watson, and Traditions; (3) Freeman's repeated warnings that consolidation was inappropriate; and (4) that the lack of support for goodwill from the Behavioral transaction might indicate the acquisition did not really take place. While it is true that Anton & Chia approved Accelera's decision to consolidate Behavioral in 2013 before Deutchman got involved, he became aware of sufficient red flags as EQR in 2014 and should have reconsidered the firm's earlier decision.

3.6.5. Failure to identify non-conformance with GAAP during interim reviews

"The objective of a review of interim financial information" under AU § 722 "is to provide the accountant with a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information for it to conform with generally accepted accounting principles." AU § 722.07. If, during this review, the accountant becomes aware of possible non-conformance with GAAP, "the accountant should make additional inquiries or perform other procedures that the accountant considers appropriate to provide a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information." AU § 722.22.

Wahl was involved in all but one of Anton & Chia's reviews of Accelera's finances for its quarterly reports in 2014 and 2015. During those reviews, various red flags should have caused Wahl and the engagement team to reconsider whether Behavioral's consolidation complied with GAAP. For example, in late April or early May 2014, Wolfrum told the members of the engagement team who did fieldwork at Behavioral that he still owned the company and Accelera's purchase had not been completed. In August 2014, Chen wondered whether Behavioral had ever been paid for its stock, and Koch's handwritten notes on the Q2 10-Q similarly asked whether the purchase price installments had even been paid. During the second quarter of 2015, Anton & Chia noted that Accelera still had not made any payments to Behavioral. Yet in none of these instances did the engagement team examine the original sale documents or reassess whether the transaction was consummated and whether consolidation was appropriate. Nor, for example, did the team make further inquiries of Accelera management to determine what should be done. Finally, in no instance did the engagement team mark the Behavioral transaction as having continuing significance on forms and checklists prepared during its interim reviews. *See* Div. Post-hr'g Br. at 9; *see also* Div. PFOF at 69–70, 76–77, 97–98, 101–02; AU § 722.11 (procedures for interim reviews should include reading prior audit documentation to determine whether there are "significant financial accounting and reporting matters that may be of continuing significance, such as weaknesses in internal control"); *see, e.g.*, Ex. 164 ¶ 4(a)(iv); Ex. 1.2 ¶ 4(a)(iv); Ex. 1.3 ¶ 4(a)(iv); Ex. 1.8 at 1; Ex. 1, 2015 Q1, WP 3001 at 1; Ex. 1, 2015 Q2, WP 3001 at 1; Ex. 1, 2015 Q3, WP 3001 at 1. Although the firm believed that Behavioral had been appropriately consolidated, and thus would have had no reason to flag the transaction as having continued significance, the failure to do so nonetheless demonstrates that Wahl and his the team neglected to notice red flags indicating that consolidation was inappropriate.

4. Premier facts and accounting violations

4.1. Introduction and summary

An audit team from Anton & Chia led by Wahl audited the 2013 year-end financial statements of Premier Holding Corporation. In those financial statements, in violation of GAAP standards, Premier recorded the value of an unsecured promissory note (the Note) it had received from a related party as $869,000 even though the note was worthless. In further contravention of GAAP, Premier recorded the entirety of its $4.5 million acquisition of The Power Company (TPC) as goodwill even though the transaction included identifiable assets that should have been recorded differently. Anton & Chia's engagement team did not adequately review these problematic transactions according to PCAOB standards. Rather, in his work on and review of the audit, Wahl failed to: (1) exercise due professional care and skepticism; (2) prepare appropriate audit documentation and obtain sufficient audit evidence; (3) properly use the work of a valuation specialist; (4) consider the possibility of fraud in Premier's financial statements; or (5) perform alternative confirmation procedures.

4.2. Premier's initial accounting for the Note

4.2.1. Premier entered into several transactions with related parties that eventually led to the issuance of the Note.

Premier is a Nevada corporation with its principal place of business in Tustin, California. Ex. 840 ¶ 26. Premier's common stock is and was at all relevant times registered with the Commission pursuant to Exchange Act Section 12(g) and quoted on the OTC Link under ticker symbol PRHL. *Id.* Premier files periodic reports with the Commission, including Forms 10-K and 10-Q. *Id.* Throughout the relevant period, Premier raised funds through private sales of stock. *Id.*

In 2011, Premier's primary intended line of business was to sell discount caskets to Native Americans and low-income groups. Ex. 400 at 3 (Premier 2011 Form 10-K). Premier recorded $10,000 of revenue in 2011, and no revenue in 2010. *Id.* at 8. From late 2011 to early 2012, Premier exited the casket business and entered the green energy business. Ex. 401 at 5 (Premier 2012 Form 10-K).

By the end of December 2011, Premier completed asset purchase agreements with WePower, LLC,[16] a Delaware limited liability company, and Green Central Holdings, Inc., a Nevada corporation, for assets to enable commercial buildings to reduce energy consumption. Ex. 407 at Item 2.01. Premier acquired those green energy assets from WePower, LLC, and Green Central in exchange for approximately 30.5 million shares, representing around 70% of Premier common stock. Ex. 401 at 12, 30. At the time, WePower, LLC, was managed by Marvin Winkler, and Green Central was managed by Randall Letcavage. Ex. 401 at 19; Ex. 433 at 3; Tr. 1290–91, 5764. Premier contributed the newly acquired assets to its newly formed, wholly owned subsidiary called WePower Ecolutions Inc., through which it planned to operate the green energy business. Ex. 407 at Item 1.01; Ex. 400 at 3, 9.

Premier reshuffled its management shortly after purchasing the green energy assets. On February 22, 2012, Premier appointed Kevin Donovan as one of its directors and as CEO of WePower Ecolutions. Ex. 401 at 5; Ex. 839.5 at 4 (PDF); Tr. 1301. On February 24, 2012, the two other directors of Premier resigned, making Donovan the sole director. Ex. 400 at 27. On April 11, 2012, Donovan became the CEO of Premier. Ex. 401 at 5; Ex. 408 at Item 5.02.

In early 2012, Premier engaged the valuation firm of Doty Scott Enterprises, Inc., to perform a purchase price allocation for its transactions with WePower, LLC, and Green Central, including valuing the assets Premier acquired as of December 29, 2011. Ex. 440 at 1 (PDF); Tr. 1362–63. On April 24, 2012, Doty Scott issued a final report that valued the assets WePower Ecolutions acquired from WePower, LLC, and Green Central, including sales leads, marketing materials, intellectual property, and contracts, at $48,874. Ex. 440 at 2. Notwithstanding the final valuation report, in its 2011 Form 10-K, Premier valued the green energy assets as of December 31, 2011, at zero, because the acquisitions from WePower, LLC, and Green Central were related-party transactions and because the inventory acquired had been found to be impaired. Ex. 400 at 27.

Throughout 2012, WePower Ecolutions operated the green energy assets at a loss; the total loss came to $756,912. Ex. 401 at 14, 46. Because Donovan was unsuccessful in generating revenue or value from the green energy assets, Letcavage moved to end Donovan's tenure. Tr. 5664, 5687–88.

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[16] There are three distinct "WePower" entities discussed in this section: (1) WePower, LLC, which sold green energy assets to Premier; (2) WePower Ecolutions, the Premier subsidiary that operated those assets; and (3) WePower Eco Corp. (aka "New Eco"), which exchanged the Note with Premier.

In October 2012, Premier announced its intent to spin off WePower Ecolutions. Ex. 409 at Item 5.07. Premier also announced that Donovan was ending his role as an officer and director of Premier and Letcavage had been appointed Premier's CEO, president, treasurer, principal executive officer, and principal accounting officer. *Id.* at Item 5.02; Ex. 411, Shareholder Letter, at 2. Concurrently, Letcavage, Winkler, and one other person became directors. Ex. 409 at Item 5.02.

In November 2012, Premier announced an agreement in principle to transfer the green energy assets from WePower Ecolutions to WePower Eco Corp (New Eco), a newly formed company controlled by Donovan, in exchange for the Note, which was an unsecured promissory note with a face value of $5,000,000. Ex. 410 at Item 8.01; Ex. 411, Shareholder Letter, at 3. As a result of this agreement in principle, Premier classified its WePower Ecolutions subsidiary as "held for sale" and reported it as "discontinued operations." Ex. 401 at 46. Premier recognized a "loss from discontinued operations" of $756,912, which was the amount of WePower Ecolutions' net operating loss for 2012. *Id.*; *see id.* at 28.

On January 7, 2013, Premier's WePower Ecolutions sold the green energy assets, including three patents, six trademarks, 28 contracts, and certain "exclusive" business opportunities, to New Eco. *Id.* at 46; Ex. 402 at F-14 (Premier 2013 Form 10-K); *see* Ex. 840 ¶ 28; Ex. 442. In addition, WePower Ecolutions agreed to immediately cease using the WePower name. Ex. 442 ¶ 6(h); *see* Ex. 411, Shareholder Letter, at 3. The principal assets transferred from WePower Ecolutions to New Eco were those originally purchased from WePower, LLC, in December of 2011—trademarks, patents, and certain contracts. Ex. 402 at F-14; *compare* Ex. 433, Schedule 1, *with* Ex. 442, Schedule 2(a).

In exchange for the assets, WePower Ecolutions received the Note from New Eco and New Eco assumed roughly $100,000 in liabilities. Ex. 402 at F-14; Ex. 412 at Ex. 10.3; Ex. 442 ¶ 2 & Schedule 2(b). The Note had a term of 20 years, did not require New Eco to pay any principal for five years, and had an interest rate of 2%. Ex. 442 at Promissory Note ¶ 1. Before semi-annual interest payments commenced, New Eco was not required to pay interest for eleven months, so its initial semi-annual interest payment of $50,000 was due on December 7, 2013. *Id.* ¶ 1(a). If New Eco failed to make that payment within 15 days of the due date, it would be in default. *Id.* ¶ 4(a). At the time, New Eco's CEO, Donovan, understood there was a likelihood that New Eco would default on the Note. Ex. 839.5 at 23–24 (PDF). Yet, in the event that Donovan was successful, Letcavage viewed the Note as a means to provide value to Premier shareholders. Tr. 5668.

New Eco never paid any interest on the Note, Ex. 839.5 at 12 (PDF), so the Note was in default on December 22, 2013, 15 days after New Eco failed to make the first $50,000 interest payment on December 7, 2013. Ex. 441 ¶ 4(a). Premier never attempted to collect on the Note. Tr. 3218; Ex. 839.5 at 12–14 (PDF).

On March 4, 2014, Premier entered into an agreement to, among other things, transfer the Note to WePower, LLC, in exchange for the return of 2.5 million shares of Premier common stock. Ex. 402 at F-14. This was part of an overarching agreement that resolved multiple disputes among multiple parties. Ex. 454; Tr. 1318. One of those disputes related to Premier's purchase of TPC, discussed below: Winkler previously promised to return 5 million shares of Premier stock to facilitate the TPC acquisition but had not yet done so. Tr. 1322–23. Under the agreement, to resolve the dispute related to the TPC acquisition, WePower, LLC, was to return 5 million shares of Premier common stock to Premier and deliver 2.5 million shares of Premier common stock to Premier in exchange for the Note. Ex. 454 at Ex. B. These two transactions were entirely separate. Tr. 1325.

4.2.2. Doty Scott's valuation of the Note

To prepare its financial statements, Premier needed to assign a value to the Note. Premier again engaged the valuation firm Doty Scott to determine the fair value of the Note as of the January 7, 2013, acquisition date. Exs. 443, 444, 447; Tr. 1994–95. Doty Scott planned to determine the fair value of the Note by discounting the expected cash flows on the Note at New Eco's estimated weighted average cost of capital (WACC). Tr. 6006. Doty Scott also needed to value New Eco, because the value of the Note depended on New Eco's ability to pay it. Ex. 447.

On March 19, 2013, Phil Scott, Doty Scott's manager, requested various information from the Premier officials responsible for its accounting function—then Joseph Greenblatt and Eric Rosenberg—concerning New Eco and the performance of its assets in order to carry out the valuation. Ex. 444; Tr. 2186. Instead of providing the information Scott requested, Premier directed him to speak to Donovan. Tr. 1389. Scott then requested the information from Donovan and Winkler, but neither had financial projections, and they were unwilling to provide them even if they had them. Tr. 1389–90; *see* Exs. 445–46; Ex. 839.5 at 15 (PDF). New Eco never provided any information to Doty Scott. Tr. 1391. As a result, Scott told Premier that he needed its "best estimates of future projections based on the sales leads you were able to generate during your year of ownership" of the assets. Ex. 446. Premier never sent Doty Scott any updated projections or other data. Tr. 1392.

In the interim, Alfred Haddad, who conducts financial modeling and analytics for Doty Scott, prepared a template of the valuation model that Doty Scott would use to value New Eco and the Note once it received the necessary information. Tr. 1991, 2005. Because Doty Scott never received financial projections for New Eco, as a placeholder, the valuation template used financial projections that Doty Scott had received when it valued the assets Premier had acquired from WePower, LLC, and Green Central at the end of 2011. Tr. 2011. At that point, Haddad "had no evidence of anything," but "was just … sitting in front of the computer making up numbers until we got some data." Tr. 2008. The draft tables he prepared had "so many unsupported assumptions built into it, that there really wasn't a reasonable valuation of anything." Tr. 2010.

On March 29, 2013, Scott sent these placeholder valuation tables to Doty Scott's then-designated point of contact at Premier, Larry Young, in order to elicit information about New Eco's performance and prospects, so that Doty Scott could complete a valuation. Ex. 447; Tr. 1393, 1396, 2008. In his transmittal email, Scott reiterated that Doty Scott sought to value New Eco in addition to the Note itself, and cautioned that since New Eco refused to provide Doty Scott with any information, the initial valuation tables made assumptions that needed to be verified and supported by management. Ex. 447. Finally, Scott warned, "[t]his preliminary valuation is not to be quoted at this time." *Id.*

The initial valuation tables contained three placeholder valuation figures: one figure for the fair value of the Note—$698,377—and two figures for the fair value of New Eco: $869,000 for the fair value of the New Eco enterprise and $861,000 for fair market value of the intellectual property, patents, and trade secrets acquired by New Eco. Ex. 447 at 2.

On April 22, 2013—just a few weeks after Doty Scott's admonition to Premier not to quote the figures in its initial valuation tables—Premier nonetheless used $869,000, the value of the New Eco enterprise, as the "preliminary valuation" of the Note in its 2012 Form 10-K, Ex. 401 at 46, and concurrently stated that New Eco's "product line and prospects have been *conservatively* valued at approximately $869,000." *Id.* at 5 (emphasis added).

On April 24, 2013, unaware of the 10-K language, Scott forwarded his March 29 email to three Premier officials, advising them that there were still several issues requiring Premier's input before Doty Scott could issue a report. Ex. 450. Premier never provided the requested information. Tr. 1413.

4.3. Anton & Chia's initial review and subsequent audit of Premier's accounting for the Note

4.3.1. Anton & Chia reviewed Premier's treatment of the Note in the first quarter of 2013.

Just as it did in its 2012 Form 10-K, Premier included the Note as an asset worth $869,000 in its financial statements for the first quarter of 2013. Ex. 404 at 3, 19 (Premier Q1 2013 Form 10-Q). The company also represented that the Note had "been independently valued at approximately $869,000." *Id.* at 20; *see id.* at 9. Premier further reported a gain from the sale of discontinued operations of $985,138 comprised of the purported $869,000 value of the Note and New Eco's assumption of $116,138 in liabilities. *Id.* at 9.

Unlike Doty Scott, at the time of Anton & Chia's Q1 2013 review, Wahl was aware Premier had already disclosed to investors that the Note had a preliminary value of $869,000. Tr. 5306. As part of Anton & Chia's review of Premier's Q1 2013 financial statements, Chris Wen was assigned to evaluate the propriety of the recording of Premier's note receivable balance as of quarter end. Tr. 2118–19. When Wen asked Premier's accounting consultants for support for the $869,000 value for the Note, they advised him that the $869,000 "was validated by a third-party firm" and sent him a copy of the hard-coded initial valuation tables by Doty Scott, which did not include the formulas used to calculate the valuation tables. Tr. 2119–21. Wen then asked for Premier's help in obtaining a version of the tables that included the formulas. Tr. 2123–24.

On May 22, 2013, Rosenberg asked Haddad to send copies of the Excel spreadsheets that contained the formulas to Anton & Chia. Ex. 451. Haddad then sent Wen three Excel files that contained the formulas and were clearly labeled as drafts, not final valuations. Ex. 452; Tr. 2125. Haddad's email advised Wen not to share the proprietary models with anyone outside of Anton & Chia, including Premier, and to email with any questions. Ex. 452.[17] Haddad assumed that Wen was a valuation professional, because Doty Scott typically deals with an audit firm's valuation division, auditors with valuation expertise, or outside valuation consultants. Tr. 1354–55, 2028, 2032. However, at that time, Wen had no prior experience working with valuation and did not understand discount rate, enterprise value, or WACC. Tr. 2122, 2128, 2131. Wen was unfamiliar with complex Excel tables, and did not understand the

[17] Upon request, Doty Scott generally sends its models to the auditors so that the auditors can confirm that they are comfortable with Doty Scott's methodology. Tr. 1353, 1423–24, 2030.

meaning and relationship of the three valuation figures that appeared on the Doty Scott spreadsheets. Tr. 2126–27, 2129. Even after reviewing them, Wen did not understand the models, the assumptions used, or the relationships of the fair value figures produced by the models. Tr. 2127–29.

On a brief telephone call, Scott provided Wen with some basic guidance about how to navigate and use the files so that Wen could conduct some form of review. Tr. 1424–25. No one from Doty Scott concluded, or would have said they concluded, that the fair value of the promissory note was $869,000, because the figure was unsupported by verified data, and because it was not even a provisional figure for the value of the Note. Tr. 1425–26, 1479, 1487, 2023, 6027. After that, from Doty Scott's perspective, the Note valuation engagement "went radio silent," and Doty Scott ceased working on it for about a year. Tr. 1426.

After his conversation with Scott and conducting further research, Wen still did not understand the Doty Scott spreadsheets, and he told that to Wahl. Tr. 2140–41. In response, Wahl told Wen to make sure that the math was correct, i.e., to use the formulas and numbers provided to confirm the calculation of the $869,000 value. Tr. 2140–41. Wen focused on the table's $869,000 enterprise value, which was the one used by Premier in its financials, and never paid attention to the $698,377 value the table assigned to the Note. Tr. 2142–43. Wen did not pay attention the fact that the Doty Scott spreadsheets were labeled as drafts. Tr. 2132.

Wen prepared a workpaper for the Note valuation. Ex. 860; Tr. 2134. The workpaper consisted of Doty Scott's initial draft spreadsheet with six lines of text that Wen inserted at the top of the summary sheet. Ex. 860; Tr. 2134–35. Wen's text read:

> *Purpose*: To evaluate the value of the Note receivable balance as of March 31, 2013 appropreately [sic] recorded.
>
> *Procedures*: AnC has directly contact[ed] the thrid [sic] party Appraiser to obtain the valuation report.
>
> AnC team has review[ed] the reasonableness of the assumptions, estimates of the fair value.
>
> *Conclusion*: Based on the review of the reasonableness of the valuation, AnC agreed that the estimated fair value appropreately [sic] presented.

Ex. 860. Despite what Wen wrote, he could not have reviewed the reasonableness of Doty Scott's assumptions used to estimate the fair value, as he did not understand them. Tr. 2127–31, 2137–40.

4.3.2. Anton & Chia audited Premier's treatment of the Note for year-end 2013.

Wahl was the engagement partner on Anton & Chia's audit of Premier's FY 2013 financial statements. Ex. 840 ¶ 42; Ex. 402 at F-1. Premier paid the firm $31,200 for the audit. Ex. 482. Anton & Chia's team for the 2013 audit also included Richard Koch as the engagement quality reviewer, Tommy Shek as audit manager, and Monique Lai, Ivan Shing, and Chris Wen as staff. Ex. 419 at 1857; *see* Tr. 2143, 2218–19, 2222.

In Anton & Chia's December 31, 2013, audit planning memorandum, the engagement team determined that they would address two of Premier's financial assertions: (1) the notes receivable balance, i.e., the value of the Note, which was Premier's only note receivable; and (2) the value of goodwill. Ex. 419 at 1854. As to the Note, Anton & Chia planned the following audit procedures: (1) "Valuation – [Anton & Chia] will test the assumptions for the discounted cash flow for the [Note] from disposal of WePower Co in Q1 2013" and (2) "Existence – [Anton & Chia] will send direct confirmation to verify the balance as of 12/31/2013 and also reconcile with the disposal agreement between [Premier] and the buyer." *Id.* As to the second point, Anton & Chia never received confirmation of the balance due on the Note. Ex. 459; Tr. 2248–49.

As to the first point—the valuation of the Note—Shek asked Premier for a valuation report. Ex. 419; Tr. 2238–40. On March 7, 2014, Wen told Haddad and Scott that Premier requested that Anton & Chia review the note valuation report provided by Doty Scott. Ex. 455 at 3. Scott responded that the firm had not prepared a report on the Note. *Id.* at 1.

On April 1, 2014, Shek emailed Premier's CEO's assistant, Connie Absher, asking for the official report that valued the $5 million note at $869,000. Ex. 461 at 13227. On April 2, Absher emailed Shek to advise him that Letcavage said Anton & Chia "should have everything" since it was something handled in 2012 and should already be presented in the 2012 Form 10-K. *Id.* at 13226. Shek then checked with Wen about what Anton & Chia previously received from Doty Scott, Ex. 460, and emailed Absher that Anton & Chia only had "numbers" from Doty Scott and would need "to spend a lot of time to understand his calculations without anything in writing." Ex. 461 at 13226.

On April 3, 2014, Shek emailed Scott to see if Doty Scott would prepare a report. Ex. 465. In an April 7, 2014, email, Scott explained to Shek that the Excel spreadsheets Doty Scott had prepared in 2013 were merely a "draft analysis" and that the firm would need additional information in order to complete its analysis and prepare a report, including New Eco's financial statements at the time of the issuance of the Note and New Eco's budget and financial projections. Ex. 466 at 131. Anton & Chia forwarded Scott's email to Letcavage, Absher, and one other individual. Ex. 466 at 132. Later on April 7, 2014, Absher told Scott that New Eco had paid "nothing" on the Note and Premier had no financial information from New Eco. Ex. 469 at 7544. Absher closed her email by stating: "Please advise us on how we should handle this. We do need to get this completed ASAP." *Id.*

On April 8, 2014, Scott responded by reiterating Doty Scott's need for financial information, including WePower's 2012 financial statements, to prepare the valuation as Doty Scott had no financial information or projections from the buyer. *Id.* at 7542–43. Later that day, Young emailed Scott a copy of the asset purchase agreement and some unspecific, unconfirmed information about financing New Eco might receive, "[h]oping this is sufficient as we are in a hurry." *Id.*

Anton & Chia never received anything else from Doty Scott while it worked on the audit. Wen ended up including two workpapers concerning the Note valuation for the audit. First, he created WP 4451, which Wahl instructed him to "roll forward" from the Q1 quarterly review to support the year-end Note valuation. Ex. 423; Tr. 2153–54. Second, at the request of Shek or Wahl, he prepared a second workpaper for the Note valuation: a one-page memorandum labeled WP 4452. Ex. 424; Tr. 2158.

Workpaper 4451 is virtually identical to the Note valuation workpaper Wen prepared for the 2013 first quarter review. It is a copy of the same Doty Scott "initial valuation" Excel workbook that served as the Note valuation workpaper for the Q1 review with largely the same legend that Wen inserted at the top of the first page. Ex. 423. Wen's only addition to the legend indicates that Anton & Chia also checked the valuation firm's credentials. *Id.* Other than checking Doty Scott's credentials, Wen performed no additional substantive work on the Note valuation for the audit beyond what he did for the 2013 Q1 review. Tr. 2157–58. With the exception of Wen's conversation with Scott during the Q1 review, no one from Anton & Chia asked how the Note valuation was calculated. Tr. 6009. Wen did not even change the "as of" date of the workpaper from March 31, 2013, to December 31, 2013. *Compare* Ex. 860, *with* Ex. 423; Tr. 2156–57.

Workpaper 4451 states that Anton & Chia reviewed the "reasonableness of the assumptions" but does not indicate what assumptions Anton & Chia evaluated or how it determined if they were reasonable. Ex. 423. It does not contain any financial projections of New Eco, the payor under the Note, but instead contains projections for WePower Ecolutions, the subsidiary of Premier, once it purchased the assets from WePower, LLC. *Id.* The "Financial Projections" tab reveals that it involves a different transaction between the different companies in a prior year. The top of that page reads, in bold type: "Asset Sale Valuation (WePower, LLC, to WEPOWER Ecolutions, Inc.) as of 12/31/12." Similarly, many other tabs contain the same header. *Id.* Neither the "Project Overview" tab nor the "Value Assumptions" tab mentions the New Eco Note. *Id.* The workpaper incorporates over forty tabs/spreadsheets and includes complicated formulas, critical assumptions, and multi-year financial projections, but nowhere does it discuss whether any of those formulas, assumptions, or projections were reasonable. *Id.* The Excel workbook that Wen used to create WP 4451 does not contain any basis for the Note's fair value or any reference to the Note other than on the summary page. Wahl has no memory of reviewing any tabs of WP 4451. Tr. 5345.

Workpaper 4452, the note valuation memo that Wen prepared, is in many ways similar to WP 4451. It includes, for example, a list of many of the same procedures Wen placed in the legend of WP 4451 to test whether the Note was reasonably recorded, and like WP 4451, contains no substantive analysis of how Wen actually made the determination. Ex. 424; Tr. 2161, 2165–66. It also indicates that no payment had been received on the Note as of December 31, 2013, but does not discuss that New Eco was in default and that Premier made no effort to collect. *See id.* Wahl did not review WP 4452. *See* Ex. 417 at A&C-Premier 144 (sign-offs for 2013 Premier audit).

Neither of the workpapers discussed the terms of the Note, which were highly favorable to New Eco. Ex. 441; Tr. 1448–49. Neither referred to a sale or settlement of the Note in early 2014. *See* Exs. 423 & 424. Anton & Chia's workpapers do not reflect any analysis or consideration of how the same assets that generated losses for WePower Ecolutions in 2012 would generate profits for New Eco. *Id.*; *see* Ex. 401 at 28.

Like Wen, Shek did not understand the Doty Scott spreadsheets or what they did. Tr. 2237. Shek and Wen knew that Doty Scott had not completed a valuation of the Note. Ex. 455 at 1; Ex. 466 at 131; Tr. 2238–39, 2255. Beyond the Excel file, Shek told Wahl he was unable to obtain information to audit the Note valuation. Tr. 2255–56; Ex. 461. Shek refused to sign off on either Note valuation workpaper because he was unable to understand the spreadsheets. Tr. 2257; Ex. 417 at AnC-Premier 143–44 (showing that Wen and Wahl, but not Shek, signed off on workpaper 4451, and that Wen signed off on workpaper 4452, but Shek and Wahl did not).

Wahl testified at the hearing that the $869,000 valuation was reasonable because it was an 83% discount on the $5 million face value of the Note. Tr.

5348–49. He explained that he did not use the $698,000 figure in the draft tables, even though it was labeled as the value of the Note, because it would have been an inappropriate "double discount" off the face value of the note. Tr. 4443, 5359–60. Essentially, Wahl believed that the $869,000 figure was already appropriately discounted, and that Doty Scott must have applied the WACC discount a second time to $869,000 to arrive at $698,000. Tr. 5360–63. But Wahl never discussed his assumptions with anyone at Doty Scott. Tr. 4444–45, 5364–65. In fact, Scott testified that there was no "double discount"; he applied the WACC only once to reach $698,000, and that the two figures—$869,000 and $698,000—were "completely independent" of each other. Tr. 6009–10, 6013–15. Moreover, Wahl never documented his analysis in the workpapers, Tr. 5365–66, and during a deposition in 2014, he could not recall why he had chosen $869,000 over $698,000, which suggests that his explanations at the hearing were post-hoc rationalizations. Tr. 5319, 5324.[18]

Wahl further testified that he chose $869,000 as the value of the Note because he was aware of discussions that the Note was to be settled by the return of as many as 7.5 million shares to Premier, and that this would roughly match the chosen value. Tr. 5348, 5375, 5381–82. But neither Wahl nor Shek ever told Wen to document an analysis of the value of 7.5 million shares of Premier stock exchanged for the Note. Tr. 2159. Indeed, nothing about this rationale for using the $869,000 figure is found anywhere in the workpapers. *See* Tr. 1717 (Devor's testimony). In addition, Premier's 2013 10-K reflects that only 2.5 million shares were returned in exchange for the Note. Ex. 402 at F-14.

4.3.3. Doty Scott completed its valuation report before Premier filed its 10-K, but Anton & Chia did not receive it.

Although neither New Eco nor Premier ended up providing Doty Scott with the financial information requested, Doty Scott completed its analysis using the information it had, including WePower Ecolutions's 2012 performance as reported by Premier in its FY 2012 Form 10-K. Tr. 2051, 1453–54.

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18 Misuraca's expert testimony does not help Wahl either. Misuraca opined that the method Doty Scott used to reach $869,000 was reasonable, but withheld judgment on whether Wahl should have relied on the spreadsheet. Tr. 3461, 3567. Further, Misuraca never spoke with anyone at Doty Scott, and did not know that the $869,000 figure in the spreadsheet was supposed to represent the fair value of the entire enterprise, not just the value of the Note. Tr. 3586–87, 3589; Ex. 1122 at 5.

On April 9, 2014, Doty Scott sent Premier a draft report that valued the Note at $0. Ex. 472. In the report, Doty Scott gave the following reasons for valuing the Note at $0: (1) it was unsecured and secondary to all secured debt obtained by the borrower; (2) the terms were 20 years with no principal payments for five years and a significantly below market 2% interest rate with interest payments deferred until 11 months after issuance; (3) the payor, New Eco, was a start-up company incorporated in late 2012 with no other known assets; (4) New Eco had no known revenues; (5) New Eco had an undisclosed and unknown quantity of secured and unsecured liabilities; (6) the assets transferred generated no revenue for Premier in 2012; (7) the assets generated a net loss in excess of $750,000 for Premier;[19] and (8) New Eco refused to provide any information regarding its financial status or projections. Ex. 472 at 48, 53; *see* Tr. 1446–49.

Scott explained that a discounted cash flow analysis of the Note's payment terms netted a value of $272,488, with a WACC of 52.1%, which Scott concluded was more reasonable under the circumstances than the 27.91% used in the initial valuation tables. Ex. 472 at 48; *see* Tr. 1452. The firm also estimated the value of New Eco, which served as a cap on the value of the Note. Doty Scott found that the net enterprise value of New Eco was less than $10,000 and the net value of New Eco's intangible assets was negative, so the Note was worthless. Ex. 472 at 48; Tr. 1451–52.

Despite having received Doty Scott's report six days prior, Premier filed its 2013 audited financial statements on Form 10-K on April 15, 2014, and reported the Note as a note receivable valued at $869,000 on its balance sheet, as it had in 2012. Ex. 402 at F-2; *see id.* at F-4, F-9, F-14. Based on the Note valuation and New Eco's agreement to assume $116,138 of WePower Ecolutions's liabilities, Premier also reported $985,138 in income from discontinued operations. *Id.* at F-3. It does not appear, however, that Anton & Chia received Doty Scott's valuation report before completing its audit. *See* Div. Response to Wahl PFOF at 275.

4.4. The TPC acquisition

4.4.1. Premier's acquisition of TPC and its accounting for the transaction in its 2013 Form 10-K

On February 28, 2013, Premier acquired an 80% interest in TPC, a deregulated power broker in Illinois, in exchange for 30,000,000 shares of

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[19] At the hearing, Scott corrected a typographical mistake in the report, clarifying that the year that the assets generated a loss in excess of $750,000 was 2012, not 2011. Tr. 1450.

Premier stock. Ex. 840 ¶ 29; Ex. 402 at 4, F-11. TPC's customer contracts were the source of TPC's revenue and receivables. Tr. 2478. Premier touted the TPC acquisition to the market by publicly emphasizing the quantity and the value of customer contracts:

- Its December 27, 2012, letter to shareholders preceding the acquisition stated that TPC had "significant assets," including "receivables of over $1,000,000" and "power contracts with 8,600 customers that we believe represent in excess of $8,000,000 of assets that will become part of Premier." Ex. 411, Shareholder Letter, at 3.

- Its February 27, 2013, press release announcing the TPC acquisition claimed that TPC had "contracts with over 14,000 customers representing assets estimated to be valued from $6,000,000 to $10,000,000." Ex. 413 at Ex. 99.1 Press Release.

- Its May 30, 2013, press release quoted Letcavage and said Premier believed that TPC's "contracts in hand today are worth approximately $20,000,000 … if the company chose to sell them off in the deregulated energy markets" and that "[t]he market value of [TPC's] contracts at year end, December 31, 2013, should exceed $35,000,000." Ex. 414.

- Its 2013 first quarter Form 10-Q reported that "[a]s of March 31, 2013, TPC had over 12,000 commercial contracts, and now has almost 18,000." Ex. 404 at 21. Premier also reported: "The Power Company has over 12,000 residential and commercial customers, and has been adding between 1,000 and 1,500 clients per month, and it expects to add over 2,000 residential and commercial customers per month beginning as early as May 2013." *Id.* at 20.

- Its 2013 second quarter Form 10-Q reported that TPC "clos[ed] second quarter 2013 with 18,000 contracts" and had "over 18,500 residential and commercial customers." Ex. 405 at 12, 21.

- Its 2013 third quarter Form 10-Q reported that TPC "clos[ed] third quarter 2013 with 40,000 contracts" and had "over 18,500 residential and commercial customers." Ex. 406 at 12, 16.

Premier engaged Doty Scott to do a purchase price allocation for the TPC acquisition and Doty Scott requested information it needed to value TPC's assets. Ex. 451; Tr. 2027. Doty Scott never received any of the requested information, and never completed the TPC purchase price allocation. Tr. 2027.

In its 2013 Form 10-K, Premier stated that because an independent valuation of TPC's identifiable assets and liabilities was "still in process," it was reporting the entire $4.5 million purchase price—the purported value of the 30 million shares Premier issued to the sellers as consideration for the acquisition—as goodwill. Ex. 402 at F-11.

Premier's decision to recognize the full purchase price from the TPC acquisition as goodwill was the primary reason that Premier's reported goodwill increased from $138,000 as of December 31, 2012, to $4,555,750 as of December 31, 2013. Ex. 894 at F-11. Goodwill thus became the largest piece of Premier's total reported assets of $6,879,145, with the goodwill attributed to the TPC acquisition constituting more than 65% of Premier's total assets. Ex. 402 at F-2.

In its 2013 Form 10-K, Premier further stated that it "periodically reviews the carrying value of intangible assets not subject to amortization, including goodwill, to determine whether impairment may exist." Ex. 402 at F-8. It also represented that "[g]oodwill and certain intangible assets are assessed annually, or when certain triggering events occur, for impairment using fair value measurement techniques." *Id.* Premier did not report any impairment of goodwill in its 2013 financial statements. *See id.*

In a September 19, 2013, email, Greenblatt, one of Premier's accounting consultants, told Young that Premier had valued the TPC stake "solely based" on its 12,000 customers. Ex. 478. According to Rosenberg, another of Premier's accounting consultants, Anton & Chia knew that Premier had valued TPC based on its customer contracts, and Rosenberg would have provided Anton & Chia with worksheets he had received from TPC showing that TPC was adding 1,500 to 2,000 contracts each month. Tr. 2191–95. Premier's CEO would have provided information about the number and value of the TPC contracts if Anton & Chia asked for it. Tr. 5788.

4.4.2. Anton & Chia's audit of the TPC acquisition

Anton & Chia's planning memo for the 2013 audit stated that Premier "has to complete a purchase price allocation [for the TPC acquisition] within a year per SEC requirement" and that Anton & Chia would "look … [at] the reasonableness of the purchase price allocation." Ex. 419 at 1854. Anton & Chia's audit team knew Premier engaged Doty Scott to complete a purchase price allocation for TPC, and that, as of April 3, 2014, Doty Scott was "awaiting data from the client to complete the engagement." Ex. 480. Shek acknowledged that he was concerned that the purchase price allocation was not completed at the time of the audit even though over a year had passed since the TPC acquisition. Tr. 2264, 2267. Nonetheless, the purchase price allocation was not completed, so Anton & Chia did not review it. Tr. 2027, 2267. Anton & Chia's audit team, including Wahl, knew that $4,500,000 of Premier's reported goodwill of $4,555,750 was attributable to the full purchase price of the TPC acquisition. Tr. 2266–67; Ex. 402 at F-2.

Despite its failure to obtain or consider a purchase price allocation, Anton & Chia did look at "impairment issues in the goodwill" regarding the TPC acquisition as it had stated in its audit planning memo. Ex. 419 at 3; Ex. 428; Tr. 2269. But because Premier never provided a goodwill impairment analysis, Anton & Chia considered goodwill impairment on its own. Tr. 2268–69; *see* Ex. 428. Shek prepared WP 4500.04, titled "Goodwill Impairment Analysis." Ex. 428; Tr. 2269. That workpaper reflected the methodology Wahl directed: take two months of TPC's cash inflows (not net cash flows), calculate the average, and project future income using that average monthly number. *See* Ex. 428; Tr. 2274–76. Although the workpaper stated it calculated cash inflow projections for 60 months, it included only 36 months of projections. Ex. 428 at 2. Contrary to Wahl's approach, Shek testified that analyzing impairment using net cash flow would have been more accurate. Tr. 2274–75. Indeed, according to bank records summarized in Devor's report, TPC's net cash flow was negative over the two months used for Shek's impairment analysis from January to February 2014. Specifically, TPC had net cash flow of $13,205 in January, but net cash flow of negative $17,322 in February. Taken together, TPC had a net cash flow of negative $4,117, an average of negative $2,058 per month. *See* Ex. 88.1 at 130–31 (Devor's mathematical summary).

After calculating cash inflows, the workpaper then documented Anton & Chia's inquiry "with the management," where Premier purportedly advised that they expected TPC to keep growing "and did not see any factors that [would] significantly impair[] the goodwill." Ex. 428 at 2. The workpaper also stated it would employ Wahl's methodology of analyzing how many new customers TPC signed up in the first quarter of 2014 compared to the first quarter of 2013 to see whether the business was growing, but did not say it would consider whether TPC was actually making money from the new contracts. *Id.* at 2–3; Tr. 2282–83. Despite the fact that the information about growth came entirely from Premier and not independent inquiry on Anton & Chia's part, the workpaper does not reflect any evaluation of whether the numbers Premier provided were reliable. *See* Ex. 428.

4.5. Wahl reviewed the audit workpapers very quickly.

Wahl signed off on 150 workpapers for the Premier audit between April 10 and April 15, 2014, which was the day that Anton & Chia issued its unqualified audit opinion. Ex. 402 at F-1; Ex. 417 (workpaper sign off history report). Specifically, Wahl signed off on: 36 workpapers on April 10; 60

workpapers on April 14; and 54 workpapers on April 15, 2014, including WP 4451, Wen's consideration of the Note's valuation that was rolled forward from the 2013 Q1 review. Ex. 417 at A&C-Premier 144 (noting that Wahl signed off on WP 4451); Ex. 88 at Ex. 4 (Devor's summary chart); *see* Ex. 423. According to Anton & Chia's records, Wahl spent a total of 8.5 hours on his review; and of the six hours he spent from April 10 through 15, he only spent a half hour on the last day signing off on 54 workpapers including WP 4451 concerning the valuation of the Note. Ex. 417 at A&C-Premier 144; Ex. 418 at A&C-Premier 149.[20]

4.6. Anton & Chia's audit report asserted compliance with GAAP and PCAOB standards.

Anton & Chia's audit report in Premier's 2013 Form 10-K represented that it had conducted its audit "in accordance with the standards of the Public Company Accounting Oversight Board" and that Premier's financial statements were materially accurate and in conformity with GAAP. Ex. 402 at F-1. The audit report contained a going concern qualification and a related party qualification, but neither were related to the valuation of the Note or the way the TPC transaction was recorded. *Id.*

4.7. Premier's failures to comply with GAAP

4.7.1. Premier's accounting for the Note did not comply with GAAP.

ASC 310 governs the accounting for notes receivable. ASC 310-10-05-4. When the face value of a note is materially different from its fair value, ASC 310 requires the company to record the receivable at fair value. ASC 310-10-30-5. After the initial transaction and measurement, ASC 310 requires a company to periodically measure receivables for impairment to ensure that the recorded amounts still reflect the likelihood of collection. ASC 310-10-35-8, -35-16.

In this case, there can be no disagreement that the $5 million face value of the Note was materially different than its fair value. At the outset of the transaction, New Eco's CEO admitted there was a significant chance that the company would default without paying. Ex. 839.5 at 23–24 (PDF). Notwithstanding a few individuals' hopes for the green energy assets, the Note had been exchanged for assets that were previously valued by Premier at $0. Ex. 400 at 27. Thus, ASC 310 required Premier to record the Note at fair value

20 Wahl's claim that he spent more time on the audit that he failed to record is unsubstantiated. *See* Wahl Response to Div. PFOF at 536 (PDF).

upon acquisition and thereafter to measure it for impairment. ASC 310-10-30-5, -35-8, -35-16.

In terms of the appropriate fair value for the assets, ASC 820 defines acquisition-date "fair value" as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." ASC 820-10-20; *see* ASC 805-20-30-1; *see also* ASC 820-10-05-1B, ASC 820-10-35-9A. An "orderly transaction" is a "transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets." ASC 820-10-20. Circumstances that may indicate that a transaction is not orderly include, where "the seller marketed the asset or liability to a single market participant." ASC 820-10-35-54I(b). "If the evidence indicates that a transaction is not orderly, a reporting entity shall place little, if any, weight (compared with other indications of fair value) on that transaction price." ASC 820-10-35-54J.

The Note transaction was by no means orderly. The green energy assets were marketed only to New Eco and were never put up for sale by Premier. As such, there was no exposure to the market before the transaction. Even when Premier purchased the assets initially, it was from related parties, after which Premier itself reported that the assets had no value. For these reasons, no weight can be placed on the agreed-upon purchase price from either transaction.

Wahl contends that Anton & Chia determined that $869,000 was the Note's historical cost to Premier based on Premier's share price at the time it first acquired the assets in 2013, *see* Wahl Post-hr'g Br. at 55; Ex. 1100 at 2 (PDF), but this is not reflected as a rationale for accepting the $869,000 figure in Anton & Chia's workpapers or the testimony of the Anton & Chia accountants who performed the work. It is also directly contradictory to Doty Scott's conclusion that the fair value of the same green energy assets acquired in late 2011 was less than $50,000, as well as by Premier's decision to discount that value to $0 in its 2011 Form 10-K.

In the alternative, Wahl contends that the Note valuation was appropriate in light of the Note's supposed subsequent settlement for 7.5 million shares in 2014. *See* Wahl Post-hr'g Br. at 56–57. But because such an analysis is not reflected in the workpapers, and Wahl never requested that Wen do it, one must presume that it was not considered. *See Dearlove*, 2008 WL 281105, at *10 n.39. Further, of the 7.5 million shares that were returned to Premier, only 2.5 million were exchanged for the Note. Ex. 402 at F-14. Thus, even under

Wahl's post-hoc analysis, the Note should only have been valued at about one-third of $869,000 based on the share price and number of shares exchanged.

Wahl's claim that he found $869,000 to be a reasonable valuation because it was an 83% discount off the face value of the note is similarly baseless. *See* Wahl Post-hr'g Br. at 55; Tr. 5359–63. It is not reflected in Anton & Chia's workpapers, and as Scott testified, it has no relationship to the analysis performed by his firm either.

To put it simply, Premier, whether on its own or in tandem with Wahl, never had any basis to report the fair value of the Note at $869,000. As noted, Doty Scott's draft tables—which were themselves not reliable—considered $869,000 the fair value of the entire enterprise, not the Note. And yet it was that number—without any apparent explanation or reflection—that Premier placed in its financial statements in contravention of ASC 310 and 820. Indeed, by the time that Premier issued its 2013 10-K, Doty Scott had determined that the fair value of the Note upon acquisition was $0—strikingly similar to the $0 Premier recorded for the same green energy assets in its 2011 Form 10-K. Accordingly, under GAAP, Premier should have recorded the Note at $0. Instead, Premier improperly reported a value for the Note that was not based on any current financial measures, and which the company's valuation expert had said was not to be used in its public filings. Ex. 447. The company also falsely suggested that a valuation was ongoing. Ex. 402 at F-9 (calling the Note amount "provisional" and referring to $869,000 as a "preliminary" appraised value). Though Wahl did not know about Doty Scott's $0 valuation report, he knew more than enough to apprehend that Premier's financial statement regarding the Note failed to comply with ASC 310 and 820.

4.7.2. Premier's accounting for the TPC acquisition did not comply with GAAP.

As discussed above regarding Accelera, ASC 805's definition of a business combination revolves around an acquirer obtaining control of a business. ASC 805-10-20. After identifying the acquirer and acquisition date, the acquisition method requires the acquirer to recognize and measure the identifiable assets acquired, and to separately recognize and measure any goodwill arising from the transaction. *See* ASC 805-10-05-4, -20-25-10. Goodwill represents the future economic benefits arising from assets acquired in a transaction beyond the value of identifiable assets such as contracts. ASC 805-20-20, -30-30-1; *see* ASC 805-20-55-2, -20-55-3, -20-55-4 (an asset separable from the acquired entity is identifiable). ASC 805-10-25-14 requires that the purchase price allocation, which separates identifiable assets from goodwill, be completed within one year of acquisition, and in many cases much earlier.

Premier purchased an 80% interest in TPC in February 2013, but in its financial statements for year-end 2013 prepared in April 2014, it allocated the entire purchase price to goodwill despite publicly touting the millions of dollars in value it was getting from TPC's thousands of individual contracts. Given the requirement to conduct a purchase price allocation separating goodwill from identifiable assets within one year of acquisition at the latest, Premier's attribution of all the value to goodwill was in violation of GAAP.

Wahl argues that the audit needed to consider Premier's finances only as of year-end 2013, and since the purchase price allocation did not need to be completed until February 2014, it was acceptable to leave everything allocated to goodwill until the company's first quarter 2014 report. *See* Wahl Post-hr'g Br. at 59 (calling the purchase price allocation a "subsequent event" to December 31, 2013); Wahl Resp. to Div. PFOF at 491–92 (PDF). But Wahl is incorrect. Anton & Chia's planning memorandum for the audit itself acknowledges that the purchase price allocation was due no later than one year from the acquisition and would be evaluated by the firm during the 2013 audit. Ex. 419 at 1854. And even assuming that Wahl has a colorable argument about the timing, one is not granted license to simply record everything as goodwill during the one year measurement period. Rather, an acquirer must adjust the provisional amounts recorded as new information that existed as of the acquisition date becomes available. ASC 805-10-25-13. The measurement period then ends as soon as the acquirer receives the information it was seeking about facts and circumstances that existed as of the acquisition date or learns that more information is not obtainable, even if one year has not yet passed. ASC-805-10-25-14. Since Premier surely had sufficient information about the value of TPC's contracts to make the allocation long before a year expired—as evidenced by the numerous press releases and quarterly reports mentioning customer contracts and estimating their value—the company violated GAAP by instead leaving everything allocated to goodwill in its year-end financial statements.

In making his argument, Wahl also appears to conflate the required timing for a purchase price allocation with the timing for a goodwill impairment analysis. *See* ASC 350-20-35-28 (after its initial recognition, goodwill "shall be tested for impairment on an annual basis"). Wahl seems to maintain that because Premier alleged it tested the goodwill associated with the TPC acquisition during Q1 2013, it had until Q1 2014 to complete the purchase price allocation. Wahl Post-hr'g Br. at 59; *see* Wahl PFOF at 346 (PDF); Div. Resp. to Wahl PFOF at 279–80. But the relevant requirements are separate and independent; the timing of testing goodwill does not delay the one-year deadline for the purchase price allocation.

Wahl also argues that recording everything as goodwill was appropriate because Premier did not obtain any identifiable TPC assets in the acquisition: any customer list had no economic value because it identified contracts that were between suppliers and customers but not Premier or TPC. *See* Wahl Post-hr'g Br. at 59; Wahl PFOF at 338–43 (PDF); Wahl Resp. to Div. PFOF at 489–90 (PDF); Tr. 4534–37; Ex. 1116 (purchase agreement between Premier and TPC does not record the transfer of customer contracts). But Premier acquired an 80% interest in TPC, and thus an 80% interest in all of TPC's contracts and the revenue generated by those contracts, as underscored by Premier's repeated public disclosures about the value of the contracts. Regardless of who held the contracts, TPC and Premier had economic rights flowing from them and they had the potential to generate revenue. The contracts were identifiable assets clearly separable from the company itself. *See* ASC 805-20-20, -20-55-3.

Wahl's GAAP arguments about the TPC acquisition are further belied by Anton & Chia's workpapers. The planning memo explicitly recognized that Premier had to complete the purchase price allocation within a year of acquiring TPC and stated that Anton & Chia would evaluate the reasonableness of the purchase price allocation. Ex. 419 at 1854. Wahl points to no evidence supporting the notion that he later decided to handle this issue differently based on the reasons he has proposed in this proceeding. *See Wendy McNeely, CPA*, Exchange Act Release No. 68431, 2012 WL 6457291, at *11 & n.26 (Dec. 13, 2012) (rejecting an after-the-fact rationalization unsupported by the evidence that also failed to explain the lack of due care).

After its initial recognition, goodwill must be presented in accordance with ASC 350, which requires that it "be tested for impairment on an annual basis." ASC 350-20-35-28. In discussing its goodwill in its 2013 financial statements, Premier reported that it performed a two-step quantitative assessment when periodically reviewing goodwill for impairment. Ex. 402 at F-8; *see* ASC 350-20-35-3 (concerning the two-step quantitative goodwill impairment test). But in fact, Premier never performed a goodwill assessment, and Anton & Chia performed one for Premier instead. Tr. 2268–69; *see* Ex. 428. Premier's failure to perform a goodwill impairment analysis did not comport with GAAP.

4.8. Wahl failed to comply with PCAOB standards.

Wahl, in his role as engagement partner for the 2013 Premier audit, failed to comply with multiple PCAOB standards then in effect with regard to the Note and TPC acquisition.

4.8.1. Failure to exercise due professional care and skepticism

In violation of AU § 230, Wahl did not exercise due care in the sparingly few moments he reviewed just the summary page of Wen's workpaper purporting to justify the $869,000 Note valuation. *See* AU §§ 230.01–.04. Wahl knew there was no completed valuation report on the Note. He further knew that neither Wen nor Shek understood the placeholder valuation tables Anton & Chia obtained from Doty Scott. Shek in fact refused to sign either workpaper Wen prepared. The lack of care employed by Wahl is underscored by the fact that the $869,000 placeholder value actually represented the overall value of New Eco, some $200,000 more than the placeholder value of the Note. Additionally, Wahl completely disregarded Doty Scott's admonition that the spreadsheets should not be cited. The preceding failings also violated AU § 230.08, which specifically "requires the auditor to consider the competency and sufficiency of the evidence." And in contravention of AU § 230.07, Wahl did not exercise any professional skepticism with respect to Premier's unsubstantiated assertion that the Note was worth $869,000. Instead, he seemed to take it for a given, and justified it only by reference to an inapplicable placeholder value that was never meant to be cited.

Turning to the TPC acquisition, Wahl failed to exercise the requisite care and professional skepticism when he did not follow up on the need for a purchase price allocation despite the fact that one had been commissioned, more than a year had passed since the acquisition, and Anton & Chia's planning memo specifically indicated that it would review the allocation as part of the audit. *See* AU § 230.07. Further, in approving Premier's provisional allocation of all of TPC's assets to goodwill, Wahl either failed to review, or disregarded, Premier's numerous public statements about identifiable assets in the form of customer contracts that made the acquisition valuable to Premier. Wahl also failed to demonstrate due care in signing off on Premier's financial statements reporting that it assessed its recorded goodwill for impairment at least annually, when he knew, or should have known, that Premier had not conducted its own goodwill impairment analysis. Instead, Anton & Chia conducted a flawed goodwill impairment analysis for Premier on its own, and in signing off on that workpaper, Wahl was complicit in the paucity of its analysis and findings.

4.8.2. Failure to prepare adequate documentation or obtain sufficient audit evidence

Wahl violated AS Nos. 3, 14, and 15 due to insufficient audit documentation or workpapers (AS No. 3.2) and a lack of audit evidence (AS Nos. 14.4(f), 15). Engagement supervisors, like Wahl, review the workpapers "to understand how the engagement team reached significant conclusions, and whether there is adequate evidential support for those conclusions." AS No. 3.3(c). Workpapers "should be prepared in sufficient detail to provide a clear understanding of [their] purpose, source, and the conclusions reached"; they also "should be appropriately organized to provide a clear link to the significant findings or issues." AS No. 3.4. The workpapers should "[s]upport the basis for the auditor's conclusions concerning every relevant financial statement assertion" and "[d]emonstrate that the underlying accounting records agreed or reconciled with the financial statements," AS No. 3.5(b), (c), which here included records concerning the Note's value. Anton & Chia's two workpapers on the Note, prepared by an accountant who warned Wahl he was unable to understand the information with which he was provided (a source that did not support management's conclusion as to valuation anyway), could not possibly meet this standard. *See* AS No. 3.3(c), .4–.5. As discussed above, the workpapers addressing the Note valuation were thoroughly deficient, offering baseless conclusions supporting management's valuation without any analysis. Moreover, the workpapers do not "clearly demonstrate that the work was in fact performed," nor would an auditor lacking a "previous connection to the engagement" have been able to "understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached." AS No. 3.6. Quite the opposite in fact.

Under AS No. 14.6, evidence concerning unusual, related party transactions—like the Note and its purported valuation—should be reviewed for sufficiency in evaluating the audit results, and "[t]he auditor should obtain corroboration for management's explanations regarding significant unusual … transactions … or relationships." AS No. 14.8. Here, neither Wahl nor anyone else at Anton & Chia obtained corroboration regarding how a Note for assets previously valued at less than $50,000 and discounted to no value by Premier's management was now worth close to a million dollars following a period in which the operation of those assets had resulted in the loss of three-quarters of a million dollars.

Further, "[t]he objective of the auditor is to plan and perform the audit to obtain appropriate audit evidence that is sufficient to support the opinion expressed in the auditor's report." AS No. 15.3. As the risk of material misstatement or ineffective control over financial reporting increases—risks Wahl admits were present with Premier—"the amount of evidence that the auditor should obtain also increases." AS No. 15.5. Yet, notwithstanding the heightened risk, Wahl sought no such additional evidence. In short, the workpapers related to the Note's value were, on their face, patently insufficient to serve as evidence of the $869,000 valuation, and made use of Doty Scott's draft spreadsheets that were never intended to be quoted. Even basic knowledge about the assets underlying the Note would have made one skeptical that it had anything more than nominal value.

Turning again to the TPC acquisition, the workpapers improperly provided no explanation for the absence of the overdue purchase price allocation. *See* AS No. 3.3(c), .4, .5(b); AS No. 14.32, .34(e), .35; AS No. 15.4. In light of Premier's failure to conduct a purchase price allocation or a demonstrable assessment that $4.5 million purchase price was appropriately attributed to goodwill, Wahl was presumptively obliged to "obtain corroboration for [Premier's] explanations" concerning both, and if their responses "appear[ed] to be implausible, … imprecise, or not at a sufficient level of detail to be useful, the auditor should [have] perform[ed] procedures to address the matter." AS No. 14.8; *see* AS No. 15.5. But Wahl never asked for corroboration, even though Premier's assertions regarding these issues in its financial statements, if not outright implausible, were, at a minimum, insufficient to be useful. *See id.* Further, Premier's refusal to recognize any impairment to the value of the goodwill represented a potential fraud risk that Wahl and his team never considered. *See* AS No. 14.6(b), .9. And because they never considered it, they never took any measures to mitigate that risk.

Likewise, Anton & Chia's goodwill impairment memorandum, which Wahl signed off on, did not afford Wahl, Koch, or any reader the ability to meaningfully understand how the engagement team concluded there was no impairment or that there was adequate evidentiary support for that conclusion. *See* AS No. 3.3(b)–(c), .4, .6. The memo's points and authorities provided no relevant or reliable bases for substantiating its conclusion. AS No. 15.6–.8. For one, it relied only on cash inflows for two months instead of on net cash flows, which would have been more reliable, and would have showed the assets were losing money. It further failed to satisfy typical indicia of reliability because it depended on "internal company sources" of Premier, a company Anton & Chia determined had material weaknesses with regard to controls, instead of depending on an independent "knowledgeable source." AS No. 15.8. The engagement team failed to conduct the required procedures to verify internal information, such as the positive assessment Premier provided regarding TPC's future performance. *See* AS No. 15.10.

4.8.3. Improper use of the work of a specialist

AU § 336, "Using the Work of a Specialist," applies, in pertinent part, where "[m]anagement engages … a specialist and the auditor uses that specialist's work as evidential matter in performing substantive tests to evaluate material financial statement assertions." AU § 336.03(b). Here, Premier engaged the valuation firm Doty Scott to report on the value of the Note, and Anton & Chia treated Doty Scott's placeholder valuation tables as evidential matter. Valuation is a prime example of the work of a specialist that is considered by an auditor. AU § 336.07(a). The auditor should understand, among other things, "[t]he methods or assumptions used" and "[t]he appropriateness of using the specialist's work for the intended purpose." AU §§ 336.09(c), (e); *see* AU § 336.12. Here, neither Wahl nor anyone at Anton & Chia understood Doty Scott's methods or assumptions, nor did they understand that the placeholder tables contained outdated assumptions from a previous period and were never meant to be relied on.

The auditor should also "make appropriate tests of data provided to the specialist." AU § 336.12. Here, insufficient data had been provided to Doty Scott, and Wahl directed Wen (who told Wahl he did not understand the spreadsheets) only to check the math. Checking math is not a test of the data: it instead presumes that the data is correct, and only evaluates whether one or more formulae are being calculated correctly. And the two workpapers that Wen prepared were entirely conclusory. Thus, Wahl failed not only to understand Doty Scott's methods and assumptions, but also failed to appropriately test the data provided.

4.8.4. Failure to consider fraud in Premier's financial statements

Wahl violated AU § 316, "Consideration of Fraud in a Financial Statement Audit," by failing to properly evaluate and consider the circular and unusual nature of the transactions that Premier entered into surrounding the Note. Under PCAOB standards, fraud is "an intentional act that results in a material misstatement in financial statements that are the subject of an audit." AU § 316.05. Material misstatements due to aggressive applications of accounting rules that are rationalized by management can result in fraud. AU § 316.06. The auditor should therefore "design and perform audit procedures in a manner that addresses" the risk of fraud. AU § 316.52. In this context, auditors have a responsibility to consider "significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment." AU § 316.66. This responsibility includes: "gain[ing] an understanding of the business rationale for such transactions and whether that rationale (or the lack thereof) suggests that the transactions may have been entered into to engage in fraudulent financial reporting … ." *Id.* In evaluating the business rationale for the transaction, the auditor should consider whether the transaction involves related parties and how that fact might contribute to the risk of fraud. *See* AU § 316.67. Yet Wahl gave no special attention to the unusual, related party transaction regarding the Note, which added almost $1 million to Premier's balance sheet in exchange for certain assets that had lost more than $750,000 the year before, and were previously valued at zero dollars by Premier itself. With the facts that Anton & Chia had, this transaction suggested possible fraud, yet Wahl failed to take any discernable action under AU § 316 to address that possibility.

Further, Wahl failed to evaluate the TPC acquisition for fraud. He should have done so, particularly since it was a large cashless transaction for which the valuation of identifiable assets had not been completed in a timely fashion.

4.8.5. Failure to perform alternative confirmation procedures

In violation of AU § 330, Wahl, who was ultimately responsible for the audit, failed to perform alternative procedures when New Eco did not respond to Anton & Chia's confirmation request regarding the Note. "Confirmation is undertaken to obtain evidence from third parties about financial statement assertions made by management," and greater assurance is needed for "unusual or complex transactions." AU §§ 330.06–.08. If a positive confirmation is not returned by the third party, the auditor "should apply alternative procedures to the nonresponses to obtain the evidence necessary to reduce audit risk to an acceptably low level." AU § 330.31. After performing the alternative procedures, "the auditor should evaluate the combined evidence provided by the confirmations and the alternative procedures to determine whether sufficient evidence has been obtained about all the applicable financial statement assertions." AU § 330.33. Anton & Chia planned to obtain third-party confirmation from New Eco of the Note's existence and balance. Ex. 419 at 1854 (stating that Anton & Chia would "send direct confirmation to verify the balance as of 12/31/2013 and also reconcile with the disposal agreement between the company and the buyer"). Yet, although Anton & Chia never received confirmation from New Eco, Ex. 459; Tr. 2248–49, there is no evidence that it ever performed alternate procedures to reduce audit risk.

5. CannaVEST facts and accounting violations

5.1. Introduction and summary

Anton & Chia conducted interim reviews of CannaVEST Corp. for the first three quarters of 2013. Ex. 840 ¶ 46. CannaVEST materially overstated goodwill from its acquisition of PhytoSphere Systems, LLC, in the first and second quarter reports. In the third quarter report, CannaVEST impaired the goodwill, but did not explain why and did not restate the earlier quarters' reports. All three reports failed to follow GAAP. Wahl, who worked on all three interim reviews, and Chung, who was the EQR for the first quarter review, did not adequately review CannaVEST's financial statements and did not identify the significant accounting problems in those statements. As such, Wahl and Chung failed to follow applicable PCAOB standards requiring due professional care, Wahl failed to follow standards for interim reviews with regard to planning and supervision and making inquiries of management, and Chung failed to conduct an appropriate engagement quality review.

5.2. CannaVEST acquires PhytoSphere

CannaVEST was incorporated under the name Foreclosure Solutions, Inc., in 2010. Ex. 702 at 4 (CannaVEST 2012 Form 10-K). It was unable to attract financing for its business plan of offering real estate services. New owners acquired control of Foreclosure Solutions in November 2012 in a series of stock transactions with a total purchase price of $375,000. *Id.* at 4, 17. After the sale, Michael Mona, Jr., became the company's sole officer. *Id.* at 12. At the end of 2012, the company had earned no revenue since its inception, had a net loss for the year of $45,611, and its only asset was $431 in cash. *Id.* at F-3, F-4, F-6.

In January 2013, Foreclosure Solutions changed its name to CannaVEST.[21] Ex. 840 ¶ 30. The same day, CannaVEST closed a deal to purchase PhytoSphere from Medical Marijuana, Inc. Ex. 700 at 3. After the acquisition, the newly renamed CannaVEST planned to focus on producing and selling products containing cannabidiol (CBD), an extract from the hemp plant. Ex. 702 at 4. PhytoSphere had contracts to import hemp products from Europe as, at that time, cultivation of hemp in the United States was illegal. *Id.* at 5. CannaVEST also acquired PhytoSphere's equipment, inventory, domain names, telephone numbers, licenses, and cash on hand of about $50,000. Ex. 751 at 8.

The nominal purchase price for PhytoSphere was $35 million, payable in five installments by cash or CannaVEST stock at CannaVEST's discretion. *Id.* at 1–2. The value of the stock was based on the prior day's closing price, but there was a price collar provision limiting the value to no greater than $6.00 or less than $4.50 per share. *Id.* at 2. CannaVEST paid $950,000 in cash and issued 5,825,000 shares of stock to complete the purchase, valuing the stock at $5.85 per share. Ex. 715 at F-12 (CannaVEST 2013 Form 10-K). At the time of the purchase, however, CannaVEST stock did not trade on an active market, trading volume was "miniscule," and the price was volatile. Tr. 2602; *see* Exs. 776, 779. The previous major change of ownership of PhytoSphere was in April 2012, when Medical Marijuana acquired an 80% stake in it for $2.5 million. Exs. 836, 837.

The day before CannaVEST changed its name and closed the PhytoSphere deal, Mona joined the board of directors and the sole previous director resigned. Ex. 702 at 12. Three additional directors joined the board in March 2013. *Id.*

5.3. CannaVEST's financial reporting

The public accounting firm Turner, Stone & Company audited CannaVEST's 2012 Form 10-K, which was filed in April 2013. Ex. 702 at F-2. Because the PhytoSphere acquisition had not been completed by the end of

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[21] In 2016, after the events relevant to this proceeding, CannaVEST changed its name to CV Sciences, Inc. CannaVEST Corp., Current Report at 4 (Form 8-K) (Jan. 4, 2016).

2012, the transaction was not included in the annual financial statements in the 2012 Form 10-K. Tr. 2072–73. Turner Stone informed CannaVEST management that, for the 2013 periodic reports, CannaVEST would need to have PhytoSphere's assets valued. Ex. 782; Tr. 2084–85. In addition, since CannaVEST was no longer a shell company, the amount of work needed to audit the company would significantly increase. Tr. 2087–88. For its 2012 audit services, Turner Stone charged $16,230. Ex. 702 at 17. Turner Stone estimated that it would bill about twice as much in 2013. Tr. 2088. CannaVEST was unwilling to pay these higher fees and engaged Anton & Chia, which charged $2,500 for each quarterly review. Tr. 2089.

No one from Anton & Chia contacted Turner Stone before or after accepting CannaVEST as an audit client. Tr. 2092.

CannaVEST's report for the first quarter of 2013 was the first to include the PhytoSphere transaction. The balance sheet included $33,656,833 in net intangible assets, and the statement of cash flow recorded a $34,035,000 investment for the purchase of PhytoSphere's goodwill. Ex. 705 at 3, 6. These intangible assets represented over 90% of CannaVEST's total assets. *Id.* The report disclosed a material weakness in CannaVEST's internal control over financial reporting, warning of a reasonable possibility of a material misstatement in its financial statements. *Id.* at 15. Ten days after filing the report, it filed an amended report to correct a mathematical error in the balance sheet, add missing items to the management's discussion and analysis of financial condition and results of operation, and correct other errors. Ex. 706 at 1.

The 2013 second quarter report's balance sheet differed from the first quarter in that it recorded goodwill—$26,998,125—separately from other net intangibles—$4,995,895. Ex. 708 at 3. These two categories still accounted for 85% of CannaVEST's total assets. CannaVEST once again acknowledged a material weakness in its internal controls. *Id.* at 16.

In August 2013, CannaVEST engaged Vantage Point Advisors, Inc., to conduct an independent valuation of CannaVEST's common stock. Ex. 830. Vantage Point estimated that the total equity value of CannaVEST was $12,200,000 and the value per share was $1.31, discounted to $0.68 due to lack of marketability. Ex. 797 at 29. Using a discounted cash flow method, Vantage Point estimated CannaVEST's business enterprise value to be between $14,070,000 and $16,840,000. *Id.* at 25.

As this business enterprise value was less than half of the purported purchase price of PhytoSphere, CannaVEST had Vantage Point value PhytoSphere as of the acquisition date. Tr. 2626–27. In a draft report prepared in October 2013, Vantage Point estimated PhytoSphere's fair market value as of January 2013 to be $8,150,000. Ex. 798 at 1. This value was less than one fourth of the $35,000,000 purported sale price.

In its third quarter report, CannaVEST recognized an impairment to goodwill of $26,998,125, the entire amount it had on its balance sheet the previous quarter. Ex. 710 at 5. The third quarter report did not disclose the facts and circumstances of the impairment and did not mention that goodwill was recalculated based on an independent valuation of PhytoSphere. Ex. 710; Tr. 2874–75. As a result of this impairment, CannaVEST's total assets decreased from $37,303,795 to $10,732,131 from the second quarter to the third quarter. Ex. 710 at 4; Ex. 708 at 3. Despite the valuation report showing that PhytoSphere was only worth $8 million at the time of purchase, CannaVEST did not at that time restate either of the prior quarters' financial statements. The report did disclose a material weakness in internal controls. Ex. 710 at 17–18.

On the same day the third quarter 10-Q was filed, Wahl and Anton & Chia resigned as CannaVEST's auditor. Tr. 2650, Ex. 711. The reason for the resignation was not a disagreement between CannaVEST management and Anton & Chia on a matter of accounting principles or practices. Ex. 711. CannaVEST hired PKF LLP to succeed Anton & Chia as its auditor in January 2014. Ex. 713.

James Stewart, a partner at PKF, reviewed CannaVEST's recent filings and was concerned about the impairment of goodwill. Tr. 2872–73. Stewart's professional judgment was that CannaVEST could not rely on its stock price to value the PhytoSphere transaction and that an independent valuation was necessary. Tr. 2893–96. At PKF's suggestion, CannaVEST had Vantage Point update its report with an allocation of the $8 million fair value of PhytoSphere allocated among the assets acquired. Exs. 771, 801; Tr. 2878–89.

CannaVEST filed its 2013 Form 10-K at the end of March 2014. CannaVEST valued PhytoSphere at $8,020,000 and allocated that money according to the Vantage Point report. Ex. 715 at F-12. CannaVEST explained that it based the value of PhytoSphere on an estimate of the fair market value acquired—rather than the nominal value of the stock paid—because CannaVEST's "common stock was not trading and [CannaVEST] had no operations at the time." *Id.*

In April 2014, shortly after filing the 10-K, CannaVEST advised investors not to rely on the financial statements in the three 2013 quarterly reports because of errors related to the purchase price and asset allocation of the PhytoSphere transaction. Ex. 716. Less than two weeks later, CannaVEST announced that it would restate the financial statements in those three reports. Ex. 717. By the end of April, CannaVEST filed Forms 10-Q/A amending the 2013 quarterly reports. Exs. 718, 719, 720. These amended reports explained that the purchase price of PhytoSphere originally reported did not represent fair market value of the transaction under GAAP. *E.g.*, Ex. 719 at 2.

Staff from the Commission's Division of Corporation Finance corresponded with CannaVEST management about the restatement. At first, the staff sought more information about the PhytoSphere transaction. *See* Exs. 776, 777, 778 (letters from CannaVEST to the staff responding to inquiries and explaining the basis for the restatement). In a phone call in September 2014, Commission staff explained its disagreement with the accounting treatment of the PhytoSphere transaction in the 2013 10-K and restated 10-Qs. Ex. 779 at 1. The Commission staff instead told CannaVEST to restate its 2013 financial statements to reflect the contract value of $35 million for PhytoSphere and to recognize an immediate impairment to goodwill of just under $27 million. *Id.* CannaVEST appealed this decision to the Chief Accountant of the Division of Corporation Finance. *Id.* As a result of this appeal, CannaVEST was not required to restate the 2013 10-K or further restate the three 2013 10-Qs. Tr. 2902.

5.4. CannaVEST violated GAAP

5.4.1. Failure to value PhytoSphere correctly

CannaVEST violated GAAP and materially misstated its assets in the 2013 first and second quarter reports by valuing PhytoSphere at the $35 million contracted purchase price when the actual fair value of the PhytoSphere assets was only about $8 million.

ASC 805 provides that goodwill is recognized on the acquiring company's balance sheet when the consideration paid is greater than the net identifiable assets acquired. ASC 805-30-30-01. The consideration paid must be measured at fair value. ASC 805-30-30-7. As noted regarding Premier, fair value is defined as "[t]he price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." ASC 820-10-20.

The PhytoSphere transaction was not an orderly transaction between market participants, which, as noted above, assumes that usual and customary marketing activities took place. ASC 820-10-20. Evidence that a transaction is not orderly includes the seller marketing the asset to a single potential buyer, a lack of knowledge or due diligence by the buyer or seller, and a transaction price that is an outlier when compared to other recent transactions. ASC 820-

10-35-54I. Each of those was the case in this transaction. Medical Marijuana did not market PhytoSphere to anyone other than CannaVEST, CannaVEST performed no due diligence, and the price was an outlier, particularly when compared to the $2.5 million Medical Marijuana paid for 80% of PhytoSphere just nine months earlier. Ex. 779 at 4–5; Tr. 1531. Because the acquisition was not orderly, "little, if any, weight" should be placed on the acquisition price. ASC 820-10-35-54J.

Wahl argues that the PhytoSphere acquisition was an orderly transaction because it was not a forced sale or a sale between related parties. Wahl PFOF at 143 (PDF); Wahl Post-hr'g Br. at 49. A forced sale or related party transaction would be strong evidence that a transaction is not orderly and between market participants, but these are not the only factors considered. *See* ASC 820-10-30-3A, -35-54I. The overall weight of the evidence is that the acquisition was not an orderly transaction. *See* ASC 820-10-35-54I ("A reporting entity shall evaluate the circumstances to determine whether, on the weight of the evidence available, the transaction is orderly.").

Even if it were an orderly transaction, CannaVEST knew many other facts at the time of the first and second quarter reports that showed that the $35 million contract value of the PhytoSphere purchase price was an unreliable indicator of the fair value of the consideration paid. CannaVEST paid only $950,000 in cash. The bulk of the consideration was thinly traded and unmarketable CannaVEST stock. Ex. 779 at 2. Before the acquisition, CannaVEST was a corporate shell and had no revenue, net losses, and only $431 in assets. In the purchase, CannaVEST's stock was valued at over $5.00 per share based on limited trading and the price collar in the contract. The price collar was used to limit the number of shares exchanged and prevent dilution—it was not intended to represent fair market value. *See* Ex. 779 at 2.[22] The independent valuation of the PhytoSphere assets, which CannaVEST finally commissioned in the third quarter, confirmed these red flags.

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[22] In explaining why it restated the earlier reports, CannaVEST told Commission staff that at the acquisition date

> [it] had minimal operations, (ii) [its] common stock was not trading, (iii) the number of shares issuable in the transaction was of little relevance to [CannaVEST], and (iv) the $35 million assigned purchase price was of little relevance to management and was not thought to represent the fair value of the business acquired when the transaction occurred.

Wahl argues that CannaVEST's stock price was the most reliable method of determining the fair value of the acquisition. Wahl PFOF at 199 (PDF); *but see* Wahl Post-hr'g Br. 49.[23] Under ASC 820's hierarchy of valuation inputs, "quoted prices (unadjusted) in active markets for identical assets or liabilities" are considered "Level 1 inputs" and should be used to measure fair value, if available. ASC 820-10-35-40; *see* ASC 820-10-35-36B, -37, -41. Because CannaVEST's stock was not actively traded at the time of the transaction, however, its stock price cannot be considered a Level 1 input, as Anton & Chia itself recognized: the goodwill impairment memorandum, prepared in the third quarter, acknowledge that CannaVEST's common stock had "finite trading volume" and did not qualify for Level 1 treatment. Ex. 763 at 1–2 (adjusting the stock price down to the contract collar upper bound).

By failing to follow ASC 805 and ASC 820 and by not noticing or ignoring the many red flags around the valuation of the PhytoSphere acquisition, CannaVEST materially overstated its assets by about $27 million in its 10-Qs for the first and second quarters of 2013.

5.4.2. Failure to explain why goodwill was impaired

In its third quarter report, CannaVEST corrected the overstatement of goodwill by recognizing a $27 million impairment. CannaVEST did not, however, adequately explain the reasons for the impairment, a violation of GAAP. *See* ASC 350-20-50-2 (requiring, "[f]or each goodwill impairment loss recognized," an explanation in the notes describing "the facts and circumstances leading to the impairment" and "the method of determining the fair value"). Namely, CannaVEST did not disclose in the third quarter report that it had commissioned a valuation report from Vantage Point that showed PhytoSphere to be worth about $8 million, not $35 million, at the time of the acquisition. *See* Ex. 710 at 10, 12 (stating simply that CannaVEST "has recorded the impairment loss of goodwill under operating expense of $26,998,125 for the nine months ended September 30, 2013"); Tr. 2874–75.

Ex. 779 at 2.

23 By contrast, Wahl asserted in his brief that the "purchase price was not tied to the stock price." Wahl Post-hr'g Br. at 49. If Wahl is alluding to the fixed contract price of $35 million, that contract price was not a reliable indicator of fair value because 97% of the price was paid in stock and the contract specified an arbitrary and inflated stock price collar.

5.4.3. Failure to restate the first and second quarter reports

Once CannaVEST impaired the goodwill from the PhytoSphere acquisition in its third quarter 10-Q, it should have restated the prior two quarters. Under ASC 250, "[a]ny error in the financial statements of a prior period discovered after the financial statements are issued … shall be reported as an error correction, by restating the prior-period financial statements." ASC 250-10-45-23.

The Vantage Point draft valuation report showed that PhytoSphere was only worth $8 million as of the January 2013 transaction date. Although Vantage Point did not complete a final report until after the third quarter 10-Q was filed, CannaVEST and Anton & Chia knew the conclusions in Vantage Point's draft report, which were substantiated in the final report, and that was the reason the goodwill was impaired in the third quarter 10-Q. *See, e.g.*, Ex. 752 at 1–2 (PDF); Ex. 753 at 2 (PDF); Ex. 763 at 2 (PDF) (Anton & Chia's third quarter workpapers and emails from Wahl showing that the valuation report was the reason for the impairment).

Wahl argues that CannaVEST missing revenue targets, rather than the Vantage Point draft report, was the "initial trigger" for the impairment. Wahl PFOF at 221 (PDF); Wahl Post-hr'g Br. at 53. But Wahl never told Richard Canote—an independent contractor who worked as CannaVEST's consulting interim CFO—that the failure to meet projections was a reason for the impairment, Tr. 2589–92, 2667, 2682, 2691; to the contrary, he explained that the valuation report was the reason for the impairment. Ex. 753 at 2 (PDF). Wahl also argues that Commission staff's proposed accounting treatment—recognizing $35 million in goodwill at the time of the transaction with an immediate impairment of $27 million—supports the way Anton & Chia handled the PhytoSphere valuation. According to Wahl, staff agreed with Anton & Chia's "analysis of the fair value of the consideration" with the exception of "using significant hindsight to impair the goodwill on day one." Wahl PFOF at 240–41 (PDF). At best, however, this is only partially true. As explained above, significant evidence existed in the first quarter that PhytoSphere was not worth $35 million, and this evidence was strengthened by the draft valuation report in the third quarter. Hindsight was not required to know that PhytoSphere was not worth $35 million when acquired, and by the third quarter it was even more apparent. CannaVEST should have restated the reports for the first and second quarter.

5.5. Anton & Chia's reviews of CannaVEST's interim financial information

5.5.1. First quarter

Anton & Chia performed the interim reviews of CannaVEST quickly and cheaply. CannaVEST engaged Anton & Chia on May 6, 2013. Ex. 703 at 2. CannaVEST filed its first quarter Form 10-Q just two weeks later on May 20, five days after the original deadline, and filed an amended 10-Q on May 30. Exs. 704, 705, 706. Wahl put pressure on his staff to complete the work quickly. Tr. 2375–76, 2457, 2809–10. Other audit firms considered the $2,500 Anton & Chia billed per review to be well below a reasonable fee for the amount of work necessary. Tr. 2089, 2653.

Anton & Chia had frequent personnel turnover, and the staff assigned to the first quarter review was inexperienced. Tr. 2456–57. Wahl, who took on the role of engagement partner, assigned Tommy Shek to be the manager for the CannaVEST review a few days before the deadline. Ex. 740 at 2; Tr. 2377–78. Shek was the only manager-level employee at Anton & Chia at the time of the first quarter review, but he lacked audit-managing experience. Tr. 2372–74. In particular, Shek had no experience in reviewing or auditing business combinations, applying ASC 805, or measuring the fair value of acquired assets. Tr. 2378. Wahl knew Shek lacked this experience. *Id.*

Wahl assigned Binh La to do "all the heavy lifting on the 10-Q." Ex. 727 at 4 (PDF). La started working at Anton & Chia in March, two months before he was assigned to the review. Tr. 2380, 2803–04. La had no auditing experience before coming to Anton & Chia. Tr. 2805. La's training at Anton & Chia was "minimal" and not well organized, and he felt a "constant urgency" to work quickly. Tr. 2805–06, 2812. Wahl assigned La to the CannaVEST review two days before the Form 10-Q was due and seven days before it was filed. Ex. 727 at 3 (PDF). La was not knowledgeable about applying ASC 805 or ASC 820, and no one told him that those standards applied to the PhytoSphere transaction. Tr. 2820.

At CannaVEST, Edward Wilson prepared the first quarter financials and sent La an allocation of the assets of PhytoSphere. Tr. 2542, 2823; Ex. 793. Wilson was a CPA, family friend of Mona, and a member of CannaVEST's board of directors. Tr. 2534. His CPA business focused on tax and bookkeeping work, and he had no expertise in business combinations or public company financial reporting and did not know how to apply ASC 805 or ASC 820. Tr. 2532–33, 2559. Wahl assumed that Wilson prepared the financial statements in accordance with GAAP. Ex. 727 at 5 (PDF). But neither Wahl nor Shek made any inquiries about Wilson's competency to do that given the significant business combination and valuation issues that arose during the quarter. Tr. 2382–83.

La prepared a review planning memorandum for the first quarter review. Tr. 2834. The memorandum did not mention CannaVEST's material weakness in internal control over financial reporting or how Anton & Chia might address the risks posed by that weakness. Ex. 740; *but see* Ex. 784 at 2 (PDF) (interim review inquiries checklist marked "yes" for "significant deficiencies or material weaknesses in the design or operation of internal controls which could adversely affect the ability to record, process, summarize, and report financial data?"). The memorandum briefly described the PhytoSphere acquisition under "liabilities," but there was no mention of any procedures Anton & Chia would employ to determine the fair value of the purchase price or assets acquired. Ex. 740 at 2. The planning memorandum simply said that Anton & Chia "will make inquiries of management to ensure that provided financials are properly presented." *Id.*; *see also* Ex. 747 at 2 (engagement summary memo). The workpapers do not show that any inquiries were made about the fair value of assets acquired or the fair value of the consideration paid in the PhytoSphere transaction. *See generally* Ex. 3. Even though the interim review inquiries checklist reflects that fair value was not measured or disclosed in accordance with GAAP, no inquiries related to fair value were noted. Ex. 784 at 2 (PDF). Shek and La made no such inquiries, and Wahl did not tell them to ask. Tr. 2361–62, 2823.

The inquiries Anton & Chia did make were general. For example, Shek asked Wilson for an allocation of intangibles and goodwill and the support for those values. Ex. 761 at 2 (PDF). Wilson replied that CannaVEST did "not have a schedule for the detail of the intangibles" and offered to send the PhytoSphere agreement, but warned that it was "not very specific." *Id.* at 1. Wilson sent Shek the PhytoSphere agreement and a breakdown of the $35 million in assets, which included $17 million in unspecified "other agreements." S*ee* Ex. 793 at 1 (PDF). The $17 million in other agreements was a "balancing number" or "fudge factor" Wilson used to make the total add up to $35 million. Tr. 2558–59. Wilson did not perform any analysis on these assets or know whether the $35 million total was correct under GAAP. Tr. 2560. Shek did not follow up or note the lack of detail in the agreement as a red flag. Tr. 2401–02. Anton & Chia did nothing to test the validity of the numbers provided by Wilson. Tr. 2422–23. La simply took the numbers Wilson provided and applied them to the balance sheet. Tr. 2823. As for the fair value of the consideration, Shek asked Wahl what he should do about the stock price collar in the purchase agreement, and Wahl said that it was the only thing that could be relied on and that Shek should accept it.[24] Tr. 2405–06.

Compounding the already short timeframe for completing the review, CannaVEST provided Anton & Chia its draft first quarter financial statements on May 14, 2013, one day before the filing deadline, and did not send the PhytoSphere agreement until May 15. Exs. 761, 793. CannaVEST requested a five-day filing extension from the Commission, but Shek and La knew that five more days were not enough complete the review. Tr. 2399–401, 2821–22; *cf.* Tr. 2497–98 (Shek could complete a review in three to five days for a small, recurring client but could not review a "significant transaction" in that amount of time). When CannaVEST filed its Form 10-Q on May 20, Anton & Chia had not completed its review, no engagement quality review had been completed, and certain financial information in the report was left blank. Tr. 2418–21; Ex. 705 at 4 (missing earnings per share and weighted average number of shares); Ex. 731 (signoff summary report showing many signoffs from Wahl, Chung, and Shek dated May 29 and May 30). CannaVEST filed an amended Form 10-Q on May 30 that included the information left out of the original filing. Ex. 706.

Chung was the EQR for the first quarter engagement. She took the role of EQR because the only other partner at Anton & Chia had recently left the firm. Tr. 2431–32, 2468, 2807–09. Chung had limited experience in auditing matters. From 2005 to 2008, she had worked as a staff accountant at an audit firm and as an internal auditor. Ex. 875 at 10–11; Ex. 839.6 at 349 (PDF) (designated portions of Chung's deposition). Chung joined Anton & Chia in 2009 as a co-owner. Ex. 875 at 10. From 2009 to 2013, Chung helped set up the firm and worked on administrative matters, but she did not work on any engagements except as an EQR for CannaVEST's first quarter 2013 filing and one other matter. Ex. 839.6 at 346 (PDF). She did not have experience as an engagement partner in any public company review or audit before acting as EQR. *See id.* at 452 (PDF). Chung was not familiar with ASC 820 and could not recall having applied ASC 805 except in the CannaVEST engagement. *Id.* at 355, 357 (PDF).

Chung did not ask any questions of Shek or La or otherwise interact with them about the first quarter review. Shek did not believe Chung was competent to serve as EQR. Tr. 2432. He never received any advice from her, and she was rarely in the office. *Id.*; Ex. 839.6 at 346 (PDF). Shek found it

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[24] While Anton & Chia was working on the first quarter review, Wahl and Chung were on a cruise, although Wahl corresponded by email and phone. Tr. 2378–79.

unusual that Chung never communicated with him during the engagement quality review. Tr. 2434. La also noted that Chung was rarely in the office. Tr. 2846. He did not interact with her regarding the first quarter review. Tr. 2845.

Chung failed to notice that the review team did not adequately consider whether the PhytoSphere transaction was recorded in accordance with GAAP. On the supervision, review, and approval form, she checked not applicable to "whether appropriate consultations have taken place on difficult or contentious matters, or significant unusual transactions" and commented that "[n]one is necessary." Ex. 745 at 4.

5.5.2. Second quarter

For the second quarter review, La was the staff accountant, Shek the audit manager, Wahl the engagement partner, and Richard Koch the EQR. Ex. 808 at 2 (PDF). With respect to the PhytoSphere transaction, the review planning memorandum for the second quarter contained the same language as the previous quarter's: that Anton & Chia "will make inquiries of management to ensure that provided financials are properly presented." *Id.* There was again no mention of CannaVEST's material weakness in internal controls or how that risk could be mitigated. *See id.* The balance sheet saw major changes to the way CannaVEST allocated the $35 million purported purchase price of PhytoSphere, but Anton & Chia's workpapers do not explain the reasons for the changes. *Compare* Ex. 851 (second quarter balance sheet analytics), *with* Ex. 850 (first quarter balance sheet analytics). For example, the first quarter balance sheet analytics valued the right to purchase 460 kilograms of CBD at $11.5 million, but this was decreased to $947,387.50 in the second quarter.[25] *Id.* The value of goodwill (to make up the difference between the listed assets and the purchase price) increased to about $27 million from $17.5 million. *Id.*

Anton & Chia conducted no analysis and made no inquiries about why the allocation of assets changed so significantly. Like in the first quarter, Anton & Chia simply accepted the financial numbers provided by CannaVEST. Tr. 2438, 2851. Anton & Chia did not prepare a balance sheet analytics page comparing the first quarter with the second quarter. Tr. 2850–51. Wahl did not direct Shek or La to ask about these changes. Tr. 2441–42. The interim review

[25] CannaVEST partially explained the difference in a revised calculation of intangible assets that Canote sent to La. Ex. 843. One tab on this spreadsheet explained that the first quarter right to purchase CBD was valued at $25,000 per kilogram, while for the second quarter it was valued at $3,989 per kilogram. Ex. 843.1 (intangibles tab). This information did not make it into Anton & Chia's analytical workpapers or CannaVEST's Form 10-Q. *See* Tr. 2441–42.

inquiries checklist indicated that no unexpected differences were noted during the review period, even though the changes in allocations and goodwill were significant unexpected differences. Ex. 785 at 1; Tr. 2439–40, 2847–48. The checklist also incorrectly stated that there were no material weaknesses in CannaVEST's internal controls. Ex. 785 at 2.

5.5.3. Third quarter

The engagement team for the third quarter was the same as the second quarter with Windy Wu added as a second staff accountant. Ex. 787 at 3. The third quarter planning memorandum again had no mention of CannaVEST's material weakness in internal controls, and the inquiries checklist was again marked "no" for the material weakness question. Ex. 787; Ex. 789 at 2.

Based on the draft Vantage Point valuation, Anton & Chia proposed that CannaVEST record an impairment of $26,988,125 to goodwill, eliminating the entirety of goodwill from the second quarter balance sheet. Ex. 763. Anton & Chia's workpapers and emails reflect that the basis for the goodwill impairment charge was the draft Vantage Point valuation report on PhytoSphere. *See* Ex. 763 at 2 (PDF) (goodwill impairment memo stating that independent advisors provided a valuation of PhytoSphere less than the originally booked purchase price, leading to impairment of goodwill); Ex. 752 at 1 (PDF) (Wahl email stating that the "Phytosphere valuation implies an impairment"). In his investigative testimony, Wahl explained that the evidence of the impairment was the PhytoSphere valuation. Ex. 839.6 at 247–48, 279 (PDF). He also stated that CannaVEST's revenue for the past nine months, which was less than management projected "was also a factor in determining whether there was an impairment." *Id.* at 290 (PDF). But Wahl never mentioned to Canote that the goodwill impairment stemmed from CannaVEST's failure to meet revenue projections, and his contention that revenue was a factor is not supported by the impairment memo, other workpapers, or emails. Tr. 2691; *see* Ex. 763 (goodwill impairment memo); Ex. 752 (email); Ex. 753 (email).

Anton & Chia did not recommend that CannaVEST restate the financials of the first and second quarter reports even though Wahl knew that PhytoSphere was not worth $35 million when CannaVEST acquired it. *See* Ex. 753 at 2 (PDF) (Wahl email to Canote stating that "the third party valuation came in at approximately $8.0MM[;] looks like this should have been booked originally at $8.0MM not the approximately $35MM"); *see also* Ex. 763 at 2 (PDF). Had Anton & Chia insisted on restatement, CannaVEST would have done so. Tr. 2650. Anton & Chia did not advise CannaVEST to disclose in the third quarter report the facts and circumstances of the impairment or the method used to determine the fair value of the goodwill—the independent valuation of PhytoSphere at the time of the transaction. Tr. 2643–44.

5.6. Wahl and Chung violated PCAOB standards

In conducting reviews of CannaVEST's interim financial information, Wahl, as engagement partner on all three reviews, and Chung, as EQR for the first quarter review, violated applicable professional standards.

5.6.1. Failure to adequately plan and supervise the first quarter review, and failures of due professional care

Failures started even before Anton & Chia accepted the CannaVEST engagement. Before a successor auditor accepts an engagement, it should communicate with the predecessor auditor. AU §§ 315.07, 722.04, 722.12. This responsibility rests with the successor auditor. AU § 315.06. But the engagement team at Anton & Chia never contacted Turner Stone. Tr. 2092.

The first quarter review was rushed. Wahl assigned La and Shek to the audit only a few days before the due date, and CannaVEST provided significant financial information to Anton & Chia at the very last moment. Exs. 761, 793. CannaVEST sought a five-day extension of the deadline, but even with the extra time, Anton & Chia was unable to fully complete the review before it was filed. Tr. 2418–20; Ex. 705 at 4. Although the extension might have been sufficient if CannaVEST were still a shell company, there was insufficient time for Anton & Chia's staff to evaluate a significant transaction for a new client—one that increased its assets from $431 to a purported $36 million. Tr. 2399–01, 2497–98, 2821–22; Ex. 706 at 3. Even after the extension, the Form 10-Q CannaVEST filed was incomplete and no engagement quality review had been done. CannaVEST had to file an amended 10-Q ten days later to fill in blanks in the original filing. Wahl did not give his staff adequate time and pressed them to get the review done quickly.

The staff Wahl assigned to the review was ill prepared for it. Wahl expected La to do the "heavy lifting" despite La being new to Anton & Chia, having little previous auditing experience, and being unfamiliar with ASC 805 and ASC 820. Wahl assigned Shek to be the audit manager even though he had no experience at that level and had not applied ASC 805 before. Because the only other partner at Anton & Chia left the firm, Wahl had Chung act as EQR although she had limited relevant experience. It does not violate professional standards to have new or inexperienced staff, but inexperienced staff need more supervision and support. AU § 150.02 ("The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor"; "[A]ssistants, if any, are to be properly supervised."); AU § 722.01 (applying § 150.02 to interim reviews); *cf.* AU § 210.03 ("The junior assistant … must obtain his professional experience with the proper supervision and review of his work by a more experienced superior."). In this case, staff did not receive the support they needed. Wahl did not tell La, for example, that ASC 805 applied to the transaction or explain how to assess the financial figures provided by CannaVEST. And when asked by Shek about what to do with the stock price in the sale agreement, Wahl told him just to accept it.

Further, Anton & Chia's workpapers do not mention that ASC 805 and ASC 820 are the accounting standards that applied to the PhytoSphere acquisition. *See* Exs. 3, 747. Not identifying the accounting standards that applied was a planning failure that hindered the engagement team from making adequate inquires of management and performing appropriate analytical procedures. AU § 722.11 ("In planning a review of interim financial information, the accountant should … identify particular events, transactions, or assertions to which … inquiries may be directed or analytical procedures applied.").

By not communicating with the predecessor auditor, assigning inexperienced staff, not providing sufficient guidance and supervision, and not giving his staff enough time to complete a thorough review, Wahl failed to adequately plan and supervise the first quarter interim review. These failures also violate the requirement that due professional care be exercised in the performance of work. AU §§ 150.02, 722.01; *see* AU § 230.02 ("This standard requires the independent auditor to plan and perform his or her work with due professional care."); AU § 230.06 ("The engagement partner is responsible for the assignment of tasks to, and supervision of, the members of the engagement team.").

5.6.2. Failure to make adequate inquiries of management about the valuation of PhytoSphere

An auditor conducting an interim review is not responsible for "expressing an opinion about whether the financial statements are presented fairly, in all material respects, in conformity with" GAAP. AU § 722.07. The auditor's objective is to understand whether GAAP requires any material modifications to the interim financial statements. *Id.* A key requirement for completing this objective is making adequate inquiries of management to understand the client's business and financial statements. AU §§ 722.12, .15. In particular, the accountant should identify and inquire about any "items that appear to be unusual and that may indicate a material misstatement." AU § 722.16.

The most significant item for CannaVEST was the PhytoSphere transaction. The engagement team noted the acquisition in the review planning memoranda, which stated that Anton & Chia "will make inquiries of management to ensure that provided financials are properly presented." Ex. 740 at 2; Ex. 808 at 2. But there is no evidence that this happened.[26] Wahl and his team failed to make adequate inquiries of CannaVEST's management about the PhytoSphere transaction.

Under ASC 805, the accounting for the acquisition should have reflected the fair value of the consideration paid and fair value of the assets acquired. Wahl's team failed, however, to adequately investigate what those fair values were. They simply accepted that the $35 million purchase price in the sale agreement was the actual value of PhytoSphere. When Shek asked what to do about the stock price collar in the agreement, Wahl told him it was the only thing to go by. Even basic inquiries of management would have revealed many red flags showing that the acquisition was not an orderly transaction between market participants and thus "little, if any, weight" should have been placed on the purchase price. ASC 820-10-35-54J; *see* Ex. 779 at 4–5; Tr. 1531. On top of that, an adequate investigation would have revealed that CannaVEST's stock, which was thinly traded—in CannaVEST's own words, "non-marketable" (Ex. 779 at 4)—was not a reliable indicator of the consideration paid. CannaVEST later admitted that the stock price collar was not a reflection of the fair value of CannaVEST stock and the $35 million was not a figure management believed to be the fair value of the assets acquired. Ex. 779 at 2.

Wahl accepted the allocation of assets provided by Wilson, even though Wilson did not have documentation to back up the allocation. The sale agreement was not specific and CannaVEST did not have a detailed schedule of the allocation. Ex. 761 at 1–3 (PDF). Almost half of the assets allocated, $17 million, were in a catch-all "other agreements" category assigned just to make the numbers add up. Wahl and his team did not find out whether Wilson had experience applying ASC 805 or ASC 820. He did not. Wahl, though, assumed that the financials Wilson prepared—and Anton & Chia adopted—followed GAAP. They did not.

Wahl argues that, in an interim review, management is responsible for preparing the financial statements and presenting them fairly. Wahl PFOF at 151 (PDF); Wahl Post-hr'g Br. at 48–49. This is correct. *See* AU § 722.07, .09. In addition, the reviewing accountant "ordinarily is not required to corroborate management's responses with other evidence." AU § 722.17. The accountant should, however, "consider the reasonableness and consistency of management's responses in light of the results of other review procedures and

[26] If such inquiries were made, they were not documented, a violation of AU § 722.52.

the accountant's knowledge of the entity's business and its internal control." *Id.* Wahl's team was aware of CannaVEST's weakness over its internal financial controls, which was disclosed in its 2012 annual report and each of the three quarterly reports Anton & Chia reviewed. *See* Ex. 784 at 2 (first quarter interim review checklist). Despite these repeated disclosures, Anton & Chia never noted this weakness on any of the planning memoranda. Exs. 740, 787, 808; *see* AU § 722.52 (review documentation should include any significant findings or issues). There is no evidence that the engagement team considered this risk when it accepted the financials management provided or made the inquiries the planning memoranda said it would. Given the risk of weak financial controls and the many red flags about the unreliability of the purported fair value of the PhytoSphere acquisition, Wahl should not have accepted the financials provided by management without question. AU §§ 722.11, .12, .15, .16.

5.6.3. Failure to compare the first and second quarter balance sheets

Among the analytical procedures and related inquires to be performed in an interim review, the accountant should compare the quarterly interim financial information "with comparable information for the immediately preceding interim period." AU § 722.16. In the second quarter, Anton & Chia failed to compare the second quarter data with the first quarter. Tr. 2850–51. CannaVEST altered the allocation of assets between its first quarter and second quarter reports, but no explanation was given in the reports or in Anton & Chia's workpapers. The engagement team's failure to perform this analytical step was a missed opportunity to identify these changes, which represented another red flag for the material misstatement of the PhytoSphere assets. *See* AU § 722.16; *see also* AU § 722.51–52 (discussing the need to prepare adequate documentation).

5.6.4. Failure to conduct an adequate engagement quality review

Chung violated AS No. 7 because she was not qualified to serve as EQR and she failed to adequately evaluate the significant judgments of the engagement team.

An engagement quality review and concurring approval of issuance by the EQR is required for a review of interim financial information. AS No. 7.1. The purpose of an engagement quality review is to evaluate the "significant judgments" and overall conclusion of the engagement team. AS No. 7.2. For that reason, an EQR must be "a partner or another individual in an equivalent position." AS No. 7.3. The EQR has to have "competence, independence,[27] integrity, and objectivity." AS No. 7.4. To be competent, an EQR "must possess the level of knowledge and competence related to accounting, auditing, and financial reporting required to serve as the engagement partner on the engagement under review." AS No. 7.5.

Competency to serve as an engagement partner can be gained in various ways. Usually, competency is obtained through recent experience with accounting or auditing engagements, but industry, governmental, or academic experience may also be relevant in some cases. *See* PCAOB Quality Control Standards (QC) § 40.05 (describing how a CPA firm can implement a system of quality control to insure a practitioner-in-charge is sufficiently competent); AS No. 7.5 n.3 (referencing QC 40 as an applicable standard for EQR competency). Continuing professional education, consulting experience, or "rigorous self-study" may also supplement experience. QC § 40.05. The "nature and extent" of the competencies required "should be based on the characteristics of a particular client, industry, and the kind of service being provided." QC § 40.07.

Chung lacked the experience necessary to be a competent EQR for the CannaVEST review. Chung had no experience as an engagement partner or audit manager. Her only auditing experience before coming to Anton & Chia was in low-level staff accountant positions, and that experience was five years before the CannaVEST engagement. At Anton & Chia, she mostly worked on administrative matters and had little contact with the auditing staff. Chung was unable to say whether she would have been comfortable serving as the engagement partner on the CannaVEST engagement. Ex. 839.6 at 452 (PDF). She also lacked experience based on the specific characteristics of CannaVEST, which had just completed a significant business combination. Chung was not familiar with ASC 820 and could not recall having applied ASC 805 before working on CannaVEST. *Id.* at 355, 357 (PDF).

Chung served as EQR because the only partner at Anton & Chia other than Wahl and Chung recently left the firm. She was EQR only for the first quarter review of CannaVEST and one other engagement. Once another

[27] An EQR must be "independent of the company" being reviewed. AS No. 7.6. Chung was married to Wahl, but the PCAOB and Commission have no requirement that the EQR be independent of the engagement team as long as the EQR maintains objectivity and does not "assume any of the responsibilities of the engagement team." AS No. 7.7; *see* 17 C.F.R. § 210.2-01(b) (setting forth requirements for the Commission to recognize an accountant as independent with respect to an audit client). The OIP does not allege that Chung failed to maintain independence or objectivity.

partner joined Anton & Chia, she stopped performing engagement quality reviews.

Chung's review lacked the required rigor. For an interim review, an EQR is supposed to "evaluate the significant judgments … and the related conclusions" of the engagement team. AS No. 7.14. To do this, the EQR should "(1) hold discussions with the engagement partner and other members of the engagement team, and (2) review documentation." *Id.*

Chung did not interact with La or Shek about the first quarter review. Tr. 2433, 2845. Shek found it odd that she did not ask him any questions, as he "would expect at least some basic questions about the transaction" from the EQR. Tr. 2434. Chung could not recall speaking with Wahl or the other engagement team members about the engagement, although she said she would have discussed things if she had any concerns. Ex. 839.6 at 372, 416, 465 (PDF). But she could not recall having any questions or concerns about the PhytoSphere transaction. *Id.* at 416–17.

Chung also detected none of the problems with the documentation of the first quarter review. In the engagement quality review section of the interim review approval form, Chung marked "none is necessary" to "whether appropriate consultations have taken place on difficult or contentious matters, or significant unusual transactions." Ex. 745 at 4. By contrast, the interim review inquiries checklist was marked "yes" for there being "any unusual or complex situations or significant unusual transactions that may have an effect on the financial statements." Ex. 784 at 1. Wahl and Shek both believed the PhytoSphere acquisition was a significant transaction. Ex. 839.6 at 231 (PDF); Tr. 2427. Had Chung adequately reviewed the documentation or discussed the matter with the engagement team, she would not have thought that no consultations or analysis of the transaction was necessary. *See* AS No. 7.10h, .15f. Finally, by providing her concurring approval of issuance without the required competency and by failing to adequately review the significant judgments of the engagement team, Chung failed to act with due professional care. *See* AS No. 7.17; AU § 230.

5.6.5. Failure to recommend restatement of the first and second quarter financial statements

Anton & Chia recommended that CannaVEST take a $27 million impairment to goodwill in the third quarter, but it did not recommend restating first and second quarter financial results. The Division argues that Wahl violated AU § 722 by not considering whether a restatement was necessary. Div. Post-hr'g Br. at 19; OIP at 35; *see* AU § 722.26 (if a misstatement is identified, the accountant should evaluate "whether material modification should be made to the interim financial information for it to conform with generally accepted accounting principles," which includes consideration of "whether the misstatements originated in the preceding year or interim periods of the current year").

Wahl argues that it would have been inappropriate to restate the prior quarters' financials based on Vantage Point's draft report. Wahl PFOF at 221 (PDF); *see* Wahl Post-hr'g Br. at 50–51. The final Vantage Point report was not completed until five days after CannaVEST filed its third quarter report and Anton & Chia resigned as CannaVEST's auditor. Nonetheless, if Anton & Chia could recommend a write down of goodwill based on the draft report, the report should have also served as notice that goodwill was misstated in the prior two quarters. Wahl also argues that CannaVEST missing revenue targets was the "initial trigger" for impairment of goodwill, Wahl PFOF at 221 (PDF); Wahl Post-hr'g Br. at 52, but as noted, this argument is not supported by the evidence. The draft report on valuation is what prompted the impairment, *see* Exs. 752, 753, 763; Tr. 2691, and based on it, Wahl knew that PhytoSphere was not worth $35 million in the first or second quarter. Ex. 753 at 2 (PDF). As such, Wahl should have recommended restatement.[28] Even so, taking note of the lower standard generally applicable to interim reviews compared to audit engagements, AU § 722.07, and given the fact that Anton & Chia resigned on the day the third quarter report was filed, the failure to recommend restatement is of lesser import than Wahl's other missteps that led to the misstatements in the first and second quarters to begin with.

6. Other federal litigation

In addition to the claims in the OIP, the Commission has also pursued in federal court claims against other entities and persons related to the audits at issue in this proceeding. In September 2017, the Commission charged Accelera, its founder and board chairman Geoffrey J. Thompson, its CEO John Wallin, and another company named Synergistic Holdings, LLC, with violating or aiding and abetting violations of antifraud, reporting, registration, and certification provisions of the federal securities laws due to the inappropriate consolidation of Behavioral, among other reasons. *SEC v. Accelera Innovations, Inc.*, No. 1:17-cv-7052 (N.D. Ill. Sept. 29, 2017), ECF No. 1; *SEC v. Wallin*,

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28 Wahl's argument that he did not recommend restatement in part because CannaVEST management did not want to restate lacks support. *See* Wahl Post-hr'g Br. at 51. To the contrary, CannaVEST would have restated if Anton & Chia had insisted, Tr. 2650, and it did restate when PKF recommended it. Regardless, an auditor's responsibility to follow PCAOB standards is not dependent on whether or not the client wants to comply.

No. 1:17-cv-7057 (N.D. Ill. Sept. 29, 2017), ECF No. 1. The defendants settled and were enjoined from further violations of those provisions; Synergistic and Thompson agreed to disgorge the stock sale proceeds; Thompson and Wallin agreed to pay a civil money penalty; and Wallin was prohibited from serving as an officer or director of a public company. *Wallin*, No. 1:17-cv-7057 (N.D. Ill. Feb. 26, 2019), ECF No. 42; *Accelera*, No. 1:17-cv-7052 (N.D. Ill. Apr. 3, 2020), ECF Nos. 48, 49, 50.

In December 2017, the Commission brought charges against Premier, its CEO Randall Letcavage, and consultant Joseph Greenblatt, alleging that their baseless valuation of the Note and irregularities in accounting for the TPC acquisition, among other things, violated the antifraud, reporting, internal controls, and certification provisions of the securities laws. *SEC v. Premier Holding Corp.*, No. 1:17-cv-9485 (S.D.N.Y. Dec. 4, 2017), ECF No. 1. After the case was transferred to another district court, that court granted summary judgment against the defendants, finding that Premier and Letcavage committed antifraud violations, Greenblatt aided and abetted Premier's antifraud and reporting violations, and that Greenblatt also violated the internal accounting controls provisions. *Premier*, No. 8:18-cv-813 (C.D. Cal. Dec. 10, 2019 & Nov. 30, 2020), ECF Nos. 146, 208. Premier and Letcavage were enjoined from further violations of the antifraud and other provisions of the securities laws, were ordered to disgorge profits jointly and severally, and each were ordered to pay a civil penalty. *Premier*, No. 8:18-cv-813 (C.D. Cal. Jan. 20, 2021), ECF Nos. 220, 221.[29]

In June 2017, the Commission charged CannaVEST and its CEO, Michael Mona, with violating the antifraud, reporting, bookkeeping, internal controls, certification, and other provisions of the federal securities laws by overstating the value of the assets acquired in the PhytoSphere transaction. *SEC v. CannaVEST Corp.*, No. 2:17-cv-1681 (D. Nev. June 15, 2017), ECF No. 1. The parties settled the allegations in 2018; CannaVEST and Mona were enjoined and ordered to pay a civil money penalty. *CannaVEST*, No. 2:17-cv-1681 (D. Nev. June 1, 2018), ECF Nos. 37, 38.

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29 A final judgment has not yet been entered as to Greenblatt.

Conclusions of Law

1. Exchange Act Section 10(b) and Rule 10b-5

Under Section 10(b) and Rule 10b-5(b),[30] it is unlawful for any person—by use of interstate means or the mails—to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading ... in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(b); *see* 15 U.S.C. § 78j(b) (authorizing the Commission to adopt rules prohibiting manipulative and deceptive conduct).

"[A]n accounting firm acts 'in connection with' securities trading when it produces an audit report that it knows its client will include in a Form 10–K." *McGann v. Ernst & Young*, 102 F.3d 390, 397 (9th Cir. 1996). Further, the interstate commerce requirement is satisfied when misstatements appear in filings made on EDGAR, a system maintained by the Commission for the electronic filing of documents. *See SEC v. Straub*, No. 11-cv-9645, 2016 WL 5793398, at *11 (S.D.N.Y. Sep. 30, 2016); *McConville*, 2005 WL 1560276, at *10.

An auditor's letter expressing an opinion as to compliance with GAAP and PCAOB standards can be found to contain fraudulent misstatements "(1) if the auditor does not actually hold the stated opinion; (2) if the opinion contains an embedded statement of fact that is [untrue or] misleading; or (3) if the opinion omits a fact that makes the opinion misleading to [a reasonable] investor." *In re Am. Realty Capital Props., Inc. Litig.*, No. 15-cv-307, 2019 WL 2082508, at *2 (S.D.N.Y. May 10, 2019); *see Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 184–89 (2015); *Tongue v. Sanofi*, 816 F.3d 199, 209–10 (2d Cir. 2016) (explaining that under *Omnicare*, an opinion in a Commission filing could be actionable if it does not "rest on some meaningful inquiry" into facts in the opinion maker's possession but instead reflects "baseless, off-the-cuff judgments"); *In re Valeant Pharm. Int'l, Inc. Sec. Litig.*, No. 15-cv-7658, 2017 WL 1658822, at *14 (D.N.J. Apr. 28, 2017).[31]

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[30] Because the scope of Rule 10b-5 is coextensive with the coverage of Section 10(b), *SEC v. Zandford*, 535 U.S. 813, 816 n.1 (2002), a reference to either covers both.

[31] Some courts have suggested that an auditor's statement in an audit opinion letter is more fact than opinion to begin with and that analysis under *Omnicare* is unnecessary, but the matter remains unsettled. *Compare Querub v. Moore Stephens Hong Kong*, 649 F. App'x 55, 58 (2d Cir. 2016) ("Audit

A misstatement or omission is material if there is a substantial likelihood that a reasonable investor would view "disclosure of the omitted fact … as having significantly altered the 'total mix' of information made available." *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 38 (2011) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988)). A corollary is that material statements create a substantial likelihood that a reasonable investor would deem the statement important when making an investment decision. *Basic*, 485 U.S. at 231–32.

Liability requires a showing of scienter, "a mental state embracing [an] intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5, 691, 695 (1980) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)). In certain cases, a respondent's recklessness satisfies the scienter requirement. *See Ottmann v. Hanger Orthopedic Grp., Inc.*, 353 F.3d 338, 343–44 (4th Cir. 2003) (collecting cases). For "recklessness on the part of a non-fiduciary accountant" to satisfy scienter, "such recklessness must be conduct that is 'highly unreasonable', representing 'an extreme departure from the standards of ordinary care.' It must, in fact, approximate an actual intent to aid in the fraud being perpetrated by the audited company." *Rothman v. Gregor*, 220 F.3d 81, 98 (2d Cir. 2000) (quoting *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 120–21 (2d Cir. 1982)). Scienter is thus established when an auditor acts with an "egregious refusal to see the obvious, or to investigate the doubtful, or that the accounting judgments which were made were such that no reasonable accountant would have made the same decisions if confronted with the same facts." *N.M. State Inv. Counsel v. Ernst & Young LLP*, 641 F.3d 1089, 1097–98 (9th Cir. 2011) (quoting *In re Software Toolworks Inc.*, 50 F.3d 615, 628 (9th Cir. 1994)). "While a violation of GAAP, standing alone, is not sufficient, allegations of recklessness have been sufficient where defendants 'failed to review or check information that they had a duty to

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reports, labeled 'opinions' and involving considerable subjective judgment, are statements of opinion subject to the *Omnicare* standard … ."), *and Se. Penn. Transp. Auth. v. Orrstown Fin. Servs.*, No. 12-cv-993, 2015 WL 3833849, at *33–34 (M.D. Pa. June 22, 2015) (applying *Omnicare* to a defendant's "representation that its audit reports were presented in conformity with GAAP"), *with Miller Inv. Tr. v. Morgan Stanley & Co.*, 308 F. Supp. 3d 411, 430 (D. Mass. 2018) ("In the wake of *Omnicare*, I have come to agree … that statements by auditors of their own compliance with the PCAOB standards or GAAS are statements of fact."), *and In re Petrobras Sec. Litig.*, No. 14-cv-9662, 2016 WL 1533553, at *3 (S.D.N.Y. Feb. 19, 2016) ("[A]n auditor's 'opinion' is a term of art, the meaning of which may not be entirely synonymous with the more everyday use of the word discussed in *Omnicare* … .").

monitor, or ignored obvious signs of fraud.'" *Id.* (quoting *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000)). Similarly, with regard to violations of PCAOB standards, "the more likely an auditor would have discovered the truth if a reasonable audit had been conducted, the stronger the scienter inference." *Id.*; *see McLean v. Alexander*, 599 F.2d 1190, 1198 (3d Cir. 1979) ("Circumstantial evidence may often be the principal, if not the only, means of proving bad faith. A showing of shoddy accounting practices amounting at best to a pretended audit, or of grounds supporting a representation so flimsy as to lead to the conclusion that there was no genuine belief back of it have traditionally supported a finding of liability in the face of repeated assertions of good faith, and continue to do so." (citations and internal quotation marks omitted)).[32]

1.1. Deutchman aided and abetted Anton & Chia's antifraud violations in his role in the 2014 Accelera audit.

Deutchman is charged under Section 10(b) and Rule 10b-5 with aiding and abetting Anton & Chia's fraud related to its 2014 audit report for Accelera.

To establish an aiding and abetting violation, it must be shown that (1) a primary violation of the securities laws was committed; (2) the alleged aider and abettor provided substantial assistance to the primary violator; and (3) the alleged aider and abettor provided such assistance with the necessary scienter, *i.e.*, he or she rendered such assistance knowingly or recklessly. *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000); *see Russo Sec. Inc.*, Exchange Act Release No. 39181, 1997 WL 603786, at *4 & n.16 (Oct. 1, 1997).

Anton & Chia committed primary violations because its audit report claiming GAAP and PCAOB standard compliance was misstated on two fronts: the consolidation of Accelera and Behavioral did not comply with GAAP, and the auditing team violated PCAOB standards. At the very least, these opinions were misleading due to omitted facts about Anton & Chia's systematically deficient audit procedures and underlying falsehoods in the financial statements. *See Omnicare*, 575 U.S. at 185–89; *Tongue*, 816 F.3d at 209–10; *Petrobras*, 2016 WL 1533553, at *4 (audit opinions must necessarily rely on embedded facts in the underlying financial statements or else "would be of no use to anyone").

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32 Courts have rejected Wahl's assertion that the Commission must also prove "loss causation," "injury," "reliance," or follow the heightened pleading requirements applicable to private securities actions. Wahl Post-hr'g Br. at 30–31; *see Gebhart v. SEC*, 595 F.3d 1034, 1040 n.8 (9th Cir. 2010); *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1363–64 (9th Cir. 1993); *SEC v. ICN Pharm., Inc.*, 84 F. Supp. 2d 1097, 1099 (C.D. Cal. 2000).

These misstatements were material. Behavioral's improper consolidation modified Accelera's revenues in 2014 by 90% and millions of dollars. *See Ponce*, 2000 WL 1232986, at *9 ("AAC's overstatement of its assets, which for fiscal years 1988–91 ranged from 88 to 95%, coupled with the fact that AAC's treatment did not, contrary to Ponce's representation, comply with GAAP, would have been material to a reasonable investor."). Of note, the engagement team had determined in the planning memo for the 2014 audit that the materiality threshold was $41,000. Ex. 171 at 2. Further, the fact that Anton & Chia failed to adhere to PCAOB standards and disregarded numerous red flags—such as concerns raised by Freeman, Accelera's CFO, about consolidation—was something a reasonable investor would surely have wanted to know because it directly contributed to the 90% revenue misstatement.[33]

Anton & Chia's scienter can be inferred from Deutchman's own scienter. *In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 476 (6th Cir. 2014) (holding that the scienter of a corporate agent who reviewed or approved a misstatement before its issuance can be attributed to the corporation); *see Bernerd E. Young*, Securities Act Release No. 10060, 2016 WL 1168564, at *19 n.81 (Mar. 24, 2016), *pet. dismissed*, 956 F.3d 650 (D.C. Cir. 2020). Thus, I turn to the second and third elements of the aiding and abetting test: whether Deutchman provided substantial assistance toward Anton & Chia's fraud, and whether he acted recklessly or knowingly.

In his role as EQR for the 2014 audit, Deutchman was responsible for evaluating significant judgments made by the engagement team and the conclusions they reached. AS No. 7.9. An audit report may only be used by the client once the EQR provides concurring approval. AS No. 7.13. By performing a markedly inadequate review in dereliction of key duties, Deutchman substantially assisted Anton & Chia's fraud. *See vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 WL 2674858, at *13 (July 2, 2010) (substantial assistance is satisfied by a respondent's failure to act where he "has a clear duty to act and the failure to act itself constitutes the underlying primary violation"); *see also Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir. 1983) (recognizing that even inaction may be treated as substantial assistance when "it was in conscious and reckless violation of a duty to act"); *SEC v. KPMG*, 412 F. Supp. 2d 349, 377 (S.D.N.Y. 2006) (explaining that a concurring

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[33] Wahl argues that the larger adjustments Anton & Chia proposed to other portions of Accelera's financial statements render the Behavioral transaction immaterial by comparison. Wahl Post-hr'g Br. at 27–28. This argument fails. Even if Anton & Chia and Deutchman proposed larger adjustments, and even if the Behavioral transaction was not the most significant issue in the audit, it was still material.

review partner could incur aiding and abetting liability). Moreover, Deutchman performed extra duties that were more appropriate for an engagement partner, compounding his assistance in the fraud. *See* AS No. 7.7 ("To maintain objectivity, the engagement quality reviewer and others who assist the reviewer should not make decisions on behalf of the engagement team or assume any of the responsibilities of the engagement team.").

Deutchman also demonstrated scienter. Freeman told Deutchman on multiple occasions to revisit consolidation, but he never did. Instead, he just ignored Freeman. Further, he never documented Freeman's concerns or shared them with the engagement team. Deutchman does not seem to have reviewed the stock purchase agreements or Chen's memo in any meaningful way; if he had, he would have realized that control never transferred because the purchase price was never paid. If Deutchman had spoken with Wolfrum, he could have learned that Accelera never controlled Behavioral. Deutchman's failure to perform a single audit procedure in response to Freeman's warnings was "an egregious refusal to see the obvious, or to investigate the doubtful." *Ernst & Young*, 641 F.3d at 1097–98; *see Russell G. Davy*, Accounting and Auditing Enforcement Act Release No. 53, 1985 WL 660828, at *3–4 (Apr. 15, 1985) (finding that an auditor committed fraud by certifying financial statements stating that the company owned certain properties when in fact the transaction had not been consummated and the auditor "simply ignored information that he received both before and after his audit which clearly should have put him on notice that [the company's] financial statements contained materially false information"); *Reiger v. Price Waterhouse Coopers LLP*, 117 F. Supp. 2d 1003, 1012 (S.D. Cal. 2000) (noting that district courts had found sufficient evidence of scienter when there were "warning signs" that "more closely resembled 'smoking guns' than 'red flags,'" such as "specific facts suggesting the independent accountant consciously entertained doubts about the veracity of its client's financial disclosures, either from a client or third party informing the accountant of the client's fraud, or from contemporaneous statements made by the accountant"), *aff'd sub nom. DSAM Glob. Value Fund v. Altris Software, Inc.*, 288 F.3d 385 (9th Cir. 2002).

While it is true, as Deutchman argues, that the prior engagement team determined to consolidate a year before he started working on the audit, Deutchman Post-hr'g Br. at 5, Deutchman still had the responsibility to revisit the issue when confronted with red flags such as Freeman's additional information. And although Deutchman and Wahl had no confidence in Freeman's abilities, having made many adjustments to his financial statements, this too did not absolve Deutchman of an obligation to investigate the doubtful when Freeman raised a well-substantiated concern.

Deutchman argues that it was Freeman's obligation to prepare a memo explaining why consolidation was inappropriate. *See* Tr. 707–08, 719, 892. Even if this were true, Deutchman declined to provide Freeman with any information that might have helped him. At the hearing and in his brief, Deutchman cites concerns about auditor independence to explain his refusal to provide information. Deutchman Post-hr'g Br. at 7, 8–9 (noting testimony at the hearing that Anton & Chia "was concerned with losing its independence as independent auditors were they to provide legal/auditing advice to Accelera" and FASB guidance stating that "responsibility for the choices and judgments inherent in the preparation of … financial statements cannot be delegated to the auditor or to anyone else"); Tr. 938–44. But those concerns do not support the notion that he should have avoided and ignored the issue. According to Commission guidance, it does not impugn Anton & Chia's independence to consult with management; Deutchman just needed to use good judgment when doing so. *See* Div. of Corp. Fin., Office of the Chief Accountant, "Staff Statement on Management's Report on Internal Control Over Financial Reporting" (May 16, 2005), https://www.sec.gov/info/accountants/stafficreporting.htm ("[T]he auditor's discussing and exchanging views with management does not in itself violate the independence principles," but "a hallmark of [an auditor's] professionalism is to exercise sound judgment in both the audit and in ongoing dialogue with management. … Investors benefit when auditors and management engage in dialogue, including regarding new accounting standards and the appropriate accounting treatment for complex or unusual transactions.").

Deutchman further maintains that he fulfilled his responsibility to investors by impairing all of Accelera's goodwill from Behavioral in 2014. In his opinion, the goodwill impairment made Accelera look significantly worse from a financial perspective (Accelera retained all of Behavioral's debt and its contractual obligations under the stock purchase agreement but none of the benefits), which warned investors that the company was a bad investment. Deutchman Post-hr'g Br. at 10, 19; Tr. 703–04, 911. But the companies should never have been consolidated. Making a company's financials look materially worse than they should be by increasing debt or obligations does not negate scienter. *Cf. S.W. Hatfield, C.P.A.*, Exchange Act Release No. 69930, 2013 WL 3339647, at *24 & n.148 (July 3, 2013) (finding unpersuasive applicant auditors' claim that a scienter finding was unjustified because, as the auditors argued, they "required [the client] to increase the reserve for bad debt exposure, and then to concurrently write off, and recognize, the portion of accounts receivable that were never to be collected"; "[a]pplicants were not freed from the many auditing requirements they inexcusably ignored simply because [the client] increased its reserve for bad debt"). Accelera's financials were still materially misstated, depriving investors of access to accurate financial information.[34]

Deutchman claims that the question of consolidation was a "complex problem," Deutchman Post-hr'g Br. at 19, and since "auditors are not lawyers," he should not be held liable for securities fraud for adhering to a good faith but ultimately incorrect legal analysis. *Id.* at 20 (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 860 n.8 (D.C. Cir. 1980)). But this is not a case where the auditors needed to "apply extraordinarily complicated regulations." *Coastal States*, 617 F.2d at 860 n.8. The stock purchase agreement and its attendant documents were quite clear: the companies were to merge only once Accelera had paid for Behavioral's stock. That never occurred. Deutchman's explanations are post-hoc justifications; there is no documentation in the workpapers that he did anything to evaluate Behavioral's consolidation. *See Dearlove*, 2008 WL 281105, at *10 n.39 ("We consider the absence of work papers to be evidence that the audit team did not devote substantial, if any, effort to review the areas in question."). Indeed, in his sworn investigative testimony, Deutchman had no recollection that he reviewed the key documents. Tr. 1062. Faced with red flags warning that consolidation was inappropriate, Deutchman simply did nothing to satisfy his duties as an auditor in this circumstance.[35]

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[34] Moreover, the very fact that Deutchman proposed impairing all of the goodwill from the purchase price was a red flag that should have made him reconsider whether consolidation was appropriate in the first place.

[35] In an attempt to deflect blame, Deutchman generally points to management's ultimate responsibility over the content of its financial statements. *See* Deutchman Post-hr'g Br. at 6–9, 15; AU § 110.03 ("The financial statements are management's responsibility."). But regardless, Anton & Chia as auditor had the responsibility to audit the financial statements and perform certain duties in connection with the audit. *See, e.g.*, AU § 110.03 ("The auditor's responsibility is to express an opinion on the financial statements"); and the numerous standards cited in this decision, *supra*. The arguments that Deutchman (and at times Wahl, *see, e.g.*, Wahl Post-hr'g Br. at 30–31) make about management's responsibility do not absolve Respondents who had their own independent duties that they failed to fulfill.

1.2. Wahl violated antifraud provisions and aided and abetted Anton & Chia's violations in his role as engagement partner in the 2013 Premier audit.

Wahl is charged under Exchange Act Section 10(b) and Rule 10b-5 with fraud for his role in the 2013 audit of Premier and of aiding and abetting Anton & Chia's fraud.

To be liable as a primary violator under Section 10(b) and Rule 10b-5, one must have "made" the misstatement in question, or in other words, be "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Grp. v. First Derivative Traders*, 564 U.S. 135, 141–42 (2011). The auditors who prepare an audit report possess the authority over that report, including its content and whether it is issued to the client. *See S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *6 (Dec. 5, 2014). Ultimate authority over the content of an audit report may be shown if an individual was the audit engagement partner whose sign-off was required to issue the opinion. *See KPMG*, 412 F. Supp. 2d at 375–76. Wahl, the engagement partner, possessed ultimate authority over the audit opinion and report Anton & Chia issued for Premier's 2013 Form 10-K, and in fact signed off on it. Ex. 419 at 6 (PDF); Ex. 840 ¶ 42; Tr. 764 (an engagement partner takes "responsibility for the job"), 2223 (Wahl, as the engagement partner for Premier, would have been "the first partner to sign off in the audit report"). He was also a 90% owner of the firm. Ex. 839.6 at 156 (PDF). For these reasons, he can be held directly liable for any misstatements in the audit report.[36]

Further, under the same legal standards set forth above regarding Deutchman, Wahl is liable for aiding and abetting Anton & Chia's antifraud violations concerning Premier: Anton & Chia committed a primary violation, Wahl provided substantial assistance, and as the principal of Anton & Chia, Wahl's scienter can be imputed to the company. *See Graham*, 222 F.3d at 1000; *Young*, 2016 WL 1168564, at *19 n.81; *vFinance*, 2010 WL 2674858, at *13.

Anton & Chia's 2013 audit report for Premier was misstated. Contrary to its representations, the audit was not conducted according to PCAOB

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36 Wahl contends that no Rule 10b-5 liability has been established because he lacked ultimate authority over the contents of Premier's 2013 Form 10-K. Wahl Post-hr'g Br. at 25–26. However, the Division's allegations concern misstatements in Anton & Chia's audit opinion that was included in that annual report. *See, e.g.*, OIP at 30; Div. Post-hr'g Reply Br. at 6–7. An independent auditor possesses ultimate authority over its own audit opinion and report. *See Hatfield*, 2014 WL 6850921, at *6.

standards, and the issuer's financial statements did not comply with GAAP because of the baseless valuation of the Note and the allocation of the entire TPC transaction to goodwill. *See Omnicare*, 575 U.S. at 185–89; *Tongue*, 816 F.3d at 209–10; *Petrobras*, 2016 WL 1533553, at *3–4.

These misstatements were material. Premier reported total assets of $6,879,145 as of December 31, 2013, an increase of over $6,000,000 from December 31, 2012. Ex. 402 at F-2. Together, the Note and TPC goodwill represented 78% of Premier's reported assets as of that date. *Id.*

Assuming that the Note was worth nothing, as Doty Scott eventually concluded, and not $869,000, the misstatement of the Note's value inflated Premier's balance sheet by nearly 13%. Although Wahl did not receive Doty Scott's zero-dollar valuation report for the Note before the 10-K was issued, the $869,000 valuation was still baseless and did not comply with GAAP: it was copied from Doty Scott's draft tables that were not to be used and were missing information. Even worse, the valuation represented the draft tables' fair value estimate of the enterprise of a whole, not of the Note. However one looks at it, properly determining the fair value of an unsecured promissory note with a $5 million face value was a material component of Premier's financial statements, particularly since Anton & Chia's own planning threshold for materiality was only $25,000. Ex. 419 at 2. Moreover, the superficiality of the audit procedures the firm used to determine the Note's value, which ensured the misstatement's perpetuation in the 10-K, were in flagrant disregard of PCAOB standards and would have been of interest to a reasonable investor.

Premier's reporting of the entire TPC purchase price of $4,500,000 as goodwill, which made up 65% of its assets, was also a material misstatement. Premier's financials reported its goodwill figure as purportedly provisional as of year-end without mentioning that, as of the filing date, a purchase price allocation had not been timely completed. In any event, because of the actual customer contracts from which TPC would benefit, the $4,500,000 should not have been assigned entirely to goodwill even as a provisional figure. *See SEC v. Todd*, 642 F.3d 1207, 1221 (9th Cir. 2011) ("Information regarding a company's financial condition is material to investment."); *SEC v. Talbot*, 530 F.3d 1085, 1097 (9th Cir. 2008) (courts consider a variety of factors, including the magnitude of a transaction to the issuer, when determining materiality); *Hughes v. Huron Consulting Grp., Inc.*, 733 F. Supp. 2d 943, 947–48 (N.D. Ill. 2010) ("disguising" payments as goodwill to make company appear more profitable held to be actionable); *In re Unicapital Corp. Sec. Litig.*, 149 F. Supp. 2d 1353, 1364 (S.D. Fla. 2001) ("[T]he prospectus and the registration statement overstated Unicapital's goodwill by approximately 20% and, consequently, its total assets by approximately 8%. Such misstatements would presumably be important to a reasonable investor." (footnote omitted)).

While it is true that Premier disclosed in the 10-K that the value of the goodwill was only provisional, that does not render the misstatement immaterial. Premier's disclaimer about the goodwill was at best a "half-truth." *See SEC v. Gabelli*, 653 F.3d 49, 57 (2d Cir. 2011) ("The law is well settled ... that so-called 'half-truths'—literally true statements that create a materially misleading impression—will support claims for securities fraud."), *rev'd on other grounds* 568 U.S. 442 (2013). A reasonable investor would have wanted to know that the allocation of the majority of Premier's assets to goodwill did not accord with GAAP and that, contrary to PCAOB standards, Anton & Chia and Wahl had failed to follow up on red flags which called into question how 65% of Premier's assets had been reported.

Moreover, as a result of Premier's representations about its goodwill accounting, investors could reasonably have believed that Premier assessed its goodwill for impairment at least annually and concluded that none of the goodwill was impaired as of December 31, 2013. *See* Ex. 402 at F-8. But the goodwill impairment analysis performed by Anton & Chia, which did not examine net cash flows, was significantly flawed, and, had it been done properly, could have easily made a material difference to Premier's balance sheet given the $25,000 materiality threshold.

Wahl acted with scienter. For the Note transaction, Wahl and Anton & Chia ignored the obvious signs that the Doty Scott initial valuation tables were incomplete and based on data for the wrong company as of the wrong date. He also ignored the concerns raised by his own audit team that they did not understand the spreadsheets and could not understand them without a valuation report, and he ultimately disposed of the problem by instructing his staff to simply make sure the mathematical formulas in the Excel files were operating properly. Wahl spent only 30 minutes reviewing and signing off on 54 workpapers, including the crucial Note valuation workpaper prepared by Chen. In his review of the workpaper and the draft tables, Wahl failed to notice that the $869,000 value Premier had assigned to the Note was actually the placeholder for the "Fair Market Value of the Enterprise," or all of New Eco, while $698,377 was the placeholder assigned to the "Fair Value of the Promissory Note." This elementary error would not have occurred if he had done anything but the most cursory of reviews.[37] Further, Wahl's claim that he understood the calculations and found $869,000 supportable based on his own analysis of the discount rate was thoroughly refuted by Scott's testimony. To the contrary, it appears that Wahl's assertion is a post-hoc fabrication and

[37] Not that it would have been much better had Wahl used the $698,377 value assigned to the Note instead—as noted, the tables used draft placeholder figures, which is something Wahl should have known.

that, in fact, he performed no analysis of the spreadsheet at all; given the amount of time he recorded as having spent reviewing the audit on that day, he could not have spent more than seconds reviewing the spreadsheet. And when Wahl learned during the audit that Anton & Chia had not received a report from Doty Scott and could not understand the valuation tables without one, Wahl told Wen just to bring the workpaper from the quarterly review forward. If those were not warnings enough, Shek, Wahl's audit manager for Premier, refused to sign both workpapers related to the Note's valuation because he did not understand them. That alone underscores the recklessness of Wahl's course of action.

For the TPC acquisition, Wahl recklessly disregarded a significant red flag that the one-year deadline for the purchase price allocation had passed, but the allocation had not been completed. Yet, rather than engage Premier on the issue, Wahl simply ignored it and later rationalized that failure based on several post-hoc arguments including a muddled interpretation of a different annual requirement for goodwill impairment analysis and a claim that Premier did not purchase TPC's customer contracts. It was at least reckless for Wahl to disregard the issue of the purchase price allocation given that it was something the engagement team specifically flagged in the planning memo. To make matters worse, he endorsed Premier's assignment of the entire value of the acquisition to goodwill, even though, from the outset, Premier itself reported that the value of the acquisition came from quantifiable contractual assets.

Wahl also knew that Premier had not conducted the goodwill impairment analysis it professed it had because Anton & Chia had to attempt an analysis on its own. And Anton & Chia's goodwill analysis was little better than no analysis at all. In concluding, at Wahl's direction, that there was no impairment: (1) the drafter prepared projections for three years into the future based on only two months of cash inflows, even though Shek understood that net cash flows (which would show whether TPC was actually losing money) would be more accurate; (2) credited the unsubstantiated growth predictions of Premier insiders; and (3) credited an increase in the number of contracts without an assessment of which if any of those contracts were profitable. Here, as with the Note, Wahl's gross disregard of the applicable requirements is sufficient to establish scienter.

The Division does not dispute, as Wahl notes, that Anton & Chia suggested several audit adjustments that reduced Premier's net income by over $600,000, and "identified a global material weakness over … Financial Reporting, Operations, Acquisitions, Anti-Fraud programs and Corporate Governance." Wahl Post-hr'g Br. at 46; Ex. 432 at 7, 9–11; Ex. 1107; *see* Div. Post-hr'g Reply Br. at 4–5. Those adjustments demonstrate that Anton & Chia conducted creditable work on other aspects of its engagements with Premier that are not at issue here. However, providing adjustments of more than half a million dollars and identifying overarching material weaknesses in Premier's financial reporting and anti-fraud program do not excuse the violations that are at issue. If anything, the firm's identification of problems should have intensified its vigilance, especially with respect to the Note and TPC acquisition that Wahl agreed were not routine transactions. *See, e.g.*, AS No. 15.4–.5; Tr. 5710.[38]

Further, contrary to Wahl's arguments, even if a going concern disclosure "is about the most conspicuous 'red flag' that an auditor can wave," Wahl Post-hr'g Br. at 45–46 (quoting *In re N. Am. Acceptance Corp. Sec. Cases*, 513 F. Supp. 608, 636 n.15 (N.D. Ga. 1981)); *see Drabkin v. Alexander Grant & Co.*, 905 F.2d 453, 455–56 (D.C. Cir. 1990), it does not shield one from fraud liability when the filing in question contains material misstatements. *See Barry C. Scutillo*, Exchange Act Release No. 48238, 2003 WL 21738818, at *8 (July 28, 2003) (finding scienter and a Section 10(b) violation because "Scutillo had neither persuasive evidence nor sufficient competent evidential matter to support the CDs' valuation. His insertion of a going concern qualification in his report did not justify that valuation."). A going concern qualification is a forward-looking disclosure about the company's health, and while it might discourage investment in a weak company, it cannot, by its nature, cure a material misstatement in a company's presentation of its past year's financial statements. *See, e.g.*, *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1414 (9th Cir. 1994) ("The bespeaks caution doctrine applies only to *precise* cautionary language which directly addresses itself to *future* projections, estimates or forecasts in a prospectus." (emphasis added)) (quoting *In re Worlds of Wonder Sec. Litig.*, 814 F. Supp. 850, 858 (N.D. Cal. 1993)); *cf. Saltzberg v. TM Sterling/Austin Assocs., Ltd.*, 45 F.3d 399, 400 (11th Cir. 1995) (per curiam) (affirming a summary judgment order finding no material misstatement or omission when "[t]he cautionary language … was no

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[38] Wahl makes the same argument regarding Anton & Chia's approximately $20 million in adjustments for Accelera made over three years and adjustments of nearly $28 million made during the CannaVEST reviews, but those arguments fail for the same reasons as the Premier argument fails—they do not excuse fraud, violations of professional standards, or other securities law violations. *See* Wahl Post-hr'g Br. at 46–47, 53; Ex. 801 at 1–2 (documenting CannaVEST adjustments).

boilerplate and was not buried among too many other things, but was explicit, repetitive and linked to the projections about which plaintiffs complain").[39]

2. Exchange Act Section 13(a)

Wahl is charged with aiding and abetting and causing Premier's violation of Section 13(a) and its rules, and Wahl and Deutchman are both charged with aiding and abetting and causing Accelera's Section 13(a) violation.

Section 13(a) and Rules 13a-1 and 13a-13 provide, in part, that issuers with securities registered under Exchange Act Section 12 must file annual and quarterly reports. 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, -13. An issuer's "obligation to file these reports includes an obligation that the filings be accurate." *Robert W. Armstrong III*, Exchange Act Release No. 51920, 2005 WL 1498425, at *10 (June 24, 2005) (citing *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991)). An issuer violates these provisions if it files reports that contain materially false or misleading information. *SEC v. Blackburn*, 431 F. Supp. 3d 774, 815 (E.D. La. 2019); *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 315–16 (S.D.N.Y. 1975).

As noted, aiding-and-abetting liability requires a violation, substantial assistance by the respondent, and scienter. *Graham*, 222 F.3d at 1000. Causing liability requires "an act or omission by the respondent that was a cause of the violation," and a finding that the individual "knew, or should have known, that his conduct would contribute to the violation." *Robert M. Fuller*, Securities Act Release No. 8273, 2003 WL 22016309, at *4 (Aug. 25, 2003), *pet. denied*, 95 F. App'x 361 (D.C. Cir. 2004) (per curiam). Negligence is sufficient to show causing liability if the underlying violation does not require a showing of scienter. *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *19 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002); *SEC v. McNulty*, 137 F.3d 732, 740–41 (2d Cir. 1998) (no showing of scienter is required to prove Section 13(a) reporting violations). "One who aids and abets a primary violation is necessarily a 'cause' of the violation." *Ronald S. Bloomfield*, Exchange Act Release No. 71632, 2014 WL 768828, at *16 (Feb. 27, 2014), *pet. denied*, 649 F. App'x 546 (9th Cir. 2016).

An auditor can be found to have aided and abetted Section 13(a) violations if there is a showing of substantial assistance and scienter, or to have caused

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[39] Nor does the inclusion of a going concern warning demonstrate that the auditor applied heightened professional judgment. Wahl Post-hr'g Br. at 45–46. Wahl's serious lapses of professional judgment show quite the opposite in fact.

the violations as long as the assisting auditor was negligent. *Ponce*, 2000 WL 1232986, at *5.[40]

Premier violated Section 13(a) because of the material inaccuracies in its 2013 Form 10-K concerning the value of the Note and the goodwill associated with the TPC acquisition, as well as by including Anton & Chia's audit report, which falsely indicated that the audit complied with PCAOB standards and Premier's financial statements were presented in accordance with GAAP. Wahl, the engagement partner on Anton & Chia's audit, aided and abetted and caused this violation. As explained above, he signed the unqualified audit report for Premier's 10-K despite his recklessly deficient review that failed to identify the 10-K's material deficiencies.

Eight of Accelera's periodic filings—the 2013 and 2014 10-Ks and all six of the 2014 and 2015 10-Qs—were materially inaccurate because they improperly consolidated Behavioral's revenues with Accelera's. The two 10-Ks were additionally misstated because they included Anton & Chia's inaccurate, unqualified audit report claiming GAAP and PCAOB standard compliance. Wahl (in all seven Accelera engagements in which he was involved) and Deutchman (in the 2014 audit and in the 2014 and 2015 quarterly reviews in which he participated) aided and abetted and caused Accelera's violations by authorizing Anton & Chia's year-end audit reports and signing off on Accelera's quarterly reports after performing recklessly deficient work.

Deutchman's scienter and assistance is demonstrated above. And Wahl, as the engagement partner, also assisted Accelera's violations in each report he reviewed and authorized, as he was reckless in failing to catch the material misstatement about Behavioral in Accelera's filings. *See Novak*, 216 F.3d at 308 ("Under certain circumstances, we have found allegations of recklessness to be sufficient where plaintiffs alleged facts demonstrating that defendants failed to review or check information that they had a duty to monitor, or

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[40] Wahl argues that he cannot be held liable under Section 13(a) because he did not prepare the issuers' financial statements. Wahl Post-hr'g Br. at 41. However, he did prepare the misleading audit reports at issue and sign off on misstated 10-Ks and 10-Qs, which is sufficient to find aiding-and-abetting and causing liability for assisting the issuers' Section 13(a) violations. *See Ponce*, 2000 WL 1232986, at *5–6. Wahl argues that *Ponce* is distinguishable because "Ponce prepared the financial statements (i.e. acted like management) [and] he then completed audits and review[s] of the numbers he created, which is a clear violation of the independence rules." Wahl Post-hr'g Br. at 41. The Commission, however, did not consider Ponce's management-like activities, yet still found that Ponce aided, abetted, and caused the issuer's reporting violations. *Ponce*, 2000 WL 1232986, at *11 n.49.

ignored obvious signs of fraud."). Wahl signed off on Chen's woefully deficient memo that failed to explain how Accelera obtained control of Behavioral or when it did so. *See* Tr. 5086–87 (Wahl testified that "when the engagement partner reviews the work paper, he's taking responsibility for it"). Anything more than a hurried, superficial review of the memo should have alerted him to the problems with it. Further, the interpretation of the stock purchase agreement and its exhibits that Wahl advanced at the hearing is entirely unreasonable and evidently a post-hoc rationalization. It is hard to see how anyone could read the agreements with the appropriate degree of care and conclude that the stock purchase had been consummated. This is no mere careless violation of a complicated or esoteric portion of GAAP. Behavioral's consolidation should have presented an obvious question and red flag to any but the most disengaged reviewer. That Wahl nonetheless went along with Accelera's consolidation of Behavioral—signing off on it on behalf of the firm on multiple occasions—was an egregious refusal to see the obvious or investigate the doubtful. *See Scutillo*, 2003 WL 21738818, at *8–9 (finding a reckless and egregious refusal to see the obvious or investigate the doubtful when an auditor performed a perfunctory audit of a suspicious transaction that accounted for more than half of the company's assets).

3. Rule 2-02(b) of Regulation S-X

Regulation S-X Rule 2-02 requires an auditor furnishing audit reports to public companies to indicate in those reports the professional standards it followed and whether, in the auditor's opinion, the company's financial statements are consistent with accounting principles. 17 C.F.R. § 210.2-02(b)(1), (c)(1). Rule 2-02 is violated when an auditor issues a report stating that auditing standards were followed when they were not. *See KPMG Peat Marwick*, 2001 WL 47245, at *19.[41]

Anton & Chia violated Rule 2-02 by issuing two audit reports for Accelera and one report for Premier falsely indicating that the audits complied with PCAOB standards and recklessly opining that the financial statements audited were presented in accordance with GAAP.[42] Wahl and Deutchman are

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41 Wahl argues that the rule does not require the auditor to comply with GAAP and GAAS, but only to state the professional standards under which the audit was conducted. Wahl Post-hr'g Br. at 39–40. But once the auditor states that it complied with a professional standard, the statement needs to be true. Anton & Chia's statements were not.

42 Despite the fact that at the time of Respondents' alleged misconduct, Rule 2-02(b)(1) required the auditor to state whether the audit complied with "GAAS," instead of the current language, which refers to "applicable

charged with aiding and abetting and causing Anton & Chia's violations of this rule for their respective involvement (Wahl for all three audit reports, and Deutchman for the 2014 Accelera audit report). The Division has met its burden to demonstrate Wahl and Deutchman's liability. As documented above, they provided substantial assistance to Anton & Chia's violation in their instrumental roles in making the findings in the audit reports and acting recklessly in their conduct of the underlying audits.

4. Exchange Act Section 4C and Rule 102(e)

Under Exchange Act Section 4C and Rule 102(e), the Commission may deny accountants the privilege of appearing or practicing before the Commission if the accountants engaged in "improper professional conduct" or if they willfully committed or aided and abetted federal securities law violations. 15 U.S.C. § 78d-3(a)(2)–(3); 17 C.F.R. § 201.102(e)(1)(ii), (iii).[43] Wahl, Chung, and Deutchman are charged with engaging in improper professional conduct in connection with Anton & Chia's audits of public companies. Additionally, as discussed above, Wahl and Deutchman are charged with committing or aiding and abetting violations of the federal securities laws.

Improper professional conduct includes intentional, knowing, or reckless conduct that leads to violations of applicable professional standards, as well as negligent conduct if it is either: (1) a single instance of highly unreasonable conduct in a situation where the accountant knows or should know heightened scrutiny is warranted and standards are violated; or (2) repeated unreasonable conduct leading to violations and demonstrating a lack of sufficient competence to practice before the Commission. 15 U.S.C. § 78d-3(b); 17 C.F.R. § 201.102(e)(1)(iv)(A)–(B).[44] The applicable professional standards referenced

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professional standards," *see* Div. Post-hr'g Br. at 37 (noting that Rule 2-02(b) requires a statement about GAAS compliance), Commission interpretive guidance from 2004 clarified that the reference to GAAS meant the PCAOB standards and the Commission's applicable rules. *See* Commission Guidance on PCAOB Standard No. 1, 69 Fed. Reg. at 29,065.

[43] Establishing willfulness does not require an intent to violate the law, but simply an intent to perform an act which constitutes a violation. *See Wonsover v. SEC*, 205 F.3d 408, 413–15 (D.C. Cir. 2000); *accord Robare Grp. v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019).

[44] Rule 102(e)(1)(iv) describes improper professional conduct with respect to persons licensed as accountants; Section 4C describes improper professional

include GAAP and the PCAOB auditing standards. *See* Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57,164, 57,166 (Oct. 26, 1998); Commission Guidance on PCAOB Standard No. 1, 69 Fed. Reg. at 29,065.

Recklessness under Rule 102(e) "can be demonstrated simply by evidence of 'an extreme departure from the standard of ordinary care for auditors,'" in violating the applicable professional standards, and does not require a showing of fraud. *Marrie v. SEC*, 374 F.3d 1196, 1204 (D.C. Cir. 2004) (quoting *Michael J. Marrie, CPA*, Exchange Act Release No. 48246, 2003 WL 21741785, at *7 (July 29, 2003)). Highly unreasonable conduct is "an intermediate standard, higher than ordinary negligence but lower than the traditional definition of recklessness used in cases brought under Section 10(b) and Rule 10b-5 of the Exchange Act." *James Thomas McCurdy, CPA*, Exchange Act Release No. 49182, 2004 WL 210606, at *8 (Feb. 4, 2004) (quoting Amendment to Rule 102(e), 63 Fed. Reg. at 57,167). Repeated instances of unreasonable conduct can be shown by applying "an ordinary or simple negligence standard." Amendment to Rule 102(e), 63 Fed. Reg. at 57,169.

Wahl engaged in many instances of professional misconduct in the Accelera, Premier, and CannaVEST engagements by failing to follow PCAOB standards and ensure GAAP compliance. At times his behavior was reckless, at times highly unreasonable, and at the very least, was repeatedly unreasonable. Wahl also violated Section 10(b) and Rule 10b-5 in connection with his work on Premier and aided and abetted Anton & Chia's Section 13(a) and Rule 2-02 of Regulation S-X violations in connection with his work on both Premier and Accelera. Deutchman also engaged in reckless, highly unreasonable, and repeatedly unreasonable professional misconduct during his work on Accelera. Deutchman further aided and abetted Anton & Chia's violations of Section 10(b) and Rule 10b-5, Section 13(a), and Rule 2-02 with regards to Accelera. Finally, Chung demonstrated professional misconduct in her work as EQR on the first quarter 2013 CannaVEST engagement. She was aware of the competency requirements of AS No. 7, yet she acted as EQR despite falling well below the standard required. *See* Ex. 839.6 at 395–96, 452 (PDF) (in her deposition, Chung indicated that the CannaVEST engagement quality review would have been performed according to AS No. 7). Her failure to perform or document any audit procedures when reviewing the engagement team's valuation of the Phytosphere acquisition was at the very least an

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conduct with respect to any registered public accounting firm or associated person.

instance of highly unreasonable conduct; in fact, it seems as though Chung essentially performed no review at all.

Wahl and Chung argue that their conduct was within the bounds of professional judgment, and since Rule 102(e) "does not entail arbitrary subjective second-guessing of auditing judgment calls," *Marrie*, 374 F.3d at 1206, they should not be found liable. Wahl Post-hr'g Br. at 37. But to the contrary, Wahl and Chung abandoned their professional responsibilities. Wahl's review of documents in all three engagements was severely wanting. He repeatedly and recklessly ignored PCAOB standards and red flags that should have been obvious in the course of a proper review. And, at most, Chung performed a perfunctory and wholly insufficient review of the CannaVEST report in the first quarter of 2013. There is no evidence that she applied deliberative professional judgment in her review process. Instead, she in effect rubber stamped the insufficient efforts of the engagement team to let the interim review proceed, which was highly unreasonable conduct.

Finally, to the extent that Wahl and Chung argue that they should not be sanctioned for the CannaVEST engagement because Anton & Chia did not issue an audit report for the 10-Qs and thus were not the makers of any statement, they are incorrect. *See* Wahl Post-hr'g Br. at 47–49. With respect to CannaVEST, the Division charged them under Rule 102(e), which does not require any material misstatement on the part of Respondents. It is sufficient that Wahl and Chung failed to follow professional standards.

Sanctions

The Commission directed that I determine whether: to impose disgorgement against Wahl; to impose cease-and-desist orders and civil money penalties against Wahl and Deutchman; and to censure Wahl, Deutchman, and Chung or deny them, temporarily or permanently, the privilege of appearing or practicing before the Commission as accountants. OIP at 42. The Division seeks all the preceding sanctions except disgorgement. Respondents oppose any sanction.

1. Disgorgement

Although the Division originally sought disgorgement of the funds Wahl earned from the engagements, Div. Post-hr'g Br. at 46, it waived its request for disgorgement in light of *Liu v. SEC*, 140 S. Ct. 1936 (2020). Div. Post-hr'g Reply Br. at 1, 24. "Statements by … staff … do not necessarily bind th[e] Commission," *George Salloum*, Exchange Act Release No. 35563, 1995 WL 215268, at *6 n.40 (Apr. 5, 1995), but the Commission typically declines to consider positions abandoned by the Division. *See, e.g.*, *Larry C. Grossman*, Securities Act Release No. 10473, 2018 WL 1532792, at *2 & n.12 (Mar. 29, 2018) (respecting the parties' agreement that disgorgement should not be imposed); *James S. Tagliaferri*, Securities Act Release No. 10308, 2017 WL 632134, at *2 n.17 (Feb. 15, 2017) (considering a charge from the OIP "abandoned" when "the Division declined to pursue that alleged violation in its motion for summary disposition"). I therefore decline to impose the sanction.

2. Cease-and-desist order and the public interest

Exchange Act Section 21C authorizes the Commission to issue a cease-and-desist order against any person found to have violated, or caused a violation of, a provision of the act or a rule or regulation promulgated under it. *See* 15 U.S.C. § 78u-3(a). To issue such an order, "there must be some likelihood of future violations." *KPMG Peat Marwick*, 2001 WL 47245, at *24. But the risk of future violations "need not be very great to warrant issuing a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation." *Id.*; *see also id.* at *26. Here, I have found that Wahl and Deutchman violated, or aided and abetted or caused violations of, Exchange Act Sections 10(b) and 13(a); Rules 10b-5, 13a-1, and 13a-13; and Rule 2-02(b) of Regulation S-X.

Additionally, the Commission considers the public-interest factors described in *Steadman v. SEC,* 603 F.2d 1126, 1140 (5th. Cir. 1979)*, aff'd on other grounds,* 450 U.S. 91 (1981)*,* when determining whether to issue a cease-and-desist order. *KPMG Peat Marwick*, 2001 WL 47245, at *23 & n.114, *26; *see Timothy S. Dembski*, Securities Act Release No. 10326, 2017 WL 1103685, at *14 (Mar. 24, 2017), *pet. denied*, 726 F. App'x 841 (2d Cir. 2018). These factors include: (i) the egregiousness of the actions; (ii) the isolated or recurrent nature of the infractions; (iii) the degree of scienter involved; (iv) the sincerity of the respondent's assurances against future violations; (v) a respondent's recognition of the wrongful nature of his or her conduct; and (vi) the likelihood that a respondent's occupation will present opportunities for future violations. *KPMG Peat Marwick*, 2001 WL 47245, at *26; *see also Steadman*, 603 F.2d at 1140. In addition to these factors, the Commission also may consider (vii) the extent to which a sanction will have a deterrent effect, *see Schield Management Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *8 (Jan. 31, 2006), (viii) whether the violation is recent, (ix) the degree of harm to investors or the marketplace resulting from the violation, and (x) the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings. *KPMG Peat Marwick*, 2001 WL 47245, at *26. The inquiry is flexible, no single factor in this analysis is dispositive, and the entire record is considered when deciding whether to issue a cease-and-desist order. *Id.* Accordingly, I also consider (xi) Wahl's misrepresentations to his expert and false statements under oath during the proceeding. *See Robert*

Bruce Lohmann, Exchange Act Release No. 48092, 2003 WL 21468604, at *5 n.20 (June 26, 2003) (noting that a respondent's lies to staff during the investigation can be considered in assessing sanctions even though it was not charged in the OIP); *see also Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *5 & n.21 (Jan. 14, 2011) (considering respondent's post-OIP criminal conviction in assessing sanctions and citing *Lohmann*).

Finally, although the Division seeks a cease-and-desist order only against Wahl and Deutchman, because the public-interest factors are also relevant with regard to whether Respondents should be sanctioned under Exchange Act Section 4C and Rule of Practice 102(e), I also consider them in relation to Chung. *See Chris G. Gunderson*, Exchange Act Release No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009) (applying the *Steadman* factors to a disciplinary proceeding under Rule 102(e)).

2.1. Egregiousness

The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Commission-required periodic reports are the "primary statutory tools for protecting the integrity of the securities marketplace." *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *11 (Nov. 4, 2013). Thus, Respondents' misconduct—which in the case of Wahl and Deutchman violated antifraud provisions and for all three Respondents occurred in the context of a company's public financials contained in periodic reports—is considered egregious.

2.1.1. Wahl

Although Wahl did not steal anyone's money or intentionally commit fraud, and he claims that he carefully considered each engagement at issue, he rushed haphazardly to finish work, and in the face of glaring red flags, approved utterly inadequate workpapers when even minimal inquiries would have uncovered the issuers' misrepresentations. In light of the public trust reposed in auditors, Wahl's conduct was egregious. *Davy*, 1985 WL 660828, at *4.

2.1.2. Deutchman

Deutchman's conduct when working on the Accelera engagement was also egregious. Anton & Chia's only workpaper supporting the consolidation of Behavioral was grossly deficient. Although Deutchman first came to the engagement after Behavioral was consolidated, he was warned by Accelera's CFO Freeman that it had been improperly consolidated. Regardless of Deutchman's personal view of the CFO's abilities, that warning required Deutchman to revisit the rationale for consolidation, and, at that point, it should have been clear, at a minimum, that the workpaper was grossly deficient and that further diligence was warranted. From there, it would have been evident from Anton & Chia's file that consolidation was in error. Instead, however, Deutchman assumed consolidation was correct and that it was not his role to question it, which is exactly the opposite of how Deutchman should have proceeded in discharging his responsibilities. It is that aspect of his conduct that is egregious, particularly for someone of his experience.

2.1.3. Chung

Chung's involvement in this action arises from unfortunate circumstances and inopportune timing, when the only other Anton & Chia partner who could serve as EQR for CannaVEST left the firm shortly before the quarterly review was due to be filed. At that point, Wahl—rather than taking the time, effort, and expense of engaging an outside partner to act as EQR—instead turned to his wife, who had no EQR experience. Chung had not practiced accounting for years, had no partner or manager experience, and—significantly here—lacked any previous experience analyzing business combinations under ASC 805 and 820. Chung should have declined Wahl's request to serve as EQR, but she did not. As I have found, Chung failed markedly in her EQR duties. The severity of those failings are mitigated in part by the fact that there was no suitable partner to serve as EQR at the time. But the fact that she did such a poor job once she assumed the role of EQR remains egregious.

2.2. Recurrence

2.2.1. Wahl

Wahl's violations recurred across multiple engagements with three different issuers during a three-year period. This repeated misconduct weighs in favor of sanctions.

2.2.2. Deutchman

Deutchman's misconduct recurred across five Accelera engagements over two years. Although matters outside the OIP do not show recurrence of the violations at issue in this proceeding, I also consider two of his previous securities law violations in assessing sanctions, as they show a recurring pattern of misconduct. First, the Commission censured Deutchman in 2008 on two grounds: he "willfully violated Section 102(a) of the Sarbanes-Oxley Act of 2002" by preparing and issuing an audit report in 2004 for an issuer while failing to register as a public accounting firm, and he practiced public accounting while he "did not possess the requisite qualifications to represent others." *Deutchman*, 2008 WL 2902011, at *1–2. Second, the PCAOB barred Deutchman from association with a registered public accounting firm in 2014 for two years and ordered him to pay a civil penalty of $35,000, in connection with a scheme he participated in while employed at his prior employer, Kabani & Company. Order Summarily Affirming Findings, *Kabani*, PCAOB File No. 105-2012-002, at 19; *Kabani*, 2017 WL 947229 (sustaining the PCAOB's findings of violations and sanction imposed); Deutchman Answer at 3. At Kabani, Deutchman was responsible for the quality control function of the firm. Tr. 3342. The PCAOB found that Deutchman participated in a "wide-spread and resource-intensive effort … to alter documents in the audit files of three issuers in an attempt to deceive PCAOB inspections in an upcoming inspection about the deficiencies in the firm's audit work papers." *Kabani*, PCAOB File No. 105-2012-002, at 1; *see also Kabani*, 2017 WL 947229, at *1. Third, the California Board of Accountancy revoked Deutchman's CPA license in 2019, but this does not appear to be based on violations that are independent of the preceding matters, and, as such, does not denote an additional recurrence of violations. *See* Order Denying Petition for Rehearing, *Michael Deutchman*, No. AC-2019-24 (Cal. Board of Accountancy August 27, 2019), https://www.dca.ca.gov/cba/discipline/actions/ac-2019-24.pdf; Tr. 3322.

Although Deutchman's violations as a whole were not frequent—except with respect to the Accelera engagements that he is charged with here—the Division did establish that he has engaged in a recurring pattern of misconduct over the course of a decade, such that this factor weighs strongly in support of a sanction in the public interest.

2.2.3. Chung

Chung's violations were not recurrent. Her misconduct concerned only the first quarter 2013 interim review of CannaVEST, on which she worked intermittently over the course of two weeks. Her lack of recurring misconduct weighs in her favor.

2.3. Scienter

Respondents did not commit intentional violations. Nonetheless, as discussed above, Wahl and Deutchman acted recklessly and repeatedly failed to exercise the due care required of their chosen profession. And Chung's violation of professional standards was highly unreasonable, which is more than ordinary negligence but does not reflect scienter. *See McCurdy*, 2004 WL 210606, at *8.

2.4. Sincerity of assurances against future violations

None of the Respondents made any assurances against future violations. They instead claimed that they acted properly in all respects, which suggests that they would persist in similar misconduct in the future. Although Deutchman testified he was retired, Tr. 639, and he is of retirement age, there is no assurance that he will stay in retirement. And Wahl's conduct in this proceeding further demonstrates his difficulty in carrying out assurances of compliance. For example, he did not fully abide by the order of a previously assigned judge to return or destroy all copies of the voicemail recording he was ordered not to disclose to any person. *Anton & Chia*, Admin. Proc. Rulings Release No. 6361, 2018 SEC LEXIS 3306, at *8 (ALJ Nov. 26, 2018); Tr. 5065–68 (under seal).

2.5. Recognition of wrongdoing

Respondents uniformly failed to recognize the wrongfulness of their actions, notwithstanding restatements made by Accelera and CannaVEST acknowledging the prior accounting was wrong, and a federal court finding that Premier's accounting for the WePower Note was materially misleading. Although Respondents are entitled to vigorously contest the charges in these proceedings, their failure to acknowledge any wrongdoing is a missed opportunity to mitigate sanctions. *See Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) ("[The respondent] still thinks he did nothing wrong, which casts doubts on his promise that he will mend his ways."); *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *6 (Jan. 16, 2007) ("[F]ailure to acknowledge guilt or show remorse indicates that there is a significant risk that, given the opportunity, [the respondent] would commit further misconduct in the future."); *see also Seghers v. SEC*, 548 F.3d 129, 136 (D.C. Cir. 2008) (due process is not violated where a respondent is "given the option of recognizing the wrongfulness of [her] conduct or refusing to do so and risking more severe remedial action").

2.5.1. Wahl

Wahl has long maintained that he made no mistakes in the audits and interim reviews in question. Tr. 5086, 5300. Even after sitting through the hearing and reviewing the evidence, Wahl said he would have carried out the same accounting for key transactions, such as the Note. Tr. 5385–86; *see* Tr. 4270.

Wahl also failed to acknowledge his wrongdoing regarding the false document that he "forwarded" to his expert witness, Misuraca, for use as the principal basis for the expert's opinion regarding CannaVEST, where he made it seem as if the key data in the document originated from the issuer. *Compare*

Ex. 823 (email from Wahl to Misuraca), *with* Ex. 824 (original, un-doctored email). Instead, Wahl first falsely testified that he inadvertently pasted then-existing data from CannaVEST into that email that he "forwarded"—which is also what he wrote in his sworn declaration on the matter—before effectively acknowledging that he invented the financial projections on his own long after the original email was written. Tr. 5494–5516; *see* Opp'n to Mot. to Exclude Misuraca at 7.

Finally, although Wahl was aware of two PCAOB inspection reports that identified more than a dozen deficiencies with Anton & Chia's audit practices, Wahl never read either of them. *See* Ex. 82; Ex. 83; Tr. 4977, 4991. For another PCAOB inspection, Wahl directed another Anton & Chia partner to tell PCAOB inspectors he had performed work that had not been done, writing: "if you didn't [do the work], try and say you did so it goes away." Ex. 309 (Dec. 27, 2016, email from Wahl to Rahul Gandhi). Although those inspections do not address the wrongdoing at issue in this case and two of them occurred well after the engagements at issue here, Wahl's disinterest in seeking to understand the deficiencies for which his firm was cited suggests, at the very least, a lax approach to wrongdoing.

2.5.2. Deutchman

In addition to the fact that Deutchman claimed his conduct when working on Accelera was appropriate, he also fell short of recognizing the wrongful nature of his conduct leading to his previous securities law violations. He referred to the Commission's censure of him as "literally a nothing case," Tr. 3362–63, and characterized the PCAOB case as a "travesty" at his expense, based on an "overstatement of the facts." Tr. 3357.

2.5.3. Chung

Chung failed to acknowledge the possibility she did anything wrong. Although she was unable to recall what work she had done on the CannaVEST engagement, Tr. 5182, she nonetheless testified that she had done "everything right, nothing wrong" and "according to the U.S. GAAP and GAAS standard." Tr. 5161; *see also* Tr. 5146–47. While I do not fault her for expressing the general view that she follows professional standards, her refusal to consider the possibility that she made mistakes is troubling given the fact that she had no recollection of her work. Absent objective evidence establishing that no error was committed, which Chung did not offer, this is an extraordinary position for a person to take.

2.6. Opportunities for future violations

2.6.1. Wahl

Wahl's current position presents the opportunity for violations. Wahl works for NorAsia Consulting and Advisory, a company owned by Chung, which conducts consulting work for private and public companies. Tr. 5191, 5195, 5198. Wahl is the principal, public-facing point of contact for NorAsia. *See* NorAsia Consulting & Advisory, Location and Contact, https://www.norasiaconsulting.com/index.php/contact (last visited Feb. 4, 2021); Exs. 892, 892.1 (Website capture declaration; NorAsia website and LinkedIn profile website captures).

One possible example of Wahl's continued involvement in public audit work concerns a 2019 review of the financial statements for a public company called Max Sound Corporation, for which there is an audit opinion affixed to the company's Form 10-K under the name "G.A. Wahl." Ex. 863 at 25–26 (PDF); Tr. 3710–11, 3754, 3757–58, 3776; *see* Tr. 4947–53. While there is some confusion as to whether Wahl authorized the use of his name on the opinion, the other facts highlight how Wahl's consulting work with public companies—which continues at NorAsia to this day—presents opportunities for future violations. Tr. 3735–39, 3741–42, 3744, 3748, 3750.

2.6.2. Deutchman

Deutchman, who is retired, is in a position that ostensibly presents the least opportunity for future violations. Nonetheless, nothing precludes him from returning to the industry. *See Donald L. Koch*, Exchange Act Release No. 31047, 2014 WL 1998524, at *20 (May 16, 2014) ("[A]bsent a bar there is nothing to prevent [the respondent] from coming out of retirement and participating in the industry."), *petition granted in part on other grounds and denied in part*, 793 F.3d 147 (D.C. Cir. 2015). This factor is neutral for Deutchman.

2.6.3. Chung

Although Chung appeared to carry out little or no current auditing work at the time of the hearing, she owns NorAsia, which provides accounting consulting services to public companies, and she continues to work with her husband or helps to enable his work. Her continued involvement could pose the risk of her contributing to future violations.

2.7. Deterrence

Cease-and-desist orders may deter Wahl and Deutchman from committing the proscribed misconduct again. In addition, a cease-and-desist order also makes them and the market aware of what conduct gave rise to the violations. Aside from providing context and depth to the remedial order, it would stand as a cautionary tale for potential future violators, including Wahl and Deutchman, to avoid the underlying violative conduct in the future. The other sanctions sought by the Division have a similar deterrent effect, and deterrence is a relevant consideration in deciding whether to impose Rule 102(e) sanctions against all three Respondents. *See Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at *8 (Sept. 20, 2012); *Steven Altman, Esq.*, Exchange Act Release No. 63306, 2010 WL 5092725, at *19 & n.71 (Nov. 10, 2010), *pet. denied*, 666 F.3d 1322 (D.C. Cir. 2011).

The need for deterrence in the area of public accounting is at a premium because of that profession's crucial role in ensuring the integrity of market information. As the Commission has explained, citing the Supreme Court:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility … [and] owes ultimate allegiance to the corporation's credits and stockholders, as well as to [the] investing public. This 'public watchdog' function … requires complete fidelity to the public trust. … [T]he independent auditor's obligation to serve the public interest assures that the integrity of the securities markets will be preserved … .

Davy, 1985 WL 660828, at *4 (quoting *United States v. Arthur Young & Co.*, 465 U.S. 805, 817–18, 819 (1984)).[45]

2.8. Recency

The violations at issue here are not particularly recent, having mostly occurred more than five years ago at this point. But neither are they especially old, given that the misconduct at Anton & Chia took place no more than seven to eight years ago. Accordingly, this factor does not weigh strongly one way or the other.

2.9. Harm to investors or the market

The Division did not present any evidence, such as investor testimony, that any Respondent's conduct actually harmed investors. Indeed, the case

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45 While the Supreme Court in *Young* used this reasoning to reject work-product immunity for accountants' tax accrual workpapers, the rationale nonetheless underscores the crucial role of accountants in maintaining the public trust.

concerns thinly traded companies, where most of the shares were in the hands of corporate officials. Nevertheless, material inaccuracies appeared in the annual and quarterly reports of the companies, and investors were deprived of accurate information, which harms market efficiency and investors. *See McConville*, 2005 WL 1560276, at *16 ("Fraudulent misstatements and omissions in financial statements and periodic reports mislead investors who buy or sell stock based on the information contained therein."); *see also SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1377 (D.C. Cir. 1980) ("Dissemination of false or misleading information by companies to members of the investing public may distort the efficient workings of the securities markets and injure investors who rely on the accuracy and completeness of the company's public disclosures."). This kind of general informational harm that potentially impacts investors weighs in favor of sanctions. *vFinance*, 2010 WL 2674858, at *17 ("The absence from the record of evidence demonstrating any direct customer harm is not mitigating, as our public interest analysis focus[es] … on the welfare of investors generally." (internal quotation marks omitted)).

2.10. Remedial function in the context of other sanctions

Although Wahl and Deutchman will be precluded from practicing before the Commission altogether, a cease-and-desist order will still serve a meaningful remedial function, particularly if either Respondent serves in an advisory or consulting capacity to public companies. Further, it will deter them and others from future misconduct.

2.11. Wahl's misconduct during the proceeding

As discussed at length earlier, Wahl intentionally misled his expert witness, submitted a perjurious declaration, and lied about it under oath. *See supra* Preliminary Issues § 2.2.1. Perjury is serious misconduct in any proceeding, particularly for an accountant. Not only is candor necessary for the fair and efficient functioning of the public securities markets, *see Frank Kufrovich*, Exchange Act Release No. 45437, 2002 WL 215446, at *5 (Feb. 13, 2002) (because the securities industry "presents numerous opportunities for abuses of trust," a "propensity for dishonest behavior is of particular concern"), but this concern is especially applicable to auditors, on whose honesty, integrity, and competence "the Commission and the investing public rely heavily." *Marrie*, 2003 WL 21741785, at *17, *pet. granted on other grounds*, 374 F.3d 1196; *see* 15 U.S.C. § 78d-3(a)(2); 17 C.R.F. § 201.102(e)(1)(ii); *Myron Swartz*, File No. 4-98, 1961 WL 62209, at *5 (May 24, 1961) (noting the "high standard of honesty and professional conduct we must demand of accountants and others practicing before this Commission"); AICPA Code of Professional Conduct 0.300.040.03 ("Integrity requires a *member* to be, among other things, honest and candid within the constraints of *client* confidentiality."); *Id.*

1.400.001.01 ("A *member* shall not commit an act discreditable to the profession.") (emphasis in original). Wahl's misconduct in preparation for and at the hearing demonstrates the need for a strong sanction in the public interest.

* * *

Based on the foregoing analysis, I find that a cease-and-desist order is appropriate for Wahl and Deutchman's violations, and that sanctions in some form are warranted for all three Respondents in the public interest. While there are a handful of mitigating considerations, they are insufficient to render a cease-and-desist order or other sanctions unnecessary to serve the public interest.

3. Civil penalties

Exchange Act Section 21B(a)(2) authorizes civil penalties in cease-and-desist proceedings against any person who has violated, or caused a violation of, a provision of that act or a rule or regulation thereunder. 15 U.S.C. § 78u-2(a)(2). Under consideration are civil penalties against Wahl and Deutchman.

3.1. Civil penalties are in the public interest.

Civil penalties must be in the public interest, 15 U.S.C. § 78u-2(a)(1), which the Commission determines by considering six factors: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm, directly or indirectly, to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need for deterrence; and (6) such other matters as justice may require. *See, e.g.*, 15 U.S.C. §78u-2(c).

The first factor weighs in favor of penalties because Wahl and Deutchman's violations involved the reckless disregard of regulatory requirements and violated the antifraud provisions of the securities laws. As to harm, although it appears that Wahl and Deutchman's violations did not result in actual harm to persons by direct or indirect means, their material misrepresentations to the marketplace posed the risk of harm and were generally harmful to market integrity. Still, because of the lack of specific harm and the fact that disgorgement is no longer at issue, unjust enrichment and prior restitution are not relevant here. Next, although Wahl has no past record of regulatory violations, Deutchman's regulatory history weighs in favor of some penalty. Turning to deterrence, it is necessary to impose a civil penalty of sufficient magnitude to deter Wahl and Deutchman from future violations and influence senior accountants working with publicly traded companies to not violate, aid and abet, or cause violations of the securities laws at issue here.

See Johnny Clifton, Securities Act Release No. 9417, 2013 WL 3487076, at *16 (July 12, 2013) (third-tier penalty was "necessary to deter [the respondent] from future misconduct and will have an additional remedial effect of deterring others from engaging in similar misconduct"). Finally, as far as other matters that justice requires, Respondents have not identified any matters that would mitigate the need for penalties, and Wahl's perjury weighs in favor of a penalty for him.

In sum, although there are a handful of mitigating factors, taken as a whole, the public-interest factors weigh in favor of civil penalties.

3.2. Second tier penalties are appropriate.

The maximum penalty that can be imposed is based on the seriousness of the violation and divided into three tiers. First-tier penalties are available based on the fact of the violation alone. 15 U.S.C. § 78u-2(b)(1). Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. § 78u-2(b)(2). Third-tier penalties require the additional finding that the misconduct, "directly or indirectly, resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain" to the respondent who committed the violation. 15 U.S.C. § 78u-2(b)(3). As relevant here, for a natural person's misconduct that occurred between March 6, 2013, and November 2, 2015, the maximum second-tier penalty per violation is $80,000 and the maximum third-tier penalty per violation is $160,000. 17 C.F.R. § 201.1001 tbl. I.

The record supports second-tier penalties for Wahl and Deutchman's misconduct, which evidenced scienter and was deceitful. *See SEC v. M & A W., Inc.*, 538 F.3d 1043, 1054 (9th Cir. 2008) ("[T]he imposition of second-tier penalties requires an assessment of scienter.").

The Division, however, requests third-tier penalties based on its assertion that "[t]he material overstatement of Premier and Accelera's financial statements posed a significant risk of substantial losses to investors." Div. Post-hr'g Br. at 47. But the bases for the Division's contention are unclear. While there were material inaccuracies in the issuers' periodic filings that sometimes made the issuers appear to be better investments than they would have been otherwise, neither Accelera nor Premier appears to have been a particularly attractive investment, which is highlighted by Anton & Chia's inclusion of going concern disclosures for each issuer.[46] Although going concern

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[46] Premier's lack of financial attractiveness was further underscored by the periodic report's prominent inclusion of the fact that the transactions with the

qualifications do not absolve the auditor of performing its other obligations with due care, they nonetheless represent cautionary statements to investors. Further, even though material inaccuracies in financial reporting can pose a significant risk of substantial losses, the Division did not meet its burden here to establish such a loss, or risk of loss, with testimony from actual or potential investors, an expert witness, or documentary evidence such as trade data. As such, I find second-tier penalties more appropriate for each violation. Indeed, even if a significant risk of substantial losses had been established, I would exercise my discretion to impose second-tier penalties in light of the other public interest factors. *See J.S. Oliver Capital Mgmt., LP*, Exchange Act Release No. 78098, 2016 WL 3361166, at *18 (June 17, 2016) (imposing second-tier penalties in light of the public interest despite the Division's request for third-tier penalties and the substantial losses caused), *vacated on other grounds*, *Pending Admin. Proc.*, 2018 WL 4003609; *Rockies Fund, Inc.*, Exchange Act Release No. 54892, 2006 WL 3542989, at *7 (Dec. 7, 2006) (imposing second-tier penalties), *pet. denied*, 298 F. App'x 4 (D.C. Cir. 2008).

That leaves the question of how many second-tier penalties to impose. The securities statutes allow a penalty to be imposed for each act or omission, but leave the precise unit of violation undefined. *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *24 n.162 (Feb. 20, 2015). The Division requests what it characterizes as a "conservative interpretation, applying a single third-tier penalty for each respondent, for each issuer," resulting in two penalties for Wahl, and one for Deutchman. Div. Post-hr'g Br. at 48. I find the Division's method appropriate here (although not the tier requested), because the misconduct during each engagement, while involving multiple acts or omissions, can be deemed an overall unit of violation. Wahl's misconduct spanned two engagements—Accelera and Premier—and his actions were separate and distinct enough between them to warrant the two separate penalties sought by the Division.

Therefore, I impose two maximum second-tier penalties for a total of $160,000 for Wahl's misconduct with respect to Accelera and Premier and one second-tier penalty of $40,000 for Deutchman's Accelera-related misconduct. Notwithstanding Deutchman's regulatory history, he was less involved than Wahl in the Accelera engagement, coming on as EQR well after consolidation had initially been evaluated by the firm, and participating in one audit and four reviews. Wahl on the other hand participated in seven Accelera engagements, was the engagement partner for both the 2013 and 2014 audits, approved the thoroughly deficient consolidation memo, and was the majority

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greatest impact to the financial statements were among related parties. *See* Ex. 402 at F-1, F-12.

owner of the firm and the one who managed it. Moreover, Wahl's perjury evidences a propensity for dishonest behavior, which is particularly troubling in light of his continued involvement as a consultant to publicly traded companies at NorAsia. In sum, Wahl bears more responsibility than Deutchman and must be thoroughly deterred against future misconduct. His conduct warrants higher overall penalties.

4. Section 4C and Rule 102(e)

Rule 102 sanctions protect the public from future reckless or negligent conduct by professionals who practice before the Commission and the "integrity of [the Commission's] own processes." *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979). "If incompetent or unethical accountants should be permitted to certify financial statements, the reliability of the disclosure process would be impaired." *Id.* at 581. And that is precisely what happened here.

Wahl and Deutchman recklessly violated applicable professional standards and willfully violated or willfully aided and abetted violations of the federal securities laws. Given the extent of their misconduct and the points discussed below, their bars should be permanent, without a right to reapply after a period of years.

As to Deutchman, where, as here, "[l]ess stringent sanctions" for similar past violations have "proved to be insufficient to preclude future misconduct," a permanent bar is warranted. *Fundamental Portfolio Advisors, Inc.*, Securities Act Release No. 8251, 2003 WL 21658248, at *17 (July 15, 2003) (granting permanent bar in third Commission proceeding against respondent, finding that his "past misconduct holds out scant assurance against future violations"). Also, while Deutchman may remain retired, he could change his mind.

Wahl's misconduct was the most extensive. He showed no remorse, and defended his misconduct by, among other things: submitting a false declaration under penalty of perjury, lying under oath, and deceiving his own expert witness. While Wahl's perjury is not mentioned in the OIP, it took place in the course of the proceeding, and highlights the need to bar Wahl from appearing or practicing before the Commission as an accountant. The integrity of the Commission's processes are undermined when an individual submits false documents and testifies falsely. While Wahl's numerous violations of the securities laws and professional standards seem sufficient to support a permanent bar on their own, his further misconduct at the hearing further demonstrates he does not deserve a right to reapply after a fixed amount of time.

Chung performed a perfunctory and wholly insufficient engagement quality review of the CannaVEST report in the first quarter of 2013, rubber-stamping the firm's thoroughly deficient work product. As I noted earlier, her conduct was highly unreasonable. *See supra* Law § 4; 15 U.S.C. § 78d-3(b)(2)(A).

The Division seeks a multi-year suspension for Chung. Div. Post-hr'g Br. at 44. In doing so, it argues that I should consider as precedent: (1) the two-year bar with a right to reapply given to Koch because of his work as EQR on two of CannaVEST's interim reviews after Chung and his work as EQR on the 2013 Premier audit; and (2) the one-year bar with a right to reapply given to Shek because of his work as audit manager on all of CannaVEST's 2013 interim reviews. *Id.* at 45 (citing *Richard Koch*, Exchange Act Release No. 82207, 2017 WL 6015563 (Dec. 4, 2017), and *Anton & Chia*, 2018 WL 3388553). But I decline to treat these settled orders as precedent, because both "are not binding on any other person or entity in this or any other proceeding." *Koch*, 2017 WL 6015563, at *1 n.3; *Anton & Chia*, 2018 WL 3388553, at *1 n.3. As settled matters, the many factors that contributed their respective resolutions are unknown to me. *See Joseph John VanCook*, Exchange Act Release No. 61039A, 2009 WL 4026291, at *19 (Nov. 20, 2009) ("[T]he sanctions that are imposed in settled cases are the result of a myriad 'pragmatic considerations such as the avoidance of time-and-manpower-consuming adversarial litigation' that enter into decisions to accept offers of settlement from respondents. For this reason, they cannot be meaningfully compared to the sanctions imposed in litigated cases, which are the result of fact-specific considerations of various factors designed to best protect the public interest." (quoting *Philip A. Lehman*, Exchange Act Release No. 54660, 2006 WL 3054584, at *9 (Oct. 27, 2006))), *pet. denied*, 653 F.3d 130 (2d Cir. 2011).

Even if I were to consider those orders as persuasive authorities, a multi-year penalty does not seem appropriate given that Chung, in contrast to Koch for example, worked on only one CannaVEST interim review that lasted only two weeks. Without minimizing the importance of her role as EQR, the limited timeframe is a distinction that tips in favor of a shorter bar. While it would have behooved Chung to be more willing, in retrospect, to examine her shortcomings as an EQR, her conduct is sufficiently sanctioned by a bar with the right to reapply after one year. This sanction should demonstrate to Chung that her conduct was wrongful and must not be repeated. Although the Commission typically imposes a twelve month suspension with automatic reinstatement in lieu of a one-year bar with a right to reapply, *see John J. Aesoph*, Exchange Act Release No. 78490, 2016 WL 4176930, at *17 & n.84 (Aug. 5, 2016), *vacated on other grounds*, *Pending Admin. Proc.*, 2018 WL 4003609, Chung's highly unreasonable conduct warrants a bar, which will enable the Commission to perform an important gate-keeping role should Chung seek to appear or practice after the year has elapsed.

Record Certification

I certify that the record includes the items set forth in the corrected record index issued by the Secretary of the Commission on December 11, 2020. *See* 17 C.F.R. § 201.351(b).

Order

Exhibit 1036 is ADMITTED.

Exhibit 1113 is NOT ADMITTED.

Under Section 4C of the Securities Exchange Act of 1934 and Section 102(e) of the Securities and Exchange Commission's Rules of Practice:

> Gregory A. Wahl, CPA, and Michael Deutchman, CPA, are PERMANENTLY DENIED the privilege of appearing or practicing before the Commission as accountants; and
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> Georgia Chung, CPA, is DENIED the privilege of appearing or practicing before the Commission as an accountant, provided, however, that she may reapply to the Commission for permission to appear or practice before it after one year.

Under Section 21C(a) of the Securities Exchange Act of 1934:

> Gregory A. Wahl, CPA, and Michael Deutchman, CPA, must CEASE AND DESIST from committing or causing violations, and any future violations, of Exchange Act Sections 10(b) and 13(a), and Rules 10b-5, 13a-1, and 13a-13 thereunder, and Regulation S-X Rule 2-02(b).

Under Section 21B(a)(2) of the Securities Exchange Act of 1934:

> Gregory A. Wahl, CPA, must PAY A CIVIL MONEY PENALTY in the amount of $160,000; and
>
> Michael Deutchman, CPA, must PAY A CIVIL MONEY PENALTY in the amount of $40,000.

Payment of civil penalties must be made no later than 21 days following the day this initial decision becomes final, unless the Commission directs otherwise. Payment must be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/ofm; or (3) by certified check, bank cashier's check, bank money order, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying the Respondent and Administrative Proceeding File No. 3-18292: Enterprise Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment must be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under that rule, a party may file a petition for review of this initial decision within 21 days after service of the initial decision. Under Rule of Practice 111, a party may also file a motion to correct a manifest error of fact within ten days of the initial decision. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party has 21 days to file a petition for review from the date of the order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occur, the initial decision will not become final as to that party.

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Jason S. Patil
Administrative Law Judge

Served by email on all parties.

Appendix – Comparison of Vantage Point Projections to Wahl email

Year	Vantage Point Ex. 824	Wahl email Exs. 823, 1036	reduction (increase)	% reduced (increased)
Total Revenue				
2013	$3,582,405	$3,575,000	$7,405	0%
2014	$22,237,108	$10,029,798	$12,207,310	55%
2015	$41,181,331	$19,725,617	$21,455,714	52%
2016	$53,449,793	$34,815,276	$18,634,517	35%
2017	$64,968,557	$43,335,356	$21,633,201	33%
Cost of Goods Sold				
2013	$666,040	$1,881,500	($1,215,460)	(182%)
2014	$7,072,676	$2,156,407	$4,916,269	70%
2015	$16,326,519	$4,241,008	$12,085,511	74%
2016	$21,190,404	$7,485,284	$13,705,120	65%
2017	$25,757,069	$9,317,102	$16,439,967	64%
Gross Profit				
2013	$2,916,365	$1,693,500	$1,222,865	42%
2014	$15,164,432	$7,873,391	$7,291,041	48%
2015	$24,854,812	$15,484,609	$9,370,203	38%
2016	$32,259,389	$27,329,992	$4,929,397	15%
2017	$39,211,489	$34,018,254	$5,193,235	13%
Total Operating Expense (“G&A” in Wahl email)				
2013	$1,192,354	$1,015,559	$176,795	15%
2014	$5,456,994	$5,794,345	($337,351)	(6%)
2015	$11,800,433	$10,638,455	$1,161,978	10%
2016	$15,315,937	$15,957,683	($641,746)	(4%)
2017	$18,616,617	$21,542,871	($2,926,254)	(16%)
EBITDA (“Net Income” in Wahl email)				
2013	$1,724,012	$677,941	$1,046,071	61%
2014	$9,707,438	$2,079,046	$7,628,392	79%
2015	$13,054,379	$4,846,154	$8,208,225	63%
2016	$16,943,452	$11,372,309	$5,571,143	33%
2017	$20,594,871	$12,475,383	$8,119,488	39%