

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Admin. Proc. File No. 3-20297

In the Matter of

MJ BIOTECH, INC. (F/K/A MICHAEL
JAMES ENTERPRISES, INC.)

RESPONDENT'S SUPPLEMENTAL BRIEFING

In compliance with the December 23, 2024 Order issued by the Securities and Exchange Commission, please accept this legal memorandum and the Declaration of Christopher Krause regarding the Respondent's restricted access to the EDGAR filing system by the Securities and Exchange Commission.

FACTUAL BACKGROUND

Following the Commission's September 3, 2021 Order revoking the registration of the Respondent's registered securities, the Respondent's EDGAR filing access was restricted. The Respondent's EDGAR filing access has yet to be restored, even after the Commission filed an Order on June 2, 2023 vacating the Order revoking the registration of the Respondent's securities. The EDGAR filing system is the exclusive way for entities to submit filings to the SEC and an authorized account must be used to access the system to file any required periodic reports. Before an entity can electronically file through EDGAR, the entity is required to complete the following steps: (1) the entity must become an EDGAR filer with access codes; (2) create a Form ID, which will then be submitted to the SEC for authorization; (3) obtain a CIK and passphrase; and (4)

receive access codes.¹ After the passing of the former sole Officer and Director of MJ Biotech, Inc., Christopher Krause was elected, by a majority of the Respondent's shareholders as the Respondent's new sole Officer and Director on October 3, 2023.

LEGAL ARGUMENT

One of the legal defenses to a breach of contract claim recognized by the courts is the doctrine of impossibility of performance, which is “[t]he principle that a party may be released from a contract on the ground that uncontrollable circumstances have rendered performance impossible.” Black’s Law Dictionary 772 (8th Ed. 2004). “The common-law doctrine of impossibility ‘excuses what would otherwise be a breach of contract under very limited and narrowly defined circumstances.’” Mull v. Motion Picture Indus. Health Plan, 41 F.4th 1120, 1130-31 (9th Cir. 2022) (quoting 30 Williston on Contracts § 77:1 (4th ed. 2021)). Such a “defense is traditionally unavailable where the barrier to performance arises from the act of the party seeking discharge...[.]” United States v. Winstar Corp., 518 U.S. 839, 895 (1996). Under this doctrine,

[w]here, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary. United States v. Winstar Corp., 518 U.S. 839, 904 (1996) (citation and internal quotation omitted).

In S.E.C. v. Ormont Drug & Chemical Co., Inc., the respondent was initially charged with violating the Security Exchange Act of 1934's reporting requirements due to its failure to file an annual report and three quarterly reports. S.E.C. v. Ormont Drug & Chemical Co., Inc., 739 F. 2d 654, 655 (1984). The SEC also argued that the respondent had a pattern of delinquency and as a result, the Court ordered the respondent to file its delinquent reports and enjoined the company

¹ The information regarding the process in which an entity may file on EDGAR was obtained on the SEC's website: <https://www.filermanagement.edgarfiling.sec.gov/filermgmt/Welcome/EDGARFilerMgmtMain.htm>.

from filing untimely reports in the future. Id. After the respondent failed to comply with the injunctive order, the respondent was brought before the court for contempt proceedings. Id. Although the respondent alleged that compliance with the injunction was impossible due to the company's lack of funds, which had delayed the preparation and the filing of the reports, the court ignored the respondent's argument. Id. at 656-56. In deciding to remand the matter to the district court, the Appellate Division relied on the premise that:

[i]t would be unreasonable and unjust to hold in contempt a defendant who demonstrated that he was powerless to comply. An equity court can never exclude claims of inability to render absolute performance, but it must scrutinize such claims carefully...[.] Id. at 266 (citations omitted).

Thus, the Court ruled that even though the fact and duration of noncompliance are factors to be considered, the court must also adequately consider a party's inability to render compliance, without fault on its part. Id. at 657; see also Afro-Lecon, Inc. v. U.S., 820 F. 2d 1198, 1200, 1207 (1987) (remanding proceedings to further assess the respondent's claim that it was unable to comply with the mandated order on accounting since the corporate agents having knowledge of the accounting had been criminally charged in New York State); but see S.E.C. v. Bankers Alliance Corp., 881 F. Supp. 673 (1995) (ruling that the respondent to a contempt charge failed to proffer credible evidence to support the position that the corporate agents did not have knowledge of, or access to, certain funds and, therefore, was unable to meet its burden of making a categorical, detailed showing of the impossibility in complying with a prior consent order to turn over all illegally obtained gains to the SEC).

With respect to the instant matter, the EDGAR system is the exclusive method through which entities are able to file all periodic reports in compliance with the mandates of the Security Exchange Act of 1934, but an entity must become an EDGAR filer and remain active for it to be permitted to electronically file through the system. An entity mis required to complete a several-

step process, subject to the SEC's approval, to create an EDGAR account before being able to electronically file. Therefore, entities are precluded from electronically filing if authorization to access EDGAR is not given by the SEC. Here, the Respondent was prohibited from accessing its EDGAR account due to the actions taken by the SEC. Without the Respondent having access to its EDGAR account, the Respondent was precluded from filing any delinquent, or subsequent, reports and therefore, it was impossible for the Respondent to comply with the applicable reporting requirements. The Respondent's failure to file any reports following the September 3, 2021 Order was not due to any action or inaction for which the Respondent was culpable – the EDGAR accessibility determinations made by the SEC rendered compliance impossible. See S.E.C. v. Ormont Drug & Chemical Co., Inc., 739 F. 2d 654 (1984); United States v. Winstar Corp., 518 U.S. 839, 895 (1996).

Further, the Respondent had prepared comprehensive reports to cure the alleged deficiencies in its Security Exchange Act of 1934 filings, which were submitted with its January 28, 2023 Motion to Set Aside Default. Although the enforcement staff have argued that these reports contain deficiencies, the alleged technical deficiencies can be appropriately addressed outside of the enforcement process. Had the SEC not restricted the Respondent's access to the EDGAR filing system, the Respondent would have been able to file the required reports, and in the event that the SEC concluded that they contained deficiencies, the Respondent would have been afforded a reasonable amount of time in which it could cure any such deficiencies. However, the Respondent was never given this opportunity. Therefore, any report that the Respondent could have filed to cure prior missing reports, following September 3, 2021 should not be used as evidence in support of the SEC's contention that the Respondent has established a pattern of non-compliance in its reporting.

CONCLUSION

Based on the above, the Respondent respectfully requests that a summary disposition in favor of the Respondent as a result of the impossibility to comply with reporting requirements – a situation created by the SEC by the complete denial of the Respondent's access to the EDGAR filing system.

Respectfully submitted,



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Dated: January 10, 2025

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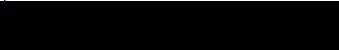
DECLARATION OF CHRISTOPHER KRAUSE

I, Christopher Krause, pursuant to 28 U.S.C. § 1746, declare:

1. I am the officer and director of MJ Biotech, Inc. and I am fully familiar with the facts of this matter.
2. Maxine Peters was the former sole Officer and Director of MJ Biotech, Inc. She passed away on or about March 24, 2023.
3. It was not until October 3, 2023 that I was appointed the sole Officer and Director of MJ Biotech, Inc. by a majority vote of the shareholders.
4. Currently, MJ Biotech, Inc. is, to the best of my knowledge, information and belief, restricted from accessing its EDGAR system account, precluding MJ Biotech, Inc. from being able to file any of its current reports, including this quarterly or annual reports on Forms 10Q and 10K.
5. My understanding is that MJ Biotech, Inc.'s access to its EDGAR account has been continuously restricted by the Security Exchange Commission since September 3, 2021

I declare under penalty of perjury that the foregoing is true and correct.

Signed by:



F7010374F3B9444
Christopher Krause

1/10/2025

Dated