

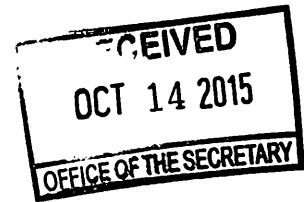
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16745

In the Matter of

Austin Funding.com Corp., *et al.*,

Respondents.



**DIVISION OF ENFORCEMENT'S  
MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT**

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## **MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rules of Practice 154 and 250, respectfully moves for an order of summary disposition against Modern City Entertainment, Inc. (“Modern City”) on the grounds that there is no genuine issue with regard to any material fact, and that pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”), the Division is entitled, as a matter of law, to an order revoking each class of securities of Modern City registered with the Commission pursuant to Exchange Act Section 12.

### **BRIEF IN SUPPORT**

#### **I. Statement of Facts**

Modern City is a Washington corporation located in Fort Lauderdale, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). (OIP, ¶ II.A.3; Modern City’s Answer<sup>1</sup>; eCourierCorps Inc. (n/k/a Modern City)’s Excerpted Form 10-SB filed November 12, 2013 and Exhibit 3.1 thereto (Articles of Incorporation), Exhibit (“Ex.”) 1 to the Declaration of Neil J. Welch, Jr. in Support of the Division’s Motion for Summary Disposition (“Welch Decl.”)<sup>2</sup>; Printout from Washington Secretary of State website, Welch Decl., Ex. 2.) Modern City has failed to file its periodic reports for over three years, *i.e.*, all of its periodic reports after its Form 10-Q for the period ended March 31, 2012. (OIP, ¶ II.A.3; Modern City’s Answer; EDGAR printout of all filings for Modern City, Welch Decl, Ex. 3.) On August 9, 2013, the

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<sup>1</sup> Rule of Practice 220(c) provides: “Any allegation not denied shall be deemed admitted.”

<sup>2</sup> The Division asks that pursuant to Rule of Practice 323, the Court take official notice of this and all other information and filings on EDGAR referred to in this brief and/or filed as exhibits with the Welch Decl. In order to reduce the volume of these pleadings, the Division has excerpted larger EDGAR documents, with the full document being available on EDGAR.

Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter by registered mail to Modern City that stated that Modern City appeared to be delinquent in its periodic filings and warned that it could be subject to revocation, and to a trading suspension pursuant to Exchange Act Section 12(k), without further notice if it did not file its required reports within fifteen days of the date of the letter. Modern City signed for the certified letter on August 15, 2013. (Delinquency Letter and Return Receipt, Welch Decl., Ex. 4.)

As of October 14, 2015, Modern City continued to be delinquent in its periodic reports. (Welch Decl., Ex. 3.)

## **II. Argument**

### **A. Standards Applicable to the Division's Summary Disposition Motion.**

Rule 250(a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see Michael Puorro*, Initial Decision Rel. No. 253, 2004 SEC LEXIS 1348, at \*3 (June 28, 2004) citing 17 C.F.R. § 201.250; *Garcis, U.S.A.*, Securities Exchange Act of 1934 Rel. No. 38495 (Apr. 10, 1997) (granting motion for summary disposition).

As one Administrative Law Judge explained,

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, ‘its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.’ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer’s function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *See Anderson*, 477 U.S. at 249.

*Edward Becker*, Initial Decision Rel. No. 252, 2004 SEC LEXIS 1135, at \*5 (June 3, 2004).

This administrative proceeding was instituted under Section 12(j) of the Exchange Act. Section 12(j) empowers the Commission to either suspend (for a period not exceeding twelve months) or permanently revoke the registration of a class of securities “if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder.” It is appropriate to grant summary disposition and revoke a registrant’s registration in a Section 12(j) proceeding where, as here, there is no dispute that the registrant has failed to comply with Section 13(a) of the Exchange Act. *See California Service Stations, Inc.*, Initial Decision Rel. No. 368, 2009 SEC LEXIS 85 (Jan. 16, 2009); *Ocean Resources, Inc.*, Initial Decision Rel. No. 365, 2008 SEC LEXIS 2851 (Dec. 18, 2008); *Wall Street Deli, Inc.*, Initial Decision Rel. No. 361, 2008 SEC LEXIS 3153 (Nov. 14, 2008); *AIC Int’l, Inc.*, Initial Decision Rel. No. 324, 2006 SEC LEXIS 2996 (Dec. 27, 2006); *Bilogic, Inc.*, Initial Decision Rel. No. 322, 2006 SEC LEXIS 2596, at \*12 (Nov. 9, 2006).



**B. The Division is Entitled to Summary Disposition Against Modern City for Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.**

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core information about issuers of securities. The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are “the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

*Gateway International Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 at \*26 (May 31, 2006) (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1<sup>st</sup> Cir. 1977)).

As explained in the initial decision in the *St. George Metals, Inc.* administrative proceeding:

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual

reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder.

*St. George Metals, Inc.*, Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at \*26 (Sept. 29, 2005); *accord Gateway*, 2006 SEC LEXIS 1288 at \*18, \*22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at \*15 (July 14, 2003); and *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242 at \*14 (May 8, 2002).

There is no dispute that as of the date the OIP was instituted, Modern City had failed to file its periodic reports for over three years, *i.e.*, all of its periodic reports after its Form 10-Q for the period ended March 31, 2012. (OIP, ¶ II.A.4; Modern City's Answer; Welch Decl, Ex. 3.) There is therefore no genuine issue with regard to any material fact as to Modern City's violations of Exchange Act Section 13(a) and the rules thereunder, and the Division is entitled to an order of summary disposition as to Modern City as a matter of law. *See Chemfix Technologies, Inc.*, 2009 SEC LEXIS 2056 at \*21-\*23 (May 15, 2009) (summary disposition granted in Section 12(j) action); *AIC Int'l, Inc.*, 2006 SEC LEXIS 2996 at \*25 (same); *Bilogic, Inc.*, 2006 SEC LEXIS 2596 at \*12 (same); *Investco, Inc.*, Initial Decision Rel. No. 240, 2003 SEC LEXIS 2792, at \*7 (Nov. 24, 2003) (same); *Nano World Projects Corp.*, Initial Decision Rel. No. 228, 2003 SEC LEXIS 1968, at \*3 (May 20, 2003) (Division's motion for summary disposition in Section 12(j) action granted where certifications on filings and respondent's admission established failure to file annual or quarterly reports); and *Hamilton Bancorp, Inc.*, Initial Decision Rel. No. 223, 2003 SEC LEXIS 431, at \*4-\*5 (Feb. 24, 2003) (summary disposition in Section 12(j) action).

**C. Revocation is the Appropriate Sanction for Modern  
City's Serial Violations of Exchange Act Section  
13(a) and Rules 13a-1 and 13a-13 Thereunder.**

Exchange Act Section 12(j) provides that the Commission may revoke or suspend a registration of a class of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination of which sanction is appropriate "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." *Gateway*, 2006 SEC LEXIS 1288, at \*19-\*20. In making this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission's *Gateway* decision). Although no one factor is controlling, *Stansbury*, 2003 SEC LEXIS 1639, at \*14-\*15; and *WSF Corp.*, 2002 SEC LEXIS 1242 at \*5, \*18, the Commission has stated that it views the "recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197 at \*27 (May 23, 2008). An analysis of the factors above confirms that revocation of Modern City's securities is appropriate.

1. **Modern City's violations are serious and egregious.**

As established by the record in this proceeding, Modern City's conduct is serious and egregious. Modern City has not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012. Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found violations of these provisions of the same and of less duration to be egregious, and Modern City's violations support an order of revocation for each class of its securities. *See WSF Corp.*, 2002 SEC LEXIS 1242, at \*14 (respondent failed to file periodic reports over two-year period); and *Freedom Golf Corp.*, Initial Decision Release No. 227, 2003 SEC LEXIS 1178, at \*5 (May 15, 2003) (respondent's failure to file periodic reports for less than one year was egregious violation).

2. **Modern City's violations of Section 13(a) have been not just recurrent, but continuous.**

Modern City's violations are not unique and singular, but continuous. Modern City has failed to file any of its periodic reports since the period ended March 31, 2012. Modern City also failed to file any Forms 12b-25 seeking extensions of time to make its periodic filings for any of its periodic reports from the period ended March 31, 2012 and thereafter. (Welch Decl., Ex. 3.) *See Investco, Inc.*, 2003 SEC LEXIS 2792, at \*6 (delinquent issuer's actions were found to be egregious and recurrent where there was no evidence that any extension to make the filings was sought). The serial and continuous nature of Modern City's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

**3. Modern City's degree of culpability, including its proxy violations, supports revocation.**

For many of the same reasons that Modern City's violations were long-standing and serious, they suggest a high degree of culpability. In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is "the degree of culpability involved." The Commission found that the delinquent issuer in *Gateway* "evidenced a high degree of culpability," because it "knew of its reporting obligations, yet failed to file" twenty periodic reports and only filed two Forms 12b-25. *Gateway*, at 10, 2006 SEC LEXIS 1288, at \*21. Similar to the respondent in *Gateway*, Modern City has not filed any of its required Forms 12b-25 seeking extensions of time to make its periodic filings for any of its delinquent reports for over three years. (Welch Decl., Ex. 3.) Because Modern City knew of its reporting obligations and nevertheless failed to file its periodic reports, and failed to file the required Forms 12b-25 informing investors of the reasons for its delinquency and the plan to cure its violations, it has shown more than sufficient culpability to support the Division's motion for revocation.

Modern City has failed to comply with Exchange Act Sections 14(a) and/or 14(c) and rules thereunder by failing to file any proxies since December 5, 2007. (Welch Decl., Ex. 3.) Under Washington state law, Modern City is required to elect its directors in accordance with its articles of incorporation or bylaws. WASH. REV. CODE § 23B.08.030. Under Modern City's Articles of Incorporation, (filed November 12, 2003 with its Form 10-SB registration statement, Exhibit 1), Article 6.2 provides that Modern City will have an annual election each year for one-third of its directors. If Modern City

solicited proxies from shareholders for any matter, it was required to file a proxy statement with the Commission pursuant to Exchange Act Section 14(a) and Rule 14a-3 thereunder. <sup>(With Del., Ex. 1.)</sup> If Modern City instead obtained the consent of shareholders for any matter, it was required to file an information statement with the Commission pursuant to Exchange Act Section 14(c) and Rule 14c-2 thereunder. No such filings have been made by Modern City since December 5, 2007. ✓

This conduct of Modern City, although not alleged in the OIP, provides further evidence of its culpability that the Court can and should consider when assessing the appropriate sanction for its admitted violations. See *Gateway* at 5, n.30 (Commission may consider other violations “and other matters that fall outside of the OIP in assessing appropriate sanctions”); *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 SEC LEXIS 2024 at \*32 (June 29, 2012) (management’s failure to comply with Exchange Act Sections 13(d) and 16(a) “further brings into question the likelihood of the Company’s future compliance with Section 13(a)”); *Ocean Resources, Inc.*, 2008 SEC LEXIS 2851 at \*15 (ALJ found on summary disposition that respondent’s assurances of future compliance achieved little credibility where its sole officer had ongoing violations of Exchange Act Section 16(a) in both the respondent’s and other companies’ securities).<sup>3</sup>

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<sup>3</sup> The Commission has applied the same principle in other contexts. *Robert Bruce Lohman*, Exchange Act Rel. No. 48092, 2003 SEC LEXIS 1521 at \*17 n.20 (June 26, 2003) (ALJ may properly consider lies told to staff during investigation in assessing sanctions, though they were not charged in the OIP); *Stephen Stout*, Exchange Act Rel. No. 43410, 2000 SEC LEXIS 2119 at \*57 & n.64. (Oct. 4, 2000) (respondent’s subsequent conduct in creation of arbitration scheme, which was not charged in OIP, found to be relevant in determining whether bar was appropriate); and *Joseph P. Barbato*, Exchange Act Rel. No. 41034, 1999 SEC LEXIS 276 at \*49-\*50 (Feb. 10, 1999) (respondent’s conduct in contacting former customers identified as Division witnesses found to be indicative of respondent’s potential for committing future violations). See also *SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 78 (D.C. Cir. 1980) (district court’s injunction against future securities violations upheld; court found noncompliance with Exchange Act Section 16(a) “does evince a disregard of the securities laws that may manifest itself in noncompliance elsewhere.”).

4. **Modern City has made no efforts to remedy its past violations, nor has it made any assurances against future violations.**

Modern City has made no efforts to remedy its past violations by, for example, hiring an auditor to help it prepare its delinquent periodic reports, nor has it filed any of its delinquent periodic reports, nor does it intend to hire an auditor or make its delinquent periodic reports. Modern City has instead stated that it plans to file a Form 15 to deregister its securities, but has not yet done so. (Modern City's Answer; Prehearing Conference Transcript, Welch Decl., Ex. 5, at 5-6; Welch Decl., ¶ 7, and Ex. 3.) However, even if Modern City files a Form 15, it will be moot as to this motion because a Form 15 does not become effective until ninety days after it is filed, and that ninety days would not run until after have the date this case must be decided, December 14, 2015. Moreover, the company has made no assurances against future violations.

**D. Revocation is the Appropriate Remedy for Modern City.**

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for Modern City's long-standing violations of the periodic filings requirements. Modern City's recurrent failures to file its periodic reports have not been outweighed by "a strongly compelling showing with respect to the other factors" which "would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, 2008 SEC LEXIS 1197 at \*27.

Moreover, revocation will not be overly harmful to whatever business operations, finances, or shareholders Modern City may have. The remedy of revocation will not cause Modern City to cease being whatever kind of company it was before its securities

registration was revoked. Revocation will not only protect current and future investors in Modern City, who presently lack the necessary information about Modern City because of the issuer's failure to make Exchange Act filings; it will also deter other similar companies from becoming lax in their reporting obligations.

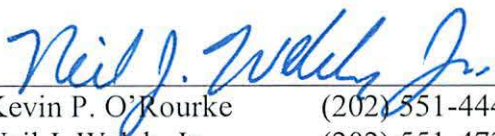
A new registration process will place all investors on an even playing field. All current investors will still own the same amount of shares in Modern City that they did before registration, though their shares will no longer be devalued because of the company's delinquent status. All investors, current and future alike, will also benefit from the legitimacy, reliability, and transparency of a company in compliance. The time-out will protect the status quo, and will give Modern City the opportunity to come into full compliance, to calmly and thoroughly work through all of Modern City's remaining issues with its consultants, auditors, and management, and to complete its financial statements in compliance with Regulations S-K and S-X.

### **III. Conclusion**

For the reasons set forth above, the Division respectfully requests that the Commission revoke the registration of each class of Modern City's securities registered under Exchange Act Section 12.

Dated: October 14, 2015

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Motion for Summary Disposition and Brief in Support, and Declaration of Neil J. Welch, Jr. in support thereof, were served on the following on this 14th day of October, 2015, in the manner indicated below:

By Hand:

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