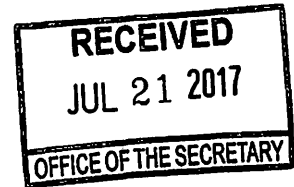


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-18017

In the Matter of

Can-Cal Resources Ltd., *et al.*,

Respondents.

**DIVISION OF ENFORCEMENT'S MOTION FOR
RULING ON THE PLEADINGS AS TO LACHES DEFENSE**

The Division of Enforcement ("Division"), by counsel, pursuant to Commission Rule of Practice 250(a), respectfully moves for a ruling on the pleadings against respondent Can-Cal Resources Ltd. ("Can-Cal") as to its Third Affirmative Defense of laches. Can-Cal's defense of laches is not applicable to a government agency such as the Commission which has brought a proceeding such as this one to vindicate public rights and which is in the public interest. Even accepting all of Can-Cal's factual allegations as true and drawing all reasonable inferences in Can-Cal's favor, the Division is entitled to a ruling that the defense of laches is barred as a matter of law.

BRIEF IN SUPPORT

Can-Cal's affirmative defense of laches should be ruled not to apply in this case on the grounds that (1) settled case law plainly establishes that the defense is legally insufficient as to the Division in this case, and (2) the Division would be prejudiced by having to waste any amount of time, expense, or other resources responding to this defense. Laches is not available against government agencies seeking to vindicate public

rights or acting in the public interest. *SEC v. PacketPort.com, Inc.*, 2006 WL 2798804, at *4 (D. Conn. Sept. 27, 2006); *SEC v. Toomey*, 866 F. Supp. 719, 725 (S.D.N.Y. 1992) (“the presence of this [laches] defense threatens to increase the time and expense of trial”); *SEC v. Gulf & Western Industries, Inc.*, 502 F. Supp. 343, 348 (D.D.C. 1980) (“laches...cannot be applied to a government agency working in the public interest”); see also *Costello v. United States*, 365 U.S. 265, 281 (1961) (“[L]aches is not a defense against the sovereign.”).

Moreover, Can-Cal has not alleged any facts on which it can make a colorable argument for such a defense against the Commission. Simply put, Can-Cal has failed to plead any factual basis at all for the laches defense.

Conclusion

For the reasons set forth above, the Division respectfully requests that the Commission grant the Division’s motion for ruling on the pleadings as to Can-Cal’s Third Affirmative Defense of laches.

Dated: July 21, 2017

Respectfully submitted,



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COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Motion for Ruling on the Pleadings as to Laches Defense were served on the following on this 21st day of July, 2017, in the manner indicated below:

By Email:


The Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
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