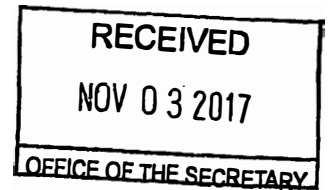


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-18017

In the Matter of

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

Respondents.

**DIVISION OF ENFORCEMENT'S
MOTION FOR 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(b), respectfully moves for an order of summary disposition against respondent Can-Cal Resources Ltd. (“Can-Cal”) 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 Can-Cal registered with the Commission pursuant to Exchange Act Section 12.

BRIEF IN SUPPORT

I. Statement of Facts

Can-Cal is a defaulted Nevada corporation located in Red Deer, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). (OIP, ¶ II.A.1; Can-Cal’s Answer, p. 1; Printout of all EDGAR filings for Can-Cal as of November 3, 2017, Exhibit (“Ex.”) 1 to the Declaration of Neil J. Welch, Jr. in Support of the Division’s Motion for Summary Disposition (“Welch Decl.”).¹ Can-Cal has failed to file its periodic reports for almost two years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended September 30, 2015, which reported a net loss of \$152,507 for the prior nine months. (OIP, ¶ II.A.1; Printout of all EDGAR filings for Can-Cal as of November 3, 2017, Welch Decl., Ex. 2). As of May 30, 2017, the company’s stock (symbol “CCRE”) was quoted on OTC Link operated by OTC Markets Group, Inc., had five market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3). (OIP, ¶ II.A.1).

¹ 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.

On November 20, 2015, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter by registered mail to Can-Cal that stated that Can-Cal 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. (Corporation Finance Delinquency Letter to Can-Cal dated November 20, 2015, Welch Decl., Ex. 2.) Delivery of the letter to Can-Cal was attempted on December 10, 2015 (Welch Decl. Ex. 2), but Can-Cal did not receive the letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S-T, 17 C.F.R. 232.301 and Section 5.4 of EDGAR Filer Manual). (Order of Suspension of Trading dated June 8, 2017, Welch Decl., Ex. 3.)

On June 8, 2017, the same day that the OIP was instituted, the Commission issued a ten-day trading suspension for Can-Cal's stock (symbol "CCRE") pursuant to Exchange Act Section 12(k) because Can-Cal had not filed any of its periodic reports since the period ended September 30, 2015. (Welch Decl., Ex. 3.)

On October 3, 2017, respondent's counsel sent an email to Division counsel identifying Can-Cal's auditor as Thomas M. "Mickey" O'Neal, CPA, with Thayer O'Neal Company, LLC in Houston, Texas. (Welch Decl., Ex. 4.)

On October 4, 2017, Division counsel telephoned Mr. O'Neal, and Mr. O'Neal stated that while there were recent discussions with Can-Cal about doing new audit work for the respondent, his firm had not been engaged to do new audits of Can-Cal. Mr. O'Neal said his firm was still owed \$12,500 for past audit work for Can-Cal, and that any

new audit work would require payment of the outstanding bill of \$12,500, an engagement letter, and a \$5,000 retainer. On October 30, 2017, Mr. O'Neal told Division counsel that Can-Cal had sent him a wire of approximately \$10,000 (Canadian) the week of October 23, 2017, but Mr. O'Neal would still need approximately another \$10,000 to have his past bill paid off and provide him with the required retainer for the new work. (Welch Decl., ¶ 9.) EDGAR indicates that Can-Cal has also not filed the required Form 8-K announcing the engagement of Thayer O'Neal Company, LLC as its new auditor, which it would be required to do if a new auditor was engaged. (Welch Decl., Ex. 1.)

As of November 3, 2017, Can-Cal continued to be delinquent in its periodic reports, (Welch Decl., Ex. 1).

II. Argument

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 respondent has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.

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

Rule 250(b) of the Commission's Rules of Practice 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 Can-Cal 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 (1st 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, Can-Cal had failed to file its periodic reports for almost two years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended September 30, 2015. (OIP, ¶ II.A.3; Welch Decl, Ex. 7.) There is therefore no genuine issue with regard to any material fact as to Can-Cal'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 Can-Cal as a matter of law. *See Chemfix Technologies, Inc.*, Int. Dec. Rel. No. 278, 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 Can-Cal'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 Can-Cal’s securities is appropriate.

1. Can-Cal’s violations are serious and egregious.

As established by the pleadings in this proceeding, Can-Cal’s conduct is serious and egregious. Can-Cal has not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2015. 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 Can-Cal’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. Can-Cal’s violations of Section 13(a) have been not just recurrent, but continuous.

Can-Cal’s violations are not unique and singular, but continuous. Can-Cal has failed to file any of its periodic reports since the period ended September 30, 2015. (Welch Decl., Ex. 1.) Thus, Can-Cal has failed to file two Forms 10-K and five Forms 10-Q. Can-Cal 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 December 31, 2015 and thereafter. (Welch Decl., Ex. 1.) *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 Can-Cal's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

3. Can-Cal's degree of culpability, including its Officers and Directors' Section 16 violations, supports revocation.

For many of the same reasons that Can-Cal'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" its periodic reports. *Gateway*, at 10, 2006 SEC LEXIS 1288, at *21. Similar to the respondent in *Gateway*, according to EDGAR, Can-Cal has failed to file seven periodic reports. Because Can-Cal 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.

Exchange Act Section 16(a) requires that an individual file a Form 3 within ten days of becoming an officer, director, or ten percent beneficial owner of a company. According to EDGAR, Can-Cal filed a Form 8-K on June 13, 2016 stating that Casey Douglas became one of its Directors on that date, and on July 24, 2017 Can-Cal filed another Form 8-K stating that Mr. Douglas is the Chairman of the company. According to Can-Cal's Form 8-K filed on September 21, 2016, Gary Oosterhoff and Cornelus (Case) Korver became Directors of Can-Cal on September 21, 2016. (Welch Decl., Ex.

6.) However, EDGAR also shows that Messrs Douglas, Oosterhoff, and Korver never filed a Form 3 disclosing that they were directors of Can-Cal. (Welch Decl., Ex. 1.)

Exchange Act Section 16(a) also requires that company officers and directors file Forms 4 and/or 5 when they become beneficial owners of the company's stock. The stock transfer agent records for Can-Cal show that Casey Douglass's wife, Dorothy Douglass, acquired three blocks of Can-Cal restricted stock in 2011 and 2012: 100,000 shares on June 27, 2011, 145,500 shares on October 26, 2011, and 17,500 shares on August 14, 2012. (Pacific Stock Transfer Co., Excerpted List of Can-Cal Shareholders with Certificate Detail, Welch Decl., Ex. 7, p. 18.) Mr. Douglass has an indirect pecuniary interest in "Securities held by members of [his] immediate family sharing the same household." Exchange Act Rule 16a-1(a)(2)(ii). Cornelus (Case) Korver and his wife acquired 100,000 restricted shares of Can-Cal stock on October 26, 2011. (Welch Decl., Ex. 7, p. 34.) Gary Oosterhoff also acquired 100,000 shares on October 26, 2011. (Welch Decl., Ex. 7, p. 45.) EDGAR shows that none of these officers and directors filed Forms 4 or 5 to give the required notice to investors that they had acquired their company's stock.

This conduct of Can-Cal and its officers and directors, although not alleged in the OIP, provides further evidence of Can-Cal's 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 81 at *15, Securities Act Rel. No. 59268 (Jan. 21, 2009) (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).² See *Energy Edge Technologies Corp.*, 2017 WL 4804437, at *3 (Oct. 25, 2017).

4. Can-Cal has made minimal efforts to remedy its past violations, nor has it made assurances against future violations.

Can-Cal has made minimal efforts to remedy its past violations by, for example, filing any of its delinquent periodic reports. Can-Cal's counsel stated in the October 3, 2017 prehearing conference that the company had hired an auditor, but he could not identify it. On October 3, 2017, Can-Cal's attorney identified "Can-Cal's current auditor" as Thomas M. "Mickey" O'Neal, CPA of Thayer O'Neal in Houston Texas. (Welch Decl., Ex. 4.) However, Mr. O'Neal told the Division on October 4, 2017 that Can-Cal still owed his firm \$12,500 for its prior audit work, and it would not be engaged for any new audit work until Can-Cal paid off the \$12,500 outstanding bill, paid a \$5,000

² 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.").

retainer, and signed a new engagement letter. On October 30, 2017, Mr. O’Neal told Division counsel that Can-Cal had sent him a wire of approximately \$10,000 (Canadian) the week of October 23, 2017, but Mr. O’Neal said he would still need approximately another \$10,000 to have his past bill paid off and provide him with the required retainer for the new work. (Welch Decl., ¶ 9.) Thus, Can-Cal has not yet provided a realistic assurance of future compliance.

III. Revocation is the Appropriate Remedy for Can-Cal.

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for Can-Cal’s long-standing violations of the periodic filings requirements, particularly since the company’s stock has continued to trade on the over-the-counter markets after the trading suspension. (Welch Decl., Ex. 5.) Can-Cal’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 Can-Cal may have. The remedy of revocation will not cause Can-Cal to cease being whatever kind of company it was before its securities registration was revoked. The remedy instead will ensure that until Can-Cal becomes current and compliant on its past and current filings, its shares cannot trade publicly on the open market (but may be traded privately). *See Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534, at *9 (July 5, 2006) (revocation would

lessen, but not eliminate, shareholders' ability to transfer their securities). Revocation will not only protect current and future investors in Can-Cal, who presently lack the necessary information about Can-Cal 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 Can-Cal 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 Can-Cal the opportunity to come into full compliance, to calmly and thoroughly work through all of its remaining issues with its attorney, 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 Can-Cal's securities registered under Exchange Act Section 12.

Dated: November 3, 2017

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. were served on the following on this 3rd day of November, 2017, in the manner indicated below:

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