UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18038

In the Matter of

Energy Edge Technologies 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(b), respectfully moves for an order of summary disposition against respondent New York Sub Co. ("New York Sub") 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 New York Sub registered with the Commission pursuant to Exchange Act Section 12.

BRIEF IN SUPPORT

I. Statement of Facts

New York Sub is a defaulted Nevada 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; New York Sub's Form 8A12G filed November 17, 2011 under its prior name, Easy Organic Cookery, Inc., Exhibit ("Ex.") 1 to the Declaration of Neil J. Welch, Jr. in Support of the Division's Motion for Summary Disposition ("Welch Decl."). New York Sub has failed to file its periodic reports for two years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended June 30, 2015, which reported a net loss of $42,981 for the prior three months. (OIP, ¶ II.A.3; Printout of all EDGAR filings for New York Sub as of August 30, 2017, Welch Decl., Ex. 2[1]). As of June 9, 2017, the company's stock (symbol "NSUB") was quoted on OTC Link operated by OTC Markets Group, Inc., had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3). (OIP, ¶ II.A.3).

[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 30, 2016, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter by certified mail to New York Sub that stated that New York Sub 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 New York Sub dated November 30, 2016, Welch Decl., Ex. 3.) Digital Brand received the delinquency letter on December 10, 2016 (Welch Decl. Ex. 4), but failed to cure its delinquencies.

On June 20, 2017, the same day that the OIP was instituted, the Commission issued a ten-day trading suspension for New York Sub's stock (symbol "NSUB) pursuant to Exchange Act Section 12(k) because New York Sub had not filed any of its periodic reports since the period ended June 30, 2015. (Order of Suspension of Trading dated June 20, 2017, Welch Decl., Ex. 5.)

On June 27, 2017, Daniel R. Patterson, President, CEO, and CFO of New York Sub sent a letter to the SEC Division of Corporation Finance stating: "The Company has been advised by the independent auditor that the audits and review required will be completed within 4 weeks. The Company expects to have all of the required filings completed no later than August 15, 2017." (Welch Decl., Ex. 6.)

At the August 3, 2017 prehearing conference, the Court asked counsel for the respondent: "I have read the filing which was styled a request for continuance, and there is something in there about how you expect the update – all the required filings to be ready by August 15. Is that still a good estimate?" Respondent's counsel responded,

"Yes, Your Honor, that is still a good estimate." The Court also asked who is the auditor, and respondent's counsel answered, "I'm not sure right now." (Prehearing Conf. Tr. at 4, Welch Decl. Ex. 7.)

On August 18, 2017, respondent's counsel sent an email to Division counsel identifying New York Sub Co.'s auditor as Kory Kolterman, CPA, with Fruci & Associates II, PLLC in Spokane, Washington. (Welch Decl., Ex. 8.)

On August 21, 2017, Division counsel telephoned Mr. Kolterman, and he stated that while there were discussions with New York Sub Co. in June, his auditing firm has not been formerly engaged as the company's auditor. Mr. Kolterman prepared and sent a proposed engagement letter to the company, but it has not been executed and no retainer has been paid, nor has he heard back from the company. Division counsel asked if Mr. Kolterman had performed any of their pre-engagement procedures, and he said they had not contacted the prior auditor. He did not say what other pre-engagement procedures, if any, had been completed. On August 29, 2017, Mr. Kolterman stated that he had heard nothing further from New York Sub since he had spoken to Division counsel on August 21, 2017. (Welch Decl., ¶ 10.) EDGAR indicates that New York Sub Co. has also not filed the required Form 8-K announcing the engagement of Fruci & Associates II, PLLC as its new auditor, which it would be required to do if a new auditor was engaged. (Welch Decl., Ex. 2.)

As of August 30, 2017, New York Sub continued to be delinquent in its periodic reports, (Welch Decl., Ex. 2), and its stock had 521 trades on the over-the-counter markets with a dollar volume of $2 million, and share volume of 3.4 million shares. (Welch Decl., Ex. 9.)

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 New York Sub 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, New York Sub had failed to file its periodic reports for over two years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended June 30, 2015. (OIP, ¶ II.A.3; Welch Decl, Ex. 7.) There is therefore no genuine issue with regard to any material fact as to New York Sub'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 New York Sub 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 New York Sub'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 New York Sub's securities is appropriate.

1. New York Sub's violations are serious and egregious.

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

New York Sub's violations are not unique and singular, but continuous. New York Sub has failed to file any of its periodic reports since the period ended June 30, 2015. New York Sub filed a Form NT-10-K for the period ended September 30, 2015, so it apparently has switch its fiscal year end to September 30, whereas its last Form 10-K was filed for the period ended July 31, 2014. (Welch Decl., Ex. 2.) Thus, New York Sub has failed to file two Forms 10-K and six Forms 10-Q. The serial and continuous nature of New York Sub's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

3. New York Sub's degree of culpability, including its Sole Officer and Director's Section 16 violation, supports revocation.

For many of the same reasons that New York Sub'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, New York Sub has failed to file six periodic reports. Because New York Sub knew of its reporting obligations and

nevertheless failed to file its periodic reports, 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, New York Sub filed a Form 10-K for the fiscal year ended July 31, 2014 stating that Daniel R. Patterson was President, Secretary/Treasurer, Chief Financial Officer, and Chairman. However, EDGAR shows that Mr. Patterson has never filed a Form 3 disclosing that he was an officer or director of New York Sub. (Welch Decl., Ex. 2.)

This conduct of New York Sub and its sole officer and director, although not alleged in the OIP, provides further evidence of New York Sub'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]

[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

4. New York Sub has made no efforts to remedy its past violations, nor has it made assurances against future violations.

New York Sub has made no efforts to remedy its past violations by, for example, filing any of its delinquent periodic reports. It stated that it had hired an auditor and would file its delinquent reports by August 15, 2017, but it has done neither. The auditor that New York Sub said it hired, Kory Kolterman, has told the Division that while he had discussions with the company in June 2017, his firm has not been engaged as the company's auditor. The proposed engagement letter he sent to New York Sub has not been executed, no retainer has been paid, (Welch Decl., ¶ 10.), and not Form 8-K announcing the auditor engagement has been filed by the company. (Welch Decl., Ex. 2.) New York Sub has not provided, and cannot provide, a realistic assurance of future compliance. New York Sub's own statements establish the lack of a credible claim that it will catch-up and stay caught-up with its required filings.

III. Revocation is the Appropriate Remedy for New York Sub.

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for New York Sub'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. 9.) New York Sub's recurrent failures to file its periodic reports have not been outweighed

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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.").

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 New York Sub may have. The remedy of revocation will not cause New York Sub to cease being whatever kind of company it was before its securities registration was revoked. The remedy instead will ensure that until New York Sub 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 New York Sub, who presently lack the necessary information about New York Sub 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 New York Sub 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 New York Sub 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 New York Sub's securities registered under Exchange Act Section 12.

Dated: August 31, 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 31st day of August, 2017, in the manner indicated below:

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