UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18292

In the Matter of **Anton & Chia, LLP,** **Gregory A. Wahl, CPA,** **Michael Deutchman, CPA,** **Georgia Chung, CPA, and** **Tommy Shek, CPA,** **Respondents.**

THE DIVISION OF ENFORCEMENT'S POST-HEARING REPLY BRIEF

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INTRODUCTION

The Division hereby replies to the post-hearing filings by Respondents Gregory Wahl and Georgia Chung ("Wahl Brief"), and by Michael Deutchman ("Deutchman Facts" or "Deutchman CoL"). To the extent not addressed herein, the Division continues to rely on its post-hearing brief ("Div. Brief") and proposed findings of fact ("Div. Facts"), which fully set forth its position. In light of *Liu v. SEC*, 591 U.S.__, 140 S. Ct. 1936 (2020), and the unique facts of this case and the record that was developed before *Liu* was decided, however, the Division no longer seeks an order of disgorgement against Wahl.

ARGUMENT

I. Wahl, Deutchman and Chung Violated Rule 102(e).

A. Wahl and Chung Confuse the Standards for Rule 102(e) Violations.

The record evidence demonstrates that Wahl, Deutchman and Chung violated multiple PCAOB standards during their audits and/or interim reviews of Accelera, Premier and/or CannaVEST. (Div. Brief 6-28.) Seeking to divert attention from their repeated violations of the applicable PCAOB standards, and ignoring the plain language of Rule 102(e), Wahl and Chung argue that 102(e) violations require the "type of recklessness" that "must approximate an actual intent to aid in the fraud being perpetrated by the audited company." (Wahl Brief 38-39.) They are wrong. *See Carroll A. Wallace*, Rel. No. 34-48372, 2003 SEC LEXIS 3347, *7 (Aug. 20. 2003) ("[t]he question [under Rule 102(e)] is not whether an accountant recklessly intended to aid in the fraud committed by the audit client, but rather whether the accountant recklessly violated applicable professional standards"); *see also* 1998 Amendment to Rule 102(e), Rel. No. 34-40567, 1998 SEC LEXIS 2256 (Oct. 19, 1998).

B. Respondents' "Professional Judgment" Was Not Guided by "Sound Auditing Principles."

Wahl and Chung argue that their purported "professional judgment" in applying GAAS and GAAP "should not be second guessed." (Wahl Brief 37-38, 51.) Wahl's and Chung's repeated invocation of "professional judgment" does not shield them from liability, particularly where, as here, there is no contemporaneous record evidence to demonstrate that they exercised the appropriate degree of "professional judgment" to conclude, however erroneously, that the issuers' financial statements complied with GAAP.

Professional judgment "must be guided by sound auditing principles," that include due professional care and professional skepticism, an attitude that includes "a questioning mind and a critical assessment of the audit evidence." *McCurdy v. SEC*, 374 F.3d 1258, 1263 (D.C. Cir. 2005); AS No. 230.07. When matters are important or material, or when warning signals or other factors alert an accountant to heightened risk, heightened scrutiny is required. *Wendy McNeeley, CPA*, Rel. No. 34-68431, 2012 SEC LEXIS 3880, *24 (Dec. 13, 2012). Moreover, management representations '"are not a substitute for the application of th[e] auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statement under audit," and auditors may not become satisfied with less than persuasive evidence because they believe management is honest." *Id*. *44. Nor is "being lied to" a defense to charges of improper professional conduct. *Michael S. Hope, CPA*, 49 S.E.C. 568, 606 (1986); *Touche Ross & Co.*, 45 S.E.C. 469 (1974).

Here, the record evidence shows that Respondents failed to exercise the appropriate degree of professional judgement as their actions were not "guided by sound auditing principles." (*See* Div. Brief 1-4, 7-19; Div. Facts ¶¶ 212-398, 531-660, 730-898.)

C. Wahl and Chung Minimize the Importance of the Workpapers.

Similarly, Wahl and Chung argue that the Division and its expert, Harris Devor, "incorrectly focused on the working papers" and not on Wahl's and Chung's "professional judgment." (Wahl Brief 24.) In the absence of work papers demonstrating their contemporaneous exercise of due professional care, there is no way to determine if the work was actually performed or whether they are presenting after-the-fact justifications for their conduct.

Under AS No. 3, *Audit Documentation*, audit and interim review documentation must "clearly demonstrate that the work was in fact performed" and "must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement to: (a) understand the nature, timing, extent, and results of the procedures performed, evidenced obtained, and conclusions reached…" AS No. 3.6. Applying that standard, the Commission has held that "if audit documentation does not exist for a particular procedure or conclusion related to a significant matter, it casts doubt as to whether the necessary work was done." *John J. Aesoph, CPA*, Rel. No. 34-78490, 2016 SEC LEXIS 2730, *39 (Aug. 5, 2016) (quoting AS No. 3.6); *see also McNeeley,* 12 SEC LEXIS 3880, *42 ("[w]e consider the absence of work papers to be evidence that the audit team did not devote substantial, if any, effort to review the areas in question.") (citing *Gregory M. Dearlove*, Rel. No. 34-57244, 2008 SEC LEXIS 223, *32 (Jan. 31, 2008)); *cf. Michael J. Marrie*, Rel. No. 34-48246, 2003 SEC LEXIS 1791, *39 (July 29, 2003) (rejecting "an after-the-fact justification for [respondents'] failure to exercise the required degree of professional care").

Accordingly, to the extent Respondents' claimed exercise of professional judgment is not reflected in the work papers, their claim should be met with a high degree of skepticism.

D. "Should" and "Shall" Indicate Mandatory Responsibilities.

Wahl and Chung contend that the words "shall" and "should" under the PCAOB standards (GAAS) and the Accounting Standards Codification ("ASC," *i.e.*, GAAP) do not impose any mandatory obligations on them. (*See* Wahl's and Chung's Motion to Object to the Division's Proposed Facts, at 2-3 ("as it turns out, 'shall' is not a word of obligation").)

PCAOB Rule 3101, *Certain Terms Used in Auditing and Related Professional Practice Standards*, defines the terms "shall" and "should" under the PCAOB standards. Under Rule 3101(a)(1), "shall" is an unconditional responsibility, and under Rule 3101(a)(2), "should" is a presumptively mandatory responsibility. *See Aesoph,* 2016 SEC LEXIS 2730, *46, n. 56; *see also* FASB "About the Codification" v4.10 (Dec. 2014) (shall and should refer to the same requirement: "the requirement to apply a standard").[1]

In short, Wahl's and Chung's interpretation of the words "shall" and "should" under GAAS and GAAP is plainly wrong and only highlights their lack of competence to practice before the Commission.

E. The Identification of Material Weaknesses or Proposing Adjustments Does Not Shield an Accountant from Liability.

While Respondents repeatedly point to material weaknesses and significant deficiencies in Accelera's and Premier's internal accounting controls and to the "millions of dollars in audit adjustments" that Anton & Chia identified in the issuers' financials (Wahl Brief 23, 46-47, 53), those facts do not shield Respondents from liability. To the contrary, the issuers' weak internal controls and alleged errors in their financials only increased Respondents' responsibility to scrutinize the issuers' financial statements. *See, e.g.,* AS No. 15.4-.5, 15.29. The record evidence, however, demonstrates that Respondents did not perform even the most basic audit and review

[1] https://asc.fasb.org/imageRoot/71/58741171.pdf

procedures, let alone additional procedures. (Div. Facts ¶¶ 212-398, 531-660, 730-898.)

F. Going Concern Disclosures Do Not Shield Respondents from Liability.

Wahl also argues that Anton & Chia prevented investors from investing in Accelera and Premier by including a going concern paragraph in Anton & Chia's opinions. (Wahl Brief 23-24, 45-46.) Wahl's claim is false (*see* Division's Response to Gregory Wahl and Georgia Chung's Proposed Findings of Fact ("Div. Resp. to Wahl Facts") ¶ 795) and he quickly retreats from it by stating that a "***reasonable*** investor may have unreasonably decided to invest… but that is their free will." (Wahl Brief 45) (emphasis added). Wahl also claims that by including a going concern paragraph in the audit opinions, he "applied heightened independent professional judgment in completing their audits." (*Id.* 45-46.)

The inclusion of a going concern paragraph in Anton & Chia's audit opinions proves nothing. This action is not about the adequacy of Anton & Chia's going concern analysis under AU § 341. Nor does the inclusion of a going concern paragraph in the audit opinions relieve Respondents from compliance with all other PCAOB standards. *See, e.g., Barry C. Scutillo*, 56 S.E.C 714, 729 (July 28, 2003) (accountant's insertion of a going concern qualification did not justify improper valuation of CD's). (*See also* Div. Facts ¶ 259.)

G. Quarterly Reviews Can and Do Lead to Rule 102(e) Violations.

Wahl and Chung claim that liability under Rule 102(e) cannot attach to quarterly reviews because Anton & Chia did not issue any interim review reports. (Wahl Brief 24, 47.) Again, they are incorrect. Rule 102(e) is not limited to improper professional conduct in audit engagements and the Commission has routinely charged auditors under Rule 102(e) with conduct that includes failing to conduct interim reviews in accordance with PCAOB standards. *See KLJ & Associates, LLP*, Rel. No. 34-85518, 2019 SEC LEXIS 737, *8-9 (Apr. 5, 2019); *DLL CPAS, LLC*, Rel. No.

34-85233, 2019 SEC LEXIS 284, *6-7 (Mar. 1, 2019); *Li and Company, PC*, Rel. No. 34-83036, 2018 SEC LEXIS 900, *7-8 (Apr. 12, 2018).[2]

Relatedly, Wahl and Chung argue that due professional care does not apply to interim reviews. (Wahl's Motion to Object to the Division's Proposed Facts, ¶¶ 47, 782.) This remarkable proposition only serves to illustrate Wahl's and Chung's disregard for GAAS. Needless to say, during an interim review, an accountant needs to apply due professional care to his work under AU §230 and AU §722.01 (as provided in AU §150.02, *Generally Accepted Auditing Standards*). *See, e.g.*, *Anton & Chia, LLP*, Rel. No. 34-87033, 2019 SEC LEXIS 2864 (Sept. 20, 2019); *Richard J. Koch*, Rel. No. 34-82207, 2017 SEC LEXIS 3778 (Dec. 4, 2017).

II. Wahl and Deutchman Violated, and/or Willfully Aided and Abetted Anton & Chia's Violations of, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder.

A. The Misrepresentations Were Made in Anton & Chia's Audit Opinions.

Wahl begins his defense of the Division's fraud claim by arguing that Respondents made no misrepresentations because it was the issuers who made the disclosures in the financial statements audited by Anton & Chia. (Wahl Brief 24.) This argument misconstrues the Division's fraud claim. As stated in the OIP, and explained in the Division's post-hearing brief, the Division's fraud claim against Wahl is based on the two false statements ***made in the audit opinion letter*** **–**that the audit was conducted in compliance with PCAOB standards and that the issuer's financial statements complied with GAAP – that Anton & Chia issued in connection with its audit of Premier's 2013 financial statements. (Div. Brief 30; Div. Facts ¶¶ 532, 53). Because Wahl was the person with ultimate responsibility for the statements in Anton & Chia's

[2] To the extent Wahl is suggesting he cannot be liable for aiding and abetting or causing Accelera's violations of Section 13(a) of the Exchange Act and Rule 13a-13 related to its false Forms 10-Q because Anton & Chia did not issue a report for those forms, he is incorrect. There is no requirement that Anton & Chia had to issue a report for liability to attach to Wahl under Section 13(a) of the Exchange Act and Rule 13a-13.

audit opinion letter, he was the "maker" of those false statements under Section 10(b) and Rule 10b-5(b). *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011).

B. The Misrepresentations Were Material.

As an initial matter, neither Wahl nor Deutchman dispute that the statements in Anton & Chia's audit reports —*i.e.*, that Anton & Chia conducted PCAOB-compliant audits and that financial statements complied with GAAP—were material. (Div. Brief 31.)

Wahl instead seems to argue that those statements are not materially false or misleading because the Note and TPC transactions were not material to Premier's 2013 financial statements. That contention does not withstand scrutiny. In fact, the values assigned to the Note ($869,000) and TPC's goodwill ($4.5 million) accounted for 78% of the total assets on Premier's balance sheet. (Div. Facts ¶¶ 516-17, 529-30.) These items were clearly material—both individually and collectively—to Premier's financial statements. *See* Div. Facts ¶ 515. In any event, even if those transactions were immaterial under GAAP – which they clearly were not – the representation that Anton & Chia conducted an audit of Premier in accordance with PCAOB standards would still be false and materially misleading.

Similarly, the BHCA consolidation into Accelera was clearly material to Accelera's financial statements. (*See* Div. Brief 33, 43.) BHCA accounted for 90% of Accelera's revenues. (Div. Facts ¶ 200; Ex. 88.1 ¶¶ 171-73.) Therefore, Respondents' position that Accelera's goodwill impairment in 2014 somehow rendered the GAAP violation immaterial (Wahl Brief 27, 44; Deutchman Facts ¶ 21) is simply wrong. In any event, rather than justify the consolidation, the goodwill impairment, which eliminated virtually all of the BHCA assets on Accelera's balance sheet when Accelera still owed the entire $4.55 million purchase price, was yet another

red flag of improper consolidation. (Div. Facts ¶ 354.)[3]

C. Wahl Acted with Scienter.

For purposes of Section 10(b) liability, Wahl does not challenge the Division's cited legal authority (Div. Brief 29) establishing that an auditor acts with scienter when he acts with an "egregious refusal to see the obvious, or to investigate the doubtful, or that the accounting judgments which were made were such that no reasonable accountant would have made the same decisions if confronted with the same facts," *New Mexico State Inv. Counsel v. Ernst & Young LLP*, 641 F.3d 1089, 1097-98 (9th Cir. 2011) (quoting *In re Software Toolworks Inc.*, 50 F.3d 615, 628 (9th Cir. 1994)). *See also Lehman*, 131 F. Supp. 3d at 259 ("a sufficient accumulation of 'red flags' perhaps could permit the inference that the auditor did not actually believe that it had conducted a GAAS-compliant audit (*i.e.*, that it intentionally or recklessly cut corners or otherwise skirted auditing standards when it rendered its opinions.").[4] Instead, relying on private securities cases discussing the heightened pleading requirements under PSLRA, he argues that the fact that Anton & Chia generated "fees" from the Premier audit does not sufficiently "plead" or "give rise to a strong inference of scienter." (Wahl Brief 28-29.) The PSLRA, however, does

[3]For CannaVEST, Wahl and Chung contend that on a "net basis" the recording of the PhytoSphere acquisition on the balance sheet was not material. (Wahl Brief at 53.) The acquisition, however, was material to CannaVEST's balance sheet. The PhytoSphere acquisition transformed CannaVEST from a company with only $431 in assets, no revenues since inception, and annual losses, as of December 31, 2012, into a company with a business and operations. (Div. Facts ¶¶ 662, 675.) Moreover, CannaVEST subsequently filed a restatement correcting its misleading SEC filings, again demonstrating the information was material.

[4] *See also, e.g., Timothy Quintanilla, CPA*, Exchange Act Release No. 78145, 2016 WL 4363433 (June 23, 2016) (Commission opinion) (describing antifraud charges based on failure to audit critical aspects of financial statements, deviations from PCAOB standards, and failure to investigate red flags); *John Briner, Esq.*, Exchange Act Release No. 74065, 2015 WL 220959 (Jan. 15, 2015) (litigated order charging auditors with fraud because auditors ignored red flags and audits were so deficient as to amount to no audits at all).

not apply to SEC enforcement actions. *SEC v. ICN Pharmaceuticals, Inc.*, 84 F. Supp. 2d 1097, 1099 (C.D. Cal. 2000); *SEC v. Falor*, 2010 WL 3385510, at *4 & n.4 (N.D. Ill. Aug. 19, 2010).

In any event, the Division has never argued that the fees Anton & Chia earned from the Premier audit prove Wahl acted with scienter. Rather, the Division contends—and has proven—that Wahl recklessly performed a shoddy audit that failed to comply with numerous PCAOB requirements, but nevertheless issued a clean audit opinion falsely stating that Premier's financial statements complied with GAAP and that Anton & Chia's audit complied with PCAOB standards.

With respect to the valuation of the Note, Wahl recklessly ignored the obvious signs that the Doty Scott initial valuation tables were incomplete and based on data for the wrong company as of the wrong date. He also ignored the concerns raised by his own audit team that they did not understand the spreadsheets and could not understand them without a valuation report, and ultimately disposed of the problem by instructing his staff to simply make sure the mathematical formulas in the Excel files were operating properly. With respect to Premier's purchase of TPC, Wahl approved the allocation of the entire purchase price to goodwill despite knowing that the transaction had occurred over a year before and that Premier had been publicly touting the millions of dollars in value it was getting from TPC's thousands of individual contracts. In short, Wahl's handling of the Premier engagement is a paradigmatic picture of auditor recklessness (*i.e.*, scienter).[5]

D. Deutchman Acted with Scienter.

[5] Wahl's scienter also supports his liability for aiding and abetting Anton & Chia's Section 10(b) violation arising from the false statements in Anton & Chia's audit report on the 2013 Premier audit, which Wahl fails to address.

Deutchman contends that he could not have acted with scienter because the accounting standards governing whether to consolidate BHCA into Accelera's 2014 financial statements are "complex" and "not clear" and, therefore, he acted in good faith during the 2014 audit. (Deutchman CoL ¶¶ 9-10, 20-22, 24-27.) He is wrong, and his claim about the supposed complexity of the BHCA consolidation betrays his fundamental misunderstanding of the applicable accounting and auditing standards.

The applicable accounting standard for Accelera's decision to consolidate BHCA was clear, and the consolidation decision was not a close call. Devor testified that it would not have been at all difficult for Anton & Chia and Deutchman to determine that the BHCA consolidation was inappropriate under GAAP, including ASC 805, rating the transaction "less than a one" on an auditing difficulty scale of one to ten. (Div. Resp. to Deutchman Facts ¶ 8; *see also* Div. Resp. to Deutchman CoL ¶¶ 3, 9, 22.) Deutchman's argument that the transaction was complicated relies on an obvious misreading of Regulation S-X, Rule 3-05, and § 210.3-05, which actually has nothing at all to do with control or the consolidation of putative acquisitions in issuers' financial statements. (*See* Div. Resp. to Deutchman's CoL ¶ 10; *infra* at IV(A).)

Deutchman's other arguments all rely on an array of factual errors. For example, Accelera never paid Wolfrum under the Stock Purchase Agreement, there was no "common control" between BHCA and Accelera, and Accelera never employed Wolfrum. (Div. Resp. Deutchman CoL ¶¶ 20-22.) Accelera's attorneys also never refused to express an opinion on consolidation. Rather, Accelera's attorneys directed Accelera to obtain a supplemental agreement with Wolfrum, which it never did. (*Id.* ¶ 5.)

Finally, Deutchman did not act in good faith and, in fact, his conduct during Accelera's 2014 audit demonstrates extreme recklessness. Deutchman cannot cite to a single relevant audit procedure that he performed. There is no evidence that any purported complexities identified by

Deutchman in post-trial briefing were ever identified or discussed by Deutchman or anyone else at Anton & Chia during Deutchman's engagements for Accelera. Instead, even in the face of Accelera's own CFO informing him "[t]hat Behavioral was inappropriately consolidated" (Div. Facts ¶¶ 271-273), Deutchman just "assume[d] that it was done correctly," and "defaulted to the firm's position." (Div. Resp. Deutchman CoL ¶¶ 7, 27.) The auditing standards, however, required Deutchman to "exercise 'reasonable care and diligence' and 'professional skepticism'" (Div. Facts ¶ 48), and to "investigate the circumstances and consider the reliability of the representation made," where a "representation made by management is contradicted by other audit evidence" (*id.* ¶ 69). (*See also id.* ¶¶ 49, 68, 74-97, 105-110.) He not only did none of those things, he did nothing at all. That is not good faith; it is extreme recklessness.

E. The Misrepresentations Were Made in Connection with the Purchase or Sale of Securities.

In two sentences and without citing any legal authority, Wahl claims that the issuance of an audit opinion with Premier's publicly filed Form 10-K does not satisfy the "in connection with" requirement. Under the law, however, "an accounting firm acts 'in connection with' securities trading when it produces an audit report that it knows its client will include in a Form 10–K." *McGann v. Ernst & Young*, 102 F.3d 390, 397 (9th Cir. 1996).

F. The Division Need Not Establish Reliance or Loss Causation.

Once again citing inapposite private securities cases, Wahl mistakenly argues that the Division must prove loss causation, damages, and reliance. Again, he is wrong. Courts have uniformly held that the SEC need not prove "loss causation," "injury," or "reliance." *Gebhart v. SEC*, 595 F.3d 1043, 1041 n.8 (9th Cir. 2010); *see also SEC v. Rana Research*, 8 F.3d 1358, 1363 (9th Cir. 1993); *SEC v. Hilsenrath*, 2008 WL 2225709, at *5 (N.D. Cal. May 29, 2008).

III. Wahl and Deutchman Willfully Aided and Abetted and Were Causes of Accelera's and Premier's Violations of Section 13(a) of the Exchange Act, and of Anton &

Chia's Violations of Rule 2-02(b) of Regulation S-X.

For the reasons discussed in the Division's post-hearing brief, Wahl and Deutchman are liable for willfully aiding and abetting and causing violations of Section 13(a) of the Exchange Act and Rule 2-02(b) of Regulation S-X. Deutchman does not address the Division's arguments related to these violations. Wahl advances several arguments related to these violations, none of which has merit.

First, Wahl suggests that Rule 2-02 of Reg. S-X does not actually require an auditor to comply with GAAS and GAAP. (Wahl Brief 39-40.) As the Division explained in its post-hearing brief, the requirement that an accountant's report state whether the audit was made in accordance with GAAS, and its opinion as to whether the financial statements are consistent with GAAP, has been interpreted to require that those statements, when made, are accurate. (Div. Brief 37-38.)

Second, Wahl claims that because he did not actually prepare the registrant's false financial statements, he cannot be liable under Section 13(a) of the Exchange Act. As explained in Section II, above, Wahl is charged with aiding and abetting and causing violations of Section 13(a), not with direct violations, and so this argument also fails.

Finally, Wahl argues that Accelera was not required to file a Form 8-K containing BHCA's historical financials, under Item 9.01. (Wahl Brief 41-42.) However, the Division has not brought a claim under Rule 13a-11 (which would relate to a false or missing Form 8-K). The only relevance of Item 9.01 to this case is that Accelera did not file this type of Form 8-K, which ***would have been*** required had Accelera ***actually*** acquired BHCA, and that fact was one of many red flags that this transaction was not complete. (Div. Facts ¶¶ 279-281; Div. Brief 8.) Incidentally, Wahl is incorrect that Accelera would not have been required to file a Form 8-K under Item 2.01, had it actually completed the BHCA transaction. His suggestion that $737,650

in assets would not have been "significant" to a company that had $50 in assets (Wahl Brief 42) is obviously wrong.[6]

IV. Respondents' Other Arguments About the Engagements for the Individual Issuers Fail.

A. Respondents' Arguments Related to Accelera Fail.

Wahl and Deutchman raise various arguments for why the accounting for BHCA in Accelera's financial statements was appropriate. These are post-hoc excuses, and faulty at that. Importantly, none of the supposed rationales for consolidating BHCA are found in Anton & Chia's work papers. Moreover, as explained below, each argument relies on a misrepresentation of the facts, or the accounting rules, or both.

Before addressing the Respondents' arguments, it bears noting the facts about the BHCA transaction that the Respondents do not dispute. No one denies that the Bill of Sale clearly stated that Wolfrum would only provide the stock of BHCA to Accelera "upon the payment of the purchase price set forth in Section 1.1.1.1. of the Purchase Agreement." (Div. Facts ¶ 126.) No one disputes that Accelera never issued that payment. Deutchman does not dispute that Freeman repeatedly warned him that "Behavioral was inappropriately consolidated." (Div. Facts ¶ 272.) Most glaring of all, neither Respondent points to any work paper or other evidence that they diligently or skeptically analyzed the BHCA transaction back in 2014 or 2015.

1. "Contractual Control" Is Inapplicable.

Wahl is incorrect that Accelera had "contractual control," over BHCA. (Wahl Brief 60.) As Devor explained, while it is theoretically possible that two companies may agree to pass control by contract, as opposed to by ownership, that is not what happened here. To the contrary,

[6] Under Item 2.01, "[a]n acquisition or disposition shall be deemed to involve a significant amount of assets … if the registrant's and its other subsidiaries equity in the net book value of such assets or the amount paid or received for the assets upon such acquisition or disposition exceeded 10% of the total assets of the registrant and its consolidated subsidiaries." https://www.sec.gov/files/form8-k.pdf.

the SPA and other agreements are clear that this was to be a normal stock purchase – stock in exchange for monetary consideration – and not some complex contractual control arrangement where no consideration was called for or exchanged. (Div. Resp. to Wahl Facts ¶¶ 688-689, 701):

- The **SPA** itself is clear that BHCA's stock would transfer "upon payment of the purchase price," rather than setting up any "contractual control" arrangement. (Div. Facts ¶¶ 118-125.) Wahl repeatedly misquotes the SPA as saying the transaction was "closed and effective," but that language does not appear anywhere in the SPA. (Div. Resp. to Wahl Facts ¶ 698.) Wahl also claims that the amendments to the SPA "deleted" Section 1.1.1.1., but they actually just changed the payment deadlines, leaving intact the terms that held that the stock would only transfer to Accelera upon payment. (Div. Facts ¶ 149.)
- The **Operating Agreement** set up an HMSO that never operated and to which no assets were ever contributed. (Div. Facts ¶¶ 140-143; Div. Resp. to Wahl Facts ¶ 708.) Therefore, it could not have conferred "contractual control" to Accelera.
- The **Employment Letter** was never in effect; Wolfrum testified he never worked for Accelera, and there were explicit conditions precedent in the agreement that were never met. (Div. Facts ¶¶ 144-148.) Therefore, it did not confer onto Accelera "contractual control" of BHCA. Wahl's attempts to paint the misimpression that Wolfrum worked for Accelera are belied by the facts. First, Wahl wrongly suggests that the 600,000 shares bestowed to Wolfrum under the Termination Agreement were paid as compensation under the Employment Letter (Wahl Brief 64, 67), a fact obviously contradicted by the Termination Agreement itself. (Div. Resp. to Wahl Facts ¶¶ 712, 725.) Next, Wahl suggests that Accelera took out Director's and

Officers' Insurance for Wolfrum (Wahl Brief 64), but there is no evidence that that ever happened. (Div. Resp. to Wahl Facts ¶ 723.)

- The **Security Agreement** and the **Promissory Note** would only come into effect ***after*** Accelera made the initial payment to Wolfrum – something that never happened. (Div. Facts ¶¶ 137-138; Div. Resp. to Wahl Facts ¶ 707.) Again, these agreements could not have conferred onto Acclera "contractual control" of BHCA.

2. BHCA Was Not a Variable Interest Entity

Although Wahl does not advance this argument in his brief, and thus appears to have abandoned it, he does recite the accounting rules for variable interest entities, or "VIEs" in his proposed findings. As Devor explained, VIE accounting is irrelevant. (Div. Resp. to Wahl Facts ¶ 693.) Also, there is no evidence that Wahl, Deutchman, or any member of the Anton & Chia engagement teams ever applied VIE accounting to the BHCA transaction. (*Id*.)

3. "Furnished" Does Not Mean "Consolidated"

Deutchman attempts to portray Accelera's accounting for BHCA as far more complicated than it actually was by misconstruing Rule 3-05 of Regulation S-X. He claims there was a Catch-22, where the accounting rules did not allow for consolidation, but where Reg. S-X somehow required it. Of course, this is wrong. As Devor explained during the hearing, this Rule addresses when the ***historical financials*** of an acquired entity (or acquisition target) ought to be separately ***"presented"***, but it has no relevance at all to the issue of whether BHCA should have been ***consolidated into*** Accelera's financial statements. (Div. Resp. to Deutchman CoL ¶ 10.)

B. Wahl's Arguments About the Premier Audit Fail.

Wahl's arguments about the Premier audit are equally unpersuasive. As a threshold matter, it is striking which of Division's proposed findings he does not dispute, such as the Division's proposed findings that:

- Wahl spent only 8.5 hours on the entire audit and only 30 minutes to sign off on 54 workpapers, including the crucial Note valuation workpaper. (Div. Facts ¶¶ 539-543);
- When Wen told him, during the Q1 2013 review, that he could not understand the Doty Scott initial valuation tables, Wahl simply told Wen to check the math. (Div. Facts ¶ 468);
- When he learned during the audit that Shek had not received a report from Doty Scott and could not understand the valuation tables without one, Wahl told Wen just to bring the workpaper from the quarterly review forward. (Div. Facts ¶¶ 556, 565); and
- The Note valuation workpaper that he signed off on treated the Doty Scott initial valuation tables as the "findings" of a specialist even though they clearly were not – indeed Wahl concedes that they were not "findings" and that AU 336 therefor did not apply.

Throughout the proceeding, Wahl offered multiple accounts of the analyses that supposedly got him comfortable with the Note valuation. Not only are his claimed analyses seriously flawed and sometimes inconsistent (Div. Resp. to Wahl Facts ¶ 363), but none of them is reflected in the work papers. (Div. Facts ¶ 611; Ex. 423.) It is therefore highly unlikely that he engaged in any of those analyses before the audit opinion issued. (*See* Div. Resp. to Wahl Facts ¶ 363.)

1. The Note Was Not Recorded at Historical Cost; New Eco Was Not the Same Business as WePower LLC.

Wahl argues, based on Premier's share price at the time Premier acquired assets from Letcavage's and Winkler's companies, that $869,000 was roughly the Note's historical cost to Premier. (Wahl Brief 55.) This argument fails to take into account, *inter alia,* the restrictions on Winkler's and Letcavage's shares they received in exchange for the assets, and Doty Scott's conclusion about the fair value of the shares and the assets acquired, which the firm concluded were worth less than $50,000. (Div. Resp. to Wahl Facts ¶ 398.) Wahl also argues that New Eco was essentially the same business as WePower LLC, which he claims was sufficiently valuable to justify the $869,000 Note valuation. But New Eco was essentially the same as WePower Ecolutions (Div. Facts ¶ 426-427), which had generated a loss of $756,912 and no revenue in 2012. (Ex. 401 at 46.)

2. The Note Valuation as of December 31, 2013 was Not Appropriate.

Wahl contends that the December 31, 2013 Note valuation was appropriate in light of the Note's supposed subsequent settlement for 7.5 million shares in 2014. (Wahl Brief 55.) That post-balance-sheet-date transaction, however, provides no support for the valuation of the Note when it was initially reported much less on December 31, 2013. In any evert, the only evidence to support his proposed finding that Winkler returned 7.5 million shares in exchange for the Note is his and Letcavage's self-serving testimony.[7] In fact, Winkler returned only 2.5 million shares in exchange for the Note. (Div. Resp. to Wahl Facts ¶¶ 377, 471.) Moreover, as Wahl admits (Wahl Facts ¶ 424), the exchange of the Note for shares in 2014 was a related-party transaction.

[7] Letcavage recently refused to testify, invoking the Fifth Amendment, at his deposition in *SEC v. Premier Holding Corporation* (8:18-cv-00813-CJC-KES) (C.D. Cal.).

(Ex. 88.1 ¶¶ 531-533), which would affect the fair value analysis of the transaction under ASC 820 . *See* 820-10-30-3A(a).

3. Premier's Failure to Allocate the TPC Purchase Price by the Time of the Audit Violated GAAP and Was a Red Flag; Wahl's Impairment Analysis Was Seriously Flawed.

Wahl misunderstands the GAAP principles that apply to the TPC acquisition and also misunderstands the acquisition. Wahl conflates the GAAP requirements for a purchase price allocation for a business combination with the requirements for a goodwill impairment analysis. (Wahl Brief 59.) Under ASC 805-10-25-14, a purchase price allocation be completed within one year of an acquisition. At the time of the audit, more than a year had passed since Premier had acquired its interest in TPC. Under ASC 350, goodwill has to be evaluated at least annually. Conflating the GAAP requirements for a purchase price allocation with the requirements for a goodwill impairment analysis, Wahl argues that because Premier had tested the goodwill associated with the TPC acquisition during the first quarter of 2013 (*but see* Ex. 88.1 ¶¶ 443-447 (questioning whether Premier had performed an impairment analysis in 2013)), the company had until Q1 2014 to do the purchase price allocation. He is wrong. Thus, even assuming that Premier had in fact already done an impairment analysis in Q1 2013, *i.e.* within three months of the acquisition, the purchase price allocation was overdue, a fact that should have been a red flag to Wahl. (Ex. 88.1 ¶ 565.)

Wahl also contends that it was not possible to do a purchase price allocation for the TPC acquisition (which presumably would have reduced the goodwill associated with the acquisition while increasing the value of Premier's identifiable assets (Ex. 88.1 Ex. 88.1 ¶ 431) because Premier did not obtain any TPC contracts in the acquisition. (Wahl Brief 59.) But Premier acquired an 80% interest in TPC, and thus an 80% interest in all of TPC's contracts and the revenue generated by those contracts. (Div. Resp. to Wahl Facts ¶ 440.) Thus, a purchase price

allocation was feasible. (Div. Resp. to Wahl Facts ¶ 446.) Moreover, a valuation of the contracts should have been feasible in light of Premier's repeated public statements about the value of TPC's contracts. (Div. Facts ¶ 505.) To the extent they could not be valued, this would have been another red flag and does not excuse Wahl's GAAS failures or his materially false and misleading statements that Anton & Chia had conducted its audit of Premier's financial statements in accordance with PCAOB standards and that the firm believed that those financial statements conformed to GAAP.

Finally, Anton & Chia's impairment analysis – which was designed by Wahl (Div. Facts ¶ 652; Div. Resp. to Wahl Facts ¶ 490) – was seriously flawed and thus did not follow GAAP. (Div. Facts ¶ 513.)

C. Respondents' Arguments Related to the CannaVEST Reviews Fail.

Wahl and Chung contend that "[t]he Phytosphere Transaction was recorded at the agreed to and fixed price of $35,000,000." (Wahl Brief 49.) Wahl's position that the transaction had to be recorded at the "agreed" price of $35,000,000, regardless of the fact that he knew CannaVEST would pay mainly with stock, is not supported by ASC 805/820. Under ASC 805, two critical inquiries are what is the fair value of the consideration to be paid, *i.e*., what is the fair value of CannaVest's stock as of the acquisition date, January 23, 2013, and what is the fair value of the assets acquired. Wahl, however, failed to make, or direct his staff to make, those critical inquires. (Div. Brief 16-17; Div. Facts ¶¶ 671, 692-93, 764-67, 770-773, 802, 805-808, 813-17, 891-92.)

Wahl and Chung also contend that CannaVEST's stock price on the OTC was a Level 1 input for purposes of ASC 820, by pointing to trading data *after* the acquisition date. (Wahl Facts ¶¶ 268-269.) At the time Anton & Chia worked on the CannaVEST engagement, however, Wahl correctly recognized that CannaVEST's share price was *not* a Level 1 input. (Div. Facts ¶ 882;

see also ¶ 685 (in his investigative testimony Wahl stated that the PhytoSphere transaction fell under Level 3 of ASC 820).) Furthermore, the record evidence demonstrates that CannaVEST's stock, as of January 29, 2013, did not trade in active market, and thus its stock price was not a Level 1 input under ASC 820. (Div. Facts ¶¶ 698-701.)

Wahl and Chung argue that the "purchase price was not tied to the stock price." (Wahl Brief at 49.) It is unclear what point they are trying to make through this new argument, but to the extent they are contending that they had no choice but to approve CannaVEST's recording of the transaction at the $35 million purported price, they wholly ignore the analysis required under ASC 805/820. Because CannaVEST would pay mainly with stock, it was incumbent upon Wahl and Chung to inquire of CannaVEST management if and how management determined the fair value of the stock as of January 29, 2013. Every other auditor who looked at this transaction understood that fundamental principle. (Div. Facts ¶¶ 716, 721-722, 793-798.) Moreover, under the guidance of new auditors PKF, CannaVEST recognized that its stock did not trade in an active market, the stock had little value, CannaVEST only had $431 in assets as of December 31, 2012, and CannaVEST only agreed to the $35 million price because it could pay with stock. (Div. Facts ¶¶ 700, 717, 725-27.)

Wahl and Chung also contend that since it was an "arms-length" transaction, the PhytoSphere transaction was necessarily an "orderly transaction" under ASC 805/820. (Wahl Brief at 49.) There is no record evidence that Wahl made or directed his staff to make any inquiries of management as to whether it was an orderly transaction under ASC 805/820. (Div. Facts ¶¶ 765-67, 770, 815-816, 819.) Furthermore, the transaction was not orderly under ASC 805/820 (Div. Facts ¶¶ 22-24, 28-29, 703-05), as CannaVEST itself recognized (Div. Facts ¶ 726).

Additionally, Wahl and Chung argue that CannaVEST had up to a year to revise the

allocation of the $35 million purchase price among the individual PhytoSphere assets. (Wahl Brief at 51; Wahl Facts ¶ 157.) But this case is not about the purchase price allocation among the individual PhytoSphere assets. Rather, it is about the fact that the $35 million total asset value recorded on the balance sheet was wrong to begin with in the first quarter, remained wrong in the second quarter, and Wahl did not consider a restatement in the third quarter.

Wahl also contends, without any record support, that in the third quarter CannaVEST did not want to restate its first and second quarter financial information or write-off the $27 million in goodwill. (Wahl Brief at 51.) Wahl, however, admits he and CannaVEST management never discussed a restatement. (Wahl Facts ¶ 294, item k.) In addition, Canote testified that if Anton & Chia had insisted on a restatement, CannaVEST would have done so. (See Div. Facts ¶ 691.) Even assuming Wahl could prove his contentions about CannaVEST, an accountant's obligation to follow GAAS is not a function of what the client wants or does not want. Under GAAS, Wahl should have considered whether a restatement of CannaVEST's financial information was necessary (AU § 722.26), and documented that consideration (AU § 722.52), but Wahl failed to do so. (Div. Facts ¶ 881, 886, 897.) Wahl also failed to advise CannaVEST that it should disclose in its Form 10-Q the facts and circumstances surrounding the goodwill impairment, the method CannaVEST used to determine the fair value of goodwill, or that CannaVEST had obtained an $8 million valuation of PhytoSphere as of the January 29, 2013 acquisition date. (*See* ASC 350-20-50-2, Div. Facts ¶¶ 40, 710, 714.)

Moreover, Wahl contends that his recommendation in the third quarter review to write-off the goodwill associated with the PhytoSphere transaction had nothing to do with the PhytoSphere valuation report, and that he recommended the write-off because CannaVEST was not meeting its third quarter projections. (Wahl Brief at 53; Wahl Facts ¶ 835; Tr. (Wahl Vol. XXII) 5472:11-18.) Wahl's attempt to distance himself from the report is flatly contradicted by

the workpapers and contemporaneous emails, as they demonstrate that the report was the basis for his recommended goodwill write-off. (Div. Facts ¶¶ 878-885, n. 1275.)

V. Respondents' Other Arguments All Fail.

A. A Five-Year Statute of Limitations Applies to SEC Enforcement Actions Seeking a Civil Fine or Penalty.

Wahl's claim that the Division's claims related to CannaVEST and Premier are time-barred by a two-year statute of limitations (Wahl Brief 71-72) is incorrect. *See* 28 U.S.C. § 2462 ("Except as otherwise provided by an Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued"); *Kokesh v. SEC*, 581 U.S.__, 136 S. Ct. 1635 (2017).[8]

B. Wahl's Unpled Counterclaims Against the Division Are Inappropriate.

Wahl devotes a substantial portion of his filings to allegations of misconduct by Division staff, and requests over a hundred million dollars in "damages" and community service or jail terms for Division staff. Setting aside that the Rules do not allow Respondents to advance counterclaims against the Division, much less unpled counterclaims at the post-hearing briefing stage, there are no facts to support Wahl's wild accusations. In particular, Wahl's allegation that the SEC's bankruptcy filings were somehow fraudulent (Wahl Brief 72-73) is baseless. (*See* Div. Resp. to Wahl Facts ¶ 813.) Also, Wahl's claim that he and his firm were damaged by the SEC's

[8] Moreover, the five-year statute of limitations under Section 2462 does not apply to an injunction or a Rule 102(e) suspension, both of which are prophylactic, not punitive, in nature. *See, e.g., McCurdy v. SEC*, 396 F.3d at 1265; *see also Meadows v. SEC,* 119 F.3d 1218, 1228 n. 20 (5th Cir. 1997) (distinguishing *Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996), and concluding SEC's temporary bar from association following an administrative proceeding was not penal in nature because the Administrative Law Judge made findings regarding the risk of future harm); 1998 Amendment to Rule 102(e), 1998 SEC LEXIS 2256, *18, n.31 ("[u]nder Rule 102(e), the Commission has the authority to protect the integrity of its processes from persons who pose a threat of future harm to those processes.").

issuance of a press release ignores all the ways that Wahl himself had previously "damaged" his own firm, including by not paying the salaries of his partners and staff, failing to pay taxes, and taking out huge owner's draws. (Div. Resp. to Wahl Facts ¶ 835.)

C. Devor Is a Qualified Expert.

Wahl's repeated attacks on Devor's credentials and credibility are baseless. After extensive *voir dire*, this Court found Devor to be qualified as an expert on "the issues of auditing and accounting including those with respect to public companies and microcap companies," and for good reason: Devor has enjoyed a long and prestigious career, including serving as an expert witness on some of the most high-profile accounting cases of recent decades. (*See* Div. Resp. to Wahl Facts ¶ 829.) Contrary to Wahl's disingenuous claim, Devor has not been admonished by a judge for being "biased." (*Id.* ¶ 107.)

VI. Respondents Should Be Sanctioned for Their Egregious and Recurrent Misconduct and Should Be Denied the Privilege of Appearing and Practicing Before the Commission as Accountants as They Are a Threat to the Public and to the Commission's Processes.

With a few exceptions, Respondents do not refute the Division's arguments in support of its requested remedial relief. (Div. Brief 39-48; Div. Facts ¶¶ 899-940.) The arguments they do make – Deutchman's ineffectual attempt to minimize his disciplinary history, and Wahl's and Chung's post-hoc justifications and ad hominem attacks on the Division staff – only underscore Respondents' disregard for GAAS and GAAP and their refusal to accept responsibility for their misconduct. (Div. Resp. to Deutchman CoL ¶¶ 37-38.)

Indeed, Wahl's self-serving assessment that "in every accounting engagement" he "ensured that the financial statements were reported correctly" (Wahl Brief 38) and that Accelera's, Premier's and CannaVEST's financial statements actually complied with GAAP (Wahl Brief 24-25, 41, 49), ignores Accelera's and CannaVEST's restatements, as well as the

other record evidence demonstrating that each of three issuers' financial statements were not presented in compliance with GAAP. (*See* Div. Facts ¶¶195-201, 512-524, 692-729.) Respondents' position that they got everything absolutely right, and would not have done anything differently, only demonstrates their lack of competence to practice before the Commission.

Respondents' lack of recognition that they did anything wrong, consistent disregard for GAAS and GAAP, and repeated ignoring of red flags, together with their post-hoc justifications that are flatly contradicted by their own workpapers, leads to the inescapable conclusion that there is substantial risk Respondents will commit future violations, that they are not competent to practice before the Commission, and that they are a threat to the public and to the Commission's processes. With the exception of disgorgement, which the Division now waives, the remedial relief requested by the Division against each of the Respondents is fully warranted.

Dated: August 10, 2020

Respectfully submitted,

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18292

In the Matter of **Anton & Chia, LLP,** **Gregory A. Wahl, CPA,** **Michael Deutchman, CPA,** **Georgia Chung, CPA, and** **Tommy Shek, CPA,** **Respondents.**	**CERTIFICATE OF COMPLIANCE**

I certify the Division of Enforcement's Post-Hearing Reply Brief contains less than 7,500 words. According to Microsoft Word 2016, there are a total of 7,435 words, inclusive of headings, footnotes, and quotations.

Dated: August 10, 2020

/s/ Alyssa A. Qualls
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Division of Enforcement

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CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, Alyssa A. Qualls, an attorney, hereby certifies that on August 10, 2020, she caused true and correct copies of the Division of Enforcement's Post-Hearing Reply Brief to be served on the following via email:

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