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.

NOTICE OF FILING
PAGINATED COPY OF RESPONDENTS' OPENING BRIEF

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that the Division of Enforcement is filing a paginated copy of Respondents' Opening Brief, which was originally filed on April 21, 2021. The Division prepared this version for the convenience of the Commission and the parties. The Division's Opposition Brief refers to the page numbers on the attached.

Dated: May 21, 2021

Respectfully submitted,

/s/ Alyssa A. Qualls

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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 SERVICE**

In accordance with Rule 150 of the Commission's Rules of Practice, Alyssa A. Qualls, an attorney, hereby certifies that on May 21, 2021, she caused true and correct copies of the Division of Enforcement's Notice of Filing Paginated Copy of Respondents' Opening Brief to be served on the following via email:

Respondent Georgia Chung
[redacted]

Respondent Gregory Wahl
[redacted]

Respondent Michael Deutchman
[redacted]

Dated: May 21, 2021

/s/ Alyssa A. Qualls
Alyssa A. Qualls
Division of Enforcement

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 205-49[1]

In the Matter of	
	:
Anton & Chia, LLP	:
	: Administrative
Gregory A. Wahl, CPA	: Proceeding:
Michael Deutchman, CPA	: File No. 3-
	: 18292
Georgia Chung, CPA and	:
	:
Tommy Shek, CPA	

[1] The Division filed a Notice of Appearance on April 13, 2021, lead by the guy with Narcolepsy and it was directed to the ALJ which we believe to be incorrect as this hearing is to be evaluated by the Commission. After spending $15,000,000 on this case there are still seven Division lawyers involved and they still don't understand their own rules and processes.

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RECORD CITATION ABBREVIATIONS

"ID-____"	Initial Decision, dated February 8, 2021-Page Number
"PFF #_"	Respondents' Proposed Findings of Fact, dated July 13, 2020
"Tr. -____"	Transcript of Hearing-Page Number
"Mo--____"	Respondents' July 8, 2020 Motion
"RX--____"	Respondents' Exhibit
"DX--____"	Divisions' Exhibit

INTRODUCTION AND SUMMARY:

Initial Decision claims that "*Respondents have been given the opportunity to be heard, put on evidence, and make arguments*." **ID-6** However, Respondents[2] evidence has been ignored and they are not being judged by their peers but are being judged by a partisan judge left without an expert. If a police power regulation goes too far, it will be recognized as a taking of property for which compensation must be paid.[3]

The Division and the partisan judge have intentionally used Devor's fraudulent evidence to take away our licenses, our means to earn a living and property. Respondents' have been denied due process because of this malicious intent to destroy them which is "*bad faith*" on the part of the Division[4]. Wahl attempted to correct the record by identifying when the Division and its witnesses lied but the July 8, 2020 Motion filed by Wahl was simply ignored and the partisan judge blamed Respondents for Devor's egregious acts. **ID-15,38**

The Initial Decision confirms that the Division provided "*no evidence of investor harm*" **ID-38** confirming Respondents opening statement in their July 14, 2020 Briefs.

These errors infected the Initial Decision's analysis and its assessment of Respondent's conduct and warrant reversal. Plus, they warrant the awarding of the damages that Respondents requested in the amount of **$167,661,372[5].** Devor and Friedman, LLP are responsible for the OIP and recommending the use of the fraudulent press release. Devor admitted he was involved with the OIP[6]. The Division requires an expert that supports their statements and allegations. Devor's writing style is similar to the OIP, the Divisions final briefs and Devor's expert report[7].

The Initial Decision is not supported by an expert in US GAAP and GAAS as "*Devor's opinions …about specific violations will not be considered.* **ID-14,15** *"I have not relied…on Devor's opinions about specific violations of GAAP or PCAOB standards.*" **ID-14** This is prudent as Devor could not cite one current US GAAP or PCAOB standard under oath.[8] The Initial Decision, *"..find(s) Devor's lengthy expert report to be supported satisfactorily..."* Devor's report is a fraudulent document based on Respondents' findings in their July 8, 2020 motion which the Division never

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[2] Respondents are defined as "Wahl, Chung and Deutchman".

[3] As the Due Process Clause protects against arbitrary deprivation of "property," privileges or benefits that constitute property are entitled to protection. For instance, in *Budd v. New York*, **75** Justice Brewer declared in *dictum*: "The paternal theory of government is to me odious. The utmost possible liberty to the individual, and the fullest possible protection to him and his property, is both the limitation and duty of government." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922); Welch v. Swasey, 214 U.S. 91, 107 (1909). *See also* Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978); Agins v. City of Tiburon, 447 U.S. 255 (1980). *See* also analysis of "Regulatory Takings" under the Fifth Amendment. Although the Fourteenth Amendment does not contain a "takings" provisions such as is found in the Fifth Amendment, the Court has held that such provision has been incorporated. Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155, 159 (1980).

[4] *Napue v. Illinois*, 1959, *United States v. Foster*, 1988; *United States v. LaPage*, 2000

[5] Wire instructions included, see ID at PFF #840

[6] ID at PFF #146

[7] See July 8, 2020 Motion Filed by Respondents. In fact, the partisan judge copied and pasted directly from Devor's fraudulent report in the Initial Decision.

[8] See PFF #104 TR 1129 Lines 15-18; TR 151 Lines 2-25; TR 152 Lines 1-12

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posted on the case website[9]. The Respondents Motion demonstrates that Devor changed US GAAP and GAAS over 100 times and made other false statements throughout his Report[10]. In addition to the aforementioned issues, Devor's report does not comply with C.F.R 201.222 (b)(1)(i)(ii)(iii)(iv)[11].

The Initial Decision has no merit because they do not have a "reasonable accountant" that can assess the decisions determined by Respondents.

"Scienter is thus established when an auditor acts with an "egregious refusal to see the obvious, or 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.[12]"

Analysis of Scienter by the Initial Decision is overstated since there is no expert in US GAAP or GAAS.

"*I apply preponderance of the evidence as the standard of proof*."**ID-20** The Initial Decision and Division can't meet this standard since they don't have anyone that is "credible and convincing" to assess the evidence and determine whether the financial statements comply with US GAAP and GAAS[13]. The Division has not met their requirement to provide evidence to prove their false claims which they have the burden to do so[14].

The Initial Decision dismisses Respondents efforts by evaluating their conduct against an incorrect and impermissibly "novel" interpretation of the accounting principles and audit standards that was unsupported by the record evidence. The Initial Decision exacerbates that error by (1) disregarding record evidence upon a misapplication of audit documentation standards, and (2) ignoring and failing to weigh critical record evidence submitted by Respondents, including testimony of CPA witnesses on issues such as the applicable professional standards, without any reasoned explanation for doing so.

These errors were compounded by the Initial Decision's improper reliance on hindsight to second guess the judgments made by Respondents.

The Initial Decision further misapplies the standards embodied in Rule 102(e) to it truncated and myopic review of the record to impose an unwarranted sanctions that punishes Respondents for exercising their professional judgment that was completely prudent in compliance with appropriate professional standards.

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[9] 17 C.F.R. 201.320(a) requires that evidence the that is reliable and relevant the same as Federal Rule of Evidence 702, The Initial Decision was based on irrelevant and unreliable evidence, therefore cannot achieve the preponderance of evidence.

[10] Exhibit 88.1 and See Respondent's Motion Filed July 8, 2020. "*Wahl and Chung also raise various arguments about the reliability of Devor's opinions regarding specific violations. Because I have not relied on Devor's opinions about specific violations, I do not address those arguments here*." **ID-15**

[11] See Respondent's Motion Filed July 8, 2020 and further to this Devor violated C.F.R. 201.222(b)(1)(iv) and even worse than not providing this information. Devor refused to disclose his compensation or Friedman LLP's when he testified, see PFF #124, 125 TR 5998 Lines 9-19; TR 5998 Lines 9-19; TR 6056 Lines 15-18 or their report DX 88.1.

[12] N.M. State Inv. Counsel v. Ernst & Young LLP 641 F. 2d 111, 120-21 (2d Cir. 1982).

[13] The standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not *also* **:** the evidence meeting this standard

[14] Devor was impeached now the judge is an expert in US GAAP and GAAS, after this Respondents will be qualified to be judges. Further to this Respondents had no opportunity to depose the Judge on his knowledge of US GAAP and GAAS and his experience in the accounting field.

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First, the ruling against Respondents derives from a misapprehension, misunderstanding and misapplication of applicable accounting principles and auditing standards regarding fair value estimates, consolidation, valuation of a note receivable, goodwill assessment and business combinations and the role of appraisals in the context of an accounting estimate. The Initial Decision misconstrues and misapplies ASC 805, ASC 810, ASC 820, ASC 310 and ASC 350 and the Financial Accounting Standards Board ("FASB") Staff application of these standards. The Initial Decision likewise misconstrues auditing standards pertinent to testing of the purchase price allocations, management's estimates, goodwill impairment and consolidations.

The ruling then improperly applies these incorrect standards to the conduct of Respondents.

The Initial Decision intentionally ignored Anton & Chia's ("A&C) quality control because it demonstrates that Wahl and Chung were serious competent professionals. Both A&Cs quality control advisors testified at trial and were ignored by the Initial Decision[15].

The Initial Decision demonstrates their lack of understanding of the PCAOB Inspection process. The PCAOB provides comments at the end of their visit and the Firm has 30 days to respond to those comments. Wahl was the most experienced auditor at A&C, he prepared all of the PCAOB's responses with his staff. Wahl prepared annual training for A&C based on the PCAOB's comments [16] Wahl had Garbutt shadow the engagement teams which Garbutt called "***unprecedented***" in his experience as a quality control advisor[17].

Second, the Initial Decision is arbitrary, capricious and contrary to law because it fails to address material and pertinent evidence submitted by Respondents, demonstrating that their conduct was reasonable under the applicable auditing standards. The Initial Decision erroneously invokes audit documentation standards as an evidentiary rule to reject undisputed evidence of work performed by the engagement teams. The failure to assess evidence, and the improper rejection of pertinent evidence, resulted in erroneous determinations that are unsupported by substantial evidence when measured against the record as a whole, as required by the Administrative Procedure Act and due process.

Third, the Initial Decision misapplies the standards of Rule 102(e). It fails to measure the conduct of Respondents against the actions of a reasonable partner. Most of the Division's witnesses were never partners. Most of their key witnesses weren't even accountants and if they were they did not have the credentials and experience that Respondents have.

As the Commission has explained, Rule 102(e) "does not permit judgment by hindsight, but rather compares the actions taken by an accountant at the time of the violation with actions a reasonable accountant should have taken if faced with the same situation.[18]"

The Initial Decision makes claims that auditing public companies can be determined by "***various ways***" **ID-12** this statement is false and is not consistent with the requirement of the Division's rule under 102(e) that Respondents should be judged by their peers, equivalent or someone that has the same education, training and actual work experience or higher.

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[15] ID at PFF #80 to PFF. #92

[16] ID at PFF #80 to PFF #92.

[17] ID at PFF #85. TR 3056 Lines 8-21.

[18] Amendment to Rule 102(e), Exchange Act Release No. 33-7593, 63 Fed. Reg. 57, 164, 57,168 (Oct 26, 1998) ("Rule 102(e) Release").

Nevertheless, the Initial Decision makes no effort to explain how Respondent's conduct can be deemed "highly unreasonable conduct" within the meaning of Rule 102(e). In addition, the Initial Decision conflates Rule 102(e)'s two standards for non-intentional conduct, concluding that Respondents are liable for a single instance of supposedly "highly unreasonable conduct' and "repeated" instances of "unreasonable" conduct based upon the very same conduct. This ruling renders the distinction between these two Rule 102(e) standards meaningless.

"…..*it may be appropriate to rely on expert testimony…….related to GAAP or PCAOB standards, I have not done so here. Instead, I have considered the documentary evidence and testimony of percipient witnesses*." **ID-14** The Division had no competent / credible witnesses[19].

Finally, the Division, acting in "bad faith" lead with a false press release claiming that Respondents committed "fraud" and "fraudulent" acts. In an attempt to cover up their bogus allegations. The Initial Decision claims Wahl "unintentionally" **ID-108** committed fraud and further states none of the acts were "intentional". **ID-108,110** Even more troubling is that the Division never even attempted to determine that there was investor losses. **ID-114**

The Initial Decision doesn't comply with its own rules under Rule 102(e) and is unrelenting bias in favor of the Division, which is why the 9th circuit and the Supreme Court has over turned a number of recent cases that initially ruled in favor of the SEC in lower courts[20]

The Initial Decision falsely claims that Respondents violated the following laws:

Exchange Act Section 10 (b) and Rule 10b-5

Exchange Act Section 13 (a)

Rule 2-02(b) of Regulation S-X

Exchange Act Section 4C

At the time of the issuance of the audit reports, the financial statements fully complied with US GAAP and GAAS. The Division's evidence is post-hoc that Respondents never received during their engagements and even that subsequent evidence does not deter that anything was completed incorrectly. The Initial Decision and the Division can't prove this because they don't have an expert in US GAAP and GAAS on their team[21].

[19] ID at PFF #198-201; PFF #206-233; PFF #369-378; PFF #380-387; PFF #575-639

[20] Lucia v SEC; Liu v. SEC; Kokesh v. SEC

[21] The Respondents feel strongly that this case should have been dismissed when the Judge learned of Devor's lack of experience auditing public companies. Instead, the judge decided he was an expert in US GAAP and GAAS. Judges are not qualified CPAs, nor are attorneys. It takes 15 years of practical experience to become an audit partner in a major firm. In the Quintanilla matter, Devor claimed that Quintanilla's work was so deficient it constituted no audit at all. The SEC entered into a settlement with Quintanilla for a mere $100,000 not the millions of dollars they were originally requesting. Approximately seven years later, Devor is in this case. Devor has been impeached, leaving the Judge to draw his own conclusions. Devor will say anything for a dollar and he has submitted Friedman's fraudulent report.

ISSUES PRESENTED

1. Whether Respondents were denied due process because the Division's case was based on fraudulent information presented by an impeached expert?

2. Can the Division meet the preponderance of evidence standard with an impeached expert and utilizing a fraudulent expert report?

3. Whether the Initial Decision misconstrued and misapplied applicable professional standards?

4. Whether Respondents, engaged in improper professional conduct under Commission Rule 102 (e')?

5. With their accounting careers already ruined, whether imposition of sanctions against Respondents is necessary to protect the Commission's processes under Rule 102 (e)?

BACKGROUND

A. Commission Rule 102 (e):

15 U.S.C. § 78d-3 grants the Commission the "authority to censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter….to have engaged in….improper professional conduct." 15 U.S.C. § 78d-3(a)(2). Under Section § 78d-3(a), "improper professional conduct" includes:

> (2) negligent conduct in the form of –
>
> (A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or
>
> (B) repeated instance of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission

Id. § 78d-3(b)(2); accord 17 C.F.R. § 201.102 (e)(1).

The Commission has explained that Rule 102 (e) was "not intended to cover all forms of professional misconduct" but instead only "that category of professional conduct that threatens harm to the Commission's processes." Amendment to Rule 102 (e), Exchange Act Release No. 33-7593, 63 Fed. Reg. 57,164, 57,165 (Oct 26, 1998) ("Rule 102 (e) Release"). The Commission "does not seek to use Rule 102 (e)(1)(ii) to establish new standards for the accounting profession. Id. at 57,166. Indeed, Rule 102 (e) "does not permit judgment by hindsight but rather compares the actions taken by an accountant at the time of the violation with the actions a reasonable accountant should have taken if faced with the same situation." Id. at 57,168. In assessing wither conduct is "highly unreasonable," "[t]he conduct at issues is measured by the degree of the

departure from professional standards" rather than "the impact of a violation on financial statements" or "the risk of harm posed by the conduct. Id.at 57,167-68.[22]

The Initial Decision's erroneous views of the professional standards applicable to the audits and review permeate and infect its analysis and evaluation of Respondent's conduct. In violation of the APA, due process and the requirements of 102(e), Respondents were denied notice of the standards of which their conduct was judged because the Initial Decision erroneously interprets the professional standards applicable to the audits and reviews and impermissibly applies those novel interpretations retroactively to the conduct of Respondents.

B. Applicable Professional Standards:

Accelera, CannaVEST[23] and Premier was responsible for (i) establishing effective internal controls over financial reporting and (ii) reporting its financial results in accordance with generally accepted accounting principles ("GAAP'). The auditor's responsibility, in turn, was to express an opinion on management's financial statements.

The issues presented here involve the application of these professional standards to the audit procedures applied by Respondents.

C. Auditing Standards:

The auditor's objective is to obtain "sufficient evidence to support the auditor's control risk assessments for purposes of…….financial statements." AS No. 7. AU Section 230 requires the auditor to obtain "reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud,…." AU § 230.10.

To meet these obligations, the auditor seeks "sufficient competent evidential matter to provide……a reasonable basis for forming an opinion." AU § 230.11.

The auditor exercises professional judgment in determining the quality of audit evidence and properly may rely "on evidence that is persuasive rather than convincing." AU § 326.11. The auditor expresses no opinion on individual account balances or individual transactions is not expected to "function as a valuation expert" or "substitute their judgement for that of the entity's management." AU § 328.38.

Rather, the auditor assess whether management's transactions appear to reasonably comply with US GAAP, and for estimates, ensure that they fall within a reasonable range, and evaluates the "reasonableness" of the transactions and accounting estimates "in context of the financial statements taken as a whole," AU§ 342.04.

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[22] The Initial Decision also invades the purview of the Public Company Accounting Oversight Board ("PCAOB") pursuant to the Sarbanes-Oxley Act. With respect to rulemaking, the PCAOB is vested with authority to promulgate standards governing the auditing profession. 15 U.S.C. § 7213 (a)(1). The Commission may amend PCAOB rules only as permitted by statute. See 15 U.S.C. § 7217 (b)(3), id §7217 (b)(5) (incorporating the requirements of 15 U.S.C§ 78s(c)). The Financial Accounting Standards Board ("FASB") and the SEC's Office of the Chief Accountant ("OCA") are vested with the authority to promulgate accounting principles. Any accounting "rule or regulation of general application other than an interpretive rule' must be accompanied by standard notice-and-comment procedures subject to certain exceptions that are not applicable here. 17 C.F.R. § 201.192(b).

[23] For CannaVEST no opinion was expressed see AU 722.07.

Because of the characteristics of fraud, even a properly planned and performed audit may not detect a material misstatement or material weakness in internal control AU 230.12, 13 (effective 2008).

Finally, AS No. 3 requires the exercise of professional judgement, as an auditor need not document every fact or conversation considered.

STANDARD OF REVIEW

Under Rule of Practice 411 (a), the Commission has authority to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of record." The Commission conducts an independent, de novo review of the record, except for those findings that are not challenged on appeal[24].

ARGUMENT

I. RESPONDENTS WERE DENIED DUE PROCESS BECAUSE THE DIVISION'S CASE WAS BASED ON FRAUDULENT INFORMATION PRESENTED BY AN IMPEACHED EXPERT

In United States constitutional law, a regulatory taking is a situation in which a government regulation limits the uses of private property (Respondents lost substantial private property[25]) to such a degree that the regulation effectively deprives the property owners of economically reasonable use or value of their property to such an extent that it deprives them of utility or value of that property, even though the regulation does not formally divest them of title to it. The Division created the divesture of Respondents right to title in their business, homes and their licenses.

II. THE DIVISION CANT ACHIEVE THE PREPONDERANCE OF THE EVIDENCE STANDARD WITH AN IMPEACHED EXPERT AND UTILIZING A FRAUDULENT EXPERT REPORT

The degree of relevant evidence that a reasonable person considering the record as a whole, would accept as sufficient to find a contested fact is more likely to be true than untrue. The preponderance of the evidence means that there must be at least 51% likelihood the Division's facts are true. The Division has the burden of proof.

The Initial Decision and the Division can't meet the preponderance of the evidence for the following reasons:

[24] In re Fundamental Portfolio Advisors, Inc., Exchange Act Release No. 48177, 56 S.E.C. 651, 653 (July 15, 2003); In re Bloomfield, Exchange Act Release No. 71632, 2014 SEC LEXIS 698, at *38 (Feb 27, 2014).

[25] ID at PFF #837 and PFF #840

1) Devor was impeached and there is no expert to opine on the US GAAP and GAAS standards[26].

2) The Division can't prove their case under 102 (e) since it used considerable hindsight and did not evaluate Respondents audits and reviews as a whole.

3) The Initial Decision based its analysis on Friedman's fraudulent report[27].

4) The Initial Decision rejected contracts in all three cases and testimony by Respondents, Respondent witnesses, basic facts, such as the calculation of a twelve month period; rejected all evidence that was brought by Respondents[28].

III. THE INITIAL DECISION MISAPPLIES APPLICABLE PROFESIONAL STANDARDS AND FAILS TO ADDRESS RELEVANT EVIDENCE

The Commission's independent review of the record is critical because the Initial Decision, aside from the previously identified issues, is predicated on (1) a misapplication of professional standards (and impermissible imposition of "new" professional standards) and (2) a disregard for critical evidence in violation of the APA. A brief discussion of these foundational legal errors is necessary because they permeate the ALJ's analysis and mandate reversal of the Initial Decision.

Accelera[29]

I. THE INITIAL DECISION MISCONSTRUES AND MISAPPLIES THE PROFESSIONAL STANDARDS APPLICABLE TO THE 2013 AND 2014 AUDITS AND FAILS TO ADDRESS RELEVANT EVIDENCE:

A. The Initial Decision Misconstrues The Standards For Determining Consolidation ASC 810:

The Initial Decision completely ignores the basis for consolidation it looks at only one aspect of the contracts that could potentially determine consolidation[30]. It does not reflect consolidation by "*contract alone*"; "*without transferring consideration*"; variable interest entities and it ignores basic terms and conditions of the contracts[31]. The Initial Decision makes absurd claims regarding US GAAP and it's incorrect[32].

The Partisan Judge ignores key components of the SPA, RX 1210 **Section 2.1:** November 11 –

[26] ID-14,15 "Wahl and Chung also raise various arguments about the reliability of Devor's opinions regarding specific violations. Because I have not relied on Devor's opinions about specific violations, I do not address those arguments here." ID-15

[27] See Respondents' July 8, 2020 Motion. "I find Devor's lengthy expert report to be supported satisfactorily in this case." ID-13

[28] ID PFF #1 – PFF #840

[29] ID at PFF #520 – PFF #806.

[30] Page 21 second paragraph conflicts with all contracts signed and the amendments to those contracts. ID at P.F.F#658 to #666.

[31] ID at PFF #656 – PFF #751;

[32] ID-21 third paragraph, second sentence "Consolidation did not comply with GAAP, which requires……..for consideration to change hands." Consolidation by contract and variable interest entities can obtain control with no or nominal consideration provided. The statement is not factual.

stated the deal was "***closed and effective"***[33] and **Section 5.4**[34]:

> 5.4 **Operation of the Business**. Purchaser shall conduct the Business of the Company in a commercially reasonable manner, including but not limited to, consistent with past practices in terms of salary, bonuses, hiring and firing of officers, executives, and other management type positions, until the Purchase Price is paid in full.

Section 5.4 created significant enforceable rights and obligations for Accelera to control the day to day operations of BHCA. **Section 5.4** further confirms that Accelera retained control on the acquisition date ASC 805**[35].**

The Initial Decision claims that Employment Agreement is only effective upon payment. This is not correct[36]. The claims that Wolfrum received shares for other reasons is not documented in the board minutes which clearly state that the shares are issued for compensation in accordance with the employment agreement.[37] The Initial Decision ignores that Accelera obtained D&O insurance for all of its officers, which included Dr. Blaise Wolfrum[38].

The Initial Decision **ID 23 at 2** provides a list of items that purportedly didn't happen but none of these items comply with US GAAP or GAAS[39].

The Initial Decision falsely claims "*… there is no indication that VIE accounting would have been appropriate here…*" **ID-25,26**. "*…Wolfrum confirmed that the full $4.5MM was still owed to him……..*" **ID-29**. Wolfrum signed A&C's audit confirmation each year[40]. The Initial Decision's statements conflict with US GAAP and demonstrate the lack of sophistication with US GAAP and GAAS. The debt obligation creates the "economic interest" completing the basis for consolidation, which Wahl and Deutchman testified to[41]. Wolfrum doesn't have control of BHCA's shares**. DX 188** clearly states that BHCA shares are held in escrow until the payment of the $4.5MM.

Initial Decision claims that the Stock Purchase Agreement was not in effect however it clearly states "*Debtor (i.e. Accelera) purchased l00% of the shares of stock of Behavioral Health Care Associates, Ltd., an Illinois corporation, (the "Company") from Secured Party*.[42]" Ignores that Wolfrum was locked up and couldn't sell his company from November 11, 2013 through the date

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[33] TR 4649 Lines 1-25; TR 4560 Lines 1-25; TR 4651 Lines 1-12

[34] TR 4656 Lines 13-25; TR 4657 Lines 1-20 See Farmers Auto. Ins. Ass'n v. Wroblewski, 887 N.E. 2d 916, 923 (Ill. App. Ct. 2008) (indicating that under Illinois law contracts are interpreted by first considering the contractual language and…….)

[35] TR 4656 Lines 13-25; TR 4657 Lines 1-20 See Farmers Auto. Ins. Ass'n v. Wroblewski, 887 N.E. 2d 916, 923 (Ill. App. Ct. 2008) (indicating that under Illinois law contracts are interpreted by first considering the contractual language and…….)

[36] RX 1212 and ID at PFF #725. DX 191 is not the employment agreement and this document was never provided to A&C, Wahl or Deutchman.

[37] RX 1259 documents the issuance of shares to Wolfrum for the employment agreement.

[38] ID at P.F.F# 723 and exhibit #243.

[39] This is straight out of Devor's and Friedman's fraudulent report DX 88.1, page 46 at 169.

[40] Confirmations were signed each year creating the economic interest (RX1248, 1249, 1250) with documentation in all of the agreements that indicate that the transaction was closed and effective PFF #658 to #666.

[41] ID at PFF #759 – PFF 760; ID at PFF #656 - #662

[42] RX 1207, See Farmers Auto. Ins Ass'n v. Wroblewski, 887 N.E. 2d 916, 923 (Ill. App Ct. 2008) (indicating that under Illinois law, contracts are interpreted by first considering the contractual language……)

of the termination agreement (PFF) and neither Wolfrum nor Accelera controlled BHCA's shares[43].

"*…it was a "condition of employment" that Wolfrum sign a confidentiality agreement, and that agreement was only effective upon payment of the initial $1.0M. Ex 190 at 2, 281.*" **ID-23**. This statement is false the confidentiality agreement says "*effective as of November 11, 2013 and……..*" **Ex 190 at 2, 18**.

"*……the 2014 amendments were not retroactive and could not have changed for 2013……"* **ID-28,29**. The amendments were explicitly retroactive and replaced articles 1.1.1.1 and 1.2 as of November 11, 2013[44].

Wahl Response to Div. PFOF at 2-3 has nothing to do with Wahl and Chung's "*improper professional conduct*" but further proves the dishonesty of the Partisan Judge that believes its ethical to change US GAAP and GAAS in Friedman's report and the Divisions briefs over 100 times[45]!

B. The Initial Decision Misconstrues The Standards For Management's Responsibility:

The Division has no witnesses in the Accelera matter that are competent and qualified at the time of the audits[46]. Its management's responsibility for compliance with US GAAP and preparing the financial statements[47]. Deutchman knew that if he provided any guidance to Dan Freeman that he would have simply taken that information as Accelera's decision because Freeman has no experience with ASC 805 or ASC 820 the standards for consolidation[48]. Geoff Thompson, Accelera's Chairman tried to blame Tommy Shek for their 2013 financial reporting matters when Tommy wasn't even on the 2013 engagement[49].

The Initial Decision doesn't consider that Freeman had multiple accounting firms available to him to analyze the consolidation on his behalf[50].

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[43] ID at PFF #660

[44] RX 1217,1256, 1257

[45] July 8, 2020 Motion "For example, the Division replaces key words such as "shall" with the word "must" or "should" with "requires" in US GAAP and GAAS which is not just dishonest it's clearly intentional to misrepresent and overstate the facts! The Division changed words in US GAAP and GAAS in their briefs to try and win this case is a severe injustice. The Division further makes representations that auditing standards apply to reviews to completely mischaracterize the standards that Respondents "shall" have followed. As it turns out, "shall" is not a word of obligation. The Supreme Court of the United States ruled that shall" really means "may" – quite a surprise to attorneys who were taught in law school that "shall" means "must". In fact, "must" is the only word that imposes a legal obligation that something is mandatory. "Should" is the simple past tense for "shall". Required: stipulated as necessary to be done, made, or provided. By changing US GAAP and GAAS to say "must" and even "Required" changes the entire legal standard that Respondents to appear guilty when they clearly are not.

[46] https://www.psychsearch.net/blaise-wolfrum/ The state said Wolfrum's a danger to the public. Wolfrum was day trading in the stock of Accelera while he was a director and an officer for over two years (see PFF #607 and PFF #620). Insider Trading? Martha Stewart served jail time for insider trading. The SEC used a nurse (Cindy Boreum see PFF #594), an accountant that paid $14,000 to become the CFO (Dan Freeman see P.F.F#593) and was never paid by Accelera.

[47] AS 1001.02 and 1001.03

[48] ID at PFF# 594 to PFF# 601 and PFF# 575 to PFF# 593, specifically PFF# 592.

[49] Geoff Thompson email DX 274 where he blames everyone else for his problems when he is the key fiduciary of Accelera."Then imagine you just cleaned up a huge mess from Tommy on reporting……." And ID at P.F.F# 603.

[50] Dan Freeman was delusional and probably smoking crack with this group of SEC attorneys. He thought Accelera was on NASDAQ.

"*Deutchman failed to document the concerns raised by……*" **ID-40** False, Freeman had no experience with ASC 805 or ASC 820 and couldn't deliberate any concerns with US GAAP[51]. If Freeman had prepared a memorandum documenting his concerns tying to ASC 805; ASC 820 and the relevant contract language. A&C would have reviewed and reconciled the details. Freeman, Accelera's management never communicated to Wahl that they had any issue with the consolidation of Behavioral[52].

The Initial Decision refutes management's responsibility for the 2013 and 2014 Form 10-Ks and the Form 10-Qs that Wolfrum was an "*executive officer*" and refers to a "*100% owned subsidiary of Accelera*" clearly demonstrates the bias and lack of understanding of matters pertaining to independence. Accelera's management prepared the aforementioned documents clearly indicates that they believed Behavioral should be consolidated[53]. **ID-27,28**

II. THE INITIAL DECISION FAILS TO CONSIDER, EVALUATE AND PROPERLY ASESS THE RELEVANT RECORD EVIDENCE[54]:

A. The Initial Decision Misconstrues The Standards For Auditing And Testing Consolidation:

The Initial Decision also applies an erroneous interpretation of the auditing standards pertinent to testing the consolidation and the components of purchase price estimates.

An auditor's objective is to obtain reasonable assurance to allow the auditor to express opinions on whether the financial statements are free of material misstatement and whether a material weakness exists. AU 230.10. The auditor does not express an opinion on the reasonableness of a single transaction.

The Initial Decision also erroneously concludes that the engagement team was required to document audit conclusions for every transaction and every inquiry. To the contrary, the audit documentation standards require conclusions for financial statement assertions (AS No. 3 paragraph 6). The audit team complied with this standard by documenting their conclusions regarding BHCAs consolidation.

Under the Administrative Procedure Act, "(a) sanction may not be imposed….except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." 5 U.S.C. § 556(d); see also 15 U.S.C. § 78(a)(4). Further, "an agency violates the APA when it fails to include in its adjudicatory decision a meaningful 'statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." Checkosky II, 139 F. 3d at 226 (quoting and applying 5 U.S.C. § 557(c)(3)(A)). The Initial Decision violates these requirements by ignoring critical evidence submitted by and favorable to Respondents and by failing to reconcile that evidence with the determinations in the Initial

[51] PFF #592.

[52] The Division knows there was a strong basis for consolidation of Behavioral. The Division deposed the partners at the Boulay Group and they agreed that there was a strong basis for consolidation. The Division then at the second deposition bullied the Boulay Group into making false statements regarding Behavioral. Read the Investigative Testimony and its very clear that there was strong basis for consolidation. Wahl and Deutchman were correct.

[53] Even worse the Initial Decision covers up the fact that Accelera was applying for officer and directors insurance with Dr. Blaise Wolfrum see PFF #723-724 and DX 243 Wahl has testified under oath on numerous occasions that the read the contracts during the audit and agreed with management's determination to consolidate. The contracts explicitly state control has taken place PFF #656 to PFF #752.

[54] Wahl and Deutchman respectfully incorporates the designation of any portion of the Initial Decision that materially disagrees with the Proposed Findings of Fact and Conclusions of Law filed on July 13, 2020.

Decision[55]. In failing to consider and weigh the relevant record evidence, the Initial Decision lacks an adequate evidentiary foundation.

The Initial Decision cannot side-step these requirements through an assertion that "Wahl and Deutchman are wrong, or it's a *post-hoc analysis* **ID-61**, *post-hoc fabrication* **ID-98**, *post-hoc rationalization* **ID-103**, or I am going to ignore it because I don't understand how it ties to the record…." Such boilerplate is inadequate because "if the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable.[56]"

B. The Initial Decision Misconstrues AS No. 3 To Disregard Critical Evidence:

The Initial Decision improperly misapplies the audit documentation standards of AS No. 3 to reject critical record evidence. AS No. 3 is not a rule of evidence, but rather is an auditing standard that requires auditors to document their work so that an experienced auditor not involved in the audit can understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached. An auditor's documentation involves the exercise of professional judgment, and an auditor need not document every fact considered or conversation had. Nothing AS No. 3 precludes testimonial or other documentary evidence that proves work actually was performed, or dictates the weight to be accorded such evidence.

The Initial Decision's reliance on commentary to AS No. 3 to disregard relevant and probative evidence was arbitrary and capricious and violates fundamental notions of due process.

The Initial Decision does not justify exclusion from consideration of Wahl and Deutchman's testimony regarding audit procedures performed and evidence obtained. Nor does it justify exclusion from consideration of work papers regarding the consolidation outside of those documents pertaining explicitly to consolidation, particularly the contracts that were read by Wahl and Deutchman[57]. (The work papers must be considered as a whole in evaluating the sufficiency of audit documentation). The Initial Decision ignores material and pertinent evidence that corroborated the reasonableness of Wahl and Deutchman's professional judgments[58].

AS No. 3 requires an evaluation of documentation by "an experienced auditor" with a "reasonable understanding of audit activities" and who "has studied the company's industry as well as the accounting and auditing issues relevant to the industry."[59]

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[55] See, eg, Morall v. DEA, 412 F. 3d 165, 178-80 (D.C. Cir. 2005) (setting aside agency decision because petitioner "presented extensive testimony pertaining to each of these disputed facts" but "one would not know it from the (agency's) analysis"); Lakeland Bus Lines, Inc. v. NLRB, 347. 3d 955, 963 (D.C. Cir. 2003) (holding that NLRB's 'clipped view of the record" did not support conclusion that the employer committed an unfair labor practice); Landry v. FDIC, 204 F.3d 1125, 1140 (D.C Cir. 2000) (explaining that APA requires "consideration of the evidence on both sides"); see also Steadman v. SEC, 450 U.S. 91, 98 (1981) (citing 5. U.S.C. § 556(d)).

[56] See SEC v. Chenery Corp., 332 U.S. 194, 196 (1947); State Corp. Comm'n v. Fed. Power Comm'n, 206 F. 2d 690, 723 (8th Cir. 1953) ("A mere assertion that the Commission has examined all of the available evidence of record on this subject" is inadequate to satisfy the Administrative Procedure Act (internal quotation marks omitted)); see also Trailways, Inc. v. ICC, 673 F. 2d 514, 518 (D.C. Cir. 1982) (Section 557© of the APA not satisified by "cursory findings and conclusions").

[57] ID at PFF #658 to PFF #666.

[58] ID at PFF #520 to PFF #805

[59] The Initial Decision and the Division cant meet this standard for their analysis because they don't have an expert in US GAAP or GAAS.

The Initial Decision relies upon its misrepresentations of AS No. 3 to disregard evidence about Respondents efforts in reviewing ASC 805, ASC 810, ASC 820, ASC 350 and our findings in RX-1204 and 1205. In fact, the Initial Decision brushes off the entirety of the work completed by Wahl and Deutchman which is incorrect under 102(e).

C. The Initial Decision Reflects Clearly Erroneous Determinations About Key Aspects of the 2013 and 2014 Audits:

"…adjustments A&C proposed…" **ID-92** The argument by the partisan judge fails because it refuses to look at the audit work as a whole. For the 2014 audit, both Wahl and Deutchman, forced management to record audit adjustments that increased Accelera's losses by over $18.0MM demonstrating their diligence and high regard for professional standards.[60]

The Division did not focus on the audit as a whole clearly indicates their investigative failures and the Initial Decision support of this error in application of the law indicates an intentional act of "**bad faith**".

"*…restated its 2015 financial statements..*" **ID-24,25**. The restatement did not involve Wahl and Deutchman as they did not audit 2015. The statements made by Accelera don't describe how the financial statements did not comply with US GAAP. This further proves the Initial Decision does not comply with 102 (e) as it does not analyze the facts and circumstances at the initial consolidation of Accelera only to rely on post-hoc determinations that didn't involve Deutchman-Wahl.

Premier Holdings, Inc.[61]

I. THE INITIAL DECISION MISCONSTRUES AND MISAPPLIES THE PROFESSIONAL STANDARDS APPLICABLE TO THE 2013 AUDIT

"Wahl further testified that he chose $869,000….because…the Note was to be settled by the return of…7.5 million shares.. **ID-54** This misconstrues the auditors role, management is required to determine fair value, not the auditor. Wahl didn't pick any value for the note receivable. Management did by its board minutes[62], which allocated 5,000,000 shares to record the note at fair value in the financial statements. On January 7, 2013, Premier's shares traded 48,150 shares at a closing price of $0.18 which a level one indicator of fair value under ASC 820. The statement also ignores testimony by Wahl and Wen[63]which clearly documents that the Note was settled for 7,500,000 shares. The Partisan judge ignores the accounting for the Note in the financial statements that was settled for 7,500,000 shares upon its return to treasury, which is confirmed in the 2014 Form 10-K[64].

"A&C considered goodwill impairment on its own. TR. 2268-69; see Ex. 428." **ID-58** This is false and the work paper clearly states it's a qualitative assessment. The goodwill impairment period and the provisional period for purchase price allocation match a 12 month period to ensure that

[60] RX-1204 at 5; RX-1205;TR612-17, TR4612, 4616-17, 4614, Tr. 703-04, 911.
[61] ID at PFF #362 – PFF #519
[62] RX-1000
[63] ID at PFF #362, PFF #363, PFF #374, PFF #377, PFF #378
[64] RX-1119, page 55, paragraph 1

goodwill isn't adjusted negatively or positively until the purchase price is determined[65]. This demonstrates the partisan judge's complete lack of understanding of the intricacies of US GAAP[66].

"..TPC had a net cash flow of negative $4,117……." **ID-58** This confirms Devor's and the Initial Decision's poor understanding of US GAAP and GAAS. 1) Devor fully burden's the expenses in his analysis with overhead from Premier that is not specific to TPC, which doesn't comply with ASC 350 and for obvious reasons intentionally overstates the losses in the calculations. 2) Devor ignores the growth rate for TPC, which would increase TPC's profitability substantially. *"TPC was adding 1,500 to 2,000 contracts each month."* TR 2191-95. **ID-57** The calculations made by Devor and statements made are not truthful, do not comply with US GAAP and GAAS and are intentionally written to harm Respondents.

*"…ASC 310 **requires** a company to periodically measure receivables for impairment to ensure that the recorded amounts still reflect the likelihood of collection. ASC 310-10-358,-35-16."* **ID-59** This is straight out of Friedman's fraudulent report. ASC 310-10-35-8 to 16 does not say it "requires" anything except "requires recognition of a loss when the following conditions are met: the loss is probable and amount of the loss can be reasonably estimated.". Plus the Note was settled on March 4, 2014[67] before the financial statements and A&C's audit opinion were issued for 7,500,000 shares or $1,057,500[68], which is $188,500 higher than the value recorded in Premier's financial statements.

"..post-hoc analysis," **ID-61** Wahl has been very consistent in his testimony, investigative transcripts[69], including Wen's investigative testimony[70] and Letcavage's testimony. Also, in the subsequent Form 10-K the settlement was corrected to 7,500,000 shares[71].

"Wahl points to no evidence supporting....." **ID-63** Wahl has been very consistent in his analysis since 2013 and never changed his position[72]. Wahl was intricately involved with the SEC comment letter responses for Premier, which state the same argument, completely ignored[73]. Also ignored is the disclosures by Premier in their financial statements in 2013[74] and 2014[75], which fully complies with ASC 805.

"A&C performed one for Premier instead." **ID-64** This is straight out of Friedman's fraudulent report. The impairment analysis was not required until February 27, 2014. A&C did not prepare an impairment analysis for Premier it was never provided to Premier's management.

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[65] TR 2990 Lines 22-25; TR 2991 Lines 1-13; TR 3011 Lines 15-25; TR 3012 Lines 15-25; TR 3012 Line 1; TR 3049 Lines 19-25; TR 3050 Lines 1-6.
[66] PFF #449 – PFF #454. Unbelievable, the partisan judge acting in "bad faith" just like Devor ignores US GAAP. US GAAP and GAAS are the rules that CPA's are supposed to follow not made up stories from a partisan judge and a fraudulent expert.
[67] DX-454; DX-88.1 page 99 at 421.
[68] DX-454, 7,500,000 shares multiplied by the closing price on March 4, 2014 of 0.141 = $1,057,500.
[69] ID at PFF #362, PFF #363, PFF #374.
[70] ID at PFF #377, PFF #378.
[71] RX-1119, page 55, paragraph 1 this was not a post-hoc rationalization as Wahl has contested from day one
[72] TR 4508 Lines 15-25; TR 4509 Lines 1-25; ID at PFF #368
[73] RX-1121
[74] RX-1118, page 38, Note 4.
[75] DX402 page F-11, Note 4.

"Wahl…disregarded Doty Scott's admonition that the spreadsheets should not be cited." **ID-64,65** False, Doty Scott neve communicated to anyone at A&C that the calculations were incorrect.[76]

Paragraph 2 ***ID-66***, the entire paragraph is false and lacks the evidence provided in the Initial Decision that *"TPC was adding 1,500 to 2,000 contracts each month."* TR 2191-95. **ID-57**

"Wahl failed not only to understand Doty Scott's methods…., ….appropriately test the data provided." **ID-67** This statement is false and there is no requirement in US GAAS to test the underlying data[77].

A. The Initial Decision Misconstrues The Standards For Estimating Fair Value:

The applicable standards governing Wahl's conduct nowhere required them to obtain a purchase price allocation, or a third party valuation report in connection with estimating fair value "the auditor does not function as an appraiser and is not expected to substitute his or her judgement for that entity's management" (quoting AU 328.39). The Initial Decision's determinations that Wahl violated Rule 102(e) is incorrect as they retroactively impose new obligations on accountants through this enforcement proceeding in violation of limits on Rule 102(e) and the requirements of the Administrative Procedures Act and due process.

In evaluating Wahl's judgments regarding the purchase price allocation, associated goodwill and the Note, the Initial Decision disregards that an accounting estimate is inherently imprecise with no single right number. The auditor's responsibility is to assess whether management's estimate is within a reasonable range. (AU 312.36); AU 342.02 (effective 2008). The Initial Decision fixates on a purchase price allocation, non-required goodwill impairment, and a discounted Note but ignores that an auditor exercises professional judgment in applying relevant accounting guidance. The auditing standards recognize that professional judgment affects all facets of the audit, including the selection of the "areas to be tested and the nature, timing, and extent of tests to be performed," the interpretation of "the results of audit testing," and the evaluation of "audit evidence," including the evaluation of "the reasonableness of accounting estimates." AU 230.11 (effective 2008). The Initial Decision ignores the role of professional judgment in the 2013 audit, and provides no indication of what efforts by Wahl would have been deemed sufficient, in the exercise of professional judgment under the circumstances[78].

B. The Initial Decision Misconstrues The Standards For Auditing and Testing Purchase Price Allocations, Impairment of Goodwill and Notes:

The Initial Decision also applies an erroneous interpretation of the auditing standards.

An auditor's objective is to obtain reasonable assurance to allow the auditor to express opinions on whether the financial statements are free of material misstatement and whether a material weakness exists. AU 230.10. The auditor does not express an opinion on the reasonableness of a single accounting estimate or transaction.

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[76] PFF# 375-377. TR 3260 Lines 11-17; TR 3261 Lines 12-23. TR 2176 Lines 10-25; TR 2177 Lines 1-25.
[77] ID at PFF #362 – PFF #519
[78] The Initial Decision improperly rejects Wahl's challenge to the testimony of the Division's expert Devor and Friedman. (ID at P.F.F#93 – P.F.F#147) Devor has not audited a public in over 30 years and is not an expert on fair value determinations, business combinations, and goodwill and was not qualified to opine on complicated accounting matters in general or to modify the requirements of ASC 820, ASC 805. In particular, his view on the purchase price allocation and accounting for the note transaction has no support under US GAAP and GAAS, which is to be expected given Devor's complete lack of understanding of current US GAAP and GAAS.

The Initial Decision also erroneously concludes that the engagement team was required to document audit conclusions for every transaction and every inquiry. To the contrary, the audit documentation standards require conclusions for financial statement assertions (AS No. 3 paragraph 6). The audit team complied with this standard by documenting their conclusions related to the Note-and-the-TPC-transaction. The Initial Decision ignore transactions that are properly recorded in the financial statements[79].

Under the Administrative Procedure Act, "(a) sanction may not be imposed….except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." 5 U.S.C. § 556(d); see also 15 U.S.C. §78(a)(4). Further, "an agency violates the APA when it fails to include in its adjudicatory decision a meaningful 'statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." Checkosky II, 139 F. 3d at 226 (quoting and applying 5 U.S.C. §557(c)(3)(A)). The Initial Decision violates these requirements by ignoring critical evidence submitted by and favorable to Respondent and by failing to reconcile that evidence with the determinations in the Initial Decision[80]. In failing to consider and weigh the relevant record evidence, the Initial Decision lacks an adequate evidentiary foundation.

The Initial Decision cannot side-step these requirements through an assertion that "its a *post-hoc analysis* **ID-61**, *post-hoc fabrication* **ID-98**, *post-hoc rationalization"*.**ID-103** Such boilerplate is inadequate because "if the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable[81]."

II THE INITIAL DECISION FAILS TO CONSIDER, EVALUATE AND PROPERLY ASESS THE RELEVANT RECORD EVIDENCE[82]:

A. The Initial Decision Misconstrues AS No. 3 To Disregard Critical Evidence:

The Initial Decision improperly misapplies the audit documentation standards of AS No. 3 to reject critical record evidence. AS No. 3 is not a rule of evidence, but rather is an auditing standard that requires auditors to document their work so that an experienced auditor not involved in the audit can understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached. An auditor's documentation involves the exercise of professional judgment, and an auditor need not document every fact considered or conversation had. Nothing in AS No. 3 precludes testimonial or other documentary evidence that proves work actually was performed, or dictates the weight to be accorded such evidence.

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[79] TR 5677 Lines 20 – 23.

[80] See, eg, Morall v. DEA, 412 F. 3d 165, 178-80 (D.C. Cir. 2005) (setting aside agency decision because petitioner "presented extensive testimony pertaining to each of these disputed facts" but "one would not know it from the (agency's) analysis"); Lakeland Bus Lines, Inc. v. NLRB, 347. 3d 955, 963 (D.C. Cir. 2003) (holding that NLRB's 'clipped view of the record" did not support conclusion that the employer committed an unfair labor practice); Landry v. FDIC, 204 F.3d 1125, 1140 (D.C Cir. 2000) (explaining that APA requires "consideration of the evidence on both sides"); see also Steadman v. SEC, 450 U.S. 91, 98 (1981) (citing 5. U.S.C. § 556(d)).

[81] See SEC v. Chenery Corp., 332 U.S. 194, 196 (1947); State Corp. Comm'n v. Fed. Power Comm'n, 206 F. 2d 690, 723 (8th Cir. 1953) ("A mere assertion that the Commission has examined all of the available evidence of record on this subject" is inadequate to satisfy the Administrative Procedure Act (internal quotation marks omitted)); see also Trailways, Inc. v. ICC, 673 F. 2d 514, 518 (D.C. Cir. 1982) (Section 557© of the APA not satisfied by "cursory findings and conclusions").

[82] Wahl respectfully incorporates the designation of any portion of the Initial Decision that materially disagrees with the Proposed Findings of Fact and Conclusions of Law filed on July 13, 2020.

The Initial Decision's reliance on commentary to AS No. 3 to disregard relevant and probative evidence was arbitrary and capricious and violates fundamental notions of due process. The Initial Decision states:

"Failure to prepare adequate documentation or obtain sufficient audit evidence." **ID-64**

The Initial Decision and the Division have also ignored and don't understand how the transactions are recorded in the financial statements.

That commentary does not justify exclusion from consideration of Wahl's testimony regarding audit procedures performed and evidence obtained. Nor does it justify exclusion from consideration of work papers regarding the Note and TPC transaction outside of those documents pertaining explicitly to the aforementioned transactions. (The work papers must be considered as a whole in evaluating the sufficiency of audit documentation).) The Initial Decision ignores material and pertinent evidence that corroborated the reasonableness of Wahl's professional judgments.

AS No. 3 requires an evaluation of documentation by "an experienced auditor" with a "reasonable understanding of audit activities" and who "has studied the company's industry as well as the accounting and auditing issues relevant to the industry[83]."

The failure to address the record evidence had a ripple effect because, as discussed above, the Initial Decision relies upon its misrepresentations of AS No. 3 to disregard evidence about Respondents efforts in reviewing ASC 805, ASC 820, ASC 310 and ASC 350.

B) The Initial Decision Reflects Clearly Erroneous Determinations About Key Aspects of the 2013 Audit:

The Initial Decision did not fully comprehend the dates that were specific to the audited financial statements for Premier.

Key Dates:

January 1, 2013	**Audit and Financial Reporting Period for 2013 commences.**
January 7, 2013	PRHL receives the Note in exchange for the green assets[84].
February 20, 2013	The Board of Directors approve the settlement of the Note for 5,000,000 shares, which is $0.18 * 5,000,000 = $900,000[85].

[83] The Partisan Judge, the Division have no experience in auditing public companies. Devor hasn't audited a public company in over 30 years. They have no experience with PCAOB standards, the Industry and therefore, cant meet the preponderance of the evidence standard.
[84] RX-1101
[85] RX-1000 Wahl didn't pick any value for the note receivable value. Management did by its board minutes, which allocated 5,000,000 shares to record the note at fair value in the financial statements. On January 7, 2013, Premier's shares traded 48,150 shares at a closing price of $0.18 which a level one indicator of fair value under ASC 820.TR 5686 Lines 14-25.

February 28, 2013 TPC transaction is closed and PRHL shares are transferred to TPC.

Provisional Period commences under ASC 805 (twelve months from today)[86]

December 31, 2013 Audit and Financial Reporting Period for 2013 ENDS!

February 27, 2014 Provisional Period under ASC 805 ends for the TPC transaction – Subsequent to December 31, 2013. The first quarter of 2014.

March 4, 2014 Marvin Winkler takes back the Note in exchange for 7,500,000 shares that were retired to PRHL treasury. The Note was removed from the financial statements[87].

[86] ASC 805 and RX 1116. TR 2990 Lines 22-25; TR 2991 Lines 1-13; TR 3011 Lines 15-25; TR 3012 Lines 15-25; TR 3012 Line 1; TR 3049 Lines 19-25; TR 3050 Lines 1-6.
[87] RX-1119, page 55, paragraph 1; ID at PFF #422, PFF #425-427. TR 5677 Lines 20-23.

CannaVEST[88]

I. THE INITIAL DECISION MISCONSTRUES AND MISAPPLIES THE PROFESSIONAL STANDARDS APPLICABLE FOR INTERIM REVIEW ENGAGEMENTS

"Stewart's professional judgement was that CannaVEST could not rely on its stock price to value the Phytosphere transaction…….. **ID-71** CannaVEST stock price had nothing to do with the determined contract price between the parties and demonstrates Stewart's incompetence. The transaction is recorded at the contract price and then each individual component of the transaction is recorded at fair value and that would determine the total fair value of the transaction not the stock price[89]. This is not factual, CannaVEST did have an active market even compared to Premier. This is only disputed by partisan inexperienced individuals[90].

"*Commission staff explained its disagreement with the accounting treatment of the Photosphere transaction….."* **ID-72** The Commission had all the pertinent information, the stock trading, the contracts and appropriately looked back at the initial decision and disagreed with CannaVEST management's decision to restate[91]

"…CannaVEST knew many other facts at the time…." **ID-73** If CannaVEST knew all these facts in Q1 and Q2 then they lied to A&C invalidating the rep letters and the engagement[92]. The analysis under 102 (e') is based on the information provided to A&C at the time of the transaction. Not based on a post-hoc analysis after the fact with another auditor[93].

"If Wahl is alluding to the fixed contract price of $35 million." **ID-74**. There is no allusion here it's in the contract and based on the information provided by management at that time it represented the fair market value of the transaction. The purchase price was still provisional and changed four times in over 14 months and management subsequently restated with a new auditor[94]. The restatement was contested by the Commission[95]. The process is to establish the purchase price then fair value each component that came over[96]. There is no evidence at the time that would indicate that Phytosphere wasn't worth $35 million[97].

"Had A&C insisted on restatement, CannaVest would have done so…." **ID-80.** False [98], CannaVEST didn't want to record the goodwill impairment.

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[88] ID at P.F.F# 148 to P.F.F# 361.
[89] ID at PFF #251 – 255.
[90] ID at PFF #269 compared to PFF #519 – CannaVEST has an annual value traded of $5,764,884, which is $1,280,469 higher than Premier during the same period.
[91] RX 1030 page 1.
[92] RX 1000; 1009; 1006
[93] TR 2920 Lines 17-22.
[94] TR 2990 Lines 22-25; TR 2991 Lines 1-13; TR 3011 Lines 15-25; TR 3012 Lines 15-25; TR 3012 Line 1; TR 3049 Lines 19-25; TR 3050 Lines 1-6.
[95] RX 1030, page 1.
[96] ID at PFF #251-255 and Shane Garbutt Testimony TR 3049 Lines 19-25; TR 3050 Lines 1-6; TR 2990 Lines 22-25; TR 2991 Lines 1-13; TR 3011 Lines 15-25; TR 3012 Line 1.
[97] ID at PFF #308-312
[98] ID at PFF #230-233; PFF #287-295; PFF #296 – 298; PFF #308-313.

"5.6.2. Failure to make adequate inquiries of management about the valuation of Photosphere."
ID-82,**83** The Division, Devor or the Partisan Judge never read A&C's working papers if they did, they would have seen the work completed that they claim is not there[99].

"*adequate investigation*" **ID-83** A&C was not completing an "investigation" we completed a review engagement which is "negative assurance" and is substantially less than an audit[100]. An investigation is a much higher threshold than audit.

"Competency to serve as an engagement partner……." **ID-85** Ms. Chung has over 20 years of business experience, in which she reviewed financial statements. To falsely claim she doesn't have sufficient competence to act as a concurring partner for one quarterly review, when the SEC with its $2.7 Billion budget hired a CPA that has not audited a public company in 30 years and is impeached only to have the partisan judge use his fraudulent report undermines the legitimacy of their claims.

A. The Initial Decision Misconstrues The Standards For Estimating Fair Value:

The applicable standards governing Wahl and Chung's conduct nowhere required them to obtain a third party valuation in connection with estimating fair value "the auditor does not function as an appraiser and is not expected to substitute his or her judgement for that entity's management" (quoting AU 328.39).[101]. The Initial Decision's determinations that Wahl and Chung violated Rule 102(e) should be reviewed by the Commission because they retroactively impose new obligations on accountants through this enforcement proceeding in violation of limits on Rule 102(e) and the requirements of the Administrative Procedures Act and due process.

In evaluating their judgments regarding the fair value of the purchase price allocation, the Initial Decision disregards that an accounting estimate is inherently imprecise with no single correct number. The auditor's responsibility is to assess whether management's estimate is within a reasonable range. (AU 312.36); AU 342.02 (effective 2008). The Initial Decision fixates on existence, or lack, of a valuation during the first quarterly review, refutes basic contract law that the purchase price is fixed and that the earn-out liability is fixed; and ignores ASC 805. It further overstates the auditor's requirement because it was an interim review and not an audit[102]. The Initial Decision ignores the role of professional judgment and provides no indication of what efforts by Wahl and Chung would have been deemed sufficient, in the exercise of professional judgment under the circumstances[103].

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[99] RX-1000 to 1007; RX-1008 to 1014; RX-1014 to 1029
[100] TR 2910 Lines 8-11.
[101] CannaVEST changed its purchase price three times while Wahl worked on the quarterly reviews. This is allowed under ASC 805 if new information came to fruition that would better estimate the purchase price. CannaVEST came back with another purchase price allocation several months later. Then Office of Chief Accountants refused to allow CannaVEST to restate until almost twelve months from the time Wahl terminated the relationship with CannaVEST. See RX-1030.
[102] TR 2910 Lines 8-11. TR 3207 Lines 17-25; TR 3208 Line 2.
[103] The Initial Decision improperly rejects Wahl and Chung's challenge to the testimony of the Division's expert with Devor. (ID at PFF#93 - #147) Devor has not audited a public in over 30 years and is not an expert on fair value determinations, business combinations, and goodwill and was not qualified to opine on complicated accounting matters in general or to modify the requirements of ASC 820, ASC 805 in particular. His unqualified view's on the recording of the Phytosphere and overstatement of facts of the US GAAP and GAAS requirements for interim reviews is to be expected.

Wahl had to fight with CannaVEST management to record the $28MM in adjustments in Q3[104]. The Initial Decision also does not consider Wahl's testimony where the engagement team did not have any trust in management[105]. The position of management was never to restate the financial statements[106].

II THE INITIAL DECISION FAILS TO CONSIDER, EVALUATE AND PROPERLY ASESS THE RELEVANT RECORD EVIDENCE[107]:

A. The Initial Decision Misconstrues AS No. 3 To Disregard Critical Evidence:

The Initial Decision improperly misapplies the audit documentation standards of AS No. 3 to reject critical record evidence. AS No. 3 is not a rule of evidence, but rather is an auditing standard that requires auditors to document their work so that an experienced auditor not involved in the audit can understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached. An auditor's documentation involves the exercise of professional judgment, and an auditor need not document every fact considered or conversation had.

The Initial Decision's reliance on commentary to AS No. 3 to disregard relevant and probative evidence was arbitrary and capricious and violates fundamental notions of due process.

The Initial Decision excludes from consideration of Wahl and Chung's testimony regarding review procedures performed and evidence obtained. Nor does it justify exclusion from consideration of work papers regarding the purchase price allocation for Phytosphere outside of those documents pertaining explicitly to the transaction. (The work papers must be considered as a whole in evaluating the sufficiency of review documentation).) The Initial Decision ignores material and pertinent evidence that corroborated the reasonableness of Wahl and Chung's professional judgments.

"A&C did not prepare the balance sheet analytics…. comparing the first quarter with the second quarter." **ID-79** False, the Initial Decision did not read RX 1011, 3 and 4, where A&C explains all of the changes in the balance sheet accounts and the purchase price allocation from Q1 2013 to Q2 2013 in substantial detail.[108]

The failure to address, understand and read the record evidence. The Initial Decision relies upon its misrepresentations of AS No. 3 to disregard evidence about Respondents efforts in reviewing ASC 805, ASC 820, ASC 350[109].

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[104] RX 1022, 1023, 1026

[105] RX 1026. PFF #296-313

[106] PFF #296-313; TR 2920 Lines 17-22

[107] Wahl and Chung respectfully incorporates the designation of any portion of the Initial Decision that materially disagrees with the Proposed Findings of Fact and Conclusions of Law filed on July 13, 2020.

[108] The Q2 analytics explains all of the changes from Q1 to Q2 in great detail for all material accounts – Accounts Receivable, Prepaids, Inventory, the Phytosphere Purchase price, Intangibles, Goodwill, including the Phytosphere liabilities. The Initial Decision's statement regarding balance sheet analytics is straight out of Devor's fraudulent expert report. DX 88.1 page 165 at 714 and page 167 at 714.

[109] The standard for a review is substantially less than an audit and its not expected that auditors identify all material modifications to the financial statements nor are the expected to identify instances of fraud see AU 722.07 "A review may bring to the accountant's attention significant matters affecting the interim financial information, but it does not provide assurance that the accountant will become aware of all significant matters that would be identified in an audit."

B. The Initial Decision Reflects Clearly Erroneous Determinations About Key Aspects of the 2013 Interim Reviews:

1. Initial Purchase Price Determination and Liability Earn Out[110]:

The Initial Decision completely ignores the legal standard of the Supreme Court and Anton & Chia's engagement letter[111]. Due process is not only to be heard but to have the record and evidence reviewed with objectivity.

The Initial Decision ignores the opposing liability earn-out on the Phytosphere transaction[112] yet, confirms that the payments of stock were at an average of $5.85. **ID-69** Respondents calculated the average share price per day of $21.26[113], the $5.85 price is pegged at a discount of 73.5% which is not unreasonable to approximate fair market value for the settlement of the liability.

The Initial Decision claims that Wahl and Chung ignored US GAAP, which is not true, in fact the Initial Decision ignores ASC 805 that provides companies twelve months to settle their purchase price allocation[114] and ignores that the purchase price allocation changed at least four times in a fourteen month period.

2. Misstates the Purpose of the August 2013 Valuation[115]

The Initial Decision decides to carry weight to a "Draft" and "substantially revised" reports, RX 1018 clearly states on page 6 that "***No other use is intended or inferred***.[116]"

3. Subsequent Events - No Knowledge of Restatement[117]

The Initial Decision does not reconcile the interim review standards and the subsequent audit standards utilized by PKF for each of the quarterly reviews[118] which is a much higher standard than A&C was obligated to perform and it minimizes hindsight that ignores CannaVEST didn't file a non-reliance 8-K until April 3, 2014 4.5 months from A&C's termination[119].

The Initial Decision further minimizes the SEC corporate finance groups agreement with A&C, using hindsight to push back the timing of the goodwill impairment after CannaVEST completed four rounds of comment letters with the SEC[120].

The Initial Decision refuses to acknowledge that Respondents never received any communication from CannaVEST management, their auditor PKF regarding the restatement[121]. A requirement

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[110] ID at PFF #241 – PFF.#278.
[111] ID at PFF 242
[112] ID at PFF #271
[113] ID at PFF #269
[114] TR 2990 Lines 22-25; TR 2991 Lines 1-13.
[115] ID at PFF #279 – PFF #286.
[116] RX 1018. ID at PFF #293; PFF #305; PFF #312; PFF #340.
[117] ID at PFF.#296 – PFF #313.
[118] TR 2936 Lines 14-24.
[119] ID at PFF #308 – PFF #313.
[120] RX 1030, 1031, 1032, 1033. The purchase price allocation took almost a eighteen months to be resolved from the transaction date by the Commission, which is pure hindsight.

[121] TR 3205 Lines 9-23.

under US GAAP. In fact, Respondents never received the corporate finance letters documenting the communications with the SEC and CannaVEST management until March 2017[122].

The Initial Decision completely ignores case law with regards to restatements "the fact of a restatement does not mean an auditor knew the original statements were false at the *time they were issued or that the auditor can be held liable for fraud*"[123].

OTHER MATTERS

The Initial Decision instead of dismissing matters that are not part of the original OIP, it takes this fake "perjury" allegation, which Wahl did not commit, as an attempt to further fuel this witch hunt[124].

THE INITIAL DECISION'S PROPOSED SANCTIONS SHOULD BE REJECTED AS ARBITRARY AND CAPRICIOUS:

The Commission long ago made clear that "not every violation of law…may be sufficient to justify invocation of the sanctions available under" Rule 102(e)[125]. Indeed sanctions must be "necessary to protect the investing public and the Commission from the future impact on the processes of professional conduct." Id. At *5 (emphasis added). Further, in deciding as to an appropriate sanction, the "accountant's good faith" may be a relevant consideration. Rule 102(e) Release, 63 Fed. Reg. at 57,170. More ever, it is insufficient to apply mechanically the six factors set forth in Steadman v. SEC in considering a potential sanction 603 F.2nd 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Rather, appropriate weight must be given to the relevant mitigating factors, including the collateral impact of sanctions on the respondent. See, e.g., PAZ Secs., Inc. v. SEC, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

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[122] TR 3205 Lines 24-25; TR 3208 Lines 13-25; TR 3206 Lines 1-16. PFF #296-313; TR 2918 Lines 14-24 TR 2921 Lines 2 – 12. The Initial Decision ignores the decision by the Commission to postpone the restatement demonstrates significant after the fact analysis that determining the appropriate valuation and restatement would not take significant resources, time and insurmountable requirement for professional judgement.

[123] Ezra Charitable Trust, 466 F.3d. ID at PFF #842.

[124] The Initial Decision also falsely alleges that Wahl continues to practice in front of the SEC, the only basis is that NorAsia Consulting & Advisory has not had time to update its website.

The Initial Decision also falsely alleges that "Wahl crumbled on the stand." Wahl was on the stand for six to seven days and answered every question honestly and truthfully. The statement in the Initial Decision is so false that the ALJ, the Division knows that I won! But it's a rigged system! Please read the transcript!

Their expert was lit up on the stand repeatedly, their witnesses had no credibility and they didn't put up Respondent's July 8, 2020 motion, nor our final briefs and proposed facts and conclusions of law!

There is no evidence that Wahl continues to practice. He lost his Canadian License and on his own accord he transitioned his California and New York licenses to inactive status. Wahl has no idea what the "GA Wahl" was, the Initial Decision and the Division know this to be true and it was not part of the OIP.

[125] In re Carter & Johnson, Exchange Act Release No. 17597, 1981 WL 384414, at *6 (Feb. 28, 1981) (dismissing proceedings).

No sanction was warranted under the Steadman factors.[126] Deutchman's and Wahl's conduct was not egregious and not even negligent they acted in "good faith". Further, it is fundamentally unfair to impose a sanction on Respondents because they advanced "vigorous defense of the charges."

Respondents demonstrated that they acted in "good faith"[127] in each engagement they acted with detail, diligence, this evidenced by the material audit adjustments and material weaknesses identified; and there was no evidence of investor harm in each engagement.

The Initial Decision overstepped its authority and skill set by claiming US GAAP and PCAOB violations without an expert in US GAAP and PCAOB standards.

Respondents were not reckless and did not act with scienter. There were no US GAAP or GAAS violations at the time of the work completed, therefore, there could not be any violations of federal laws.

The Initial Decision offers no indication of what more Respondents should have done in their roles as partners based on the information they had at the time the transactions were completed.

Second, the Initial Decision also misapplies the distinct standards for liability for "highly unreasonable" and "unreasonable" conduct under Rule 102 (e) as applied to Respondents' roles as partners.

The Initial Decision provides no distinction between "highly unreasonable" and "unreasonable conduct and doesn't state the degree of the departure or what Respondent's should have done better. Then with respect to "repeated instances" of "unreasonable conduct," the Initial Decision relies on the very same conduct.

Specifically, the ALJ generally asserts, which doesn't comply with Rule 102 (e):

"*Wahl engaged in many instances of professional misconduct in the Accelera, Premier, and CannaVEST engagements by failing to follow PCAOB standards and ensure GAAP compliance. At times his behavior was reckless at times highly unreasonable, and at the very least, was repeatedly unreasonable*." **ID-105**

"*Deutchman also engaged in reckless, highly unreasonable, and repeatedly unreasonable professional misconduct during his work on Accelera.*" **ID-105**

The Initial Decision is holding Chung to the standard for an audit. This does not comply with Rule 102 (e) nor PCAOB standards. Additionally, the statement that "*the engagement team's valuation"* **ID-105,106** further indicates the lack of understanding of an auditors role while completing interim reviews. Auditors don't complete valuations for their audit clients.

[126] The Steadman factors are: the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations." Steadman, 603 F. 2d at 1140.

[127] And in assessing whether a sanction would be appropriate, the "accountant's good faith" maybe a relevant consideration. Rule 102 (e) Release, 63 Fed. Reg. at 57,170. The Initial Decision and the Division from day one of this investigation to the end has done nothing more than character assassinate the Respondents.

III THE INITIAL DECISION MISCONSTRUES AND MISAPPLIES RULE 102(e)

A.The Initial Decision Fails to Identify The Acts A Reasonable Partner Would Have Taken:

The Initial Decision does not acknowledge that "Respondents" conduct must be compared with action a reasonable accountant would have taken at the time of the audit, without the benefit of hindsight, and evaluated in light of standards in effect at the time of the conduct at issue…" **ID-24**[128] It fails, to apply that standard when analyzing Respondent's conduct as audit partners[129].

But nowhere does the Initial Decision explain how Wahl and Deutchman's conduct departed from what a reasonable partner would have done at that time. Nor does the Initial Decision make any mention of what a reasonable partner would have done differently, in circumstances where, it is undisputed, Wahl and Deutchman acted with due care and were conservative in their analysis of the consolidation and recording other material audit adjustments.

Further, the Initial Decision makes no effort to explain how Wahl and Deutchman conduct was "highly unreasonable" within the meaning of Rule 102(e). Rule 102(e) requires both that the challenged conduct (i) occurred under circumstances where "heightened scrutiny is warranted" and (ii) involve an "instance of highly unreasonable conduct." That omission is particularly stark since the Commission has made plain that a determination of "highly unreasonable" conduct must be made based on an analysis of "the degree of the departure from professional standards." Rule 102(e) Release, 63 Fed. Reg at 56,167. The Initial Decision never accesses the conduct of Wahl and Deutchman against how a reasonable Partner would have acted, attempts to measure the "degree of departure" of Wahl and Deutchman's conduct from the applicable "professional standards," or explains how such a departure qualifies as "highly unreasonable." See Checkosky II, 139 F.3d at 225 (rejecting SEC's imposition of sanctions under Rule 102(e) because the Court was "at a loss to know what kind of standard (the agency) is applying or how it is applying that standard too his record" (internal quotation marks omitted)).

B. The Initial Decision Improperly Collapses The Separate Standards For "Unreasonable" and "Highly Unreasonable" Conduct.

The Initial Decision also misapplies the distinct standards of liability for non-intentional, unreasonable conduct under Rule 102(e).

First the Initial Decision states that Wahl and Deutchman conduct relate to the audit taken as whole, constitutes a "single instance of highly unreasonable conduct."[130]

"*Wahl engaged in many instances of professional conduct in the Accelera, Premier, CannaVEST,…… by failing to follow PCAOB standards and ensure GAAP compliance. At times*

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[128] citing In re Hall & Meyer, Exchange Act Release No. 61162, 2009 WL 4809215, at *7 n. 25 (Dec. 14, 2009); Rule 102(e) Release, 63 Fed. Reg. at 57,168.

[129] The Initial Decision also impermissibly invokes hindsight, relying on events that occurred after Respondents performed their work the most specific pertains to AJ Robbins which restated only the 2015 year (Wahl and Deutchman never worked on the 2015 audit) and never communicated this to Anton & Chia, LLP. Nor does the Initial Decision provide any documentation as to why AJ Robbins restated that was supported by US GAAP. This is not incompliance with Rule 102 (e) its materially after the fact with no benefit to dissect whether the information provided to Anton & Chia, LLP was consistent with the information that AJ Robbins was provided. See ID at PFF #561.

[130] Notably, the Initial Decision only makes reference to other audit work other than the consolidation of BHCA when Wahl and Deutchman brought forward their findings in RX 1204 and 1205. This is an incorrect analysis and makes it clear that the ALJ was not considering the audit as a whole for purpose of assessing Wahl and Deutchman's competence.

his behavior was reckless, at times highly unreasonable, and at the very least, was repeatedly unreasonable……..Deutchman also engaged in reckless, highly unreasonable professional misconduct during his work on Accelera." **ID-105**

With respect to the issue of "unreasonable conduct," the Initial Decision relies on the same conduct. Actually, the decision does not elaborate further on the conduct.

"*Wahl engaged in many instances of professional conduct in the Accelera, Premier, CannaVEST,…… by failing to follow PCAOB standards and ensure GAAP compliance. At times his behavior was reckless, at times highly unreasonable, and at the very least, was repeatedly unreasonable……..Deutchman also engaged in reckless, highly unreasonable professional misconduct during his work on Accelera*." **ID-105**

The Initial Decision thus aggregates Wahl and Deutchman's conduct with respect to the consolidation of BHCA to conclude that they engaged in a single instance of highly unreasonable conduct, but disaggregates the same conduct to conclude that they engaged in repeated instances of unreasonable conduct. This is improper and conflates the separate negligence standards in Rule 102(e).

But nowhere does the Initial Decision explain how Wahl's conduct departed from what a reasonable partner would have done at that time. Nor does the Initial Decision make any mention of what a reasonable partner would have done differently, in circumstances where, it is undisputed, Wahl acted with due care and was conservative in evaluating management's estimates regarding Premier's Note and the TPC transaction[131].

The Initial Decision thus aggregates Wahl and Chung's conduct with respect to the Phytosphere transaction to conclude that they engaged in a single instance of highly unreasonable conduct, but disaggregates the same conduct to conclude that he engaged in repeated instances of unreasonable conduct. This is improper and conflates the separate negligence standards in Rule 102(e).

Second, the narrow scope of this case – addressed to the aspects of the audits and reviews on specific transactions does not support a sanction for repeated instances of "unreasonable" conduct under Rule 102(e)[132]. Here, the Initial Decision focuses exclusively on one component of a single transaction[133][134].

The Initial Decision thus aggregates Wahl conduct and concludes that they engaged in a single instance of highly unreasonable conduct, but disaggregates the same conduct to conclude that

[131] The Initial Decision also impermissibly invokes hindsight, in this case, the Division is attempting to claim that the events occurring after March 4, 2014 are more significant than the Note being removed from the financial statements.

[132] In amending Rule 102(e), the Commission explained that "a single judgment error, even if unreasonable when made, may not indicate a lack of competence to practice before the Commission" and therefore may not "require Commission action under Rule 102(e)." Rule 102(e) Releases, 63 Fed, Reg. at 57,166.

[133] That determination, even if accepted, should not support liability based on repeated instances of unreasonable conduct under Rule 102(e). See id at 57,169 ("A single error that results in an issuer's financial statements being misstated in more than one place would not, by itself, constitute a violation of this subparagraph.").

[134] In amending Rule 102(e), the Commission explained that "a single judgment error, even if unreasonable when made, may not indicate a lack of competence to practice before the Commission" and therefore may not "require Commission action under Rule 102(e)." Rule 102(e) Releases, 63 Fed, Reg. at 57,166.

he engaged in repeated instances of unreasonable conduct. This is improper and conflates the separate negligence standards in Rule 102(e)[135].

The Initial Decision also misapplies the distinct standards of liability for non-intentional, unreasonable conduct under Rule 102(e).

First the Initial Decision states that Wahl and Chung's conduct relate to the review taken as whole, constitutes a "single instance of highly unreasonable conduct."[136]

"*Finally, Chung demonstrated professional misconduct in here work as EQR on the first quarter 2013 CannaVEST engagement."* ID Second, the narrow scope of this case – addressed to the aspect of an interim review that provides only "negative assurance" based on the Phytosphere transaction does not support a sanction for repeated instances of "unreasonable" conduct under Rule 102(e).

For Chung, no sanction was warranted under Steadman factors. Chung's conduct was not egregious and occurred as a second partner for a single quarterly review[137].

Likewise, it is unfair to impose career–ending sanctions to Respondents. The sanction ordered in the Initial Decision is devastating to Respondents that have had a long history of exemplary work history.

The Initial Decision imposes crippling sanctions because it concludes, in the stark light of hindsight, no accounting expert to opine on the work; and lack of actual public company audit experience, behooving their capability in understanding those professional responsibilities that Respondents "engaged in reckless, highly unreasonable, and repeatedly unreasonable professional misconduct…….or failed to follow professional standards."

Imposition of a sanction under these circumstances would not serve the purposes of Rule 102 (e) but instead would send an inappropriate and harmful signal to the audit profession[138]. Respondents "vigorous defense of the charges," be permitted to support imposition of a sanction against Respondents[139].

[135] Notably, the Initial Decision only makes reference to other audit work other than the Note and the Purchase Price/Goodwill for TPC when Wahl brought forward their findings in DX 432. This is an incorrect analysis and makes it clear that the ALJ was not considering the audit as a whole for purpose of assessing Wahl's competence.
[136] Notably, the Initial Decision only makes reference to other audit work other than the Purchase Price/Goodwill for the Purchase Price Allocation when Wahl brought forward their findings in RX 1023, 1026, 1029. This is an incorrect analysis and makes it clear that the ALJ was not considering the interim reviews as a whole for purpose of assessing Wahl's competence. Wahl's team during the Q3 interim review even found errors in revenue recognition of $75,426 (See RX 1026) which is very difficult to do, even PKF in their audit couldn't identify the errors in CannaVEST revenues and accounts receivable. TR 2915 Lines 1-13.
[137] ASC 805; TR 2990 Lines 22-25; TR 2991 Lines 1-13; TR 3011 Lines 15-25; TR 3012 Lines 15-25; TR 3012 Line 1; TR 3049 Lines 19-25; TR 3050 Lines 1-6.
[138] Rule 102 (e) Release, 63 Fed. Reg. at 57,165
[139] SEC v. First City Fin. Corp, 890 F. 2d 1215, 1229 (D.C. Cir. 1989).

Nothing about Respondents conduct resembles the extreme cases in which the Commission has obtained Rule 102(e) sanctions. And, to the extent the sanction is based on a finding of deficient audit documentation pursuant to AS No. 3, it is unprecedented under Rule 102(e) [140].

For Respondents, this is not a picture of incompetent professionals who poses a threat to the Commission's processes.[141] Further, the conduct at issue in the few precedents in which there was no intentional violations and no evidence of investor harm where partners were sanctioned under Rule 102(e) does not in any way resemble Respondent's conduct here.

CONCLUSION

For these reasons, the allegations leveled against Respondents should be dismissed and Respondents also request that the Commission grant any and all relief requested by Respondents.

Respectfully submitted,

/s/ Gregory A. Wahl, CPA inactive CA, NY, pro se

/s/ Michael Deutchman, pro se

/s/ Georgia C Chung, CPA inactive CA, pro se

Dated: April 21, 2021

[140] Imposition of a sanction under these circumstances would send an inappropriate signal to the auditing profession. Auditors should not be required to exercise their professional judgment against the threat of devastating sanctions imposed against an auditor based on good-faith and diligent efforts.

[141] This proceeding and the antecedent investigation already have created substantial and undue hardship to Wahl, Chung and Deutchman's career and their personal life. Even if a sanction were warranted, which it is not, no remedial action is necessary to impress upon him the importance to adhering to professional standards. See Checkosky I, 23 F.3d at 479 (discussing consequences associated with a sanction under Rule 102(e).

RULE 450(d) CERTIFICATE OF COMPLIANCE

Pursuant to Commission Rule 450(d), we hereby certify that the foregoing Brief of Respondents complies with the length limitation set forth in Commission Rule 450(c'). The Brief is 13,996 word exclusive of the cover page, Table of Contents, Table of Authorities, this Certificate and the Certificate of Service. This total was calculated using Microsoft Word 2007's word count function.

Respectfully submitted,

/s/ Gregory A. Wahl, CPA inactive CA, NY, pro se

/s/ Michael Deutchman, pro se

/s/ Georgia C Chung, CPA inactive CA, pro se

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