

UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18811

In the Matter of

Ceelox, Inc., *et al.*,

Respondents.

DIVISION OF ENFORCEMENT'S
REPLY TO RESPONDENT TALON
REAL ESTATE HOLDING CORP.'s
("TALR's") RESPONSE TO
DIVISION'S MOTION FOR
SUMMARY DISPOSITION

I. **ARGUMENT**

A. **Since Respondent (“TALR”) Has Still Not Filed Its Missing Periodic Reports Despite The Advanced Stage Of This Proceeding, Its Assurances Regarding Future Compliance Are Not Credible**

Respondent (“TALR”) concedes in its Response Brief “that it has not been able to file the necessary reports.” *See* TALR’s Response at 4. Nonetheless, TALR seeks to dodge the consequences of its persistent and numerous deficiencies, and asks the Commission to suspend disbelief, by claiming, without a whit of authoritative support, that it has “a genuine commitment to fulfilling its corporate responsibilities as they relate to the within action.” *Id.*, at 7.

Saying it is so does not make it so. TALR’s extended history of delinquencies, and its repeated promises (and repeated failures) to cure them by the dates *it* set, *see* Division’s Motion for Summary Disposition at 2-4, offers it no solace, and inexorably leads to this clear-eyed assessment: the Commission cannot rely upon TALR’s assurances regarding its past or future violations.

At the time this proceeding was instituted, TALR had failed to file seven consecutive periodic reports, including two Forms 10-K and five Forms 10-Q. *See* Frye Decl., Exs. 4 and 5. Yet it has still not made *any* of its missing filings despite the advanced stage of this proceeding – offering, instead, vague assurances of future compliance as the basis for avoiding sanction.

TALR’s feel-good bromides concerning its “genuine commitment to fulfilling its corporate responsibilities” are particularly unavailing here, given that it has missed two additional filings since this proceeding was instituted – its Form 10-Q, due on November 14, 2018, and its Form 10-K, due on April 1, 2019 (the latter of which occurred *after* TALR received an extension of time to file its opposition to the Division’s Motion for Summary Disposition).

It cannot be denied that a company that has failed to file seven periodic filings over an extended period of time has committed serious and egregious violations of section 13(a). It is

equally true that the likelihood of future violations can be inferred from a single past violation, including the very violation that led to the enforcement action. See *KPMG Peat Marwick LLP*, Securities Exchange Act of 1934 Rel. No. 44050, 2001 SEC LEXIS 422, at *21-22 (March 8, 2001) (some risk of future violation “need not be very great to warrant issuing a cease-and-desist order and [] in the ordinary case and absent evidence to the contrary, a finding of past violation raises a sufficient risk of future violation.”).

Now, TALR promises that it will file all of its missing reports and comply with its reporting requirements in the future. Even assuming that TALR manages to file all of its delinquent reports, the Commission has given little credit to registrants that fail to comply with their filing requirements and then make filings during the pendency of a Commission administrative proceeding. As the Commission has noted in upholding revocation of the securities registration of an issuer that made some of its delinquent filings during the pendency of the proceeding:

Dismissal [in this case] would reward those issuers who fail to file required periodic reports when due over an extended period of time, become the subject of Exchange Act Section 12 (j) revocation proceedings, and then, on the eve of hearings before the law judge or, in this case, oral argument on appeal, make last-minute filings in an effort to bring themselves current with their reporting obligations, while prolonging indefinitely the period during which public investors would be without accurate, complete, and timely reports (that comply with the requirements of the Exchange Act and its rules and regulations) to make informed investment decisions.

Nature's Sunshine Products, Inc., Securities Exchange Act of 1934 Rel. No. 59268, 2009 SEC LEXIS 81, at *34 (January 21, 2009).

Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.), Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at *24 (April 4, 2014) (“*Absolute*”) presented a similar situation. In *Absolute*, the issuer made all of its delinquent filings and became current in its filings during the pendency of the administrative proceeding. Notwithstanding this fact, the Commission

revoked its registration because, among other things, its “unpersuasive explanations for those delinquencies and the absence of concrete remedial changes to ensure compliance demonstrate that [it] is likely to violate the reporting requirements in the future.” *Absolute*, 2014 SEC LEXIS 1193, at *21.


In another case of an issuer that became current after institution, Judge Foelak noted that “dismissal or a lesser sanction [than revocation] would reward issuers who fail to file required periodic reports over an extended period and become current only after enforcement proceedings are brought against them, essentially providing an automatic lengthy postponement of the prescribed filing dates for such issuers to the detriment of the public interest and investors” *Law Enforcement Associates Corp., et al. [as to Sonnen Corp.]*, Initial Decision Rel. No. 487, 2013 SEC LEXIS 1436, at *12-13 (May 15, 2013). *See also Tamir Biotechnology, Inc.*, Initial Decision Rel. No. 488, 2013 SEC LEXIS 1489, at *3-4 (May 22, 2013) (Elliot, ALJ) (issuer’s registration revoked where it was less than two year’s delinquent and brought itself current after institution). TALR is entitled to even less sympathy than the foregoing issuers because, as of April 10, 2019, the date of the Division’s submission of its Reply Brief, TALR has still not filed *any* of its delinquent reports. Enough is enough.

II. CONCLUSION

TALR’s violations have not been unique and singular, but numerous, continuous, and ongoing. Its promises of future compliance are not credible. Given its history, the only way the Commission can be assured that TALR’s reporting failures will come to an end is to revoke its registration. For the aforementioned reasons, the Division respectfully requests that the Commission grant the Division’s Motion for Summary Disposition and revoke the registrations of each class of TALR’s Exchange Act Section 12 registered securities.

Dated: April 10, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on April 10, 2019, I caused the foregoing **DIVISION OF ENFORCEMENT'S REPLY TO RESPONDENT TALON REAL ESTATE HOLDING CORP.'s ("TALR's") RESPONSE TO DIVISION'S MOTION FOR SUMMARY DISPOSITION** to be served on the following persons by the method of delivery indicated below:

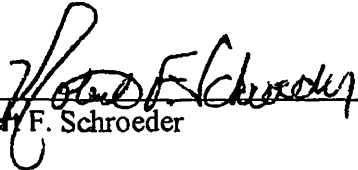
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