

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20297

In the Matter of

**MJ Biotech, Inc. (f/k/a Michael James
Enterprises, Inc.)**

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT

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Table of Authorities

Cases

<i>Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)</i> , Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193 (Apr. 4, 2014).....	10, 11
<i>Accredited Bus. Consolidators</i> , Exchange Act Rel. No. 75840, 2015 WL 5172970 (Sep. 4, 2015).....	3, 10, 11
<i>Advanced Life Sciences</i> , Exchange Act Rel. No. 81253, 2017 WL 3214455 (July. 28, 2017).....	11
<i>American Stellar Energy, Inc.</i> , Exchange Act Rel. No. 64897, 2011 WL 2783483 (Dec. 15, 2010).....	11
<i>Calais Res. Inc.</i> , Release No. 67312, 2012 WL 2499349 (Jun. 29, 2012).....	11
<i>ChinaBiotics, Inc.</i> , Exchange Act Rel. 70800, 2013 SEC LEXIS 3451 (Nov. 4, 2013)	
<i>ChinaBiotics, Inc.</i> , Exchange Act Rel. 70800, 2013 SEC LEXIS 3451 (Nov. 4, 2013).....	4, 6, 11
<i>Citizens Capital Corp.</i> , Exchange Act Rel. No. 67313, 2012 WL 2499350 (Jun. 29, 2012).....	5
<i>Cobalis Corp.</i> , Exchange Act Rel. No. 64813, 2011 WL 2644158 (July. 6, 2011).....	12
<i>Freedom Golf Corp.</i> , Initial Decision Rel. No. 227, 2003 SEC LEXIS 1178 (May 15, 2003).....	6
<i>Gateway International Holdings, Inc.</i> , Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 (May 31, 2006).....	3, 4, 7
<i>iBIZ Technology Corp.</i> , Initial Decision Rel. No. 312 at 1, 2006 WL 1675913 (June. 16, 2006), <i>aff'd</i> July 11, 2006.....	6
<i>Ironclad Encryption Corp.</i> , Rel. No. 9426, 2022 WL 488507 (Feb. 15, 2022).....	5
<i>KPMG Peat Marwick LLP</i> , Securities Exchange Act of 1934 Rel. No. 44050, 2001 SEC LEXIS 422 (Mar. 8, 2001).....	9
<i>LegacyXChange, Inc.</i> , Exchange Act Rel. No. 96401, 2022 WL 17345980 (Nov. 29, 2022).....	6, 10
<i>Natures Sunshine Prod., Inc.</i> , Exchange Act Rel. No. 59268, 2009 WL 137145 (Jan. 7, 2009).....	11
<i>Phlo Corp.</i> , Exchange Act Rel. No. 55562, 2007 WL 966943 (Mar. 30, 2007).....	8
<i>Smartag International, Inc.</i> , Exchange Act Rel. No. 96755, 2023 WL 1066737 (Jan. 26, 2023).....	3
<i>Talon Real Est. Holding Corp.</i> , Exchange Act Rel. No. 87614, WL 6324601 (Nov. 25, 2019).....	11
<i>Triton Emission Sols. Inc.</i> , Rel. No. 94255, 2022 WL 488504 (Feb. 15, 2022).....	5
<i>WSF Corp.</i> , Initial Decision Rel. No. 204, 2002 WL 917293 (May 8, 2002).....	6

Statutes

Section 12(g).....	passim
--------------------	--------

Rules

Commission Rules of Practice 154.....	1
Commission Rules of Practice 250.....	1, 2

Table of Contents

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY..... 1

II. APPLICABLE STANDARDS 2

 A. Rule of Practice 250..... 2

 B. The *Gateway* Factors 3

III. ARGUMENT 4

 A. MJ Biotech’s violations are serious and recurrent..... 4

 B. MJ Biotech has not rebutted the presumption of revocation with a compelling showing on the remaining *Gateway* factors. Indeed, those factors confirm that revocation is required to protect investors..... 6

 i. MJ Biotech’s disregard for its reporting obligations evidences a high degree of culpability. 6

 ii. MJ Biotech has not remedied its past violations or adopted concrete measures to ensure future compliance. 7

 iii. MJ Biotech has made no assurances against future violations..... 9

 C. Revocation is required for investor protection..... 10

IV. CONCLUSION 12

MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”), pursuant to Commission Rules of Practice 154 and 250, moves for an order of summary disposition that the registration of each class of securities of Respondent MJ Biotech, Inc. (“MJ Biotech”) be revoked. There is no genuine issue concerning any material fact, making an evidentiary hearing unnecessary. Pursuant to Exchange Act Section 12(j) and the Commission’s precedent applying the *Gateway* factors, the protection of investors requires the revocation of the registration of Respondent’s securities.

BRIEF IN SUPPORT

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

MJ Biotech (CIK No. 0001543272) is a Wyoming corporation located in Boynton Beach, Florida that registered with the Commission pursuant to Exchange Act Section 12(g) in March 2012. MJ Biotech’s common stock was previously quoted on OTC Link operated by OTC Markets Group Inc.¹

On May 11, 2021, the Commission issued an Order Instituting Proceedings (“OIP”) to provide MJ Biotech an opportunity to explain why the registration of its securities should not be revoked. At that time, MJ Biotech had not filed a periodic report for over two years and was delinquent in two Forms 10-K and six Forms 10-Q, leaving

¹ On December 17, 2020, the Division of Corporation Finance (“Corporation Finance”) sent a delinquency notice to MJ Biotech requesting that it cure its delinquencies. The notice was sent to the address listed in MJ Biotech’s last filing which, at that time, was an August 14, 2019 NT 10-Q that listed an address of 4781 North Congress Avenue, Suite 1102 Boynton Beach, Florida 33426. The delinquency letter was delivered, although MJ Biotech claims not to have received it. *See* Declaration of Sandhya Harris at ¶4 and Ex. 3.

investors without current and comprehensive information since December 2018.² *See* Declaration of Sandhya C. Harris at ¶7 and Ex. 6. MJ Biotech defaulted, and the Commission revoked its registration on September 3, 2021. *See* Exchange Act Release No. 92880, 2021 WL 4067015 (Sep. 3, 2021).

On January 28, 2022, MJ Biotech filed a motion to set aside the default and submitted to the Commission a purportedly curative filing. *See* MJ Biotech’s Motion to Set aside Default (“Set Aside Motion”); *see also* Comprehensive 10-K, attached as Ex. C to Set Aside Motion. On June 2, 2023, the Commission set aside the default based, in part, on MJ Biotech’s evidence that, shortly after the OIP was issued, its CEO began experiencing serious health issues that prevented her from responding. *See* Exchange Act Release No. 97644, 2023 WL 3790803 (Jun. 2, 2023); *see also* Affidavit of Maxine Pierson at ¶4, attached as Ex. B to Set Aside Motion.

The Division now files this Motion for Summary Disposition because the protection of investors requires that the registration of MJ Biotech’s securities be revoked.

II. APPLICABLE STANDARDS

A. Rule of Practice 250

Rule of Practice 250(b) provides that the Commission may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *See* 17 C.F.R. § 201.250(b).

² Simultaneously with the institution of this proceeding, the Commission issued an order suspending trading in MJ Biotech’s stock (ticker MJTV) for ten business days. *See* Exchange Act Rel. No. 91850, 2021 WL 1911710 (May 11, 2021).

B. The Gateway Factors

Section 12(j) of the Exchange Act empowers the Commission, where “necessary and appropriate for the protection of investors,” to either suspend (for a period not exceeding twelve months) or permanently revoke a security’s registration “if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder.” *See* 15 U.S.C. § 78l.

In making its determination, the Commission considers, among other things: (1) the seriousness of the issuer’s violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer’s efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer’s assurances, if any, against future violations. *Gateway International Holdings, Inc.*, Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006). Where there is a “recurrent failure to file periodic reports,” the Commission considers the violations “so serious that only a strongly compelling showing with respect to the other factors would be sufficient to avoid revocation.” *Smartag International, Inc.*, Exchange Act Rel. No. 96755, 2023 WL 1066737, at *3 (Jan. 26, 2023) (quoting *Accredited Bus. Consolidators*, Exchange Act Rel. No. 75840, 2015 WL 5172970, at *3 (Sept. 4, 2015)).

III. ARGUMENT

MJ Biotech admits that it was delinquent in its periodic filings, *see* Answer at II.A.1, and there is no genuine issue of material fact that a violation has occurred. The only issue is whether revocation is appropriate. Because the facts relevant to the *Gateway* factors are not disputed, no evidentiary hearing is necessary for a remedy determination. Under Commission precedent, the appropriate remedy is revocation.

A. MJ Biotech's violations are serious and recurrent.

As for the first *Gateway* factor, all violations of Section 13(a)'s reporting requirements are serious because timely and accurate reporting is statutorily required, and the reporting requirements are one of the primary statutory tools for protecting the integrity of the securities marketplace. As the Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are "the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities." Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway, 2006 SEC LEXIS 1288, at *26 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

MJ Biotech's reporting violations were especially serious because they coincided with significant changes in the company's direction. *See ChinaBiotics, Inc.*, Exchange Act Rel. 70800, 2013 SEC LEXIS 3451, at *37 (Nov. 4, 2013) (delinquencies were especially serious where the periods coincided with significant changes to financial results, changes to its business model, turnover in management, and major financial

investments); *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 WL 2499350, at *3 (Jun. 29, 2012) (reporting violations were especially significant when they “occurred during a period when the [c]ompany admittedly engaged in various and significant changes in its business”).

Prior to the first delinquent report, MJ Biotech, was in the business of “nutraceuticals,” substances derived from food that provide purported health benefits.³ *See* Comprehensive 10-K at 9. In February 2019, when the delinquencies began, MJ Biotech became involved in the acquisition of hemp growing facilities, negotiated an agreement with a distributor for the distribution of CBD oils, formed a wholly owned subsidiary for the extraction of CBD oil, and began working to develop a CBD extraction operation in Maine. *Id.* Although MJ Biotech disclosed some of these transactions in Forms 8-K, because of MJ Biotech’s delinquencies, investors have been left without any information as to whether MJ Biotech closed on any of these transactions and, if so, how these transactions and new lines of business impacted MJ Biotech’s finances. The delinquencies have left investors without critical information during a time when the company is undergoing a significant business transformation.

MJ Biotech’s violations are also recurrent and continuous violations under the second *Gateway* factor. At the time the OIP issued, two Forms 10-K and six Forms 10-Q were delinquent, and investors had been left without current required information about the company for over two years. Shorter delinquencies for fewer reports have been held to be continuous and recurrent. *See, e.g., Triton Emission Sols. Inc.*, Rel. No. 94255, 2022 WL 488504, at *3 (Feb. 15, 2022) (failure to file for “more than a year”); *Ironclad*

³ *See* <https://www.franciscanhealth.org/community/blog/nutraceuticals>.

Encryption Corp., Rel. No. 9426, 2022 WL 488507, at *3 (Feb. 15, 2022) (same). See also *iBIZ Technology Corp.*, Initial Decision Rel. No. 312 at 1, 2006 WL 1675913 (Jun. 16, 2006), *aff'd* July 11, 2006 (one Form 10-K and two Forms 10-Q); *Freedom Golf Corp.*, Initial Decision Rel. No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (one Form 10-K and one Form 10-Q), *aff'd June 10, 2003*; *WSF Corp.*, Initial Decision Rel. No. 204, 2002 WL 917293, at *14 (May 8, 2002) (one Form 10-K and three Forms 10-Q), *aff'd May 24, 2002*.

B. MJ Biotech has not rebutted the presumption of revocation with a compelling showing on the remaining *Gateway* factors. Indeed, those factors confirm that revocation is required to protect investors.

Because MJ Biotech's violations are serious and recurrent, they give rise to the presumption that revocation is required to protect investors unless MJ Biotech can make a compelling showing on the remaining *Gateway* factors. On this record, MJ Biotech cannot do so; the remaining factors weigh in favor of revocation.

i. MJ Biotech's disregard for its reporting obligations evidences a high degree of culpability.

Evidence that a violation was "inadvertent or accidental" establishes a low level of culpability. *China-Biotics, Inc.*, 2013 SEC LEXIS 3451, at *37. Evidence that an issuer knew of its reporting obligations but failed to comply with them establishes "a high degree of culpability." *Id.* (issuer had a "high degree of culpability" where it "did not file a single periodic report for more than a year and a half"). See also *LegacyXChange, Inc.*, Exchange Act Rel. No. 96401, 2022 WL 17345980, at *5 (Nov. 29, 2022) ("Legacy committed these violations with a high degree of culpability [where] Legacy demonstrated that it was aware of its periodic and other filing obligations . . . [y]et, despite such awareness, Legacy has repeatedly failed to file periodic reports" for more

than four years); *Gateway*, 2006 SEC LEXIS 1288, at *21 (issuer “evidenced a high degree of culpability,” because it “knew of its reporting obligations, yet failed to file”).

MJ Biotech’s filing failures were not inadvertent or accidental; MJ Biotech knew of its reporting obligations, but simply failed to satisfy them. MJ Biotech’s CEO, who is also its owner and sole executive, has been responsible for MJ Biotech’s securities law compliance since August 2017. *See* Pierson Aff. at ¶¶2-3. The CEO knew that MJ Biotech was required to make periodic reports, as demonstrated by the fact that under her management, MJ Biotech made six periodic filings before the delinquencies at issue occurred. *See* Harris Dec. at ¶7 and Ex. 6. MJ Biotech also acknowledged its filing obligations in multiple Form 12b-25 notices that it filed under the CEO’s management explaining why it was not making required filings. *Id.* Despite its knowledge of the reporting requirements, MJ Biotech ceased filing Forms 12b-25 after May 2019 and persisted in its periodic filing failures for two years before the OIP was issued.

ii. MJ Biotech has not remedied its past violations or adopted concrete measures to ensure future compliance.

MJ Biotech has not made a compelling showing that it has remedied the violations that led to the filing of the OIP. Although MJ Biotech submitted a Comprehensive 10-K with its Set Aside Motion, the Comprehensive 10-K does not cure the delinquencies. As set forth in the Declaration of a Senior Staff Accountant in the Office of Enforcement Liaison within the Division of Corporation Finance, the Comprehensive 10-K is materially deficient in the following respects, among others:

1. The Comprehensive 10-K does not contain officer certifications required by Sections 302 or 906 of the Sarbanes-Oxley Act of 2002 and Item 601(b)(31) and (32) of Regulation S-K for any annual or interim period included.
2. The first set of financials within the Comprehensive 10-K compares the December 31, 2019 results with December 31, 2018 results; however the

December 31, 2018 report was prepared by the previous audit firm. PCAOB standards and Regulation S-X require that the prior audit firm re-issue its report for inclusion in this subsequent filing.

3. The Comprehensive 10-K fails to meet the requirements of Item 403 of Regulation S-K, which requires disclosure of both beneficial ownership of a voting class of securities greater than 5% and security ownership by management.

See Declaration of Rebekah Lindsey at ¶¶6, 10, and 11. Moreover, when the Comprehensive Form 10-K was submitted on January 28, 2022, it did not include all of the reports that were then due. At that time, the deadlines for filing all three of the company's Forms 10-Q for the fiscal year ended December 31, 2021 had passed. See Harris Dec. at ¶7 and Ex. 6. The Division notified MJ Biotech of the above deficiencies more than two years ago, see Division's February 4, 2022 Opposition to Set Aside Motion at 7, but MJ Biotech has not submitted a corrected Comprehensive 10-K. The fact that, in the four years since the OIP was filed, MJ Biotech has still failed to cure the delinquencies at issue is compelling evidence in favor of revocation, not against.⁴

To make a compelling showing on future compliance, MJ Biotech must demonstrate that it has implemented concrete and effective measures to address the cause of its filing failures. *Phlo Corp.*, Exchange Act Rel. No. 55562, 2007 WL 966943, at *16 (Mar. 30, 2007). MJ Biotech has not made *any* showing of *any* remedial measures. In the multiple Forms 12b-25 filed under the CEO's management, MJ Biotech cited the company's limited resources as the reason for its filing delinquencies. See Harris Dec. at

⁴ The Comprehensive Form 10-K is materially deficient for additional reasons. Item 1 is missing any discussion of several products, lines of business, and transactions referenced elsewhere in the Form; management's annual report on Internal Control over Financial Reporting does not address 2019; the Disclosure Controls and Procedures Disclosure does not include disclosures for the interim periods covered by the Form; debt issuances are not included in the Statement of Cash Flows, and the Statement on Changes in Registrant's Certifying Accountant incorrectly states that the prior auditor's report was unmodified when it was modified for going concern. See Lindsey Dec. at ¶¶7-9.

¶6 and Ex. 5. That precarious financial position has not changed. In filings made in this proceeding, MJ Biotech reiterated that it had “limited resources.” *See* February 8, 2022 Reply in support of Set Aside Motion at ¶7. And the Comprehensive 10-K states that “as of and for the year ended December 31, 2020, the Company continued to have a working capital deficit and continued to incur substantial losses which continues to give rise to the substantial doubt that the Company will continue as a going concern.” *See* Comprehensive 10-K at 87. The fact that MJ Biotech continues to experience the financial struggles that caused its delinquencies is compelling evidence in favor of revocation, not against.

iii. MJ Biotech has made no assurances against future violations.

The likelihood that Respondent will commit future violations can be inferred from its past violations, including its consistent failure to meet prescribed periodic filing due dates under 13(a). *See KPMG Peat Marwick LLP, Securities Exchange Act of 1934 Rel. No. 44050, 2001 SEC LEXIS 422, at *21-22 (Mar. 8, 2001) (risk of future violation “need not be very great to warrant issuing a cease-and-desist order and that in the ordinary case and absent evidence to the contrary, a finding of past violation raises a sufficient risk of future violation”)*.

As outlined above, MJ Biotech was over two years delinquent at the time these proceedings were instituted, made a deficient attempt to cure with its Comprehensive 10-K, and has made no effort to correct the Comprehensive 10-K in the two years since being notified of its material deficiencies or otherwise file ongoing periodic reports since these proceedings were instituted. *See* Harris Dec. at ¶7 and Ex. 6. On this record, MJ Biotech has not, and could not, provide credible assurances against future violations.

C. Revocation is required for investor protection.

The protection of investors is concerned with more than a particular registrant's existing investors. It also takes into account a registrant's prospective investors and all investors who participate in the markets regulated by the Commission. *Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at *7, 32 (Apr. 4, 2014) (investor protection also takes into account "the broader systemic harm" that follows from registrants who fail to comply with reporting requirements and both "current and prospective" investors). *See also Accredited Bus. Consolidators*, 2015 WL 5172970, at *2 (protection of investors includes prospective investors).

The Commission has repeatedly held that revocation is required to protect investors where an issuer's lengthy delinquencies are only cured after institution of a revocation proceeding. *See, e.g., LegacyXChange, Inc.*, 2022 WL 17345980, at *4 (filing "reports that were delinquent at the time of the OIP . . . does not provide a defense to the OIP's allegations of reporting violations or preclude revoking the registration of" an issuer's securities). Otherwise, there would be little incentive for issuers to timely file reports, which harms all investors:

Dismissal [of the revocation proceeding] also 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.

Natures Sunshine Prod., Inc., Exchange Act Rel. No. 59268, 2009 WL 137145 at *8 (Jan. 7, 2009). Revocation is required in this circumstance to deter other issuers from violating the reporting requirements that protect all investors:

As we have recognized, revocation may be warranted in these circumstances to address not only the harm to current and prospective investors in the non-compliant issuer but also to address the broader systemic harm that follows from registrants who “game the system” by complying with their unambiguous reporting obligations only when they are confronted by imminent revocation.

Absolute Potential, Inc., 2014 SEC LEXIS 1193, at * 27. *See also Talon Real Est. Holding Corp.*, Exchange Act Rel. No. 87614, WL 6324601 at *5 (Nov. 25, 2019) (a “sanction other than revocation would fail to protect the public from an issuer like Talon whose delinquencies cover an extended period of time and who makes last minute filings only after becoming the subject of Exchange Act Section 12(j) proceedings”) (internal punctuation omitted); *Advanced Life Sciences*, Exchange Act Rel. No. 81253, 2017 WL 3214455 at *5 (Jul. 28, 2017) (“Revocation is necessary to deter issuers from disregarding their obligations to present accurate and timely information to the investing public until spurred by the institution of proceedings.”); *Accredited Bus. Consolidators Corp.*, 2015 WL 5172970 at n.18 (“Deterrence is meaningful only if a lengthy delinquency, in the absence of strongly compelling circumstances regarding the other Gateway factors, results in revocation.”); *China Biotics, Inc.*, 2013 SEC LEXIS 3451, at * 26 (filings made pending revocation proceeding do not “obviate the public interest in revocation”); *Calais Res. Inc.*, Release No. 67312, 2012 WL 2499349 at *7 (Jun. 29, 2012) (extended delinquencies that are only cured by filings made after the institution of a revocation proceeding “must be addressed with meaningful sanctions”); *American Stellar Energy, Inc.*, Exchange Act Rel. No. 64897, 2011 WL 2783483 at *7 (Dec. 15,

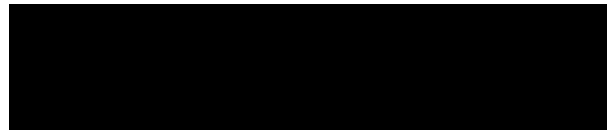
2010) (allowing an issuer who engages in extended delinquencies to avoid sanction by curing delinquencies pending a revocation proceeding “significantly detracts from the Exchange Act's reporting requirements”); *Cobalis Corp.*, Exchange Act Rel. No. 64813, 2011 WL 2644158, at n.32 (Jul. 6, 2011) (declining to sanction an issuer who cures extended delinquencies during a revocation proceeding “would undermine the reporting requirements”).

IV. CONCLUSION

By registering under Section 12(g), Respondent made a commitment to file mandatory periodic reports. Respondent has continually shown that it is incapable of honoring those commitments. The protection of investors through an actively enforced reporting program mandates revocation. For the reasons set forth above, the Division requests that this Motion for Summary Disposition be granted and that the registration of MJ Biotech’s securities be revoked.

Dated: May 31, 2024

Respectfully submitted,



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COUNSEL FOR
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CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Opposition to Respondent's Motion to Set Aside Default, and Exhibits thereto, to be served on the following on May 31, 2024, in the manner indicated below:

BY EMAIL SERVICE

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Counsel for Respondent

/s/ Samantha M. Williams

Samantha M. Williams

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20297

In the Matter of

**MJ Biotech, Inc. (f/k/a Michael James
Enterprises, Inc.),**

Respondent.

**DECLARATION OF SANDHYA C. HARRIS IN SUPPORT OF
DIVISION OF ENFORCEMENT’S MOTION FOR SUMMARY DISPOSITION**

SANDHYA C. HARRIS, pursuant to 28 U.S.C. § 1746, declares:

1. I am a Senior Counsel with the Division of Enforcement (“Division”) of the Securities and Exchange Commission (“Commission”) and co-counsel for the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Division’s Motion for Summary Disposition (“Motion”).

2. Attached hereto as Exhibit 1 is a true copy of a printout from the Wyoming Secretary of State website showing MJ Biotech’s corporate status as of December 1, 2020.

3. Attached hereto as Exhibit 2 is a true copy of a printout from FINRA Daily List: Deletions showing the September 7, 2021 removal of MJ Biotech’s ticker (Symbol: MJTV) from OTC Markets.

4. Attached hereto as Exhibit 3 is a true copy of a delinquency letter (including tracking information) from the Division of Corporation Finance to MJ Biotech, dated December 17, 2020.

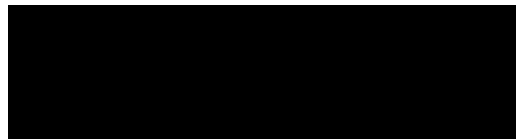
5. Attached hereto as Exhibit 4 is a true copy of a download from the Commission's internal EDGAR site showing all EDGAR filings made by MJ Biotech through September 7, 2021. This download has also been designed to capture all Forms 3, 4 or 5 and all Schedules 13D and 13G and amendments thereto, if any, which may have been filed relating to MJ Biotech. This download contains a complete record of all of the foregoing filings.

6. Attached hereto as Exhibit 5 is a compilation of MJ Biotech's various Forms 12b-25 Notification of Late Filing made between periods ended December 2016 through June 2019.

7. Attached hereto as Exhibit 6 is a true copy of a chart I prepared concerning MJ Biotech's periodic filings from the period ended March 31, 2016 to present. The chart includes a list of filings that remain outstanding as of May 31, 2024. The first column lists the type of filing. The second column gives the fiscal period end to which the filing relates. The third column gives the due date for the filing. The fourth column gives the date on which the filing was actually filed. The fifth column gives the number of days by which the filing was late. The sixth column gives either the date on which a Form 12b-25 Notification of Late Filing was filed for the periodic report or indicates that the filing was not made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 31, 2024.



Sandhya C. Harris