

**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.**

**THE DIVISION OF ENFORCEMENT’S BRIEF IN RESPONSE TO  
RESPONDENT’S CROSS MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement (“Division”) submits this brief in response to the Cross Motion for Summary Disposition filed by Respondent MJ Biotech, Inc. (f/k/a Michael James Enterprises, Inc.).

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On May 11, 2021, the Commission issued an Order Instituting Proceedings (“OIP”) in which the Division alleged that Respondent had engaged in repeated violations of the Securities and Exchange Act of 1934 (the “Exchange Act”) by failing to file periodic reports for over two years. *See* Exchange Act Rel. No. 91850 (May 11, 2021). *See also* Division’s May 31, 2024 Motion for Summary Disposition (“MSD”) at Declaration of Sandhya Harris, Ex. 6. When Respondent failed to answer, the Commission entered a default judgment deeming the allegations of the OIP to be true and revoking the registration of Respondent’s securities. *See* Exchange Act Rel. No. 92880, 2021 WL 4067015 (Sep. 3, 2021).

Respondent then filed a motion to set aside the default along with a purportedly curative filing. *See* Respondent’s Motion to Set aside Default and Comprehensive 10-K, attached as Ex. C (the “Curative Filing”). The Commission set aside the default based, in part, on Respondent’s evidence that, shortly after the OIP was issued, its CEO began experiencing serious health issues that prevented her from responding. *See* Exchange Act Rel. No. 97644 (Jun. 2, 2023) (the “Vacate Order”).

The Vacate Order required the parties to brief “the effect of this order’s setting aside the default, including on prior actions taken in this proceeding[.]” *Id.* at 3. In compliance with this directive, the parties reached an agreement that this matter should follow the ordinary procedure for resolution of Section 12(j) proceedings commencing with an Answer, a prehearing conference, and a prehearing conference statement. This agreement was memorialized in a jointly filed memorandum in which the parties stated, “The parties agree that this matter should follow the ordinary procedure for resolution of Section 12(j) proceedings.” *See* June 30, 2023 Joint Memorandum (the “Joint Memorandum”).

On August 15, 2023, Respondent filed an Answer admitting that, when the OIP issued, Respondent had not filed its required reports for two years. *See* OIP at IIA1 and Answer at IIA1. As agreed, the parties held a prehearing conference and filed a joint prehearing conference statement. When the parties could not resolve this matter through settlement, the Division filed a Motion for Summary Disposition.

Because Respondent had admitted its securities law violations, the only issue left for resolution was the appropriate remedy, an issue governed by evidence on the *Gateway* factors. The *Gateway* factors are: (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. 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." *Accredited Bus. Consolidators*, Exchange Act Rel. No. No. 75840, 2015 WL 5172970, at \*3 (Sept. 4, 2015).

In its Motion for Summary Disposition, the Division submitted evidence that the Respondent's securities law violations were serious and recurrent, giving rise to a presumption of revocation that could only be overcome with compelling evidence in Respondent's favor on the remaining *Gateway* factors. As to the remaining factors, the Division submitted evidence that Respondent's violations were committed with a high degree of culpability, that its efforts to cure were materially deficient, that it adopted no concrete measures to ensure future reporting compliance, and that it gave no credible assurances against future violations. *See* MSD at 4-10. *See also* Declaration of Rebekeh Lindsey, ¶¶6, 10, and 11 (identifying numerous material deficiencies in the Curative Filing). Finally, the Division cited to long-standing Commission precedent that, even where a registrant cures its delinquencies during a pending 12(j) proceeding, revocation is still required for lengthy delinquencies 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. (f/k/a Absolute Waste Services, Inc.)*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at \*27 (Apr. 4, 2014).

Respondent did not oppose the Division’s Motion for Summary Disposition and, instead, filed a Cross Motion for Summary Disposition (“Cross Motion”).

### **ARGUMENT**

Pursuant to Rule of Practice 250, the Commission may grant a motion for summary disposition if there is no genuine issue regarding 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). The relevant evidence in this proceeding is whether the delinquencies occurred and, if so, the appropriate remedy based on the *Gateway* factors. *Gateway International Holdings, Inc.*, 2006 SEC LEXIS 1288, at \*19-20.

In its Cross Motion, Respondent does not contend that the delinquencies never occurred (a fact it previously admitted). Nor does Respondent submit evidence on any of the *Gateway* factors. Instead, Respondent argues that the Vacate Order somehow rendered this proceeding moot and that evidence on one of the *Gateway* factors (Respondent’s efforts to cure its delinquencies) should be “addressed outside of the enforcement process.” Cross Motion at ¶¶13 and 15. Respondent’s Cross Motion is without merit. It should be denied and the Division’s Motion for Summary Disposition should be granted.

#### **I. The Vacate Order Did Not Moot This Proceeding**

Respondent argues that the Vacate Order rendered the factual findings contained in the default judgment null and void. The Division does not disagree. Respondent then argues that the Vacate Order somehow rendered the OIP ineffective, thus entitling Respondent to summary disposition in its favor. Cross Motion at ¶¶13-14. Respondent does not explain why that would be so and it is not.

As a preliminary matter, Respondent previously acknowledged that this proceeding was not moot in the Joint Memorandum and also by filing an Answer, by participating in the prehearing conference, and by filing a joint prehearing conference statement. All of these activities would have been unnecessary if the Vacate Order made the OIP ineffective.

In any event, the OIP was not rendered ineffective by the Vacate Order. The OIP contains the Division's allegations. Its purpose is to institute a proceeding so that the Commission may determine whether the Division's allegations are true and "whether or not a person is about to violate, has violated, has caused a violation of, or has aided or abetted a violation of any statute or rule administered by the Commission or whether to impose a sanction as defined in Section 551(10) of the Administrative Procedure Act, 5 U.S.C. 551(10)." *See* 17 C.F.R. §202.101(a)(4). The Vacate Order did not find the OIP's delinquency allegations false; nor did it find that revocation was unnecessary for the protection of investors. After the Vacate Order, the Division's and Respondent's positions were no different than had the default judgment never issued. The Vacate Order simply returned the case back to square one – the Division was entitled to prove that the allegations in the OIP are true and that revocation is required and Respondent was entitled to contest the Division's evidence.

Respondent has not contested any of the Division's evidence – either as to the existence of the delinquencies or the *Gateway* factors. As discussed at greater length in the Division's Motion for Summary Disposition, because Respondent admitted its delinquencies and because the evidence on the *Gateway* factors weighs in favor of revocation, the Division, not Respondent, is entitled to summary disposition.

## **II. This Is The Proceeding The Commission Has Established To Resolve Issues Regarding Respondent's Delinquencies**

Respondent next argues that one of the *Gateway* factors – whether Respondent has cured its delinquencies – should be resolved in some manner other than this proceeding. Respondent does not describe what other process should be used or why a different process is necessary. Prior to revoking the registration of a security, the Commission provides a registrant with an opportunity to be heard by way of an administrative proceeding in which each party is entitled to submit evidence on, among other things, the *Gateway* factors. Respondent has chosen not to rebut the Division's evidence establishing that the Curative Filing was materially deficient, which is one of the *Gateway* factors. Indeed, Respondent has chosen not to submit evidence in this proceeding on any of the *Gateway* factors. There is no reason to provide Respondent with another opportunity to present evidence related to its delinquencies through a different procedure.

### **CONCLUSION**

The facts are undisputed. Respondent engaged in repeated filing failures over a two-year period, failures that constitute serious and recurrent Exchange Act violations. Respondent's violations were committed with a high degree of culpability; its efforts to cure were materially deficient; it adopted no concrete measures to ensure future reporting compliance; and it gave no credible assurances against future violations. Even if Respondent could establish that it cured its delinquencies, because its delinquencies were lengthy, and it only attempted to cure them after the OIP issued, revocation is required for the protection of investors.

Dated: July 31, 2024

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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 Cross Motion for Summary Disposition to be served on the following on July 31, 2024, in the manner indicated below:

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