

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20550

<p>In the Matter of</p> <p>Calmare Therapeutics Incorporated.,</p> <p>Respondent.</p>

DIVISION OF ENFORCEMENT’S BRIEF IN OPPOSITION TO RESPONDENT’S
MOTION FOR EXTENSION OF TIME

The Division of Enforcement (“Division”), pursuant to Rule of Practice 154(b), hereby opposes the Motion for Extension of Time (“Motion”) filed by Calmare Therapeutics Incorporated (“Respondent” or “Calmare”). The Motion seeks an open-ended delay to these proceedings, and should be denied.

First, as an initial matter, Calmare did not serve the Motion on the Division until January 19, 2022. Calmare’s counsel was apparently under the mistaken belief that filing the Motion by eFAP constituted service on the Division, even though the Commission’s eFAP system makes clear this is not the case. (See Exhibit 1, email chain between the Division and Counsel for Calmare).¹ Because the Motion was not served on the Division until January 19, 2022, and Rule 154(b) requires oppositions to be filed “within five days after *service* of the motion,” this Brief in Opposition is timely filed. 17 C.F.R. 201.154(b) (emphasis added).

Second, the Commission should deny Calmare’s request for an open-ended extension. The parties positions regarding what was agreed to during the prehearing conference were set

¹ The Motion also fails to contain a certificate of service in violation of Rule 151(d).

forth in their respective submissions regarding the prehearing conference, and need not be re-hashed here. After receiving each party's position regarding timing of a Motion for Summary Disposition, the Commission issued a scheduling order on December 6, 2021, setting the due date for Calmare's Opposition to the Division's Motion for Summary Disposition as January 5, 2022. Nearly a month after the scheduling order was issued, and just two days before its opposition was due, Calmare filed the Motion seeking not just additional time to submit its opposition, but to a complete delay of all summary disposition briefing until after January 25, 2022. Calmare provides no date by which it intends to file its opposition to the Division's Motion for Summary Disposition. This is not a reasonable request for an extension. Calmare's proffered reason for this open-ended delay – a purported forthcoming expert report – does not justify halting all summary disposition briefing, and was considered and rejected by the Commission when the Commission issued the December 6, 2021 scheduling order.

Accordingly, the Commission should deny Calmare's request and direct Calmare to submit its opposition to the Division's Motion for Summary Disposition by January 25, 2022 or be deemed in default. *See* 17 C.F.R. 201.155(a)(2).

Dated: January 19, 2022

Respectfully submitted,

/s/ Christopher Bruckmann

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Division of Enforcement's Brief in Opposition to Respondent's Motion for Extension of Time was served on the following on January 19, 2022, in the manner indicated below:

Via eFap:

Office of the Secretary

By Email Service

Paul L. Vorndran
Alan Talesnick
Jones & Keller, P.C.
1675 Broadway, 26th Floor
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pvorndran@joneskeller.com
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Counsel for Respondent Calmare Therapeutics Incorporated

/s/ Christopher Bruckmann
Christopher Bruckmann

Bruckmann, Christopher

From: Bruckmann, Christopher
Sent: Wednesday, January 19, 2022 12:50 PM
To: Paul L. Vorndran; Alan Talesnick
Cc: Albert B. Sahlstrom; 'Emily Morse-Lee'; Joyce, Gina M.
Subject: RE: SEC v. Calmare, Case No. 3-20550

Paul and Alan,

As the eFAP system and the Commission's Rules of Practice make quite clear, filing a document by eFAP does NOT constitute service. (See screenshot from eFAP system below requiring a user making a filing to certify that they are separately serving the filing; see also Commission Rule of Practice 150). Your filing also lacked a Certificate of Service, which is required by Commission Rule of Practice 151(d).

We will be filing an opposition to your request for an extension of time.

Regards,

Chris Bruckmann

Screenshot from eFAP:

NOTICE OF RESPONSIBILITY TO SERVE FILINGS

I understand that the filing of a document through the eFAP system does not constitute service of the filing on any other party to the

From: Emily Morse-Lee <emorse-lee@joneskeller.com>
Sent: Wednesday, January 19, 2022 12:27 PM
To: Bruckmann, Christopher <bruckmann@SEC.GOV>
Cc: Paul L. Vorndran <pvorndran@joneskeller.com>; Alan Talesnick <atalesnick@joneskeller.com>; Albert B. Sahlstrom <asahlstrom@joneskeller.com>
Subject: SEC v. Calmare, Case No. 3-20550

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Bruckman:

Attached please find the Motion for Extension of Time we filed with eFAP on January 3, 2022, along with the filing confirmation.

Since the eFAP system seems buggy, we will also start sending you courtesy copies when we file anything from now on.

Let us know if you have any questions.

JONES&KELLER

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