

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20973

In the Matter of

IEH Corporation,

Respondent.

RESPONDENT IEH CORPORATION'S
MOTION FOR SUMMARY DISPOSITION

Sean M. Donahue
Paul Hastings LLP
2050 M Street, NW
Washington, DC 20036
202-551-1700
seandonahue@paulhastings.com
Counsel for Respondent

TABLE OF CONTENTS

	Page(s)
I. STATEMENT OF FACTS.....	1
A. Issuer Background.....	1
B. IEH’s Relevant Filing History.....	2
II. THE COMMISSION SHOULD GRANT SUMMARY DISPOSITION IN IEH’S FAVOR BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND IEH IS ENTITLED TO SUMMARY DISPOSITION AS A MATTER OF LAW.	4
A. There Is No Genuine Issue of Material Fact.....	4
B. Summary Disposition in Favor of IEH Is Appropriate.....	5
C. Sanctions Against IEH Are Not Appropriate or Necessary Because IEH Is Current in Its Reporting Obligations and Is Not a Shell Company.	6
1. IEH’s violations do not rise to the degree of seriousness to warrant a sanction.	8
2. IEH’s failure to file timely reports was isolated and does not warrant a sanction.	11
3. IEH has a low degree of culpability and a sanction would have no deterrent effect.	12
4. IEH has taken meaningful remedial steps to comply with its reporting obligations and ensure future compliance.	17
5. IEH has provided credible assurances against further violations.	19
III. A REVOCATION OR SUSPENSION WOULD BE DISPROPORTIONATE TO IEH’S VIOLATIONS AND WOULD NOT SERVE SHAREHOLDERS’ INTERESTS.	20
IV. CONCLUSION.....	21

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Absolute Potential Inc.</i> , Exchange Act Release No. 71866, 2014 WL 1338256 (Apr. 4, 2014)	<i>passim</i>
<i>Advanced Life Sciences Holdings, Inc.</i> , Exchange Act Release No. 81253, 2017 WL 3214455 (July 28, 2017)	6, 13, 18
<i>Am. 's Sports Voice, Inc.</i> , Exchange Act Release No. 55511, 2007 WL 9421706 (Mar. 22, 2007)	7
<i>Calais Res., Inc.</i> , Exchange Act Release No. 67312, 2012 WL 2499349, at *23 (June 22, 2012)	7
<i>Can-Cal Resources, Ltd.</i> , Admin. Proc. Ruling No. 6393, 2018 WL 8415779 (ALJ Dec. 10, 2018)	5
<i>Digital Brand Media & Marketing Group</i> , Initial Decision Release No. 1389, 2019 WL 6118538 (ALJ Nov. 12, 2019)	6, 7, 14
<i>e-Smart Technologies, Inc.</i> , Exchange Act Release No. 50514, 2004 WL 2309336 (Oct. 12, 2004)	7, 8
<i>e-Smart Technologies, Inc.</i> , Initial Decision Release No. 272, 2005 WL 274086 (ALJ Feb. 3, 2005)	<i>passim</i>
<i>Eagletech Communications, Inc.</i> , Exchange Act Release No. 54095, 2006 WL 1835958 *4 (July 5, 2006)	21
<i>Gateway International Holdings, Inc.</i> , Exchange Act Release No. 53907, 2006 WL 1506286, at *4, (May 31, 2006).	6
<i>LegacyXChange, Inc.</i> , Exchange Act Release No. 96401, 2022 WL 17345980 (November 29, 2022)	9
<i>Nature's Sunshine Prods., Inc.</i> , Exchange Act Release No. 59268, 2009 WL 137145 (Jan. 21, 2009)	7
<i>Phlo Corporation</i> , Exchange Act Release No. 55562, 2007 WL 4372235 (Mar. 30, 2007)	7, 13
<i>S.W. Hatfield, CPA</i> , Exchange Act Release 73763, 2014 WL 6850921 (Dec. 5, 2014)	5

Rules, Statutes, and Treatises

17 CFR § 201.250.....48

17 CFR § 240.13a-14, 8

17 CFR § 240.13a-134, 8

Securities Exchange Act Section 15(c)(4), 15 U.S.C. § 78o(c)(4)21

Louis Loss, Joel Seligman, Troy Paredes, Fundamentals of Securities Regulation
(7th ed. 2018).....21

Securities Exchange Act Section 12(j), 15 U.S.C. § 78l(j).....1, 5

Securities Exchange Act Section 12(g), 15 U.S.C. § 78l(g).....1, 5, 9

Securities Exchange Act Section 13, 15 U.S.C § 78m4

Thomas Lee Hazen, Treatise on the Law of Securities Regulation § 9.5 (8th ed.
2023)20

MOTION FOR SUMMARY DISPOSITION

Respondent IEH Corporation (“IEH” or the “Company”), by counsel and pursuant to Rule 250(b) of the Commission’s Rules of Practice, hereby submits this Motion for Summary Disposition seeking dismissal of the pending proceeding pursuant to Securities Exchange Act Section 12(j), 15 U.S.C. § 78l(j) because IEH has become current in its Exchange Act periodic filings. Specifically, IEH has filed a comprehensive annual report on Form 10-K for the fiscal years ended March 31, 2020, March 31, 2021, and March 31, 2022 that includes all material information that would have been included in the missed filings on which this proceeding is primarily predicated. IEH also has filed Form 10-Qs for the quarters ended June 30, 2022, September 30, 2022, and December 31, 2022, a Form 10-K for the fiscal year ended March 31, 2023, and Form 10-Qs for the quarters ended June 30, 2023 and September 30, 2023. Because IEH is no longer delinquent in its SEC filings, revocation or suspension of the registration of its securities is not a necessary or appropriate sanction and this Section 12(j) proceeding should be dismissed.

BRIEF IN SUPPORT

I. Statement of Facts.

A. Issuer Background.

IEH Corporation (CIK No. 50292) is a New York corporation located in Brooklyn, New York with a class of securities registered with the Commission pursuant to Securities Exchange Act Section 12(g), 15 U.S.C. § 78l(g). IEH is an active operating company with approximately 156 employees. For more than 80 years, the Company has designed, developed, and manufactured electrical hyperboloid products, such as printed circuit board connectors, custom interconnects, and contacts for high performance military and aerospace applications. Its customers include national and international defense contractors, commercial aerospace equipment manufacturers,

medical device manufacturers, oil and gas exploration firms, and commercial space launch companies. The business is successful and growing. In 2022, IEH opened a new 29,000 square foot manufacturing facility in Pennsylvania. For the fiscal year ended March 31, 2023, IEH had revenues of \$19,136,890 and, for the six months ended September 30, 2023, IEH had revenues of \$9,490,833. IEH maintains a strong cash position on its balance sheet with approximately \$6.0 million in cash as of September 30, 2023. IEH's securities are traded on the OTC Markets Group's Expert Market and are restricted from public viewing.¹

B. IEH's Relevant Filing History.

IEH has filed Exchange Act reports with the Commission since 1966.² During fiscal year 2020, the Company encountered difficulties in reconciling its legacy accounting system and its new accounting system (the "inventory reconciliation"). The inventory reconciliation caused delays in the Company's Exchange Act reporting. Specifically, at the end of the second quarter of fiscal year 2020, the Company migrated to a new enterprise accounting and inventory system (the "SAP system") to support its growth plans. Although its legacy and new systems had been running in parallel for several years, there were differences in inventory treatment between the two. For example, the legacy system used a periodic inventory valuation methodology (a top-down approach) while the new SAP system uses a perpetual inventory system (a bottom-up approach). The two systems also itemize inventory categories—raw material, work-in-progress, and finished

¹ See <https://www.otcmarkets.com/stock/IEHC/overview>.

² IEH's SEC EDGAR filer page indicates that IEH has been filing Exchange Act periodic reports since 1995, the earliest date for which filings are available in the EDGAR database. See *Accessing EDGAR Data*, at <https://www.sec.gov/os/accessing-edgar-data>. A search of IEH's filing history in the more comprehensive Intelligize database, however, indicates that IEH has been filing Exchange Act periodic reports since 1966.

goods—differently. Reconciling inventory across the two systems required intense, demanding work that involved distinguishing periodic inventory costing from perpetual inventory costing.³

During the migration to the SAP system and in preparation for IEH’s year-end accounting, management discovered that inventory balances previously reported as of the end of the second and third fiscal quarters were misstated. On October 8, 2020, IEH filed a Form 8-K to report that its management had concluded, and the Audit Committee of the Board of Directors concurred, that the Company’s previously issued unaudited financial statements for these two quarters should no longer be relied upon. The onset of the pandemic coincided with the Company’s March 31, 2020 fiscal year end, and the Company’s challenges with reconciling its inventory records were exacerbated by labor and supply chain disruptions and government restrictions resulting from the COVID-19 pandemic. Because of the pandemic and related restrictions, the Company’s auditors were unable to conduct a physical inventory observation for its 2020 fiscal year-end audit until May 2020. IEH disclosed this in its Annual Report on Form 10-K filed on October 8, 2020. With respect to its financial statements for the fiscal year ended March 31, 2020, on January 26, 2023, in connection with preparing the comprehensive Form 10-K, the Company’s management concluded, and the Audit Committee of the Board of Director concurred, that the Company’s previously issued financial statements and related disclosures for fiscal year 2020 should no longer be relied upon and IEH subsequently disclosed this information in a Form 8-K filing. As a result of the complexity of the issues associated with resolving the inventory reconciliation discussed *supra*, IEH failed to file a total of two annual reports and seven quarterly reports as of the August 17, 2022 date of the Order Instituting Proceedings (“OIP”).

³ IEH Form 8-K filed on September 29, 2021.

On June 22, 2023, IEH filed a Super Form 10-K for the fiscal years ended 2020, 2021, and 2022. That filing comports with guidance from the Division of Corporation Finance, which states that the staff will not require a company to file separately all of its delinquent filings, if a company files a comprehensive annual report on Form 10-K that includes all material information that would have been included in the delinquent filings.⁴ On October 6, 2023, IEH filed its Form 10-Qs for the quarters ended June 30, September 30, and December 31, 2023 and its Form 10-K for the fiscal year ended March 31, 2023. On November 30, 2023, IEH filed its Form 10-Qs for the quarters ended June 30, 2023 and September 30, 2023. Consequently, as of the date of this motion, IEH is no longer delinquent in its SEC-required periodic filings.

II. The Commission Should Grant Summary Disposition in IEH’s Favor Because There Is No Genuine Issue of Material Fact and IEH Is Entitled to Summary Disposition As a Matter of Law.

A. There Is No Genuine Issue of Material Fact.

Pursuant to Rule 250(b) of the Commission’s Rules of Practice, the Commission may grant a motion for summary disposition if there is no genuine issue of material fact and the movant is entitled to summary disposition as a matter of law.⁵ Here, it is undisputed that IEH did not file the periodic reports during the period alleged in the OIP as required by Securities Exchange Act Section 13, 15 U.S.C § 78m, and 17 CFR § 240.13a-1 and 17 CFR § 240.13a-13 thereunder. It is

⁴ SEC Division of Corporation Finance Financial Reporting Manual at Section 1320.4, https://www.sec.gov/corpfin/cf-manual/topic-1#Topic1_1100.

⁵ Rule 250 of the Commission’s Rules of Practice provides, in relevant part, that “In any proceeding under the 30-day timeframe . . . after a respondent’s answer has been filed . . . any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to § 201.323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.” 17 CFR § 201.250.

also undisputed, however, that IEH is current in its Exchange Act reporting obligations and has completed significant remedial measures such that sanctions under Securities Exchange Act Section 12(j), 15 U.S.C. § 78l(j) would not serve the public interest and are not necessary or appropriate for the protection of investors. As discussed *infra*, pursuant to the Commission’s precedent applying the *Gateway* factors, IEH is entitled to summary disposition in its favor. In particular, IEH’s remediation efforts, including the fact that IEH has become current in its SEC periodic filings, makes revocation or suspension under these circumstances unnecessary.

B. Summary Disposition in Favor of IEH Is Appropriate.

Where, as here, a registrant has become current in filing its Exchange Act periodic reports, granting summary disposition in favor of the registrant is an appropriate means to end a Section 12(j) proceeding.⁶ In *Can-Cal*, the administrative law judge observed that absent a motion from the respondent for summary disposition, the relief sought by the respondent (*i.e.*, dismissal of the proceeding) was not available. *Can-Cal*, at 3 (citing the Commission’s opinion in *S.W. Hatfield, CPA*, Exchange Act Release 73763, 2014 WL 6850921 (Dec. 5, 2014) (“[W]here a respondent has not filed its own Rule 250 motion, our rules make no express provision for the law judge to *sua sponte* dismiss the proceeding without a hearing”). Based on the Commission’s guidance in *S.W. Hatfield*, and the administrative law judge’s ruling in *Can-Cal*, IEH submits this motion for summary disposition requesting that the Commission dismiss the proceeding without sanctions.

⁶ See, e.g., *Can-Cal Resources, Ltd.*, Admin. Proc. Ruling No. 6393, 2018 WL 8415779 (ALJ Dec. 10, 2018) (“*Can-Cal*”).

C. Sanctions Against IEH Are Not Appropriate or Necessary Because IEH Is Current in Its Reporting Obligations and Is Not a Shell Company.

Sanctions for periodic reporting violations are not automatic. *Gateway International Holdings, Inc.*, Exchange Act Release No. 53907, 2006 WL 1506286, at *4, (May 31, 2006). Instead, under *Gateway*, the Commission's approach to determining sanctions involves careful consideration of the particular facts and circumstances to determine the effect on the investing public of the issuer's violations, on the one hand, and the Section 12(j) sanctions, on the other hand. The Commission considers the following factors set forth in *Gateway*: (i) the seriousness of the issuer's violations, (ii) the isolated or recurrent nature of the violations, (iii) the degree of culpability involved, (iv) the extent of the issuer's efforts to remedy its past violations and ensure future compliance, and (v) the credibility of its assurances, if any, against further violations. *Gateway* (citing *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979)).

No single *Gateway* factor or combination of factors is dispositive. Even in cases with facts less favorable than this case, such as where an issuer's violations are serious and recurrent, if there are factors that weigh strongly against revocation, such as the degree of culpability involved or the remedial efforts and assurances against future violations, sanctions are not necessarily required. *See, e.g., Advanced Life Sciences Holdings, Inc.*, Exchange Act Release No. 81253, 2017 WL 3214455 (July 28, 2017); *see also Absolute Potential Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256 (Apr. 4, 2014), at 10. For example, a company's filing of past due reports and its continuing to file current reports are mitigating factors supporting a finding that sanctions are not appropriate. *Digital Brand Media & Marketing Group*, Initial Decision Release No. 1389, 2019 WL 6118538 (ALJ Nov. 12, 2019), *petition for Commission review filed Dec. 3, 2019*. In *Digital Brand*, the administrative law judge ruled that revocation was not necessary or appropriate for the protection of investors because of the above mitigating factors, despite the company not having

filed periodic reports during a period of three years.⁷ In fact, the Division of Enforcement (“DOE”) has conceded that revocation is not appropriate in every instance where there is a violation of Section 12(j). In the DOE’s appellate brief filed in *Digital Brand*, the DOE recognized that the Commission has indeed found factors sufficient to rebut a presumption of revocation where the issuer has cured all outstanding deficiencies, identified the specific causes that led to the violations, and demonstrated concrete and effective corrective measures addressing the causes.⁸

A company’s filing history subsequent to the delinquent filings is particularly relevant to determining whether a sanction is appropriate. *e-Smart Technologies, Inc.*, Exchange Act Release No. 50514, 2004 WL 2309336 (Oct. 12, 2004); *see also Absolute Potential*, (recognizing that an issuer’s subsequent attempts to file delinquent reports and remain in compliance with its reporting obligations are particularly important factors to be considered in determining whether to revoke an issuer’s registration). In *e-Smart Technologies*, the Commission reviewed an administrative law judge’s initial decision to impose a revocation sanction, and remanded the proceeding to the

⁷ *Digital Brand*, at section IV. The administrative law judge distinguished the company’s situation from cases in which the Commission determined that revocation was necessary or appropriate. *See Calais Res., Inc.*, Exchange Act Release No. 67312, 2012 WL 2499349, at *23 (June 22, 2012) (frowning on the issuer’s “troubling willingness . . . to ignore clear staff directives regarding reporting obligations”); *Absolute Potential* (shell company with total assets of \$27, accumulated deficit of \$1,972,404; filings made during administrative proceeding, but unpersuasive explanations for protracted delinquencies and absence of concrete changes to ensure compliance as of date of Commission opinion); *Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 WL 137145 (Jan. 21, 2009) (filings just before oral argument on petition for review of Initial Decision; filings were materially deficient); *Am.’s Sports Voice, Inc.*, Exchange Act Release No. 55511, 2007 WL 9421706 (Mar. 22, 2007) (no filings), recon. denied, Exchange Act Release No. 55867, 2007 SEC LEXIS 1239 (June 6, 2017).

⁸ Appellate Brief for Division of Enforcement at 17, *In re Digital Brand Media & Marketing Group, Inc.*, available at <https://www.sec.gov/litigation/apdocuments/3-17990-2021-02-24-divisions-appellate-brief.pdf> (citing *Phlo Corp.*, Exchange Act Release No. 55562, 2007 WL 966943 (March 30, 2007) (issuer became current, identified ICFR failures that led to violations, and identified concrete measures addressing the ICFR failures); *e-Smart Technologies, Inc.*, Exchange Act Release No. 50514 (Oct. 12, 2004) (issuer identified the cause of its delinquencies and concrete remedial measures to ensure future compliance including retaining new securities counsel and auditors and implementing new internal accounting controls)).

administrative law judge to assess the sanction determination in light of the company's subsequent reporting, *even in spite of* the fact that it was "undisputed" that the company had violated Section 13(a) and 17 CFR § 240.13a-1 and 17 CFR § 240.13a-13, and that the company's violations were, in the Commission's view "serious." *e-Smart Technologies*, at section I. In remanding to the administrative law judge, the Commission cited evidence produced by e-Smart Technologies' Chief Executive Officer that the company's failure to file the required reports was due to a variety of factors including, among others, lack of capital and loss of key personnel involved in the company's financial reporting. *e-Smart Technologies*, at section II. The Commission also relied on evidence that the company had begun to put in place controls and procedures designed to ensure that information was disclosed in accordance with the Exchange Act, that the company had retained new securities counsel, and had arranged for new accounting controls and the hiring of a new auditor. *Id.* On remand, the administrative law judge declined to revoke or suspend the company's registration. *e-Smart Technologies, Inc.*, Initial Decision Release No. 272, 2005 WL 274086 (ALJ Feb. 3, 2005). Like in *e-Smart Technologies*, the investing public now has access to current, audited financial information about IEH.

Applying the *Gateway* factors below to the undisputed record, neither revocation nor suspension is appropriate here; it is not necessary to protect investors. The undisputed evidence supports denial of revocation and suspension, and dismissal of this proceeding.

1. IEH's violations do not rise to the degree of seriousness to warrant a sanction.

At the time the Commission instituted this proceeding, IEH had not filed two Form 10-Ks and seven Form 10-Qs. As of November 30, 2023, IEH is current in its Exchange Act periodic reporting obligations and investors have all the information they need to make informed investment decisions about IEH. In particular, IEH filed a Super Form 10-K on June 22, 2023 that

included quarterly reviews and audits of the fiscal years ended March 31, 2021 and 2022, and restated audited financial information for the fiscal year ended March 31, 2020. IEH also filed a Form 10-Q for each of the periods ended June 30, 2022, September 30, 2022, December 31, 2022, June 30, 2023 and September 30, 2023, as well as a Form 10-K for its fiscal year-ended March 31, 2023.

IEH takes its reporting obligations seriously. IEH's circumstances indicate that its failure to file periodic reports does not rise to the level of seriousness required to impose a sanction. IEH has a long history of providing the investing public with current, accurate financial information so that investors may make informed decisions. The Company has been filing Exchange Act reports since 1966, and while the Company's lengthy reporting history includes some late filings, the fact that the Company has been reporting for over 50 years, and only recently encountered such extenuating circumstances which caused the Company to miss filing nine periodic reports as of the date of the OIP, demonstrates that the Company has taken and continues to take its Exchange Act reporting obligations seriously.

The Commission has explained that Section 12(j) seeks to address the underlying concern that "many publicly traded companies that fail to file on a timely basis are 'shell companies' and, as such, attractive vehicles for fraudulent stock manipulation schemes." *e-Smart Technologies*, n. 14. That concern is not warranted here. Unlike the companies whose registrations were revoked in *Absolute Potential* and *LegacyXChange, Inc.*, Exchange Act Release No. 96401, 2022 WL 17345980 (November 29, 2022) IEH is not a shell company, and does not present the fraud or manipulation concerns that Section 12(j) seeks to address and about which the Commission cautioned in *e-Smart Technologies*. To the contrary, as IEH reported in its Form 10-K for the

fiscal year ended March 31, 2023, filed on October 6, 2023, IEH is an operating company that employs approximately 156 people and has been in the manufacturing business for over 80 years.

The seriousness of IEH's delayed reporting is mitigated by the steps IEH took to keep the investing public informed of the Company's operations and efforts to bring its periodic reports current. IEH filed a Notification of Late Filing on Form 12b-25 for its Form 10-K for the fiscal year ended March 31, 2020, the Form 10-K for the fiscal year ended March 31, 2021, and for each of the Form 10-Qs for the first three quarters of fiscal year 2021.⁹ IEH also continued voluntarily to file Current Reports on Form 8-K to announce major events and update its investors of its progress on becoming current in its SEC filings. In particular, IEH filed a Form 8-K on June 28, 2021 to disclose a press release announcing that IEH did not expect to file its Form 10-K for the fiscal year ended March 31, 2021 on a timely basis, and that its quarterly reports for the periods ended June 30, September 30, and December 31, 2020 had not yet been completed.¹⁰ On September 29, 2021, IEH filed a Form 8-K¹¹ to disclose that the Company's stock would be traded in accordance with the OTC Pink Sheet No Information tier as a result of its delinquent Exchange Act filings and the Commission's 2020 amendments to Exchange Act Rule 15c2-11. In this filing, the Company's President and Chief Executive Officer, David Offerman, emphasized that the Company was "extremely focused on getting current with our filings with the SEC" and highlighted the reason for the delayed filings and steps the Company had taken to address the

⁹ The Company acknowledges that it did not file a Form 12b-25 notice for *every* late periodic report after the Form 12b-25 filed for its Form 10-K for the fiscal year ended March 31, 2021, but it continued to update the market periodically regarding its filing status.

¹⁰ IEH Corporation, Current Report (Form 8-K) (June 28, 2021), https://www.sec.gov/Archives/edgar/data/50292/000117494721000639/form8k-26361_ieh.htm.

¹¹ IEH Corporation, Current Report (Form 8-K) (Sept. 29, 2021), https://www.sec.gov/ix?doc=/Archives/edgar/data/0000050292/000117494721000871/form8k-26762_ieh.htm.

issues. Further, the Company filed a Form 8-K on February 17, 2022, to disclose a press release in which the Company announced to its investors that the Company was “making significant progress on getting current on all SEC filings.” In this press release, Mr. Offerman stated that the Company was “working closely with our auditors to ensure we are caught up and able to properly report going forward. We will provide updates as we begin to file.”¹² On June 22, 2023, IEH issued a press release indicating that it filed its annual report on Form 10-K covering the fiscal years ended March 31, 2020, 2021, and 2022 and that it was in the process of preparing its Form 10-K for the fiscal year ending March 31, 2023.¹³ On October 10, 2023, IEH filed a Form 8-K indicating that it had filed its quarterly reports on Form 10-Q for the first three quarters of the fiscal year ended March 31, 2023, and its annual report on Form 10-K for the fiscal year ended March 31, 2023.¹⁴ IEH further disclosed in that Form 8-K that IEH was in the process of preparing its Form 10-Qs for the first two quarters of the fiscal year ending March 31, 2024 in an effort to become current in its SEC filings. IEH made these last 10-Q filings on November 30, 2023 and is now current in its periodic reporting obligations.

2. IEH’s failure to file timely reports was isolated and does not warrant a sanction.

When viewed in the context of IEH’s long history of making timely, periodic filings with the Commission and the Company’s currently up-to-date reporting, the Company’s recent failure to file is best described as “isolated.” The untimely filings began with the Form 10-K for the fiscal

¹² IEH Corporation, Current Report (Form 8-K) (Feb. 17, 2022), https://www.sec.gov/ix?doc=/Archives/edgar/data/0000050292/000117494722000252/form8k-27381_iehc.htm.

¹³ IEH Corporation, June 22, 2023 Press Release, <https://www.accesswire.com/763300/ieh-corporation-files-super-10-k-for-fiscal-years-ended-2020-2021-2022>.

¹⁴ IEH Corporation, Current Report (Form 8-K) (Oct. 10, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/50292/000110465923108332/tm2328149d1_8k.htm.

year ended March 31, 2020, which coincided with the onset of the COVID-19 pandemic. The COVID-19 pandemic created unprecedented challenges and disruptions as the Company disclosed in a Form 12b-25 notice filed on August 14, 2020. These disruptions included, but were not limited to, the unavailability of key personnel required to prepare the financial statements for the 2020 annual report. Additionally, the Company was unable to verify a physical inventory observation for its year-end audit until May 2020 because government-imposed COVID-19 restrictions prevented auditing personnel from entering the Company's physical offices. As a result, the Company was required to institute additional manual procedures to roll-back the Company's item-by-item inventory to March 31, 2020 from the May 2020 inventory observation dates. The roll-back had to be conducted using the newly installed inventory accounting system. The migration to the new system required additional time and effort, complicated by the COVID-19 restrictions, such that IEH employees could not complete certain inventory reconciliations until September 2020. As a manufacturing company, physical inventory observation with verification from outside auditors is an essential step in preparing the Company's fiscal year-end audit. In view of the Company's track record of making periodic filings and its current up-to-date filing status, the evidence is undisputed that the missed filings were isolated due to unique facts and circumstances caused in part by a confluence of a once-in-a-generation pandemic and the transition to a new accounting system.

3. IEH has a low degree of culpability and a sanction would have no deterrent effect.

The Company's delinquent filings stem from the specific and unique facts and circumstances described *supra*. Unlike other cases in which companies flouted filing requirements or simply failed to file periodic reports, IEH's failure to file is not the result of deliberate indifference to filing requirements, culpability, or even negligence.

Like the issuers in *Phlo Corporation*, Exchange Act Release No. 55562, 2007 WL 4372235 (Mar. 30, 2007) and *e-Smart Technologies*, IEH has a low degree of culpability. The missed filings were not an attempt to conceal the Company's financial condition, and there is no evidence to indicate otherwise. Consequently, absent any intentional wrongdoing, imposing a sanction would have no deterrent effect. The Commission has stated that revocation may be appropriate to deter issuers from disregarding their obligations to present accurate and timely information to the investing public "until spurred by the institution of proceedings" and that "deterrence is effective only if a lengthy delinquency, *in the absence of strongly compelling circumstances regarding the other Gateway factors*, results in revocation." (emphasis added). *Advanced Life Sciences Holdings, Inc.*, Exchange Act Release No. 81253, 2017 WL 3214455 (July 28, 2017). Here, revocation or suspension would serve no deterrent purpose because the Company's missed filings were not an attempt to disregard its filing obligations, which the Company takes very seriously. Instead, IEH has a low degree of culpability and began its efforts to bring its filings current *before* the Commission instituted proceedings.

In *Advanced Life Sciences* the Commission found that the issuer's failure to file a periodic report in over six years showed a high degree of culpability. Moreover, the issuer only filed when "spurred" by the institution of administrative proceedings. Unlike *Advanced Life Sciences*, IEH began steps to remedy its inventory reconciliation in 2020, well before the institution of this proceeding, and had communicated this intention to its investors. Given IEH's long history of filing periodic reports with the Commission, this simply is not a case of a company disregarding its filing obligations only to opportunistically "catch up" once the Commission instituted this proceeding. The evidence does not support this interpretation of the facts.

This factor also weighs against a sanction because there is no evidence that IEH's failure to file periodic reports was an attempt to conceal information from investors. In *Digital Brand*, the administrative law judge determined that the violations alleged in the OIP were proven, but held that no sanction was appropriate even though the company had failed to file periodic reports for more than two years. The administrative law judge reasonably concluded that there was "no evidence that [Digital Brand] forwent periodic reports to conceal its parlous financial condition" and viewed this as a mitigating factor in the degree of culpability.

Like *Digital Brand*, the degree of IEH's culpability is low and mitigates against any sanction. Far from concealing its financial condition from investors, IEH has provided a transparent, detailed, and concrete explanation for its failure to file periodic reports. IEH's failure to file periodic reports was due to the difficulties with reconciling two disparate accounting systems, which coincided with, and was exacerbated by, the COVID-19-related government restrictions and limitations, which the Company repeatedly has disclosed to its investors in its filings with the Commission. As the Company explained in its Form 8-Ks filed on June 28, 2021, September 29, 2021, and February 17, 2022, the "heart of the issue" that precipitated the missed filings is how the Company's two disparate systems itemized inventory categories, namely raw material, work-in-progress, and finished goods. The Company explained in those filings that the reconciliation was "intense, demanding work, requiring a blending of our old [Enterprise Resource Planning] system and the new one, as well as discriminating periodic inventory costing from perpetual inventory costing."¹⁵

¹⁵ IEH Corporation, Current Report (Form 8-K) (Sept. 29, 2021), https://www.sec.gov/ix?doc=/Archives/edgar/data/0000050292/000117494721000871/form8k-26762_ieh.htm.

There is no evidence to indicate that IEH's failure to file was an attempt to conceal an unfavorable financial condition, or anything else. On the contrary, IEH filed numerous Form 8-Ks and issued press releases in which it was transparent and forthcoming about the reasons for the delay in becoming current. Well before the institution of this proceeding, the Company expressed to its shareholders the urgency with which it was approaching the inventory reconciliation and outlining its efforts to become current in its reporting. In its Form 8-K filed on June 28, 2021, over a year prior to the institution of this proceeding, the Company's President and CEO commented that, "No one wants this fixed more than us, but we want to make sure we get it right" and "[w]e have engaged outside resources and focused internal resources to address these subjects appropriately so that we can keep moving forward." The delay in becoming current was not due to the Company's disregard for its reporting obligations, but rather because of the intense, demanding effort required to complete the inventory reconciliation accurately.

Unlike the company in *Absolute Potential*, which the Commission faulted for failing to offer a meaningful explanation for its missed filings, IEH has provided its investors and the SEC with a meaningful explanation through its Form 12b-25 notices, Current Reports on Form 8-K, and press releases. In *Absolute Potential*, the Commission's revocation was predicated on the company's failure to file periodic reports, and a combination of additional factors including that the company had failed to file twenty annual and quarterly periodic reports over a period of five years, the company was a shell with no revenue with which to achieve future compliance, the company lacked a meaningful explanation for its protracted delinquencies, and the absence of concrete remedial changes to ensure compliance. *Absolute Potential*, at 9.

Similarly, in *LegacyXChange*, the Commission's revocation was predicated on the company's failure to file periodic reports, and a combination of additional factors including that

the company failed to file its first required periodic report on Form 10-K after the filing of its Form 8-A and then for the next four plus years did not file any periodic reports with the SEC, the company transitioned from being an operating company to a shell company during its period of delinquency, the company had financial difficulties that were not disclosed to the market during the four plus years that it did not file any periodic reports, and the company failed to timely file seven additional periodic reports at the time the SEC issued its Opinion on November 29, 2022. Unlike the company in *LegacyXChange*, IEH on numerous occasions provided current and prospective investors and the SEC with a meaningful explanation of its inventory reconciliation issues and its plan to become current in its periodic filings through its Form 12b-25 notices, Current Reports on Form 8-K, and press releases. In addition, unlike the company in *LegacyXChange*, IEH is no longer delinquent in filing its SEC periodic reports as of the date of this motion and has adequate financial resources to comply with its periodic filing obligations in the future.

Moreover, upon receiving the SEC's letter regarding the late periodic filings dated March 11, 2022, the Company attempted to engage with the staff of the Division of Corporation Finance to discuss IEH's plans and efforts to become current. IEH communicated with Ms. Marva Simpson in the Division of Corporation Finance, and responded by letter dated April 1, 2022 (the "IEH Letter"), in which it explained some of the circumstances related to its inability to timely file its periodic reports, and reiterated that resolving this issue remained IEH's top priority.¹⁶ After submitting the IEH Letter, IEH's outside counsel called Ms. Simpson to discuss the response several times and did not receive a reply. IEH Answer, at 6. These attempts to engage with the Commission's staff are evidence of the seriousness with which IEH approaches its reporting obligations and mitigates against the degree of culpability.

¹⁶ Letter dated April 1, 2022, from William H. Craig, Former CFO, to Division of Corporation Finance.

4. IEH has taken meaningful remedial steps to comply with its reporting obligations and ensure future compliance.

IEH has adopted new controls and procedures and devoted significant attention and resources to overcome substantial challenges and comply with its Exchange Act reporting obligations so that its investors have access to timely, accurate information.

Since the first late filing, the Company's Board of Directors and management were committed to bringing the company current in its reporting obligations, completing its inventory reconciliation, and preventing a recurrence. The Company disclosed several steps it took to strengthen its financial reporting in its Annual Report on Form 10-K for fiscal year 2020.¹⁷ These steps included (1) hiring and engaging additional qualified resources;¹⁸ (2) implementing new controls designed to enhance the monthly and quarterly financial close processes to ensure proper disclosures;¹⁹ (3) implementing additional review and monitoring of transactions to ensure compliance with the new policies and procedures;²⁰ and (4) training personnel responsible for the preparation and review of financial information.²¹

Management has devoted significant time and resources to completing the inventory reconciliation and becoming current in its periodic reporting. First, management directly participated in the time-intensive accounting forensics necessary to complete the reconciliation. This included determining the severity of the issue, when it started, how to remedy it, and then

¹⁷ IEH Corporation, Annual Report (Form 10-K for fiscal year ended March 31, 2020) (Oct. 8, 2020), <https://www.sec.gov/Archives/edgar/data/50292/000117494720000987/e11182-10k.htm>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

conducting an inventory reconciliation and creating audit evidence. IEH's management examined data back to 2017 and analyzed entries on both the periodic inventory costing and perpetual inventory costing systems. In all, management analyzed over one million lines of data and physically inspected the Company's inventory and warehouses.

Second, management has expended significant resources on outside accounting, consulting, and legal professionals to assist it with the inventory reconciliation and becoming current with its periodic filings. The Company engaged Marcum in August 2019 to complete quarterly reviews and annual audits. In August 2020, IEH hired Financial Consulting Strategies, a consulting firm focused on SEC financial reporting services, to assist with carry-forward data filtering and providing sufficient auditable evidence to Marcum. In August 2022, IEH hired additional outside securities counsel to assist with becoming current in its periodic reports. IEH estimates it has spent over \$1,000,000 on external resources in connection with the inventory reconciliation, updating its SAP System, and becoming current in its SEC periodic reports.

Significantly, the Company is now current in its periodic reporting obligations. IEH filed a comprehensive Super Form 10-K on June 22, 2023, which provides investors with financial information including audits of the fiscal years ended March 2020, 2021, and 2022 and a Form 10-K for fiscal year 2023 on October 6, 2023. IEH also filed its Form 10-Qs for the quarters ended June 30, 2022, September 30, 2022, December 31, 2022, June 30, 2023, and September 30, 2023.

The Commission has previously recognized each of these as evidence of remediation. *Advanced Life Sciences Holdings, Inc.*, Exchange Act Release No. 81253, 2017 WL 3214455 (July 28, 2017). In *Absolute Potential*, a case where the Commission imposed a revocation sanction, the Commission distinguished its decisions in *Phlo*, and in *e-Smart Technologies*, Release No. 50514 (Oct. 12, 2004), where in each case the Commission declined to impose a revocation

sanction. The Commission stated that in *Phlo*, the “issuer – unlike *Absolute* – pointed to specific internal accounting failures that led to its violations,” and noted that the company “made extensive and successful efforts to remedy the internal accounting failure that led to its violations, became current in its reporting obligations while the disciplinary proceeding was pending, and expended significant resources.” *Absolute Potential*, at 12. The Commission also distinguished the facts in *e-Smart Technologies* from those in *Absolute Potential* by observing that management had retained new securities counsel, explained the filing delinquencies, and was able to bring and keep the company current.

Like the issuer in *Phlo*, IEH identified specific internal accounting issues that led to its delayed filings and has made extensive and successful efforts to remedy the causes of its inability to file its periodic reports. In addition, like *Phlo*, IEH has become current in its reporting obligations and has expended significant resources in doing so, evidencing that the Company takes its Exchange Act reporting obligations seriously. Like the issuer in *e-Smart Technologies*, IEH has retained additional counsel, explained the filing delinquencies, and is current in its reporting obligations.

5. IEH has provided credible assurances against further violations.

The Company has offered concrete and credible assurances of its ability to remain current in its reporting obligations. Even before the Commission instituting these proceedings, IEH’s President and CEO stated in a press release filed on Form 8-K on June 28, 2021 that the Company was “totally focused” on becoming current in its SEC filings, and reported that the Company had made “progress towards resolving the related inventory and ERP accounting system issues that have caused the delay” in its periodic reports. Mr. Offerman stated that once the issues were resolved the Company expected to “complete the missing filings and once again be current in our reporting obligations.” He explained to investors that “the sheer volume of data that we have to

sort and filter in order to reconcile our legacy system with our new system has proven quite challenging.” Mr. Offerman also stated that the Company had “engaged outside resources and focused internal resources to address these subjects appropriately so that we can keep moving forward.”

The Company’s actions confirm the credibility of Mr. Offerman’s previous assurances. As explained *supra* II.B.1 and B.4, after expending significant resources, IEH followed through on Mr. Offerman’s words by diligently completing the inventory reconciliation and bringing its filings current as announced in a series of press releases from June 2023 through November 2023. Furthermore, IEH has implemented new controls and procedures to ensure timely reporting and has demonstrated that it has the resources to make future timely filings. In this regard, IEH has operating revenue and cash flows sufficient to ensure continued future compliance with its reporting obligations, as evidenced by its engagement of Marcum, Financial Consulting Strategies, and additional securities counsel to assist with preparing and filing the Super Form 10-K, Form 10-K for fiscal year 2023, and the Form 10-Qs for the quarters ended June 30, 2022, September 30, 2022, December 31, 2022, June 30, 2023, and September 30, 2023.

III. A Revocation or Suspension Would Be Disproportionate to IEH’s Violations and Would Not Serve Shareholders’ Interests.

Revocation and suspension are harsh remedies that would be disproportionate to the Company’s violations, would unfairly punish innocent IEH shareholders, and would fail to acknowledge IEH’s significant efforts to come into compliance. As explained *supra*, the Company takes its reporting obligations seriously, has a long track record of timely filings, and is current in its reporting obligations. A revocation or suspension under these circumstances would be disproportionate to IEH’s violations and would unfairly punish innocent IEH investors. *See* Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 9.5 (8th ed. 2023) (“It requires

serious violations to lead the SEC to conclude that eliminating a public market for the securities best serves the interest of investors.”). Moreover, other, less extreme regulatory remedies exist to address periodic reporting violations, including ordering an issuer to comply with reporting requirements pursuant to certain terms and conditions. *See* Securities Exchange Act Section 15(c)(4), 15 U.S.C. § 78o(c)(4); *see also* Louis Loss, Joel Seligman, Troy Paredes, *Fundamentals of Securities Regulation* (7th ed. 2018) Ch. 6, Section B.3 (opining that involuntary revocation of a security’s registration is draconian, harmful to innocent investors, and unnecessary because other remedies are available to the Commission to ensure periodic reporting compliance). Revocation or suspension also would punish innocent shareholders by diminishing the liquidity and value of their stock. *See Eagletech Communications, Inc.*, Exchange Act Release No. 54095, 2006 WL 1835958 *4 (July 5, 2006). Finally, imposing a revocation or suspension in this case would send the wrong message to other issuers who are delinquent in their filings. Where, as here, all the *Gateway* factors weigh against such a sanction, a revocation or suspension would fail to acknowledge and appropriately acknowledge IEH’s diligent, costly, and time-consuming efforts necessary to bring its periodic filings current. Revocation or suspension are not appropriate remedies under these circumstances, and the Commission should grant IEH’s Motion for Summary Disposition.

IV. Conclusion.

The Commission should grant IEH’s Motion for Summary Disposition because it is current in its reporting obligations and the *Gateway* factors weigh against a sanction. IEH has a long history of filing periodic reports with the Commission. It has expended significant resources to regain compliance with its periodic reporting obligations. It has taken concrete steps to become current in its periodic reporting obligations and to ensure that the Company will be able to comply

with its reporting obligations going forward. The Commission has all the undisputed evidence it needs to justify a decision not to impose a revocation sanction. The Commission should grant the Company's Motion for Summary Disposition.

CERTIFICATE OF SERVICE

In accordance with SEC Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 201.151, I certify that a copy of IEH Corporation's Motion for Summary Disposition was (a) filed on December 22, 2023, through the Commission's Electronic Filings in Administrative Proceedings (eFAP) system; and (b) was served on the following persons on December 22, 2023, via email at the email addresses indicated:

Sandhya C. Harris, Esq.
Samantha Williams, Esq.
Harrissan@sec.gov
Williamssam@sec.gov
Counsel for Division of Enforcement
U.S. Securities and Exchange Commission

Respondent and Respondent's legal counsel, Sean M. Donahue, agree to waive all paper service of all opinions and orders, and agree to accept service of all opinions and orders by email delivery. Their email addresses are: spurkayastha@iehcorp.com and seandonahue@paulhastings.com.

/s/ Sean M. Donahue
Sean M. Donahue
Paul Hastings LLP
Counsel for Respondent

Exhibit A

AFFIDAVIT OF DAVE OFFERMAN IN SUPPORT OF
IEH CORPORATION'S MOTION FOR SUMMARY DISPOSITION