

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-21214

IN THE MATTER OF,

JOSHUA ABRAHAMS, CPA,

Respondent.

**RESPONDENT JOSHUA ABRAHAMS'S REQUEST FOR ISSUANCE OF  
SUBPOENA AD TESTIFICANDUM**

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*Attorneys for Joshua Abrahams*

Pursuant to Rule 232 of the Commission’s Rules of Practice, counsel for Respondent Joshua Abrahams submits to the Secretary this request for issuance of the Subpoena Ad Testificandum, attached hereto, requiring the attendance and testimony of the following witness at the time and place specified in the attached subpoena:

1. Harris L. Devor, CPA (Exhibit A)

In relation thereto, Mr. Abrahams states as follows:

1. The Securities and Exchange Commission’s (“SEC” or the “Commission”) Division of Enforcement (“Division”) issued an Order Instituting Proceedings (“OIP”) and instituted this proceeding against Mr. Abrahams on October 21, 2022, seeking a remedy under Rule 102(e)(I)(ii) of the Commission’s Rules of Practice.

2. Mr. Abrahams, a certified public accountant (“CPA”), was formerly an audit partner for PricewaterhouseCooper LLP (“PwC”). At all relevant times for this action, Mr. Abrahams served as PwC’s lead engagement partner for Mattel, Inc. (“Mattel”).

3. The OIP alleges that Mr. Abrahams, in conducting the interim review of Mattel’s third quarter 2017 financial statements (“Q317 Review”) and the audit of Mattel’s fiscal year-end 2017 financial statements (“2017 Audit”), engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e) of the Commission’s Rules of Practice.

4. According to the OIP, Mattel made a \$109 million error in calculating the amount of a valuation allowance against its deferred tax assets in the third quarter of 2017 (the “Valuation Allowance Calculation”) because it allegedly applied a deferred tax liability from an indefinite-lived asset (i.e., intellectual property associated with “Thomas the Train Engine”) to the valuation allowance (“Thomas Error”).

5. The OIP further alleges that Mr. Abrahams failed to comply with multiple PCAOB professional standards, including interim review standards, identifying and assessing risks of

material misstatement, audit evidence, audit documentation, audit of internal controls over financial reporting, communications with audit committees, and due care in the performance of work. The OIP also alleges that Mr. Abrahams failed to maintain independence from his audit client by engaging in prohibited human resource services for Mattel.

6. The OIP designated this proceeding as one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i). The jointly proposed hearing date was set for January 29, 2024.

7. In a proceeding involving a single respondent, Rule 233 of the SEC Rules of Practice permits each side to depose three witnesses as of right, 17 C.F.R. § 201.233(a)(1). Rule 233 permits either side to notice two additional depositions upon a showing of “compelling need,”<sup>1</sup> § 201.233(a)(3);

8. On April 27, 2023, Mr. Abrahams and the Division entered into a joint stipulation for additional depositions whereby Mr. Abrahams and the Division agreed that five depositions each, for a total of ten depositions, was appropriate and necessary for this case.

9. The parties recognize that multiple SEC ALJ decisions have held that expert depositions are not included within Rule 233’s limit on the number of depositions,<sup>2</sup> and have not included expert depositions in the agreed-upon five depositions per side only for the purposes of

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<sup>1</sup> The party seeking additional depositions must demonstrate such need by (A) identifying each of the existing and proposed witnesses; (B) describing each witness’s role; (C) describing the matters expected to be covered with each witness and explaining why each witness “is necessary for the moving side’s arguments, claims or defenses”; and (D) showing that the proposed additional depositions will not be unreasonably cumulative or duplicative. § 201.233(a)(3)(ii)(A) – (D). The additional depositions must also “satisfy § 201.232(e),” in that the deposition is not “unreasonable, oppressive, unduly burdensome”; would not “unduly delay the hearing”; and is directed at a fact witness, expert witness, or document custodian. 17 C.F.R. §§ 201.232(e), 201.233(a)(3)(ii).

<sup>2</sup> See *In the Matter of Rd Legal Cap., LLC, & Roni Dersov Itz*, Release No. 4387, 2016 WL 11447855, at 2 (Nov. 23, 2016) (ALJ Foelak) (“In view of the Commission’s failure to specify that depositions of experts count toward the limit, it is concluded that they do not. Deposing the opposing party’s expert witnesses is a developmental step from the practice of interviewing them. Further, to require depositions of experts to count against the limit would invite gamesmanship.”); *In the Matter of Laurence I. Balter d/b/a Oracle Inv. Rsch.*, Release No. 4560, 2017 WL 10442721, at 2 (Jan. 27, 2017) (ALJ Foelak) (holding same); *In the Matter of David Pruitt, CPA*, Release No. 5219 (Nov. 3, 2017) (ALJ Grimes) (engaging in four pages of analysis of amended Rule 233(a)’s text and purpose before granting respondent’s motion for leave to depose “one expert witness in addition to the five witnesses he is currently permitted to depose”; “the Commission’s concern about depositions unnecessarily recreating the record[] do[es] not apply to expert witnesses,” because “the Division does not depose its own experts as part of its investigation”).

this matter.

10. On June 30, 2023, the United States Supreme Court granted the Commission's petition for a writ of certiorari in *SEC v. Jarkesy*, ---S. Ct.---, 2023 WL 4287448 (Mem) (Jun. 30, 2023).

11. On July 3, 2023, counsel for Mr. Abrahams requested that the Division stipulate to stay proceedings at the conclusion of fact discovery on July 31, 2023 pending the Supreme Court's disposition of *Jarkesy*. The Division consented to the request. On August 14, 2023, the Office of the Secretary entered an Order Postponing Proceeding consistent with the parties' stipulation.

12. On November 17, 2023, the parties entered into a joint stipulation to complete expert discovery whereby they agreed to complete expert discovery, notwithstanding the current stay in the proceedings. The parties also agreed that upon the close of expert discovery, this proceeding will again be stayed until and including the earlier of 30 days after the Supreme Court decision in *Jarkesy* or July 31, 2024.

13. Harris L. Devor, CPA, has been engaged as an expert by Counsel representing the Division of Enforcement. He has submitted two reports in this action: (1) the Expert Report of Harris L. Devor, CPA, dated December 15, 2023, and (2) the Rebuttal Report of Harris L. Devor, dated February 12, 2024. In these reports, Mr. Devor offers expert opinions in support of the Division's allegations against Mr. Abrahams.

14. Mr. Devor's testimony is necessary because Mr. Abrahams needs the opportunity to explore on the record the validity and scope of Mr. Devor's opinions.

Mr. Abrahams therefore respectfully requests that his Request for Issuance of Subpoena be granted and that the Secretary or any person authorized to issue the subpoena pursuant to Rule 232 sign the attached subpoena so that Mr. Abrahams may serve it as soon as possible.

DATED: May 2, 2024 \_\_\_\_\_

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*Attorneys for Joshua Abrahams*

**CERTIFICATE OF SERVICE**

In accordance with 17 C.F.R. §§ 201.150, 201.151, I certify that a copy of Respondent Joshua Abrahams's Request for Issuance of Subpoena Ad Testificandum and the attachments thereto were served on the following on May 2, 2024, via the method indicated below:

***VIA EMAIL***

Stephen Kam  
Trial Counsel  
Securities and Exchange Commission  
444 Flower Street, Suite 900  
Los Angeles, CA 90071  
Email: KamS@SEC.GOV  
Telephone: (323) 302-7465

Dated: May 2, 2024

*/s/ Thomas A. Zaccaro*  
Thomas A. Zaccaro