

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21790

In the Matter of

**ERIC CHRISTOPHER
CANNON,**

Respondent.

**DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S
RENEWED MOTION FOR AN ORDER STAYING OR DISMISSING THE
AMENDED ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS**

May 3, 2024

Donald W. Searles
Kathryn C. Wanner
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Division of Enforcement
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Counsel for Division of Enforcement

The Division of Enforcement (“Division”) opposes Respondent Eric Christopher Cannon’s (“Respondent”) renewed motion for an order staying or, in the alternative, dismissing the amended order instituting administrative proceedings.

On April 26, 2024, the Division filed a motion for summary disposition under Rule 250(b) of the SEC’s Rule of Practice. Respondent’s counsel was served via UPS express next day air, which was delivered on April 28, 2024. Pursuant to Rules 150(d), 154(b) and 160, Respondent’s opposition to the Division’s motion for summary disposition is due on May 6, 2024.

Respondent now moves – for the second time – to postpone these proceedings pending the resolution of his appeal of the district court’s underlying judgment. Respondent’s first motion was filed on January 19, 2024, and was denied by the Commission on March 27, 2024. In its March 27 Order, the Commission construed Respondent’s motion as one requesting postponement under Rule 161. That rule authorizes adjournments for “good cause shown” but, as the Commission noted, such motions are “‘strongly disfavor[ed]’ unless the movant makes ‘a strong showing that the denial of the request or motion would substantially prejudice [his] case.’” *See* March 27 Order, at p. 3, n. 10. In finding that Respondent had failed to make such a showing, the Commission held that “it is not appropriate to grant an indefinite stay so that respondent can pursue other relief.” *Id.*

In his renewed motion, Respondent moves for a limited stay or postponement until the earlier of August 1, 2024, or resolution of his pending motion, filed on April 30, 2024 in the Ninth Circuit Court of Appeals, to stay the permanent injunction pending his appeal. Other than attaching that motion to his renewed motion for a stay of these proceedings, Respondent makes no effort to argue the merits of his Ninth Circuit motion or, more importantly, make any showing that the denial of his renewed motion for stay of these proceedings would substantially prejudice his case

in this proceeding.¹ Accordingly, Respondent's renewed request for a postponement of these proceedings should be denied.

Respondent's alternative request that these proceedings be dismissed under the Due Process Clause or on *res judicata* grounds should also be rejected.

Respondent's due process claim, predicated on the notion that the Commission cannot fairly adjudicate this proceeding as it is the same entity that litigated against him the federal court action, has been soundly rejected. *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104 (D.C. Cir. 1988). As the D. C. Court of Appeals observed, "[i]t is very typical for members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in ensuing hearings. *This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law.*" *Id.* at 1106 (emphasis in original) (quoting *Withrow v. Larkin*, 421 U.S. 35, 46 (1976)).

¹ In his Ninth Circuit motion for a stay of the permanent injunction, Respondent makes the same arguments that he presented to the district court in seeking a stay pending appeal. *See* Declaration of Donald W. Searles in Support of Division's Opposition to Respondent's Renewed Motion For A Stay of Proceedings ("Searles Decl."), Ex. 1 (Dkt. No, 573, 573-1, 573-2, 573-3, 574-4: Cannon's notice of motion, memorandum of points and authorities in support thereof, and supporting declaration in support of motion for stay pending appeal); Ex. 2. (Dkt. No 579: SEC opposition); Ex. 3 (Dkt No.581; Cannon reply); Ex. 4 (Dkt No. 587; Minutes of motion for stay and hearing transcript); Ex 5 (Dkt. No. 620: Hearing Transcript); Ex. 6 (Dkt. No. 590: Order denying motion to stay). With respect to the requisite showing of substantial prejudice, Respondent argued, both in his district court motion for a stay pending appeal and in his Ninth Circuit motion to stay the injunction, that without a stay he would be irreparably harmed by being labeled a "bad actor" under Rule 506(d) of Regulation D, which would disqualify any issuer with whom Respondent is affiliated in a covered capacity from issuing securities exempt from the registration requirements of Section 5 of the Securities Act. However, Respondent made no showing in the district court, in the court of appeals, or in his renewed motion for a stay of these proceedings, that he is currently associated with any issuer, nor does he claim that he intends to become associated with an issuer, much less one that is contemplating offering securities exempt from the registration requirements within the limited period for which he seeks a postponement.

Respondent's argument that this proceeding should be dismissed on *res judicata* grounds because the Division could have sought an associational bar and penny stock bar in the district court action should also be rejected. Section 15(b)(6)(A) of the Exchange Act provides that the Commission – not the district court – may order an associational bar. And while district courts are granted the authority to prohibit persons from participating in the offering of a penny stock pursuant to Section 21(d)(6) of the Exchange Act, nothing prevents the Division from seeking such a bar in this proceeding rather than in the district court. In *Blinder*, the District of Columbia Circuit Court expressly found that where the Commission did not seek specific sanctions (save for injunctive relief) in the district court, there is no Due Process Clause violation where the Commission subsequently seeks such relief in an administrative proceeding, as to find otherwise “would do violence to the core value of flexibility (coupled with appropriate procedural protections) that has been the hallmark of the modern administrative process.” *Id.* Consistent with *Blinder*, the Commission has repeatedly rejected the doctrine of *res judicata* as a defense to follow-on administrative proceedings such as this one. *See, e.g., Tzemach David Netzer Korem*, Release No. 70044 at *9 (July 26, 2013) (rejecting *res judicata* defense, as “the Exchange Act expressly allows us to institute administrative proceedings based on an injunction.”); *Michael T. Studer*, Exchange Act Release No. 50411, 2004 SEC LEXIS 2135 (Sept. 24, 2004) (neither *res judicata* nor collateral estoppel limits the Commission's authority to institute administrative proceedings based on an injunction).

Besides being unavailable, Respondent does not satisfy the elements of a *res judicata* defense. This is because there is no “identity of the cause of action in both the earlier and the later suit” as the final judgment in the district court action was based on Respondent's conduct as charged in that action, while this administrative proceeding was instituted based on the injunction

itself. *Tzemach David Netzer Korem* , at *9; see also *Lodavina Grosnickle*, Initial Decisions Release No 441, 2011 SEC LEXIS 3969 (Nov. 10, 2011) (“[i]t well established that an administrative follow-on proceeding does not qualify as the “same claim or cause of action” as its predicate legal proceeding.”) (citing *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *13 (Feb. 13, 2009)).

Therefore, because Respondent has not made the requisite showing under Rules 161 or 250, his renewed motion to stay or dismiss these proceedings should be denied.

DIVISION OF ENFORCEMENT

By its Attorneys:



Donald W. Searles
Kathryn C. Wanner

In the Matter of Eric Christopher Cannon
Administrative Proceeding File No. 3-21790
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

**DIVISION OF ENFORCEMENT'S OPPOSITION TO
RESPONDENT'S RENEWED MOTION TO STAY PROCEEDINGS**

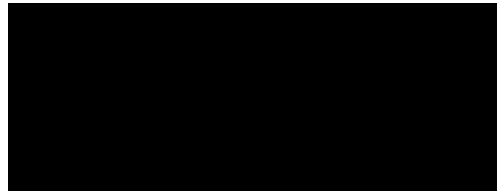
was served on May 3, 2024 upon the following parties as follows:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

(By eFAP)

Nicolas Morgan, Esq.
Investor Choice Advocates Network
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Nicolas.morgan@ican.law
Counsel for Eric Christopher Cannon

(By electronic mail)



Dated: May 3, 2024

Donald W. Searles

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-21790**

In the Matter of

**ERIC CHRISTOPHER
CANNON,**

Respondent.

**DECLARATION OF DONALD W.
SEARLES IN SUPPORT OF
DIVISION OF ENFORCEMENT'S
OPPOSITION TO RESPONDENT'S
RENEWED MOTION FOR AN
ORDER STAYING OR
DISMISSING THE AMENDED
ORDER INSTITUTING
ADMINISTRATIVE
PROCEEDINGS**

I, DONALD W. SEARLES, pursuant to 28 U.S.C. § 1746, declare:

1. I am an attorney at law admitted to practice law in the State of California and before the United States District Court for the Central District of California. I am employed as an attorney in the Los Angeles Regional Office of the U.S. Securities and Exchange Commission (“SEC”) and am counsel for the Division of Enforcement (“Division”) in this case. I have personal knowledge or knowledge based upon my review of the file of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.

2. A true and correct copy of the Remaining Defendants’ Notice of Motion and Motion to Stay Enforcement of the Judgments Without a Bond Pending Appeal, Memorandum of Points and Authorities in support of Remaining Defendants’ Motion to Stay, Brenda Barry’s Redacted Declaration in support of Motion to Stay, Eric Christopher Cannon’s Redacted Declaration in support of Motion to Stay, and Caleb Austin Moody’s Redacted Declaration in support of Motion to Stay in the civil action *Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.*, No. 2:15-CV-02563-DDP-ASx, in the Central District of California at docket numbers 573, 573-1, 573-2, 573-3, and 573-4 is attached hereto as Exhibit 1.

3. A true and correct copy of Plaintiff SEC’s Opposition to Defendants’ Motion to Stay Enforcement of Judgments Pending Appeal in the civil action *Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.*, No. 2:15-CV-02563-DDP-AS, in the Central District of California at docket number 579 is attached hereto as Exhibit 2.

4. A true and correct copy of Defendants’ Reply Memorandum in support of Remaining Defendants’ Motion to Stay Enforcement in the civil action *Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.*, No. 2:15-CV-02563-DDP-ASx, in the Central District of California at docket number 581 is attached hereto as Exhibit 3.

5. A true and correct copy of the Minutes of Defendants' Motion to Stay Enforcement in the civil action *Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.*, No. 2:15-CV-02563-DDP-ASx, in the Central District of California at docket number 587 is attached hereto as Exhibit 4.

6. A true and correct copy of the hearing transcript for Defendants' Motion to Stay Enforcement in the civil action *Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.*, No. 2:15-CV-02563-DDP-AS, in the Central District of California at docket number 620 is attached hereto as Exhibit 5.

7. A true and correct copy of the Court Order Denying Defendants' Motion to Stay Enforcement in the civil action *Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.*, No. 2:15-CV-02563-DDP-AS, in the Central District of California at docket number 590 is attached hereto as Exhibit 6.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 3, 2024, in Los Angeles, California.

A large black rectangular redaction box covering the signature area.

Donald W. Searles

In the Matter of Eric Christopher Cannon
Administrative Proceeding File No. 3-21790
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

DECLARATION OF DONALD W. SEARLES IN SUPPORT OF DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S RENEWED MOTION FOR AN ORDER STAYING OR DISMISSING THE AMENDED ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS

was served on May 3, 2024, upon the following parties as follows:

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Counsel for Eric Christopher Cannon

(By electronic mail)

Dated: May 3, 2024

