BEFORE THE UNITED STATES SECURITIES & EXCHANGE COMMISSION

In The Matter of POINT OF CARE NANO-TECHNOLOGY, INC.	Securities Exchange Act of 1934 Admin. Proc. File No. 3-22247

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Respondent Point of Care Nano-Technology, Inc. ("PCNT" or "Respondent"), by undersigned counsel, respectfully submits this response to the Order to Show Cause (the "OSC") issued by the United States Securities & Exchange Commission (the "SEC" or "Commission") on November 27, 2024 in this proceeding.

- I. INTRODUCTION -

The OSC commands PCNT to show cause why the registration of its securities should not be suspended or revoked by default due to PCNT's failure to file an answer in response to the Commission's October 15, 2024 Order Instituting Administrative Proceedings (the "OIP"). According to the OIP, PCNT has not filed periodic reports (Form 10-Ks and 10-Qs) since it filed its 10-Q for the Quarter Ending ("QE") April 31,2023 and, as a result, it may be necessary and appropriate for the Commission to revoke or suspend the registration of PCNT's securities.

- A -

As a threshold matter, PCNT acknowledges, and is not trying to hide from the fact, that, since June 12, 2023 when it timely filed its 10-Q for QE April 31, 2023, it has been delinquent in filing five periodic reports: its 10-K for fiscal year ending ("FYE") July 31, 2023; its 10-Qs for QE Oct. 31, 2023, QE Jan. 31, 2024, and QE Apr. 30, 2024; and its 10-K for FYE July 31, 2024.

However, PCNT did not refrain from filing those reports in deliberate disregard of SEC rules. Far from it. PCNT was unable to file those reports on a timely basis because, first, the PCAOB revoked the registration of PCNT's then-auditor, K.R. Margetson Ltd. ("KRM") on

September 12, 2023.[1] As a result, PCNT could not thereafter file periodic reports as it could not include in them information from financial statements audited by KRM for prior periods.[2] PCNT had to have KRM's audits re-done by a new auditor to be able to file periodic reports. Second, PCNT was virtually out of money when KRM's registration was revoked.[3] Thus, it did not have the resources to engage a new auditor to re-do KRM's audits at that time.

Thereafter, PCNT worked diligently to obtain the resources to engage a new auditor, which it did on May 30, 2024.[4] Since then, the new auditor and PCNT have worked hard to re-do KRM's prior audits and to prepare and file the five outstanding periodic reports.

Indeed, PCNT has already rectified some of the delinquency as it filed its 10-K for FYE July 31, 2023 on October 29, 2024 and its 10-Q for QE Oct. 31, 2023 on December 3, 2024. PCNT will rectify the remainder of this issue by filing its 10-Qs for QE Jan. 31, 2024 and QE April 30, 2024 by the middle and end of this month (December), respectively, and its 10-K for FYE July 31, 2024 by the end of January 2025.

PCNT's 10-Q for QE Oct. 31, 2024 is not due until December 16, 2024, so it is not past due. In the interests of candor, PCNT notes that it likely will not be able to file that 10-Q on time

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[1] *See In re K.R. Margetson Ltd. and Keith R. Margetson,* Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions, PCAOB Release No. 105-2023-023 (Sep. 12, 2023), *available at* https://assets.pcaobus.org/pcaob-dev/docs/default-source/enforcement/decisions/documents/105-2023-023-krmargetson.pdf?sfvrsn=42692443_2 (last accessed Dec. 7, 2024).

[2] *See, e.g.,* SEC Financial Reporting Manual, Topic 4, § 4115.1: "If the PCAOB revokes the registration of an audit firm, audit reports issued by that firm may no longer be included in a registrant's filings made on or after the date the firm's registration is revoked, even if the report was previously issued before the date of revocation. Financial statements previously audited by a firm whose registration has been revoked would generally need to be reaudited by a PCAOB registered firm prior to inclusion in future filings…." *Available at* https://www.sec.gov/about/divisions-offices/division-corporation-finance/financial-reporting-manual (last accessed Dec. 7, 2024).

[3] *See, e.g.,* PCNT 10-Q for QE Apr. 30, 2023 filed June 12, 2023 (showing, *inter alia,* company's cash at $2,312, no revenues for the quarter, and negative cash flow of over $50,000).

[4] *See* PCNT Form 8-K filed May 31, 2024.

due to the work on getting the outstanding periodic reports filed. If PCNT does not timely file that 10-Q, it will file a timely Form 12b-25, and it will get that 10-Q filed by the end of February 2025.

- B -

Respectfully, the registration of PCNT's securities should not be revoked by default and PCNT should be allowed to put on evidence and litigate this proceeding on its merits because, *first*, there is good reason to excuse PCNT's failure to respond to the OIP – namely, PCNT never learned of the OIP until the Order to Show Cause was issued. *Second,* PCNT has a meritorious defense to suspending or revoking the registration of its common stock for not filing periodic reports. *Third,* PCNT has timely responded to the OSC and complied with all of its requirements. These reasons are explained more fully below.

- II. BACKGROUND -

PCNT is organized under the laws of the State of Nevada. Its Nevada corporate registration status is currently active.[5] PCNT registered its shares of common stock on a voluntary basis by filing a Form 10-12G with the Commission on October 15, 2021. By law, that registration statement became effective automatically 60 days after its filing, *i.e.*, December 14, 2021. PCNT's shares of common stock are the only class of its securities that are registered with the SEC.

As of May 2024, PCNT has focused its business on developing and commercializing kits for drug testing and to diagnose illnesses through the testing of human saliva. *See, e.g.,* PCNT Form 10-K filed Oct. 29, 2024, at 4-5. PCNT sells such kits in the United States and will soon be selling them in Canada and Mexico, too, as a result of a license agreement it entered into recently. *See id*. Prior to that time, the focus of PCNT's business was on distributing certain intellectual property in animal nutrition and animal supplements. *See id.*

[5] *See* Ex. 1 hereto (email from Nevada Secy. of State that company's registration was reinstated December 3, 2024).

- II. ARGUMENT –

A. PCNT Did Not Learn of the OIP Until the OSC Was Issued

The OSC (at p. 1) requires that PCNT's response "address the reasons for its failure to timely file an answer [to the OIP]." *Accord* Comm'n Rule of Prac.155(b), 17 C.F.R. § 155(b) (requiring a motion to set aside a default state, *inter alia*, the reasons for the failure to defend).

By no means did PCNT intentionally fail to respond to the OIP "or otherwise fail to 'make defense of [this] proceeding a priority.'" *In re Application of David Mura*, Admin. Proc. File No. 3-15045, Exchange Act Rel. No. 72080, at 8 (May 2, 2014). The reason that PCNT did not respond timely to the OIP was that it did not learn of the OIP until the evening of November 27, 2024 when an investor emailed PCNT's CEO, Nicholas DeVito, to inquire about the OSC. PCNT then promptly engaged undersigned counsel to look into the OSC and assist PCNT in determining what had been filed against it, and to prepare a response to the filings.

PCNT leadership never received service of the OIP. PCNT does not doubt that the Commission sent out the OIP for service. The docket in this matter does not contain the Declaration of Sandhya C. Harris, which purportedly established that service was made on PCNT. Therefore, PCNT does not know the address at which service of the OIP was purportedly made.

The address listed for PCNT on its most recent filing with the SEC before the issuance of the OIP (its Form 8-K filed June 10, 2024) was 109 AmberSweet Way, Davenport, FL 33897. If the Commission served the OIP at that address, there is a good reason PCNT did not receive the OIP. The PCNT mailbox at that address was defunct at that time. A third-party owned (and owns) that address. At the time of service (and to this day) he and PCNT were not on speaking terms. No doubt due to that, he did not forward the OIP to PCNT leadership if it had been served there.[6]

[6] PCNT also never received the delinquency letter purportedly sent to it by the Division of Corporation Finance. *See* OIP at ¶ 2. Presumably PCNT did not receive that letter for the same reasons noted above.

PCNT recognizes that it is responsible for keeping the address where it can receive communications from the Commission up-to-date. PCNT's failure to do that was not the result of a deliberate disregard of that requirement but, at most, due to excusable neglect given the (unique) circumstances explained above. Since the time PCNT learned that it did not receive service of the OIP, it has updated its address to one at which its leadership can be sure to receive Commission communications. *See, e.g.,* PCNT Form 10-Q/A filed Dec. 5, 2024 (listing 531 US HWY 22 East, Suite 232, Whitehouse Station, NJ 08889 as its principal office address).

B. PCNT Has a Meritorious Defense to Suspending or Revoking Its Stock Registration

The Commission should also rule in PCNT's favor on the OSC because the OSC (at p. 1) requires that PCNT's response attach a proposed answer to the OIP. PCNT has done that. *See* Exhibit 2 hereto. Moreover, PCNT's answer asserts a meritorious defense to suspending or revoking the registration for its common stock. *Accord* Comm'n Rule of Prac.155(b), 17 C.F.R. § 155(b) (requiring a motion to set aside a default to state, *inter alia*, the proposed defense in the proceeding); *In re Application of David Mura*, *supra,* at 12-13 (stating that, while the asserted defense must be legally cognizable, "we do not require the respondent to establish [in a motion to vacate a default] that he is likely to prevail on the proposed defense or to make a detailed evidentiary showing regarding the theory underlying [it]").

The first defense stated in PCNT's answer is that the registration of its common stock should not be suspended or revoked in light of the facts of this case as applied to the multi-factor test the Commission uses to determine if, under Section 12(j) of the Exchange Act, it is necessary and appropriate for the protection of investors to suspend or revoke the registration of an issuer's shares for failure to file periodic reports. *See In re Gateway Int'l Holdings, Inc.,* Admin. Proc. File

No. 3-11894, at 10 (May 31, 2006) (listing factors); *see also In re The Docs, Inc.,* Admin. Proc. File No. 3-21694, Exchange Act Rel. No. 99272, at 5 (Jan. 4, 2024).

PCNT has a good basis for asserting this defense. For example, among the factors under that test are (1) "the isolated or recurrent nature of the violations," (2) "the degree of culpability involved," and (3) "the extent of the issuer's efforts to remedy its past violations and ensure future compliance." *See, e.g., In re Gateway, supra.* These factors weigh significantly in PCNT's favor.

PCNT's failure to timely file the periodic reports in question was isolated because the failure to file those all stem from one event, the PCAOB's de-registration of KRM in September 2023. And, before that event, PCNT had timely filed all its periodic reports following the December 2021 registration for its common stock pursuant to Form 10-12G.

PCNT's degree of culpability is low to non-existent. The reason being is, as explained in the Introduction above, PCNT was unable to file the periodic reports in question due to the PCAOB's de-registration of KRM and PCNT's lack of financial resources to engage a new auditor for several months to re-do KRM's audits so it could file those periodic reports.

PCNT's has worked diligently to remedy the issue as to its unfiled periodic reports. As explained above, upon the de-registration of KRM, PCNT strove to obtain sufficient resources to engage a new auditor to re-do KRM's audits so PCNT could file periodic reports. After engaging the new auditor, it and PCNT have worked, and continue to work, assiduously to get PCNT's outstanding periodic reports filed. As of the filing of the OIP, five periodic reports were outstanding. PCNT has since filed two of those reports. It will file two more by the end of this month. It will file the remaining report by the end of the month thereafter.

Regarding assurance that PCNT will file its periodic reports on timely basis in the future, PCNT once again has an auditor that is registered with the PCAOB and the resources to pay the auditor to prepare the necessary audits for its future periodic reports.

C. PCNT's Response to the OSC Is Timely and Meets Its Requirements

Finally, the Commission should rule in PCNT's favor on the OSC because PCNT has responded to the OSC on timely basis and met all of its requirements. *Accord* Comm'n Rule of Prac.155(b), 17 C.F.R. § 155(b) (requiring that a motion to set aside a default state be made within a reasonable period of time, among other things). PCNT's timely and complete response to the OSC should underscore to the Commission that PCNT takes this proceeding and the charges in it seriously and that PCNT is acting in good faith in this proceeding.

- III. CONCLUSION –

For the foregoing reasons, the Commission, respectfully, should rule in PCNT's favor on the Order to Show Cause and allow PCNT to litigate the merits of the OIP rather than dispose of this proceeding by default on a procedural technicality (an untimely answer to the OIP). *Accord Gilmore v. Palestinian Interim Self–Government Auth.,* 843 F.3d 958, 966 (D.C. Cir. 2017) (explaining that "'[c]ourts ... universally favor trials on the merits" over default judgments).

Dated: December 9, 2024

Respectfully submitted:

[redacted]

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17 C.F.R. § 201.151(e)(3) CERTIFICATION

The undersigned hereby certifies that neither the foregoing Respondent's Response To Order To Show Cause nor any exhibits thereto contains any sensitive personal information listed in 17 C.F.R. § 201.151(e)(2).

[redacted]

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CERTIFICATE OF FILING & SERVICE

The undersigned hereby certifies that on December 9, 2024 he caused the foregoing Respondent's Response To Order To Show Cause (including all exhibits thereto) to be filed with the United States Securities & Exchange Commission via https://www.sec.gov/efap and a copy of the same to be served, by email, on the following counsel for the Commission:

Sandhya Harris, Esq.
Senior Counsel
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BEFORE THE UNITED STATES SECURITIES & EXCHANGE COMMISSION

In The Matter of POINT OF CARE NANO-TECHNOLOGY, INC.	Securities Exchange Act of 1934 Admin. Proc. File No. 3-22247

[PROPOSED] ANSWER OF RESPONDENT
TO ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS

Respondent Point of Care Nano-Technology, Inc. ("PCNT" or "Respondent"), by undersigned counsel and pursuant to Commission Rule of Practice 202, 17 C.F.R. § 201.220, respectfully submits this Answer to the October 15, 2024 Order Instituting Administrative Proceedings (the "OIP") issued by the United States Securities & Exchange Commission (the "SEC" or "Commission"). For ease of reference only, PCNT utilizes the headings and sub-heading appearing in the OIP in responding to the paragraphs of the OIP below.

- ANSWER TO THE ALLEGATIONS OF THE OIP -

I.

Section I of the OIP is introductory in nature, and thus no response to Section I is required. To the extent a response to Section I is required, PCNT denies the statements therein.

II.

The allegations in the first and second sentences in numbered paragraph 1 of the OIP are denied. The allegations in the third sentence of paragraph 1 of the OIP are admitted. By way of further response, PCNT admits that:

a. it has one class of securities (its common stock) registered with the Commission pursuant to a Form 10-12G it filed with the Commission on October 15, 2021;

b. the address for its principal office listed with the Commission as of December 5, 2024 (approx.) is 531 US HWY 22 East, Suite 232, Whitehouse Station, NJ 08889;

c. its Nevada corporate registration was reinstated to active as of December 3, 2024; and,

d. since June 12, 2023 when PCNT timely filed its 10-Q for the Quarter Ending ("QE") April 31, 2023, PCNT was late in filing its 10-K for fiscal year ending ("FYE") July 31, 2023 and its 10-Q for QE Oct. 31, 2023 and that it has yet to file – but will shortly file – its 10-Qs for QE Jan. 31, 2024, and QE Apr. 30, 2024; and its 10-K for FYE July 31, 2024. PCNT filed its 10-K for FYE July 31, 2023 on October 29, 2024 and its 10-Q for QE Oct. 31, 2023 on December 3, 2024.

The allegations in numbered paragraph 2 of the OIP are denied.

The allegations in numbered paragraph 3 of the OIP characterize legal provisions to which no response is required. To the extent that a response is required, those allegations are denied, and PCNT respectfully refers the Commission to the text of Exchange Act Section 13(a), Exchange Act Rule 13a-1, and Exchange Act Rule 13a-13, respectively, for a complete and accurate recitation of what they state.

The allegations in numbered paragraph 4 of the OIP state a legal conclusion to which no response is required. To the extent that a response is required, those allegations are denied.

III.

Section III of the OIP recites the Commission's conclusion that bringing this proceeding is warranted, and thus no response to Section III is required. To the extent a response to Section III is required, PCNT denies the statements therein. By way of further response, PCNT states that it would not be necessary or appropriate for the Commission to suspend or revoke the registration of PCNT's securities registered pursuant Section 12 of the Exchange Act for reasons stated under its First Defense below

- DEFENSES -

PCNT asserts the following defenses to the OIP. By asserting these defenses, PCNT does not admit that it bears the burden of proof or persuasion on any of them.

First Defense

Suspending or revoking the registration for PCNT's common stock for not filing periodic reports would not be appropriate under the standard enunciated in *In re Gateway Int'l Holdings, Inc.,* Admin. Proc. File No. 3-11894, at 10 (May 31, 2006) and its progeny. Among other reasons:

a. PCNT's culpability for the delinquent periodic reports is extremely low to non-existent. PCNT did not refrain from filing the reports on a timely basis in deliberate disregard of SEC rules. Rather, PCNT was unable to file those reports on a timely basis because, first, the PCAOB revoked the registration of PCNT's then-auditor, K.R. Margetson Ltd. ("KRM") on September 12, 2023. As a result, PCNT could not thereafter file periodic reports as it could not include in them information from financial statements audited by KRM for prior periods. PCNT had to have KRM's audits re-done by a new auditor to be able to file periodic reports. Second, PCNT was virtually out of money when KRM's registration was revoked. Thus, it did not have the resources to engage a new auditor to re-do KRM's audits at that time.

b. PCNT has diligently worked to remedy the issue of the outstanding periodic reports. After the PCAOB revoked KRM's registration, PCNT worked diligently to obtain the resources to engage a new auditor, which it did on May 30, 2024. Since then, the new auditor and PCNT have worked hard to re-do KRM's prior audits and to prepare and file the five outstanding periodic reports. And, in fact, PCNT has already rectified some of its delinquent periodic reports as it filed its 10-K for FYE

July 31, 2023 on October 29, 2024 and its 10-Q for QE Oct. 31, 2023 on December 3, 2024. PCNT will rectify the remainder of this issue by filing its 10-Qs for QE Jan. 31, 2024 and QE April 30, 2024 by the middle and end of this month (December), respectively, and its 10-K for FYE July 31, 2024 by the end of January 2025.

c. PCNT will be able to file its period reports on a timely basis starting with its 10-Q for QE Jan. 31, 2025 as it has a new auditor (not KRM) and the ability to pay that new auditor.

d. PCNT's failure to timely file the periodic reports noted above was an isolated, and not recurrent event, because the failure to file those reports all stem from one occurrence, the PCAOB's de-registration of KRM in September 2023. Before that event, PCNT had timely filed all its periodic reports following the December 2021 registration for its common stock pursuant to Form 10-12G.

Second Defense

The Commission's claims are barred by the doctrines of laches, estoppel and/or waiver.

- RESERVATION OF RIGHTS -

PCNT expressly reserves its rights to amend, modify, and supplement this Answer, including its right assert additional or different defenses to the OIP.

[*The remainder of this page is purposefully blank; the signature page follows.*]

Dated: December 9, 2024

Respectfully submitted:

[redacted]

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17 C.F.R. § 201.151(e)(3) CERTIFICATION

The undersigned hereby certifies that the foregoing [Proposed] Answer of Respondent to Order Instituting Administrative Proceedings does not contain any sensitive personal information listed in 17 C.F.R. § 201.151(e)(2).

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