UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97644 / June 2, 2023

Admin. Proc. File No. 3-20297

In the Matter of

MJ BIOTECH, INC. (F/K/A MICHAEL JAMES ENTERPRISES, INC.)

CORRECTED ORDER GRANTING MOTION TO SET ASIDE DEFAULT AND ORDERING BRIEFS

On January 28, 2022, MJ Biotech, Inc., an issuer with a class of securities formerly registered with the Commission, moved to set aside a default the Commission imposed in an opinion accompanying an order revoking the registration of all classes of MJ Biotech's registered securities.[1]

On April 5, 2022, the Commission issued a Statement Relating to Certain Administrative Adjudications (the "April 5 Statement") describing a control deficiency related to the separation of enforcement and adjudicatory functions within the agency's system for administrative adjudication.[2] The April 5 Statement explained that the Chair initiated a comprehensive internal review to assess the scope and potential impact of the control deficiency, which review was conducted by experienced investigative staff from the Division of Examinations under the supervision of the Commission's General Counsel. The April 5 Statement further disclosed the review team's findings regarding the administrative proceedings at issue in *SEC v. Cochran*[3] and *Jarkesy v. SEC*.[4] As part of the April 5 Statement, the Commission further committed to release information about additional affected matters.

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1 *See MJ Biotech, Inc. (f/k/a Michael James Enters., Inc.)*, Exchange Act Release No. 92880, 2021 WL 4067015 (Sept. 3, 2021) (opinion and order finding MJ Biotech in default and imposing remedial sanctions).

2 https://www.sec.gov/news/statement/commission-statement-relating-certain-administrative-adjudications.

3 Admin. Proc. File No. 3-17228; *see also Axon Enters., Inc. v. FTC*, 598 U.S. ___, 143 S. Ct. 890 (2023).

4 Admin. Proc. File No. 3-15255; *see also Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), *pet. for rev. filed* (Mar. 8, 2023).

On June 2, 2023, we released a Second Commission Statement Relating to Certain Administrative Adjudications (the "June 2 Statement") regarding *Cochran* and *Jarkesy,* as well as findings about additional adjudicatory matters currently pending before the Commission that were affected by the control deficiency identified in the April 5 Statement.[5] Those include 28 adjudicatory matters—including *MJ Biotech*—in which memoranda specific to one of those particular matters ("Affected Matters") were accessed by Division of Enforcement administrative staff. With respect to those Affected Matters, the review team found no evidence that any Enforcement staff assigned to investigate and prosecute any of the 28 Affected Matters accessed any of the case-specific memoranda before the Commission approved the action recommended in them. Further, the review team found no evidence that any Enforcement staff assigned to investigate and prosecute any of the 28 matters contacted or communicated with Adjudication staff as to any of those matters.

The review team's investigation thus uncovered no evidence that the control deficiency resulted in harm to any respondent or affected the Commission's adjudication in any proceeding. We nevertheless determined to dismiss, as a matter of discretion, all pending proceedings against respondents that the review team found to be connected to the control deficiency, as to which the Commission is seeking remedial relief, and in which there is no final order.[6] We found that doing so was appropriate to preserve the Commission's resources.[7] Here, however, MJ Biotech seeks to reopen a final Commission order. This application therefore falls outside the class of cases the Commission has determined to dismiss on a discretionary basis.

Instead, we address MJ Biotech's motion under the traditional standard for setting aside a default based on the particular facts raised by MJ Biotech's motion. Under Rule of Practice 155(b), a default may be set aside "for good cause shown."[8] To establish good cause, a moving party, such as MJ Biotech, must (1) make its motion within a reasonable time; (2) state "a sufficient reason for the failure to appear or defend that led to the default, i.e., that the respondent did not intentionally default or otherwise fail to make defense of a proceeding a priority"; and (3) "articulate a meritorious defense to the administrative proceeding."[9]

We find that MJ Biotech has established good cause under these factors. First, MJ Biotech sought relief within a reasonable time. As argued in its papers, "[u]pon learning of the

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5 https://www.sec.gov/news/statement/second-commission-statement-relating-certain-administrative-adjudications.

6 Order Dismissing Proceedings, *In re Pending Administrative Proceedings* (June 2, 2023), https://www.sec.gov/litigation/opinions.htm.

7 *Id.*

8 Rule of Practice 155(b), 17 C.F.R. § 201.155(b).

9 *See David Mura*, Exchange Act Release No. 72080, 2014 WL 1744129, at *4-6 (May 2, 2014) (internal quotations and alterations omitted); *see also* 17 C.F.R. § 201.155(b) ("A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding.").

default action" MJ Biotech engaged consultants and counsel to complete and review the delinquent filings and communicated with the Division of Enforcement within a few weeks of learning of the default. Although the CEO continued to experience serious health difficulties after learning of the entry of default that limited her ability to work, and the company had recently changed its auditors, MJ Biotech sought relief from the Commission within a few months of learning of the default. Under the totality of the circumstances, we find that MJ Biotech sought relief within a reasonable time.[10] Second, MJ Biotech does not appear to have intentionally defaulted; it represents that its chief executive officer—who was the company's owner and sole corporate officer and responsible for all its compliance requirements—had "genuine" and "debilitating" health issues, which continued after the default was entered. And, finally, MJ Biotech proposed a sufficiently articulated defense with its request to set aside the default by claiming to have cured its periodic filing delinquencies existing at the time the OIP was issued.[11]

Accordingly, IT IS ORDERED that the entry of default is set aside and that the Commission's opinion and order revoking the registration of all classes of MJ Biotech's registered securities is vacated.

IT IS FURTHER ORDERED that the parties shall submit simultaneous briefs by June 30, 2023, addressing the effect of this order's setting aside the default, including on prior actions taken in this proceeding, and any other matters that the parties believe would assist the Commission in determining the appropriate procedure going forward for (and other issues related to) this proceeding.[12] It is further ordered that the parties may file simultaneous response briefs by July 28, 2023, addressing the same matters addressed by their initial briefs.

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[10] *See Mura*, 2014 WL 1744129, at *6 (stating that because the determination of whether a party sought relief from a default within a reasonable time "is likely to be fact intensive, we consider the various circumstances surrounding the default and the respondent's request to set it aside to determine if the request was made within a reasonable period"); *see also id.* (stating that in evaluating whether respondent sought relief from default within a reasonable time "we focus on the length of time between effective notice to the respondent of the entry of default and the respondent's filing of the first motion or appeal requesting that the default be set aside"). Our decision is based on the totality of the circumstances and we do not hold that first contacting the Division or that seeking relief within a few months of learning of a default is per se reasonable. *Cf. Central Operating Co. v. Utility Workers of America, AFL–CIO*, 491 F.2d 245, 252–53 (4th Cir. 1974) (finding that, under circumstances presented, delay of almost four months after receiving notice of challenged default judgments was not reasonable).

[11] *Cf. RKO Res., Inc. (a/k/a Shamika 2 Gold, Inc.)*, Exchange Act Release No. 75765, 2015 WL 5042188, at *2 (Aug. 26, 2015) (finding that, under the circumstances, respondent stated a sufficient proposed defense where it claimed that it was "fully prepared to cure any deficiencies and make all requisite filings, past and present"). We do not make any findings here as to the merits of the asserted defense.

[12] Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form, service, and filing requirements. *See also In re Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001, at *1 (Mar. 18, 2020) (stating that "pending further

(*continued . . .*)

By the Commission.

Vanessa A. Countryman
Secretary

order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161" (citing 17 C.F.R. § 201.161(b)(1))).