

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of Release No. 88735

Decision Diagnostics Corp.,

Petitioner,

**AMENDED PETITION FOR
TERMINATION OF SUSPENSION
OF TRADING IN THE
SECURITIES OF DECISION
DIAGNOSTICS CORP.**

**PETITIONER DECISION DIAGNOSTICS CORP.'S AMENDED VERIFIED PETITION
FOR TERMINATION OF SUSPENSION OF TRADING OF SECURITIES**

Decision Diagnostics Corp., (hereinafter “DECN” or the “Company”), hereby files this Amended Petition for Termination of Suspension of Trading of Securities (hereinafter the “Petition”), pursuant to the Securities and Exchange Commission (hereinafter the “SEC”) Rules of Practice Section 550.

In support thereof, DECN alleges as follows:

1. DECN is a Nevada corporation. It is the leading manufacturer and worldwide distributor of diabetic test strips engineered to operate on legacy glucose meters. Since March 2013, DECN has sold approximately 1,800,000 vials of diabetic test strips, each vial containing either 50, 100 or 250 diabetic test strips.
2. On April 23, 2020, the SEC pursuant to Section 12(k) of the Securities Exchange Act of 1934, as amended (hereinafter the “Exchange Act”), announced the temporary suspension of DECN’s securities (hereinafter the “Suspension Order”). No prior notice of the Suspension Order

was provided; in fact, DECN was waiting to hear back from the SEC to schedule the second continuation of the interview of its CEO, Keith Berman.

3. Pursuant to the Suspension Order, the suspension commenced at 9:30 a.m. EST on April 23, 2020 and terminates at 11:59 p.m. EST on May 7, 2020.

4. The Suspension Order was unnecessary in the interest of the public and was also unnecessary for the protection of investors.

5. Petitioner DECN has suffered economic damages due to the trading suspension of its securities and continue to be adversely affected at a particularly critical time in its history, as the company is seeking expedited FDA approval for two of its Genviro! COVID-19 Swift Kits designed to provide an efficient, cost-effective and accurate kit to test for the presence of the Coronavirus. Both of these test kits are currently under review by the FDA pursuant to Emergency Use Authorization.

6. The Suspension Order has damaged DECN's business, business opportunities, access to the capital markets and reputation to its character at a critical time for not only the Company but the entire country, by creating the presumption of unspecified, fraudulent business activity by DECN.

7. The Suspension Order has effectively eliminated the trading of DECN's securities which has caused certain shareholders of DECN to at least temporarily incur losses on their investments.

8. DECN's securities were previously quoted on the OTCMarkets Pink Open Market platform under the trading symbol "DECN".

STATEMENT OF FACTS ON WHICH PETITIONER RELIES

9. DECN was incorporated in Nevada in March 2001 and is located at 2600 Townsgate Road, Suite 300, Westlake, California 91361.

10. DECN is the leading manufacturer and worldwide distributor of diabetic test strips engineered to operate on legacy glucose meters, which are currently used by millions of diabetics worldwide. DECN has been manufacturing, distributing and selling its diabetic test strips since March 2013, although it has distributed diabetic test strips manufactured by legacy companies since 2004.

11. Starting in the first quarter of 2020 the Coronavirus, sometimes referred to as COVID-19, began to overwhelm the United States (and many other countries) in ways not previously imaginable.

12. The U.S. economy has taken and continues to sustain unprecedented damage from COVID-19. Non-essential businesses have been forced to close and unemployment is at new record numbers, with most indications being that the actual number of people who are unemployed is significantly greater than those who are filing or attempting to file for benefits. Most states have been forced to implement mandatory stay-at-home orders, and virtually all schools at every level are closed for the foreseeable future.

13. The uncontrollable rapid growth of the Coronavirus has also caused severe shortages of some important medical products, including but not limited to: masks, gloves, hand sanitizers, personal protective equipment (“PPE”), testing kits providing diagnostics by way of amplifying DNA, as well as rapid serological tests to confirm antibodies.

14. In mid-February, 2020 Mr. Berman learned from a CNN news report of the outbreak of COVID-19 in Daegu, Korea, where DECN's diabetic test strip factory is located. Given his familiarity with that area, Mr. Berman was startled by photographs of a virtually deserted city, and the information he obtained of the severe actions taken by the Korean government in its efforts to contain the deadly spread of COVID-19.

15. Realizing the magnitude of the impending health crisis long before it was recognized in the United States, Mr. Berman immediately initiated discussions with the Company's technical advisors to ascertain whether the Company's impedance measurement technology that it has utilized for red blood cell detection in blood glucose testing could be slightly modified to detect the presence of COVID-19. After preliminary analysis confirmed the concept that the Company's measurement technology could be utilized at a commercially viable rate to identify the presence of the COVID-19 virus, DECN began the process of adapting the red blood cell impedance method used by the Company, and then opened discussions with the FDA to file an application for an emergency waiver for testing approval. After learning that there were over seventy-five (75) applications for essentially the same technology ahead of DECN, the Company moved as quickly as possible to modify its proposed technology to distinguish it from the other applicants.

16. On March 3, 2020, DECN issued a press release entitled: "DECN Jumps Into Screening and Testing Channel for Coronavirus (COVID-19) Using its Innovative Impedance Technology First Implement in the GenUltimate TBG". The March 3rd press release prominently quoted Mr. Berman stating: "I want to say straight up we have developed a Coronavirus screening method, not a cure or vaccine for this virus." This press release did not contain any false or misleading

statements, or omit to state any facts necessary in order to make the statements made not misleading.

17. On March 4, 2020 DECN issued a press release entitled: “DECN Fills in the Gaps, Adds to Knowledge Base for its Genviro™ Coronavirus (COVID-19) Multi-Dimensional Diagnostic Methodology Announced March 2.” In this release Mr. Berman stated: “I cannot say often enough we are developing a Coronavirus screening method, not a cure or vaccine for the COVID-19 Virus.” This press release did not contain any false or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

18. On March 11, 2020 DECN issued a press release entitled: “DECN Provides First Looks at its GenViro™ Coronavirus Screening Kits & First Year Product Forecast of 420 Million Kits, with Sales Beginning Late 3Q 2020.” Mr. Berman again cautioned that the Company was developing a screening method, rather than a cure or vaccine for the COVID-19 virus. This press release did not contain any false or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

19. On March 16, 2020 DECN issued a press release entitled: “DECN Updates on its Coronavirus Testing Product Genviro!™ with 200,000 kits to be provided in USA & EU Prior to the Summer, 12 Month Forecast Updated to 480 MM.” This press release did not contain any false or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

20. On March 17, 2020 DECN issued a press release entitled “DECN’s GenViro!™ Coronavirus “Swift” Kit now to be Additionally Offered to Commercial Labs and Religious Groups as 12 Month Forecast is Raised to 525MM.” This press release did not contain any false

or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

21. On March 18, 2020 DECN issued a press release entitled: “DECN’s GenViro!™ COVID-19 “Rapid” Kit to Reap Huge Boost from 3/16 FDA Guidance Allowing for Near Immediate Distribution of Kits Prior to Emergency Waiver Grant.” This press release did not contain any false or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

22. On March 22, 2020 DECN issued a press release entitled: “DECN to Finance 2020 Roll Out of its GenViro! COVID-19 “Rapid” Kits Using Non-Dilutive Debt Financing Totaling \$13 Million Acquired in New 0% Rate Environment.” This press release did not contain any false or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

23. On March 23, 2020 DECN issued a press release entitled: “DECN Finalizes FDA Pre-EUA Version of its GenViro! Screening COVID-19 Swift Kit, Providing Results in 15 Seconds Using Only 1.0-2.0 Microliters Whole Blood.” This press release did not contain any false or misleading statements, or omit to state any facts necessary in order to make the statements made not misleading.

24. DECN is current and has been current on all of its filing with the OTCMarkets. There are no false or misleading statements contained in any OTCMarkets filings, nor have any facts been omitted so as to make the statement made not misleading.

25. DECN has never hired, retained, and has not had any understanding with any individual or entity to promote or tout the Company or its business to the public. No officer, director or affiliate of DECN has purchased or sold any of its securities at any time since the outbreak of the COVID pandemic in early 2020.

SUSPENSION IS NOT NECESSARY IN THE PUBLIC INTEREST

26. On or about March 25, 2020, two SEC staff lawyers contacted Mr. Berman and spoke to him for approximately 50 minutes about the Company's GenViro test kit and its impedance measurement technology. Mr. Berman answered all the staff's questions. During his explanation Mr. Berman made it clear to the SEC staff that the technology to be employed for the Covid-19 test kit was an evolution of the same technology used since December 2018 to lyse and count red blood cells that "leak" into a plasma glucose measurement. Both SEC staff members informed Mr. Berman that they were unfamiliar with at-home diabetic glucose measurement even though this technology is used daily by approximately 20 million Americans, and distributed by four of the world's largest pharmaceutical companies.

27. On March 25, 2020, the SEC staff sent Mr. Berman a request for information in connection with *In The Matter of Certain Coronavirus Related Issuers* (NY-10208). Specifically, the staff requested all documents and communications concerning various statements contained in eight (8) press releases issued by DECN between March 3, 2020 and March 23, 2020, as well as all documents concerning four (4) individuals, including but not limited to their trading in DECN stock.

28. On April 2, 2020, Mr. Berman retained corporate counsel, both individually and on behalf of DECN. The staff was contacted by counsel that day in order to schedule the continuation of Mr. Berman's interview as requested by the staff. The resumption of the interview was scheduled for April 13, 2020. Prior to April 13th, the staff informed counsel that it would not require the production of the documents sought by its March 25th letter to DECN.

29. On April 13th, Mr. Berman spoke to the staff via a conference call for about two hours. Once again, he answered all of their questions. Due to a prior commitment, the interview ended before the staff could complete its questions. At the staff's request, Mr. Berman agreed to make himself available a third time. Instead of scheduling the requested interview, the Commission served the Suspension Order.

THE SUSPENSION IS NOT NECESSARY IN THE PUBLIC INTEREST

Petitioner incorporates paragraphs 1 through 29.

30. The Suspension Order is unwarranted and not necessary because it was improperly based upon:

- A. An incomplete understanding of the FDA Policy Guidelines issued in response to the COVID-19 pandemic.
- B. Misinterpretations of the FDA Policy Guidelines and their applications to DECN's innovative impedance technology and its potential application for the expedited development of an efficient, cost effective and accurate test kit to determine the presence of the Coronavirus.

- C. Failure to acknowledge DECN's prior and ongoing use of its innovative impedance technology by diabetics as a springboard for the development of a kit to test for the presence of COVID-19.
 - D. The SEC's failure to acknowledge that virtually all the statements contained in the eight (8) press releases identified in the staff's March 25, 2020 letter consist of existing facts. The only exceptions were two predictions of potential future sales of test kits, which are forward looking statements and identified as such.
31. The Suspension Order is not necessary and not in the public interest because:
- A. DECN has not acted in a fraudulent, deceitful or manipulative manner. No officer, director or affiliate of DECN has sold any of its stock at any time during 2020.
 - B. As previously stated, each DECN press release was based upon facts that were true at the time the statements were made.
 - C. DECN has retained a lobbyist that has promptly engaged several influential members of Congress who have agreed to communicate on the Company's behalf directly with the Pence COVID-19 Task Force.
 - D. Neither DECN, its legitimate investors, nor the general public have been enriched. If anything, the unilateral action taken by the SEC will enhance and embolden those individuals who are intent on harming the Company by attempting to manipulate the price of its stock. DECN has now ascertained that these efforts have included recently providing the SEC with falsified, adulterated company documents that were illegally obtained by one or more hackers who broke into the Company's

server in March, 2020.¹ Upon information and belief, at least several of these individuals were as of March 25, 2020 already known to the SEC, as demonstrated by certain requests for information on specified individuals contained in the staff's March 25, 2020 letter to DECN. The staff may be aware that there are more than four such individuals; if so, they were not made known to the Company.

- E. There has been no promotion or touting of DECN's stock.
- F. The damage to the reputation of DECN has impaired its access to the capital markets. It has also impaired the Company's everyday dealings with the public.
- G. The Suspension Order has caused several companies that had expressed interest in partnering with the Company to reassess these interests.
- H. Any legitimate concern or questions on the part of the SEC regarding the actions being taken by DECN should have been and can presumably still be discussed, clarified, and resolved between the parties, as Mr. Berman remained and remains prepared to continue to fully and candidly respond to all questions posed by the

¹ Subsequent to the filing of the Petition on May 6, 2020, certain bulletin board postings appeared. They concerned a working prototype of an internal PowerPoint presentation for the proposed GenViro! test kit for the detection of Covid-19, falsely stating that DECN had asserted that its test kits were "FDA approved." The prototype PowerPoint was housed in an archive in a protected directory stored on the web site of DECN's wholly owned subsidiary, Pharma Tech Solutions, Inc. and was never in the public domain. Therefore, it could only have been obtained illegally before it was apparently provided to the SEC.

For security reasons the PowerPoint was housed in read only mode, and therefore could not have been "downloaded" as claimed on one of the bulletin board postings that admitted possession of this non-public document. This improperly obtained document appears directly connected to the SEC's investigation of DECN regarding the company's efforts to develop an effective and reliable test kit to determine the presence of the Coronavirus, which investigation resulted in the trading suspension of DECN's stock. Accordingly, the SEC's response to the Petition should also address its receipt and use of this document, including any effort that may have been made to ascertain its authenticity.

staff. However, there are now issues of trust and fair dealing by reason of the issuance of the Suspension Order.

- I. The damage to DECN and especially the public outweighs the unfounded premises and assumptions that the SEC presumably relied on to issue the Suspension Order.
- J. There is not a valid legal reason to prevent DECN's shares from trading, including but not limited to anything contained in the Company's press releases starting on March 3, 2020.

**THE SUSPENSION IS NOT NECESSARY FOR THE
PROTECTION OF INVESTORS**

Petitioner incorporates paragraphs 1 through 31.

32. All past, current, and prospective investors have access to all public information of DECN and its businesses.

33. DECN is current with all filings as required by the OTCMarkets.

34. DECN has not been involved in any promoting or touting of its stock.

35. No officer, director or any affiliate of DECN has sold any of DECN's securities since the outbreak of the COVID pandemic.

36. DECN has retained a lobbyist who has secured congressional commitments to work on the Company's behalf with the presidential COVID-19 task force headed by Vice President Pence.

37. DECN has acted as a transparent and fully compliant public company, providing the public with timely and completely accurate updates as it works feverishly to develop a reliable COVID test kit. What the Company has done used to be called the "American Way."

WHEREFORE, Petitioners respectfully request that the Commission enter an order terminating the suspension of trading in the securities of Decision Diagnostics Corp. since the suspension is not necessary in the public interest or for the protection of investors. Alternatively, Petitioner requests that the SEC state with specificity the information which caused the issuance of the Suspension Order so that Decision Diagnostics can properly reply pursuant to SEC Rule 550.

Dated: White Plains, New York
May 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the foregoing was filed on May 15, 2020 by electronic delivery to apfilings@sec.gov.

Pursuant to Release No. 88415, dated March 18, 2020, Petitioner and Petitioner's legal counsel, Ronald S. Herzog, 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: kberman@decisiondiagnostics.net and rherzog@goldbergsegalla.com.

/s/ Ronald S. Herzog

Ronald S. Herzog