

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20973**

In the Matter of  
  
IEH Corporation,  
  
Respondent.

**RESPONDENT IEH CORPORATION'S OPPOSITION BRIEF TO**  
**DIVISION OF ENFORCEMENT'S**  
**MOTION FOR SUMMARY DISPOSITION**

Sean M. Donahue  
Goodwin Procter LLP  
1900 N Street, NW  
Washington, DC 20036  
202-346-4207  
*SDonahue@goodwinlaw.com*  
Counsel for Respondent

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... 3

**OPPOSITION TO MOTION FOR SUMMARY DISPOSITION**..... 4

**BRIEF IN SUPPORT** ..... 4

**I. Statement of Facts**..... 4

**A. Issuer Background** ..... 4

**B. IEH’s Filings**..... 5

**II. Argument**..... 8

**A. Legal Standard**..... 8

**B. Neither revocation nor suspension is appropriate or necessary** ..... 9

**C. The *Gateway* factors weigh against sanctions** ..... 13

**1. IEH’s violations do not rise to the degree of seriousness to warrant a sanction** ..... 13

**2. Violation was isolated** ..... 15

**3. IEH has a low degree of culpability**..... 16

**4. IEH has taken meaningful remedial steps to ensure future compliance**..... 17

**5. IEH has provided credible assurances against further violations** ..... 20

**III. Conclusion** ..... 21

## TABLE OF AUTHORITIES

### CASES

<i>Absolute Potential, Inc.</i> , Exchange Act Release No. 71866 (Apr. 4, 2014) .....	9, 12, 19
<i>Advanced Life Sciences Holdings, Inc.</i> , Exchange Act Release No. 81253 (July 28, 2017).....	12
<i>Am.'s Sports Voice, Inc.</i> , Exchange Act Release No. 55511 (Mar. 22, 2007).....	13
<i>Calais Res., Inc.</i> , Exchange Act Release No. 67312 (June 22, 2012) .....	12
<i>Digital Brand Media &amp; Marketing Group</i> , Initial Decision Release No. 1389 (Nov. 12, 2019). 12	
<i>e-Smart Technologies, Inc.</i> , Exchange Act Release No. 50514 (Oct. 12, 2004) .....	10, 11, 13, 19
<i>e-Smart Technologies, Inc.</i> , Initial Decision Release No. 272 (Feb. 3, 2005).....	11
<i>Gateway International Holdings, Inc.</i> , Exchange Act Release No. 53907, (May 31, 2006). passim	
<i>Nature's Sunshine Prods., Inc.</i> , Exchange Act Release No. 59268 (Jan. 21, 2009) .....	12
<i>Phlo Corp.</i> , Exchange Act Release No. 55562 (March 30, 2007).....	13, 19
<i>SEC v. Beisinger Indus. Corp.</i> , 552 F.2d 15, 18 (1st Cir. 1977) .....	10
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979).....	10

## **OPPOSITION TO MOTION FOR SUMMARY DISPOSITION**

IEH Corporation (“IEH”) files this Opposition Brief to the Division of Enforcement’s (“Division”) Motion for Summary Disposition and Brief in Support (the “Motion”).

Pursuant to Rule 250 of the Commission’s Rules of Practice, and the Commission’s precedent in proceedings pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”), IEH makes a showing of genuine issues of material fact and demonstrates that based on an application of the factors the Commission set forth in *Gateway International Holdings, Inc.*, Exchange Act Release No. 53907, (May 31, 2006) the Commission should deny the Division’s motion.

### **BRIEF IN SUPPORT**

#### **I. Statement of Facts**

##### **A. Issuer Background**

IEH Corporation (CIK No. 50292) is a New York corporation located in Brooklyn, NY with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IEH is an active operating company that has approximately 180 full-time employees. For more than 80 years the company has designed, developed, and manufactured electrical hyperboloid products, such as printed circuit board connectors, custom interconnects and contacts, for high performance military and aerospace applications. Its customers include national and international defense contractors, commercial aerospace equipment manufacturers, medical device manufacturers, oil and gas exploration firms and commercial space launch companies. IEH’s business continues to grow. In 2022, IEH opened a new 29,000 square foot manufacturing facility in Pennsylvania. IEH’s securities are currently traded on the OTC

Markets Group's Expert Market and are restricted from public viewing.<sup>1</sup>

## **B. IEH's Filings**

IEH has a long history of filing Exchange Act periodic reports with the Commission. Since 1966, IEH has been filing Exchange Act reports with the Commission.<sup>2</sup> During fiscal year 2020, as a result of challenges in the reconciliation of two disparate accounting systems, its legacy system and its new system (the "inventory reconciliation"), the company was unable to file certain Exchange Act periodic reports on time. Specifically, at the end of the second quarter of fiscal year 2020, the company migrated to a new enterprise accounting and inventory system (the "SAP system"). The company's revenue had grown 50% from 2010 to 2014, and the company determined that migration to a new system was necessary to support the company's business plan.

In 2014, IEH began the process of converting from its legacy system to the SAP system. The legacy system the company had been using was over 30 years old, and operated on an outdated DOS-based, eight-bit architecture. Upkeep of the system was at risk because the original design and implementation consultant of the system was in ill health, and there was no redundancy. The company had been running its legacy system in parallel with its new SAP system since July 2017, that is, inputting the same transactions in both systems, until deciding to switch completely to the new SAP system at the end of the second quarter of the fiscal year ended March 31, 2020. As a result, the company had to migrate to a new enterprise accounting and inventory system. Although the two systems had been running in parallel, there were material differences in inventory treatment between the two – the legacy system utilized a

---

<sup>1</sup> See <https://www.otcmarkets.com/stock/IEHC/overview>.

<sup>2</sup> IEH's SEC EDGAR filer page indicates that IEH has been filing Exchange Act periodic reports since 1995, the earliest date for which filings are available in the EDGAR database. See *Accessing EDGAR Data*, at <https://www.sec.gov/os/accessing-edgar-data>. A search of IEH's filing history in the more comprehensive Intelligize database, however, indicates that IEH has been filing Exchange Act periodic reports since 1966.

periodic inventory valuation methodology (a top-down approach) while the new SAP system utilizes a perpetual inventory system (a bottom-up approach). The two disparate systems itemize inventory categories – raw material, work-in-progress, and finished goods – differently, and the inventory reconciliation required intense, demanding work that involved discriminating periodic inventory costing from perpetual inventory costing.<sup>3</sup>

In connection with the migration, which required a reconciliation of the old and new systems, and preparation of its year-end accounting, management discovered that inventory balances previously reported as of the end of the second and third fiscal quarters were misstated. On October 8, 2020, IEH filed a Form 8-K to report that its management had concluded, and the Audit Committee of the Board of Directors concurred, that the company’s previously issued unaudited financial statements for these two quarters should no longer be relied upon. The company’s challenges with reconciling the records were exacerbated by labor and supply chain disruptions, as well as government restrictions resulting from the COVID-19 pandemic. The onset of the pandemic coincided with the company’s March 31, 2020 fiscal year end. Because of the pandemic and related restrictions, the company was unable to conduct a physical inventory observation for its 2020 fiscal year-end audit until May 2020. IEH disclosed this in its Annual Report on Form 10-K filed on October 8, 2020.

As discussed below and pleaded in IEH’s Answer, IEH’s auditor is actively working on the audit of a Super Form 10-K that will cover the periods covered by the delinquent reports. IEH anticipates making this filing in the near term. IEH is working diligently toward filing the outstanding reports to become current.

In its papers, the Division puts much emphasis on the suggestion that IEH filed a report

---

<sup>3</sup> IEH Form 8-K filed on September 29, 2021.

that it believed, at the time, to be unreliable and inaccurate. This is merely a distraction from the issue at hand. It misses the point and is entirely without merit, as it contains several incorrect factual statements and unfounded allegations. First, the Division alleges, without basis in fact, that IEH “may have filed an annual report it believed to be unreliable and also failed to disclose that fact to investors.” The Division also alleges that IEH failed to disclose that its management has concluded that previously issued financial statements contained in the March 31, 2020 Form 10-K are unreliable, and has not made a required disclosure for the March 31, 2020 10-K report. Third, the Division erroneously asserts that the “Respondent has indicated that [the March 31, 2020 Form 10-K] should not be relied upon.” Division Exhibit 8.

The Division’s factually inaccurate assertions are based on a misinterpretation of the statement in Respondent’s Answer that sometime after the company filed its Form 10-K for the year ended March 31, 2020, “it subsequently determined the SAP System impacted its last Form 10-K report for the year ended March 31, 2020.” The Division’s assertions reflect a misapplication of the requirement in Item 4.02 of Form 8-K. Item 4.02 requires, in relevant part, disclosure when a “registrant’s board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, concludes that any previously issued financial statements covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S-X (17 CFR 210) should no longer be relied upon because of an error in such financial statements as addressed in FASB ASC Topic 250, Accounting Changes and Error Corrections.”

At the time IEH filed its Form 10-K for the fiscal year ended March 31, 2020 the company believed that the Form 10-K did not contain inventory balance errors similar to those contained in IEH’s Form 10-Q for the fiscal quarters ended September 30, 2019 and December

31, 2019, which were disclosed in its Form 8-K filed on October 8, 2020. As stated in IEH's Answer, the company subsequently determined that the SAP System impacted its Form 10-K for the year ended March 31, 2020. A determination that the Form 10-K had been impacted does not by itself, without a materiality determination by IEH's board of directors or management, trigger a requirement to disclose pursuant to Item 4.02 of Form 8-K. IEH's board of directors has not yet made a determination as to whether the impact on the prior year financial statements was material. The need to correct prior year financial statements for immaterial errors does not trigger an Item 4.02 Form 8-K and would not require previously filed reports to be amended. Such correction may be made the next time the company files the prior year financial statements.<sup>4</sup> The Division's suggestion that IEH filed an annual report that it believed to be unreliable and failed to disclose that fact to investors conveniently overlooks the requirements in Form 8-K, lacks merit and is without any factual support. IEH did not have an obligation to file an Item 4.02 Form 8-K based on a determination that the Form 10-K had been impacted, because the company was still evaluating the materiality of the inventory balance errors and had not yet made a materiality determination with respect to the previously-issued financial statements for the fiscal year ended March 31, 2020.

## **II. Argument**

### **A. Legal Standard**

Pursuant to Rule 250(b) of the Commission's Rules of Practice, the Commission may

---

<sup>4</sup> See Staff Accounting Bulletin No. 108 (Sept. 13, 2006). When an error is determined to be material to previously-issued financial statements, the error must be corrected by restating the prior-period financial statements (often referred to as "Big R" restatements). If the error is not material to previously-issued financial statements, but either correcting the error or leaving the error uncorrected would be material to the current period financial statements, a registrant must still correct the error, but is not precluded from doing so in the current period comparative financial statements by restating the prior period information and disclosing the error (often referred to as "little r" restatements"). See Statement by Paul Munter, Acting Chief Accountant, *Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors* (March 9, 2022), available at [https://www.sec.gov/news/statement/munter-statement-assessing-materiality-030922#\\_ednref5](https://www.sec.gov/news/statement/munter-statement-assessing-materiality-030922#_ednref5).



grant a motion for summary disposition if there is no genuine issue of material fact and the movant is entitled to summary disposition as a matter of law.<sup>5</sup> As pleaded in the company's answer, IEH did not file the periodic reports during the period alleged in the OIP as required by Exchange Act Section 13, and Rules 13a-1 and 13a-13 thereunder. There are disputed facts, however, with respect to the imposition of sanctions under Exchange Act Section 12(j), which contrary to the Division's argument would not serve the public interest and is not necessary or appropriate for the protection of investors. The Division disregards facts pleaded in IEH's Answer regarding, for example, its remediation efforts and low level of culpability. In particular, as pleaded in IEH's Answer, IEH has engaged Marcum LLP to complete an audit and review of a Super Form 10-K that the company intends to file in the near term which will include the periods covered by the delayed reports.<sup>6</sup>

**B. Neither revocation nor suspension is appropriate or necessary**

The Commission has recognized that an issuer's subsequent attempts to file delinquent reports and remain in compliance with its reporting obligations are important factors to be considered in determining whether to revoke an issuer's registration. *Absolute Potential, Inc.*, Exchange Act Release 71866 (Apr. 4, 2014). Commission precedent makes clear that imposing sanctions on a company for failure to file periodic reports is not a necessary prophylactic measure that will ensure that investors are adequately protected in *every* instance in which a company has failed to file periodic reports. *Gateway*, at \*19-20 (May 31, 2006). Instead, under

---

<sup>5</sup> Rule 250 of the Commission's Rules of Practice provides, in relevant part, that "In any proceeding under the 30-day timeframe...after a respondent's answer has been filed...any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to [§ 201.323](#) show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." 17 CFR 201.250.

<sup>6</sup> See letter from Marcum LLP attached to IEH's Answer filed October 3, 2022, available at <https://www.sec.gov/litigation/apdocuments/3-20973-2022-10-03-respondent-answer-to-oip.pdf>.

*Gateway*, the Commission’s approach to determining sanctions involves careful consideration of the particular facts and circumstances to determine the effect on the investing public of the issuer’s violations, on the one hand, and the Section 12(j) sanctions, on the other hand. This careful assessment of facts and circumstances approach makes the burden the Division must meet on summary disposition a very high one.

To determine what sanctions are appropriate under Exchange Act Section 12(j) when an issuer has violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13, the Commission will look to the factors it set forth in *Gateway* (the “*Gateway* factors”). The Commission will consider, among other things, (i) the seriousness of the issuer’s violations, (ii) the isolated or recurrent nature of the violations, (iii) the degree of culpability involved, (iv) the extent of the issuer’s efforts to remedy its past violations and ensure future compliance, and (v) the credibility of its assurances, if any, against further violations. *Gateway* (citing *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979)).

Relevant facts and circumstances include the company’s filing history subsequent to the delinquent filings, and whether the company has filed annual and quarterly reports on a timely basis such that the investing public has access to current, audited financial information about the company. *e-Smart Technologies, Inc.*, Exchange Act Release 50514 (Oct. 12, 2004). The purpose of the periodic reporting requirements is to supply the investing public with current, accurate financial information about an issuer so that investors may make informed decisions. *e-Smart Technologies*, citing *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977). The Commission has explained that an underlying concern that Section 12(j) seeks to address is that “many publicly traded companies that fail to file on a timely basis are ‘shell companies’ and, as such, attractive vehicles for fraudulent stock manipulation schemes.” *e-Smart Technologies*, n.

14. That concern is not warranted here. As discussed above, IEH is not a shell company, but an active, operating company.

In *e-Smart Technologies*, the Commission reviewed an administrative law judge's initial decision to impose a revocation sanction, and remanded the proceeding to the administrative law judge to assess the sanction determination in light of the company's subsequent reporting, *even in spite of* the fact that it was "undisputed" that the company had violated Section 13(a) and Rules 13a-1 and 13a-13, and that the company's violations were, in the Commission's view "serious." *e-Smart Technologies*, at section I. In remanding to the administrative law judge, the Commission cited evidence produced by e-Smart Technologies' Chief Executive Officer that the company's failure to file the required reports was due to a variety of factors including, among others, lack of capital and loss of key personnel involved in the company's financial reporting. *e-Smart Technologies*, at section II. The Commission also relied on evidence that the company had begun to put in place controls and procedures designed to ensure that information was disclosed in accordance with the Exchange Act, that the company had retained new securities counsel, and had arranged for new accounting controls and the hiring of a new auditor. *e-Smart Technologies*, at II. On remand, the administrative law judge declined to revoke or suspend the company's registration. *e-Smart Technologies, Inc.*, Initial Decision Release No. 272 (ALJ Feb. 3, 2005).

Like in *e-Smart Technologies*, IEH's failure to file the required reports was due to a variety of factors, IEH has implemented controls and procedures designed to ensure that information is disclosed in accordance with the Exchange Act, and the company has retained new securities counsel and engaged a new auditor. Further, once IEH files its Super Form 10-K in the near future, as it anticipates doing, the investing public will have access to current, audited

financial information about IEH. The Division summarily states without support that the facts relevant to the *Gateway* factors “are not disputed.” But the Division conveniently overlooks facts pleaded in IEH’s Answer. For example, the Division’s allegation that IEH “does not have the resources” to make required filings simply ignores IEH’s remediation steps pleaded in the Answer. In fact, IEH has hired internal and external resources with expertise in financial reporting and compliance with the federal securities laws, facts and circumstances which are relevant under *Gateway*.

Even if the Commission were to determine the violations to be “serious” and “recurrent” the presumption in favor of revocation is rebuttable where there is a strong compelling showing if the remaining factors – degree of culpability involved, remedial efforts and assurances against future violations – weigh against imposing a sanction. *Advanced Life Sciences Holdings, Inc.*, Exchange Act Release No. 81253 (July 28, 2017), at 6; *See also Absolute Potential*, at 10. For example, a company’s filing of past due reports and its continuing to file current reports are mitigating factors supporting a finding that sanctions are not appropriate. *Digital Brand Media & Marketing Group*, Initial Decision Release No. 1389 (ALJ Nov. 12, 2019), *petition for Commission review filed Dec. 3, 2019*. In *Digital Brand*, the administrative law judge ruled that revocation was not necessary or appropriate for the protection of investors because of the above mitigating factors, despite the company not having filed periodic reports during a period of three years.<sup>7</sup> In fact, the Division has conceded that revocation is not appropriate in every instance

---

<sup>7</sup> *Digital Brand*, at section IV. The administrative law judge distinguished the company’s situation from cases in which the Commission determined that revocation was necessary or appropriate. *See Calais Res., Inc.*, Exchange Act Release No. 67312, 2012 SEC LEXIS 2023, at \*23 (June 22, 2012) (frowning on the issuer’s “troubling willingness . . . to ignore clear staff directives regarding reporting obligations”); *Absolute Potential* (shell company with total assets of \$27, accumulated deficit of \$1,972,404; filings made during administrative proceeding, but unpersuasive explanations for protracted delinquencies and absence of concrete changes to ensure compliance as of date of Commission opinion); *Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 SEC LEXIS 81 (Jan. 21, 2009) (filings just before oral argument on petition for review of Initial Decision; filings were materially deficient); *Am. ’s Sports Voice, Inc.*, Exchange Act Release No. 55511, 2007 SEC LEXIS 1241 (Mar. 22, 2007) (no

where there is a violation of Section 12(j). In the Division’s appellate brief filed in *Digital Brand*, it recognized that the Commission has indeed found factors sufficient to rebut a presumption of revocation where the issuer has cured all outstanding deficiencies, identified the specific causes that led to the violations, and demonstrated concrete and effective corrective measures addressing the causes.<sup>8</sup> IEH has implemented concrete corrective measures addressing the causes of the missed filings, and anticipates filing its Super Form 10-K in the near term.

The facts pleaded in IEH’s Answer, and as set forth below, belie the Division’s assertion that IEH has “failed to make any showing rebutting the presumption of revocation” of the *Gateway* analysis. The Division has not met its high burden for summary disposition based on the facts in dispute.

### **C. The *Gateway* factors weigh against sanctions**

#### **1. IEH’s violations do not rise to the degree of seriousness to warrant a sanction**

At the time the Commission instituted this proceeding, IEH had not filed two Form 10-Ks and seven Form 10-Qs. Since then, IEH has missed two additional quarterly reports while it focuses its efforts on completing its Super 10-K. IEH has a long history of providing the investing public with current, accurate financial information so that investors may make informed decisions. The company has been filing Exchange Act reports since 1966, and while the company’s lengthy reporting history indicates some late filings, the fact that the company has been reporting for over 50 years, and only recently encountered such extenuating circumstances

---

filings), recon. denied, Exchange Act Release No. 55867, 2007 SEC LEXIS 1239 (June 6, 2017).

<sup>8</sup> Appellate Brief for Division of Enforcement at 17, *In re Digital Brand Media & Marketing Group, Inc.*, available at <https://www.sec.gov/litigation/apdocuments/3-17990-2021-02-24-divisions-appellate-brief.pdf> (citing *Phlo Corp.*, Exchange Act Release No. 55562 (March 30, 2007) (issuer became current, identified ICFR failures that led to violations, and identified concrete measures addressing the ICFR failures); *e-Smart Technologies, Inc.*, Exchange Act Release No. 50514 (Oct. 12, 2004) (issuer identified the cause of its delinquencies and concrete remedial measures to ensure future compliance including retaining new securities counsel and auditors and implementing new internal accounting controls)).

which caused the company to fall behind in its periodic reports, demonstrates that the company takes its Exchange Act reporting obligations seriously. Unlike the company whose registration was revoked in *Absolute Potential*, IEH is not a shell company, and does not present the same underlying concerns that Section 12(j) seeks to address about which the Commission cautioned in *e-Smart Technologies*. To the contrary, the company employs approximately 180 people, and has been a manufacturing company for over 80 years.

IEH filed a Notification of Late Filing on Form 12b-25 for its Form 10-K for the fiscal year ended March 31, 2020, the Form 10-K for the fiscal year ended March 31, 2021, and for each of the Form 10-Qs for the first three quarters of fiscal year 2021. While the company did not file a Form 12b-25 notice for every late periodic report after the Form 12b-25 filed for its Form 10-K for the fiscal year ended March 31, 2021, IEH nevertheless continued to file Current Reports on Form 8-K to announce major events and update its investors of its progress on becoming current in its SEC filings.

IEH filed a Form 8-K on June 28, 2021 to disclose that it issued a press release in which it announced that it did not expect to file its Form 10-K for the fiscal year ended March 31, 2021 on a timely basis, and that its quarterly reports for the periods ended June 30, September 30, and December 31, 2020 had not yet been completed. On September 29, 2021, IEH filed a Form 8-K to disclose that the company's stock would be traded in accordance with the OTC Pink Sheet No Information tier as a result of its delinquent Exchange Act filings and the Commission's 2020 amendments to Exchange Act Rule 15c2-11. In this filing, the company's President and Chief Executive Officer, David Offerman, emphasized that the company was "extremely focused on getting current with our filings with the SEC" and highlighted the reason for the delayed filings and steps the company had taken to address the issues. Further, the company filed a Form 8-K

on February 17, 2022, to disclose that it issued a press release in which the company announced to its investors that the company was “making significant progress on getting current on all SEC filings.” In this press release, Mr. Offerman stated that the company was “working closely with our auditors to ensure we are caught up and able to properly report going forward. We will provide updates as we begin to file.”

## **2. Violation was isolated**

When viewed in light of IEH’s long history of making periodic filings with the Commission, the company’s recent failure to file is best described as “isolated.” The untimely filings began with the Form 10-K for the fiscal year ended March 31, 2020, which, not coincidentally, coincided with the onset of the COVID-19 pandemic. These circumstances created unprecedented challenges and disruptions as the company disclosed in a Form 12b-25 notice filed on August 14, 2020. These disruptions included, but were not limited to, the unavailability of key personnel required to prepare the financial statements for the 2020 annual report.

In its fiscal year 2020 Form 10-K filed on October 8, 2020, the company disclosed that it had been unable to conduct a physical inventory observation for its year-end audit until May 2020 on account of COVID-19 restrictions which prevented the required personnel from being present in the company’s physical offices. As a result, the company was required to institute additional manual procedures to roll-back the company’s item by item inventory to March 31, 2020 from the May 2020 inventory observation dates. The roll-back had to be conducted utilizing the newly installed inventory accounting system after the company unexpectedly lost support for its legacy inventory system. The migration to the new system required additional time and effort, complicated by COVID-19 protocols, such that certain inventory reconciliations were not able to be completed until September 2020. As a manufacturing company, the ability to

conduct a physical inventory observation is an essential step in preparing for the company's fiscal year-end audit. The evidence is undisputed that the missed filings are isolated due to facts and circumstances caused in part by a confluence of once-in-a-generation, unique factors.

### **3. IEH has a low degree of culpability**

There is a dispute of fact as to whether IEH acted with a high degree of culpability, and the Division's support is not just wrong as a matter of fact but wrong as a matter of law as well. The Division claims that IEH did not make a required disclosure for the Form 10-K for the period ended March 31, 2020 and points to this as evidence of IEH's high degree of culpability. As discussed above, however, this assertion is wrong on its face because IEH was not under an obligation to make any disclosure upon its determination that the Form 10-K had been impacted by the inventory balance errors until determining the materiality of such errors, which has not yet occurred.

The Division also incorrectly states that IEH "never filed the Form 8-K required to take advantage of the extension" permitted by the Commission's Order extending the deadline for certain reports as a result of the COVID-19 pandemic.<sup>9</sup> This statement is demonstrably incorrect. IEH filed a Form 8-K on June 29, 2020, indicating its reliance on the Covid Exemption Order for its Form 10-K for the fiscal year ended March 21, 2020 (the "Exemptive Relief Form 8-K").<sup>10</sup> Although IEH ultimately filed its Form 10-K after the expiration of the Covid Exemption Order, the Commission should view IEH's attempted compliance by filing a Form 8-K as a mitigating factor in the degree of culpability. Similarly, the Division purports to show culpability by stating that several of IEH's periodic reports fall outside of the dates of the

---

<sup>9</sup> *Order Granting Exemptions*, Exchange Act Release No. 88318, as modified on March 25, 2020 (Release No. 34-88465), available at <https://www.sec.gov/rules/exorders/2020/34-88465.pdf> ("Covid Exemption Order").

<sup>10</sup> IEH Corporation, Current Report (Form 8-K) (June 29, 2020), [https://www.sec.gov/Archives/edgar/data/50292/000117494720000803/form8k-24428\\_iehc.htm](https://www.sec.gov/Archives/edgar/data/50292/000117494720000803/form8k-24428_iehc.htm).



time period for relief in the Covid Exemption Order. This argument is disingenuous. In the Exemptive Relief Form 8-K, IEH disclosed that it would be relying on the Covid Exemption Order to delay only the filing of its Form 10-K for the fiscal year ended March 31, 2020. The claim that periodic reports other than the Form 10-K were filed after the Covid Exemption Order had expired is irrelevant to IEH's degree of culpability because the company sought relief only for the Form 10-K.

#### **4. IEH has taken meaningful remedial steps to ensure future compliance**

As pleaded in its Answer, IEH has devoted attention and significant resources to overcome substantial challenges and once again comply with its Exchange Act reporting obligations and, as a result, ensure that its investors have access to timely, accurate information. The Division's allegation that IEH "does not have the resources to make required filings when faced with business difficulties" neglects to address these facts. The company's board of directors and management have expressed a commitment to bringing the company current in its reporting obligations, and to this end IEH has taken meaningful steps to complete its inventory reconciliation. The company disclosed several mitigation steps it has taken to strengthen its financial reporting in its Annual Report on Form 10-K for fiscal year 2020.<sup>11</sup> IEH disclosed that it had hired and engaged additional qualified resources, including a qualified financial executive to serve as Chief Financial Officer.<sup>12</sup> The company also implemented new controls designed to enhance the monthly and quarterly financial close processes to ensure proper disclosures.<sup>13</sup> IEH also implemented additional review and monitoring of transactions to ensure compliance with

---

<sup>11</sup> IEH Corporation, Annual Report (Form 10-K for fiscal year ended March 31, 2020) (Oct. 8, 2020), <https://www.sec.gov/Archives/edgar/data/50292/000117494720000987/e11182-10k.htm>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

the new policies and procedures.<sup>14</sup> IEH trained personnel responsible for the preparation and review of financial information.<sup>15</sup>

The resolution of this reconciliation issue has taken much longer than the company initially anticipated due to several reasons. First, the initial accounting forensics to determine the severity of the issue, when it started, and how to remedy the issue, and then conducting the inventory reconciliation, along with creating audit evidence, is a time-intensive process. In conducting the inventory reconciliation, IEH's management has had to examine data since 2017 and sort through entries between the periodic inventory costing and perpetual inventory costing systems. To date, management has analyzed over one million lines of data, and physically inspected inventory and warehouses. Due to the nature of the company's new accounting system, SAP's Business One system, it is difficult to go back in time and correct entries. Second, the company's efforts to resolve the inventory reconciliation were hindered by the COVID-19 pandemic. Significantly, IEH was unable to conduct an inventory assessment until after 2020 fiscal year end due to COVID-19 restrictions. Third, IEH discovered the discrepancies in inventory shortly after engaging a new auditor. The company engaged Marcum beginning in August 2019 to complete quarterly reviews and annual audits for IEH. In June 2020, IEH appointed William H. Craig as its new Chief Financial Officer ("CFO") and Treasurer. Mr. Craig is a Certified Public Accountant, is certified in financial forensics, has over twenty years' experience as a CFO (including with three prior companies subject to SEC reporting requirements), and has experience as an auditor and as a system design and implementation consultant. In August 2020, IEH hired Financial Consulting Strategies, a consulting firm focused on SEC financial reporting services, to assist with carry forward data

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

filtering and providing sufficient auditable evidence to Marcum on which it may render an opinion. IEH estimates it has spent over \$500,000 on external resources in connection with the inventory reconciliation, updating its SAP System, and becoming current in its SEC periodic reports. In August 2022, IEH hired new outside securities counsel to assist with becoming current in its periodic reports. Significantly, the company anticipates filing in the near term a comprehensive Super Form 10-K which provides investors with current financial information, including audits of the fiscal years ended March 31, 2020, 2021, and 2022. The Commission has previously recognized each of these as evidence of an attempt at remediation. *See Advanced Life Sciences Holdings.*

In *Absolute Potential*, a case where the Commission imposed a revocation sanction, the Commission was careful to distinguish the facts in that case from its decisions in *Phlo Corp.*, and in *e-Smart Technologies*, Release No. 50514 (Oct. 12, 2004), where in each case the Commission declined to impose a revocation sanction. The Commission stated that in *Phlo Corp.*, the “issuer – unlike Absolute – pointed to specific internal accounting failures that led to its violations,” and noted that the company “made extensive and successful efforts to remedy the internal accounting failure that led to its violations, became current in its reporting obligations while the disciplinary proceeding was pending, and expended significant resources.” *Absolute Potential*, at 12. The Commission also distinguished the facts in *e-Smart Technologies* from those in *Absolute Potential* by noting that management had retained new counsel, explained the filing delinquencies, and was able to bring and keep the company current.

Like the issuer in *Phlo Corp.*, IEH has made extensive and successful efforts to remedy the causes that led to its inability to file its periodic reports. In addition, like *Phlo Corp.*, IEH is

working diligently to become current in its filings and has expended significant resources in doing so, evidencing that the company takes its Exchange Act reporting obligations seriously.

#### **5. IEH has provided credible assurances against further violations**

The company has offered concrete and credible assurances of its ability to remain current in its reporting obligations. IEH's President and CEO indicated in a press release filed on Form 8-K on June 28, 2021, prior to the Commission instituting these proceedings, that the company was "totally focused" on becoming current in its SEC filings, and reported that the company had made "great progress towards resolving the related inventory and ERP accounting system issues that have caused the delay" in its periodic reports. Mr. Offerman indicated that once the issues are resolved the company expects to "complete the missing filings and once again be current in our reporting obligations." He explained to investors that "the sheer volume of data that we have to sort and filter in order to reconcile our legacy system with our new system has proven quite challenging." Mr. Offerman also indicated that the company had "engaged outside resources and focused internal resources to address these subjects appropriately so that we can keep moving forward." IEH has taken concrete steps to ensure future compliance, including hiring an auditor with extensive experience working with SEC-registered companies, hiring Financial Consulting Strategies, a consulting firm focused on SEC financial reporting services, to assist with carry forward data filtering and providing sufficient auditable evidence to the company's accountant, and hiring new outside securities counsel.

The company has followed through on its assurances that it is taking steps to become current, thereby contradicting any suggestion that its assurances were not credible. IEH has demonstrated it has the resources suggesting a strong likelihood of future timely filings. The company's financial outlook in the near- and long-term will ensure it has the ability to meet its reporting obligations. In this regard, IEH is a profitable revenue generating company that will

continue to generate income in the future. IEH has operating revenue sufficient to ensure continued future compliance with its reporting obligations, as evidenced by its engagement of Marcum, Financial Consulting Strategies, and new securities counsel to assist with preparing and filing the Super Form 10-K.

### **III. Conclusion**

IEH has a long history of filing periodic reports with the Commission, and has expended significant resources to regain compliance with its periodic reporting obligations after the disruptions caused by the company's migration to a new enterprise accounting and inventory system, and losing support for its legacy inventory system, which coincided with the unprecedented disruptions caused by COVID-19 and the associated government restrictions. IEH has taken concrete steps to become current in its Exchange Act reporting obligations and to ensure that the company will be able to continue to comply with its reporting obligations going forward, thereby providing investors with current financial information. IEH anticipates filing a Super Form 10-K in the near term, and is working diligently toward becoming current. Based on the genuine issues of material fact identified, and the fact that the *Gateway* factors weigh against revocation, the Commission should deny the Division's Motion.

Dated: March 15, 2023

Respectfully submitted,

/s/ Sean M. Donahue  
Sean M. Donahue, Esq.  
Goodwin Procter LLP  
1900 N Street, N.W.  
Washington, DC 20036  
202-346-4207  
[SDonahue@goodwinlaw.com](mailto:SDonahue@goodwinlaw.com)  
Counsel for Respondent

**UNITED STATES OF AMERICA**

**Before the**

**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-20973**

In the Matter of  
IEH Corporation,  
Respondent.

**DECLARATION OF DAVID OFFERMAN IN SUPPORT OF  
IEH CORPORATION'S RESPONSE TO DIVISION OF ENFORCEMENT'S  
MOTION FOR SUMMARY DISPOSITION**

DAVID OFFERMAN, pursuant to 28 U.S.C. §1746, declares:

A. I am the President and Chief Executive Officer of IEH Corporation ("IEH"), the respondent in the above-captioned administrative proceeding, and held these roles during the entire period of the events that are the subject of this administrative proceeding. I am authorized by IEH to file this declaration in support of IEH's Response to the Division of Enforcement's Motion for Summary Disposition (the "Response").

B. IEH (CIK No. 50292) is an active New York corporation founded in 1941, and is based in Brooklyn, New York.

C. IEH has a class of securities registered with the Commission under Exchange Act Section 12(g).

D. Since 1966, IEH has filed Exchange Act periodic reports with the Securities and Exchange Commission.

E. Beginning with its quarterly report for the period ended June 30, 2020, IEH failed to timely file its Exchange Act periodic reports. This was due to a failed SAP Business One (“SAP”) system implementation which IEH explained in detail in its March 28, 2022 response to the March 11, 2022 letter from the SEC’s Division of Corporation Finance.

F. IEH converted to the new SAP system after its revenue grew 50% from 2010 to 2014, and the company expected it would continue to grow, and determined that a new system was necessary to support its business plan. IEH’s legacy system was over 30 years old, and was based on an outdated DOS based, eight-bit architecture for which the company was at risk of losing support because the original design and implementation consultant was in ill health, and there was no redundancy.

G. The SAP system has an elaborate inventory costing process which the company had been unable to implement properly and made design changes in the out-of-the-box software. The SAP system and the legacy system have significant differences in their inventory balance breakdown between raw materials, work-in-progress (WIP), and finished goods due to the fact that the SAP system uses a perpetual inventory valuation system and IEH’s legacy system used a periodic inventory valuation system. IEH made large accounting entries to the system to mitigate the operating issues.

H. As a result of these implementation issues, it was difficult to provide sufficient audit evidence (work-in-progress (WIP) balances and supporting workpapers) to allow auditors to render an opinion.

I. For the most part, IEH was able to determine other financial accounts with reasonable assurance.

J. In July 2017, IEH commenced data entry in both its legacy and the new SAP systems. Over the next two years, inventory accounts and journal entries were created to plug the inventory gap, such that the two systems “operated in parallel.”

K. In September 2019, IEH switched over to SAP alone, at which time the company intended to take a physical inventory at the fiscal year ended March 31, 2020. Due to COVID-19 protocols, however, the company was unable to take a reliable physical inventory.

L. During this time, IEH changed auditors from an auditor that had only a single SEC reporting company client (IEH), to Marcum LLP. In addition, IEH’s new Chief Financial Officer (“CFO”), William Craig, joined the company on June 24, 2020, to replace the company’s former CFO who retired in the summer of 2020 after serving as CFO for thirty years.

M. IEH has undertaken immediate steps, and dedicated extensive resources, to cure its periodic reporting filing deficiencies. In addition to engaging Marcum, and hiring a new CFO certified in financial forensics with experience at three prior companies subject to SEC reporting requirements, IEH engaged the services of Be One Solutions, a SAP service partner that specializes in successful implementation and support, to assess the company’s SAP system from December 2020 to December 2021. In August 2020, IEH hired Financial Consulting Strategies, a consulting firm focused on SEC financial reporting services to assist with carry forward data filtering and providing Marcum with sufficient auditable evidence to render an opinion. In




August 2022, IEH hired law firm Goodwin Procter LLP as outside securities counsel to assist with the preparation of its SEC filings and with this Section 12(j) proceeding.

N. As a result of the remediation steps described herein, in IEH's answer to the Order Instituting Proceedings, and in IEH's Response, IEH was able to complete quarterly reviews and audits of the years ended March 31, 2021 and 2022 which will be included in a Super Form 10-K IEH expects to file in the near term, and restated audited financial information for the fiscal year ended March 31, 2020. Once IEH has filed its Super Form 10-K, it will focus its attention on filing quarterly reports for the quarters ended June 30, 2022, September 30, 2022, and December 31, 2022.

O. IEH has established regular and reliable relationships with its auditor, financial consultant, and outside securities counsel that will enable the company to comply with its reporting obligations going forward. Moreover, IEH has the financial resources to pay for continued compliance with its reporting obligations going forward.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 15, 2023.



David Offerman  
President and Chief Executive Officer

**CERTIFICATE PURSUANT TO RULE 154**

In accordance with Rule 154 of the Commission's Rules of Practice, I hereby certify that the respondent's Opposition Brief to Division of Enforcement's Motion for Summary Disposition ("Opposition Brief") relating to IEH Corporation, Administrative Proceeding No. 3-20973, complies with the length limitations set forth in Rule 154(c), exclusive of pages containing the table of contents, table of authorities, and addendums that consist solely of exhibits. The Opposition Brief contains 6,709 words, based on the word processing program used to prepare the document.

*/s/ Sean M. Donahue*

Sean M. Donahue

Goodwin Procter LLP

Counsel for Respondent

## CERTIFICATE OF SERVICE

In accordance with SEC Rules of Practice 150 and 151, 17 C.F.R. §§201.150 and 151, I certify that a copy of the Opposition Brief to Division of Enforcement’s Motion for Summary Disposition relating to IEH Corporation, Administrative Proceeding File No. 3-20973, was (a) filed on March 15, 2023, through the Commission’s Electronic Filings in Administrative Proceedings (eFAP) system; and (b) was served on the following persons on March 15, 2023, via email at the email addresses indicated:

Samantha Williams, Esq.  
Sandhya C. Harris, Esq.  
Counsel for Division of Enforcement  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
*williamssam@sec.gov*  
*harrissan@sec.gov*

Respondent and Respondent’s legal counsel, Sean M. Donahue, 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: *bcraig@iehcorp.com* and *SDonahue@goodwinlaw.com*.

*/s/ Sean M. Donahue*

Sean M. Donahue

Goodwin Procter LLP

Counsel for Respondent