UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-20051

In the Matter of

Daniel C. Masters,

Respondent

REPLY TO STAFF'S OPPOSITION TO RESPONDENT DANIEL C. MASTERS' MOTION TO VACATE THE COMMISSION'S SETTLEMENT ORDER AND RULE 102(e) SUSPENSION

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The SEC's opposition to Daniel Masters' Motion to Vacate fails because it 1) does not and cannot show the Commission has subject-matter jurisdiction, 2) does not show how, specifically, any statement was false, 3) does not take into consideration that the case was voluntarily withdrawn, and 4) does not show how it violated 11 U.S.C., the Bankruptcy Code.

The Commission's Lack of Subject-Matter Jurisdiction:

In its Opposition Brief the Commission Staff notes that Respondent Daniel Masters signed an offer of settlement consenting to, among other things, a Rule 102(e) Bar and a waiver of certain rights. He was, however, incapable of waiving the basis on which the SEC's action

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was predicated and, like the fruit of a poisonous tree, everything flowing from the Commission's lack of Subject-Matter Jurisdiction. He did not waive this because "[S]ubject-matter jurisdiction… can never be forfeited or waived." *United States* v. *Cotton,* 535 U. S. 625, 630 (2002); *Arbaugh v. Y & H Corp*., 546 U.S. 500 (2006). This is true regardless of when the issue is raised. "The objection that a federal court lacks subject-matter jurisdiction… may be raised at any stage in the litigation, even after trial and the entry of judgment, [FRCP] Rule 12(h)(3)." *Arbaugh v. Y & H Corp*., 546 U.S. 500 (2006).

The Staff first argues that the Bankruptcy Disclosure Statement "was an unregistered offer of securities pursuant to the exemption from registration… contained in Section 1145 of the Bankruptcy Code." (Opposition, Page 4). Yet the Disclosure Statement filed with the United States Bankruptcy Court clearly states: **"THIS IS NOT AN OFFER TO SELL OR EXCHANGE SECURITIES, NOR IS IT A SOLICITATION OF AN OFFER TO BUY OR EXCHANGE SECURITIES. SECURITIES WILL ONLY BE ISSUED PURSUANT TO AN ORDER OF THE COURT AND ONLY IF THE COURT CONFIRMS THE DEBTOR'S PLAN OF REORGANIZATION."** (Emphasis in original Disclosure) Apart from the fact the document clearly states it is ***not*** an offer, it clearly states the reason it ***cannot be*** an offer. The Debtor does not have the power to offer and its creditors do not have the power to accept. The power is vested ***only*** in the Bankruptcy Court. Without an offeror with the power to offer, and an offeree with the power to accept, there can be ***no offer***.

The Staff next argues that it had subject-matter jurisdiction because the purportedly false statements were "in connection with the purchase or sale of securities because, at all relevant times, Worthington Energy's common stock was publicly traded" (Opposition Brief, Page 6).

While it is true that Worthington Energy's common stock was publicly traded, it is also irrelevant. The Commission's Order of September 23, 2020 claims that false statements were made about a private company, Smart Tech, misrepresenting its plan to be acquired, its assets, and its sales projections. (Order, ¶ 10, 11, 12.) Whatever acquisition plans Smart Tech had,

whatever assets it claimed, whatever sales projections it made, there was never a representation that these were plans, assets, or projections of Worthington Energy or that they would ever become plans, assets, or projections of Worthington Energy. If there were no false statements about Worthington, there were no false statements "in connection with" the purchase or sale of Worthington stock on the OTC Market.

According to the Order: "…Worthington Energy did not have an agreement with the Private Company to acquire it." (Order, ¶ 10) Actually, this is true, but contrary to the SEC's contention, no representation was ever made that Worthington would acquire it. The proposal was to form a new company, a "Successor," to acquire the private company. Indeed, in the 34 pages of the Disclosure Statement the word "Successor" is used 57 times to describe the new company that would be formed, if the Court approved, to issue cash and shares to creditors of the bankruptcy estate and to acquire the private company. The Disclosure Statement clearly states that shares will ***only*** be issued to creditors and to the three principals of Smart Tech; no shares will be issued to the shareholders of Worthington. The Disclosure Statement at Page 18 states "Holders of Common Stock… in Debtor… will not receive or retain equity in the Successor Corporation or anything else of value." No one reading this could hope to acquire an interest in Smart Tech and its assets by buying Worthington shares.

The second allegation deals with assets of the private company that would, again if approved by the Court, become assets of the Successor – but never assets of Worthington (Order, ¶ 11). Finally, the third allegation is facially false as the projections show they were dependent on the Successor having less than $190,000 in assets, not $500,000 as the Order claims (Order, ¶ 12). More importantly for purposes of subject-matter jurisdiction, the third allegation is once again about the Successor and the private company, not about Worthington Energy.

It should be noted that the Staff also justifies its penny stock bar on the canard that Masters made false statements about Worthington. "Masters was a 'person participating in an

offering of penny stock' because he engaged in activities for the purpose of trading and/or inducing or attempting to induce the purchase or sale of Worthington Energy, which was a penny stock." (Opposition Brief, Page 15). As noted above, the Disclosure Statement was not an offering and it clearly stated that Worthington shareholders would receive or retain nothing of value – hardly an inducement to trade in Worthington stock.

Thus there was no "offer" and the Staff cannot point to one allegedly false or misleading statement made about Worthington Energy. Therefore there are no false or misleading statements made "in connection with" the sale of Worthington stock. The conclusion is inescapable: the Commission lacks subject matter jurisdiction in this case.

Lack of Specificity as to Fraud - FRCP Rule 9(b)

The Commission Staff, in its Opposition Brief, repeats its catalogue of alleged offenses by Respondent Daniel Masters but does so, as it has always done, without the specificity and clarity necessary to show why statements in the Disclosure were false and misleading. For example, the Staff writes, "[Masters] drafted the Disclosure Statement that falsely said that the Private Company held liquid assets valued at almost a half million dollars." (Opposition Brief, Page 6, L. 20) Why and how was information on the Private Company's assets false? Was it because the value of stock in Airborne Wireless, a publicly traded company, fluctuated from day to day? Was it because the instrument assigning Airborne stock to the Private Company was somehow flawed? Was it because the financial statement prepared by the CFO of the Private Company lacked some required detail? We simply don't know; and without this knowledge the allegations are nearly impossible to refute. This is why the Federal Rules of Civil Procedure demand that "In alleging fraud or mistake, a party ***must*** state with particularity the circumstances constituting fraud or mistake." (FRCP Rule 9(b). Emphasis added.) The Staff has ignored this basic Rule and standard.

The Case was Voluntarily Withdrawn – the FRCP Rule 11 "Warning Shot" Standard

The Staff, both in the September 23, 2020 Order and in its Opposition Brief, fails to address the fact that Masters caused the Worthington bankruptcy case to be dismissed soon after the SEC sent a Comment Letter strongly opposing the bankruptcy. This evidence of willingness to work with and voluntarily accede to the Staff's position is hard to square with a permanent Rule 102(e) Bar issued more than two years later. Indeed, the Bar defies the proper application of the Federal Rules of Civil Procedure Rule 11, the 'Sanction Rule,' which provides that if a party or their attorney receives notice, and they then withdraw the matter subject to sanction, they will not generally be sanctioned. In contrast, Masters withdrew the case but was nevertheless sanctioned by the SEC.

The Proposed Plan Advanced the Goals of the Bankruptcy Code

The Staff argues that the proposed Plan violated the Bankruptcy Code because the Disclosure included false statements, though as noted above there is no specificity in this allegation that would allow us to know exactly how the statements are false. Respondent Masters argues the Plan was in keeping with the Chapter 11 goal of maximizing recovery for creditors. The Staff notes, "Masters withdrew the Disclosure Statement before the Court was scheduled to consider it, so that the Bankruptcy Court never made any determination that the Disclosure Statement complied with applicable Bankruptcy Law" (Opposition Brief, Page 7). However the Staff fails to note that Masters withdrew the case in response to their May 10, 2018 comment letter. The Staff also fails to note that under Bankruptcy Court procedures the SEC could have opposed the motion to withdraw until after a hearing on the "adequacy" of the Disclosure Statement (11 U.S.C. § 1125), thus eliminating any doubt as to whether it complied with applicable Bankruptcy Law. Instead the Staff brandishes the claim the Disclosure was fraudulent even though it carefully avoided making this argument to the one Court with the authority to decide the issue.

The Staff's Erroneous Arguments and Conclusions

The SEC is in error not to vacate the Rule 102(e) Bar and other sanctions. Their arguments are based upon misassumptions of fact and law.

First, there was ***not*** an unregistered offer of securities, notwithstanding the Staff's Brief which states: "The Disclosure Statement was an unregistered offer of securities pursuant to the exemption from registration for securities issued to creditors in Section 1145 of the Bankruptcy Code". (Opposition Brief, Pages 4-5) This however, was not an attempt to dispose of securities, qualifying it as an offer. No offer was made because the Disclosure Statement clearly stated in bold that it was not an offer to sell or exchange securities. The Disclosure Statement for the Plan filed on May 1, 2018 explicitly stated: **"THIS IS NOT AN OFFER TO SELL OR EXCHANGE SECURITIES, NOR IS IT A SOLCITATION OF AN OFFERTO BUY OR EXCHANGE SECURITIES, SECURITIES WILL ONLY BE ISSUED PURSUANT TO AN ORDER OF THE COURT AND ONLY IF THE COURT CONFIRMS THE DEBTOR'S PLAN OF REORGANIZATION."** (Emphasis in the Disclosure Document)

The foregoing language in bold, squarely contradicts the following language on page 15 of the SEC Staff Brief; "Masters was a person participating in an offering of penny stock because he engaged in activities for the purpose of trading and/or inducing or attempting to induce the purchase or sale of Worthington Energy, which was a Penny Stock." This is clearly not true and not supported by one cited fact.

The Disclosure Statement was merely a proposal which would require approval by the United States Bankruptcy Judge before any lawful transaction implementing the Plan could be undertaken. The Judge was the only one who could approve or disapprove both the Disclosure and the Plan under the Bankruptcy Code. The Disclosure Statement made explicit reference to the exclusive authority of the US Bankruptcy Judge. "**SECURITIES WILL ONLY BE ISSUED PURSUANT TO AN ORDER OF THE COURT AND ONLY IF THE COURT CONFIRMS THE**

DEBTOR'S PLAN OF REORGANIZATION." (Disclosure Statement, Pages 2 and 35, Emphasis in the Original.)

Second, the proposed Disclosure Statement was filed May 1, 2018 and the SEC Comment Letter was dated May 10, 2018. On June 4, 2018 Masters as Counsel for Worthington Energy timely moved to withdraw the proposal and the Court granted the Motion without opposition by the SEC and with no costs or sanctions on July 16, 2018. Given that he withdrew the proposal and, as per custom and practice and in the absence of exceptional circumstances, he should not be subject to sanctions including a Rule 102(e) Bar. See Federal Rules of Civil Procedure ("FRCP"), Rule 11.

Further, since the SEC participated in the process as a party, the Court's July 16, 2018 ruling had to have an estoppel effect precluding the September 23, 2020 Administrative Proceeding and the judgment the SEC obtained by consent. In both telephonic and in person discussions with SEC Trial Counsel Neal Jacobson following his comment letter of May 10, 2018, Mr. Jacobson demanded of Masters that Worthington move the Court to dismiss the case and that the SEC would only be satisfied if Worthington did so. A motion to dismiss was filed on June 4, 2018 and subsequently granted by the Court. The motion to dismiss was made in reliance upon Jacobson's statements that only this would satisfy the SEC (other measures were offered by Masters). This reliance was detrimental to Worthington, which could not complete its bankruptcy and pay its creditors, and to its counsel, who could not be paid. Notwithstanding the Staff's word and Masters compliance, an administrative proceeding was instituted. Accordingly, the SEC should be estopped from imposing any sanctions against Masters.

Finally, the relief sought and obtained by the SEC was and is punitive and not remedial. Its effect was solely to punish allegedly prior conduct and not to deter ongoing or future misconduct or accord remedial relief. The Staff argues that Masters' penalty was comparable to In the Matter of John Briner Esq., SEC Release No. 75946, 2015 WL: 542557 (Sept. 18, 2015) (Opposition Brief, Page 15) where disgorgement accompanied a $50,000

penalty. But in the instant case there was no investor loss and no disgorgement. The cases are simply not comparable and the $50,000 penalty was not justified as a matter of law, even if Masters consented to the Order.

Conclusion

For the reasons stated above and in the Motion to Vacate, the SEC should restore Masters to his privileges to practice before the SEC and the $50,000 fine should be returned. The Commission's lack of Subject-Matter Jurisdiction, Masters' reasonable reliance on the apparent truth of the statements made in the Disclosure Statement and the Staff's failure to provide specificity as to how those statements were false, Masters' cooperation with the SEC in moving to dismiss the bankruptcy case, and the Plan's adherence to Bankruptcy Law and the goals of Chapter 11, all demonstrate that the Commission's Order and Rule 102(e) Bar should be vacated forthwith.

///

February 10, 2022

Respectfully submitted,

/s/ Norman B. Arnoff

Norman B. Arnoff, Esq.
Attorney for Daniel C. Masters, Respondent

Read and approved,

/s/ Daniel C. Masters

Respondent

Daniel Masters (SBN 220729)
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Telephone: (858) 459-1133
Facsimile: (858) 459-1103

Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:	Case No.: 18-02702-CL11
WORTHINGTON ENERGY, INC.,	**MOTION BY DEBTOR TO CONVERT THE CASE TO CHAPTER 7 OR TO DISMISS THE CASE**
A NEVADA CORPORATION,	Date: July 16, 2018 Time: 2:30 PM
Debtor.	Place: 325 West F Street, Dept. 5 San Diego, CA 92101
	Judge: Hon. Christopher B. Latham

WORTHINGTON ENERGY, INC. the debtor and debtor-in-possession (the "Debtor") moves the Court for an order converting this case from a case under Chapter 11 to a case under Chapter 7 pursuant to 11 U.S.C. section 1112(b), or, in the alternative, for an order dismissing the case.

BACKGROUND

On May 1, 2018 the Debtor filed a voluntary petition for relief under chapter 11 of the Code [Docket Entry No. 1]. On May 21, 2018 the Court held a status conference in this case and on May 29, 2018 a 341(a) meeting of creditors meeting was held. At both the status conference and the meeting of creditors the question of the corporate status of the Debtor in Nevada and in California was raised.

The Debtor's status as a corporation has been revoked in Nevada and forfeited in California, both for failure to pay corporate fees and taxes. Management of the Debtor has determined that the fees owing are $20,625 to Nevada and $7,423 to California. Management has also attempted to negotiate with the two states to reduce the amounts owing but without success. The Debtor lacks the resources to pay these

sums and management is unwilling to pay them on behalf of the Debtor. Moreover, the SEC has indicated its intent to oppose the Debtor's plan of reorganization, making it unlikely that any other party would be willing to advance the necessary funds. Finally, the Debtor's business is not operating, thus there is no business to reorganize.

Therefore the Debtor is filing this motion to convert or dismiss.

ARGUMENT

Under the present circumstances, it is in the best interests of the Debtor and its creditors to convert this chapter 11 case to a case under chapter 7 of the Bankruptcy Code, as it appears the Debtor has no legal standing and there is no meaningful operating business to reorganize. Section 1112(b)(1) of the Bankruptcy Code provides that the court "shall" convert or dismiss the case if the movant establishes cause, unless the court determines that unusual circumstances exist such that conversion or dismissal would not be in the best interests of creditors and the estate. 11 U.S.C. § 1112(b)(1) and (2).

Section 1112(b)(4) provides a non-exhaustive list of sixteen factors from which the Court may find a showing of "cause" for purposes of paragraph (b)(1). See 11 U.S.C. § 1112(b)(4). Among the factors named, cause for conversion exists when a moving party can demonstrate the "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" 11 U.S.C. §1112(b)(4)(F). Cause for conversion also exists when a moving party can demonstrate "failure timely to provide information… reasonably requested by the United States trustee" 11 U.S.C. §1112(b)(4)(H).

Here the Debtor has failed to provide the United States Trustee's office with evidence of its good standing in Nevada and California and with evidence of a debtor-in-possession bank account. The Debtor is unable to establish a bank account because of its revoked and forfeited status with Nevada and California respectively. Moreover, there is no reasonable prospect that the Debtor will be able to cure these deficiencies because the Debtor lacks the funds to pay the state fees which total approximately $28,048.

Once cause is established by the moving party, dismissal or conversion is mandatory "unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate" § 1112(b)(1). Such an appointment is not in the best interest of

creditors and the estate here because there is no ongoing business for a trustee to operate and no significant asset for a trustee to protect.

CONCLUSION

"Cause" exists for conversion of this chapter 11 case to one under chapter 7. Additionally, the Debtor is unaware of any circumstances that would constitute "unusual circumstances" that would operate as an exception to the standard set forth in section 1112(b)(1). Accordingly, it is appropriate and in the best interest of creditors and this estate for the Court to convert this chapter 11 case to a case under chapter 7 of the Bankruptcy Code or to dismiss the case. Therefore, the Debtor respectfully requests that this Court enter an order converting the Debtor's case from chapter 11 to chapter 7, or an order dismissing the case, and grant such other and further relief as it deems just and proper.

DATED: June 4, 2018

Respectfully submitted,

Worthington Energy, Inc.

/s/ Daniel Masters

By: _____
Daniel Masters
Attorney for Debtor
Worthington Energy, Inc.

DECLARATION OF CHARLES VOLK

I, Charles Volk, declare as follows:

1. I am the Chairman of Worthington Energy, Inc., debtor and debtor in possession in the above-captioned case ("Debtor"). I have personal knowledge of the facts set forth herein except those stated on information and belief, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of the attached Motion by Debtor for an order converting the case from one under chapter 11 to one under chapter 7, or, in the alternative, for an order dismissing the case.

2. The Debtor is a Nevada corporation organized on June 30, 2004, however its corporate status has been revoked by Nevada for failure to pay fees.

3. The Debtor currently owes the State of Nevada $20,625 in back fees.

4. The Debtor was qualified to do business in California, however its status in California has been forfeited for failure to pay fees.

5. The Debtor currently owes the State of California $7,423 in back fees.

6. The Debtor has no funds with which to pay these fees and no one known to the Debtor is willing to advance the funds for Debtor to pay these fees.

7. The United States Trustee has requested evidence of good standing in these states and evidence of the opening of a debtor-in-possession bank account, none of which the Debtor can provide since it is not in good standing and since the bank also requires evidence of good standing to open an account.

13. Because the Debtor is unable to comply with these requirements the Court should order this chapter 11 case to be converted to a case under chapter 7 or, in the alternative, dismiss this case.

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

Executed this 4th day of June, 2018 at Tiburon, California.

/s/ Charles Volk

Charles Volk
Chairman of Worthington Energy, Inc.

CSD 1181 [05/19/17]
Name, Address, Telephone No. & I.D. No.

Daniel Masters (SBN 220729)
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La Jolla, CA 92038

(858) 459-1133

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

In Re

WORTHINGTON ENERGY, INC.

a Nevada corporation

Tax I.D.(EIN)#: 20-1399613 /S.S.#:XXX-XX- Debtor.

BANKRUPTCY NO. 18-02702-CL11

NOTICE OF HEARING AND MOTION

TO THE DEBTOR, ALL CREDITORS AND OTHER PARTIES IN INTEREST:

You are hereby notified that on July 16, 2018, at 2:30 P.m., in Department 5, Room 318, of the Jacob Weinberger United States Courthouse, located at 325 West F Street, San Diego, California 92101-6991, there will be a hearing regarding the Motion of Worthington Energy, Inc. (the Debtor), for [check the appropriate box]:

- ☑ Dismissal of a chapter 7, 11 or 12 case;
- ☐ Conversion of a chapter 7, 11 or 12 case by a party other than the debtor;
- ☐ Allowance of [interim] [final] compensation or reimbursement of expenses of professionals as provided in Exhibit "A" [information required by FRBP 2002(c)(2)];
- ☐ Appointment of a trustee in a chapter 11 case; or
- ☑ Other [specify the nature of the matter]:

Motion to convert chapter 11 case to chapter 7 case or, in the alternative, to dismiss this case.

If not required to be attached, a set of the moving papers will be provided, upon request, by the undersigned or may be inspected at the office of the Clerk.

Any opposition or other response to the motion must be served upon the undersigned and the original and one copy of such papers with proof of service must be filed with the Clerk of the U.S. Bankruptcy Court at 325 West F St., San Diego, California 92101-6991, **not later than fourteen (14)[1] days from the date of service.**

DATED: June 4, 2018

/s/ Daniel Masters
[Attorney for] Moving Party

[1] Depending on how you were served, you may have additional time for response. See FRBP 9006.

CERTIFICATE OF SERVICE

I, the undersigned whose address appears below, certify:

That I am, and at all relevant times was, more than 18 years of age;

That on 4th day of June, 2018, I served a true copy of the within NOTICE OF MOTION AND HEARING by [describe here mode of service]
ECF to the United States Trustee and to the Securities and Exchange Commission

and by U.S. Mail, postage prepaid

on the following persons [set forth name and address of each person served] and/or as checked below:

☐ Attorney for Debtor (if required):

See attached list

☑ For Chpt. 7, 11, & 12 cases:

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San Diego, CA 92101-8897

☐ For ODD numbered Chapter 13 cases:

THOMAS H. BILLINGSLEA, JR., TRUSTEE
401 West A Street, Suite 1680
San Diego, CA 92101

☐ For EVEN numbered Chapter 13 cases:

DAVID L. SKELTON, TRUSTEE
525 B Street, Suite 1430
San Diego, CA 92101-4507

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

Executed on June 4, 2018
(Date)

Daniel Masters
(Typed Name and Signature)

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OS Received 02/10/2022

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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NEW YORK, NEW YORK 10281-1022

NEAL JACOBSON
(212) 336-0095

May 10, 2018

BY EMAIL

Daniel Masters, Esq.
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Masters@lawyer.com

Re: Worthington Energy, Inc. (NY-9884)/Bankruptcy Case No. 18-2702 (CL) (Bankr. S.D.Cal.)

Dear Mr. Masters:

The staff of the Securities and Exchange Commission ("SEC") has reviewed the Disclosure Statement Describing Debtor's Joint Plan of Reorganization ("Disclosure Statement") and the Debtor's Joint Plan of Reorganization ("Plan") filed on May 1, 2018 in the above-referenced case. As set forth more fully below, in the staff's view, the Disclosure Statement contains inadequate information and cannot be approved in its current form. In addition, the staff believes that the Plan is nothing more than an attempt to traffic in public corporate shells in contravention of Sections 1129(d) and 1141(d)(3) of the Bankruptcy Code and is unconfirmable. The staff reserves the right to conduct formal discovery in connection with any motion for an order seeking approval of the Disclosure Statement and/or confirmation of the Plan.

Disclosure Standard

Section 1125 of the Bankruptcy Code requires the proponent of a plan to provide creditors and interest holders with a disclosure statement that contains "adequate information." 11 U.S.C. § 1125(a). "Adequate information," in turn, is defined as "information of a kind, and in sufficient detail … that would enable [] a hypothetical investor of the relevant class to make an informed judgment about the plan …." 11 U.S.C. § 1125(a).

Disclosure of the SEC Investigation, Penalty Claim, and Public Filings

The SEC is investigating an apparently false press release issued by Worthington Energy, Inc. ("Worthington") on January 26, 2018. This investigation could lead to the assertion by the SEC of a penalty claim against Worthington. In addition, Worthington was sanctioned with a $25,000 civil money penalty by the SEC in November 2014 for failing to file Forms 8-K when it issued unregistered securities. That penalty has not been fully paid. It also appears that Worthington has not kept current in its filings with the SEC but the Disclosure Statement does not explain why the

filings have not been made. The Disclosure Statement should be amended to include these relevant facts.

Disclosure Regarding Worthington and its Principals

Nowhere in the Disclosure Statement is a discussion of how Worthington, a defunct public Nevada corporation whose registration was revoked, came to be controlled by its principals. There is also no disclosure regarding Worthington's and the purported merger partner's principals experience with implementing reverse mergers with public shell companies. The Disclosure Statement should be amended to include this information.

Disclosure of Information Relevant to the Purported Reverse Merger Partner

The Disclosure Statement provides that Worthington will acquire a private company named "Smart Tech" by issuing 5 million shares to Smart Tech's shareholders and will continue Smart Tech's business post-plan consummation. (Disc. St. at 19)

According to the Disclosure Statement, Smart Tech is a development stage company and is the "developer and manufacturer" of two patented devices: (i) an electronic pill reminder device ("Smart Vial"), which is inserted into a pill box and triggers an alert that reminds the user when the next pill should be taken; and (ii) a fiber optic multi-direction USB plug (the "Flipper"), which can be inserted into a USB receptacle with the contacts facing up, down, right or left, making connection easier. (Disc. St. at 7-9)

The Disclosure Statement fails to identify the owner of the purported patents or the terms of Smart Tech's license to manufacture the identified products. In fact, a cursory Google search reveals that a company by the name of Ultra Tek, not Smart Tech, appears to own the patents on Smart Vial and the Flipper. Ultra Tek's website makes no mention of Smart Tech or any role it or its principals may play in the manufacture of its patented products, and the Disclosure Statement is devoid of any information regarding the owner of the patents. Although annexed to the Plan are financial projections for Ultra Tek and a draft financing motion that refers to Ultra Tek, there is no disclosure regarding Ultra Tek in the Disclosure Statement. Adding to the confusion, the Disclosure Statement refers to "additional funding" to be provided by an entity named "Vital," but is devoid of any information regarding Vital. (Disc. St. at 22) The Disclosure Statement should be amended to include accurate information regarding the purported reverse merger partner.

The Disclosure Statement contains minimal and unreliable financial information concerning Smart Tech. The Disclosure Statement reveals that Smart Tech has $507,000 in capital, consisting of 250,000 shares of a company called "Airborne Wireless," whose shares as of February 1, 2018 traded at $2.03 each. (Disc. St. at 9) However, Airborne Wireless stock is currently trading at approximately 75c per share, resulting in a capitalization of only $187,500, assuming the stock could be sold in a thin market without devaluing the sale price.

The Disclosure Statement also contains unsupported and wildly optimistic projections regarding the reorganized debtor's prospects. According to a five line "statement of operations"

attached to the Plan, Smart Tech's 2017 sales were only $920.00, and it had a net loss of $15,815.00. Nonetheless, without any supporting discussion or documentation, Smart Tech projects that it will generate sales of $375,000 in October-December 2018; $3.75mm in 2019; $5.625mm in 2020; $7.5mm in 2021; $9mm in 2022; and $11.25mm in 2023. This sketchy financial information inserted into a disclosure statement that will be the basis for trading in Smart Tech's stock is particularly troublesome to the staff in light of the January 26, 2018 press release, apparently issued by Worthington, that touted an "exciting new direction and business expansion," by Worthington's "new leadership team" and "new officers and directors." That press release, however, did not disclose the identities of the new management team nor any information regarding the new direction and business expansion.

A cursory Google search reveals press releases dating from July 2010 that introduced the Smart Vial and Flipper by Ultra Tek. The search also reveals that Ultra Tek's principal sued the USB Implementer's Forum, Inc. for refusing to certify or test the Flipper, and that the suit was dismissed. The Disclosure Statement should discuss why those products have not had any commercial success for the past eight years, what efforts had been made to develop them, what type of competition they face, and the effect of failure to obtain certification has on the Flipper's prospects.

The Disclosure Statement states that Worthington intends to issue stock in its nine dormant subsidiaries to creditors, but contains no discussion of what businesses the subsidiaries will engage in. The Disclosure Statement should be amended to provide adequate information regarding the subsidiaries' businesses.

Finally, the Disclosure Statement does not state that the reorganized debtor will file a Form 8-K with the Securities and Exchange Commission that contains the information required in a Form 10 registration statement upon the completion of the proposed reverse merger as set forth in Item 2.01 of Form 8-K.

The Plan Provides for Illegal Shell Trafficking and is Unconfirmable

The Disclosure Statement states that Worthington intends to use the exemption from registration contained in Section 1145 of the Bankruptcy Code to issue stock and warrants in Worthington's nine dormant subsidiaries to its creditors, thereby creating nine clean public shells that will have no assets and no identified operations. (Disc. St. at 11-13) Section 1141(d)(3) of the Bankruptcy Code, however provides that a corporate debtor cannot obtain a discharge if it has liquidated all or substantially all of its assets and does not engage in business after consummation of a plan. 11 U.S.C. §1141(d)(3).[1/] This prohibition was specifically drafted to prevent trafficking in

[1] Section 1141(d)(3) provides, in relevant part, that the confirmation of a plan does not discharge a corporate debtor if:

> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
> (B) the debtor does not engage in business after consummation of the plan; and;

corporate shells. *See In re Fairchild Aircraft Corp.*, 128 B.R. 976, 982 (Bankr. W.D. Tex. 1991); H.R. Rep. No. 595, 95th Cong., 1st Sess. 384, 418-19 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 98-99, 129-130 (1978). *See also In re Goodman*, 873 F. 2d 598, 602 (2d Cir. 1989) ("Congress deliberately excluded [liquidating] corporations from eligibility for discharge … to avoid trafficking in corporate shells …."). The court in *Fairchild Aircraft* noted that the protection against trafficking in corporate shells afforded by Section 1141(d)(3) is particularly important with respect to publicly traded companies:

> Without it, entities would be tempted to pick up the shell, issue new stock, and start a new business without the dead weight of old debt, undermining not only the integrity and *bona fides* of the bankruptcy system but also the underlying salutary function of the securities laws.

Fairchild Aircraft, 128 B.R. at 982 n.6. *See also* Report of the Commission on Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, 93rd Cong., 1st Sess. (1973), *reprinted in Collier On Bankruptcy*, Appendix Volume B at App. Pt. 4-703 through App. Pt. 4-704 (16th rev. ed. 2017) (Denying a corporate debtor a discharge "restricts the manipulative use of bankruptcy shells in violation of securities laws and other legislation protecting public investors in and creditors of corporations.").

In addition, Section 1129(d) of the Bankruptcy Code provides that "on request of a party in interest that is a governmental unit, the bankruptcy court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." 11 U.S.C. § 1129(d). The principal purpose of a plan may be determined "in the context of its surrounding circumstances." *In re Scott Cable Communications, Inc.*, 227 B.R. 596, 603 (Bankr. D. Conn. 1998). Here, there can be no doubt that the principal purpose of the Plan is to traffic in corporate shells and is therefore unconfirmable.

These preliminary comments are made without prejudice to the staff's right to raise additional comments and /or objections to approval of the Disclosure Statement and/or confirmation of the Plan and to take discovery in connection with any motion by Worthington to seek approval of the Disclosure Statement and confirmation of the Plan.

Sincerely,

Neal Jacobson
Trial Counsel

(C) the debtor would be denied a discharge under Section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3).

Cc (via email):
Leslie Skorheim, Esq.
Office of the United States Trustee
Leslie.skorheim@usdoj.gov

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re:	BANKRUPTCY NO. 18-02702-CL11
WORTHINGTON ENERGY, INC.	Date of Hearing: 07/16/2018
	Time of Hearing: 2:30 PM
Debtor(s).	Name of Judge: Christopher B. Latham

ORDER DISMISSING CASE

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through two (2).

DATED: July 16, 2018

Judge, United States Bankruptcy Court

OS Received 02/10/2022

The court affirms and adopts its tentative ruling at ECF No. 36 as the ruling of the court on Debtor's unopposed motion to dismiss or convert this case to another chapter (ECF No. 32). The motion is accordingly **granted**, and the case is hereby **dismissed**.

IT IS SO ORDERED.