

# 2005 BCSECCOM 169

## Settlement Agreement

### Daniel Brennan Matthews

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The following settlement of issues has been reached between Daniel Brennan Matthews (Matthews) and the Executive Director.

#### **Agreed Statement of Facts**

- ¶ 2 As the basis for the undertakings referred to in this settlement, Matthews acknowledges the following facts as correct:
1. Jalna Resources Limited (Jalna) was incorporated in British Columbia on June 27, 1974, and trades on the TSX Venture Exchange.
  2. Incite Marketing Group Inc. (Incite) is a private company incorporated in British Columbia.
  3. Matthews became a director of Jalna on May 30, 1997, and became CEO and president on April 29, 1999. Matthews resigned as CEO and president on April 20, 2000, and as a director on February 26, 2001.
  4. Matthews was the sole shareholder and director of Incite and made all business decisions in respect of Incite.
  5. Peter William Dunfield (Dunfield) became a director of Jalna on August 27, 1999, and is currently a director of Jalna.
  6. Dunfield was also an employee of Matthews at Incite and was a signing authority for Incite.
  7. Prior to March of 2000, the board of Jalna informally agreed that Matthews handle investor relations matters in respect of Jalna. There is no written record of this agreement.
  8. In March of 2000, Matthews, with the assistance of Dunfield, caused Jalna to advance US \$350,000 to Incite for investor relations services (the Agreement).
  9. In September of 2000, Incite returned US \$100,000 to Jalna.

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10. In October of 2004, Matthews returned a further US \$100,000 to Jalna pursuant to a settlement between Matthews and Jalna.
11. There was no written, signed, contract describing the nature of the Agreement and the specific activities to be performed by Incite.

### **Jalna's Breaches**

12. Jalna failed to make proper disclosure of the Agreement as follows:
  - (a) Exchange Policy 3.4 requires all issuers to disclose, to the public, any arrangement in which the issuer enters into in respect of investor relations. The Policy requires that the issuer disclose details of the activities to be carried out, compensation for those activities, and the ownership of the entity carrying out the investor relations activities on behalf of the issuer. The Policy also requires that details of any such agreement be promptly filed with the Exchange;
  - (b) Jalna did not disclose the Agreement to the Exchange as required by Exchange Policy 3.4;
  - (c) Jalna did not publicly disclose the Agreement in a timely manner, as required by section 85 of the *Securities Act*, RSBC 1996, c. 418 and Exchange Policy 3.4; and
  - (d) Jalna did not file a material change report, describing the Agreement, with the British Columbia Securities Commission, as required by section 85 of the Act.
13. Jalna's Financial Statements were inaccurate and inconsistent as follows:
  - (a) Jalna's quarterly balance sheet, for the quarter ending March 31, 2000, signed by Dunfield and Matthews, mischaracterized the Agreement as an investment in Incite by Jalna;
  - (b) Jalna's audited year-end balance sheet, dated June 30, 2000, signed by Dunfield and Matthews, showed the remaining US \$250,000 paid by Jalna, pursuant to the Agreement, as a prepaid expense and did not indicate that any of the expenses had been incurred;
  - (c) Jalna's unaudited quarterly balance sheet, dated September 30, 2000, signed by Dunfield and Matthews, did not show the US \$250,000 as a prepaid expense. It was reclassified as an account receivable;

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- (d) Jalna's unaudited balance sheet, dated December 31, 2000, signed by Dunfield and Matthews, showed the \$250,000 US as a prepaid expense and did not indicate that any of the expenses had been incurred;
  - (e) Jalna's unaudited quarterly balance sheet, dated March 31, 2001, signed by Dunfield and Marion McGrath, did not show the \$250,000 US as a prepaid expense. It was reclassified as an account receivable. The entire amount was written off by Jalna as of June 30, 2001;
  - (f) none of Jalna's financial statements ever disclosed the Agreement as being a non arms length transaction; and
  - (g) beginning in late 1999 and continuing into 2001 Matthews personally, or through Incite, incurred expenses in excess of US \$100,000 for investor relations activities performed on behalf of Jalna. No invoices, in respect of this work or any other investor relations work relating to Matthews or the Agreement were ever provided to Jalna and none of the expenses were noted on Jalna's financial statements.
14. By omitting disclosure of, or mischaracterizing the Agreement and the transactions relating to the Agreement, Jalna's financial statements were misleading in a material respect and at the time and in light of the circumstances under which they were filed. Accordingly, Jalna breached section 168.1(1)(b) of the Act.

### **Matthews' Breaches**

15. Matthews caused Jalna to breach Exchange Policy 3.4 by not ensuring details of the Agreement were filed with the Exchange.
16. By permitting Jalna to breach section 85 of the Act, as described above, Matthews also breached section 85 of the Act under section 168.2 of the Act.
17. By permitting Jalna to breach section 168.1(1)(b) of the Act, as described above, Matthews also breached section 168.1(1)(b) of the Act under section 168.2 of the Act.
18. Matthews breached section 118 of the *Company Act*, RSBC 1996, c. 62 by not exercising the care, diligence and skill of a reasonably prudent person by:

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- (a) causing Jalna to enter into the Agreement, which was a non-arms transaction, and then not ensuring there was a written, signed contract accurately reflecting the terms of the Agreement;
  - (b) not ensuring that proper disclosure of the Agreement was made to the public, the Commission and the Exchange; and
  - (c) not ensuring that Jalna's financial statements were accurate and by not causing Incite to invoice Jalna in respect of the Agreement.
19. Matthews breached section 120 of the Company Act by not disclosing his interest in Incite to the other directors at a director's meeting.

### **Undertakings**

¶ 3 Matthews undertakes and agrees as follows:

1. to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines, from the date of this agreement;
2. to not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question; and
3. to pay to the Commission, upon execution of this agreement, the sum of \$25,000.00.

### **Order**

¶ 4 Matthews consents to an order by the Executive Director (the Order) that:

1. pursuant to section 161(1)(d)(ii) of the Act, Matthews is prohibited from being or acting as a director or officer of any issuer for the later of:
  - (a) five years from the date of the Order; and
  - (b) the date he has both successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers and filed with the Executive Director evidence that he has successfully completed the course;

except that he may act as a director or officer of a company, all of the securities of which are owned directly and beneficially by him, his wife, or his children.

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2. pursuant to section 161(1)(d)(iii) of the Act, Matthews is prohibited from engaging in investor relations activities for any issuer for the later of:
  - (a) five years from the date of the Order; and
  - (b) the date he has both successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers and filed with the Executive Director evidence that he has successfully completed the course.

### Waiver

¶ 5 Matthews waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this agreement.

¶ 6 March 11, 2005

¶ 7 “Danial Brennan Matthews” )  
Daniel Brennan Matthews

“Joyce E Mehmen” )  
Witness Signature

Joyce E Mehmen )  
Witness Name (please print)

55955 PGA Blvd La Quinta 92253 )  
Address

Concierge )  
Occupation

¶ 8 March 21, 2005

“L.E. Evans”

¶ 9 L.E. Evans  
Acting Executive Director