

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 60415 / July 31, 2009**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3027 / July 31, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13567**

**In the Matter of**

**FRANK S. LAFORGIA, CPA,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 4C AND 21C  
OF THE SECURITIES EXCHANGE ACT  
OF 1934 AND RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Frank S. LaForgia, CPA ("Respondent" or "LaForgia") pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.<sup>2</sup>

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<sup>1</sup> Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>3</sup> that:

### A. SUMMARY

1. These proceedings concern the improper professional conduct of LaForgia, a certified public accountant (“CPA”), who conducted improper audits and reviews of Certified Services, Inc.’s (“Certified”) financial statements for the years ended December 31, 2002 and December 31, 2003 and the first three quarters of 2004 (the “engagements”). LaForgia’s departure from the applicable professional standards while acting as the engagement partner caused the accounting firm, Rosenberg, Rich, Baker, Berman & Company, PA (“Rosenberg Rich”), to issue unqualified audit and review reports despite the fact that Certified’s financial statements were not presented in accordance with generally accepted accounting principles (“GAAP”).

2. Certified was a publicly held company located in Fort Lauderdale, Florida. Certified and its subsidiaries operated a professional employee leasing organization (“PEO”) business. PEOs provide small and medium-size businesses with a variety of human resource services by acting as a co-employer of those businesses’ employees. Among other things, Certified assumed some or all of its clients’ responsibilities and risks related to workers’ compensation insurance coverage. Beginning in 2002, Certified retained Rosenberg Rich to audit its financial statements and quarterly filings.

3. On March 6, 2008 the Commission filed a complaint in U.S. District Court for the Southern District of Florida (the “Complaint”), alleging, among other things, that Certified’s management engaged in financial fraud from approximately 2001 through 2004.<sup>4</sup> The Commission alleged that Certified’s officers artificially and materially inflated the company’s

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<sup>3</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>4</sup> SEC v. W. Anthony Huff et al., 08-60315-CIV-ZLOCH (S. D. Fla.).

financial condition in its Commission filings by including at its high point almost \$47 million in bogus letters of credit (“LOCs”) as assets on its balance sheet and omitting liabilities that reached a high of approximately \$65 million. The Commission also alleged that the company failed adequately to disclose material related party relationships and related party transactions.

4. LaForgia was Rosenberg Rich’s engagement partner on the audits and reviews at issue. LaForgia should have known that Certified’s financial statements for the years ended 2002 and 2003 as well as the first three quarters of 2004 were misleading and not presented in accordance with GAAP. As the engagement partner, LaForgia was a cause of Certified issuing misstated financial statements by ignoring significant evidence that indicated heightened audit risk and by failing to conduct Certified’s audits and reviews in accordance with generally accepted auditing standards (“GAAS”). Additionally, LaForgia should have known that Rosenberg Rich’s unqualified audit reports were false because they represented that the audits were conducted in accordance with GAAS, when they were not.

5. LaForgia thereby was a cause of Certified’s violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder, and engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission’s Rules of Practice (“Rule 102(e)(1)(ii)”).

## **B. RESPONDENT**

**LaForgia**, CPA, age 61, resides in White House Station, New Jersey. LaForgia is a CPA licensed in New Jersey since 1975. From 2002 through 2005, LaForgia was Rosenberg Rich’s engagement partner for Certified. LaForgia currently works for a private company.

## **C. FACTS**

### **Certified**

1. In July 2001, Danny L. Pixler and W. Anthony Huff formed Midwest Merger Management (“Midwest”) as a holding company, capitalized it with \$500, and listed Pixler’s wife and Huff’s ex-wife as the primary shareholders. In November 2001, Midwest acquired a majority ownership interest in Certified, an inactive public shell company. Certified and its subsidiaries operated a PEO business. Through a series of acquisitions, Certified grew from a shell company with minimal assets to a company with approximately \$78 million in revenues and \$107 million in assets in 2003. Pixler was Certified’s president and Huff, who was affiliated with Midwest, was also an undisclosed control person of Certified.

### **Certified Improperly Recorded LOCs as Assets**

2. Beginning in July 2002, Certified’s insurer required one of Certified’s subsidiaries to post more collateral due to Certified’s rapidly expanding PEO business. Certified relied primarily on another entity Pixler and Huff controlled through a business associate, to obtain the

collateral for its insurer. That entity provided this collateral in the form of LOCs which were due to expire in one year.<sup>5</sup> Midwest played a role in obtaining the LOCs.

3. In December 2002, Midwest entered into an agreement with Certified to purchase shares of Certified's preferred stock ("Subscription Agreement"). The Subscription Agreement specifically provided that the subscriber could use various forms of consideration to subscribe to the offering, including cash or LOCs. Midwest used the very same LOCs which it had procured for Certified's subsidiary as consideration for the subscription. Beginning with its 2002 annual report, Certified reported these LOCs as assets. Certified relied on the fact that the LOCs were used as consideration under the Subscription Agreement as a factor in justifying their treatment as assets. By Certified's second quarter 2003 filing it was reporting \$47 million in LOCs as assets on its financial statements. The LOCs were discovered to be bogus by Certified's insurer during Certified's third quarter of 2003. However, as discussed below, it was improper for Certified to record the LOCs as assets even if they had been legitimate.

### **Certified Improperly Omitted its Workers' Compensation Liabilities**

4. Certified improperly omitted substantial workers' compensation liabilities from its balance sheets. As Certified's PEO business expanded in 2002 and 2003, Certified assumed increasing amounts of workers' compensation liabilities as part of the normal operation of its PEO business. Midwest and Certified entered into a Risk Allocation Agreement ("Risk Agreement"), purportedly to enable Midwest to manage Certified's workers' compensation program and to protect against the exposure that Certified would face from large claims. Certified used the Risk Agreement to justify omitting its workers' compensation liabilities from its financials asserting that those liabilities were assumed by Midwest under the Risk Agreement.

5. In reality though, Midwest did not assume any of Certified's workers' compensation liabilities under the Risk Agreement. The Risk Agreement provided that Midwest would "assume responsibility for and promptly make all required payments *in excess of the applicable deductibles...*" (emphasis added). However, Certified already had re-insurance that protected it against having to make payments in excess of the applicable deductible (\$1 million per claim). Certified's risk was its liability for deductibles, which the Risk Agreement did not transfer. Even if the terms of the Risk Agreement had purportedly provided any real economic protection, it is unlikely that Midwest would have been able to honor those terms based on the fact that Midwest had negative equity for 2001-2003 and only one employee.

### **Certified Failed to Disclose its Related Party Transactions**

6. In its financial statements, Certified acknowledged its relationship with Midwest but omitted required information. Certified disclosed that Midwest was a "related party," however Certified did not disclose that Pixler was a co-manager of Midwest. Certified also failed to

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<sup>5</sup> A LOC is an instrument under which the issuer, usually a bank, at a customer's request, agrees to honor a draft or other demand for payment made by a third party, as long as the draft or demand complies with specified conditions, and regardless of whether any underlying agreement between the customer and the beneficiary is satisfied.

disclose until its Form 10-Q for the period ending September 30, 2004 that Pixler had received payments from Midwest. Additionally, Certified failed to disclose that Pixler's wife owned at least a 40% stake in Midwest.

### **Auditor Violations of Professional Standards**

7. LaForgia's GAAS failures during the engagements facilitated Certified's ability to report \$47 million of bogus assets, omit \$65 million of liabilities and not fully disclose its related party relationships and transactions. LaForgia failed to: staff and plan adequately; obtain sufficient competent evidential matter regarding assets and liabilities; exercise due professional care and professional skepticism; and issue accurate audit reports and review reports. Based on his violations of professional standards, LaForgia was a cause of Certified issuing misstated financial statements by ignoring significant evidence that indicated heightened audit risk and by failing to conduct Certified's audits and reviews in accordance with GAAS. Additionally, LaForgia should have known that Rosenberg Rich's unqualified audit reports were false because they incorrectly represented that the audits were conducted in accordance with GAAS, and that Certified's financial statements conformed with GAAP. Furthermore, LaForgia also caused Rosenberg Rich to improperly issue seven unqualified review reports for Certified's quarterly filings from the third quarter of 2002 through the third quarter of 2004.

### **Failure Adequately to Staff and Plan the Engagements**

8. LaForgia failed adequately to staff the engagements. GAAS requires audits to be performed by a person or persons having adequate technical training and proficiency as an auditor. (AU § 150.02, Generally Accepted Auditing Standards) The auditor, having ultimate authority for the audit, should "know, at a minimum, the relevant professional accounting and auditing standards and should be knowledgeable about the client." (AU § 230.06, Due Professional Care in the Performance of Work) The auditor "with final responsibility is responsible for the assignment of tasks to, and supervision of, assistants." (AU § 230.06) LaForgia did not have any prior experience auditing LOCs before accepting the Certified engagement. Despite his lack of experience with LOCs, and the complexity of Certified's business and financial relationships, LaForgia staffed the engagements with an audit manager who had limited experience auditing LOCs and no experience auditing PEO's. LaForgia's own inexperience auditing LOCs and his decision to select an inexperienced audit manager negatively impacted LaForgia's ability to conduct the audits and reviews in accordance with GAAS. The two most senior accountants on the engagement had little or no experience auditing the largest category of assets on Certified's balance sheets.

9. LaForgia failed to plan and develop audit programs tailored to address issues unique to Certified. GAAS requires that the auditor plan the audit "to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud." (AU § 316.01, Consideration of Fraud in a Financial Statement Audit) The risk assessment process should "be ongoing throughout the audit" and should consider whether the "nature of audit procedures performed may need to be changed to obtain evidence that is more reliable or to obtain additional corroborative information." (AU § 316.52) LaForgia was aware

that Certified had rapidly grown from a shell company to a company with approximately \$78 million in revenues. LaForgia also knew the LOCs comprised 45% of Certified's assets. Further, LaForgia was aware of Certified's treatment of its workers' compensation liabilities which were purportedly being assumed by its controlling shareholder, Midwest. Despite this knowledge, LaForgia did not plan and develop an adequate audit program particular to Certified and these issues.

10. Further, LaForgia failed adequately to plan, develop and adjust his audit programs or procedures when he was confronted with significant indications of increased fraud risk. Auditors must consider potential fraud factors when planning and performing the audit. GAAS states that the assessment of the risk of material misstatement due to fraud is a cumulative process and one that should be ongoing throughout the audit. (*See* § AU 316) LaForgia had researched Huff's background while conducting the engagements and knew that Huff had previously been criminally indicted.<sup>6</sup> Also, LaForgia identified concerns in a November 11, 2002 letter to Certified. LaForgia stated that he was "distressed" to learn that Certified incorrectly recorded \$8 million worth of LOCs as cash on its balance sheet. Further, in a November 19, 2002 letter to Certified, LaForgia identified additional concerns, namely "a lack of total candor" by Certified's executives regarding the auditors' inquiries, and Certified's penchant for "managing earnings," among other things. LaForgia's observations show that he was aware of heightened audit risks yet he did not adequately tailor the audit program specifically to address the risks suggested by these facts that were both specific to Certified and critical to the audit of its financial statements.

#### **Failure to Obtain Sufficient Competent Evidential Matter Regarding Assets and Liabilities**

11. Auditors must obtain sufficient competent evidence to afford a basis for an opinion regarding the financial statements under audit. (AU § 326.01, Audit Evidence) The validity and sufficiency of required evidence depends on the circumstances and the auditors' judgment, but should be "persuasive" though it need not be "conclusive." (AU § 326.13) With respect to such judgment, an auditor must maintain an attitude of professional skepticism and assess the risk that errors and irregularities may cause the financial statements to contain a material misstatement. (AU § 316.13) An assessment of higher risk may cause the auditor to expand the extent of procedures applied or modify the nature and/or the timing of procedures to obtain more persuasive evidence.

#### **Failure to Audit LOCs Included in the Financial Statements**

12. Certified's LOCs represented its single largest asset for its 2002 financial statements and each subsequent quarter up to, and including, the quarter ended September 30,

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<sup>6</sup> In 1998, the State of Kentucky revoked Huff's insurance license in connection with an \$113,000 insurance premium theft while he was associated with U.S. Trucking, Inc. ("U.S. Trucking") as a significant shareholder. In 2000, Huff was indicted by the United States Attorney's Office for the Western District of Kentucky, for his involvement in a multi-million dollar insurance fraud with U.S. Trucking. In 2004, he pled guilty to three counts of mail fraud in that case, served 12 months probation and paid restitution of approximately \$180,000.

2003.<sup>7</sup> LaForgia accepted the position that Certified properly recorded the LOCs as assets because they were given in consideration for the Subscription Agreement and were analogous to a note, or alternatively a promise to pay. However, LaForgia's conclusion was unreasonable. Emerging Issues Task Force 85-1, Classifying Notes Received for Capital Stock, (1985) ("EITF 85-1") states that "[t]he SEC requires that public companies report notes received in payment for the enterprise's stock as a deduction from shareholders' equity." Midwest provided the LOCs, which LaForgia equated to a note, as consideration in exchange for Certified's preferred stock. Therefore, LaForgia's conclusion was inconsistent with EITF 85-1.

13. Further, LaForgia failed to obtain sufficient competent evidence to conclude that the LOCs were properly recorded as assets. Statement of Financial Accounting Concepts No. 6. Elements of Financial Statements, provides that:

An asset has three essential characteristics: (a) it embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows, (b) a particular entity can obtain the benefit and control others' access to it, and (c) the transaction or other event giving rise to the entity's right to or control of the benefit has already occurred.

14. The LOCs did not and could not provide Certified with future cash flows. The LOCs were not cash equivalents but instead a promise to pay cash to Certified's insurance provider on behalf of one of Certified's subsidiaries, upon the insurer's demand. However the LOCs' future economic benefits were limited in duration because the fees paid to use the LOCs were made for a fixed period of time, usually one year. Therefore any future benefit ended after one year unless the LOCs were renewed or replaced. Midwest, not Certified, was obliged to replace the LOCs if they were not renewed by the issuing bank upon expiration. Certified's future economic benefit from the LOCs would have only extended beyond one year if Midwest had the financial capabilities to renew or replace the LOCs after their expiration. LaForgia did not obtain sufficient competent evidence regarding Midwest's financial capabilities to renew or replace the LOCs, and evidence shows that Midwest did not have such capabilities.

15. The LOCs also failed to meet the second criteria of an asset. Certified did not own or control the LOCs and could not pledge, assign or transfer them. This fact also renders moot the third characteristic of an asset, since Certified did not control the benefit of the LOCs. In addition, Certified did not provide collateral for the LOCs. Therefore, LaForgia did not obtain sufficient evidence to overcome these factors which collectively demonstrate that the LOCs were not assets.

### **Failure Adequately to Audit the Risk Agreement and Workers' Compensation Liabilities**

16. Certified asserted that under the Risk Agreement its workers' compensation liabilities were assumed by Midwest, even though it is clear under the Risk Agreement's terms

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<sup>7</sup> Certified reported \$18.7 million of LOCs as assets for 2002 and \$47.5 million of LOCs as assets in the second quarter of 2003.

that Midwest did not assume those liabilities. LaForgia failed adequately to audit and review the key terms of the Risk Agreement. LaForgia instead relied on Certified's representations that pursuant to the Risk Agreement, Certified's workers' compensation liabilities were assumed by Midwest and could be omitted from Certified's financial statements. GAAS requires that "[d]uring an audit, management makes many representations to the auditor, both oral and written, in response to specific inquiries or through the financial statements. Such representations from management are part of the audit evidence the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit." (AU § 333.02, Management Representations) LaForgia had a general understanding about how the parties operated under the Risk Agreement, but had little information concerning Midwest's business. LaForgia did not take sufficient steps independently to test Certified's reliance on the Risk Agreement as a basis for its decision to omit the liabilities.

17. Aside from his reliance on the Risk Agreement, LaForgia failed to obtain other sufficient competent evidence to support his position that Certified properly omitted the workers' compensation liabilities from its financial statements. Certified maintained a contractual relationship with its insurer and even if the Risk Agreement was consistent with LaForgia's belief, Certified would still be obligated to pay the deductible amount for claims in the event that Midwest did not fulfill its promises under the Risk Agreement. Further, GAAS requires that "[w]ith respect to material uncollected balances, guarantees, and other obligations, [auditors should] obtain information about the financial capability of the other party or parties to the transaction." (AU § 334.10e, Related Parties) LaForgia did not have, or require, adequate assurance that Midwest had the financial resources to satisfy the workers' compensation liabilities and he did not do adequate work to satisfy himself of Midwest's ability to pay. LaForgia failed to obtain sufficient competent evidence to provide a basis for his opinion that the workers' compensation liabilities could be omitted from Certified's financial statements.

18. Additionally, LaForgia was also confronted with facts that should have raised his professional skepticism with regards to the Risk Agreement. For example, Certified's filings included inconsistent versions of the Risk Agreement. Specifically, the language in the text of Certified's filings materially contradicted the language of the Risk Agreement that was attached to the filing. The two versions of the Risk Agreement language were contradictory regarding which party was responsible for paying claims above or below the \$1 million deductible - a critical aspect of the Risk Agreement. Also, the Risk Agreement was purportedly signed by Certified's president. This individual was not even associated with Certified at that time. These facts, in addition to those previously mentioned regarding Certified's growth and fraud risks, should have further caused LaForgia's increased skepticism. Instead, he failed to obtain sufficient competent evidence and unreasonably relied on management's representations about the Risk Agreement and why the workers' compensation liabilities were being omitted.

### **Failure to Control the LOC Confirmation Process**

19. LaForgia was confronted with numerous facts that should have caused him to heighten his skepticism during the LOC confirmation process. For example, he was aware of

Certified's rapid growth, the increase in the LOCs as a proportion of Certified's assets, LaForgia's documented concerns regarding Certified's management and his knowledge of Huff's criminal background. Significantly, LaForgia also knew that Certified did not maintain accounts with the financial institution that purportedly issued the LOCs. Despite these facts, and in contravention of AU § 330.15, (AU § 330, The Confirmation Process) LaForgia did not exhibit an appropriate level of professional skepticism.

20. LaForgia's review of the LOCs and the process LaForgia directed and conducted to confirm the LOCs were insufficient. GAAS requires that "[d]uring the performance of confirmation procedures, the auditor should maintain control over the confirmation requests and responses. Maintaining control means establishing direct communication between the intended recipient and the auditor to minimize the possibility that the results will be biased because of interception and alteration of the confirmation requests or responses." (AU § 330.28) GAAS also instructs that "[t]he auditor should direct the confirmation request to a third party who the auditor believes is knowledgeable about the information to be confirmed. For example, to confirm a client's oral and written guarantees with a financial institution, the auditor should direct the request to a financial institution official who is responsible for the financial institution's relationship with the client or is knowledgeable about the transactions or arrangements." (AU § 330.26) LaForgia and his team did not control the LOC confirmation process. Rather than independently obtaining the address of the issuing bank, LaForgia and his team of auditors relied on Certified to supply the contact information. The address they found in Certified's documents was not actually connected with the bank but instead was the address of a retail mail service store.

21. LaForgia and his team also failed to reasonably evaluate a purported confirmation response from the issuing bank. LaForgia did not question why a standard client authorization for release of information letter directed to Certified and received by the auditors was signed by a purported bank employee rather than someone from Certified. Additionally, LaForgia and his team requested certain information concerning LOCs issued on behalf of Certified's subsidiary, however the issuing bank response listed Certified, not the subsidiary as the beneficiary of the LOCs. Despite LaForgia's receipt of this document he failed adequately to analyze this one-page confirmation and did not notice the discrepancy. This discrepancy should have increased LaForgia's skepticism for two reasons. First, Certified was never mentioned in the auditors' authorization letter. Second, neither Certified nor its subsidiary ever had a banking relationship with that bank. Further, LaForgia and his team requested that the issuing bank identify the source of the LOCs' collateral, but the response failed to address this issue and LaForgia did not further pursue it. Finally, Certified did not have any other bank documents to support the issuance of the LOCs and the auditors did not obtain any evidence of cash disbursements backing the LOCs. The totality of these facts should have raised LaForgia's skepticism regarding the validity of the LOCs, particularly since they comprised such a large part of Certified's assets.

### **Failure to Identify and Examine Properly Related Party Transactions**

22. LaForgia failed to perform adequate procedures to identify related parties, and the related party transactions in the engagements. GAAS states that "[t]he auditor should place

emphasis on testing material transactions with parties he knows are related to the reporting entity.” (AU § 334.07) Further, AU Section 334.11 provides that “[t]he auditor should consider whether he has obtained sufficient competent evidential matter to understand the relationship of the parties and, for related party transactions, the effects of the transaction on the financial statements.” Certified failed to fully describe its relationship with Midwest in its Commission filings. Certified disclosed that Midwest was a “related party” because it was Certified’s largest shareholder and as part of its disclosures relating to the Risk Agreement. Yet, Certified did not disclose that in addition to being Certified’s largest shareholder, Midwest was a related party to Certified because Pixler was a co-manager of Midwest; Pixler received payments from Midwest; and Pixler’s wife owned at least a 40% stake in Midwest.<sup>8</sup> LaForgia testified that he knew, during the 2002 audit, that Pixler’s wife and Huff’s ex-wife were the owners of Midwest. Yet LaForgia did not object to Certified’s failure to disclose Pixler’s wife’s ownership of Midwest (nor that of Huff’s ex-wife, since LaForgia knew, or should have known, that Huff was an undisclosed control person of Certified). Additionally, during the 2003 audit, LaForgia also learned that Pixler was an “owner/controller” of Midwest. Yet again, LaForgia did not object to Certified’s failure to disclose Pixler’s overlapping management roles. Furthermore, LaForgia failed to take adequate steps to investigate and determine the full extent as to why Midwest was a related party when he was confronted with these additional facts evidencing the intertwined relationship. LaForgia’s failure to obtain competent evidential matter regarding Certified’s related party transactions in accordance with GAAS, and failure to address Certified’s inadequate disclosure of known intercompany relationships, caused Certified to issue financial statements that provided inadequate disclosures.

### **Failure to Exercise Due Professional Care and Professional Skepticism**

23. GAAS required LaForgia to exercise due professional care in performing the engagements and in the preparation of the audit and review reports. (AU § 230.01) Due care required LaForgia to exercise professional skepticism in planning auditing and review procedures and in assessing audit evidence and to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for the opinion regarding Certified’s financial statements. (AU § 230.07-.08) “In exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.” (AU § 230.09) Exercise of professional skepticism requires auditors to demonstrate a questioning mind and to critically assess audit evidence. (AU § 230.07; see also AU § 316.13) LaForgia had a responsibility not only to plan and perform the engagements to provide reasonable assurances of detecting material errors or irregularities in the financial statements, but to exercise sufficient professional skepticism to achieve reasonable assurance that material errors or irregularities would be detected. As described above, LaForgia’s lack of skepticism resulted in the audit and review failures.

### **Failure to Issue Accurate Audit Reports and Review Reports**

24. In auditing Certified’s financial statements, and reviewing Certified’s quarterly filings, LaForgia acted unreasonably in rendering audit reports and review reports containing

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<sup>8</sup> Certified did not disclose that Pixler received payments from Midwest until filing its Form 10-Q for the period ending September 30, 2004.

unqualified opinions. GAAS requires that the auditor's report contain an opinion on the financial statements taken as a whole and contain a clear indication of the character of the auditor's work. (AU § 508.04, Reports on Audited Financial Statements) The auditor can determine that he is able to issue an audit report containing an unqualified opinion only if he has conducted his audit in accordance with GAAS and the financial statements were presented in accordance with GAAP. (AU §§ 508.07 & .22) LaForgia signed Rosenberg Rich's audit reports and review reports on Certified's financial statements and quarterly filings even though those statements and quarterly filings were not presented in accordance with GAAP and that LaForgia did not conduct the audits in accordance with GAAS. Nevertheless, LaForgia issued audit reports containing unqualified opinions that falsely stated that Certified's financial statements were presented in accordance with GAAP and that he and the auditors he directed had conducted the audits in accordance with GAAS.

### **Violations**

1. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit a person, in connection with the purchase or sale of a security, from making an untrue statement of a material fact or from omitting to state a material fact necessary to make statements made, in light of the circumstances under which they were made, not misleading. To violate Section 10(b) or Rule 10b-5, a defendant must act with scienter, *Aaron v. SEC*, 446 U.S. 680, 695, 701-02 (1980), which the Supreme Court has defined as "a mental state embracing intent to deceive, manipulate, or defraud," *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Certified violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by filing with the Commission quarterly and annual reports that were materially misstated and that misrepresented Certified's financial condition and results of operations.

2. Under Section 21C of the Exchange Act the Commission may "enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation." Exchange Act, 15 USCS § 78u-3. As a result of his actions described above LaForgia was a cause of Certified's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). Rule 12b-20 requires disclosure of such additional information as may be necessary to make the required statements not misleading. Implicit in these provisions is the requirement that the information reported be true, correct and complete. *See SEC v. IMC International, Inc.*, 384 F.Supp. 889, 893 (N.D. Texas), *aff'd mem.*, 505 F.2d 733 (5<sup>th</sup> Cir. 1974), *cert. denied sub nom.*

4. As discussed above, LaForgia's actions were a cause of Certified filing false and misleading annual and quarterly reports with the Commission that misrepresented Certified's financial results. By his conduct described above, LaForgia caused Certified's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

5. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets.

6. As a result of the actions taken by LaForgia as described above, LaForgia was a cause of Certified's violations of Section 13(b)(2)(A) of the Exchange Act.

7. Under Rule 102(e)(1)(iv), the term "improper professional conduct" means, in part, "repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission."

8. As a result of the actions described above, LaForgia engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

### **Undertakings**

1. Ongoing Cooperation by LaForgia. LaForgia undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, LaForgia has undertaken:

A. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

B. To be interviewed by the Commission's staff at such times as the staff may reasonably request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

C. That in connection with any testimony of LaForgia to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, LaForgia:

i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, R. Scott Thompson, Esq., Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068; and

ii. Agrees that any such notice or subpoena for his appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

## **Findings**

1. Based on the foregoing, the Commission finds that LaForgia engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

2. Based on the foregoing, the Commission finds that LaForgia was a cause of Certified's violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act, and Rules Rule 10b-5, 12b-20, 13a-1 and 13a-13 promulgated thereunder.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent LaForgia's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. LaForgia shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder;

B. LaForgia is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After five (5) years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he/she is associated, has been inspected by the Board and that inspection did not identify any

criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy  
Secretary