UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-16037

In the Matter of

EDGAR R. PAGE and
PAGEONE FINANCIAL INC.,

Respondents.

DIVISION OF ENFORCEMENT'S BRIEF IN RESPONSE TO RESPONDENTS' POST-REMEDIES HEARING BRIEF

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May 26, 2015

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The Division[1] respectfully submits this memorandum of law in response to the Post-Remedies Hearing Brief of Edgar R. Page and PageOne Financial, Inc. ("Resp. Post-Hearing Br.").

PRELIMINARY STATEMENT

The Commission, in the Consent Order, found that Respondents Page and PageOne violated the anti-fraud provisions of the Advisers Act. Respondents avoided a full trial of this matter by consenting to the entry of the Consent Order. Now, Respondents seek also to avoid meaningful sanctions for their fraud by labelling their knowing, repeated (and highly profitable) scheme to get their clients to invest in risky funds—while concealing from their clients that Respondents would make millions if they did so—as a "victimless crime" (Resp. Post-Hearing Br. at 1); this despite the evidence that many of their clients will lose much, if not all, of their $15 million investment in those funds. In addition, Respondents continue—as they have throughout pendency of this litigation—to claim that they did not act knowingly, but instead were merely guilty of relying on underlings and consultants.

However, as the Division demonstrated in its opening brief, Respondents knew (indeed, mandated) that their clients not be told the truth about Respondents' significant financial relationship to UGOC. This is virtually the definition of knowing deceit in civil enforcement actions. In response to this showing, Respondents raise a host of specious arguments in support of their claim that associational bars, third-tier penalties and disgorgement are inappropriate in this case, including (1) that Respondents "did not intend to defraud anyone;" (2) that Respondents did not benefit from the $2.7 million they

[1] All capitalized terms in this brief have the meaning set out in the Division's Proposed Findings of Fact and Conclusions of Law, May 18, 2015.

received from UGOC; and (3) that Respondents' fraud did not create a risk substantial loss to investors. Each argument is plainly refuted by the evidence, including Page's own admissions that he understood that he was not telling his clients the truth.

Nonetheless, Respondents now argue that they should not receive any meaningful sanctions at all: (1) urging the Court to impose no more than a small penalty, well below even a single third-tier penalty; (2) asking that they be allowed to keep the over $2.7 million in ill-gotten gains they obtained through their wrongdoing, plus the interest that they should pay on that amount; (3) urging—despite having repeatedly violated their fiduciary duty to their clients and refusing to admit their role in their fraud now—that they be allowed to continue to continue to act as investment advisers; and (4) claiming poverty despite Page making over $600,000 last year and owning a business worth over $1 million. Respondents' arguments not only are meritless, but show that Page has no remorse for his conduct and refuses to acknowledge his wrongdoing, both of which are factors supporting the imposition of the sanctions sought by the Division.

ARGUMENT

I. Third-tier Penalties Are Appropriate Against Respondents

The Division has established that third-tier penalties are appropriate and in the public interest. (Div. Post-Hearing Br. at 20-22.)

A. Respondents Fail to Refute the Divisions' Showing That They Acted With a High Degree of Scienter

Respondents open their attempt to refute the Divisions' case with a red herring. They mischaracterize the Divisions' argument that Respondents acted with a high degree of scienter as being based on the fact that in the Consent Order the Commission found that Respondents' violations had been "willful." (Resp. Post-Hearing Br. at 4.) Respondents' violations were willful, and willful violations are a necessary basis for third-tier penalties, but the Division's argument that Respondents acted with a high degree of scienter is not based on Respondents' willfulness. Rather, Respondents' high degree of scienter is shown (1) by Page's knowledge of all the facts that gave rise to substantial conflicts of interest between him and the PageOne clients that invested in the UGOC Funds, (2) by Page's deliberate choice not to disclose those facts to PageOne's clients, and (3) by Page's deliberate choice to instead to make false disclosures in PageOne's Forms ADV. (See Div. Post-Hearing Br. at 5-10.)

Respondents next argue that third-tier penalties are not appropriate because, they claim, they "did not intend to defraud anyone," but merely made a "negligent or reckless decision to rely upon Mr. Burke and NRS that resulted in the Advisers Act violations here at issue." (Resp. Post-Hearing Br. at 7, 9-10.) In other words, they claim that Page did not really do anything very wrong, he was just too trusting. Again, this is a red herring. Respondents knew their statement were false when made; that is the definition of knowing deception. (Div. Post-Hearing Br. at 5-10; Div. COL Nos. 18-19.)

Moreover, Respondents' version of the facts simply makes no sense. On the one hand, Respondents accuse assistant compliance manager Sean Burke, and the consulting firm that assisted him, NRS, with doing a poor job of drafting PageOne's Forms ADV and of leading Page to believe that adequate disclosure of his conflicts of interest had been made. (Resp. Post-Hearing Br. at 7.) Then, on the other hand, Respondents argue that the false disclosures in PageOne's Forms ADV were in fact part of a sophisticated effort by Respondents "to put their clients on notice of a significant relationship between United and Mr. Page" by "disclosing so-called 'referral fees' and consulting payments as a means of accomplishing that, even though no such fees or payments were received." (Resp. Post-Hearing Br. at 7.) Respondents go so far as to characterize the language in the Form ADV describing the 7% fee as an "annual" fee, although such a fee would be absurdly high, as an effort to disclose that "Mr. Page could receive outright cash payments up to 49% of the amount the client invested. " (Id. at 8.) This assertion obviously is added to deal with the uncomfortable fact (for Respondents) that UGOC's actual payments to Page greatly exceeded the 7% invested by PageOne clients.

Neither of Respondents' versions of the facts is true, however, as Page himself has admitted. Respondents' failure to make the full disclosure of conflicts of interest required of investment advisers was the result of a conscious choice by Page, not sloppy drafting by Burke and NRS. Indeed, Page told Burke that Page did not want his true relationship with UGOC disclosed. (Div. FOF Nos. 46, 169.) Nor was the referral fee disclosure a conscious attempt to "put PageOne's clients on notice of a potential conflict of interest that was *more serious*" than the actual conflicts of interest. (Resp. Post-Hearing Br. at 8.) To the contrary, Page admitted that he never intended the July 31, 2009 Form ADV disclosure to notify clients of the true nature of Respondents' relationship to UGOC. (Div. FOF Nos. 169-170.) Rather, Page testified, the disclosure was in the ADV because Page and UGOC initially had discussed having UGOC pay a one-time (not annual) 7% referral fee. (Id. Nos. 171-172.) Page testified that he decided not to take a referral fee because it would require him to reactivate his securities licenses (Id. No. 173), and that he thought that the referral fee language had been removed from the Form ADV (Id. No. 174.)

Although Respondents in their brief do not bother to cite to proposed findings of fact in support of their factual assertions, it appears that most of the proposed findings of fact relevant to their position are based on excerpts from the transcript of Mr. Burke's investigative testimony. Mr. Burke's testimony has never been admitted into evidence in this matter, and therefore should not be considered by the Court. (See Commission Rule of Practice 350(a) ("the record shall consist of . . . (9) Any other document or item accepted into the record by the hearing officer."); Order Closing Hearing Record, dated May 12, 2015.) In any event, Burke was clear that the reason that full disclosure of Page's conflicts of interest was not made is that Page did not want them to be made. (Burke Tr. at 121:17-21[2].) In essence, Page is now arguing that because both he and Burke knew that they were lying to clients, Page's conduct is somehow less egregious. This does not hold.

Moreover, even if credited, Respondents' substitute disclosure story does not support Respondents' efforts to avoid third-tier penalties. First, it simply highlights the fact that Respondents violated their duties as investment advisers by intentionally lying to their advisory clients through PageOne's Forms ADV. (See Div. FOF No. 41.) In addition, the supposed substitute disclosure did not alert PageOne clients in any way to the fact that Page had committed to raise $20,000,000 for the Funds, or that if he did not do so, he would have to repay the money he had received from UGOC. (Id. 42-43.) These stark and obvious conflicts required disclosure and, as Page admitted (see Div. Post-Hearing Br. at 7), it was his job to make sure that these conflicts were accurately disclosed.

Finally, the Commission has already found that Respondents acted with sufficient scienter to support the imposition of third-tier penalties. The findings in the Consent Order repeatedly state that respondents acted "knowingly or recklessly" (Consent Order, ¶¶ III

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[2] "Q. Did he tell you why he didn't feel that he needed to disclose it? A. He would say that it's his firm and he doesn't need to tell anybody that he could sell his firm to anybody and it's, you know, nobody's business."

(A) 2, III (D) 17, 18, 25, 30, 32, 33) and the Commission's finding that Respondents violated Section 206(1) of the Advisers Act, means that the Respondents acted with at least the recklessness required to violate that provision. (See Div. COL 16, 20-21.)[3] Although the record here is clear that Page acted intentionally, there is no requirement that the Division show "intent to defraud" in other to obtain third-tier penalties. Third-tier penalties can be based on reckless conduct. See, e.g., In the Matter of Dennis J. Malouf, ID Rel. No. 766, 2015 WL 1534396 at *45 (April 7, 2015) ("Third-tier penalties are appropriate because Malouf recklessly disregarded his fiduciary duties and disclosure requirements and thereby created a significant risk of losses to his advisory clients.").

B. Respondents Failed to Refute the Divisions' Showing that Respondents' Conduct Created a Risk of Substantial Losses or a Substantial Pecuniary Gain

Respondents argue that their fraud neither "resulted in substantial losses or created a significant risk of substantial losses" nor "resulted in substantial gain" to Respondents,[4] arguing (1) that the Respondents' violations did not cause the Funds' current financial problems and therefore the Respondents' violations cannot have caused loss or risk of lost, (2) that the Funds are not yet technically in default, so Respondents' violations cannot have caused loss or risk of lost, and (3) that the $2.7 million paid to Page does not constitute a

[3] Respondents have repeatedly referred to the "neither admit nor deny" language in the Consent, as if somehow that language meant that the facts in the Consent Order are not admitted for the purpose of this proceeding. (See, e.g., Hearing Tr. at 37:10-11, 24-25, 38:20, 39:6, 16, 25; Resp. Post-Hearing Br. at 2, 4.) Of course nothing could be further from the truth. The findings in the Consent Order are binding in this proceeding and Respondents' suggestions to the contrary are just examples of their failure to accept responsibility for their wrongdoing.

[4] See Div. COL No. 45 ("A third-tier penalty is appropriate where, inter alia, a respondent's violation involved "fraud," and either, directly or indirectly, "resulted in substantial losses or created a significant risk of substantial losses," or "resulted in substantial pecuniary gain to" respondent. Adviser Act, § 203(i)(2)(C)(i)-(ii).")

"substantial gain" supporting the imposition of third tier penalties. (Resp. Post-Hearing Br. at 10-12.) None of these arguments has merit.

Respondents' violations caused a substantial risk of loss not, obviously, because they directly caused the Funds to lose money, but because by failing to disclose his conflicts of interest, Page was able to induce his clients to invest in a risky investment. Other than the UGOC Fund investments, PageOne's business consisted of the active management of portfolios of mutual funds, exchange traded funds, money market accounts, and variable annuity and variable life subaccounts. (Div. Ex. 14 at Schedule F, Part II, pp 1-2.) When Page started soliciting PageOne clients to invest in the UGOC Funds, he was recommending a very different kind of investment for PageOne clients, one that was high risk with little diversification or liquidity. (See Div. FOF No. 83; Div. Exs. 1 at 28-31; 2 at 24-27 (disclosing that Fund investments had "High Risk of Loss . . . Lack of Diversification . . . [and] Lack of Liquidity.").) Had Page disclosed to his clients that he had an enormous economic incentive to recommend these high risk investments, some of those who invested might not have done so. (See Div. Ex. 99 at ¶¶ 7-8 (Declaration by investor Rober[redacted] that he "would have considered information [concerning Page's conflicts of interest] important in deciding whether to invest in the United Fund.").) However, Page—in consciously deciding to hide his conflicts—deprived his clients of the opportunity to determine whether these conflicts (and, thus, the objectiveness of Page's advice) affected their decision to makes such risky investments.

The Division's evidence of risk of loss is further supported by the fact that UGOC recently has notified investors that 93% of the Equity Fund's assets have been lost and that a project in which the Income Fund invested over $6.8 million is now in bankruptcy. (Div.

FOF Nos. 203-206.) The Income Fund may have paid dividends in the past, but that does not in any way contradict the very high risk that investors in the Funds will lose all or most of their investments.

Respondents argue that the $2.7 million they were paid by UGOC was not a substantial gain because (1) Respondents were allowed in the Form ADV to take a referral fee of up to 49% of the amount invested but they did not take that much, and (2) because hypothetically Page was supposed to either give Uccellini equity in PageOne or pay the promissory notes to UGOC. (Resp. Post-Hearing Br. at 12.) Respondents' arguments entirely miss the point.

First, Respondents were never "allowed" to take a 49% referral fee as Page has repeatedly admitted. His current assertion—as Page well knows—is based on an intentional misreading of PageOne's Form ADV. (See Div. FOF Nos. 171-172.) In any event, whatever the Form ADV said, the receipt of $2.7 million is a substantial gain, paid to Page as a result of his putting his clients into the UGOC Funds. UGOC's agreement to pay Page for an equity stake in PageOne does not help Respondents' argument. It was exactly these payments that Respondents fraudulently failed to disclose, which is exactly why he must disgorge those sums. Moreover, Page did not end up transferring any equity to UGOC or Uccellini. Finally, Page argues that he should not have to repay the $2.7 million merely because Uccellini's estate has threatened litigation on the promissory notes. (Resp. Post-Hearing Br. at 12.) However, Page has not repaid that money to Uccellini's estate, and Page has consistently asserted that he does not need to repay it. (Hearing Tr. at 141:9-

16)[5] Indeed, Page did not plan on ever repaying that money, since according to him "he has spent essentially all of the $2.7 million that he had received in earnest money deposits from United." (Resp. Post-Hearing Br. at 20.) Thus, Page is trying to have his cake and eat it too—reaping the benefits of his refusal to repay UGOC, while using UGOC's threatened litigation as a shield against his illegal profits being considered by the Court in determining sanctions.

II. Respondents Should Be Ordered to Disgorged the $2.7 Million Paid by UGOC

The Division has demonstrated that Respondents should be required to disgorge the $2,751,345 in down payments paid by UGOC and prejudgment interest on that amount. (Div. Post-Hearing Br. at 22-23.) In response, Respondents claim (1) that they were not unjustly enriched; (2) that disgorgement is not appropriate because Respondents did not act with a high degree of scienter, and (3) that the amount of disgorgement should be offset by Respondents' "business expenses." (Resp. Post-Hearing Br. at 13-16.)

Respondents' assertion that they were not unjustly enriched because the $2.7 million was supposed to be payment for equity in PageOne and because the payments were memorialized by promissory notes is meritless for the reasons discussed in Section I. B., above. Respondents also claim that they were not unjustly enriched by the payments because the payments were supposedly meant to compensate Page for "time and trouble" and lost "business opportunity." (Resp. Post-Hearing Br. at 15.) But even if that were so, it would be Respondents' burden to show the value of Respondents' injuries, since "[t]he amount of disgorgement ordered need only be a reasonable approximation of profits

[5] "Q. So the deal never closed? A. No. Q. And United Group has asked you to pay back all the money it paid to you as down payments? A. He placed his notes in the trust and the trustees are demanding repayment. Q. And you haven't paid that money? A. It is still an ongoing litigious event."

causally connected to the violation," and "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created the uncertainty." (Div. COL No. 50.)

Respondents' claim that "disgorgement has been applied only where there is also a high degree of scienter." (Resp. Post-Hearing Br. at 15.) That is not the law, and even if it were, disgorgement would be appropriate because Respondents did act with a high degree of scienter. Neither case cited by Respondents provides any support for the proposition that the disgorgement remedy is restricted to instances in which the violator acted with a high degree of scienter. At most, they stand for the unremarkable proposition that disgorgement is appropriate in such instances. Indeed, SEC v. Martino, one of the cases cited by Respondents, directly contradicts Respondents' assertion, in that the Court ordered disgorgement from relief defendants who had not been charged with any violation of the law, much less one that involved a high degree of scienter.[6] Moreover, disgorgement is routinely awarded in connection with non-scienter violations, which completely undercuts Respondents' argument. See, e.g., SEC v. Colonial Investment Management, LLC, 659 F. Supp. 2d 467, 501-02 (SDNY 2009), aff'd, 381 Fed. Appx. 27 (2d Cir. 2010) (awarding disgorgement in connection with non-scienter violations of Rule 105 of Exchange Act Regulation M).

Respondents also are not entitled to deduct unspecified "business expenses" from the amount to be disgorged. (Resp. Post-Hearing Br. at 16.) "[T]he overwhelming weight of authority holds that securities law violators may not offset their disgorgement liability

[6] In SEC v. Martino, 255 F. Supp. 2d 268, 288 (S.D.N.Y. 2003) ("equitable powers [of disgorgement] extends to a person who, although not accused of wrongdoing, received ill-gotten gains . . . ."). The other case cited by Respondents simply is inapposite. SEC v. Thorn, 01 CV 290, 2002 WL 31412439 (S.D. Ohio Sept. 30, 2002) (granting SEC motion to strike defense that disgorgement remedy is barred by private contracts).

with business expenses." (Div. Response to Resp. COL No. 23.) While courts have occasionally exercised discretion to deduct direct transaction costs, they have taken care to distinguish such costs from "general business expenses." (Id.) Here, Respondents have offered no evidence of direct transaction costs.

III. Page Should Receive an Associational Bar

The Division demonstrated that an associational bar against Page is appropriate because the jurisdictional elements of Advisers Act 203(f) have been satisfied and such a bar is in the public interest. (Div. Post-Hearing Br. at 2-20.) Respondents claim that their conduct was not egregious, essentially relying on the arguments they raised in opposition to the imposition of third-tier penalties: (1) that the deficient disclosures were not Respondents' fault, but were Burke's and NRS's fault, (2) that the false disclosure in PageOne's Form ADV was just as good as truthful disclosure, and (3) that Page did not benefit from receiving $2.7 million from UGOC. (Resp. Post-Hearing Br. at 17-18.) For the reasons discussed in Section I above, none of these arguments has merit.

Respondents also claim that they recognize the wrongful nature of their conduct. (Resp. Post-Hearing Br. at 18-19.) But the positions they have taken in this proceeding show that they do not. Rather than accepting responsibility for his deliberate decision to hide the full details of his business relationship with UGOC from PageOne clients investing on his advice in UGOC Funds, Page blames the entire fraud on Sean Burke and NRS. But Page is the only one who had any interest in concealing his conflicts of interest from PageOne clients; it was Page who decided (and instructed Burke) not to tell the truth to Respondents' clients; and it was Page who was paid to $2.7 million in connection with the fraud.

Respondents' unwillingness to accept responsibility for their conduct is also reflected in their repeated efforts to deny facts found by the Commission in the Consent Order. For example, Page continues to insist that he made oral disclosure of his business relationships with UGOC to certain PageOne clients. (Hearing Tr. at 141:24-142:3.[7]) That assertion is directly contrary to the finding in the Consent Order that no disclosure had been made to clients. (Consent Order ¶ III (A) 2.)[8]

IV. Respondents have Not Met Their Burden of Proving Inability to Pay

Respondents claim that they do not have the financial resources to disgorge their ill-gotten gains or to pay penalties. As set forth in the Division's Post Hearing Brief, Respondents' financial statements do not meet the requirements of Commission Rule of Practice 630, and the Respondents have not met their burden of proving inability to pay appropriate monetary sanctions. (Div. Post-Hearing Br. at 23-25.) To the contrary, the evidence shows that Page is [redacted] and, indeed, has undertaken efforts to alienate PageOne's assets during the pendency of this matter. Moreover, analysis of Respondents' statements of financial condition reveals glaring inconsistencies that undercut their current claim of poverty.

For example, Page's statement of assets and liabilities values his 100% ownership interest in PageOne [redacted]. (Resp. Ex. 214, Statement of Financial Condition of Edgar R. Page ("Page Financial Statement") at 1, n 10.) However, PageOne's balance sheet reflects that, as of March 31, 2015, PageOne's assets exceeded its liabilities [redacted] and

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7 "Q. Did you tell PageOne's clients that were invested in the United Group about the United Group's acquisition of PageOne? A. Yes, I did."

8 "[F]rom early 2009 through approximately September 2011, Respondents knowingly or recklessly failed to tell their clients that . . . [UGOC] was in the process of acquiring at least 49% of PageOne . . . ."

that the total equity of PageOne (of which Page is sole owner) was [redacted]. (Resp. Ex. 2015, PageOne Financial Balance Sheet as of March 31, 2015 ("PageOne Financial Statement") (Attachment II A B).) This shows that PageOne has substantial value and that Page, as 100% owner of PageOne, has more assets than he is willing to admit.

Respondents try to paper over this glaring contradiction by arguing that PageOne actually is worth much less than the value listed on the company's balance sheet, claiming that "[i]f PageOne is to take Mr. Page's [redacted] officer loan as a loss, PageOne would instead have a net liability." (Resp. Post-Hearing Br. at 20.) This argument falls apart, however, because Page, while reflecting that his ownership interest in PageOne has no value, treats the officer loan from PageOne as a real [redacted] liability on his balance sheet, causing him to show a substantial negative net worth. (Resp. Ex. 214, Page Financial Statement at 2, item 9). Thus, Respondents ask the Court to assume that the loans are not a substantial asset to the lender, PageOne, but that they are a substantial liability to the borrower, Page. Either the loans have substance, or they do not. Respondents cannot have it both ways.

Further, PageOne is profitable. Page testified that "this . . . year [PageOne] had showed an incredible profit" (Hearing Tr. at 195:12-13) and that "there is a positive cash flow." (Hearing Tr. at 197:15-16.) This also militates against Page's claim that PageOne is worthless.

The evidence relating to Page's income also undercuts his plea of poverty. In 2014 (the only year for which Respondents have provided tax returns), Page was paid almost [redacted] in salary by PageOne and a [redacted] director's fee. (Div. FOF No. 214-215.) That year, he also received over [redacted] in loans from PageOne. (Div. FOF No. 216.)

Thus, Page made over [redacted] in 2014. That Page chooses not to live within his ample means — he claims that he spends over [redacted] per month (see Div. FOF No. 219.) — should not insulate him from repaying money (or meaningful penalties) that he illegally gained as a result of defrauding his clients.

[redacted] and he can certainly do enough belt-tightening on over $600,000 per year to pay fines and disgorgement. Indeed, Page testified that he already is "cutting expenses" and living "humbly." (Hearing Tr. at 197:6-10.) Although Page apparently likes to live lavishly and has done so in the past — for example, buying an airplane (Div. FOF No. 220), making gifts of [redacted] to his daughter and [redacted] to a church (Div. FOF Nos. 221, 222) and buying expensive furnishings (Div. FOF No. 224) — a disinclination to cut back on expenses is not the same as an inability to pay.

Indeed, some of Page's recent expenditures appear to have been motivated by a desire to spend money before the government can take it away from him. After learning that the Division was considering recommending charges against him that might include claims for disgorgement and penalties, Page caused over [redacted] to be taken out of PageOne and transferred to him as "loans." (Resp. Ex. 215, Statement of Financial Information of PageOne Financial, Inc., at 13, Section F) In addition, he transferred [redacted], including [redacted] that was paid to New Page LLC, an entity he formed to buy the house. (See Resp. Ex. 216 (h), Trustco Bank – backup records Acct. [redacted]) at 10 ([redacted] check, dated October 15, 2014, drawn on Page's account at Trustco Bank, memo line says "New Page LLC").) Page also purchased an Audi S9 for over [redacted] in July 2014, after receiving the Division's Wells Notice. (Div. Post-Hearing Br. at 24, Div. FOF No. 218).

The loan payments on the car are one component of the large monthly expenses that Page claims render him impecunious. (Resp. Ex. 214, Page Financial Statements at 6, item 8.) Page should not be rewarded for this last minute splurge by a reduction in his monetary sanctions. In short, Page and PageOne can afford to pay meaningful third-tier penalties and to repay the money they illegally received. This Court should order them to do so.

CONCLUSION

The Division of Enforcement respectfully requests that the Court grant its motion seeking relief as set out above.

Dated: May 26, 2015
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Respectfully submitted,

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DIVISION OF ENFORCEMENT

Certificate of Service

I hereby certify that on May 26, 2015, I served the Division of Enforcement's (1) Brief in Response to Respondents' Post-Remedies Hearing Brief; and (2) Response to Respondents' Findings of Fact and Conclusions of Law, on the below parties by the means indicated:

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