UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10730 / December 5, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 87661 / December 5, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4105 / December 5, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19612

In the Matter of **WARREN CLAMEN, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, 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 Warren Clamen, CPA ("Respondent" or "Clamen") pursuant to Section 8A of the Securities Act of 1933, Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.[2]

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1 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…(3)…to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder."

2 Rule 102(e)(1)(iii) 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 willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder."

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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, 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[3] that:

Summary

1. This matter involves accounting and disclosure misconduct by Warren Clamen, the former Chief Financial Officer of Iconix Brand Group, Inc. ("Iconix"), a company that owns and licenses apparel and entertainment brands, concerning: (1) the failure to recognize significant losses relating to past-due royalties owed by Iconix's financially-distressed licensees of two of Iconix's designer brands referred to herein as "Brand 1" and "Brand 2"; (2) failure to disclose that Iconix's acquisition prices for certain investment interests were used to funnel past-due and future royalties back to Iconix, which kept hidden the growing receivable balance from the licensees' failure to meet royalty payments; and (3) the failure to properly test whether Iconix's intangible assets from the brands it owned were impaired.

2. By early 2013, Clamen had notice that Iconix's core licensees for Brand 1 and Brand 2, herein referred to as "Company 2" and "Company 3," were not current on their royalty obligations to Iconix and that the licensees were financially insolvent, including that Company 3 faced an imminent threat of bankruptcy. Iconix, through Clamen, however, failed to write-off the amount of the uncollectible receivables from either core licensee or to create an allowance for bad debt in connection with the uncollectible past-due royalties. Instead, as the receivable balance continued to grow, Iconix entered into transactions with these licensees, including a deal in which Iconix purchased from the owner of Company 3 a 49% interest in a consolidated subsidiary that held Brand 2, and another deal in which the company purchased a 5% interest in Company 4, which was partly owned by the majority owner of Company 2. Clamen reviewed documents that should have put him on notice that Iconix paid a higher acquisition price in order to provide Company 3 with \$20 million and Company 2 with \$2.7 million in funds to pay past-due and future royalties.

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[3] 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.

3. As a result of Clamen's failure to write-off or reserve for uncollectible receivables owed by Company 3 by the second quarter of 2013, and his failure to do the same with respect to the receivable from Company 2 by the third quarter 2013, Iconix's interim reports for the second and third quarters of 2013 materially overstated the company's net income after taxes by 16% and 14%, respectively; and Iconix's 2013 Form 10-K materially overstated net income by 7%. As CFO, Clamen also approved Iconix's inaccurate disclosures of these deals, which omitted that a significant portion of Iconix's acquisition costs would be returned back to the company as past-due and future royalties.

4. In addition, Clamen failed to properly consider whether receding cash flows from Company 3 and Company 2, and the impending loss of these significant licensees, which made up 38% and 25% of actual Brand 2 and Brand 1 revenue in 2013, respectively, were impairment "triggering events or triggers." Clamen also failed to appreciate that Iconix's annual impairment testing for 2013, which was completed in early 2014 months after the deals with Company 2 and Company 3 had closed, included unreasonable Brand 1 and Brand 2 revenue projections. At that time, Clamen was presented with additional red flags for impairment when Iconix signed a new, short-term licensee for both Brand 1 and Brand 2. As Clamen should have understood, the new licensee was a start-up company with little operating capital and no history of owning or licensing brands, and Iconix had agreed to finance certain up-front costs for the licensee. However, Clamen included in Iconix's 2013 impairment analysis that this new licensee would pay $15.3 million in Brand 1 royalties in 2018, despite the fact that that its license did not extend to 2018, and approved unsupported royalty projections for this licensee. The values of Brand 1 and Brand 2 were, in fact, overstated on Iconix's year-end balance sheet in its 2013 Form 10-K by approximately $132.7 million to $142.7 million and $106.7 million to $116.7 million, respectively, for a total of approximately $239.4 million to $259.4 million.

Respondent

5. **Warren Clamen**, 55, resides in New York. Clamen is a Certified Public Accountant (CPA) licensed in the state of Maine and the province of Quebec in Canada. Clamen was Iconix's CFO from March 2005 to March 2014, when he resigned from the company.

Relevant Entities

6. **Iconix Brand Group, Inc.** is a Delaware-incorporated, publicly-traded company based in New York, New York. Iconix's common stock trades on the Nasdaq under the symbol, "ICON." During the relevant period, Iconix had reporting obligations under Section 13(a) of the Exchange Act.

Facts

Background of Iconix's Business and Decline of its Key Brands

7. Iconix calls itself "asset light" because it does not own apparel or other inventory associated with its brands, but instead owns brand trademarks and other related intangible assets. Iconix's business strategy involves monetizing its intangible assets, primarily by licensing its brands to third parties which typically handle manufacturing and sales. The licensees pay royalties and other fees to Iconix for the right to use Iconix brand names.

Company 2, the Licensee for Brand 1

8. Iconix acquired Brand 1 in 2007 for $204 million. Iconix immediately made Company 2 the "core licensee" for Brand 1, meaning that Company 2 set the creative direction for all other Brand 1 licensees and provided Iconix with significant royalty revenues. In 2009, Iconix acquired a 16.67% minority interest in Company 2, which it maintained at all relevant times.

9. As early as 2012, Brand 1 had declined in market acceptance and performance. Company 2, in fact, viewed Brand 1 as having "senior citizen status" and the licensing company was in "free fall mode." In January 2012, Iconix and Company 2 entered into a Fifth Amendment to Company 2's Brand 1 License Agreement. The total annual minimum payments due to Iconix was $3 million for the period from April 2012 through March 2013. Company 2 acknowledged that, prior to the effect of the Fifth Amendment, it was in default of its obligations to pay its royalties to Iconix. After signing the Fifth Amendment, however, Iconix agreed that Company 2 could pay a settlement amount of approximately $5 million for past due royalties owed to Iconix based on a payment schedule of thirteen payments from January 2012 through December 2013.

10. By August 2012, however, due to lack of operations and sales, Company 2 had ceased making royalty payments to Iconix and was unable to stay current with respect to its 2012 payment plan and the royalties owed under the Fifth Amendment. By December 31, 2012, Company 2 was millions of dollars behind in its royalty payments to Iconix and had a negative working capital.

11. In 2013, Company 2 was the second largest licensee of Brand 1, supplying approximately a quarter of all of Iconix's royalty revenue related to the brand. During 2013, although Iconix recognized approximately only $4 million in royalty revenue from Company 2, Iconix's accounts receivable balance for Company 2 remained as high as approximately $5 million. At the close of 2013, Company 2 reported a net loss of $17 million. By 2013, Company 2 became so financially distressed, Iconix faced the imminent prospect of losing its core Brand 1 licensee. In addition, Iconix's largest Brand 1 license agreement, with a different licensee, was set to expire at the end of 2013. On December 13, 2013, Iconix negotiated an extension of this agreement through 2015, but the new contract with this licensee was significantly less lucrative for Iconix. Specifically, in the extension agreement, Iconix reduced the royalties by nearly 50% and agreed to pay this licensee significant sums for its marketing expenditures.

Improper Accounting of Uncollectible Receivables from the Brand 1 Licensee and Failure to Disclose Royalty Roundtrip

12. Throughout 2012 and 2013, Clamen was aware of several factors that he should have known required Iconix to recognize a loss on the uncollectible receivables owed by Company 2 under the licensing agreement. Company 2 stopped making any royalty payments to Iconix by August 2012 and continued in a state of delinquency because the company was on the verge of bankruptcy by this point. By the beginning of the third quarter of 2013, Iconix carried approximately $5 million in its receivable balance reflecting past-due royalties owed by Company 2. Despite these factors, Clamen failed to recognize a loss by writing off the uncollectible receivables or creating an allowance for bad debt. This caused Iconix's net income after taxes with the interim report for the third quarter of 2013 to be materially overstated by 14%.

13. Instead of recognizing the loss, Iconix entered into an acquisition transaction for an interest in Company 4, which was owned in part by the majority owner of Company 2, in which $2.7 million of Iconix's purchase price was roundtripped back to Iconix as past-due royalties owed by Company 2. The transaction allowed Iconix to continue to hide losses from Company 2's growing receivable balance.

14. Specifically, in July 2013, Iconix entered into a $40 million deal to purchase an interest in Company 4. In its Form 10-Q for the third quarter of 2013, Iconix disclosed that it paid: $32 million to buy 10% of Company 5, which owned half of Company 4;[4] and $8 million to Company 4 in connection with the launch of a so-called Brand 1 "diffusion brand," referred to herein as the "Diffusion Brand."[5]

15. In reality, Iconix paid only $22 million for its share of Company 5 and, by extension, Company 4, not $32 million as disclosed. Iconix, in fact, paid $10 million to various creditors of Company 2, including $2.7 million to itself to satisfy Company 2's past-due royalty obligations. At a minimum, the transaction was further notice to Clamen that Iconix should have written off the uncollectible receivables from Company 2 or created an allowance for bad debt because the licensee made royalty payments through funds provided by Iconix that were roundtripped back to Iconix. However, Clamen caused Iconix to continue to improperly carry the receivable balance and failed to disclose to Iconix's auditors factors indicating that it was probable that the receivables were impaired and the amount of the loss could be reasonably estimated.

16. Iconix's financial statements, approved by Clamen, also overstated the cost of Iconix's Company 4 investment by at least $10 million, causing that asset to be overstated on Iconix's books beginning in the third quarter of 2013. By improperly attributing an extra $10

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[4] Through this deal, Iconix technically purchased an 18.2% interest in another LLC that was a then newly-created affiliate of Company 5. This provided Iconix with a 10% share of Company 5 and, indirectly, with a 5% ownership interest in Company 4. To this day, Iconix owns a minority share of the LLC.

[5] As part of the deal, Iconix also received a minority ownership interest of 16.667% in another newly-created company that licensed the Diffusion Brand (the "Diffusion Brand Licensee"), which interest Iconix held until July 2015. The Diffusion Brand Licensee received a license for the new Diffusion Brand, and was supposed to distribute Diffusion Brand apparel.

million to the cost of Iconix's Company 4 investment, Iconix understated its investment in Company 2, which led to a material error in Iconix's net income for the third quarter of 2013.

17. In addition, prior to the transaction, on June 5, 2013, Clamen received long-term earnings projections from Company 4 indicating that Iconix would potentially incur a loss if its purchase price was nearly half of what it actually paid in the transactions. For example, one document reflects that Iconix would suffer a $4.7 million loss by the end of 2017 under a scenario in which it paid $22.5 million (nearly half of the $40 million it ultimately paid) for even a 5% (indirect) interest in Company 4. Later that same day, Clamen, however, created several iterations of a spreadsheet, one of which more than doubled or tripled Company 4's earnings projections for certain years.

18. In its Form 10-Q for the third quarter of 2013, approved and signed by Clamen, Iconix failed to disclose that a portion of its $40 million investment would be roundtripped back to Iconix. Specifically, Iconix disclosed that it "purchased a 10% minority interest in [Company 5, which provided a 5% interest in Company 4]…for $32 million." Iconix, however, failed to make material disclosures surrounding the transactions, including that the transaction kept hidden Company 2's growing receivable balance and created the false appearance that the licensee was able to make royalty payments.

Company 3, the Licensee for Brand 2

19. Brand 2 is the main brand within what Iconix calls its Brand 2 "portfolio of brands," which also includes a Brand 2 Specialty Line. From 2009 to May 2013, Company 3 was the core and largest Brand 2 licensee, with exclusive distribution rights for substantial product categories for Brand 2 and the Brand 2 Specialty Line.

20. In 2009, Iconix acquired a 51% controlling stake in the Brand 2 portfolio and created a consolidated subsidiary to hold the brand. The other 49% of this consolidated subsidiary was owned by the principal of Company 3. Company 3 was comprised of a group of privately-held companies and was owned and operated by one of the original founders of Brand 2.

21. Starting in 2012, Company 3 experienced financial distress, including reduced cash flows from the lack of sales. According to a Company 3 senior official, the minimum royalties in Company 3's Brand 2 license agreement were higher than its capacity to sell the brand, making it difficult for Company 3 to stay current with respect to its royalty payment obligations to Iconix.[6]

[6] Company 3's principal and CEO additionally ran the day-to-day operations of the Iconix subsidiary that owned Brand 2until May 2013, which made him responsible for collecting royalties from all of the Brand 2 licensees, including sub-licensees of Company 3 that were owned in whole or part by Company 3 as well as independent licensees. A portion of the total royalty collections from all of the Brand 2 licensees flowed to Company 3 as a partner in the Iconix subsidiary, and Company 3 used those funds to offset Company 3's own royalty obligations to Iconix under Company 3's Brand 2 license agreement. The decline in cash flows from sales thus caused Company 3's royalty distributions as a partner in the Iconix subsidiary to decline. This further hurt Company 3's cash flows in 2013 and 2014.

22. In March of 2013, Iconix discussed Company 3's dire financial condition with management of both Company 3 and Company 2. For example, Iconix's CEO emailed the CEO of Company 2 about a potential merger, saying "Iconix is an interested party…and doesn't want [Brand 2] trademarks to die a similar story like [Brand 1]." At the same time, Iconix's former CEO emailed Company 3's CEO, "I think we are on our last breath….we have lost almost all of our licensees and [Company 3] doesn't even want to use [the] logo…." Company 3 filed for Chapter 11 bankruptcy in April 2014 and Company 2 wound down its business around the end of 2013 and the start of 2014.

23. During the relevant time, Clamen, as Iconix's CFO, should have understood that Brand 1 and Brand 2 experienced steep declines in market acceptance and performance, resulting in Company 3's and Company 2's inability to pay royalties owed to Iconix.

Improper Accounting Concerning Uncollectible Receivables from the Brand 2 Licensee and Failure to Disclose $20 million Royalty Roundtrip

24. By the second quarter of 2013, Clamen, as Iconix's CFO, failed to recognize a $9 million loss relating to past-due uncollectible receivables from Company 3. Clamen, for example, was aware that Iconix had issued Company 3 a series of default notices up to this point; Company 3's lender was seeking a default; and Company 3 was at high risk of declaring bankruptcy. As a result, Clamen should have written off the uncollectible receivables or created an allowance for bad debt. In failing to do so, Iconix's net income after taxes during the second quarter of 2013 was materially overstated by more than 16%.

25. Per ASC 310, *Receivables*, a receivable is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the relevant agreement. ASC 310-35-8 subtopic 450-20 requires recognition of a loss when both of the following conditions are met: (1) information available indicates that it is probable that a receivable has been impaired and (2) the amount of the loss can be reasonably estimated. Clamen, however, failed to identify the receivables that Company 3 owed to Iconix pursuant to its license for subsequent measurement and evaluation to determine if the receivables were impaired, which, in turn, would have required Iconix to write off the uncollectible receivables or reserve for it.

26. Instead of properly recognizing a loss from the uncollectible receivables from Company 3, Iconix entered into a transaction that resulted in keeping the loss hidden. Specifically, in May of 2013, Iconix purchased the remaining 49% interest in the consolidated subsidiary that owned Brand 2and awarded Company 3 a new, go-forward Brand 2 license with a significantly reduced role (*e.g.*, Company 3 would no longer be the core licensee for Brand 2 or an exclusive licensee in any product category, hold a Brand 2 Specialty Line license, or operate the day-to-day Brand 2 licensing business for Iconix, and it would not receive any distributions from other licensees' royalty payments). Clamen as the CFO was informed about the evolution of this deal and its final terms.

27. As stated in the final acquisition agreement, Iconix paid $25 million for the minority interest of Company 3's owner in the consolidated Iconix subsidiary, but added $20 million to the purchase price in order to provide Company 3 with funds to return back to Iconix as past-due and prepaid royalties under Company 3's go-forward license. Clamen reviewed the acquisition agreement, which reflected that Iconix's $20 million payment included $9 million in past-due royalties that Company 3 owed and $11 million in prepaid royalties that would be owed for the remainder of 2013 and all of 2014 under the terms of Company 3's new licensing agreement. Although he should have understood that Company 3's only ability to satisfy its royalty payment obligations to Iconix was through this transaction—in which Iconix's own money was roundtripped back to itself—Clamen failed to write off the uncollectible receivables owed by Company 3. In addition, Clamen should have understood that it was appropriate to disclose to Iconix's auditors facts indicating that it was probable that Company 3's receivable balance was impaired and that the amount of the loss could be reasonably estimated.

28. The $20 million royalty roundtrip was not disclosed to investors in Iconix's quarterly and annual reports that were signed and approved by Clamen. For example, Iconix's interim reports for the second and third quarters of 2013 as well as its annual report for 2013 stated that the company "purchased the remaining 49% minority interest in [a consolidated subsidiary that held Brand 2] for $45 million in cash," but failed to disclose the $20 million as a royalty roundtrip that was embedded in Iconix's purchase price. In addition, Iconix referred to the acquisition of the consolidated subsidiary as "investing activity" in its Form 10-Qs for the second and third quarters of 2013 and as "financing activity" in its 2013 Form 10-K, without disclosing the true nature of the acquisition or that the transaction allowed Iconix to hide the losses resulting from Company 3's failure to meet its royalty payment obligations. This was material because it prevented investors from learning that Iconix's licensees were failing in their royalty obligations; the transaction was executed to create the false appearance that the licensees were financially stable; and Brand 2 was potentially impaired.

2013 Improper Impairment Testing

Company 3's License of Brand 2

29. By the second quarter of 2013, Clamen was on notice of several triggering events or triggers for impairment for Brand 1 and Brand 2, but failed to properly consider them in connection with impairment testing for these brands in accordance with ASC 350, *Intangibles – Goodwill and Other,* which states that an intangible asset with an indefinite use life shall be reviewed for impairment if events or changes in circumstances indicate that it is more likely than not that the asset is impaired.

30. With regard to Brand 2, on April 13, 2013, about two weeks prior to the 2013 acquisition of Company 3's owner's interest in the consolidated subsidiary that held Brand 2, Clamen assessed how much royalty revenue Iconix would need from a replacement licensee for Company 3. By then, Company 3 was already on the verge of bankruptcy, experienced a

negative cash flow situation, and was about to sell off its owner's Brand 2-related assets to Iconix, leaving it with no chance to profit from a portion of the royalties paid by other Brand 2 licensees in the future. In addition, this transaction would result in Company 3 losing its exclusive Brand 2 distribution rights and, thus, it would need to compete with other Brand 2 licensees and sellers.

31. Clamen also had notice that Company 3 was only able to pay past-due royalties and future royalties through funds Iconix provided by acquiring the remainder of the subsidiary that owned Brand 2. In addition, Clamen understood, from presentations he conducted before Iconix's Board of Directors in February 2013, that relevant triggering events for Iconix included, at a minimum, loss of a significant licensee and loss of key personnel. By the second quarter, Iconix faced the loss of its licensee, Company 3, and Company 3's longtime CEO would leave Iconix's Brand 2 licensing business following the acquisition of his interest in the subsidiary that owned Brand 2. Finally, on April 30, 2013, just two days before the acquisition agreement was executed, Clamen reviewed an email sent by another Iconix officer indicating that the officer believed impairment of Brand 2 was likely even if Iconix were to return more than $20 million in royalty payments to itself through the deal.

32. Clamen failed to act on the presence of these testing triggers when they occurred, and did not test for impairment until its annual testing period, which began at year-end 2013 and continued into February of 2014.[7] Clamen therefore caused Iconix to fail to comply with US GAAP, including ASC 350, *Intangibles – Goodwill and Other*, and ASC 360, *Property, Plant, and Equipment*, by failing to test Brand 2 for impairment prior to the buyout of the minority interest in the subsidiary that held Brand 2. During the relevant time, Iconix was required to make this determination at least annually for the indefinite-lived assets on its balance sheet, such as Brand 2. Iconix was also required to test the intangible assets associated with Brand 2 on its balance sheet for impairment when certain indicators, or "triggering events," were present, meaning "whenever events or changes in circumstance indicate that the asset might be impaired."[8]

33. Clamen also approved royalty projections for Company 3 within Iconix's 2013 Brand 2 impairment test that he should have known were neither supported by what was in Company 3's Brand 2 license agreement nor what Clamen knew about Company 3's financial situation. Clamen should have understood that Iconix needed to provide Company 3 with cash liquidity so that Company 3 could return the funds as prepaid Brand 2 "royalties" in 2013 and 2014. He was aware that Company 3's license after the buyout deal did not extend past 2014. Iconix, with Clamen's approval, nevertheless projected in its 2013 impairment test that Company

7 Iconix tested its intangible assets for impairment as of October of 2013.

8 Iconix aggregated the value of its brands in a single line item for intangible assets within its financial statements. Intangible assets that are listed on a company's balance sheet are subject to periodic testing for impairment using several testing inputs, such as royalty projections and growth rates relating to the performance of Iconix's licensees. Pursuant to ASC 350, an intangible asset is impaired when its carrying amount exceeds its fair value. (ASC 820 defines fair value as the price that would be received to sell an asset or to transfer a liability in an orderly transaction between market participants at the measurement date.)

3 would continue to pay between $5.2 and $6.2 million each year through 2018. This was unreasonable and unsupported.

34. As a result, the company failed to recognize that Brand 2 was materially overvalued on its balance sheet in 2013 by an amount that was at least in the range of $106.7 million to $116.7 million.

Company 2's License of Brand 1

35. With regard to Brand 1, Iconix improperly bolstered the value of that brand in its 2013 impairment test, overseen by Clamen, by attributing projections for Diffusion Brand royalties to Brand 1. Iconix, with Clamen's approval, compounded this error by applying an excessive, year-over-year growth rate ranging from 825% in 2015 through 26% in 2018 to the Diffusion Brand licensee's projections. This was unreasonable and had no basis in past performance. It also ignored the fact that the Diffusion Brand's license did not extend into 2018.

36. Clamen failed to properly assess the loss of a significant licensee, Company 2, as a triggering event. This triggering event obligated Iconix, through Clamen, to test its Brand 1 asset for impairment as of the third quarter of 2013. As a result of Clamen's failure to properly assess impairment triggering events, Iconix violated US GAAP, including ASC 350 and ASC 360, by failing to test Brand 1 for impairment following the loss of a significant licensee around the time of Iconix's acquisition of an interest in Company 4.

New Licensee in 2014 for Brand 1 and Brand 2

37. By early 2014, Iconix signed a new core licensee for Brand 1 and Brand 2, referred to herein as the "Factory Liaison." The Factory Liaison was a start-up company with little operations and no prior history of owning or licensing any brands.

38. At the time the Factory Liaison signed its Brand 1 licensing agreement with Iconix, the Factory Liaison believed that Brand 1 was not desirable and lacked customer demand.

39. The Factory Liaison agreed to be a Brand 1 licensee because Iconix agreed to operate and finance front-end functions for it, such as sales, design, and payroll for Brand 1 staff. The Factory Liaison's primary responsibility would be limited to purchasing and shipping products.

40. The Factory Liaison's Brand 1 license also included a "shortfall" provision that allowed the Factory Liaison to pay just a percentage of its actual Brand 1 sales revenue each year, and pushed forward indefinitely the amount of any shortfall between that number and the "guaranteed" minimum royalty payments in its license agreement.[9] As a result of this provision,

[9] ASC 605, *Revenue Recognition*, provides that revenue should not be recognized until it is realized or realizable and earned. Iconix's revenue recognition policy, consistent with GAAP, set forth four requirements that must generally be met before revenue can be realized and earned: 1) persuasive evidence of an arrangement exists;

the contractual minimums in the Factory Liaison's Brand 1 license were not fixed or determinable under Iconix's revenue recognition policy, which policy was consistent with US GAAP.[10]

41. Clamen included unreasonable and unsupported projections in Iconix's 2013 impairment testing of Brand 1, including unreasonable projections for the Factory Liaison. Specifically, the Brand 1 royalty projections that Clamen approved for the Factory Liaison in Iconix's 2013 impairment test were much higher than those in its license. Iconix projected that the Factory Liaison would pay between 88% and 578% *more* in Brand 1 royalties each year from 2014 through 2017 than the targets listed in its license. Overages on projections of a few hundred percent were unreasonable, and had no basis in past performance.

42. Clamen also approved Iconix's projection that the Factory Liaison would pay $15.3 million in Brand 1 royalties in 2018, even though its license did not extend to 2018. Clamen should have known that this was unreasonable, since he received emails and documents from other Iconix executives indicating that the Factory Liaison was a mere "12-18 month solution" for whom Iconix would serve as front-end by running and financing its Brand 1 operations. Moreover, the projections were made further unreasonable given the shortfall provision in its contract, and its substantial Brand 2 commitments.

43. As a result of Clamen's failure to properly identify triggering events and approving unreasonable projections for the Factory Liaison, Iconix failed to recognize that its Brand 1 asset (and its Brand 2 asset, as aforementioned) was materially overvalued on its balance sheet in 2013 by an amount that was at least in the range of $132.7 million to $142.7 million and to properly account for this asset.

Improper Accounting for and Disclosure of Iconix's Ownership Interest in Company 2, the 2013 Core Licensee of Brand 1

44. More than a year before the Company 4 acquisition, in March 2012, Company 2 delegated day-to-day management responsibilities over its affairs to Iconix and Iconix's CEO at the time. The terms of this arrangement were memorialized in a confidential written agreement which supported the fact that, from this point forward, Iconix exercised significant influence over Company 2, and this licensee began a practice of steady reporting of its operational circumstances to Iconix.

45. Under ASC 323, *Equity Method and Joint Ventures*, a 5% or more investment in a limited liability company, such as Company 2, is generally accounted for under the equity

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2) delivery has occurred or services have been rendered; 3) the seller's price to the buyer is fixed or determinable; and 4) collectability is reasonably assured.

[10] The Factory Liaison's Brand 2 license was structured differently from its Brand 1 license (*e.g.*, no shortfall provision and Iconix was not responsible for front-end functions), and therefore the Brand 2 license did not on its face present the same revenue recognition issues for Iconix.

method. Therefore, since Iconix owned 16.67% of Company 2, Iconix should have accounted for its investment under the equity method. In addition, under ASC 323, the equity method is also the appropriate method to use in circumstances where, as here, Iconix had the ability to (and did) exercise significant influence over the operating and financial policies of Company 2.

46. Clamen periodically met with Company 2's management to review financial and business updates, which should have been an indication of Iconix's influence over Company 2. For example, in August 2013, Clamen received and reviewed the 2013 and 2014 Company 2 internal financial projections that Company 2 used to obtain financing. As these documents reflect, Iconix's then-CEO directed management decisions for Company 2. For example, Clamen understood that Iconix's CEO terminated Company 2's CEO. Furthermore, according to Company 2 officials, from at least late 2012 to mid-2013, Clamen and Iconix's then-CEO were actively involved in the management of Company 2's business from a financial standpoint. At certain times, Iconix's then-CEO asked Company 2's CEO to have Clamen "vet the financials."

47. Despite these indications that Iconix exercised significant influence over Company 2 (which, in fact, it had, pursuant to the management agreement between the parties), and the fact that Iconix had a 5% or more investment in this licensee, an LLC, Clamen failed to properly examine whether it was appropriate to continue to use the cost method to account for Iconix's interest in Company 2, as opposed to the equity method. As a result, Iconix did not properly account for a material equity loss pick-up in the third quarter of 2013 relating to the $10 million payment it made in connection with the Company 4 acquisition. In addition, Iconix did not disclose related party transactions with Company 2, including the Company 4 acquisition, pursuant to ASC 850, *Related Party Disclosures*[11] and Rule 4-08(k) of Regulation S-X.

Inaccurate Representation Letters to Iconix's Auditor

48. As CFO, Clamen was responsible for the fair presentation in the financial statements of financial position, results of operations, and cash flows in conformity with US GAAP. He signed quarterly representation letters to Iconix's outside auditors on August 9, 2013 (for the second quarter Form 10-Q), November 6, 2013 (for the third quarter Form 10-Q) and February 27, 2014 (for the 2013 Form 10-K). The representation letters conveyed inaccurate information, or omitted material facts, to Iconix's auditor that, among other things:

(a) all of Iconix's material transactions were properly recorded;

(b) Iconix tested its indefinite-lived intangibles for impairment in accordance with FASB ASC 350 and recorded any and all adjustments appropriately;

(c) Iconix reviewed intangibles whenever events indicated that the carrying amount might not be recoverable and found that no impairment write-downs were required;

[11] *See also* ASC 850-10-20(b) (related parties include entities required to be accounted for by the equity method); ASC 850-10-50-1 ("Financial statements shall include disclosures of material related party transactions").

(d) all related-party transactions, including sales, purchases, guarantees and amounts receivable from or payable to related parties, such as unconsolidated subsidiaries and affiliates under common control with Iconix or directly or indirectly controlled by Iconix, were properly recorded and disclosed;

(e) Iconix disclosed to its auditors on a quarterly basis the identity of related parties and all related party relationships known to the company, and also properly disclosed these things in its annual financial statements;

(f) unconsolidated joint ventures or other such participations were properly recorded and disclosed;[12]

(g) receivables in the financial statements represented valid claims and were properly accounted for;

(h) the cost method was used to account for Iconix's investment in Company 2 because Iconix did not have the ability to exercise significant influence over Company 2's operating and financial policies;

(i) Iconix made available to the auditors all financial records and related data; and

(j) Iconix's system of internal controls was effective and had no deficiencies.

Violations

49. As a result of the negligent conduct described above, Clamen willfully[13] violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. Specifically, he violated these statutes in connection with Iconix's improper disclosure of its acquisition of the minority interest in the subsidiary that owned Brand 2 and the Company 4 acquisition transaction and accounting for the loss and cost of investments in connection with the buyout related to Brand 2 and Company 4 acquisitions. Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3).

50. As a result of the conduct described above, Clamen willfully violated Exchange Act Rules 13b2-1 and 13b2-2, which make it unlawful to directly or indirectly, falsify, or cause to be falsified, any book, record, or account, or for officers, directors, and any persons acting under the direction thereof, to make a materially false or misleading statement, or omit certain material facts,

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12 In March 2016, Iconix restated its historical accounting treatment for several overseas joint ventures to consolidate them within Iconix's financial statements. Some of those joint ventures were operational while Clamen was still at the company. Additionally, Iconix did not properly record its investment in Company 2 since it failed to use the equity method of accounting.

13 "Willfully," for purposes of imposing relief under Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

to an accountant in connection with an audit. No showing of scienter is required to establish a violation of Rules 13b2-1 or 13b2-2.

51. As a result of the conduct described above, Clamen caused Iconix to violate Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require issuers to file annual, current and quarterly reports, which include such further information as may be necessary to make the required statements not misleading.

52. As a result of the conduct described above, Clamen caused Iconix to violate Section 13(b)(2)(A) of the Exchange Act, which requires issuers to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer.

53. As a result of the conduct described above, Clamen caused Iconix to violate Section 13(b)(2)(B) of the Exchange Act, which requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

54. As a result of the conduct described above, Clamen is subject to the provisions set forth in Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

Findings

55. Based on the foregoing, the Commission finds that Clamen (a) committed willful violations of Sections 17(a)(2) and (3) of the Securities Act and committed willful violations of Exchange Act Rules 13b2-1 and 13b2-2; (b) caused Iconix's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder; and (c) is subject to the provisions set forth in Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

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

A. Clamen shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act; Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act; and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, and 13b2-2.

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

C. After three (3) years from the date of this order, Clamen 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Clamen's work in his practice before the Commission as an accountant 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. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant.

Such an application must satisfy the Commission that:

(a) Clamen, 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) Clamen, or the registered public accounting firm with which he 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 Clamen will not receive appropriate supervision;

(c) Clamen 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) Clamen acknowledges his responsibility, as long as he 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 Clamen to resume appearing or practicing before the Commission provided that his relevant CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy or relevant Canadian licensing authority. However, if 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 Clamen's character, integrity professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

E. Clamen shall, within 10 days of the entry of this Order, pay disgorgement of $39,042.61, prejudgment interest of $10,082.65, and a civil money penalty in the amount of $150,000.00 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

F. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Clamen as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6561.

F. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary