UNITED STATES OF AMERICA
Before the
SECURITES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-15928

In the Matter of

SIMING YANG,

Respondent.

ANSWER AND AFFIRMATIVE DEFENSES

Siming Yang ("Yang") in accordance with Rule 220 of the Commission's Rules of Practice, in Answer to the allegations of the Division of Enforcement ("Division"), states as follows:

After an investigation, the Division of Enforcement alleges that:

1. Yang, age 37, is a citizen of the People's Republic of China. From January 2008 through at least April 2012, Yang maintained a residence in New York, New York. From 2008 until March 30, 2012, Yang was employed as a research analyst with a New York-based registered broker/dealer and investment adviser, BAMCO, Inc. ("BAMCO"), and/or registered broker-dealer Baron Capital, Inc., and/or registered investment adviser Baron Capital Management, Inc., all affiliated subsidiaries of investment management holding company, Baron Capital Group. Yang also acted as the investment adviser to his own investment firm, Prestige Trade investments Limited ("Prestige").

RESPONSE: Yang he admits he is a citizen of the People's Republic of China and that at the time the OIP was entered, he was 37 years old. Yang admits he maintained a residence in New York from January 2008 through April 2012. Yang denies that BAMCO was a registered broker/dealer. Yang denies he acted as an investment adviser to Prestige as defined by the Investment Advisers Act of 1940.

Additionally, relating to Yang's employment, in the civil action titled, *SEC v. Yang, Prestige Trade Investments Limited, Fan, and Chang*, No. 12-cv-2473, (the "Litigation"), the Division claimed Yang was employed by different entities, as follows:

A. In its complaint, the Division claimed Yang was employed by Baron Capital Management. (SEC Complaint, ¶ 17, relevant portion of which are attached as "Exhibit A.")

B. In the Statement of Facts submitted to the court in the Litigation, the Division asserted that Yang's employer was Baron Capital Group, Inc., that was not a registered broker-dealer or investment adviser. (SEC's Statement of Facts, attached as "Exhibit B," Fact No. 17.)

C. The Division submitted to the court in the Litigation three declarations from Yang's colleagues. Each of the affidavits represented that Yang was employed by Baron Capital, Inc. (Kass Declaration, ¶¶ 1, 3; Mayorga Declaration, ¶¶ 1, 4; Susman Declaration, ¶¶ 1, 5, all attached as "Exhibit C.") Baron Capital, Inc. is not an investment adviser and is an entirely different entity than Baron Capital Group, Inc., and both are different entities from BAMCO. Yang was not a registered person with any of those entities and none ever submitted a Form U4 or Form U5 for Yang.

D. The Division also submitted to the court in the Litigation a declaration from Patrick Patalino, the General Counsel of Baron Capital Group, Inc. In that declaration, Patalino avoided referencing the particular entity that employed Yang, preferring to refer to the unregistered holding company and the broker-dealer and investment adviser entities collectively as "Baron." (Patalino Declaration, ¶¶ 1, 2, 4.) (Patalino Declaration attached as "Exhibit D.")

Moreover, various documents appear to identify Yang's employer alternately as "Baron Capital," "Baron Capital Inc." and "BAMCO Inc." (documents attached as "Exhibit E").

In light of the above, Yang lacks sufficient information to respond to the allegation about the identity of his employer, therefore, denies that allegation.

Yang further states as an affirmative defense that the Division should not be permitted to take conflicting positions in different legal forums about Yang's employer for multiple reasons, including but not limited to, the doctrines of judicial estoppel and res judicata.

2. On May 27, 2014, a final judgment was entered against Yang, permanently enjoining him from future violations of Sections 10(b) and 13(d) of the Exchange Act, and Rules 10b-5, 13d-1 and 13d-2 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Siming Yang, Prestige Trade Investments Limited, Caiyin Fan, Shui Chong (Eric) Chang, Civil Action Number 12-cv-2473, in the United States District Court for the Northern District of Illinois.

RESPONSE: Yang admits the allegations and states further that he prevailed in the insider trading claim, which the court determined was "the centerpiece of the case," that was "the

primary focus of the dispute prior to and during the trial." (Memorandum Opinion and Order, p. 2, attached as "Exhibit F.") The court declined to order Yang to pay any disgorgement. *Id.*, at p. 4. The court found further that "there was no significant harm to investors." (*Id.*, at p. 2.) The court additionally held that "the Schedule 13D violations [...] were not terribly significant to the investing public given that Yang accurately disclosed on the forms the purchases of vastly greater amounts of stock by Prestige [a codefendant]. And it is unlikely that Prestige experienced any quantifiable harm from Yang's front-running." *Id.*

3. The Commission's complaint alleged that, among other things, Yang engaged in a fraudulent front-running scheme, whereby he sought to personally profit by purchasing Zhongpin Inc. ("Zhongpin") securities in his joint personal account when he knew that he would soon complete massive, market moving purchases of Zhongpin stock on behalf of his own start-up investment firm, Prestige. The complaint alleged that while still employed with BAMCO, Yang secretly created Prestige and acted as the firm's investment adviser. Yang was responsible for creating Prestige's investment strategy and directed all trades on Prestige's behalf. Between March 15 and March 21, 2012, Yang used $29.8 million of Prestige's funds to purchase over 3 million shares of Zhongpin stock. On March 14, prior to Prestige's purchases, Yang purchased 50,000 shares of Zhongpin stock and 1,978 Zhongpin call options in his personal brokerage account.

RESPONSE: Yang denies that the complaint alleged that Yang ever was employed with BAMCO. Yang states further that the Division's original complaint alleged that Yang was employed by Baron Capital Management, which is not BAMCO. (See Exhibit A.) Additionally, that complaint included no allegations of front-running and, thus Yang denies that allegation. Yang further states that the Division's later iterations of the complaint, i.e., the first and second amendments of the complaint, in which the front-running allegations surfaced, the SEC did not allege that Yang was employed by BAMCO. Yang denies the remaining allegations in the paragraph.

The Complaint also alleged that on April 2, 2012, Yang caused Prestige to file a Schedule 13D and later an amended Schedule 13D disclosing Prestige's acquisition of Zhongpin stock. Yang failed to disclose in either Schedule 13D his purchases of Zhongpin securities in his personal account. The complaint alleged that Yang knew or recklessly disregarded that the Schedules 13D contained material misrepresentations and omissions regarding Yang's personal transactions in Zhongpin securities.

RESPONSE: The original complaint makes no mention of Schedule 13D claims and, thus, Yang denies the allegations.

Respectfully submitted,

Howard J. Rosenburg
Attorney for Respondent
Siming Yang

James L. Kopecky
Howard J. Rosenburg
Kopecky, Schumacher Bleakley Rosenburg, PC
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hrosenburg@ksblegal.com

Howard J. Rosenburg, an attorney, hereby certifies that on December 9, 2014, he caused true and correct copies of the Siming Yang's Answer and Affirmative Defenses to be served on the following individuals by U.S. mail:

The Honorable Carol Fox Foelak
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Emily Heller, Esq.
U.S. Securities and Exchange Commission
Chicago Regional Office
175 W. Jackson Blvd, Ste. 900
Chicago, IL 60664

Dated: December 9, 2014

Howard J. Rosenburg

EXHIBIT A

Redacted

[redacted]

Case No. 12-cv-02473

RECEIVED

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THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SIMING YANG, PRESTIGE TRADE, INVESTMENTS LIMITED, CAIYIN FAN, AND SHUI CHONG (ERIC) CHANG, Defendants.	)	Case No. 12-C-2473 Hon. Matthew F. Kennelly

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S LOCAL RULE 56.1 STATEMENT OF ADDITIONAL MATERIAL FACTS

Plaintiff U.S. Securities and Exchange Commission (the "SEC") pursuant to Rule 56.1(b)(3) of the Local Rules of the District Court for the Northern District of Illinois respectfully submits the following Statement of Additional facts in response to Defendant Siming Yang's and Defendant Prestige Trade Investments Limited's ("Prestige's") Motion for Summary Judgment:

Defendant Siming Yang Opens a Joint Account at Sogotrade With Caiyin Fan

1. Yang had a personal e-mail account through Google with an address of jedi980@gmail.com. (*E.g.*, Dkt.#161-8, Yang Decl. at exhibts D, E and F.)

2. On November 21, 2011, account opening documents for account #5****135 were sent to Sogotrade (a division of Wang Investments) from Siming Yang's personal e-mail address at jedi980@gmail.com. The account opening documents listed Caiyin Fan and Siming Yang as account holders. That account was formally opened on November 25,

15. As of the close of the market on March 27, 2012 – the first day after Zhongpin's announcement – Prestige had unrealized gains of $7,672,632 on its Zhongpin stock position. (Ex. 43, Kustusch Decl. ¶¶ 9-10.)

16. In a presentation to Prestige investors, Yang represented that Prestige's portfolio would be "properly diversified…by industry…by sector and country." (Ex. 24, February 2012 Prestige Presentation V4 (Translated) at 8.)

Yang Violates His Employer's Insider Trading Policies

17. Defendant Siming Yang was retained by Baron Capital Group, Inc. – a New York-based holding company that included broker-dealer and investment adviser subsidiaries – as a Research Analyst beginning in October 2008 to conduct company and market research on behalf of two of Baron's registered mutual funds: (1) the Baron Emerging Markets Fund, and (2) the Baron International Growth Fund. He remained employed with Baron until he was terminated effective March 30, 2012. (Ex. 1, P. Patalino Decl. ¶ 2, 4; Ex. 2, Kass Decl. ¶¶ 3-4.)

18. At all times during his employment at Baron, Siming Yang was subject to Baron's written policies which – among other goals – was designed to prevent even the appearance of insider trading by Baron employees. (Ex. 1, P. Patalino Decl. ¶¶ 5-11; Ex. 7, 2/12/2008 Baron's Code of Ethics at 15-20; Ex. 8, Baron's 2/14/2012 Amended and Restated Code of Ethics at 5.)

19. Among other things, Baron's policies (a) required Yang to pre-clear all personal securities trades, (b) barred Yang from placing trades in publicly traded companies, (c) required Yang to submit periodic reports to Baron identifying all personal brokerage accounts in which he had a beneficial or controlling interest, all securities holdings and all

291-293.)

36. Yang and the other Reporting Persons stated on the Schedule 13D that they shared voting and dispositive power over the shares and that none of them held sole voting or dispositive powers over any other shares. Further, they stated that during the previous sixty days "no transactions in the Common Stock were effected by any Reporting Person" other than those disclosed on the form. (Ex. 27, 4/2/2012 Schedule 13D at 2-5, 7.)

37. The Schedule 13D reflected only those shares acquired by Prestige and did not disclose the shares that were purchased in the Yang/Fan account. (Ex. 27, 4/2/2012 Schedule 13D at 3.)

Yang's Prestige Salary:

38. In exchange for managing the investments of Prestige, Yang was to receive a salary of .5% of assets under management and a bonus equal to a percentage of Prestige's investment gains. (Ex. 26, Prestige Articles of Association at 8-9.)

Dated: July 12, 2013

Respectfully submitted by:

s/Timothy S. Leiman
Robert J. Burson (IL#3126909)
Timothy S. Leiman(IL#6270153)
Jedediah B. Forkner (IL#6299787)
Marlene Key-Patterson (IL#6296919)
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Attorneys for Plaintiff
U.S. Securities and Exchange Commission

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	Case No. 12-C-2473
v.	)	Hon. Matthew F. Kennelly
SIMYING YANG, PRESTIGE TRADE, INVESTMENTS LIMITED, CAIYIN FAN, AND SHUI CHONG (ERIC) CHANG,	)	
Defendants.	)	

DECLARATION OF MICHAEL KASS

I, Michael Kass, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct and that, if called to do so, I could competently testify as follows:

1) I am a Portfolio Manager and Vice President for Baron Capital, Inc. ("Baron") and have served in those positions since 2007.

2) In those capacities, I manage the investment portfolios of two registered, diversified mutual funds: (1) the Baron Emerging Markets Fund, and (2) the Baron International Growth Fund.

3) From October 2008 until March 2012, Siming Yang worked for Baron as a Research Analyst under my direct supervision. During that time, Mr. Yang was based out of Baron's offices in New York and spent the majority of his work days at that office.

4) In that capacity, Mr. Yang was responsible for researching companies based in

the People's Republic of China as well as other emerging and developed international markets - primarily in Asia.

5) Mr. Yang never presented Zhongpin, Inc. to me – or to my knowledge, anyone else at Baron – as a good investment opportunity for Baron's funds. However, Zhongpin is a company that would have been in Mr. Yang's research universeduring his employment at Baron.

6) During his employment at Baron, Siming Yang never disclosed to me that he was raising funds for a private investment vehicle and never mentioned the name, Prestige Trade Investments, Ltd. ("Prestige").

7) In late 2011, I noticed that Siming Yang's productivity was declining and that he was increasingly unresponsive and detached. My conclusion was that he was no longer providing significant contributions to Baron or its mutual funds.

8) In January 2012, I discussed Mr. Yang's lack of production with Baron's senior management.

9) On February 14, 2012, I sent an e-mail to Siming Yang stating my opinion that it looked like a publicly-traded Chinese company called AsiaInfo had "chunked the qtr. in advance of the fairness opinion." I was indicating to Mr. Yang that it appeared to me that the company may have reported disappointing earnings in order to make the price they were offering to take the company private more attractive, which would make obtaining a favorable fairness opinion from an independent financial adviser more likely. A true and correct copy of that e-mail to Mr. Yang was produced to the Commission by Baron and bears Bates-number SEC-BC-0059374.

10) In mid-February 2012, Siming Yang left for a trip to China. He explained to me

that his grandmother had died and that he was travelling so that he could be with his family. Mr. Yang did not indicate that there was any business purpose to this trip.

11) Mr. Yang remained in China through mid-March.

12) After further discussion with Baron senior officers, the decision was made to terminate Siming Yang's employment based on his lack of productivity and lack of communication with Baron about his status during his absence.

13) On or about March 19, 2012, I attended Siming Yang's exit interview along with Siming Yang and two other Baron officers –Ronald Baron (Chairman and Chief Executive Officer) and and Linda S. Martinson (President and Chief Operating Officer) – to discuss his termination.

14) During the meeting, Mr. Yang indicated that he was interested in raising money from investors in China so that he could start his own hedge fund. He specifically mentioned that, in the future, he wanted to raise approximately $30 million for a hedge fund.

15) Mr. Yang never disclosed to me that he had already started work on a private investment vehicle called Prestige or that Prestige had purchased stock in Zhongpin.

16) Mr. Yang never disclosed to me that he had purchased any securities in publicly traded Chinese companies, including the securities of Zhongpin.

I, Michael Kass, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct.

Executed on the 17th day of June 2013

Michael Kass

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS EASTERN
DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SIMYING YANG, PRESTIGE TRADE, INVESTMENTS LIMITED, CAIYIN FAN, AND SHUI CHONG (ERIC) CHANG, Defendants.	Case No. 12-C-2473 Hon. Matthew F. Kennelly

DECLARATION OF HENRY MAYORGA

I, Henry Mayorga, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct and that, if called to do so, I could competently testify as follows:

1) I am Manager of Network Technology for Baron Capital, Inc. ("Baron") and have served in that position since 2008.

2) I graduated from Columbia University in 1990 with a B.S. in Computer Science and I have worked in the Information Technology ("IT") and network infrastructure field since 1991.

3) In that position I am responsible for overseeing Baron's entire IT infrastructure, including Baron's Blackberry Enterprise Server and IT equipment issued to Baron employees. At Baron Capital, I manage a staff of 4 IT specialists.

4) From October 2008 until March 2012, Siming Yang was employed with Baron. During that period, Baron assigned Mr. Yang a desktop computer and a Blackberry device.

He also was assigned the e-mail address syang@baronfunds.com.

5) Under Baron's IT policies, all documents and communications created or stored on Siming Yang's Baron-issued computer and Blackberry were Baron's property. In addition, aside from *de minimus* personal use, Baron-issued devices were to be used only for purposes of Baron-related business. Siming Yang received training on Baron's IT policies, and, like all Baron employees, was informed that he had no right to privacy in documents and communications created or maintained on his Baron-issued devices and that all such documents and communications were the property of Baron.

6) When Mr. Yang's employment was terminated in March 2012, he was informed that he would have to turn over his Baron-issued computer and his Blackberry.

7) Siming Yang did not inform me – or to my knowledge anyone under my supervision – that he had documents on his Baron-issued devices related to research into Zhongpin, Inc. or his work for Prestige Trade Investments, Ltd. ("Prestige"). In fact, prior to this litigation, I had not heard of either entity. While Mr. Yang would have been allowed to retain copies of purely personal documents (such as personal photographs or personal financial information) Mr. Yang did not ask for – and the Baron IT department did not give – permission to delete, alter, copy or transfer any documents related to Zhongpin, Prestige, or research into any public company.

8) Mr. Yang turned over his Baron-issued computer to Baron's IT department on March 30, 2012.

9) In searching for documents responsive to requests from the SEC, I (and Baron IT staff, acting at my direction) examined Siming Yang's hard drive for deleted documents. In doing so, I discovered that a number of documents had been deleted from Siming Yang's

desktop on March 30, 2012 – just before Mr. Yang left the company and turned over his computer.

10) The deleted documents had been removed from Siming Yang's desktop and, therefore, (a) were not visible to users through the desktop interface without further examination and (b) were designated to be overwritten which means that – with further use of the computer – the files could have been partially or entirely destroyed without the possibility of recovery. Because the Baron IT department preserved Siming Yang's hard drive and examined it we were able to preserve and recover the deleted documents from Mr. Yang's hard drive and prevent them from being permanently destroyed.

11) Among the documents that had been deleted from Mr. Yang's computer on March 30, 2012 was a pdf file titled "HSBC." A true and correct copy of that deleted document was produced to the SEC in response to their document requests in this matter (a paper copy of which has been Bates-stamped SEC-BC-0127991 through SEC-BC-0128033).

12) After Baron's IT department examined Siming Yang's hard drive and recovered the documents deleted on March 30, 2012, the hard drive was preserved so that SEC computer forensics personnel could make a forensic copy of all data on the drive.

13) Siming Yang did not return his Blackberry on March 30, 2012 as he was instructed to do. He did not return the Blackberry until April 3, 2012 – after several additional requests by Baron IT staff.

14) When the Blackberry was returned, I (and Baron IT staff working at my direction) examined the device.

15) Upon examining the device, I discovered that the Subscriber Identification Module ("SIM") card for Siming Yang's Blackberry had been altered. The SIM card is a

removable plastic card in the Blackberry device that is used to identify and authenticate users to the network (in this case, Baron's Blackberry Enterprise Server). The security features of the SIM card for Siming Yang's Blackberry had been bypassed and the configuration of the SIM card had been changed so that the Blackberry no longer received e-mail at syang@baronfunds.com, but rather, received e-mail addressed to syang08@gsb.columbia.edu.

16) In addition, the phone number for Siming Yang's Baron-issued Blackberry had been transferred without permission to a different service provider – from Verizon (Baron's service provider) to Sprint.

17) Based on my knowledge of Baron's IT infrastructure, including Baron's Blackberry Enterprise Server, I believe that someone with technical proficiency altered Siming Yang's Baron-issued Blackberry – bypassing several security features of the device and Baron's Blackberry Enterprise Server – so that the device could receive e-mail at another address and could continue to be used outside of Baron's network infrastructure.

18) After Baron's IT department examined Siming Yang's Blackberry, the device was preserved and turned over to the SEC's computer forensics personnel upon their request.

I, Henry Mayorga, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct.

Executed on the 17th day of June 2013

Henry Mayorga

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Case No. 12-C-2473
v.	)	
	)	Hon. Matthew F. Kennelly
SIMYING YANG, PRESTIGE TRADE, INVESTMENTS LIMITED, CAIYIN FAN, AND SHUI CHONG (ERIC) CHANG,	)	
	)	
Defendants.	)	

DECLARATION OF ROBERT SUSMAN

I, Robert Susman, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct and that, if called to do so, I could competently testify as follows:

1) I worked as a Research Analyst at Baron Capital, Inc. ("Baron") from September 2007 to January 2013.

2) I have never been able to speak any dialect of the Chinese language and have never taken any classes in the Chinese language.

3) I have never been able to read or write the Chinese language.

4) While at Baron, I was primarily responsible for conducting research in the financial and business services sectors. I did not generally conduct research into Chinese companies for Baron and have no particular expertise in that geographical region.

5) Defendant Siming Yang worked as a Research Analyst at Baron while I had the

 RGS

same position there.

6) Although we occasionally exchanged pleasantries when passing each other in the hallway, I did not know Siming Yang well and we never socialized outside of the workplace.

7) I have never worked with Siming Yang on any business projects outside of Baron, never assisted Mr. Yang in setting up business meetings with individuals in China and never heard of the entity Prestige Trade Investments, Ltd. before the events of this litigation.

8) I have never registered or used an e-mail account with the address rsusman08@gmail.com. In fact, before the events of this litigation, I had never heard of that e-mail address.

9) I do not know, and have never communicated with, the following individuals:

(a) Li Ji;

(b) Qiming Li; or

(c) Hu Dajiang.

I, Robert Susman, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing statements are true and correct.

Executed on the 17th day of June 2013

Robert Susman

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Case No. 12-C-2473
v.	)	
	)	Hon. Matthew F. Kennelly
SIMYING YANG, PRESTIGE TRADE, INVESTMENTS LIMITED, CAIYIN FAN, AND SHUI CHONG (ERIC) CHANG,	)	
	)	
Defendants.	)	

DECLARATION OF PATRICK PATALINO

I, Patrick Patalino, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct and that, if called to do so, I could competently testify as follows:

1) I am currently General Counsel and Vice President of Baron Capital Group, Inc. and have served in those positions since 2007.

2) Baron Capital Group, Inc is a holding company incorporated in New York with three subsidiaries: Baron Capital, Inc., a limited purpose broker-dealer registered with the Securities and Exchange Commission; BAMCO, Inc. and Baron Capital Management, Inc., investment advisers registered with the Securities and Exchange Commission. Baron Capital Group, Inc. and its subsidiaries are collectively referred to herein as "Baron."

3) In my role as General Counsel, I am responsible for the Legal and Compliance Departments. The Legal and Compliance Departments are responsible for developing and implementing policies and proceduresto ensure that Baron and its employees comply with

applicable law. To that end, Baron's Legal and Compliance Departments conduct training of Baron employees to ensure that they understand their responsibilities for complying with Baron's policies and procedures.

4) Defendant Siming Yang was hired by Baron as a Research Analyst beginning in October 2008. In that role, he primarily conducted company and market research on behalf of two of Baron's registered mutual funds: (1) the Baron Emerging Markets Fund, and (2) the Baron International Growth Fund. He remained employed with Baron until he was terminated effective March 30, 2012.

5) At all times during Siming Yang's employment at Baron, Baron had a written Code of Ethics which, among other things, set out Baron's policies for personal securities transactions of Baron's employees. Among other goals, those policies were intended to protect Baron's clients, manage potential conflicts, and prevent even the appearance of inappropriate personal trading by Baron employees, including insider trading.

6) At all times during his employment at Baron, Siming Yang was subject to Baron's Code of Ethics. A true and correct copy of Baron's Code of Ethics – bearing the Bates-stamp BC000021 – BC000048 – was produced to the Securities and Exchange Commission (the "SEC") in response to its document requests in this matter. Among other things, Baron's Code of Ethics required Siming Yang:

(a) to obtain pre-clearance from Baron before making any personal securities transactions, including the purchase of equity securities;

(b) to place personal securities trades only through a broker-dealer approved by Baron; and

(c) to periodically submit reports to Baron's Legal and Compliance Departments, identifying (a) all brokerage accounts in which Mr. Yang had a beneficial or controlling interest, (b) all securities holdings, and (c) all personal securities transactions, including the date of the transaction, the name and ticker symbol of the security, the nature of the transaction, the price and the number of shares purchased.

7) Siming Yang was required periodically to certify to Baron's Legal and Compliance Departments that he (a) received, read, and understood the Code of Ethics, (b) recognized that he was subject to the provisions of the Code, (c) had complied with the Code, and (d) had disclosed all personal securities transactions. Yang completed and submitted that certification for each period during his employment at Baron.

8) At all times during Siming Yang's employment at Baron, Baron did not permit its employees to purchase securities issued by publicly traded companies.

9) This long-standing practice of prohibiting employees from purchasing securities issued by publicly traded companies was officially added to Baron's Code of Ethics on February 14, 2012. I personally circulated that revised Code of Ethics to all Baron employees (including Siming Yang) by e-mail. A true and correct copy of the February 14, 2012, 2012 Amended and Restated Code of Ethics – Bates-stamped BC000049 – BC000074 – was produced by Baron to the SEC in response to its document requests in this matter.

10) At all times during Siming Yang's employment at Baron, Baron's Rules of Conductprohibited employees from holding outside employment or engaging in any business activities that could conflict with their duties to Baron unless they had received written approval from the CEO. Siming Yang never requested or received such approval.

11) Siming Yang received training in Baron's policies regarding personal securities transactions, the disclosure of personal securities holdings, and the prohibition on employment outside of Baron. and . In addition, on an annual basis he was emailed a list of the Baron policies that applied to him, including the policies mentioned above, affirmed that

he had received and read them and certified that he had complied with them.

12) In December 2008, Mr. Yang violated Baron's policies regarding personal securities transactions by placing personal trades without first seeking pre-clearance from the Legal Department. The trades involved purchases of equity securities of publicly traded companies. Had Mr. Yang requested pre-clearance for those trades, his request would have been denied consistent with Baron's practice of not permitting its employees to purchase securities issued by publicly traded companies.

13) After discovering the violation, the Legal Department informed Siming Yang that he was required to pre-clear his personal trades with the Legal Departmentand that he was prohibited from purchasing securities issued by publicly traded companies. Siming Yang responded that he understood. Pursuant to the Investment Company Act of 1940, a record of Mr. Yang's violation and the action taken was documented and reported to the Baron Funds Board of Trustees.

14) As required by Baron policy, Siming Yang submitted periodic reports to Baron's Legal and Compliance Departments certifying his personal securities holdings and personal securities transactions.

15) Siming Yang never disclosed to Baron's Legal and Compliance Departments any of the following brokerage accounts:

(a) Any brokerage account at Sogotrade in the name of Siming Yang;

(b) Any brokerage account at Sogotrade in the name of Caiyin Fan and Siming Yang; or

(c) Any brokerage accounts in the name of Prestige Trade Investments, Ltd.

16) Siming Yang never disclosed to Baron that he was the general manager, managing partner or investment adviser of a private investment vehicle called Prestige

Trade Investments, Ltd. ("Prestige"). In fact, although he was prohibited from outside employment while at Baron, Siming Yang never disclosed the existence of Prestige to Baron. Any work performed by Siming Yang on behalf of Prestige prior to March 30, 2012 was a violation of the provisions of Baron's Code of Ethics, Rules of Conduct and Employee Handbook that are designed to prevent conflicts of interest.

17) Siming Yang did not disclose to Baron -- or seek preclearance from Baron's Legal Department related to -- any trading in Zhongpin, Inc. (which is a public company, trading under the ticker symbol "HOGS") whether out of a brokerage account in his name or an account in the name of Prestige.

18) Any trades placed at the direction of, on behalf of, or for the benefit of Siming Yang in the securities of Zhongpin, Inc. prior to March 30, 2012 were in violation of Baron's Code of Ethics.

19) Baron also required Siming Yang to periodically complete an "Affirmation Report" in which Baron employees respond to various compliance questions. Mr. Yang's last Affirmation Report was submitted to Baron's Compliance Department on March 26, 2012 – just a few days before he left the company. True and correct copies of Mr. Yang's Affirmation Reports were produced to the Commission in response to their document requests in this matter (Bates-stamped SEC-BC-0000254 through SEC-BC-0000302).

20) In his March 26, 2012 Affirmation Report submitted to Baron's Compliance Department, Mr. Yang affirmed the answer "No" to the following questions:

(a) "To the best of your knowledge, has any of the information that you have acquired in connection with your employment at Baron been used by you in any way that was contrary to or in competition with the interests of clients?";

(b) Have you sold any financial instruments away from the Firm or otherwise participated in any private securities transactions (excluding transactions among immediate family members for which you received no selling compensation)?"; and

(c) Have you engaged in any outside business activities for which you have been employed or received compensation?"

21) At all times during Siming Yang's employment with Baron, Baron had information technology ("IT") policies that, among other things, provided that all documents and work product related to an employee's employment – including electronic documents and data files – are the property of Baron. In addition, at all times during Siming Yang's employment with Baron, Baron's Employee Handbook stated that "Confidential Information" is the property of Baron and may not be taken from Baron after an employee is terminated. The Employee Handbook's definition of Confidential Information includes "research about portfolio companies or prospective portfolio companies." Mr. Yang signed an acknowledgement that he read and understood the Employee Handbook in connection with commencing his employement at Baron.

22) Under the IT policy and the policy regarding the treatment of Confidential Information, any documents related to Siming Yang's analysis of Chinese public companies – including any documents related to the analysis of Zhongpin, Inc. – created or retained on Baron equipment were the property of Baron. Any deletion, removal or transfer of those documents by Siming Yang from his Baron-issued computer was a violation of those policies.

23) Under Baron's IT policies, Baron employees have no right to privacy in any of their communications made using Baron-issued equipment, including Baron-issued BlackBerries.

24) Siming Yang received training in Baron's IT policies, including the policy that

employee communications and work-related documents are Baron's property.

25) Siming Yang signed a "Meeting Sign-in Sheet" acknowledging that he received training in which Baron's IT privacy policies were explained. In response to the SEC's document requests in this matter, Baron produced to the SEC a true and correct copy of a PowerPoint presentation from that training and (b) the signature sheet on which Siming Yang acknowledged receiving that training (attached as Ex.10 to the SEC's Rule 56.1 Statement of Facts).

26) On or about March 19, 2008, I was out of the office at a conference and received a call from Linda Martinson, Baron's President and Chief Operating Officer, whoinformed me that Siming Yang's employment would be terminated effective March 30, 2012. She told me that Siming Yang would meet with her, Michael Kass (Portfolio Manager and Siming Yang's direct supervisor), and Ronald Baron (Chairman and Chief Executive Officer) to discuss his termination.

27) When I returned to the office, I met with Mr. Yang to discuss his termination, inform him of his obligations to the Firm in connection therewith, and answer any of his questions. During the meeting, Mr. Yang indicated that he was interested in raising money from investors in China so that he could start his own hedge fund. He specifically mentioned that, in the future, he wanted to raise approximately $30 million for a hedge fund. I told Mr. Yang that he could not start his new hedge fund or raise any money for that fund until he officially left Baron on March 30, 2012.

28) Mr. Yang told me that he understood and that he would not raise any money until he left Baron.He then told me that he was eager to leave so that he could start doing so. Mr. Yang did not inform me that he had already started a private investment vehicle called

Prestige or that he had already raised money for Prestige from investors.

While employed with Baron, Siming Yang's was assigned the e-mail address: syang@baronfunds.com.

I, Patrick Patalino, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the forgoing is true and correct to the best of my knowledge.

Executed: June 17, 2013

Patrick Patalino

EXHIBIT E

BARON
CAPITAL

Benefits Termination Letter

March 30, 2012

Dear Siming Yang:

Your last day of employment with Baron Capital ("Baron" or the "Company") is March 30, 2012. In connection with your termination, there are a number of issues related to your benefits of which you should be aware.

Medical Insurance: Group Number BC2449
Your coverage under Baron's Medical Plan ends on the last day of the month in which your employment terminated. On the last day of employment or within three weeks after your termination, you will receive information regarding your rights to continue your medical coverage under COBRA at your own expense for a period of time (generally, 36 months). If you continue your coverage through COBRA (and make required payments timely), coverage will be retroactive to the date your benefits terminated and there will be no break in your coverage.

Flexible Spending Account (FSA)
Pre-tax contributions to the FSA stop with your last paycheck. If there is a balance remaining in your Health Care FSA, you may request reimbursement for up to 90 days only for expenses incurred prior to the last day of the month in which your employment terminated. You may seek service until the last day of the month in which your employment terminated. If you do not use all of the funds in the account you will lose the balance.

Life & AD&D Insurance: Group Number 01789
Your Life & AD&D Insurance coverage ceases with Prudential on your termination date.

Personal Life Insurance
If you have a payroll-deducted, personal life insurance plan, you will need to contact your insurance representative, who will assist you in arranging for the premiums to be paid.

Long Term Disability Insurance: Group Number 223418
Your LTD coverage with UNUM ceases on your termination date.

401(k) Plan
Since you have participated in the 401(k) Plan you have the option to rollover the account balance to an IRA or to another employer's qualified plan. Please see the distribution package which includes the Explanation of Benefit Payments, Special Tax Notice, Application for Benefits Form and the Form W-4P Withholding Certificate for Pension or Annuity Payments.

To ensure you receive documents and notices from the Company, please be sure to contact the Company if your address changes. If you have any questions, please call Caitlin Sullivan at (212) 583-2058.

Sincerely,

Caitlin Sullivan

767 FIFTH AVENUE
49TH FLOOR
NEW YORK, NY 10153
TEL: 212.583.2000
FAX: 212.583.2030
1.800.99.BARON
www.baronfunds.com

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797A, Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER [redacted]		CASE TYPE I129 PETITION FOR A NONIMMIGRANT WORKER	
RECEIPT DATE April 8, 2009	PRIORITY DATE	PETITIONER BAMCO INC	
NOTICE DATE April 13, 2009	PAGE 1 of 1	BENEFICIARY A137 733 004 YANG, SIMING	

MATTHEW S. DUNN ESQ
KRAMER LEVIN NAFTALIS & FRANKEL LL
1177 AVENUE OF THE AMERICAS 23RD
FLOOR
NEW YORK NY 10036

Notice Type: Approval Notice
Class: H1B
Valid from 10/01/2009 to 09/07/2012

The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, *Arrival-Departure Record*. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-824, *Application for Action on an Approved Application or Petition*, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.
IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (800) 375-5283
Form I797A (Rev. 09/07/93)N

PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE

Detach This Half for Personal Records

Receipt # [redacted]
I-94# [redacted]
NAME YANG, [redacted]
CLASS H1B
VALID FROM 10/01/2009 UNTIL 09/07/2012

PETITIONER: BAMCO INC
767 FIFTH AVENUE 49TH FLOOR
NEW YORK NY 10153

392821047 18

Receipt Numb[redacted]
Immigration and
Naturalization Service

I-94
Departure Record Petitioner: BAMCO INC

14. Family Name YANG	
15. First (Given) Name SIMING	16. Date of Birth 08/04/1976
17. Country of Citizenship CONFIDENTIAL TREATMENT REQUESTED BC000144	

PERSONNEL	HOURS Reg / O/T / Hours 3&4	EARNINGS Reg / O/T / Earnings 3&4 / Earnings 5	GROSS	STATUTORY DEDUCTIONS Federal / State/Local	VOLUNTARY DEDUCTIONS	NET PAY
YANG,SIMING File: 001174 Dept: 006002 Rate: 6250.00		6,250.00	6,250.00	1,435.56 FIT 358.75 NY 200.03 0022	3568.16 Y CHKNG 687.50 K 401(K)	Voucher# 110040 .00

ADP Payroll Register

BARON CAPITAL INC

Company Code: -31

Batch : 5000-020 Period Ending : 03/15/2009 Week 11

Pay Date : 03/13/2009 Page 6

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 12 C 2473**
	)	
SIMING YANG, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

After a six-day trial, a jury found in favor of defendant Siming Yang on the SEC's claim of insider trading but in favor of the SEC against Yang on its claims of "front running" and filing false Schedule 13D forms with the SEC. The Court later denied Yang's motion for judgment as a matter of law or a new trial on the latter claims. In this order, the Court determines the appropriate remedies and the nature of the appropriate final judgment. This order assumes familiarity with the background of the case. *See SEC v. Yang,* No. 12 C 2473, 2014 WL 1303457 (N.D. Ill. Mar. 30, 2014) (decision denying Yang's post-trial motions); *SEC v. Yang,* ___ F. Supp. 2d ___, 2013 WL 6049074 (N.D. Ill. Nov. 14, 2013) (decision denying Yang's motion for summary judgment).

1. Permanent injunction

A permanent injunction is appropriate if the SEC shows a reasonable likelihood of future violations by the defendant. *See SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir.

1982). In making this determination, a court considers all of the circumstances involving the defendant and the violations, including factors such as –

- the gravity of harm caused by the violations;

- the extent of the defendant's participation and his degree of scienter;

- whether the violations were isolated or recurrent;

- whether the defendant's usual business activities might involve him in such transactions in the future;

- the defendant's recognition of his culpability; and

- the sincerity of his assurances against future violations.

See id.

There was no significant harm to investors from Yang's violations. In the scheme of things, the Schedule 13D violations (which involved Yang's nondisclosure of his own stock purchases) were not terribly significant to the investing public given that Yang accurately disclosed on the forms the purchases of vastly greater amounts of stock by Prestige. And it is unlikely that Prestige experienced any quantifiable harm from Yang's front-running. The market was harmed in the sense that Yang traded based on information (regarding Prestige's impending large purchases) to which only he had access, but the degree of harm was not great due to Yang's limited purchases.

Yang fought and continues to fight the SEC's claims, but in the Court's view, he should not be penalized for this. *See SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1229 (D.C. Cir. 1989). In this regard, it is important to keep in mind that Yang prevailed on the SEC's insider trading claim, which was the centerpiece of the case. That claim was the primary focus of the dispute prior to and during the trial.

On the other hand, Yang was shown to have the level of scienter required to prove the violations, and he was the sole participant (at least the sole direct participant). These factors tilt in favor of imposition of an injunction.

The SEC also contends, and the Court agrees, that Yang has engaged in further misconduct following the conclusion of the trial. First of all, as the Court previously found, Yang participated in a transaction with Prestige that resulted in the denial of compensation that he had coming to him, in a way that ran afoul of the stipulated asset freeze order that the Court entered. This had both the purpose and anticipated effect of making it difficult if not impossible for the SEC to collect any disgorgement or civil penalties that the Court ordered. The Court took steps necessary to prevent Yang and Prestige from effectuating this transaction, but what is significant here is the intent to evade legal sanctions and the rather obvious implication this has regarding the likelihood of future violations.

Second, the SEC has shown that Yang engaged in further trading via a separate account (at Fidelity) in May 2013, while the litigation was under way, that he did not disclose in responses or amended responses to interrogatories from the SEC that sought disclosure of his brokerage accounts. Yang says that he opened this account and conducted the trading after the close of discovery, but the applicable rules quite clearly required him to supplement his interrogatory responses when they became incorrect, and the fact that discovery had closed did not absolve him of that responsibility. *See* Fed. R. Civ. P. 26(e)(1). The trading also likely violated the stipulated asset freeze order, which (contrary to Yang's suggestion) was not limited to the accounts in which he had conducted the Prestige trading. Yang also made a profit trading in the Fidelity account, purchasing 23,000 shares of a company just before it announced it was going private and selling the shares at a significantly higher price just a few days later, just after the company made the announcement. *See* Pl.'s Reply, Exs. C & D. This suggests, if nothing else, an ongoing intention to trade on U.S. markets, despite Yang's protestations to the contrary.

Were it not for these post-lawsuit incidents, the Court might be inclined not to impose an injunction against Yang; his violations of the securities laws were non-recurrent and were limited to a brief period of time in 2013. But these incidents and the other injunction-favoring factors noted above indicate a reasonable likelihood of future violations, making an injunction appropriate.

2. Disgorgement

The Court declines to order disgorgement in this case. The purpose of disgorgement is to prevent unjust enrichment. *See, e.g., SEC v. Commonwealth Chem. Secs., Inc.*, 574 F.2d 90, 95, 102 (2d Cir. 1978); *SEC v. McDonald*, 699 F.2d 47, 54 (1st Cir. 1983). Yang was not, in fact, enriched by the trading that constituted front-running. He purchased Zhongpin options but then let them expire; he bought some Zhongpin stock and sold it at a loss; and he did not sell even more Zhongpin stock that he had purchased. *See* Pl.'s Motion for Remedies, Ex. 1 (Kustusch Affid.) ¶ 10.

The SEC says, and Yang does not dispute, that if one calculates the value of the stock and options as of a relevant date, March 23, 2012, Yang had unrealized gains with a net total of about $151,000. The SEC also argues, and the Court acknowledges that it has the authority to order "disgorgement" of paper "profits" that existed at one time but were not realized. According to the SEC, the lack of profit was a matter of choice on Yang's part, and he should not get the benefit of that choice for purposes of disgorgement.

The fact of the matter, however, is that even assuming Yang could have made a lot of money if he had sold his stock and options at the opportune time, he chose not to do so, and as a result he made no profits. In the Court's view, it would turn the purpose of disgorgement on its head to require Yang to "give up" profit that he elected not to take.

3. Civil penalties

The Securities Exchange Act and the Investment Advisers Act both authorize imposition of civil penalties for violations of those statutes. *See* 15 U.S.C. §§ 78u(d)(3) & 80b-9(e). The purpose of these civil penalties is to provide a financial disincentive to violate the securities laws over and above the remedy of disgorgement, which simply involves requiring the violator to give back his profits. *See, e.g., SEC v. Moran*, 944 F. Supp. 296 (S.D.N.Y. 1996).

Both statutes provide for three levels (called "tiers") of penalties based on the nature of the violation. The first tier is the base level and provides for a maximum penalty of $7,500 for an individual (higher for an entity) for the period at issue here. The second tier applies where the violation involves "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and provides for a maximum of $75,000 for an individual. The third tier applies when the requirements for the second tier are met and the violation "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons"; it provides for a maximum of $150,000 for an individual. *See id.* §§ 78u(d)(3)(B)(i-iii) & 80b9(e)(2)(A-C); 17 C.F.R. §§ 201.1004 – 2011005 & Subpart E, Table IV.

The SEC argues that "the jury found that Yang's false 13D filings violated two free-standing statutory provisions: (1) the antifraud provisions of the Exchange Act, Section 10(b); and (2) the disclosure requirements of Exchange Act Section 13(d)" and that "[f]or each statute, there were two violations—one for each of the false Schedules 13D . . . ." Pl.'s Mot. for Remedies at 11. The SEC therefore seeks for these violations a civil penalty of four times the maximum tier two penalty of $75,000, for a total of $300,000. For the front-running claim, the SEC seeks a civil penalty totaling $450,000, "an amount equal to a third tier penalty for three violations." *Id.* at 12. It proposes to group Yang's personal trades in Zhongpin stock and options into three groups for this purpose: his purchase of stock on March 14; his purchase of call options on March 14; and his purchase of call options on March 15. *Id.*

The SEC's proposed breakdown of the front-running claim is artificial and arguably at odds with the jury's findings, because the jury was asked to find only *a violation*, not separate violations. The Court finds it appropriate to maintain that breakdown in determining the appropriate civil penalties.

The Court likewise disagrees with the SEC's proposed breakdown of the Schedule 13D violations. The jury was asked to make two separate findings regarding the Schedule 13D forms, but these were essentially alternative theories for the same wrongdoing (a fraud theory and a false disclosure theory). The Court can find no appropriate basis to treat these as separate violations for the purpose of civil penalties. The Court likewise declines to order separate penalties for the original Schedule 13D that Yang filed and the amended one he filed later the same day. Among other things, the jury was not asked to find that Yang filed two false Schedule 13D forms; the jury instructions were worded in the singular.

Both sides agree that the Schedule 13D violation is appropriately treated as a tier two violation. They dispute how the front-running violation should be treated. The Court agrees with Yang that this violation is likewise appropriately treated as a tier two violation. In particular, the tier three requirement of "substantial losses or . . . a significant risk of substantial losses" is missing in this case.

The Court finds that, particularly in view of the absence of disgorgement and the Court's decision to treat the violations as singular rather than plural in nature, a penalty for each at the statutory maximum is appropriate. The Court imposes upon Yang a civil penalty of $75,000 for the front-running violation and $75,000 for the Schedule 13D violation, for a total of $150,000.

Conclusion

For the reasons stated above, the Court directs the Clerk to enter judgment in favor of plaintiff and against defendant Siming Yang, imposing civil penalties in the amount of $150,000 as well as a permanent injunction. A separate judgment order embodying these terms will be entered.

MATTHEW F. KENNELLY
United States District Judge

Date: May 27, 2014