

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

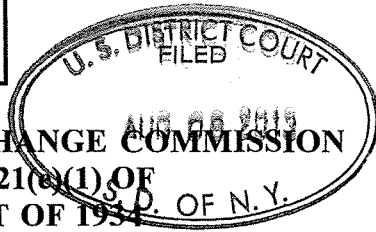
Petitioner,

v.

MICHAEL H. TABER, CPA,

Respondent.

13 MISC 0282



APPLICATION OF THE SECURITIES AND EXCHANGE COMMISSION  
FOR AN ORDER UNDER SECTION 21(e)(1) OF  
THE SECURITIES EXCHANGE ACT OF 1934  
ENFORCING COMPLIANCE WITH COMMISSION ORDER

Applicant United States Securities and Exchange Commission (the “Commission”) applies to the Court for an order pursuant to Section 21(e)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78u(e)(1)], enforcing compliance by the Respondent Michael H. Taber, CPA, (“Taber”) with a final Commission order entered against him on July 21, 2004, and ordering disgorgement with prejudgment interest thereon. In support, the Commission states as follows:

INTRODUCTION

1. On July 21, 2004, the Commission entered an order suspending Taber from appearing or practicing before the Commission as an accountant, pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice [17 C.F.R. § 201.102(e)(3)(i)] (the “2004 Order”).

2. By this Application, the Commission seeks an order directing Taber to comply with the 2004 Order and ordering him to disgorge his illicit compensation received from violations of the 2004 Order, with prejudgment interest thereon.

3. Taber appeared or practiced as an accountant before the Commission and violated the 2004 Order by, among other things: preparing income statements and statements of cash flow; drafting and editing footnotes to these and other financial statements; compiling and computing schedules of support for such footnotes; creating, compiling, and editing this data and other information that was then incorporated into filed Forms 10-K, 10-Q, 8-K, 11-K, and 4; and providing issuers with accounting advice that was subsequently reflected in financial statements filed with the Commission.

4. The Commission brings this Application pursuant to Exchange Act Section 21(e)(1) [15 U.S.C. § 78u(e)(1)]. The jurisdiction of this Court is based on Exchange Act Sections 21(e) and 27 [15 U.S.C. §§ 78u(e) and 78aa].

5. Venue is proper because certain of the acts, practices, transactions, and courses of business constituting the violations alleged herein occurred within this judicial district.

#### **PARTIES**

6. The Commission is an agency of the United States government with an office located at 100 F Street, N.E., Washington, DC 20549.

7. Taber, age 68, is a resident of Salisbury Mills (Orange County), NY and of Yulee (Nassau County), FL. Taber has worked as a financial reporting consultant and is licensed as a certified public accountant by the State of New York since 1974. Taber's CPA license is registered through the last day of January 2015.

## STATEMENT OF FACTS

8. On July 21, 2004, the Commission entered the 2004 Order, which suspended Taber from appearing or practicing before the Commission as an accountant pursuant to Rule 102(e)(3)(i) of its Rules of Practice [17 C.F.R. § 201.102(e)(3)(i)]. In the Matter of Michael H. Taber, CPA, Securities Exchange Act Rel. No. 50053, AAER No. 2057, Admin. Proc. File No. 3-11554 (July 21, 2004). A copy of the 2004 Order is attached hereto as Exhibit A.

9. At the time of the 2004 Order, Taber was employed as the controller of Sono-Tek Corporation, an issuer that filed periodic reports with the Commission. Taber's responsibilities at Sono-Tek during that period included drafting quarterly and annual statements on Forms 10-Q and 10-K and preparing income statements, balance sheets, statements of cash flow, and footnotes to those financial statements, which were included in filed quarterly and annual reports. In addition to preparing Sono-Tek's financial statements, Taber was responsible for filing the company's periodic reports with the Commission. Despite the 2004 Order, he continued to work at Sono-Tek as controller until 2005.

10. After Taber left Sono-Tek in 2005, he went to work for Jefferson Wells International, Inc., a professional services firm that outsourced specialists to perform accounting and other work. From 2005 until 2010, Taber was contracted out to numerous issuers, including Paxar Corporation, Cendant Corporation, Avis Budget Group, Inc., and Liz Claiborne, Inc. During this entire period, Taber was suspended from appearing or practicing before the Commission as an accountant.

11. At Paxar, Taber worked for the controller and vice president of finance and helped draft the company's Reports on Forms 10-Q and 10-K, as well as footnotes to the financial statements included in those reports. At Cendant, Taber helped the company's head of

financial reporting create schedules, prepare financial statements, and draft footnotes to the financial statements. Those financial statements became part of the company's periodic filings with the Commission. At Avis Budget, Taber's responsibilities included drafting footnotes for the company's financial statements, preparing support schedules for those footnotes, and making sure that the numbers reported in the financial statements were accurate and supported by the company's accounting schedules. Those financial statements were included in the company's filings with the Commission. Taber also reviewed Commission filings with officers and audit committee members and provided accounting advice that was reflected in financial statements filed with the Commission. At Liz Claiborne, Taber was responsible for drafting footnotes and preparing support for the financial statements that were filed with the Commission. Among other things, he worked on the leases, commitments, subsequent events, and accounting pronouncements sections of the company's annual Report on Form 10-K.

12. Taber ceased working at Jefferson Wells in late 2010.

## ARGUMENT

### **A. Section 21(e) of the Exchange Act**

13. Section 21(e) of the Exchange Act [15 U.S.C. § 78u(e)], provides that upon application of the Commission the district courts of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of the Exchange Act, the rules and regulations thereunder, and any order made by the Commission thereunder.

14. The Second Circuit has held that under "Section 21(e) of the Exchange Act, the SEC may . . . seek . . . 'orders' from the federal courts commanding any person to comply with, inter alia, 'the provisions of [the Exchange Act], the rules, regulations, and orders thereunder.'"

Fiero v. Fin. Indus. Regulatory Auth., Inc., 660 F.3d 569, 575 (2nd Cir. 2011). Other circuits have agreed that Section 21(e) vests “the SEC with authority to apply to the district court for orders commanding compliance with the SEC orders.” SEC v. Vittor, 323 F.3d 930, 935 (11th Cir. 2003) (citing Lang v. French, 154 F.3d 217 (5th Cir. 1998)).

15. Courts in this judicial district have held that “Section 21(e) of the Exchange Act permit[s] the use of summary proceedings in district court to enforce SEC orders.” SEC v. Vindman, No. 06 Civ. 14233, 2007 LEXIS 27371, at \*3 (S.D.N.Y. Apr. 5, 2007) (citing SEC v. McCarthy, 322 F.3d 650, 659 (9th Cir. 2003)). In McCarthy, the court held that “summary proceedings may be ‘conducted without formal pleadings, on short notice, without summons and complaints, generally on affidavits, and sometimes even *ex parte*.’” McCarthy, 322 F.3d at 655 (citing N.H. Fire Ins. Co. v. Scanlon, 362 U.S. 404, 406 (1960)). Applications by the Commission to enforce its orders under Section 21(e) of the Exchange Act are examples of such summary proceedings. Id. at 655-58; see also SEC v. Sprecher, 594 F.2d 317, 320 (2d Cir. 1979) (interpreting similar language in a provision of the Securities Act of 1933 authorizing summary proceedings). The respondent may not challenge the validity of the order the Commission seeks to enforce in such proceedings. SEC v. Pinchas, 421 F. Supp.2d 781, 783 (S.D.N.Y. 2006).

**B. Appearing or Practicing Before the Commission**

16. The purpose of Rule 102 of the Commission’s Rules of Practice is to protect the integrity of the Commission’s proceedings, including the accuracy and completeness of financial statements and related disclosures filed with the Commission. See Touche Ross & Co. v. SEC, 609 F.2d 570, 582 (2d Cir. 1979) (noting that Rule 102(e) was adopted “as a means to ensure

that those . . . on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence”).

17. Rule 102(e)(3)(i) of the Commission’s Rules of Practice, in relevant part, authorizes the Commission by order to “suspend from appearing or practicing before it any . . . accountant . . . who has been by name [p]ermanently enjoined by any court of competent jurisdiction . . . from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.” 17 C.F.R. § 201.102(e)(3)(i). Rule 102(f) of the Rules of Practice broadly defines “practicing before the Commission” to include “[t]he preparation of any statement, opinion or other paper by any . . . accountant . . . filed with the Commission in any registration statement, notification, application, report or other document with the consent of such . . . accountant.” 17 C.F.R. § 201.102(f).

18. The Commission has provided additional guidance on practicing before it, by stating that:

The text of [Rule 102(e)] does not specify that a person must sign a document filed with the Commission. Moreover, the term “preparation” of a document is, we believe, sufficiently broad to encompass the preparation of data to be included in a document filed with the Commission, at least where, as here, the data was prepared for the express purpose of being included in such a document. . . . [Rule 102(e)] . . . recognizes that financial statements often incorporate information created, compiled, or edited by accountants who are not responsible for signing or filing the financial statements. Thus, practicing before the Commission includes computing the figures and supplying the data incorporated into Commission filings and consenting to their incorporation.

In the Matter of Robert W. Armstrong, III, Admin. Proc. No. 3-9793, 2005 SEC LEXIS 1497 at \*46-47 (June 24, 2005).

19. The Armstrong Opinion was discussed by the U.S. District Court for the District of Columbia in a recent Commission civil action. The Commission's complaint in that action alleged, in relevant part, that the defendant, through his conduct at a public company, including reviewing, commenting on, and approving the company's filings with the Commission, had violated the Commission's Order suspending him from appearing or practicing before the Commission as an accountant. SEC v. Brown, 878 F. Supp. 2d 109, 121 (D.D.C. 2012). The district court, in denying the defendant's motion for summary judgment, stated:

[T]he SEC is also correct that Armstrong clearly established that an individual may also be found to have 'practic[ed] before the Commission' if he or she 'participate[d] in the preparation of financial statements filed with the Commission by, for example, 'creating,' 'compil[ing]' or 'editing' information or data incorporated into those documents and consenting to their incorporation. . . . The Commission's interpretation in Armstrong of 'practicing before the Commission' is consistent with the language of Rule 102(f). . . . Consequently, it is reasonable, especially in view of the purpose of Rule 102(e), to accord deference to the Commission's interpretation of it.

Id. at 125-26 (quoting Armstrong, 2005 SEC LEXIS 1497 at \*46-47).

20. Following a bench trial in that action, the district court cited the Armstrong Opinion as the "leading decision addressing this issue [of practicing before the Commission]." SEC v. Prince, No. 09-1423, 2013 WL 1831841 at \*35 (D.D.C. May 2, 2013). The defendant had argued that appearing or practicing before the Commission excluded reviewing and deciding on accounting treatments unless done by someone who had the final authority to implement the suggestions. The court stated that this "cramped definition ignores the language and spirit of Armstrong, which rejected the premise that only those who were 'responsible for signing or filing the financial statements' were practicing accounting." Id. at \*36 (quoting Armstrong, 2005 SEC LEXIS 1497 at \*47). The district court, relying on the Armstrong explication of "appearing

and practicing,” held that “since [the defendant] was practicing accounting by preparing financial data that was filed with the Commission, he violated the terms of his Accounting Bar.” Id. at \*39.

**C. Taber Violated the 2004 Commission Order**

21. Taber appeared or practiced as an accountant before the Commission within the meaning of Rule 102(f) and violated the 2004 Order by, among other things: preparing income statements and statements of cash flow; drafting and editing footnotes to these and other financial statements; compiling and computing schedules of support for such footnotes; creating, compiling, and editing this data and other information that was then incorporated into filed Forms 10-K, 10-Q, 8-K, 11-K, and 4; and by providing issuers with accounting advice that was subsequently reflected in financial statements filed with the Commission.

22. The Commission seeks an order from this Court compelling Taber to comply with the 2004 Order, disgorging his compensation received as a result of his engaging in work that was proscribed by the 2004 Order, with prejudgment interest thereon, and such other and further relief as may to the Court appear as just and proper. Specifically, the Commission seeks the entry of the Proposed Order Under Section 21(e)(1) of the Securities Exchange Act of 1934 Enforcing Compliance with Commission Order, attached hereto as Exhibit B.

23. The Commission also requests that the Court issue an Order to Show Cause, directing among other things the method of service of this Application upon Taber, and setting a schedule for Taber to submit any opposition papers and the Commission to submit any reply papers.



24. No application for this or for similar relief has been made to this or any other court or judge.

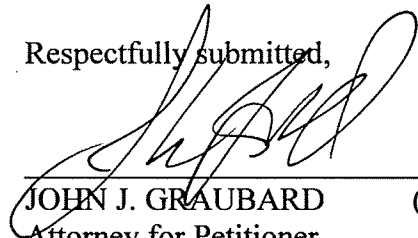
**CONCLUSION**

For the reasons set forth above, the Commission requests that this Court:

1. Issue an order to show cause setting a hearing date and providing for service of these moving papers, opposition papers, and reply papers;
2. Enter an order enforcing compliance with the 2004 Order;
3. Order respondent Taber to disgorge \$584,650.41, representing illicit compensation gained as a result of his engaging in work that was proscribed by the 2004 Order, together with prejudgment interest thereon in the amount of \$146,849.02;
4. Grant the Commission such other and further relief as may be necessary and appropriate; and
5. Retain jurisdiction over this matter to ensure Taber's compliance with the order enforcing compliance with the 2004 Order.

Dated: New York, New York  
August 8, 2013

Respectfully submitted,



JOHN J. GRAUBARD (JG-4854)

Of Counsel:  
Scott W. Friestad  
David Frohlich  
Matthew L. Skidmore

Attorney for Petitioner  
Securities and Exchange Commission  
New York Regional Office  
3 World Financial Center, Room 400  
New York, NY 10281-1022  
Tel.: 212-336-0084  
Fax: 212-336-1353  
E-mail: graubardj@sec.gov

# **EXHIBIT A**



U.S. Securities and Exchange Commission

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 50053 / July 21, 2004

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2057 / July 21, 2004

Admin. Proc. File No. 3-11554

In the Matter of
Michael H. Taber, CPA,
Respondents.
ORDER INSTITUTING
ADMINISTRATIVE
PROCEEDINGS PURSUANT TO
RULE 102(e) OF THE
COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS,
AND IMPOSING REMEDIAL
SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to institute public administrative proceedings against Michael Taber pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.

II.

In anticipation of the institution of these proceedings, Taber 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, and the findings contained in Section III.3. below, which are admitted, Taber consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Taber's Offer, the Commission finds that:

1. Taber, age 58, is and has been a certified public accountant licensed to practice in the state of New York. Taber served as Chief Financial Officer and Vice President of Finance of Del Global Technologies, Inc. ("Del") during the period relevant to the conduct described herein and continuing until his termination in January 2001.
2. Del was, at all relevant times, a New York corporation headquartered in Valhalla, New York. Del designs, manufactures and markets medical imaging and diagnostic systems, as well as power conversion and electronic noise suppression subsystems for medical and industrial applications. At all relevant times, Del's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the NASDAQ National Market.
3. On June 7, 2004, a final judgment was entered against Taber in the civil action entitled *Securities and Exchange Commission v. Del Global Technologies, Inc., et al.*, No. 04 CV 4092, in the United States District Court for the Southern District of New York. The final judgment, among other things, permanently enjoined Taber from future violations of Securities Act of 1933 Section 17(a), Exchange Act Sections 10(b) and 13(b)(5) and Exchange Act Rules 10b-5, 13b2-1 and 13b2-2.
4. The Commission's complaint in the civil action alleged, among other things, that Taber participated in a fraudulent scheme which resulted in the filing of financial statements that, in contravention of generally accepted accounting principles ("GAAP"), materially overstated Del's revenues for every fiscal quarter from fiscal year 1997 through fiscal year 2000. The complaint further alleged that Taber misled Del's outside accountants in connection with their review of Del's financial statements for the fiscal periods from 1997 through 2000 by failing to provide them with material facts concerning the company's financial statements.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Taber's Offer.

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

Taber is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Jonathan G. Katz  
Secretary

#### Endnotes

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<sup>1</sup> Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

<http://www.sec.gov/litigation/admin/34-50053.htm>

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Modified: 07/21/2004

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

MICHAEL H. TABER, CPA,

Respondent.

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**[PROPOSED]**  
**ORDER UNDER SECTION 21(e)(1) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**ENFORCING COMPLIANCE WITH COMMISSION ORDER**

THIS CAUSE is before the Court upon the Application of the United States Securities and Exchange Commission for an Order Under Section 21(e)(1) of the Securities Exchange Act of 1934 Enforcing Compliance with Commission Order. In its Application the United States Securities and Exchange Commission (“Commission”) argues that it is entitled to an order enforcing its order of July 21, 2004 (the “2004 Order”) suspending Respondent Michael H. Taber, CPA (“Taber”) from appearing or practicing before the Commission as an accountant, and ordering disgorgement with prejudgment interest thereon. Having reviewed the Application, the applicable law, and being otherwise duly advised, the Court finds:

1. Taber, age 68, is a resident of Salisbury Mills (Orange County), NY. Taber has worked as a financial reporting consultant and is licensed as a certified public accountant by the State of New York since 1974. Taber’s license is registered through the last day of January 2015.
2. On July 21, 2004, the Commission entered the 2004 Order, which suspended Taber from appearing or practicing before the Commission as an accountant pursuant to Rule

102(e)(3)(i) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(3)(i)]. In the Matter of Michael H. Taber, CPA, Securities Exchange Act Rel. No. 50053, AAER No. 2057, Admin. Proc. File No. 3-11554 (July 21, 2004).

3. Rule 102(e)(3)(i), in relevant part, authorizes the Commission by order to "suspend from appearing or practicing before it any . . . accountant . . . who has been by name [p]ermanently enjoined by any court of competent jurisdiction . . . from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder." 17 C.F.R. § 201.102(e)(3)(i).

4. On June 7, 2004, a final judgment was entered against Taber in Securities and Exchange Commission v. Del Global Technologies Corp., Inc. et al., No. 04 cv 4092, in the United States District Court for the Southern District of New York, enjoining him from future violations of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78u(e)(1)], and Exchange Act Rules 10b-5, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 13b2-1, and 13b2-2].

5. At the time of the 2004 Order, Taber was employed as the controller of Sono-Tek Corporation, an issuer that filed periodic reports with the Commission. Taber's responsibilities at Sono-Tek during that period included drafting quarterly and annual reports on Forms 10-Q and 10-K and preparing income statements, balance sheets, statements of cash flow, and footnotes to those financial statements, which were included in filed quarterly and annual reports. In addition to preparing Sono-Tek's quarterly and annual reports, Taber was responsible for filing these periodic reports with the Commission. Despite the 2004 Order, he continued to work at Sono-Tek as controller until 2005.



6. After Taber left Sono-Tek in 2005, he went to work for Jefferson Wells International, Inc., a professional services firm that outsourced specialists to perform accounting and other work. While he was at Jefferson Wells, Taber provided a number of issuers with various accounting services, including: preparing income statements and statements of cash flow; drafting and editing footnotes to these and other financial statements; compiling and computing schedules of support for such footnotes; creating, compiling, and editing this data and other information that was then incorporated into filed Forms 10-K, 10-Q, 8-K, 11-K, and 4; and providing accounting advice that was subsequently reflected in financial statements filed with the Commission.

7. Rule 102(f) of the Commission's Rules of Practice [17 C.F.R. § 201.102(f)], states:

For the purpose of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

\* \* \*

(2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

8. By preparing, creating, compiling, and editing financial statements and other information incorporated into quarterly and annual reports filed with the Commission, Taber violated the 2004 Order that suspended him from appearing or practicing before the Commission as an accountant.

Based upon the foregoing, it is hereby

**ORDERED AND ADJUDGED that:**

1. Taber is **ORDERED** to comply with the Commission Order of July 21, 2004 suspending him from appearing or practicing before the Commission as an accountant.

2. Taber is ORDERED to disgorge \$584,650.41, representing profits gained as a result of the conduct alleged in the Application, together with prejudgment interest in the amount of \$146,849.02.
3. Taber shall satisfy this obligation by paying \$731,499.43 to the Commission within 14 days after entry of this Order. Taber may transmit payment electronically to the Commission, which will provide detailed ACH/Fedwire instructions upon request. Payment may also be made directly from a bank account via pay.gov through the Commission website at <http://www.sec.gov/about/offices/ofm.htm>. Taber may also pay by certified check, bank check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court, setting forth Taber's name as a respondent in this action, and specifying that payment is made pursuant to this Order. Taber shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action.

4. By making this payment, Taber relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Taber. The Commission shall send the funds paid pursuant to this Order to the United States Treasury.

5. The Commission may enforce the Court's order for disgorgement and prejudgment interest as a judgment, and may move for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Order.
6. Taber shall pay postjudgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.
7. This Court shall retain jurisdiction to enforce compliance with this Order.

Dated: New York, New York  
\_\_\_\_\_, 2013

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UNITED STATES DISTRICT JUDGE