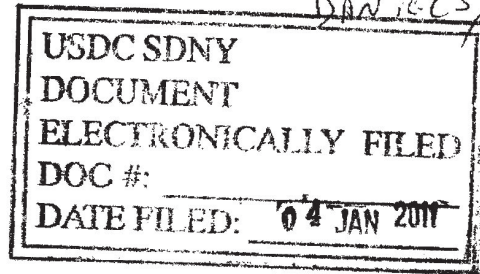


*Daniel S. J.*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,  
  
Plaintiff,  
  
v.  
  
LUIS E. PALLAIS and RODEDAWG  
INTERNATIONAL INDUSTRIES, INC.,  
  
Defendants.

08-CV-8384 (GBD)

*#*  
\_\_\_\_\_

**[PROPOSED] FINAL JUDGMENT AS TO DEFENDANTS LUIS E. PALLAIS AND  
RODEDAWG INTERNATIONAL INDUSTRIES, INC.**

The Securities and Exchange Commission ("Commission") having filed a Complaint and Defendants Luis E. Pallais ("Pallais") and Rodedawg International Industries, Inc. ("Rodedawg Int'l") (collectively, the "Defendants") having defaulted in defending this action, and the Court, on December 16, 2009, having granted the Commission's application for the entry of default judgment, and by Memorandum Decision and Order dated December 23, 2010, having granted, in part, the Commission's motion for relief:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Commission's motion for default judgment is GRANTED.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or

participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant Pallais is prohibited, for ten (10) years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Pallais is barred, for ten (10) years following the date of entry of this Final Judgment, from

participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

V.



IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Pallais is liable for disgorgement of \$7,057.20, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,125.46, and a civil penalty in the amount of \$65,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant Pallais shall satisfy this obligation by paying \$73,182.66 within fourteen (14) days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Pallais as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel in this action, and to Robert J. Keyes, Chief Operations Officer, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281. Defendant relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant. Defendant Pallais shall pay post-

judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 04 JAN 2011

  
UNITED STATES DISTRICT JUDGE  
HON. GEORGE B. DANIELS 

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff

-v-

LUIS E. PALLAIS and RODEDAWG  
INTERNATIONAL INDUSTRIES, INC,

Defendants.



MEMORANDUM DECISION AND ORDER  
08 CV 08384 (GBD)(GWG)

GEORGE B. DANIELS, District Judge:

Plaintiff the Securities and Exchange Commission ("SEC") brings this suit against Rodedawg International Industries, Inc., and its CEO and Chairman Luis E. Pallais (collectively, "Defendants"), alleging violations of section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder. On December 16, 2009, this Court entered a default judgment against Defendants and referred the matter to Magistrate Judge Gabriel W. Gorenstein for an inquest on damages and further appropriate relief.

**BACKGROUND**

The SEC, as detailed in its Motion for Default Judgment, seeks a judgment (1) permanently restraining and enjoining Defendants from directly or indirectly, singly or in concert, violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (2) permanently barring Pallais from serving as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d),

pursuant to section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2); (3) permanently barring Pallais from participating in an offering of a penny stock pursuant to section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6); (4) ordering Pallais to disgorge ill-gotten gains in the amount of \$7,057.20 plus prejudgment interest in the amount of \$1,125.46; and (5) ordering Pallais to pay a civil monetary penalty of \$130,000 pursuant to section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

Magistrate Judge Gorenstein issued a Scheduling Order providing Defendants the opportunity to respond to the SEC's request. Pallais submitted two documents, wherein he claimed that "the SEC's claims are frivolous, he does not recall being served by the SEC, he committed no wrongdoing, this case is damaging to his shareholders, his press releases did not violate any laws, and he cannot obtain a lawyer because of financial hardship." Report and Recommendation ("Report") at 3. The Scheduling Order also notified the parties that the Court would conduct its inquest based solely on the written submissions of the parties absent a request from either side for a hearing. No party requested a hearing.

Magistrate Judge Gorenstein issued a Report and Recommendation ("Report") based solely on the written submissions of the parties. Magistrate Judge Gorenstein recommended that the SEC's request be granted in part and denied in part. In particular, Magistrate Judge Gorenstein recommended that "the SEC . . . be awarded a judgment against the defendants (1) enjoining Rodedawg and Pallais from violating section 10(b) of the Exchange Act and Rule 10b-5; (2) barring Pallais from serving as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d), pursuant to section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), for ten years; and (3)

ordering Pallais to pay a civil monetary penalty of \$ 65,000 to the United States Treasury pursuant to section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).” Report at I. Magistrate Judge Gorenstein denied the SEC’s requests for a penny stock bar, a civil penalty in the amount of \$130,000, and disgorgement of \$7,057.20 plus prejudgment interest.

In his report, Magistrate Judge Gorenstein advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The SEC submitted a memorandum to the Court (dated July 18, 2010) indicating its objection to part of the Report issued by Magistrate Judge Gorenstein. The SEC argues that the Court should order the following remedies denied in the Report: (a) a permanent bar on Pallais from participating in an offering of penny stock because the status was uncontested and factual allegations are accepted as true upon a defendant’s default; (b) a civil penalty pursuant to 15 U.S.C. § 78(u)(d)(3) in the amount of \$130,000 because Pallais created a significant risk of substantial losses to other persons; and (c) disgorgement because, contrary to the Report’s assertion, the SEC did submit evidence to support the claim.

#### **STANDARD OF REVIEW**

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a de novo determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is not required, however, that the Court conduct a de novo hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court “arrive at its own,

independent conclusions” regarding those portions to which objections were made. Nelson v. Smith, 618 F.Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5<sup>th</sup> Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if “there is no clear error on the face of the record.” Adee Motor Cars, LLC v. Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citation omitted).

#### **RECOMMENDATIONS WITHOUT OBJECTIONS**

With respect to the first two requests for relief, this Court must assess whether the SEC has provided a sufficient basis for the Court to determine damages. See Transatl. Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997) (noting that the Court “should take the necessary steps to establish damages with reasonable certainty”). Although the Court may hold a hearing to assess damages, a hearing is not required where a sufficient basis on which to make a calculation exists. FED. R. CIV. P. 55(b)(2) (court may conduct hearings on damages as necessary); Action S.A. v. Marc Rich & Co., 951 F.2d 504, 508 (2d Cir. 1991) (FED. R. CIV. P. 55(b)(2) “allows but does not require . . . a hearing”).

This Court accepts the Report’s recommendation that the SEC’s written submissions provide an adequate basis for the requested relief. After carefully reviewing the Report and Recommendation, this Court finds that the report is not facially erroneous with respect to the SEC’s first two requests, and adopts the Report’s Recommendation to: (1) enjoin Rodedawg and Pallais from violating section 10(b) of the Exchange Act and Rule 10b-5; and (2) bar Pallais from serving as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d), pursuant to section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), for ten years.”



### RECOMMENDATIONS WITH OBJECTIONS

This Court has examined Magistrate Judge Gorenstein's report in light of the SEC's objections regarding its remaining requests for relief. The SEC's objections regarding the penny stock bar and disgorgement are sustained. The SEC's objections regarding the Tier III penalty are overruled.

#### **A. Penny Stock Bar**

Magistrate Judge Gorenstein properly recited the legal standard for imposing a penny stock bar. The securities must qualify as penny stock – that is, they must bear “a price of less than five dollars except as provided in 17 C.F.R. § 240.3a51-1.” United States SEC v. Universal Express, Inc., 475 F. Supp. 2d 412, 429 (S.D.N.Y. 2007). Also the standard for imposing an officer-or-director bar must be satisfied. See id. Here, this Court adopts the Report's recommendation to impose an officer-or-director bar.

Magistrate Judge Gorenstein properly stated that, even when a default judgment has been entered, the SEC must submit admissible evidence proving that the securities qualify as penny stock before the Court may order a bar. See SEC v. Becker, 2010 U.S. Dist. LEXIS 52623, at \*18 (S.D.N.Y. May 28, 2010). A subsequent decision by United States District Judge Shira A. Scheindlin cited by the SEC did not alter the requirement for evidence. See SEC v. Becker, 2010 U.S. Dist. LEXIS 67828, at \*4-5 (S.D.N.Y. July 8, 2010) (starting the discussion with “[t]he evidence . . . demonstrates that the imposition of a penny stock bar . . . is warranted in this case.”). Rather, in that case, the SEC submitted evidence to support each of its factual assertions, and the SEC demonstrated that the issue was uncontested by identifying the defendants' admission of the penny stock status. Id. at 5. Thus, Judge Scheindlin found that “[t]his evidence demonstrates that [the] securities were penny stocks.” Id. Magistrate Judge

Gorenstein, therefore, properly denied the SEC's request for a penny stock bar because the SEC failed to submit any evidence in support of its claim.

Now, in its objection memorandum, the SEC submits sufficient evidence to establish that Rodedawg securities qualify as penny stock. The SEC provides true copies of Rodedawg International's Unaudited Balance Sheet and Income Statement for years end 2005 and 2006 to demonstrate that the company never had net tangible assets that exceed \$2,000,000 or revenues of at least \$6,000,0000 during an three year period. See Declaration of William Finkel, Ex. B. The SEC provides a graph generated by [www.OTCMarkets.com](http://www.OTCMarkets.com) that displays the price/volume of Rodedawg International's securities from September 1, 2005 to March 31, 2007 to demonstrate that the stock never traded at \$5 per share or higher. See Finkel Declaration, Ex. A. Finally, the SEC offers a declaration in support of its assertion that "none of Rodedawg Int'l securities were ever reported securities or registered on an exchange, approved for reporting or listing, or 'NMS' securities." Finkel Declaration ¶ 10. This evidence demonstrates that Rodedawg securities were penny stock. Therefore, upon receipt of the further submitted evidence, this Court sustains the SEC's objection. A penny stock bar of ten years, the term imposed for the officer-or-director bar, is appropriate.

**B. Tier III Penalty**

Magistrate Judge Gorenstein properly rejected the SEC's request for a Tier III penalty in the amount of \$130,000. Magistrate Judge Gorenstein properly stated the law governing the imposition of civil penalties under 15 U.S.C. § 78(u)(d)(3). A Tier II penalty is available if the violation involves "fraud, deceit, manipulation or reckless disregard of a regulatory requirement." Id. § 78(u)(d)(3)(B)(ii). A Tier III penalty is available if, in addition to the factors required for a Tier II penalty, the violation "resulted in substantial losses or created a significant

risk of substantial losses or created a risk of substantial losses to other persons.” Id. § 78(u)(d)(3)(B)(iii)(bb). Nevertheless, the discretion to determine the appropriate kind of penalty to impose lies with the district court. See id. § 78u(d)(3)(B)(I); accord SEC v. Bocchino, 2002 U.S. Dist. LEXIS 22047 at \*4 (S.D.N.Y. Nov. 8, 2002).

Magistrate Judge Gorenstein properly found that Pallais should pay a Tier II penalty. The facts demonstrate that Pallais’s violation involved “fraud, deceit, manipulation or reckless disregard of a regulatory requirement.” However, a second tier penalty is warranted because the SEC failed to satisfy the substantial loss requirement. Magistrate Judge Gorenstein properly found that, as illustrated by previous cases cited in the Report, the loss sustained by investors (\$7,057.20) was not substantial. Additionally, Magistrate Judge Gorenstein properly determined that Pallais’s fraudulent conduct did not pose a risk of substantial loss. The SEC provided no facts to demonstrate that either a large number of investors or investors with substantial funds were exposed to or could have been induced by Pallais’s fraudulent press releases. The SEC failed to explain why the fluctuating price of Rodedawg shares created a substantial risk of loss. Finally, the SEC never even alleged an estimated potential loss. Therefore, this Court overrules the objection. A Tier II civil penalty of \$65,000 is reasonable and appropriate.

### C. **Disgorgement**

Magistrate Judge Gorenstein properly stated the law governing disgorgement. “Disgorgement is an equitable remedy for violations of the federal securities laws, which is aimed at forcing a defendant to give up the amount by which he was unjustly enriched.” SEC v. Anticevic, 2010 U.S. Dist. LEXIS 50207, at \*19 (S.D.N.Y. May 14, 2010) (quoting SEC v. Tome, 833 F.2d 1086, 1096 (2d Cir. 1987)). “[T]he Commission bears the ultimate burden of establishing that its calculated disgorgement reasonably approximates the defendant’s unjust

enrichment, any risk in uncertainty [in calculating disgorgement] should fall on the wrongdoer whose conduct created that uncertainty.” SEC v. Rosenfeld, 2001 U.S. Dist. LEXIS 166, at \*5 (S.D.N.Y. Jan. 9, 2001) (citing SEC v. First City Fin., Corp., 281 U.S. App. D.C. 410, 890 F.2d 1215, 1232 (D.C. Cir. 1989) (quoting SEC v. Patel, 61 F.3d 137, 140 (2d Cir. 1995))) (citations and internal quotation marks omitted). “Thus, once the Commission shows the existence of a fraudulent scheme in violation of federal securities laws, the burden shifts to the defendant to ‘demonstrat[e] that he received less than the full amount allegedly misappropriated and sought to be disgorged.’” SEC v. Breed, 2004 U.S. Dist. LEXIS 7336, at \*11 (quoting SEC v. Rosenfeld, 2001 U.S. Dist. LEXIS 166, at \*5-6 (citations omitted)) (internal quotation marks omitted) (bracketing in original).

Magistrate Judge Gorenstein properly stated that, absent evidence to support its claimed amount of unjust enrichment, the SEC was not entitled to equitable relief. However, Magistrate Judge Gorenstein improperly concluded that “there is no basis for ordering such relief” because “the SEC . . . failed to submit any evidence, admissible or otherwise, to support its claim as to disgorgement.” Report at 14. The SEC submitted with its Motion for Default Judgment Pallais’ brokerage account statements for shares of Rodedawg International sold during the time of the fraudulent activity.<sup>1</sup> This is sufficient evidence of Pallais’ profit given that, during the course of Pallais’ illegal actions, “Pallais caused Rodedawg Int’l to issue millions of shares of company stock to him, and [then] Pallais sold at least 267,000 shares of Rodedawg Int’l stock for approximately \$7,057.20.” Complaint ¶ 19. Therefore, this Court sustains the objection. The

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<sup>1</sup> Statements from the Fidelity Investment Account indicate eight transactions from 03/05/07 - 03/08/07 where Pallais sold 167,500 shares for \$4,132.30. See Finkel Declaration, Ex. N. Statements for the Broad Street Securities, Inc. Account indicate five transactions on 12/15/06 where Pallais sold 100,000 shares for \$2,924.90. See Finkel Declaration, Ex. O.

SEC is entitled to an order disgorging Pallais of \$7,057.20. The SEC is also entitled to prejudgment interest in the amount of \$1,125.46.<sup>2</sup>

**CONCLUSION**

Defendants Rodedawg International Industries, Inc., and Luis E. Pallais are HEREBY ENJOINED AND RESTRAINED from violating section 10(b) of the Exchange Act and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder.

Defendant Luis E. Pallais is HEREBY ENJOINED AND RESTRAINED for ten (10) years from serving as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d), pursuant to section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), for ten years.

Defendant Luis E. Pallais is HEREBY ENJOINED AND RESTRAINED from participating in an offering of a penny stock pursuant to section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6), for ten years.

Defendant Luis E. Pallais is HEREBY ORDERED to disgorge his ill-gotten gains in the amount of \$ 7,057.20 plus prejudgment interest in the amount of \$ 1,125.46.

Defendant Luis E. Pallais is HEREBY ORDERED to pay a civil monetary penalty of \$ 65,000 in U.S. currency to the United States Treasury pursuant to section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

Dated: New York, New York  
December 23, 2010

SO ORDERED:



GEORGE B. DANIELS  
United States District Judge

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<sup>2</sup> The SEC, based on documentation submitted with its Motion for Default, relies on the nine percent rate of interest used by the Internal Revenue Service and provides a table detailing the annual rate, period rate, and quarter interest calculations by quarter range.

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

**Date:**

**In Re:**

-v-

**Case #:** ( )

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

**Ruby J. Krajick, Clerk of Court**

by: \_\_\_\_\_

, Deputy Clerk

**APPEAL FORMS**

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

**NOTICE OF APPEAL**

civ. ( )

Notice is hereby given that \_\_\_\_\_  
(party)  
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(day) (month) (year)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_ ( ) \_\_\_\_\_ - \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

MOTION FOR EXTENSION OF TIME  
TO FILE A NOTICE OF APPEAL

civ. ( )

Pursuant to Fed. R. App. P. 4(a)(5), \_\_\_\_\_ respectfully  
(party)  
requests leave to file the within notice of appeal out of time. \_\_\_\_\_  
(party)  
desires to appeal the judgment in this action entered on \_\_\_\_\_ but failed to file a  
(day)  
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).



FORM 2

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

NOTICE OF APPEAL  
AND  
MOTION FOR EXTENSION OF TIME

civ. ( )

1. Notice is hereby given that \_\_\_\_\_ hereby appeals to  
(party)  
the United States Court of Appeals for the Second Circuit from the judgment entered on \_\_\_\_\_.  
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time  
\_\_\_\_\_ respectfully requests the court to grant an extension of time in  
(party)  
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, \_\_\_\_\_ states that  
(party)  
this Court's judgment was received on \_\_\_\_\_ and that this form was mailed to the  
(date)  
court on \_\_\_\_\_.  
(date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_ - \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

FORM 3

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

**AFFIRMATION OF SERVICE**

civ. ( )

I, \_\_\_\_\_, declare under penalty of perjury that I have  
served a copy of the attached \_\_\_\_\_

\_\_\_\_\_ upon \_\_\_\_\_

\_\_\_\_\_ whose address is: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)