UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10504 / June 5, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83377 / June 5, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18531

In the Matter of

CONSTANT CONTACT, INC. and ENDURANCE INTERNATIONAL GROUP HOLDINGS, INC.,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Constant Contact, Inc. ("Constant Contact") and Endurance International Group Holdings, Inc. ("Endurance") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds[1] that:

Summary

1. This case involves two Massachusetts-based public companies, Constant Contact and Endurance. During the period from October 2013 through July 2015 (the "Relevant Period"), the companies were in the business of offering web hosting and online and email marketing products principally to small- and medium-sized businesses. Because both companies derived most of their revenue from offering subscription-based software solutions, the number of subscribers or customers for their subscription-based products was an important metric. Among other things, the subscriber or customer metrics could be used to evaluate the companies' financial performance. During the Relevant Period, both companies disclosed and reported their subscriber or customer metrics to the investing public, including through their required quarterly and annual filings with the Commission. At times during the Relevant Period, each company made material misrepresentations about their subscriber or customer metrics and the growth they had experienced in those metrics.

2. Endurance acquired Constant Contact in February 2016. Prior to the acquisition, Constant Contact described itself as a provider of online marketing tools, such as email marketing, designed for use by small organizations. During the Relevant Period, Constant Contact reported unique paying customers in quarterly, annual, and current reports filed with the Commission. In the quarterly and annual reports, Constant Contact identified unique paying customers as one of the key metrics used by the company's management to understand and improve its business, review its historical performance, benchmark its performance versus other companies and identify current and future trends, and for planning purposes.

3. Prior to its acquisition by Endurance, Constant Contact artificially inflated the number of unique paying customers it reported in its periodic filings with the Commission from January 2015 through July 2015, which reported financial performance for the fourth quarter and full fiscal year 2014 and the first and second quarters of fiscal year 2015. In these filings, the company knowingly included in its unique paying customer count customers who received a free month of service after calling to cancel their subscription in the last month of the relevant quarter.

4. Endurance describes itself as a provider of cloud-based platform solutions such as web hosting and domain registration services to small- and medium-sized businesses. During the Relevant Period, Endurance reported its subscriber count and its average revenue per subscriber in its quarterly, annual, and current reports filed with the Commission. In the quarterly and annual reports, the company identified its subscriber count and average revenue per subscriber as two of

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[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

the key metrics it used to evaluate the operating and financial performance of its business, identify trends affecting its business, develop projections and make strategic business decisions.

5. Due to an error first identified by Endurance in May 2014, Endurance overstated its subscriber count in its required periodic filings with the Commission from the time of its initial public offering of stock in October 2013 to the filing of its periodic report for the third quarter of fiscal year 2014 in November 2014. In addition, when Endurance corrected the overstatement in connection with the filing of its periodic report with the Commission for fiscal year 2014 in February 2015, the company made additional material misstatements and omissions which failed to disclose the fact of the correction and the impact of the correction on the company's publicly reported operating metrics.

Respondents

6. **Constant Contact, Inc.** is a Delaware company with a principal place of business in Waltham, Massachusetts. Following Endurance's acquisition of Constant Contact on February 9, 2016, Constant Contact became a subsidiary of Endurance. Prior to the acquisition, Constant Contact's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was quoted under the symbol "CTCT" on the NASDAQ Global Select Market.

7. **Endurance International Group Holdings, Inc.** is a Delaware company with a principal place of business in Burlington, Massachusetts. It describes itself as a company that provides cloud-based platform solutions such as web hosting and domain registration services to small- and medium-sized businesses. Endurance's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is quoted under the symbol "EIGI" on the NASDAQ Global Select Market.

Facts

Constant Contact Artificially Inflated its Paying Customer Count

8. During the Relevant Period, prior to its acquisition by Endurance, Constant Contact reported its unique customer count rounded to the nearest 5,000 in quarterly earnings releases (which are regular news or other releases issued by companies to announce their financial performance) and quarterly and annual reports filed with the Commission. In each earnings release, the company compared its quarterly ending customer balance with the prior quarter's ending customer balance. From the first quarter of fiscal year 2013 (the quarter ended March 31, 2013) through the first quarter of fiscal year 2015 (the quarter ended March 31, 2015), Constant Contact reported each quarter that its customer count had grown by 10,000 customers in that quarter. During this period, the company internally targeted 10,000 net customer additions on a quarterly basis, and considered that number to be consistent with investor expectations.

9. Beginning in the third quarter of fiscal year 2014 (the quarter ended September 30, 2014), certain members of Constant Contact's senior management received reports which indicated that the company's operating performance was trending below the levels necessary to attain the

10,000 net customer addition target. On September 22, 2014, a member of Constant Contact's senior management received a forecast which indicated that the company would need to add more than 1,000 customers in the following eight days in order to report 10,000 net customer additions for the quarter. Shortly thereafter, on September 24, 2014, the company instituted a new program, referred to by certain members of senior management as the "Save Program." To implement the program, when customers called to cancel their subscription to Constant Contact's email marketing product, company staff were instructed and incentivized to offer the customers a free month of service, but only if the canceling customer was scheduled to receive a bill before the last day of the quarter (and therefore would have otherwise been removed from the company's customer count for the quarter). For customers who received a free month offer pursuant to the Save Program, the company automatically processed their cancellation in the month after they called to cancel, during the next quarter, unless the customer contacted the Company and asked to reactivate their account.

10. The Save Program was created and approved by certain members of Constant Contact's senior management who had knowledge of the gap the company faced to achieve its net add target with eight days remaining in the third quarter of fiscal year 2014. The Save Program was designed to postpone customer cancellations and thereby increase the reported number of net customer additions in the quarter. As such, it was designed to artificially inflate Constant Contact's externally reported customer count by including in the count customers who called to cancel their service prior to quarter's end and, as a result of the Save Program, were not paying for their service at quarter's end. Although Constant Contact ran the Save Program in the third quarter of fiscal year 2014, the customers impacted by the Save Program were not counted in the customer count. In that quarter, the company met its customer additions target without including customers who received a free month pursuant to the program.

11. With the knowledge and approval of certain members of senior management, Constant Contact implemented the Save Program during the fourth quarter of fiscal year 2014 (the quarter ended December 31, 2014) and the first and second quarters of fiscal year 2015 (the quarters ended March 31 and June 30, 2015). To implement the program in each of these quarters, Constant Contact staff were again instructed and incentivized to offer customers calling to cancel a free month of service only if those customers would have otherwise been removed from the company's customer count for the quarter, which delayed the cancellation date of those customers into the next quarter.

12. From the fourth quarter of fiscal year 2014 through the second quarter of fiscal year 2015, Constant Contact counted customers who received a free month pursuant to the Save Program offer as "paying customers" for purposes of its external reporting of customer metrics to investors and in its Commission filings, even though those customers called to cancel their service prior to quarter's end and, as a result of the Save Program, were not paying for their service at quarter's end. The inclusion of Save Program customers artificially inflated Constant Contact's customer count as follows:

As Reported	Q4FY14	Q1FY15	Q2FY15
Ending Customer Balance	635,000	645,000	650,000
Net Customer Additions	10,000	10,000	5,000
Revised	**Q4FY14**	**Q1FY15**	**Q2FY15**
Ending Customer Balance	630,000	635,000	640,000
Net Customer Additions	5,000	5,000	5,000

13. Prior to Constant Contact's public disclosure of its artificially inflated customer count in the fourth quarter of fiscal year 2014 and the first and second quarters of fiscal year 2015, certain members of senior management received information showing how the company's use of the Save Program contributed to achieving its 10,000 net customer additions targets. Certain members of senior management received reports which indicated that the company would not have achieved its desired customer additions target in each of the relevant quarters without the inclusion of customers who received a free month of service pursuant to the Save Program.

14. Constant Contact's inclusion of customers who received a free month of service pursuant to the Save Program in its externally reported customer count was contrary to its public disclosures to investors and its filings with the Commission. The company continued to describe its publicly reported customer count as including "paying customers" in its quarterly and annual reports filed with the Commission notwithstanding the fact that customers impacted by the Save Program had called to cancel their service prior to quarter's end and were not paying for their service at quarter's end.

15. Constant Contact's inclusion of customers receiving a free month of service pursuant to the Save Program in its externally reported customer count was also inconsistent with its prior practice. Before implementing the Save Program, Constant Contact included in its externally reported customer count only customers who received a positive value invoice (in other words, customers who affirmatively paid for service or still owed money to Constant Contact for the service provided) in the last month of the quarter. Under this policy, customers with a zero dollar invoice (in other words, customers who did not affirmatively pay or owe money to Constant Contact for the service, either due to a promotion or a cancellation of service) were not included in the externally reported customer count. Customers who received a free month of service pursuant to the Save Program were issued zero dollar invoices in the last month of the quarter, and therefore should have been excluded from the customer count under the company's policy. In order to include the Save Program customers in the externally reported customer count, the company manually added the customers after completing its usual calculation of the externally reported customer count.

16. Constant Contact's inclusion of customers receiving a free month of service pursuant to the Save Program in its externally reported customer count artificially inflated the company's publicly reported customer count and masked from investors the difficulties the company was experiencing in efforts to grow its core email marketing business. In the company's regularly scheduled public conference call for the fourth quarter fiscal year 2014 to discuss its

financial performance (commonly referred to as an "earnings call"), the company stated it was starting to see the basis of an acceleration in net customer growth. The company made this assertion despite knowing that it included in its customer count customers receiving a free month of service pursuant to the Save Program to artificially achieve 10,000 net customer additions in that quarter. During that earnings call, the company reaffirmed its long-term vision to achieve 20% revenue and earnings growth, and set guidance for fiscal year 2015 which anticipated accelerated growth. As with many such earnings calls, this earnings call was attended by stock analysts who evaluate companies as investment opportunities and make recommendations to investors about whether to buy, sell, or hold a particular company's securities. Analysts who attended this call heard Constant Contact discuss customer metrics that were inflated and heard misleading statements by Constant Contact about customer numbers.

17. In the following quarter (the first quarter of fiscal year 2015 ended March 31, 2015), after it had projected accelerated growth with reference to artificially inflated customer counts, Constant Contact reduced its publicly-reported annual revenue guidance for 2015 from 17% revenue growth to 12% to 14% revenue growth. And by the end of the second quarter of 2015 (the quarter ended June 30, 2015), the company acknowledged that its continued disappointing net customer additions made achieving even its lowered fiscal year 2015 guidance more difficult.

18. Based on the conduct described above, Constant Contact's customer count was overstated and its disclosures concerning its customer count were misleading. Among others, Constant Contact made misstatements and omissions regarding its customer count in certain Forms 10-K, 10-Q, and 8-K filed with the Commission on January 29, 2015, February 25, 2015, April 30, 2015, May 6, 2015, July 23, 2015, and July 29, 2015.

<u>Endurance Identified And Failed to Disclose an Error in Its Subscriber Count</u>

19. In May 2014, certain members of Endurance's senior management learned that one of the company's largest web presence brands, Hostgator, had identified a potential error in its subscriber counting calculation which materially overstated the brand's subscriber count by including in the count a certain population of customers that had previously cancelled their subscriptions. Initial estimates as to the magnitude of the error suggested that it could reduce the brand's subscriber tally, and by extension Endurance's overall subscriber count, by up to 80,000 subscribers.

20. When certain members of senior management at Endurance learned of the Hostgator subscriber count error, they discussed options to reduce the potential impact on net subscriber additions to be reported publicly at the close of the second quarter of fiscal year 2014 (the quarter ended June 30, 2014). Prior to the release of Endurance's second quarter 2014 financial results, the company had not completed its analysis of the subscriber error, but at least one member of senior management was informed that continued work on the matter indicated that the error was larger than the company initially thought.

21. When Endurance filed with the Commission a Form 10-Q that included its financial results for the second quarter of fiscal year 2014 (the quarter ended June 30, 2014), it reported that the company had a total of approximately 3.7 million subscribers and had added approximately 93,000 net paying subscribers in the quarter. The reported subscriber metrics failed to take into account the discovery of the over-counting error at Hostgator. At that time, certain members of senior management understood that correcting the over-counting error would reduce the company's total subscriber balance and the reported subscriber additions in the quarter. Endurance failed to report any information concerning the discovery of a material error in the subscriber count calculation.

22. In September 2014, before Endurance filed with the Commission a Form 10-Q that included its financial results for the third quarter of fiscal year 2014, at least one member of the company's senior management received a report estimating that the over-counting error at Hostgator had caused the company's subscriber count to be overstated by 250,000 subscribers.

23. When Endurance filed with the Commission a Form 10-Q that included its financial results for the third quarter of fiscal year 2014 (the quarter ended September 30, 2014), it reported that the company had a total of approximately 3.8 million subscribers and had added approximately 94,000 net paying subscribers in the quarter. The reported subscriber metrics failed to take into account the discovery of the over-counting error at Hostgator. At that time, at least one member of senior management understood that correcting the over-counting error would reduce the company's total subscriber balance by more than 6%. Endurance again failed to report any information concerning the discovery of a material error in the subscriber count calculation.

Endurance Made Material Misstatements and Omissions When it Corrected its Subscriber Count

24. Endurance completed its analysis of the over-counting error at Hostgator prior to publicly reporting its financial results for the fourth quarter and fiscal year 2014 (the quarter and fiscal year ended December 31, 2014). The final analysis, which accounted for counting errors at all brands in the Endurance portfolio, determined that, by that time, the company's subscriber count was materially overstated by approximately 424,000 subscribers (more than 10% of the company's total subscriber balance). In the same quarter, certain members of Endurance's senior management determined to change the company's definition of total subscribers to include customers of other products who had not previously been included in the company's publicly-disclosed subscriber count. The effect of this changed definition was to offset the 424,000 reduction that resulted from the correction of the over-counting error.

25. When Endurance filed with the Commission a Form 10-K that included its financial results for the fourth quarter and fiscal year 2014, it reported that the company had a total of approximately 4.1 million subscribers and had added approximately 600,000 subscribers during the year, 200,000 of which had been added through acquisitions of other companies. Endurance disclosed publicly, including in its Commission filings, that it had modified its definition of total subscribers to include paid subscribers to all of its subscription-based products, rather than paid subscribers to web presence solutions as previous reports had reflected. The company did not,

however, provide a reconciliation between the subscriber count under its prior definition and the subscriber count under the new definition. As a result, investors were not informed that the adoption of the new definition masked a reduction of 424,000 in the prior subscriber count, by including approximately 482,000 subscribers who would not have been included under the prior definition. During the earnings call for the fourth quarter of fiscal year 2014, the company reported it grew its subscriber base by 380,000 customers during the year without considering the impact of acquisitions. Endurance failed to inform investors that much of the increase would have been offset by the correction of the subscriber balance but for the subscriber definition change.

26. When Endurance filed with the Commission a Form 10-K that included its financial results for the fourth quarter and fiscal year 2014, it reported its average revenue per subscriber metric using a modified methodology, which had the effect of further concealing the subscriber error. Endurance disclosed to investors that it calculated average revenue per subscriber as the amount of revenue it recognized in a period divided by the average number of total subscribers at the beginning of the period and at the end of the period. Endurance failed to disclose to investors that the denominator to its calculation, the average number of subscribers, counted subscribers that had been added as a result of the change in the definition of total subscribers at the end of the period. In reality, those subscribers may have been in existence at the beginning of the period. By including the subscribers as of the end of the period only, Endurance materially overstated the reported average revenue per subscriber. This change in methodology overstated the company's 2014 fourth quarter average revenue per subscriber calculation by $0.21 (overstating the reported growth in the metric from the fourth quarter of 2013 by approximately 14.8%).

27. Endurance's inconsistent reporting of subscriber data impacted the company's publicly reported subscriber count from third quarter of fiscal year 2013 through the third quarter of fiscal year 2014. The company did not provide investors with information about the impact of the counting errors on prior periods when it made a correction in the fourth quarter of fiscal year 2014. The corrected subscriber numbers, as detailed below, indicate that net subscriber additions reported by Endurance on a quarterly basis were materially overstated as follows:

As Reported (in thousands)	**Q3FY13**	**Q4FY13**	**Q1FY14**	**Q2FY14**	**Q3FY14**
Beginning Subscriber Balance	3,370	3,440	3,502	3,654	3,747
Net Adds	70	62	152	93	94
Ending Subscriber Balance	3,440	3,502	3,654	3,747	3,841
Revised (in thousands)	**Q3FY13**	**Q4FY13**	**Q1FY14**	**Q2FY14**	**Q3FY14**
Beginning Subscriber Balance	3,307	3,335	3,370	3,482	3,507
Net Adds	28	35	112	25	36
Ending Subscriber Balance	3,335	3,370	3,482	3,507	3,543

28. Based on the conduct described above, Endurance's publicly reported subscriber count was materially overstated and its disclosures concerning the subscriber count were materially misleading. Among others, Endurance made misstatements and omissions regarding its subscriber count in certain Forms 10-K, 10-Q, and 8-K filed with the Commission on December 3, 2013, December 6, 2013, February 25, 2014, February 28, 2014, May 6, 2014, May 9, 2014, August 7,

2014, August 8, 2014, November 4, 2014, November 7, 2014, February 23, 2015, and February 27, 2015. During the relevant period, Endurance failed to implement a policy across its brands to ensure that subscribers were counted in a consistent and reliable manner.

Constant Contact and Endurance Offered Securities

29. During the relevant period, Constant Contact and Endurance issued shares through employee share purchase plans offered to employees. Also during the relevant period, Endurance issued common stock in an initial public offering on October 24, 2013 and a secondary public offering on November 26, 2014.

Violations

30. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct in connection with the purchase and sale of a security. As a result of the conduct described above, Constant Contact violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

31. Section 17(a) of the Securities Act prohibits fraudulent conduct in the offer and sale of securities. As a result of the conduct described above, Constant Contact violated Section 17(a) of the Securities Act. Section 17(a)(2) of the Securities Act prohibits fraudulently or negligently obtaining money or property by means of a material false statement or omission. As a result of the conduct described above, Endurance violated Section 17(a)(2) of the Securities Act.

32. Section 13(a) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. With exceptions not applicable here, Rules 13a-1, 13a-11, and 13a-13 of the Exchange Act require each issuer to file annual, current, and quarterly reports respectively on the appropriate forms and within the period specific on the form. Rule 12b-20 further requires that the required reports contain such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading. As a result of the conduct described above, Constant Contact and Endurance violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

33. Section 13(b)(2)(A) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. As a result of the conduct described above, Constant Contact and Endurance violated Section 13(b)(2)(A) of the Exchange Act.

Endurance's Remedial Efforts and Cooperation

34. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent Endurance and cooperation afforded the Commission staff.

Endurance voluntarily conducted an internal investigation and provided the facts obtained in that inquiry to the staff.

Undertakings

35. Constant Contact and Endurance shall cooperate fully with the Commission with respect to any matter relating to the Commission's investigation, including but not limited to any litigation or other proceeding related to or resulting from that investigation. Such cooperation shall include, but is not limited to:

(a) Production of information – at the Commission's request, upon reasonable notice, and without subpoena, Constant Contact and Endurance (including officers, directors, principals, agents, and employees) shall truthfully and completely disclose all information requested by SEC staff in connection with the Commission's investigation, litigation or other proceedings;

(b) Production of documents – at the Commission's request, upon reasonable notice, and without subpoena, Constant Contact and Endurance (including officers, directors, principals, agents, and employees) shall provide any document, record, or other tangible evidence requested by SEC staff in connection with the Commission's investigation, litigation, or other proceedings;

(c) Production of cooperative personnel – at the Commission's request, upon reasonable notice, and without subpoena, Constant Contact and Endurance (including officers, directors, principals, agents, and employees) shall use their best efforts to secure attendance and truthful statements or testimony of any officer, director, principal, agent, and employee, excluding any such person who is a party to litigation with the Commission, at any meeting, interview, testimony, deposition, trial or other legal proceeding.

The foregoing obligations are subject to Constant Contact's and Endurance's reservations of rights to claim that documents or information requested is protected from disclosure by any applicable protection or privilege, such as the attorney-client privilege or attorney work product protection.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Constant Contact's and Endurance's Offer.

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

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Constant Contact shall cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and Section 17(a) of the Securities Act.

Respondent Endurance shall cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and Section 17(a)(2) of the Securities Act.

B. On behalf of itself and its subsidiary, Constant Contact, Respondent Endurance shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $8,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

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

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

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

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

Payments by check or money order must be accompanied by a cover letter identifying Endurance International Group Holdings, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Associate Director John T. Dugan, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Endurance's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor

Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. Respondents acknowledge that the Commission is not imposing a civil penalty in excess of $8,000,000 based upon their agreement to cooperate in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondents knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondents, petition the Commission to reopen this matter and seek an order directing that the Respondents pay an additional civil penalty. Respondents may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary