



Public Company Accounting Oversight Board

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**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

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In the Matter of *Stan Jeong-Ha Lee* )  
*and Stan J.H. Lee, CPA* )  
)  
Respondents. )  
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PCAOB File No. 105-2012-001  
**Notice of Finality of Initial Decision**  
June 19, 2013

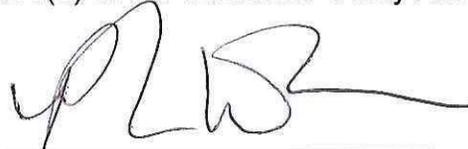
On May 9, 2013, the Chief Hearing Officer of the Public Company Accounting Oversight Board issued an Initial Decision pursuant to PCAOB Rule 5204(b), finding that Stan Jeong-Ha Lee ("the Lee Firm"), a registered public accounting firm (as defined by Section 2(a)(12) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7201(9), and PCAOB Rule 1001(r)(i)), and Stan J.H. Lee, CPA ("Lee"), a person associated with that firm (as defined by Section 2(a)(9) of the Act, 15 U.S.C. 7201(9), and PCAOB Rule 1001(p)(i)), violated PCAOB Rule 4006 by improperly creating, altering, and backdating audit documentation concerning another firm's audit of the 2007 financial statements of an issuer (as defined by Section 2(a)(7) of the Act, 15 U.S.C. 7201(7), and PCAOB Rule 1001(i)(iii)), in connection with a PCAOB inspection. The Initial Decision ordered, as sanctions, that the Lee Firm's PCAOB registration be permanently revoked, that Lee be permanently barred from being an associated person of a registered public accounting firm, and that Lee pay a civil money penalty in the amount of \$50,000.

There having been no petition for Board review of the Initial Decision filed by any party pursuant to PCAOB Rule 5460(a) and no action by the Board to call the matter for review pursuant to PCAOB Rule 5460(b), the Initial Decision has today become final pursuant to PCAOB Rule 5204(d).

Lee shall pay the civil money penalty by (a) wire transfer pursuant to instructions provided by Board staff; or (b) United States postal money order, certified check, bank cashier's check or bank money order; (c) made payable to the Public Company Accounting Oversight Board; (d) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006; and (e) submitted under a cover letter which identifies Stan J.H. Lee, CPA as a respondent in these proceedings, sets forth the title and PCAOB File Number of these proceedings, and states that payment is made pursuant to this Notice, a copy of which cover letter

and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

Effective Date of Sanctions: As to each of the two respondents, if that respondent does not file an application for review by the Securities and Exchange Commission ("Commission") and the Commission does not order review of sanctions ordered against that respondent on its own motion, the effective date of the sanctions shall be the later of the expiration of the time period for filing an application for Commission review or the expiration of the time period for the Commission to order review. If a respondent files an application for review by the Commission or the Commission orders review of sanctions ordered against that respondent, the effective date of the sanctions ordered against that respondent shall be the date the Commission lifts the stay imposed by Section 105(e) of the Sarbanes-Oxley Act of 2002.



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Phoebe W. Brown  
Secretary

June 19, 2013



Public Company Accounting Oversight Board

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In the Matter of Gruber & Co., LLC,  
E. Randall Gruber, CPA, Stan Jeong-Ha Lee,  
and Stan J.H. Lee, CPA,

Respondents.

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PCAOB No. 105-2012-001

Hearing Officer – DMF

**INITIAL DECISION (DEFAULT)**

May 9, 2013

### *Summary*

*Respondents Stan Jeong-Ha Lee and Stan J.H. Lee, CPA (“Lee Respondents”) were held in default, pursuant to Rule 5409(a)(1), for failing to attend a pre-hearing conference of which they had notice. Based upon allegations in the Order Instituting Disciplinary Proceedings that were admitted by the Lee Respondents, as well as substantiating evidence submitted by the Division of Enforcement and Investigations, the Lee Respondents violated PCAOB Rule 4006 by improperly creating, altering, and backdating audit documentation in connection with a Board inspection. For that violation, Stan Jeong-Ha Lee’s registration with the Board is permanently revoked, and Stan J.H. Lee, CPA is permanently barred from being an associated person of a registered public accounting firm and ordered to pay a civil money penalty in the amount of \$50,000.*

### **INITIAL DECISION (DEFAULT)**

#### **I. Procedural History**

On March 21, 2012, the Public Company Accounting Oversight Board (“PCAOB” or “Board”) issued an Order Instituting Disciplinary Proceedings (“OIP”) pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002 (“Act”) and PCAOB Rule 5200(a)(1) against Respondents Gruber & Co., LLC (“G&C”) and E. Randall Gruber, CPA (“Gruber”) (collectively, the “Gruber Respondents”), and Stan Jeong-Ha Lee (“the Lee Firm”) and Stan J.H.

Lee, CPA (“Lee”) (collectively, the “Lee Respondents”). (All four Respondents are referred to herein, collectively, as “Respondents.”) The OIP alleges that the Gruber Respondents violated PCAOB Rule 4006, Duty to Cooperate with Inspectors, and that they violated PCAOB Rule 3100, Compliance with Auditing and Related Professional Practice Standards, by violating Auditing Standard No. 3, Audit Documentation (“AS3”); in contrast, the OIP only alleges that the Lee Respondents violated Rule 4006. More specifically, the OIP alleges that, after being advised that the PCAOB would be conducting an inspection of G&C, the Gruber Respondents provided a misleading document and other information to the PCAOB inspectors concerning an audit of [Issuer A\*] purportedly performed by G&C, in connection with the inspection of that audit. The OIP further alleges that all Respondents, and others acting on their behalf, improperly created, altered, and backdated audit documentation concerning G&C’s purported audit of [Issuer A], and that all Respondents also improperly created, altered, and backdated audit documentation related to a G&C audit of [Issuer B] and a G&C audit of [Issuer C], in connection with the inspections of those audits.

The Gruber Respondents and the Lee Respondents, represented by the same counsel, filed a joint Answer to the OIP on May 1, 2012. On behalf of [the Lee Respondents], the Answer admitted the OIP’s allegations regarding the [Issuer A] audit, but asserted “duress” as an affirmative defense. With regard to the [Issuer B and C] audits, the Answer asserted, on behalf of [the Lee Respondents], that the audit documents referred to in the OIP “were but paper copies of the original electronic files. None of the files were backdated, but only reflected the date the work had originally been performed and by whom.” Answer at ¶¶ 55, 68.

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\* Note from the Office of the Secretary of the PCAOB (08/09/2013): Certain information has been redacted from the public version of this initial decision, as indicated by instances in which brackets ( [ ] ) are used in the document.

On June 13, 2012, the Division of Enforcement and Investigations (“Division”) filed a motion for summary disposition against [the Lee Respondents], pursuant to PCAOB Rule 5427. [The Lee Respondents] filed an opposition to the Division’s motion on July 5, 2012, and the Division filed a motion for leave to file a reply in support of its summary disposition motion, along with the proposed reply, on July 10, 2012.

On July 12, 2012, I issued an order granting the Division’s summary disposition motion, in part, as well as the Division’s motion for leave to file a reply (“July 12 Order”). In the July 12 Order, I found that there was no genuine issue as to any material fact regarding the OIP’s allegations concerning [the Lee Respondents’] conduct with respect to G&C’s purported audit of Issuer A, and I concluded that [the Lee Respondents’] undisputed conduct violated Rule 4006 [REDACTED]. Therefore, I granted summary disposition on those charges, subject to consideration of the purported duress defense. I denied summary disposition as to the duress defense and also denied summary disposition as to the OIP’s charges that [the Lee Respondents’] conduct with respect to the documentation of G&C’s [Issuer B and C] audits violated Rule 4006 [REDACTED].

At the time I issued the July 12 Order, a hearing to receive evidence relevant to [the Lee Respondents’] duress defense and the OIP’s charges regarding the documentation for G&C’s [Issuer B and C] audits was scheduled for the period September 11-14, 2012. On July 25, 2012, however, the parties filed a joint motion requesting that the hearing be continued indefinitely because they had “reached settlement terms in principle, and anticipate(d) finalizing a settlement in the near future” for submission to the Board. I issued an order granting the motion on July 26, 2012.

On October 15, 2012, however, the parties filed a joint status report in which they indicated that, while the Lee Respondents still expected to finalize a proposed offer of settlement

for submission to the Board, the Gruber Respondents no longer planned to submit an offer of settlement. Subsequently, on November 8, 2012, the parties filed another joint status report in which they reported that the Lee Respondents had also decided not to submit a proposed offer of settlement.

Accordingly, as requested by the parties, I rescheduled the hearing to begin on January 22, 2013. On November 29, 2012, however, Respondents filed an unopposed motion to reschedule the hearing to begin on February 19, 2013. In support of the motion, Respondents' counsel, [Individual A], represented that he was scheduled to undergo heart surgery during the week of December 17, 2012. [Individual A], a sole practitioner, requested the postponement to afford him sufficient time to recover from the surgery prior to the hearing. I granted the motion on November 30, 2012.

On January 11, 2013, the Division filed a status report stating that on January 10, 2013, the Division "learned from [Individual A's] wife, that although [Individual A] had expected to be released from the hospital within fourteen days of his surgery, he is still in the hospital's intensive care unit and there is no scheduled date for his release." In light of this information, I issued an order, also on January 11, vacating the existing pre-hearing and hearing schedule and requiring Respondents to file a report, directly or through counsel, regarding the status of their representation in this proceeding by February 4, 2013. Also, in light of the information regarding [Individual A's] health provided by the Division, this order, as well as all the subsequent orders and notices discussed below, were sent directly to both Gruber, for the Gruber Respondents, and Lee, for the Lee Respondents, as well as to [Individual A], who remained Respondents' counsel of record.

On February 4, 2013, the Hearing Office received a letter from Gruber on behalf of the Gruber Respondents, but received nothing from or on behalf of the Lee Respondents. Gruber's

letter stated that [Individual A] had “suffered a stroke and we understand he remains in the hospital,” but included no information regarding his prognosis for recovery. Instead, the letter requested that the hearing be postponed “for at least six (6) months” so that either [Individual A] could recover and continue his representation or the Gruber Respondents could find new counsel. On February 5, I issued an order denying that request because the Gruber Respondents had failed to provide facts regarding [Individual A’s] condition that would permit some reasonable assessment of the time required for him to recover. I therefore afforded the Gruber Respondents an opportunity to renew their request with “supporting documentation from [Individual A’s] physicians describing his current condition and prospects for recovery, including an estimate as to when he will be able to represent Respondents in this proceeding.”

On February 11, 2013, the Hearing Office received a letter from Gruber, on behalf of the Gruber Respondents, requesting reconsideration of my February 5 order. In the letter, Gruber stated that [Individual A’s] wife had informed him that “she (did) not know when [Individual A] (would) return to his legal practice and if he does, it will not be in the short term. She stated he is still unable to speak clearly and it could be ‘10 months or it could be a year before he’s able to do anything.’ We did ask if she could have [Individual A’s] current physician provide us with a letter describing [Individual A’s] condition and prognosis as directed in the Order. [Individual A’s wife] declined providing us with any written documentation citing health care privacy laws.” Once again, no communication was received from or on behalf of the Lee Respondents.

In the meantime, on February 6, 2013, the Division filed a motion seeking an order directing the Lee Respondents to show cause why they should not be held in default for failing to respond to my January 11 order. On February 12, I issued an order denying the Division’s motion, but scheduling a pre-hearing conference “for the purpose of establishing a schedule for completion of this proceeding.” The order warned all Respondents that “a failure to appear at

the conference, in person or through an appropriate representative, would constitute grounds for holding the party that failed to appear in default under Rule 5409(a). Further, under Rule 5401, an individual may appear on his own behalf, or through counsel, and a partnership or corporation may appear through counsel or through a partner or an officer. Mr. Gruber, therefore, cannot represent the Lee Respondents at the conference. If the Lee Respondents fail to appear through Mr. Lee or counsel, they will be held in default.” As noted above, this order was sent directly to both Gruber, for the Gruber Respondents, and Lee, for the Lee Respondents, as well as to [Individual A].

The pre-hearing conference was held by telephone conference call on March 15, 2013. Prior to the conference, new counsel filed an appearance on behalf of the Gruber Respondents, but not on behalf of the Lee Respondents. The Division and the Gruber Respondents, through their new counsel, appeared and took part in the conference, but there was no appearance by or on behalf of the Lee Respondents.<sup>1</sup> Accordingly, on March 19, 2013, I issued an order holding the Lee Respondents in default, pursuant to Rule 5409(a)(1), for failing to attend the pre-hearing conference, of which they had notice. In the order, I set a March 29, 2013, deadline for the Lee Respondents to file a motion to set aside their default, pursuant to Rule 5409(b), and the order was sent directly to Lee, for the Lee Respondents, as well as to [Individual A]. No motion to set aside the default, or any other response to the order, was filed by or on behalf of the Lee Respondents.

On April 9, 2013, the Division filed a motion for a default decision against the Lee Respondents. The Lee Respondents did not file any response to the Division’s motion. For the reasons set forth below, the Division’s motion is GRANTED.

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<sup>1</sup> During the conference I confirmed with the Gruber Respondents’ new counsel that he did not represent the Lee Respondents.

## **II. Facts**

### **A. Factual Basis for Default Decision**

Rule 5409(a) provides that, in the event of a default, “the hearing officer may determine the proceeding against (the defaulting) party upon consideration of the record, including the order instituting proceedings ..., the allegations of which may be deemed to be true.” In this case, unlike the more typical default involving a respondent’s failure to file an Answer to the OIP, there is a substantial record, including [the Lee Respondents’] admissions to many of the allegations in the OIP in their Answer; the evidentiary materials included in the parties’ filings in connection with the Division’s motion for summary disposition; the statement of uncontested facts set forth in the July 12 Order; and additional evidentiary materials submitted by the Division in support of its motion for a default decision.

On the other hand, [the Lee Respondents] denied certain of the OIP’s allegations in their Answer, and in the July 12 Order, I found that there were disputed issues of material fact that precluded a summary disposition as to [the Lee Respondents’] duress defense and as to the OIP’s charges relating to the audit documentation for G&C’s [Issuer B and C] 2007 audits. Both the duress defense and the allegations regarding the documentation for G&C’s [Issuer B and C] 2007 audits relate to the Gruber Respondents, as well as the Lee Respondents, and, as applied to the Gruber Respondents, they will be addressed in an evidentiary hearing that has been scheduled for June 2013. As explained in greater detail below, under those circumstances, I do not find it appropriate to deem the contested allegations true for purposes of this default Initial Decision; rather, this default Initial Decision rests on the uncontested facts, as determined in the July 12 Order, as well as the absence of any factual support for a duress defense on behalf of the Lee Respondents.

## **B. Uncontested Facts**

Rule 5421(c) provides: “Any allegation (in the OIP) not denied (in Respondents’ Answer) shall be deemed admitted.” In their joint Answer, [the Lee Respondents] admitted, or did not deny, most of the allegations in the OIP. Accordingly, as set forth in the July 12 Order, the following facts have been established for purposes of this proceeding, including this default Initial Decision:<sup>2</sup>

### **1. Respondents**

- G&C is a limited liability company headquartered in Lake Saint Louis, Missouri. G&C is registered with the Board pursuant to Section 102 of the Act and PCAOB Rules. It is licensed by the Missouri State Board of Accountancy (License No. 2002009503). [REDACTED.] At all times relevant to the OIP, Gruber was the sole principal and owner of G&C, and G&C had no other audit staff. In October 2008, the Board inspected G&C’s audits of Issuer A, Issuer B, and Issuer C.
- Gruber, age 60, of Lake Saint Louis, Missouri, is the Managing Member of G&C, its sole principal and owner, and a certified public accountant licensed in the state of Missouri (License No. 006667). [REDACTED.] At all times relevant to this matter, Gruber was an associated person of G&C, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).
- The Lee Firm is a public accounting firm headquartered in Fort Lee, New Jersey. The Lee Firm is registered with the Board pursuant to Section 102 of the Act and PCAOB Rules. At all times relevant to this matter, the Lee Firm had one principal and owner, Lee, and no audit staff.
- Lee, age 55, of Tijuana Baja California, Mexico, is the sole owner of the Lee Firm, and a certified public accountant licensed in the state of New Jersey (License No. 20CC02300900). Lee has also held a California “practice privileges” license (No. OK85457). At all times relevant to this matter, Lee was an associated person of the Lee Firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i). Lee conducted the Lee Firm’s concurring review of the 2007 G&C audits of [Issuer B and C] financial statements, and purportedly conducted the Lee Firm’s concurring review of the 2007 G&C purported audit of [Issuer A]. Lee earned approximately \$5,000 for conducting these activities.

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<sup>2</sup> Where [the Lee Respondents] denied a portion of an OIP allegation in their joint Answer, only the portion of the allegation not denied is deemed admitted.

## **2. Other Relevant Individuals and Entities**

- [Individual B] is a former CPA. Although [Individual B] was not an employee of G&C, he referred work to G&C. [REDACTED.]
- [Individual C] is a non-accountant hired by G&C to assist in a number of audits performed by G&C. [Individual C] was employed by G&C at all times relevant to this matter.
- [REDACTED.] At all times relevant to this matter, [Issuer A] was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001 (i)(iii). An audit report (the “[Issuer A] 2007 audit” report) in the name of G&C was issued in connection with [Issuer A’s] April 14, 2008 Form 10-KSB filing with the Securities and Exchange Commission (“SEC” or “Commission”).
- [REDACTED.] At all times relevant to this matter, [Issuer B] was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001 (i)(iii). G&C issued an audit report (the “[Issuer B] 2007 audit” report) in connection with [Issuer B’s] April 15, 2008 Form 10-KSB filing with the Commission.
- [REDACTED.] At all times relevant to this matter, [Issuer C] was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001 (i)(iii). G&C issued an audit report (the “[Issuer C] 2007 audit” report) in connection with [Issuer C’s] March 24, 2008 Form 10-KSB filing with the Commission.

## **3. Conduct Regarding the [Issuer A] 2007 Audit**

- On April 14, 2008, [Issuer A] filed a Form 10-KSB with the Commission [REDACTED], for the year ending December 31, 2007. Included in that filing was the [Issuer A] 2007 audit report, signed by “Gruber & Company, LLC.” [REDACTED.]
- The audit report release date for the [Issuer A] 2007 audit report was April 14, 2008. The documentation completion date, therefore, was May 29, 2008.
- On April 7, 2008, just prior to the issuance of the [Issuer A] 2007 audit report, the Board’s Division of Registration and Inspections (“Inspections Division”) confirmed with G&C, through Gruber, in writing, that it had selected G&C for inspection. Field work for the inspection was scheduled to commence in September 2008.
- On April 7, 2008, as part of the Board’s notification of the inspection, the Inspections Division provided G&C with a form, entitled “Exhibit B - Issuer Information Form” (“Exhibit B”). Exhibit B required G&C to provide, among other information, a list of all audit opinions for issuers released under the firm’s name between May 1, 2007 and March 31, 2008.

- Gruber completed Exhibit B and, on or about May 2, 2008, provided it to the Inspections Division. On the completed Exhibit B, Gruber represented that [Issuer A] became a client of G&C in March 2008, and that on April 7, 2008, the Firm issued an audit report on [Issuer A's] December 31, 2007 financial statements. On the completed Exhibit B, Gruber listed himself as the engagement partner for the [Issuer A] audit, indicating that he had incurred 48 hours on the audit, and that his concurring review partner had incurred six hours on that audit.
- At the time Gruber completed Exhibit B and provided it to the Inspections Division, he knew that: (a) G&C had not authorized the issuance of the [Issuer A] 2007 audit report, and (b) G&C and Gruber had not conducted any work in connection with the issuance of the [Issuer A] 2007 audit report. At no point in time did Gruber inform the Inspections Division of these facts in connection with the inspection of G&C.
- The Inspections Division was originally scheduled to visit G&C's office on September 8, 2008, to conduct a review of certain audits conducted by G&C. Gruber requested a delay of the inspection, and on August 28, 2008, the Inspections Division granted Gruber's request, and notified Gruber that it would visit G&C during the week of October 6, 2008.
- During the week preceding the Inspections Division's planned visit of G&C's office commencing on October 6, 2008, Gruber arranged for Lee, [Individual B], and [Individual C] to meet him in Missouri for a "firm retreat," held in a hotel conference room. Gruber and [Individual B] paid the travel and other expenses of Lee and [Individual C]. The firm retreat occurred from September 29, 2008 through October 8, 2008. During the firm retreat, Gruber, Lee, [Individual B] and [Individual C] met and prepared for the upcoming visit by the Inspections Division.
- Gruber asked [Individual B] to attend in order to facilitate the handover of working papers related to any opinions [Individual B] had issued under the G&C name in case the Inspections Division selected that audit and related opinion for inspection. Lee and [Individual C] were present due to their involvement in other G&C 2007 audits. [Individual C] had assisted in several audits and Lee had acted as a concurring review partner in several audits including the [Issuer B and C] 2007 audits. [REDACTED.]
- On October 3, 2008, Gruber contacted the Inspections Division to confirm the dates of its visit and to inquire about which audit engagements the Inspections Division would review. The Inspections Division confirmed the dates with Gruber, and identified to him four issuers' audits for review, including [Issuer A], [Issuer B], and [Issuer C].
- Immediately upon learning that the Inspections Division planned to examine the [Issuer A] audit, Respondent Gruber, during the firm retreat, instructed [Individual B] to provide him with all documentation for the [Issuer A] 2007 audit. [Individual B] then arranged to have [Issuer A] management provide this documentation to Gruber. According to Gruber, he received the [Issuer A] audit documentation on or about October 3, 2008. This was the first time Gruber had seen any audit documentation related to the [Issuer A] 2007 audit report.

- At the time of the firm retreat, the AS3 documentation completion date for the [Issuer A] 2007 audit report had passed.
- At the time of the firm retreat, Gruber was aware of AS3's requirements. In particular, Gruber was aware of AS3's requirement that an auditor must complete audit documentation within 45 days of an audit report release date, and that any changes to that documentation after the documentation completion date must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it.
- During the firm retreat Lee was also aware of AS3 and that audit documentation files must be completed 45 days after the audit report release date.
- During the firm retreat on October 3, 2008, Gruber altered, created, and backdated a set of audit working papers purporting to relate to the [Issuer A] 2007 audit report. Gruber's actions included: (a) signing-off on and backdating audit working papers that neither G&C nor Gruber prepared or reviewed in connection with issuance of the [Issuer A] 2007 audit report; (b) making handwritten entries on certain audit working papers for work that neither G&C nor Gruber had performed prior to issuance of the [Issuer A] 2007 audit report, including audit work related to Cash in Bank ("A4 Working Paper"); (c) adding a handwritten list of procedures to the A4 Working Paper; (d) permitting [Individual B] to include Gruber's initials on multiple PCAOB audit checklists including PCA-AP-1, Audit Program for Planning Procedures, and PCA-AP-2, Audit Program for General Auditing and Completion Procedures; (e) and permitting [Individual B] to include Gruber's name as G&C's Engagement Partner on PCA-CX-14.3, Engagement Completion Document.
- Gruber also instructed [Individual C] and Lee to sign and backdate certain [Issuer A] working papers. For example, regarding audit work related to Commercial Paper ("A5 Working Paper"), Gruber directed [Individual C] to sign and backdate the working paper to March 17, 2008, then Gruber himself signed the "approved by" block which he backdated to March 22, 2008. Gruber then instructed Lee to place his initials and the date March 30, 2008 on the A5 Working Paper, which Lee did.
- During the firm retreat, Gruber informed Lee that the Inspections Division planned to review the [Issuer A] 2007 audit.
- Lee assisted [Individual B] and Gruber in the creation of the following audit documentation that had not previously existed: PCA-AP-1, Audit Program for General Planning Procedures; PCA-AP-2, Audit Program for General Audit and Completion Procedures; PCA-CX-2, Financial Statement Materiality Worksheet for Planning Purposes; PCA-CX-3.1, Client Information Form; PCA-CX-3.2, Fraud Risk Information Form; PCA-CX-4.2, Understanding of Internal Control Documentation Form; PCA-CX-7.2, Risk Assessment Summary Form-Financial Statement Audit Only; PCA-CX-14.1, Supervision, Review and Approval Form; PCA-CX-14.2, Audit Documentation

Checklist; PCA-CX-14.3, Engagement Completion Document; and PCA-CX-16.1, Going Concern Checklist.

- In addition, Lee initialed and backdated to April 3, 2008, the following four documents: PCA-AP-1; PCA-AP-2; PCA-CX-2 and PCA-CX-4.2. Lee also signed an audit work paper related to the Trial Balance (“TB1 Working Paper”) and backdated the document to July, 30 2008.
- At the time, Lee understood that the Inspections Division intended to inspect G&C’s purported audit of [Issuer A].
- Field work for the Board’s inspection occurred during the week of October 6, 2008. During the field work, Gruber and G&C presented the misleading audit working papers for the [Issuer A] 2007 audit to the Inspections Division.
- At no time during the inspection did any of the Respondents indicate to the Inspections Division that they had not performed any audit work prior to issuance of the [Issuer A] 2007 audit report, or that in October 2008, they and others had improperly created and modified audit documentation to associate with the audit report.
- Additionally, at no time during the inspection, did Gruber inform the inspection team of his belief or knowledge that [Individual B] had, without G&C’s authorization, issued the [Issuer A] 2007 audit report as well as other audit reports in G&C’s name that were not the subject of the Board’s 2008 inspection.
- Immediately following the field work of the Inspections Division, Gruber directed Lee to prepare and backdate to March 2008, an independence letter purportedly related to the [Issuer A] 2007 audit report, which Lee did. Lee understood at the time that Gruber intended to provide the backdated independence letter to the Inspections Division. Gruber produced the backdated independence letter to the inspection team. Neither Gruber nor Lee informed the Inspections Division that this document was backdated.
- On October 30, 2009, the Inspections Division provided G&C with a draft report of its October 2008 inspection. On November 29, 2009, Gruber submitted to the Inspections Division a response to the draft inspection report. In the response, Gruber reiterated that G&C had performed an audit of [Issuer A’s] 2007 financial statements.
- At no point prior to the Division’s investigation into this matter did Gruber withdraw or disassociate himself or G&C from the [Issuer A] 2007 audit report. It was only in response to the Division’s March 2010 request for documentation related to the [Issuer A] 2007 audit report as part of its investigation that Gruber represented for the first time to the Board that he and G&C had not been involved in the [Issuer A] 2007 audit.
- In August 2010, during Lee’s testimony as part of the Division’s investigation, Lee revealed for the first time to Board staff that he, Gruber, [Individual B] and [Individual

C] had created, altered and backdated audit documentation related to [Issuer A's] 2007 financial statements.

- It was not until his September 2010 testimony as part of the Division's investigation, and the Division's inquiry about the creation or modification of certain audit work papers that Gruber acknowledged that in fact, Gruber, Lee, [Individual B] and [Individual C] had created, altered and backdated audit documentation related to [Issuer A's] 2007 financial statements.

#### **4. Conduct Regarding the [Issuer B and C] Audits**

##### **a. The [Issuer B] 2007 Audit**

- G&C audited [Issuer B's] 2007 financial statements. Gruber served as the auditor with final responsibility for the engagement. Lee served as the concurring review partner.
- On April 15, 2008, [Issuer B] filed a Form 10-KSB with the Commission. The [Issuer B] 2007 audit report was included in that filing.
- The audit report release date was April 15, 2008. The documentation completion date, therefore, was May 30, 2008.
- During the October 2008 firm retreat addressed above, the Inspections Division informed Gruber that the inspection team would be examining G&C's audit of [Issuer B's] 2007 financial statements.
- At the time of the firm retreat, Gruber understood that the documentation completion date for the [Issuer B] audit had passed.
- At the time of the firm retreat, Gruber was also aware of AS3's requirements. In particular, Gruber was aware of AS3's requirement that an auditor must complete audit documentation within 45 days of an audit report release date, and that any changes to that documentation after the documentation completion date must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it.
- In response to learning that the Inspections Division would be examining G&C's audit of [Issuer B's] 2007 financial statements, Gruber asked Lee to "clean up" the [Issuer B] audit working papers and to memorialize Lee's concurring review work in the working papers.
- At the time Lee undertook actions with respect to the audit documentation related to the [Issuer B] 2007 audit report, he understood that the Inspections Division intended to inspect G&C's audit of [Issuer B].

- At no time prior to this investigation did Respondents disclose to the Board their actions with respect to the [Issuer B] 2007 audit documentation.

**b. The [Issuer C] 2007 Audit**

- G&C audited [Issuer C's] 2007 financial statements. Gruber served as the auditor with final responsibility for the engagement. Lee served as the concurring review partner.
- On March 24, 2008, [Issuer C] filed a Form 10-KSB with the Commission. The [Issuer C] 2007 audit report was included in that filing.
- The audit report release date was March 24, 2008. The documentation completion date, therefore, was May 7, 2008.
- During the October 2008 firm retreat, the Inspections Division informed Gruber that the inspection team would be examining G&C's audit of [Issuer C's] 2007 financial statements.
- At the time of the firm retreat, Gruber understood that the documentation completion date for the [Issuer C] audit had passed.
- At the time of the firm retreat, Gruber was also aware of AS3's requirements. In particular, Gruber was aware of AS3's requirement that an auditor must complete audit documentation within 45 days of an audit report release date, and that any changes to that documentation after the documentation completion date must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it.
- In response to learning that the Inspections Division would be examining G&C's audit of [Issuer C's] 2007 financial statements, Gruber asked Lee to help "clean up" the [Issuer C] audit working papers and to memorialize Lee's concurring review work in the working papers.
- At the time Lee undertook actions with respect to the audit documentation related to the [Issuer C] 2007 audit report, he understood that the Inspections Division intended to inspect G&C's audit of [Issuer C].
- Respondents did not disclose to the Board their actions with regard to the [Issuer C] 2007 audit documentation prior to or during the Inspections Division's inspection of G&C.

### **III. Violations Charged**

PCAOB Rule 4006 provides, in part, that “(e)very registered public accounting firm, and every associated person of a registered public accounting firm, shall cooperate with the Board in the performance of any Board inspection.”

#### **A. The [Issuer A] 2007 Audit**

The facts set forth above establish that the Lee Respondents<sup>3</sup> participated in the deliberate falsification of audit documentation for the [Issuer A] 2007 audit with knowledge that the falsified documentation would be submitted to PCAOB inspectors as reflecting G&C’s work on the audit. Specifically, they improperly created, altered, and backdated audit documentation concerning G&C’s purported audit of [Issuer A], as alleged in the OIP. The Lee Respondents thereby participated in an effort to mislead the inspectors as to the audit work that G&C had performed and the individuals who had performed it. Under Rule 4006, the Lee Respondents were required to cooperate with “any Board inspection,” including the inspection of G&C. The falsification of audit documentation to mislead PCAOB inspectors as to the work performed by the firm being inspected is the antithesis of cooperation. Accordingly, I conclude that the undisputed facts establish that the Lee Respondents violated Rule 4006 by participating in the falsification of documentation regarding G&C’s purported [Issuer A] 2007 audit.

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<sup>3</sup> Although Lee personally engaged in the violative conduct discussed in this decision, Respondents’ Answer admits that he was the Lee Firm’s owner and sole professional employee, and the Lee Respondents have not alleged or offered any evidence that Lee’s conduct was not on behalf of the Lee Firm. Accordingly, I find that both Lee Respondents are responsible for the violations discussed herein.

## **B. Duress Defense**

In their Answer, [the Lee Respondents] “admit(ted) that Respondents and others acting on their behalf improperly created, altered and backdated audit documentation concerning (G&C’s) purported audit” of [Issuer A]. They urged, however, that their conduct “would not have occurred but for the threats of physical violence by [Individual B].” Answer at ¶ 2; Answer at Affirmative Defense ¶ 1.

Under certain circumstances, duress has been recognized as a defense to criminal charges. The elements of a duress defense in that context include: (1) the defendant was under an unlawful and imminent threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury; (2) the defendant had not recklessly or negligently placed himself in a situation in which it was probable that he would be forced to perform the criminal conduct; (3) the defendant had no reasonable, legal alternative to violating the law; and (4) a direct causal relationship may be reasonably anticipated between the criminal act and the avoidance of the threatened harm. See Dixon v. United States, 548 U.S. 1, 3 n.2 (2006) (“presum(ing) the accuracy” of these elements of the defense).

The duress defense has been asserted in criminal cases. PCAOB proceedings, however, are not criminal, but rather disciplinary and remedial in nature. The purpose of such proceedings is not to punish respondents, but to protect the investing public where the evidence indicates that respondents are unwilling or unable to conform to PCAOB rules and auditing standards. Neither in their Answer nor in their opposition to the Division’s motion for summary disposition did Respondents, including the Lee Respondents, cite any precedent recognizing a duress defense in any proceedings analogous to PCAOB disciplinary proceedings.

Even assuming that a duress defense might be recognized in PCAOB disciplinary proceedings, there is nothing in the record that could substantiate such a defense with respect to

the Lee Respondents. Respondents' Answer asserts: "Because of threats of physical harm to Gruber, his family and friend at the 'firm retreat' and, for a lengthy period subsequent, work-papers were compiled to reflect an audit when [Individual B] had not done an audit. But for the treats (sic) of [Individual B], which were very real to those present, such would not have been done." Answer at Affirmative Defense ¶ 1. The Answer does not, however, allege that any threats were made against the Lee Respondents.

Similarly, in support of their opposition to the Division's summary disposition motion, Respondents submitted three affidavits, one signed by a husband and wife who are clients of Gruber and G&C, one signed by a friend of Gruber and his wife, and one signed by [Individual C], a non-accountant who worked on audits performed by G&C. None of the affidavits, however, sets forth any facts regarding any threats against the Lee Respondents. Further, in the portions of Lee's investigative testimony submitted by the Division in support of its motion for summary disposition, Lee did not testify that he received any threats, or that he felt under duress when participating in creating false documentation for the [Issuer A] 2007 audit, and Respondents did not submit either excerpts from Gruber's or Lee's investigative testimony or an affidavit from either individual. As a result, there is no evidence in the record that Lee's conduct in falsifying documentation for G&C's purported [Issuer A] 2007 audit was attributable to duress directed against the Lee Respondents. In particular, there is no evidence whatsoever that Lee acted under an unlawful and imminent threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury, or that he had no reasonable, legal alternative to violating the law. By defaulting, the Lee Respondents have abandoned their right to offer factual support for a duress defense in a hearing.

Accordingly, I conclude that the Lee Respondents do not have a duress defense to their violations of Rule 4006 in connection with the [Issuer A] 2007 audit.<sup>4</sup>

### **C. The [Issuer B and C] 2007 Audits**

The OIP alleges that Respondents improperly created, altered, and back-dated working papers relating to the [Issuer B and C] 2007 audits prior to the Board's inspection of G&C, thereby violating Rule 4006 and, as to the Gruber Respondents, AS3. In their Answer, [the Lee Respondents] admitted a number of the OIP's allegations regarding the [Issuer B and C] 2007 audits. In particular, [the Lee Respondents] admitted that G&C performed the audits and that Lee served as the concurring review partner on the audits; that the companies filed the audit reports with the Commission; that the document completion dates for both audits were in May 2008; and that after learning during the October 2008 firm retreat that the Inspections Division was going to inspect the [Issuer B and C] audits in connection with the inspection of G&C, Gruber asked Lee to help "clean up" the working papers for both audits and to memorialize Lee's concurring review in the working papers for both audits. Further, [the Lee Respondents] admitted that at the time Lee undertook actions with respect to the working papers for both audits, he understood that the Inspections Division intended to inspect those audits, and that Respondents did not disclose Lee's actions to the Board prior to the investigation that led to this proceeding. These admissions tend to support the OIP's charges against the Lee Respondents relating to the [Issuer B and C] 2007 audits.

[The Lee Respondents] asserted in their Answer, however, that the "clean-up" that Gruber asked Lee to perform "was the printing and collation of the files from the electronic version to a paper version." OIP ¶¶ 49, 63; Answer ¶¶ 49, 63. Further, in their Answer, [the Lee Respondents] denied the OIP's allegation that Gruber provided Lee with work papers for the

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<sup>4</sup> [REDACTED.]

[Issuer B and C] audits for the first time during the firm retreat, and the allegation that Lee initialed and back-dated those work papers. Rather, [the Lee Respondents] asserted in their Answer that the work papers Gruber presented to Lee during the firm retreat “were paper copies of working papers previously reviewed in electronic form. Dates and initials were affixed to the paper copies which were the dates the electronic files had actually been reviewed by Mr. Lee.” Answer ¶ 50; see also Answer ¶¶ 51-52, 54-55, 64-68.

Other evidence in the record tends to contradict assertions in the Answer. For example, in their Answer, [the Lee Respondents] denied the OIP’s allegation that “(p)rior to the release of the [Issuer B] (2007) audit report, Lee had only seen a fraction of (the) working papers related to the [Issuer B] 2007 audit, and had not signed or initialed any of them.” Instead, [the Lee Respondents] asserted that “(p)rior to the release of the audit report, Mr. Lee had reviewed the electronic work-papers, not the subsequent paper work-papers which were subsequently printed from the electronic file.” OIP ¶ 45; Answer ¶ 45. The record, however, includes excerpts from Lee’s investigative testimony in which Lee appears to have admitted that he affixed his initials and false March 2008 dates to audit documentation that he did not see until September or October 2008.

In its motion for a default decision, the Division does not directly address the significance of the assertions set forth in Respondents’ Answer. Rather, the Division simply urges that I deem the allegations in the OIP true, as permitted by Rule 5409(a), offering portions of Lee’s investigative testimony and certain working papers as support for some allegations. I am reluctant to adopt that approach, however, because the allegations regarding the [Issuer B and C] 2007 audits, and Respondents’ denials and assertions in response to those allegations in their Answer, also apply to the Gruber Respondents, who have not defaulted and are contesting the charges. If I were to simply deem the allegations regarding the [Issuer B and C] 2007 audits true

as to the Lee Respondents, in spite of the denials and assertions in the Answer, there would be a risk that this default Initial Decision would then rest on factual findings that would prove to be inconsistent with the facts as determined in the Initial Decision that will be issued with respect to the Gruber Respondents after an evidentiary hearing. Any such inconsistencies could call into question the soundness of this default Initial Decision, and perhaps provide grounds for reopening it.

As I explained during the March 15 conference, to avoid the risk of such inconsistencies, I would normally delay issuing this default Initial Decision until after issuing the Initial Decision as to the Gruber Respondents, so that the two decisions could be harmonized. Although the Division agreed with that approach during the March 15 conference, the Division subsequently requested that I issue the default Initial Decision against the Lee Respondents immediately, arguing that because the Lee Respondents are continuing to issue audit reports for issuers, prompt issuance of the default Initial Decision is needed to avoid an ongoing risk to the investing public. In support of this argument, the Division submitted materials showing that from March 2012 through March 2013, the Lee Respondents issued more than 20 audit reports for issuers, for which they charged more than \$400,000 in audit fees.

After considering all these circumstances, I have decided to issue this default Initial Decision now, as requested by the Division, but to rest it solely on the uncontested allegations establishing the Lee Respondents' violation of Rule 4006 with regard to the creation, altering, and backdating of audit documentation concerning G&C's purported [Issuer A] 2007 audit. I recognize that this approach is contrary to the normal practice of addressing all the charges in the OIP in an Initial Decision, but I believe that it is the prudent course in this case, particularly because, as set forth below, I conclude that the uncontested facts regarding the Lee Respondents' conduct in falsifying audit documentation for the [Issuer A] 2007 audit fully support the

sanctions sought by the Division. Accordingly, I make no findings as to the contested allegations concerning the [Issuer B and C] 2007 audits, and therefore reach no conclusions as to the merits of the OIP's charges against the Lee Respondents regarding those audits.

#### **IV. Sanctions**

The imposition of disciplinary sanctions is governed by Sections 105(c)(4) and 105(c)(5) of the Act. Section 105(c)(4) authorizes the Board to impose a wide range of sanctions, including a temporary or permanent suspension or permanent revocation of a firm's registration, a temporary or permanent suspension or bar of a person from further association with any registered public accounting firm, or a civil money penalty. Pursuant to Section 105(c)(5), a firm's registration may be suspended or revoked and a person may be suspended or barred from association with any registered public accounting firm only if the violations involved "intentional or knowing conduct, including reckless conduct," or "repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard." On the other hand, a civil money penalty may be imposed without such a finding, so long as the penalty does not exceed the amount set forth in Section 105(c)(4)(D)(i) of the Act, as adjusted. In this case, the Division requests that the Lee Firm's registration be permanently revoked, that Lee be permanently barred from further association with any registered public accounting firm, and that Lee be ordered to pay a \$50,000 civil money penalty, an amount that falls within the adjusted limits of Section 105(c)(4)(D)(i) of the Act.

The undisputed facts regarding the Lee Respondents' conduct in falsifying audit documentation for the [Issuer A] 2007 audit, as set forth above, justify the imposition of the sanctions requested by the Division. The Lee Respondents have admitted that Lee intentionally created, altered, and backdated working papers to substantiate G&C's purported [Issuer A] 2007

audit, knowing that the Board's Inspections Division planned to inspect that audit as part of its inspection of G&C.

The inspections process is an integral part of the Board's responsibilities under the Act. Section 104(a) of the Act requires the Board to "conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers." The integrity of the audit documentation for the audits selected by PCAOB inspectors for inspection is plainly critical to the Board's fulfillment of this statutory responsibility. The Lee Respondents' conduct—assisting in the preparation of false audit documentation for the [Issuer A] 2007 audit—compels the conclusion that the Lee Respondents lack the integrity required of registered public accounting firms. As a result, the Lee Respondents pose an unacceptable risk to investors who may rely on audits of issuers that the Lee Respondents perform, or claim to perform. In that regard, as noted above, the Division has submitted materials establishing that the Lee Respondents have continued to issue numerous audit reports for issuers since this proceeding was instituted.

In determining whether a civil money penalty is an appropriate sanction and, if so, the amount of the penalty, the Board has considered the factors set forth in Section 21B(c) of the Securities Exchange Act of 1934 as providing helpful and relevant guidance.

The factors specified in section 21B(c) include (1) whether the conduct for which a penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to other persons resulting directly or indirectly from the conduct; (3) the extent to which any person was unjustly enriched; (4) whether the person against whom a penalty is assessed has previously been found by the Commission, another appropriate regulatory agency, or self-regulatory organization ("SRO") to have violated federal securities laws, state securities laws, or SRO rules, or has been enjoined from such violations or

convicted of certain offenses; (5) the need to deter such person and other persons from such conduct; and (6) such other matters as justice may require.

Section 21B does not require that all of these factors be present as a condition to imposing a penalty, but sets them out as factors to be considered.

Larry O'Donnell, CPA, P.C., PCAOB File No. 105-2010-002 (Oct. 19, 2010), at 9-10 (footnotes omitted). The Commission has confirmed that “[a]n analysis based on Section 21B is ... sufficiently flexible to be used in this context.” R.E. Bassie & Co., Accounting and Auditing Enforcement Rel. No. 3354, 2012 SEC LEXIS 89 at \*47 (Jan. 10, 2012).

In this case, Lee’s conduct involved deliberate disregard of regulatory requirements for the purpose of deceiving the Inspections Division, and, for the reasons set forth above, there is a strong need to deter both Lee and other associated persons of registered public accounting firms from such conduct in order to protect the Board’s ability to fulfill its statutory responsibilities for the protection of investors. Accordingly, a civil money penalty is warranted and the penalty amount requested by the Division is appropriate.

Therefore, the Lee Firm’s registration with the Board will be permanently revoked, Lee will be permanently barred from association with any registered public accounting firm, and Lee will be ordered to pay a civil money penalty in the amount of \$50,000.

**V. Order**

For the foregoing reasons, **IT IS ORDERED**, pursuant to Section 105(c)(4) and (c)(5) of the Act and Rule 5300(a), that for violating PCAOB Rule 4006, the registration of Respondent Stan Jeong-Ha Lee is permanently revoked; Respondent Stan J.H. Lee, CPA is permanently barred from further association with any registered public accounting firm; and Respondent Stan J.H. Lee, CPA shall pay a civil money penalty in the amount of \$50,000.

This default Initial Decision shall become final in accordance with Rule 5204(d)(1) upon issuance of a notice of finality by the Secretary. Any party may obtain Board review of this default Initial Decision in accordance with Rule 5460(a), or the Board may, on its own initiative, order review, in which case this default Initial Decision will not become final.

  
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David M. FitzGerald  
Hearing Officer