UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

ADMINISTRATIVE PROCEEDING
File No. 3-15764

In the Matter of

GARY L. MCDUFF,
Respondent

RESPONDENT'S OPENING POST-HEARING BRIEF

DATED: August 12, 2016

Respectfully submitted,

Gary L. McDuff
Respondent in *Pro Se*

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BACKGROUND - PROCEDURAL POSTURE

Because the procedural posture is known by the parties an abbreviated procedural background is presented.

1. Administrative Proceeding File No. 3-15764 was assigned by Commission Secretary Elizabeth M. Murphy when the Commission on Feb. 21, 2014 published Release No. 71594 and issued the Order Instituting Administrative Proceedings and Notice of Hearing.

2. On April 14, 2014, Respondent filed his Rule 220 Initial Answer with 28 Attachments in support.

3. On April 25, 2014 the DOE filed the Division of Enforcement's Motion for Summary Disposition with Exhibits A through L in support.

4. On April 25, 2014 Respondent filed his Motion for Summary Disposition with 4 Exhibits in support.

5. On Sept. 5, 2014 the ALJ Hearing Officer issued the Initial Decision as release number ID-663 granting the Division's Motion for Summary Disposition.

6. On Nov. 13, 2014 Respondent filed his Rule 360(b) Petition for Review of Initial Decision with 3 Attachments in support.

7. On Nov. 18, 2014 the court clerk filed Respondent's 11/10/14 letter to ALJ Elliot with 2 enclosures in support of the letter noticing the ALJ that exculpatory evidence had been withheld from Respondent and his defense had been corroborated by 21 Federal Courts. (ONESCO cases)

8. Order by Commissioners Remanding for Additional Proceedings issued on April 23, 2015.

9. Order on Respondent's Motion for a Decision on the Scope of Hearing issued on April 5, 2016.

10. June 14, 2016, the Commission denied interlocutory review and cautioned that the preclusive effects of McDuff's civil injunction and criminal conviction are limited. The Commission also noted that "A respondent in a follow-on proceeding 'may introduce evidence regarding the circumstances surrounding the conduct that forms the basis of the underlying proceeding to determine whether sanctions should be imposed in public interest.' "

11. Post-Hearing Order and Protective Order setting filing dates for post-hearing briefs and responsive briefs issued on June 22, 2016.

SUMMARY OF ARGUMENT

The Department of Enforcement (DOE) has to establish under the Exchange Act § 15(b)(6) that McDuff was either (1) "associated;" (2) "is seeking to become associated;" or at the time of the alleged misconduct, was (3) "associated" or (4) "was seeking to become associated" with a broker or dealer and that McDuff meets at least one of the several potential bases for proceeding...including being enjoined...§ 15(b)(6) Securities Exchange Act; 15 U.S.C. §780(b)(6); Martin R. Kaiden, Securities Exchange Act Release No. 41629, 54 SEC 194, 1999 WL 507860, at *7 (July 20, 1999).

As the ALJ clarified the DOE must prove that "McDuff was acting as a broker or dealer at the time of his misconduct (alleged), and what sanctions, if any, should be imposed against him in the public interest." See Gary L. McDuff, Securities Exchange Act of 1934 Release No. 74803, 7015 WL 1873119, at *3 (ALJ summarizing Release 3763 / April 5, 2016).

As noted *infra* the DOE is *judicially estopped* from meeting its burden; the evidence is insufficient to establish that McDuff was "associated or seeking to become associated" at the

time in question - and no evidence that McDuff is currently associated or seeking to become associated with a broker dealer was presented by the DOE.

The PPM qualified as a Reg. D - restricted security and was not subject to the same restrictions raising Jurisdictional issues.

The DOE witnesses - and documents submitted by the DOE in support of its case are not credible - especially in view of the documents delivered mid-hearing on June 15, 2016 at 4:00 PM.

The DOE/BOP has un-clean hands or is imputed with unclean hands by conduct.

There is no credible evidence of public interest factor in view of McDuff's current sentence - should his sentence be reversed the underlying conviction on which the purported sanction would be based will have been reversed.

The underlying basis for the allegations in this follow-on proceeding (i.e. civil-verdict and criminal conviction) are not final and are under appeal - therefore unavailable for that basis to be used by the DOE.

DOE furnished 1000's of pages of evidence mid-hearing due to the BOP's continued obstruction of justice. As a result of these documents, some attached hereto, undermine both the civil case and the criminal case, which will result in another new trial motion in the civil and criminal case. Those documents attached and offered herein - are afforded not only as impeachment evidence to the witness testimony and exhibits offered in the hearing - but also as rebuttal to the present filing in this case. (i.e. - civil case - criminal transcripts).

Hearsay analysis under the Commission's case law establishes that the bulk of the testimony and arguments of the DOE are "Lies, Damned Lies and Statistics" to quote Mark Twain. Specifically, the DOE and United States suborned perjury, altered documents, omitted

material facts which would lead a reasonable person to an alternate conclusion, misused terms of art, testified inappropriately in multiple criminal proceedings and in general "abused the judicial process" and "played fast and loose" with the courts.

ARGUMENT - FACT – LAW

INCORPORATION

McDuff hereby incorporates, each and every, all and singular the contents of each paragraph and section in each and every other section as further documentary support for the allegations, facts, and arguments proffered herein.

ALTERNATIVE

McDuff's arguments are in the alternative and McDuff specifically does not abandon any prior argument, allegation, objections, or assertion herein by way of argument.

INTRO

In order for the Division of Enforcement (DOE) to meet its burden under *SEC v. Kramer*, 778 F. Supp. 2d 1320 (MD. Fla - 2011) it must prove by a preponderance of the evidence a violation of 15b. *SEC v. Ginsburg*, 362 F.3d 1292, 1298 (11th Cir. 2004) ("preponderance of the evidence.")

The DOE in its submissions and hearing testimony fails its burden miserably, not only because the testimony is perjured, unreliable, inappropriate hearsay on which an ALJ cannot rely (see *infra*), but the DOE simply ignores its required elements entirely. Rather than follow typical legal format, wherein the DOE identifies the nature of its claims, the elements of each specific claim, and then proffers factual evidence to support each element; the DOE makes broad and general claims, ignores "terms of art," or "industry terms" - and thereafter fails to define those terms. Alleging in general allegations and conduct (much of which was legal or as demonstrated

infra, were patently false allegations) and merely proffering facts in the guise of fabricated testimony or otherwise does not come close to meeting the standard the law requires.

But in the same manner as stones properly placed and designed along with mortar become building blocks to build a house. A pile of random facts no more makes a case than a stack of stones constitutes a house.

The three specific elements are noted and the DOE's glaring failures pointed out.

§ 780(b)(6)(A) provides "with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or seeking to become associated with a broker or dealer...the Commission, by order, shall censure...if the Commission finds, on the record after notice...that such censure, placing of limitations...or bar is in the public interest and that such person..."

> (i) has committed or omitted any act, or is subject to an order finding enumerated in subparagraph A, (D), or (E) of paragraph 4 of this subsection.
>
> (ii) has been convicted of any offense specified in subparagraph (B) of such ¶ 4 within 10 years.
>
> (iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

Initially 6A(i) as to subparagraph (4)(A) is irrelevant to this proceeding.

6A(ii) is irrelevant to this proceeding. McDuff's prior criminal conviction in 1993 is 18 USC § 1957 (which are not included in the enumerated counts of subparagraph (4)(B). Also note that "bad actor" is a new enactment and is not applicable for conduct prior to 2013.

78j(d) "Bad Actor" disqualification.

(2) Paragraph (d)(1) of this section shall not apply:

> (i) with respect to any conviction, under judgment, decree, suspension, expulsion or bar that occurred or was issued before September 23, 2013.

McDuff's final "Default Judgment" including the injunction is February 22, 2013, prior to the "Bad Actor" enactment of September 23, 2013. Judicial notice requested.

6A(iii) is enjoined from any action...specified in subparagraph (C) of subparagraph (4).

In *SEC v. Kramer*, 778 F. Supp. 2d 1380 (M.D. Fla 2011) the court addresses, in part, the analysis of the ALJ is to consider. The court considered various cases as points of reference. McDuff addresses the *SEC v. Hansen*, 1984 U.S. Dist. Lexis 17835, 1984 WG 2413, *W (S.D.N.Y. 1984) case in detail herein. However, the court's analysis of other cases is also instructive. McDuff highlights those cases and analysis below:

Cornhusker Energy Lexington, LLC. v. Prospect St. Ventures, 2006 U.S. Dist. Lexis 68959, 2006 WL2620985, *6 (D.Neb. 2006) (broker="analyzing the financial needs of an issuer;" "recommending or designing financing methods; "discussing" details of security transactions," and recommending an investment). The *Cornhusker* case was not a PPM-limited Reg. D 506 closed in fund transaction.

SEC v. Margolin, 1992 U.S. Dist. Lexis 14872, 1992 WL279735 (S.D.N.Y. 1992) (finding that a broker = "receiving transaction-based compensation, advertising for clients, and possessing client funds and securities"). This did not happen in the case at bar. Notably Benyo in her statements (referenced with particularity *infra*) to the FBI identifies her two brokers - spoiler alert: they are not McDuff.

SEC v. Bravata, 2009 U.S. Dist. Lexis 64609, 209 WL 2245649, *2 (ED Mich. 2009) ("the most important factor in determining whether an individual or entity is a broker" is the "regularity of participation in securities transactions at key points in the chain of distribution.") (citing *Martino*, 255 F. Supp. 2d at 283).

SEC v. Kenton Capital, Ltd., 69 F.Supp. 2d 1, 1243 (D. D.C. 1998) ("regularity of participation" as one of the primary indicia of engag[ing] in the business")

The court noted, in other words, transaction-based compensation is the hallmark of a salesman." *Kramer*, 778 F. Supp. 2d at 1334-1335.

The Court noted a line of cases similar to the alleged conduct (to the extent the ALJ finds the testimony credible) of McDuff. In *SEC v. M & A West, Inc.*, 2005 U.S. Dist. Lexis 22452, 2005 WL 1514101 (N.D. Cal. 2005) the Court granted summary judgment *sua sponte* in favor of the defendant on the Commission's Section 15(a) claims. In that case the defendant was involved in reverse mergers doing work much like that a paralegal would do. The Court rejected the Commission's argument that the defendant's conduct amounted to broker activity. The language by the *M & A West* Court is particularly instructive.

> "Th[e] [Commission's] factual recitation capped with an *ipse dixit* sheds no light on why [the defendant]'s activities - commonly associated with paralegals (who draft documents), lawyers (who draft documents and orchestrate transactions), businessmen (who identify potential mergers partners) and opportunists (who like to take a small cut of a big transaction), none of which is commonly regarded as a broker - add up to [the defendant's] being a broker. In particular, no assets were entrusted to [the defendant], and the Commission identifies no evidence that he was authorized to transact 'for the account of others' (aside from his fiduciary authority over [the] accounts [of entities controlled by him]). Although [the defendant] was in the business of facilitating securities transactions among other persons, the Commission cites no authority for the proposition that this equates to 'effecting transactions in securities for the account of others.'"

This is exactly the case in the McDuff case at bar.

After *M & A West* a line of cases developed "so-called finder's exceptions" including ...:"merely bringing together the parties to transactions, even those involving the purchase and sale of securities is not enough" to warrant broker registration under Section 15(a). *Apex Global Partners, Inc. v. Kaye/Bassman Intern. Corp.*, 2009 US Dist. Lexis 77679, 2009 WL 2777869, *3(N.D. Tex. 2009)

"Performing a narrow scope of activities without triggering the broker/dealer registration requirements" *Salaman v. Teleplus Enterprises, Inc.*, 2008 U.S. Dist. Lexis 42112, 2008 WL 227094, *8 (D.NJ 2008) (quoting *Cornhusker*, 2006 US Dist. Lexis 68959, 2006 WL 260985 at *6).

The evidence must demonstrate involvement at "key points in the chain of distribution," such as participating in the negotiation, analyzing the issuer's financial needs, discussing the details of the transaction, and recommending an investment. *Cornhusker*, 2006 U.S. Dist. Lexis 68959, 2006 WL 2620985 at *6.

"Even if the 'finder' receives a fee 'in proportion to the amount of the sale' - i.e., a percentage of the total payment rather than a flat fee - the Commission (in a series of 'no action' letters) 'has been willing to find that there was no need for registration.' " Citing *David A. Lipton*, 15 Broker - Dealer Regulations § 1:18.

The *Kramer* case, 778 F. Supp. 2d 1320 (M.D. Fla - 2011) is additionally instructive for the similarities of the factual basis - McDuff's family, mother, father, uncle, and prior associates from Dobb-White in England provided funds to Lancorp Trust Fund. And in the case of his personal family - invested in Megafund (without G. McDuff's impetus). But in these transactions McDuff provided "back office" support to Terrance de'Ath at Secured Clearing and subsequently MexBank - much akin to a paralegal providing support to an attorney.

McDuff, under this *Kramer/Hansen* construct cannot under any circumstances be construed as acting as a broker/dealer or seeking to become associated with a broker dealer as those terms are defined at law.

McDuff attacks the DOE's evidence, the credibility of its witnesses, the types and quality of the hearsay, the trustworthiness of the hearsay and addresses the ALJ's concerns hereunder.

ARGUMENT

I.
JUDICIAL ESTOPPEL.

The Division of Enforcement seeks to establish that McDuff was:

1) Associated with a broker, or

2) Seeking to be associated with a broker,

3) At the time of the alleged misconduct (undefined date)

4) And while having been previously enjoined.

The DOE is judicially estopped from seeking relief herein due to the testimony of Jessica Magee, [1]DOE trial attorney at McDuff's criminal trial. The Supreme Court in addressing Judicial estoppel in Zedner v. United States, 547 U.S. 489 (2006) noted as follows:

> Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. *Davis v. Wakelee*, 156 U.S. 680, 689 (1985). This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase. *Pengram v. Herdrich*, 530 U.S. 211, 227, n.8 (2000); *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)

...several factors typically inform the decision to apply the doctrine in a particular case:

> First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position...A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *New Hampshire*, 532 U.S. 750-751. (emphasis added.)

Consistent therewith, as the court noted "the doctrine or judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party

[1] Jessica Magee was replaced in this mater by Ms. Janie Frank, however she appears as counsel in support - at the hearing.

in a previous proceeding."; 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4477, p. 782 (1981) ("absent any good explanation, a party should not be allowed to gain an advantage by litigation of one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.") (emphasis added)

The Court held that Judicial Estoppel is designed "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to exigencies of the moment." *New Hampshire*, 532 U.S. 750-752. The Court further took the opportunity in *New Hampshire* to elaborate on judicial estoppel and noted several other courts' positions. *In re Cassidy*, 892 F.2d 637, 641 (7th Cir. 1990) ("Judicial estoppel is a doctrine intended to prevent the perversion of the judicial process"); *Allen v. Zurichins Co.*, 667 F.2d 1162, 1166 (4th Cir. 1982) (judicial estoppel "protects the essential integrity of the judicial process"); *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (3rd Cir. 1953) (judicial estoppel prevents parties from "playing fast and loose with the courts") (quoting *Stretch v. Watson*, 6 N.J. Super 456, 569, 69 A2d 596, 603 (1949)). (emphasis added).

A. DOE's Inconsistent Positions.

1). "My name is Jessica Magee...I'm a trial attorney for the United States Securities and Exchange Commission's Division of Enforcement in the Fort Worth Regional Office of the SEC... [the DOE from Ft. Worth is prosecuting this follow-on proceeding] Since March of 2011, I have been a trial attorney for the Division of Enforcement...Before that, prior to March of 2011, I spent two years as a Staff Attorney at the Division of Enforcement...

> Q: Did you determine whether Mr. McDuff was registered with the Commission?
>
> A: We did make that determination, and he was not and is not.

Q: Did you make the same determination for a gentleman named Robert Reese?

A: Yes Sir.

Q: And what did you find?

A: Not registered.

Q: Did you make the same determination for a gentleman named Gary Lancaster?

A: Yes, sir; Not Registered."

(DOE Tab 54) pp. 314-318.

2). While this is a knowingly false statement by the DOE, Gary Lancaster actually had a Series 6, 7, 63, 65 licenses in the relevant time frame (Lancaster lost his licenses in 2006) (whatever that timeframe is - as it has never been defined by the DOE for purposes of this hearing) the DOE TOOK that position at McDuff's criminal trial in order to falsely convict McDuff, and now in this follow-on proceeding seeks to take the exact opposite position (i.e. that Gary Lancaster was in fact licensed as a broker/dealer and that McDuff was at the unidentified moment in time of the alleged wrongful conduct), seeking to associate with Lancaster or was in fact associated with Lancaster. [2]Twenty-one U.S. District Courts found that Lancaster was licensed and associated with ONESCO in the 2007-2008 time frame - see the cases cited herein - and yet in 2013, Jessica Magee, DOE attorney, despite 21 courts making such findings, despite the DOE allegations to the contrary in McDuff's civil trial, despite Lancaster's multiple depositions testimony to the contrary, despite the SEC's own records of Lancaster's series 6, 7,

[2] Jessica Magee authored the "Motion to Reopen Case," 6/19/2012; "Motion to Reissue Summons," 6/19/2012; "Application for Entry of Default," 9/24/2012 (wherein she specifically pleads that Lancaster is licensed - adopting pleadings as basis for default); "Motion for Entry of Default," 9/24/2012; "Motion for Default Judgment Brief," 2/19/2013. Interestingly the 21 Federal Judges involved in the ONESCO cases, noted herein, which had to do with Lancaster being associated with ONESCO, none noted McDuff's association with Lancaster as a Broker or dealer - which would have also made ONESCO liable for civil damages.

63, 65; despite the SEC records showing Lancaster's licenses being revoked in 2006 - boldly lied to McDuff's criminal jury that Lancaster was not and had never been licensed.

The Supreme Court could not have found a better example of "perversion of the judicial process," or "playing fast and loose with the courts," than the conduct of the DOE herein. There could not be a better example of a court needing to prevent one party from impugning the "integrity of the judicial process" than this case.

First a DOE counsel takes a knowingly false position (testifying under oath) on behalf of the DOE that "Lancaster is not licensed" (when in fact he was) and thereby obtains a criminal conviction, at least based in part, on the knowingly false testimony of Magee and:

Second the DOE seeks a follow-on proceeding wherein the DOE asserts (through Magee, pleadings, Judicial notice...etc.) that McDuff was associated with a broker/dealer or seeking to associate with a broker/dealer - (i.e. Lancaster).

This perversion of the judicial process does not end here. The AUSA who suborned perjury, Shamoil Shipchandler, who offered Jessica Magee's knowingly false testimony is now the head of the DOE Fort Worth Office - who is prosecuting this case. Another example of "fast and loose" with the judicial system. This "systematic perversion" is not offered to impugn, but rather to demonstrate that the false position taken in the criminal trial (Lancaster not licensed) on which the DOE obtained a favorable conviction - was not the result of error or neglect but calculated fiendish and intentional (a knowing perversion, a typical arrow from a pettifogger's quiver). The polar opposite necessity in this case (Lancaster was in fact licensed and McDuff was associated with or seeking to be associated with during the applicable time frame - which is still unknown) should be precluded from being asserted under judicial estoppel.

As if the systemic perversion regarding Lancaster's licensing issue (DOE alleging no license at criminal trial - now asserting *de facto* that Lancaster is licensed in this hearing) were not enough. Ms. Magee further perjured herself regarding the Lancorp filing, her perjured testimony suborned by the now head of the Fort Worth DOE Office, Shamoil Shipchandler. Specifically, Magee testified:

> Q: From your experience with the SEC, are you familiar with the manner in which the SEC maintains and keeps its business records?
>
> A: Yes, I am.
>
> Q: Based on a request from the U.S. Attorney's Office, did you check the registration status of the Lancorp Fund?
>
> A: Yes, I did.
>
> Q: What did you find?
>
> A: The Lancorp Fund was not and never was registered with The United States Securities and Exchange Commission. It did not ever register any offering of securities that it offered or sold to the public.
>
> Q: In some of the documentation it claimed that it was exempt from registration. Based on your analysis, was it exempt from registration?
>
> A: ...The Commission determined that the Lancorp Fund was not registered with the Commission and was not exempt....

(DOE Tab 54, Vol. 2, Case 4:09-cr-00090-RAS-PPB, Dkt. 187, pp. 50-51)

RX 27 is that filing that Ms. Magee lied about in the criminal trial. Specifically, Form D, file stamped by the SEC on May 27, 2003 and processed by the SEC on May 28, 2003. [3]The

[3] Evidence of Jessica Magee's knowingly false testimony is beyond question - as the documents submitted mid-hearing along with testimony of Lancaster in his deposition, Lancaster's sentencing hearing, etc...including the 21 prior cases ONESCO prove - See this post-hearing brief *infra*

DOE also altered documents and DOE witness Loecker described Lancorp Fund as "Lancaster" in the Stan Leitner trial. Both addressed *infra.*

McDuff addresses in detail why, pursuant to statute the PPM qualified as a Reg. D - 506 - restricted security, and that it was not required to be registered, *infra* but be that as it may - this is offered herein to demonstrate intent to testify falsely by Ms. Magee and not as a result of any mistake or unknowing error. Further, McDuff would note that he requested to call Ms. Magee - who was present at the hearing - to testify, a request that was denied by the ALJ [4] her testimony is demonstratively relevant. In any event, the DOE should be judicially estopped from asserting the polar opposite position in a follow-on proceeding from a position it took under oath in the

[4] As the court will recall it announced its acceptance of the criminal trial testimony and its reliance thereon - The DOE's knowingly false testimony in a criminal trial, beyond question, when offered by a DOE attorney, testifying under oath, proffered by another DOE attorney (Shipchandler); creates an unrebuttable presumption of fraud upon the court - for which Judicial estoppel should be applied. For a discussion of Government Misconduct see United States v. Luis Posada-Carriles, 486 F.Supp. 2d 599 (W.D. Tex 2007). In view of Posada-Carriles ethical standard Magee, if she wanted to assert a difference between "filed" and/or "registered" she had to include that in her testimony so as not to give a false appearance or impression to the jury (as to the "Filing" vs. "Registering" the Fund). She did not and as an attorney knew that a knowing material omission which causes the truth to be obfuscated is also perjurious.

criminal trial[5] [6] Any attempt to rebut this obvious perjury should be construed as an attempt to cover up a criminal act and a further obstruction of justice. [7]

II.
THE PPM AS A REG D RESTRICTED SECURITY

The Securities Act of 1933 codified as 15 U.S.C.§ 77 *et seq*. provides some additional guidance. Specifically, 15 U.S.C. § 77d. Exempted transactions: Provides in relevant part; Disqualifying felons and other "bad actors" from Regulation D offerings Act July 21, 2010, P.L. 111-203, Title IX, Subtitle B, § 926, 124 Stat. 1851 specifically does not apply herein (McDuff's prior felony in 1993 is not a qualifying felony even under the new law). The DOE has tried to make a glowing point of the prior felony - in all aspects - civil - criminal - follow-on proceeding - even though it is a non-qualifying felony. (But as noted *supra*, it is not even with the 10-year bar time frame.)

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[5] For purposes of the record, Ms. Magee, DOE attorney, appeared at the hearing, was a witness who was sought to be called, was a prior witness against McDuff in the criminal trial, despite having material evidence regarding the broker/dealer issue - McDuff's request to call Ms. Magee was denied. An attorney's appearance in a case in which they are a witness - other than for attorney's fees is a conflict of interest as a matter of law. (citations omitted)

[6] See also Division Exhibits at 20 "Complaint." Specifically ... [p]1..."Lancaster, a former registered representative, most recently with American Fidelity Securities, Inc. from March 2006 through July 2006. Previously, Lancaster was registered with Sloan Security Corporation from July 2005 through October 2005 and with the O.N. Equity Sales Company from March 2004 through January 2005, Lancaster has held Series 6, 7, 63 and 65 licenses. On September 5, 2006, the NASD barred Lancaster from association with any NASD member in any capacity. Ms. Magee signed numerous pleadings in this case, adopting the allegations of the DOE - and then lied under oath, at Shipchandler's offering at McDuff's criminal trial. (emphasis added) Next, this Judge took judicial notice of the fact at the hearing that "Lancaster was licensed." FRE Rule 201 provides in part:

> (b) The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

FRE Rule 201(b)(2).

[7] Black's Law Defines judicial notice as: "A court's acceptance...of a well-known and indisputable fact; <the trial court took judicial notice of the fact that water freezes at 32 degrees Fahrenheit.> Black's Law Dictionary, 10th ed. This was done as a basis to deny Magee as a witness - The judicial notice itself is sufficient for a perjury finding. (citations omitted)

Initially under 15 U.S.C.§ 77e the SEC has to prove three elements to make a *prima facie* case for a security. In *SEC v. Ralston Purina Co.*, 346 US 119 (1953) the court discussed the broad remedial purposes of federal securities legislation, imposition of burden of proof on the issuer who is arguing for exemption from a public offering. Id.

Once the SEC has proven all three elements then it becomes the corporate offeror's burden to prove it is entitled to claim an exemption. 15 U.S.C. § 77d(2). The three elements are set out in *SEC v. Ralston Purina Co.*, 346 US 119 (1953) below:

The SEC Elements that must be proven are:

(1). No registration statement was in effect as to the securities.

(2). Defendant sold or offered to sell these securities. And;

(3). Interstate transportation or communication and mails were used in connection with the sale or offer of sale. (Emphasis added).

There is no evidence, nor did the DOE even attempt to establish any underlying basis for element (3) the "Interstate transportation as communication..." for purposes establishing a requirement for the "Private Placement Memorandum" (PPM) to become a "purported security" which calls into question the actual Jurisdiction and/or premise of the hearing. Had the DOE made its *prima facie* showing of a "public offering"; the burden would have been on the issuer for an exception - however, no such *prima facie* showing was made.[8]

[8] For Example - in SEC v. Hansen 1984 U.S. Dist. LEXIS 17835, Fed. Sec. L. Rep. (CCH) P91, 426, The court..."concluded that the dealer used the mails and other instrumentalities of interstate commerce to induce and attempt to induce the sale..." Both Benyo and Biles testified they met in person with McDuff who was also in Houston - no testimony of interstate commerce alleged to be involved in the "sale" of any transaction - involving McDuff and any purported party. New allegations of interstate commerce is not sufficient as the circuits and Supreme Court have held recently "it requires substantially more" - actual documentation of transactions in interstate commerce. "Significant here is that the DOE cannot rely on the Civil or Criminal documents for this element (from the default or criminal trial). This is so because of the nature of conspiracy vs. the charges in this follow-on proceeding. In a conspiracy (alleged in both the civil case and the criminal cases) the actions of one member of the conspiracy may be attributed to each of the members of the alleged conspiracy - including the

Next, in referencing the "Bad Actor" disqualification and felon discussion in Lancaster's sentencing transcript - accepted prior to the hearing by the ALJ - (April 11, 2016) that was not even applicable (i.e. "Gary McDuff could not be licensed...etc.") as that provision was enacted on July 21, 2010, *supra* and the entire time frame of the purported conduct (presented as it has not been defined by the DOE) was between 2001-2005. (RX 61) Further there is no way Lancaster would have even known the existence of the new law - "Quilling: Dumb as a box of rocks!" - no doubt another lie suborned by the DOJ.

III.
RELEVANT SECURITY AUTHORITY REGARDING BROKER-DEALER

§ 780[(n)](k) Standard of Conduct: provides in part;

(1). "...The receipt or compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer."

§ 230.405 Definition of terms: provides in part;

Affiliate. An affiliate of, or person affiliated with, a specified person, is a person that directly, or indirectly, through one or more intermediataries, controls or is controlled by, or is under common control with, the person specified.

Associate. The term associate, when used to indicate a relationship with any person, means (1) a corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities. (Emphasis added).

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interstate element. However, here there is not a "conspiracy allegation" or a "conspiracy to associate" etc...with a "broker." The analysis is inapposite and therefore direct evidence is required to establish the interstate element.

Section 3(a)(4) of the Exchange Act, 15 U.S.C. § 78c(a)(4) defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."[9] Under section 3(a)(5) of the Exchange Act, 15 U.S.C. § 78c (a)(5), a dealer is defined as "any person engaged in the business of buying and selling for his own account...but not as part of some regular business." The courts that have considered the provisions have required a showing that the alleged broker or dealer was characterized by "a

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[9] Undisputed that the alleged funds to McDuff were paid to MexBank. And as numerous Affidavits, depositions, and documents attached hereto establish as a matter of law, MexBank was a foreign bank as that term is defined by the SEC. 12 USCS ||3101(7) "foreign bank" means any company organized under the laws of a foreign country...which engages in the business of banking...For purposes of this Act the term "foreign bank" includes without limitation...other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

15 USCS § 78c "Definitions and application"
(4) Broker
(A) In general. The term "broker" means...
(B) Exception for certain bank activities. A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities...:
(i) Third party brokerage arrangements. The bank enters into a contracted or other written arrangement with a broker or dealer registered under this title
(ii) Trust activities
(iii) Permissible security transactions
(II) exempted securities
(emphasis added)
(5) Dealer
(A) In general. The term "dealer" means...
(C) Exception for certain bank activities. A bank shall not be considered to be a dealer because the bank engages...
(i)
(II) exempted securities
(emphasis added)
E.g. MexBank and its employee McDuff is not subject to the "Broker" or "Dealer" definitions. The DOE bears the burden to demonstrate that MexBank did not qualify as the provision is not an affirmative defense - rather a statutory provision. Quilling's nonsensical allegations do not stand - as he did nothing to check them out (the McDuff entities) - and confesses such negligence in the hearing (HT p.141:19-142:5) (HT p.219:12-221:15)

At the outset the "broker" or "dealer" determination cannot be made, as the DOE attempts to do in the criminal context. McDuff [UNDERLINE] was [END UNDERLINE] or [UNDERLINE] was not [END UNDERLINE], as this ALJ will initially determine acting as a "broker" or "dealer," as those terms are defined, at the time (date of specific action still as yet undefined) in question. This determination is independent and separate of whether there was wrong doing or fraud or any other improper conduct alleged by the DOE. The criminal conduct, or deceptive conduct, or whatever improper conduct the DOE chooses to allege is to bias the ALJ is not material to the "broker" or "dealer" issue. [UNDERLINE]Kramer[END UNDERLINE] and [UNDERLINE]Hansen[END UNDERLINE] set out the elements for the ALJ to consider...notably "conspiracy" or "fraud" or "failure to disclose"...or anything else the DOE has surreptitiously alleged about McDuff is not germane the "broker" or "dealer" issue.

certain regularity of participation in securities transactions at key points in the chain of distribution." *SEC v. Hansen*, 1984 W. L. 2413 at *10 (S. D. N.Y. April 16, 1984) citing *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F.Supp. 411, 415 (D. Mass.), affd 545 F.2d 754 (1st Cir. 1976), *cert. denied*, 431 U.S. 904 (1977).

Factors to be considered in Broker determination:

1). Whether McDuff was an employee of the issuer [Lancorp];

2). Whether McDuff received commissions as opposed to a salary;

3). Whether McDuff was selling, or had previously sold, the securities of other issuers;

4). Whether McDuff was involved in negotiations between the issuer and the investor;

5). Whether McDuff makes valuations as to the merits of the investment or gives advice; and

6). Whether McDuff was an active rather than a passive finder of investors. *SEC v. Hansen*, citing N. Wolfsan, R. Phillips & T. Russo, Regulations of Brokers, Dealers and Security Markets. § 1.06 (1st ed. 1977) at 1-12.

A. Analysis and Application

The statutes establish that an alleged "commission" payment is not sufficient to establish the Broker/Dealer designation.

The term associate, used by the DOE intermittingly in this case clearly does not fit any of the allegations of the DOE or evidence proffered by the DOE in support of its allegations.

MexBank was a private investment bank, duly licensed by Mexico and qualifies as a bank under section 3(a)(4) of the Exchange Act. Quilling testimony notwithstanding - as he did nothing to investigate - see *infra* section IV herein impeaching Quilling. See also Coffman Affidavit attached hereto. (RX 69) (RX 12) (RX 57) (Evidence of MexBank Existence)

The term "dealer" as defined by section 3(a)(5) of the Exchange Act, 15 U.S.C.§ 78c (a)(5) does not apply to McDuff as none of the testimony offered at the hearing or in support thereof established that McDuff was "engaged in the business of buying" or "selling for his own account.... but not as part of some regular business." There was no testimony that McDuff was characterized by "a certain regularity of participation in securities transactions..." nor was there any identification of the "key points" at which McDuff was involved "in the chain of distribution.". (emphasis added)

B. Factors in Broker determination, used in *Hansen*, do not fit McDuff.

1). It is undisputed that McDuff was not an employee of Gary Lancaster or Lancorp Group, Lancorp Fund.

2). It is undisputed that McDuff (giving the DOE's broadest interpretation, McDuff asserts that MexBank was paid a profit payment) was not paid a commission as opposed to a salary - McDuff received neither a commission nor a salary. The DOE alleged that a Joint Venture agreement which paid "profits" was somehow a "commission." That is simply ludicrous. See Black's Law Dictionary 286 (8th ed. 2004) defining a "commission" as "a fee paid to an agent or employee for a particular transaction." "A fee paid to an agent or employee for transacting a piece of business or performing a service..." Webster's Third New INT'L Dictionary of he English Language Unabridged 457 (1993). The definition of "paid" is "receiving pay; marked by the reception of pay...." Webster's *supra* at 1620. (Emphasis added). These definitions suggest that "commissions" are not commonly understood to be payments that are actually received by an employee. Plain language is interpreted in "an ordinary popular sense as would a person of average intelligence and experience, such that the language is given

its generally accepted meaning if there is one." *Keszenheimer v. Reliance Standard Life Ins. Co.*, 402 F.3d 504, 507 (5th Cir. 2005) (Emphasis added).

Further, McDuff would object to the inclusion of the term "employee" or "agent" as applied to McDuff or any evidence thereof purported to support such terms (or to be alleged by the DOE in any post-hearing submission). Specifically, the DOE must provide pleadings and proof to support any proposed judgment. There are no pleadings to support purported proof of "agent" or "employee" relationship as they relate to Lancorp or Lancaster and McDuff. McDuff objects to trial by consent, and specifically notes that the DOE did not plead any agency relationship or employer relationship between Lancaster or Lancorp and McDuff. (Lancaster specifically denies such relationship.)

Further still, the DOE pled that McDuff was in a controlling position (which is expressly denied), but in any event there are no pleadings to support an employee or agency relationship and therefore by definition no "commission" could have been paid.[10]

Alternatively, there is no evidence of either an agency relationship or employee relationship between McDuff and Lancaster or Lancorp. Judicial notice requested.

3). It is undisputed that McDuff did not, was not; and never had previously sold the securities of other issuers and there is no evidence thereof (McDuff argues these in the alternative, while specifically denying that he was a broker/dealer, employee, agent or waiving any prior arguments).

4). It is undisputed, or there is insufficient evidence to support that McDuff was involved in negotiations between Lancorp and any investor. (The PPM was a complete closed contract.) (e.g. "parloe evidence" rule).

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[10] McDuff was unable to locate a term of art definition of "commission" specifically on point for this section and therefore applies the general meaning from Black's Law and Webster's.

5). It is undisputed that McDuff never made a "Valuation" of the investment. See the PPM. No testimony that McDuff made a "valuation" as that term is defined. ("The estimated or determined market valve of a thing"). The Merriam Webster Dictionary, 6th ed. 2004, 797. (Benyo and Biles testify to an example of the fund being used "the investments would be used to assist large corporations like Disney with financing" - not an allegation of a market valuation.)

6). The term advice is defined as "Guidance offered by one person...to another." Black's Law Dictionary, 10th ed. 2009, 65. Independently, "advice" is completely subjective and doesn't provide the ALJ a basis for interpretation. However, when reading in context - as the law requires - "advice" and "valuation" - or "guidance" and "valuation" when read together - there is no evidence that McDuff provided any "guidance" or "advice" as to the "valuation" of the PPM.

7). There is no dispute that McDuff was passive rather than active, even granting the DOE's allegations the broadest interpretations, for purposes of "finding investors." The DOE alleged that "Reese" was the active solicitor of investors not McDuff. See further documentation of the testimony *infra*. McDuff does not abandon his position that he did not solicit or "sell" or "guide" or "recruit" any investor as opposed to merely providing information - and argues in the alternative. (Specifically Lancaster deposition.) McDuff posits also the *Apex Global Partners, Inc. v. Kaye/Bossman Intern. Corp*, holding that "merely bringing together parties to transactions...involving the purchase and sale of securities..."is not a broker."

8). Addressing "Affiliate." The DOE allegations or proof do not plead or address the term of art "Affiliate" and offers no proof to support the use or implication of an "Affiliate" relationship as it pertains to McDuff.

9). Addressing "Associate." The DOE does use the term associate or its variations, but does not distinguish between the term of art "associate" and the common use definition ("to

join together; connect; combine; to bring (a person) into relationship with oneself or another as companion, partner, friend, etc..." Webster's New World College Dictionary 4th Ed. 2012, 86) and the term of art. The failure to do so, and attempts at conflagration are fatal to the DOE's arguments regarding "associate" or "associated" or "association.", as used interchangeably in their pleadings, motions, brief and arguments. Thereby the DOE's failing to establish with specificity a proper claim such that in their pleadings and motions - the unartful construction denies proper Due Process - Notice to McDuff.

C. The *O.N. EQUITY SALES CO., v. Allen Samuels, et al.* 2007 U.S. Dist. Lexis 90332, No. 8:07-cv-1091-7-23TGW (M.D. Fla. November 30, 2007) establish the following:

Notably McDuff or some conspiracy involving McDuff or McDuff's control, direction, or even mention is not contained in one of the 20 plus civil cases involving Lancaster, Lancorp Fund, or Lancorp Group. This begs the question "how is it possible more than 20 United States District Judges, reviewed 1000's of pages, depositions and declarations of Lancaster and others; Lancaster was an associate to ONESCO under the proper declaration by the court, but there was no mention of McDuff's name as an associate?" Biles, who was a witness in the case at bar received a settlement from the ONESCO case settlements (HT p.256:6-260:8) but yet in those cases - no mention of McDuff.

ONESCO CASE FINDINGS

1). Lancaster was an experienced investment representative who organized the Lancorp Financial Fund Business Trust ("Lancorp Fund").

2). "In March 2003, Lancaster generated and began circulating a PPM to sell investors in the fund."

3). The PPM provided that "at any time before or after the initial closing date and before the maximum number of the Investor Shares have been sold, the Trust may terminate the offering."

4). Thereafter, Lancaster sought to replace the insurance element with a valid written obligation from a financial institution.

5). A letter was sent to investors on March 12, 2004, regarding insurance arrangement allowing a full and immediate refund. (DOE 64)

6). A second letter was sent by Lancaster on April 5, 2004, announcing changes to insurance and allowing withdrawal. (RX 60) (RX 55)

7). Both the PPM and the Subscription Agreement provided that [investor] money was to be held in escrow until Lancorp Fund's closing date and that Lancaster had complete discretion to modify, withdraw, or cancel the offering at any time up until that date. Importantly, that closing did not occur until May 14, 2004, two months after Lancaster had become a registered representative of [O.N. Equity Sales Co.] In addition, Lancaster made a change to the offering that required [investor] to confirm or rescind his decision to invest in Lancorp. Id: See also (RX 60) (DOE Tab 55, p.952).

D. The Court in *O.N. Equity Sales Co. v. Pals, et al*, 551 F. Supp. 2d. 821; 2008 U.S. Dist. Lexis 36676, No. C 07-4049-MWB (N.D. Iowa, May 5, 2008) establish the following:

1). The court also found that, [ ] the record showed beyond dispute that the terms of the Lancorp Fund private placement offering were materially changed in April 2004, which required all subscribers to confirm their subscriptions or receive a return of their funds..." (change in the purchase position)

2). The court finds [] the important fact is that investors were required to reconfirm their investment in the Lancorp Fund by May 14, 2004, in order to continue their investment in the Lancorp Fund.

3). The "associated person" was Lancaster vis a vis ONESCO - no mention of McDuff (not in more than 20 separate cases or actions).

4). The record shows beyond dispute that "the terms of the Lancorp Fund private placement offering were materially changed in April 2004..."

E. The following are a list of cases in which various facts and findings regarding Lancorp Fund are made by U.S. District Courts in 2007-2008. Notably.

1). No sale of Lancorp Fund shares were made before 2004 (April) and there was no testimony or allegation that McDuff (post April) in 2004 made any sales - the testimony had to do with the 2003 timeframe. (ONESCO analysis)

2). Material change in PPM - required a reconfirmation in April 2004 at the earliest - which under some instances could be construed as a "sale" date - but by which McDuff was not involved - precluding a finding on the broker/dealer issue - especially considering the definitions of broker/dealer *supra*.

3). The placement into escrow of investment funds does not constitute a sale. The only testimony was that funds were placed in "escrow" as a result of McDuff's introductions (using the broadest of interpretation in favor of the DOE - which is expressly denied by McDuff).

4). The ONESCO cases are:

A. *The O.N. Equity Sales Company v. Steinke*
504 F.Supp. 2d 913, August 27, 2007 U.S. Dist. LEXIS 64842
(Central District of California)

B. *The O.N. Equity Sales Company v. Pals*
509 F.Supp. 2d 761, September 6, 2007 U.S. Dist. LEXIS 66121

(Northern District of Iowa, WD)

C. *The O.N. Equity Sales Company v. Venrick*
508 F.Supp. 2d 872, September 17, 2007 U.S. Dist. LEXIS 68866
(Western District of Washington)

D. *The O.N. Equity Sales Company v. Gibson*
514 F.Supp. 2d 857, October 1, 2007 U.S. Dist. LEXIS 74763
(S.D. of West Virginia)

E. *The O.N. Equity Sales Company v. Prins*
519 F.Supp. 2d 1006, November 6, 2007 U.S. Dist. LEXIS 82748
(District of Minnesota)

F. *The O.N. Equity Sales Company v. Wallace*
2007 U.S. Dist. LEXIS 84945
(S.D. California), November 15, 2007

G. *The O.N. Equity Sales Company v. Samuels*
2007 U.S. Dist. LEXIS 90332
(M.D. Florida), November 30, 2007

H. *The O.N. Equity Sales Company v. Rahner*
526 F.Supp. 2d 1195, November 30, 2007 U.S. Dist. LEXIS 90197
(District of Columbia)

I. *The O.N. Equity Sales Company v. Emmertz*
526 F.Supp. 2d 523, December 19, 2007 U.S. Dist. LEXIS 93405
(Eastern District of Pennsylvania)

J. *The O.N. Equity Sales Company v. Thiers*
590 F.Supp. 2d 1208, January 10, 2008 U.S. Dist. LEXIS 3765
(District of Arizona)

K. *The O.N. Equity Sales Company v. Cui*
2008 U.S. Dist. LEXIS 6828
(N.D. of California), January 16, 2008

L. *The O.N. Equity Sales Company v. Charters*
2008 U.S. Dist. LEXIS 74403
(M.D. of Pennsylvania), January 25, 2008

M. *The O.N. Equity Sales Company v. Nemes*
2008 U.S. Dist. LEXIS 9189
(N.D. of California), January 28, 2008

N. *The O.N. Equity Sales Company v. Staudt*
2008 U.S. Dist. LEXIS 7777
(District of Vermont), January 30, 2008

O. *The O.N. Equity Sales Company v. Cattan*
2008 U.S. Dist. LEXIS 9827
(S.D. of Texas), February 8, 2008

P. *The O.N. Equity Sales Company v. Broderson*
2008 U.S. Dist. LEXIS 11447
(E.D. of Michigan), February 14, 2008

Q. *The O.N. Equity Sales Company v. Pals*
528 F.3d 564, March 10, 2008 U.S. App. LEXIS 12252
(Eighth Circuit Court of Appeals)

R. *The O.N. Equity Sales Company v. Stephens*
2008 U.S. Dist. LEXIS 71623
(N.D. of Florida), March 28, 2008

S. *The O.N. Equity Sales Company v. Pals*
551 F.Supp. 2d 821, May 5, 2008 U.S. Dist. LEXIS 36676

T. *The O.N. Equity Sales Company v. Gibson*
553 F.Supp. 2d 652, May 15, 2008 U.S. Dist. LEXIS 39763
(S.D. of West Virginia)

U. *The O.N. Equity Sales Company v. Emmertz*
2008 U.S. Dist. LEXIS 5219
(E.D. of Pennsylvania), July 30, 2008
71 Fed. R. Serv. 3d (Callaghan) 320

V. *The O.N. Equity Sales Company v. Robinson*
2008 U.S. Dist. LEXIS 111778
(E.D. of Virginia), August 25, 2008

5). The DOE neglects to make any attempt to establish a date of sale, or any of the requisites for determining any of the factors noted *supra* which would be used to distinguish a "sale" vs. an "introduction." (The US District courts found that occurred when Lancaster sent the insurance acknowledgement - a material intervening event.) The DOE's failure to do so is fatal to their obligations to plead and prove to this court their basis for a judgment. Specifically, ¶ 1-19 fail to allege any act attributable to McDuff (i.e. you can't conspire to be a broker/dealer) that is germane to the broker/dealer issue. [Dkt. 1] (underlying civil case). (DOE Tab 20).

There is no allegation in the complaint that McDuff was a Broker/Dealer. No allegation of an affiliation (term of art) with a broker/dealer. No allegation of sales as a broker or dealer. As a result, and in view of no time frame allegation of sales by the DOE there are insufficient pleadings to support any judgment regarding the Broker/Dealer issue.

McDuff hereby objects to a variance between the pleadings - which fail to state anything re: the broker/dealer issue - see March 26, 2008 "complaint"(DOE Tab 20) [Dkt. 1] and the DOE's attempt at proof (DOE Tab 26) [Dkt. 39]. The failure of the DOE to properly plead (1) a relevant time frame for the Broker/Dealer issue (when the alleged sales took place); (2) that

McDuff acted as a broker/dealer in the context of a security sale (e.g. McDuff could under the pleadings have been alleged to do so, but alas the DOE used conspiracy language - but McDuff - as a matter of law could not "conspire to be a broker/dealer"); (3) did not allege elements of the Benyo or Biles sale in the complaint which could somehow be construed as the broker/dealer issue; (4) no allegation relevant to the broker - dealer issue is alleged in the complaint (DOE Tab 20) [Dkt. 1].

The record is still open (follow-on proceeding) and the matter was not tried to a jury, no waiver has occurred as a matter of law and McDuff objects to a variance in the pleadings and attempted proof such that no judgment rendered by this judge on a broker/dealer issue can be sustained because there are no pleadings to support the judgment. McDuff further objects to any trial amendment or to an amendment of the pleadings post-hearing as fundamentally unfair in view of the late delivery of DOE's investigative file - and should the ALJ consider such an amendment, requests an additional hearing to be able to impeach DOE witnesses and documents with the newly discovered evidence - (newly produced to McDuff).

F. Follow-on Proceeding - Improper Venue

1). As the court is aware, McDuff filed a Motion to Set Aside Judgment for Improper Service (DOE Tab 28) [Dkt. 41] SEC v. McDuff, Civ. Action No. 3:08-CV-0526-L. The DOE filed their response [RX. 65] and [RX. 66 - Appendix]. While the U.S. District Court/Appellate Court will resolve this service issue, a subsequent venue issue will be filed as a follow up - the gravamen of the argument for purposes of this follow-on proceeding is that - it cannot be reasonably disputed that the court lacked venue and in personam jurisdiction.

2). Section 1391 provides the initial venue statute;

a). Applicability of section. "Except as otherwise provided by law...". (Emphasis added).

b). In Securities actions, venue is proper "in the district wherein the defendant is found or is an inhabitant or transacts business." 15 U.S.C. §§ 774(a), 78(aa); see also 15 U.S.C. § 80b-14. Interesting to note is the fact that the DOE pled these exact statutes in their poorly pled complaint, see [Dkt. 1] *SEC v. McDuff*, Civ. Action No. 3:08-CV-0526-L ¶ 4, as the basis for jurisdiction and venue.

3). Now, in view of Ms. Frank's report [RX 65] and her appendix there to [RX 66] and in consideration of (DOE Tab 26) [Dkt. 39] "Plaintiff's Motion for Default Judgment as to Defendant Gary L. McDuff and Brief in Support (page 4 ¶ 3) ("McDuff is currently incarcerated in the Fannin County Jail in Bonham, Texas") this case should be dismissed.

4). A defendant may move to dismiss a lawsuit for improper venue, Fed. R. Civ. P. 12(b)(3). McDuff, by the DOE's own pleadings has not subjected himself to the court's authority. ("...McDuff, who has failed to answer, plead, or otherwise defend this action.") (DOE Tab 26) [Dkt. 39] p. 1 ¶ 2; ("...Special appearance") (DOE Tab 75) [Dkt. 9]; ("...he would 'not consent' to these proceedings.") *Id.* at p. 2.

5). As Ms. Frank's and Ms. Magee's pleadings have made abundantly clear – facts that are incapable of being rebutted, McDuff was found in Fannin County which is the Eastern District of Texas, McDuff at the time of service resided in Fannin County Jail - also in the Eastern District of Texas. Notably, McDuff was alleged to be conducting business in Mexico by the DOE. Id.

6). Black letter law establishes that before entering a default judgment for damages (DOE sought penalties, disgorgement, pre-judgment interest), the district court must ensure that the well-pleaded allegations in the complaint, which are taken as true due to the default, actually

state a substantive course of action and that there is a substantive, sufficient basis in the pleadings for the particular relief sought. At that point, the defendant, even though in default, is still entitled to contest the sufficiency of the complaint and its allegations to support the judgment being sought. A defaulted defendant also can defend by challenging the jurisdiction of the court to enter judgment against him. Thus, for example, a defendant on default still can challenge the validity of service of process or contest the court's exercise of personal jurisdiction over him.

7). While "a default is not treated as an absolute confession by the defendant of his liability and the plaintiff's right to recover," a defaulted defendant is deemed to "admit [] the plaintiff's well-pleaded allegations of fact." *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). The defendant, however, "is not held to admit facts that are not-well-pleaded or to admit conclusions of law." Id.

8). Thus, before entering a default judgment for damages, the district court must ensure that the well-pleaded allegations in the complaints, which are taken as true, support the default. See *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005) (Citing *Nishimatsu*, 515 F.2d at 1206).

9). Here, the DOE has pled themselves out of court in their unfounded rush to judgment. As the following evidence which impeaches the DOE's entire case demonstrate, the DOE used false and misleading accusations and allegations to fabricate testimony and obfuscate the truth of the underlying events. McDuff addresses all the additional evidence, rebutting not just the broker/dealer issue, but the testimony of the witnesses called to testify herein to establish bias, credit worthiness, hearsay context, etc, to establish a basis for the ALJ to determine the credibility and veracity of the witness called by the DOE. See Section IV herein *infra*.

10). As the Hobson's choice the DOE now finds themselves in, either their underlying civil action was well pled, in which case McDuff was found and inhabiting the Eastern District of Texas (asserted by the DOE); or the underlying civil pleading (for which this follow-on proceeding is predicated upon) was not well-pled and the evidence is therefore not sufficient for a default judgment and the injunction fails. Either way, there is no foundation for this case/hearing.

11). Finally, the evidence attached to (DOE Tab 26) [Dkt. 39] in the civil cases demonstrates that venue in the civil case is in the Eastern District; purporting to show transactions in the Eastern District for purposes of the criminal case - but in the Northern District for the civil case...another judicial estoppel issue. However, in this case a civil judgment was issued in the Northern District (claiming *in personam* jurisdiction) first and then a criminal verdict was claimed in the Eastern District of Texas claiming *in personam* jurisdiction - using the exact same testimony and evidence by the government. Truly a "perverse twist of the judicial system;" more playing "fast and loose" with the courts.

IV.
THE DOE WITNESS AND OTHER EVIDENCE WERE NOT CREDIBLE

Initially, McDuff is grateful for this follow-on proceeding. But for the follow-on proceeding, McDuff would not have received the thousands and thousands of pages of documents, depositions, 302's, and other documentary evidence demonstrating the vast scope and breadth of the DOE and Quilling's fraud upon the various courts. McDuff addresses the Broker and Dealer issues herein, and tangentially the credibility of the witness who "mis-remember" out of convenience or more likely perjured themselves as will be documented herein. Not only are the witnesses' testimony internally inconsistent, they ignore dozens of other

contradictory statements and documents that rebut wholesale the allegations of the DOE. McDuff notes the statements of the witnesses and subsequently notes a portion of the rebutting evidence thereunder. All of this evidence is newly discovered post criminal conviction and will support McDuff's 33b Motion for New Trial based on newly discovered evidence. In any event, the evidence demonstrates conclusively that McDuff does not qualify as a "broker" or "dealer" and was not a "broker" or "dealer" as defined by the SEC.

Evidence, although relevant, may be relevant for specific grounds, may be admitted for those specific grounds but not considered for other grounds; McDuff initially objected to the wholesale admission of the DOE's evidence because the hearsay evidence was (a) not properly authenticated (to the extent it was documents) or properly delineated for any particular exception to the hearsay rules. And while the admissibility of hearsay is permitted in these administrative hearings, the judge being the one to determine the weight to be afforded the evidence, the issue is one of context. The judge was not afforded a proffer or explanation by Ms. Frank as to the basis of the hearsay that she proffered wholesale and therefore the ALJ is without context to determine the weight, the scope, or the basis for the hearsay and without any explanation of the purpose that the hearsay is offered it should be rejected. In the Matter of the Application of Joseph Abbondante, referenced by the court, as to hearsay, cites to *Calhoun v. Bailer*, 626 F.2d 145, 148 (9th Cir. 1980) for purposes of a hearsay determination in an administrative hearing (The factors to consider include the (1) possible bias of the declarant, the (2) type of hearsay at issue, (3) whether the statements are signed and sworn to rather than anonymous, (4) oral or unsworn, (5) whether the statements are contradicted by direct testimony, (6) whether the declarant was available to testify, and (7) whether the hearsay is corroborated.) Citing *Calhoun*, 626 F.2d at 149.

However, *Calhoun v. Bailer* deserves a second look.

In *Calhoun*; "At the administrative hearing, the officer who took the affidavits laid a proper foundation for this admission, testifying that each affiant was warned both orally and in writing of his or her constitutional rights and was given opportunity to review and revise the statement before swearing to it. The affidavits were received into evidence without objection. No later motion to strike the affidavits was made." *Id.* at 147. Because *Calhoun* forms the basis of *Abbondante* hearsay analysis - *Calhoun* is entitled to a thorough discussion.

The court in *Calhoun* lays out a step by step analysis for the ALJ to follow regarding hearsay. The Court "began with a recognition that strict rules of evidence do not apply in the administrative context." See *Marlowe v. Immigration and Naturalization Service* (9th Cir. 1972) 457 F.2d 1314, 1315 (*per curium*); *Navarette-Navarette v. Landon* (9th Cir. 1955) 223 F.2d 234, 237, *cert. denied* 241 U.S. 911. "The Administrative Procedures Act provides that 'Any oral or documentary evidence may be received, 'but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A Sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by an in accordance with the reliable, probative, and substantial evidence.'" U.S.C.S. § 556(d) (emphasis added and in original) See. K. Davis Administrative Law Treatise § 14.05. ("Rules of evidence are not applied strictly..." 5 C.F.R. § 771.116(f)(3)) (Irregular cite format in original)

As the Calhoun court noted "there [is] no administrative rule of automatic exclusion for hearsay evidence, but the only limit to the admissibility of hearsay evidence is that it bear satisfactory indicia of reliability... hearsay [must] be probative and its use fundamentally fair."

See *Hodnsilapa v. INS* (9th Cir. 1978) 575 F.2d 735, 738, modified 586 F.2d 755; Marlowe v. INS. *supra*. (emphasis added).

"Thus," the court ruled, "it is not the hearsay nature *per se* of the proffered evidence that is significant, it is its probative value, reliability, and the fairness of its use that are determinations." Citing *Richardson v. Perales*, 402 U.S. 389, 407-408 (1971) *Id.* at 148-150 (evidence must be reliable and credible)

The court in *Calhoun* noted that evidence must be determined by several factors: Does the evidence (1) "bear indicia of reliability"; (2) declarant must be independent; (3) possible bias must be considered; (4) statements signed and sworn as opposed to anonymous, oral, or written; (5) declarant available to testify; (6) other evidence available; (7) whether hearsay is corroborated. The Court finally noted F.R.E. Rule 803(24) on the standards of admission of hearsay relying on the "*circumstantial guarantees of trustworthiness*". Id. at 145-150. (emphasis added).

We therefore have a seven-part test to follow for purposes of hearsay in administrative hearings. The seven parts are:

(1). Possible bias of the declarant

(2). Type of hearsay at issue

(3). Whether the statements are signed and sworn to rather than anonymous

(4). Oral or written or unsworn

(5). Whether the statements are contradicted by direct testimony

(6). Whether the declarant was available to testify

(7). Whether the hearsay is corroborated.

Using the above seven-part test to analyze the hearing testimony - the DOE's testimony and theories and arguments are more suited for a Monty Python script than a court of law.

Initially, McDuff objected to the hearsay and the court (ALJ) granted a standing objection to all of it. Next, the hearsay proffered fails virtually all of the elements of the seven-point test, individually and certainly in total, as demonstrated below. As additional guidance McDuff notes the following authority.

"Evidence based on possibilities rather than probabilities is incompetent." *City of Pearland v. Alexander*, 483 S.W. 2d 244, 247 (Tex. 1972)

A. BENYO

1) Initially, Benyo testified that she destroyed evidence material to this case. (HT 48, 20-49, 6) McDuff is entitled to an adverse inference that the evidence she destroyed was supportive to McDuff. McDuff requests such an inference.

2) McDuff is entitled to an inference that the evidence destroyed by BOP officer Michael was favorable to McDuff. (Office of Inspector General specifically queried, "Do you know who asked him to do this?"). McDuff requests such an inference.

3) Benyo testified about two meetings with McDuff (HT p.22-26) Actually only one meeting took place. See declaration of McDuff and Levoy Dewey. (RX 70 and RX 41).

4) Benyo testified "it was all the money I had in the world." (HT p.27, 8-9) But on cross-examination - that it was not all the money that she had.

> "Q: Do you recall saying in the criminal trial that was all the money you had in the world?
>
> A: Yes.
>
> Q: Was that true?
>
> A: I had some money from a Life Insurance Policy...

Q: Why did you say that was all the money you had...

A: Well, everybody has to have a Slush Fund (HT p.78, line 4-12)

See also (CRT p.99-8-10) (DOE TAB 53).

Q: Was this all of the retirement money you had?

A: It was every penny of money I had left in the world"

5) Benyo testified that McDuff "recommended" the Lancorp Investment to her (at this second meeting that did not actually occur). (RX 70) (RX 41) See McDuff declaration, Levoy Dewey declaration. (HT p.27:16-18.)

6) Benyo testified she called McDuff to get answers to questions about PPM. (HT, p. 27:19-28:8) (Again after this phantom second meeting that did not occur).

7) Benyo testified that insurance was important to her (HT p.31:6-20) But later testifies that she knew there was no insurance (HT p.88:9-92:3). See also criminal trial where Benyo lies about insurance (CRT p.102:7-103:1) (DOE Tab 53).

8) Ms. Frank asks questions such as "Who did you think he was?" [referring to McDuff] (HT p.32:21-22) as opposed to "Who did McDuff say he was in relation to Lancorp?" soliciting rank speculation on the part of Benyo.

9) Ms. Frank asked questions about McDuff's prior felony. (HT p.33:7-12) But failed to note McDuff had a website that disclosed his status as a felon, (see www.GaryMcDuff.com (RX 17) or to note that his felony is irrelevant in the security context.

10) Ms. Frank solicited knowingly misleading and false testimony from Ms. Benyo regarding Reese. (Did he mention that he had an associate named Robert Reese who had been barred by the state of California?) (HT p.33:13-22) (Reese had a Desist & Refrain Order, not a Bar - see DOE Tab 12.). Ms. Benyo's investment with Lancorp and all her material

conversations with McDuff were in 2001-2003. In fact, she reaffirmed her investment without the insurance on April 9, 2004. Reese's California bar did not occur until August of 2004!! It would have been impossible for McDuff to notify Benyo about an event that had not occurred. Her Overseas Bank investment was years before Reese's California Order. That Order was 18 months before as to her initial bank investment and four months after she reaffirmed her Lancorp I investment in April of 2004. See Reese California Order attached hereto as DOE TAB 12 (Gov. Exhibit 33, *USA v. McDuff*); See Benyo acknowledgment of no insurance (RX 60); McDuff seeks Judicial notice that he could not, as a matter of law, have advised Benyo (or Biles for that matter whose no insurance acknowledgment was also signed in April of 2004) or Biles about an event that had not occurred. McDuff further seeks Judicial notice that April 2004 is prior to August 2004.

See also Benyo's October 29, 2006 302 - wherein she states she made her initial investment in Lancorp on March 25, 2003 and wired her funds to her Broker Retirement Accounts Inc., who wired her funds on April 3, 2003. (RX 4-A) (RX 4-B) (RX 4)

See also Benyo's Retirement Accounts Inc. Statement for a CD from 10/9/2001 to 10/9/2002 (maturity date) 3 years before Reese's California action - and note her investment date 4/17/2003 - 16 months before Reese August California matter. (RX 4-A) (RX 4-B) (RX 4)

See also IRS interview by Loecker, which misstates that her first investment "with McDuff" was in 2003. Benyo's Retirement Account's Inc. (RX 4) establishes that the first "CD" investment was 2001 with a maturity date (12 months) in 2002. "Benyo has made several investments in the past based on the referral of Levoy Dewey a minister friend of hers..." (RX 4-A) (RX 4-B) (RX 4)

Benyo also notes to Loecker that Dewey told her about Megafund-Not McDuff. (RX 4-B)

See also Benyo's criminal trial testimony. (DOE Tab 53)

In the criminal trial Benyo testifies that she was contacted about the investment (Lancorp) by Gary McDuff. (CRT. p.95:20-24) (DOE Tab 53). But in the hearing on June 15, 2016, she notes that Patricia Maxey invited her to the internet business meeting. (HT p.41:12-18) notably her testimony is inconsistent between the FBI 302 (RX 4-A), the Loecker interview (RX 4-B), the criminal trial (CRT p.95:20-24) (DOE Tab 53), and the Hearing on June 15, 2016 (HT p.41:12-18).

Incredulously, with what can only be knowing and intentional fraud upon the criminal court, AUSA Shipchandler propagates this continued lie. (CRT. 345:4-11) (DOE Tab 54)

> "The Court: Mr. Shipchandler, you have offered Government's Exhibit 33, which is a Cease-and-Desist order issued against Robert Thomas Reese, a codefendant in this case. Tell me, why do you want that?
>
> Mr. Shipchandler: Your Honor, because it was a material omission of fact that was provided to the investors [sic]. Count 1 alleges a conspiracy, an agreement to withhold that information from the investors..."

That statement is knowingly false! It is undisputed that all the investors in Lancorp Fund I had been involved by April 2004. This document is for August 2004. Mr. Shipchandler's statements are false. Any purported investment post April 2004 were for Lancorp Fund II or were reinvestors (persons who had invested prior to April 2004, and/or persons who had no knowledge of Reese or McDuff). Further, no one at the criminal trial testified that they had been solicited by Reese or McDuff after August 2004 - making the allegations of Shipchandler at best

a rather shabby attempt at deception. The Court and Shipchandler proceed in a collaque on the matter. (CRT p.345:3-350:13) (DOE Tab 54). Without addressing the issue of conspiracy on which Shipchandler is completely wrong - had McDuff been charged with a Securities fraud conspiracy, then Shipchandler's analysis would be correct - but under a wire fraud conspiracy the Shipchandler statements and analysis are false. In any event, the representations that Shipchandler made to the court were knowingly false, as no transaction relevant to the testimony at the criminal trial (Lancorp I new investors) occurred after August 2004 - the time at which an argument could even be proffered that some duty to disclose arose (even that is an incorrect argument).

11) Ms. Benyo completely (perhaps because of age and the fact that events occurred years previously) confuses all her testimony regarding Levoy Dewey. First Benyo testifies she put "Levoy Dewey" on the "Lancorp Subscription" because McDuff asked her to, but then goes into a long description about Levoy Dewey being a minister. (HT, p.35:1-36:3) But in her October 24, 2006 302 she states that "Larson made an investment presentation at the meeting" along with McDuff. (See RX 4-A). Benyo had Larson's phone number.

12) Ms. Benyo at the hearing testified she did not know who Mr. Lars Larson was. (HT p.41:15-18) But in her October 24, 2006 302 interview she produced his number and knew that he was promoting the internet business meeting about women's libido. She even remembered he had a Swedish descent. (RX 4-A)

13) Ms. Benyo did not recall her money being in an investment CD. (HT p. 45:15-45,19) But in fact she invested in a Bank CD with retirement funds. (RX 3, RX 4)

14) Ms. Benyo confused the amounts she invested. On direct she stated she invested Overseas Bank and Trust between "15- and $18,000." (HT 24:16-22) But in her statement to the

FBI on 10/29/2006 she told them $170,000 (RX 4-A). Her Retirements Accounts, Inc. statement noted $168,124.83 (close to $170,000) (RX 4). To agent Loecker on July 19, 2006 she stated her investment was $180,000. (RX 4-B)

15) Ms. Benyo wanted to argue about the difference in name between Overseas Development Bank & Trust and Investor's Bank and Trust. (HT p.54:14-55, 12) ("Show the proof") The name change is noted at (RX 5). (HT p.70:23-72:8)

16) Ms. Benyo asserts that she spoke to someone else but doesn't know whether he was a "broker, a banker, I'm not sure." (HT p.63:5-16) But in her FBI 302 testimony she recalls he was a broker. (RX 4-A) And he was a broker specifically with Overseas Development Bank. Again, not McDuff.

17) Ms. Benyo, in response to questioning from the ALJ confuses her Overseas Development investment with her Lancorp Investment. (HT p.64:1-25) But once again she is not consistent with her testimony to the FBI or to Agent Loecker. (RX 4-A) (RX 4-B)

18) Ms. Benyo doesn't recall her conversations with Levoy Dewey. (HT p.65:22-66:22) But in her statements to Loecker she said she made several investments based on the referral of Levoy Dewey. (RX 4-B)

19) Ms. Benyo doesn't remember Levoy Dewey asking her to fill out the Lancorp form as her referral. In fact, she alleged McDuff asked her to do so. (HT p.26:15-28:13) (again with the phantom second meeting that never occurred) (HT p.73:24-74:21) ("But I don't know why I would be having him put down there...") But see her contradictory statement to Loecker (RX 4-B) (makes investments based on referrals of Levoy Dewey). (RX 41) (RX 70)

20) Ms. Benyo doesn't even know how she got Levoy Dewey's phone number. (HT p.76:5-11) But see Benyo's statement to Loecker (RX 4-B) (She got investment advice from Dewey).

21) Ms. Benyo lied again at the criminal trial about the investment being all the money she had. (CRT p.106:3-5) (DOE Tab 53) Apparently "every penny I had to my name" doesn't include her slush fund. (HT p.78:4-12)

22) Ms. Benyo lied again at the criminal trial about the insurance - the perjury solicited by Shipchandler - Ms. Frank's superior at the DOE. (CRT p.106:6-18) (DOE Tab 53) (HT p.31:6-20) (HT p.88:9-91:5)

23) Not to be content with his numerous attempts to suborn perjury during the criminal trial, Shipchandler again solicits false testimony about insurance from Benyo. (CRT p.108:24-109:15) (DOE Tab 53) But of course we all know from her testimony at the June 15, 2016 hearing that she knew there was no insurance!! Before she invested!! (HT p.88:9-91:5) (Shipchandler throughout Benyo's testimony in the criminal trial suborns perjury on the insurance issue.)

24) Originally on direct Ms. Benyo testifies she contacted McDuff first about Lancorp I. But on Cross, she says she doesn't know whether she spoke to Lancaster first or to McDuff. (HT p.93:5-15)

25) Ms. Benyo testified that McDuff sold her the fund. (HT p.94:22-96:7) But she told the FBI that Retirement Account, Inc. was her Broker. (RX 4-A) (RX 4) She also said she had a "broker" for the Overseas Development investment - not McDuff. (RX 4) (RX 4-A)

26) Not to beat a dead horse, but Shipchandler suborned perjury by Benyo regarding the insurance being so important to her investment decision - much the same way Ms. Frank did

in this hearing - throughout her criminal testimony. (See CRT p.113:24-114:8) (DOE Tab 53) But see (HT p.31:6-20) (HT p.88:9-91:5) (CRT p.108:24-109:15) (DOE Tab 53) The boldness of the subornation of perjury is breathtaking. (See DOE Tab 53) (CRT 113:24-114:8)

> Q: Now, if you had known that there was no insurance on the principal of your investment, would you have invested with Lancorp?
>
> A: No, I would not have.
>
> Q: Why not, Ma'am?
>
> A: As I said, it was literally the only money I had.
>
> Id.

Not only does Shipchandler solicit false testimony about the insurance - and that she invested despite knowing there was no insurance. He solicited false testimony about it "being all the money she had," seeking to prejudice the jury by sympathy. ("Every body needs a slush fund.") The conduct by Shipchandler and Frank are unconscionable - as the impeachment evidence - proving perjury all came from the DOE's investigative files! (RX 60) (DOE Tab 55, p. 952) See also hearing testimony. Noted *supra* - But see also Shipchandler suborning perjury again on page (DOE Tab 53) 115 of the criminal transcript. (CRT p.115:10-116:7)

27) Ms. Benyo's recollection (purported recollection) is by a demonstratedly elderly woman; about oral conversations more than 13-15 years ago, controverted by other written testimony, controverted by her other sworn testimony, controverted by documents which purport to be created at that time, and controverted by Affidavits of individuals who were prepared to appear and testify live - but whose appearance was refused by either the ALJ or turned away by the BOP.

There may be, certainly are, other cases in U.S. history, in particular the antebellum south, where Blacks were systematically excluded from testimony of trials, or excluded from attendance at Public hearings because of their race or color, but short of that a greater denial of due process (as to the right of witnesses to testify and the public to appear at hearings) is not present in recent memory - despite the heroic efforts of the ALJ to illicit assistance from the BOP regarding the Hearing on June 15, and June 16, 2016.

28) Once again Ms. Benyo misleads the jury in the criminal case as to Ms. Benyo's financial condition. (CRT p.129:22-24) (DOE Tab 53) ("It was every penny of money I had.") More and more untruths from Ms. Benyo. She has no credibility - and that credibility or lack thereof, is based on solicited perjury by Shipchandler and Ms. Frank.

Benyo Summary

Using the *Abbodonte* and *Calhoun* analysis -

1). Ms. Benyo demonstrated bias in both her criminal and Hearing testimony against McDuff. Bias planted and nourished no doubt by the government.

2). Ms. Benyo's hearsay, would be purported to be a statement against interest; they are not present sense impressions, excited utterance; then existing mental, emotional, or physical condition; statements for medical diagnosis; records; business records; public records; records of vital statistics; absence of public record entry; records of religious organizations, marriage, baptism records, family records; records reflecting an interest in real property or "titled" property; statements in Ancient documents; market reprints; commercial publications; learned treatises; reputation concerning personal or family history; reputations concerning business; reputation as to character; and finally the FBI 302 and Loecker interview (which are not in Benyo's favor) are recorded recollections - even though second hand as to the type of hearsay of

Benyo - none is really in her favor. The purported statements against interest by McDuff are all controverted by other documents and other testimony. The recorded recollection (second-hand by government agents) are opposite to Benyo's recollection.

As to her statements about what Lancaster or some other third party told her, they are contradicted by direct testimony, the controverting affidavits are sworn under oath - and her testimony in all material aspects is not only not corroborated but controverted.

All this hearsay and testimony of Benyo even excluding the perjury (whether her falsehoods are material - or are implanted memories by Ms. Frank and Mr. Shipchandler or simply the result of age and time do not have to be addressed here), demonstrate that Benyo is completely not credible as a witness under the direct testimony and cross testimony and inconsistent with her testimony in the criminal trial, statements to the FBI, and documents offered herein. The ALJ should afford her testimony no weight. Ms. Benyo's recollection (purported recollection) is by a demonstratedly elderly woman; about oral conversations more than 13-15 years ago, controverted by other written testimony, controverted by her other sworn testimony, controverted by documents which purport to be created at that time, and controverted by Affidavits of individuals who were prepared to appear and testify live - but whose appearance was refused by either the ALJ or turned away by the BOP.

There may be, certainly are, other cases in U.S. history, in particular the antebellum south, where Blacks were systematically excluded from testimony of trials, or excluded from attendance at Public hearings because of their race or color, but short of that a greater denial of due process (as to the right of witnesses to testify and the public to appear at hearings) is not present in recent memory - despite the heroic efforts of the ALJ to illicit assistance from the BOP regarding the Hearing on June 15, and June 16, 2016.

For the sake of brevity, McDuff attacks Benyo's testimony in a cursory manner, if need be many, many more examples of impeachment can be offered on rebuttal.

B. QUILLING TESTIMONY

1) Quilling opines he spoke to "the investors"; "Gary Lancaster", and others whom he cannot recall. (HT p.118-122) Quilling opines that Lancaster told him the "Blue Print" for Lancorp Fund I came from McDuff and was implemented by Lancaster. (HT p.122:3-4) No, not true, here we go again with the false testimony. The DOE was kind enough to provide numerous records which include Lancaster's two deposition transcripts, sentencing transcript, Roger McDuff deposition, John McDuff's Deposition, Lancaster's sentencing interview, Mia Flannery's interview, Stan Leitner affidavit; Norman Reynolds deposition, Steven Renner deposition as well as others - calling into question Quilling's characterization that the "blue print" came from McDuff. Making Quilling's conclusion largely specious:

Norman Reynolds, the attorney who prepared the PPM testifies in detail about the creators, owners, and basis for the PPM. (RX 62; p.11:5-13:10) (He went to London to meet with the owners, McDuff merely introduced Reynolds to de'Ath from London.) Quilling was at the deposition and asked questions. However, he testifies as though the testimony of Norman Reynolds - an attorney whom Quilling testified at the hearing on June 15, 2016 was creditworthy from a reputable firm - never existed. Either Quilling has the same type of memory issues as Benyo - or he knowingly or recklessly lied to this ALJ. (RX 8) (RX 8-A) (RX 8-B) (RX 8-C) (RX 8-D)

(DOE Tab 36, p.12:5-25) (Secured Clearing from England owned by Terrence de'Ath...McDuff a director "for Secured Clearing in Houston, Texas") (DOE Tab 37; p.182:1-7; p.185:5-16; p.186:1-18; p.197:24-198:22; p.209:1-211:9; p.413:23-415:9).

Next see (RX 23) engagement letter of Secured Clearing by Norman Reynolds. (RX 37) Affidavit of David Deaton, attorney for Jackson Walker, referencing Terrence de'Ath..."the sole owner"...at ¶ 4. See also exhibits to (RX 37) A-O which in part are prepared by Mr. de'Ath.

Next see specifically (RX 24) April 1, 2002 Opinion letter from Jackson Walker, LLP to Mr. Terrence de'Ath.

Next see specifically (RX 22) Explanation of EMS Funds used to create Trust.

Next see (RX 34) Affidavit of Alan White as to Terrence de'Ath, Owner of Secured Clearing Corp.

Next see (RX 38) Affidavit of David Taylor as to Terrence de'Ath as owner of Secured Clearing Corp.

Next see (RX 35) Affidavit of Mike Steptoe as to Terrence de'Ath as owner of Secured Clearing Corp.

Next see (RX 39) Affidavit of Michael J. Boyd as to the creation of the Cash Management Agreement.

Next see (RX 33) Affidavit of Shinder Gangar refuting the allegation that McDuff created the blue print. (Note: Pursuant to British law, an attorney (solicitor) is an "officer of oaths" and confirms the sworn testimony - equivalent to our Affidavit.)

Next see (RX 32) Affidavit of Shinder Gangar refuting Quilling's allegations.

Next see (RX 63) Affidavit of Lynn Hodge refuting Quilling's allegations.

(See RX 62) Norman Reynolds testified in his deposition p.11:5-13:14 ("Met de'Ath in person, in London, off Piccadilly, met with three or four people, one was an attorney.")

In essence, Mr. Quilling lied in this assertion. No other conclusion can be drawn.

2) Quilling asserts he reviewed documents to support his conclusions. (HT p.117:5-120:14) But as the dozens and dozens of rebuttal documents herein demonstrate, Quilling drew his own conclusions, and then lied about his methodology. Neither Lancaster's depositions, sentencing transcript or the documents confirm his allegations - so either Quilling is grossly incompetent or his testimony is recklessly or knowingly false. (incorporating prior exhibits *supra* and following *infra*). Notably under the *Calhoun* analysis discussed *supra*; Quilling demonstrated bias and gross unprofessional conduct during the hearing (for an attorney); none of his testimony fits one of the hearsay exceptions (as McDuff was not making the statements and this is not a conspiracy case); none of the unidentified documents that Quilling purports to use to form the basis of his testimony (impermissible - since he is not an expert witness - not qualified as one or proffered as one) is signed or sworn - note he disagrees with Lancaster's sworn testimony - the two depositions and sentencing transcript wherein Lancaster refutes the allegations of Quilling - Quilling bases it on unidentified oral statements which are not corroborated. Quilling's testimony about what Lancaster is purported to have said - is the exact type of testimony the founding fathers discussed in Federalist Papers and other documents - sought to be banned in our system of justice. As Monty Python in their epic, "The Holy Grail" - wherein a human serf is seeking to impugn a woman he claims is a witch. He exclaims forcefully, "She turned me into a newt (small lizard) ..." After the Lord questions him on it as he was a human and not a lizard, the serf retorts, "I got better." And then leads a chant: "Burn her anyway!" - That is Quilling's purported testimony about Lancaster. It is refuted by all of Lancaster's depositions under oath - and sentencing transcript.

3) Quilling asserts Lancaster was "dumb as a box of rocks." (HT p.120:4-121:12) However the stupid one was Quilling. ("Most of what I learned about Lancorp...is through Gary

Lancaster...") Unfortunately, only stupid people rely on people who are "as dumb as a box of rocks," because the documents and other witnesses' statements and relevant materials do not support Lancaster's story as told by Quilling - not even Lancaster's depositions support Quilling's assertions, or Lancaster's sentencing transcript, or dozens of Affiants' Affidavits, or other documentary evidence, such as contracts, etc...and Quilling and Loecker attributes credibility to Lancaster at the time of his sentencing - he refutes Quilling in the 2010 sentencing as well.

4) Lancaster and Quilling formed a personal relationship, familiar relationship. (DOE Tab 36) p.51:3-4) ("...with my first conversation with Mike") referring to Michael Quilling.

5) Next, from November 17, 2005 forward, the SEC and Quilling were unable to separate the two legal entities (Lancorp Group and Lancorp Fund) See (DOE Tab 36) (p.54:12-16) (recall testimony concerning Lancorp [sic] Business Financial Group registration in various states? Not correct. Lancorp Fund was registered in various states not Lancorp Group.) (But see p.54:22-25) Quilling recklessly fails to differentiate between Lancorp I and Lancorp II, which Quilling acknowledges at the June 15, 2016 hearing that Lancaster did on his own - McDuff knew nothing about it.

6) Next, Quilling opines about McDuff and Reese doing the marketing for the fund. (HT p.124:3-19) However, in Lancaster's deposition of November 17, 2005, Lancaster notes that he (Lancaster) was brought to the Fund by his client, Morris Cerello who introduced him "to Gary" because of Lancaster's credentials. (DOE Tab 36) (p.77:7-12) Further eroding Mr. Quilling's assertions and investigation as the receiver. See also *infra* where Lancaster and Reese market Lancorp Fund II without disclosure to McDuff. (RX 54)

7) Next, Quilling states that it was McDuff's (inferring Gary L. McDuff's) idea to invest in Megafund. (HT 124:20-125:4) Again, not correct. Lancaster told Quilling that Gary McDuff had very little information about Megafund. (DOE Tab 36) (p.50:1-5) Lancaster was introduced to Megafund by John McDuff, Gary McDuff's father. (DOE Tab 36) (p.23:23-24:5) (See Also RX 52) Affidavits of Stan Leitner.

8) Next Quilling again, purposefully blurs the lines between the McDuff's. (HT p.124:23-125:4) Leitner knew McDuff. But this is false if it is "Gary L. McDuff." (See DOE Tab 36) (p.24:1-5) John McDuff, Gary L. McDuff's father, knew Leitner. And while the Stan Leitner Affidavit and the Roger McDuff and John McDuff affidavits/depositions make clear they had only recently met Leitner, Loecker purports that Leitner told him he knew the McDuff's for over 15 years. See (RX 10) (RX 53)

9) Next Quilling expands on his lie - (HT p.125:9-10) (McDuff had some relationship with Leitner. That McDuff being John McDuff and Roger McDuff.) (See RX 52) (Affidavit of Leitner) (RX 10) (RX 53) Depositions of John and Roger McDuff on how they met Leitner. (p.13:12-20:6) (p.7:19-9:14) respectively. Curiously, Quilling is actually asking the questions of the McDuff's..."When did you first meet Stan Leitner?" (RX 53 p.7:19) (RX 10 p.13:12) So Quilling expands on his lie at will - ignoring the testimony of the only people, all three people, involved in the actual meeting (e.g. Leitner, John McDuff, and Roger McDuff).

10) Next Quilling, whose relationship with the truth is strained continues his fanciful story - not based on the facts. (HT p.125:11-126:11) (How many investors through McDuff? .... the vast majority of them) But of course - Mr. Lancaster - whom Quilling purportedly based his testimony off of did not say that. (DOE Tab 36) (November 17, 2005 Deposition of Lancaster) (p.66:16-18) (DOE Tab 37).

Q: Would you agree with me that approximately 80% of them were referred to you by Robert Reese? [sic]

A: Yes.

But that's not all. Lancaster also said in the deposition in response to questioning he did not know how many investors Gary McDuff was purported to have referred.

Q: And Mr. McDuff referred how many?

A: I don't know exactly.

(DOE Tab 36) (p.74:14-15)

However, Quilling, who testifies first that Lancaster was the basis of his testimony at the hearing (HT p.120:4-14) then proceeds to lie about what Lancaster is purported to have said. And says that others "3 or 4" also referred along with Reese and McDuff - Benyo and Biles are the only investors produced by the DOE and their testimony is not dispositive of anything - not consistent with the documents and does not implicate Interstate Commerce. (This is not a conspiracy - other's conduct does not implicate McDuff).

11) Next, Quilling continues his falsehoods. (HT p.127:9-13) (He went through the documents with Lancaster) None of the documents support his statements about McDuff referring the majority etc. of investors. See all the arguments and documents impeaching Quilling herein.

12) McDuff's family invested and lost money in Megafund. (HT p.127:20-22) It is unlikely that McDuff would have his entire family invest in Megafund (as the DOE alleges) had he had any knowledge about the ponzi scheme or other irregularities taking place at Megafund or Lancorp Funds for that matter.

13) Quilling affirms his declaration from the civil case at the hearing. (HT p.129:22-130:3) Not surprisingly it contains falsehoods and down right lies. For example, in ¶ 5 Quilling

concludes - without foundation - that McDuff "acted in his individual capacity as well as d/b/a Secured Clearing Corp., First Global Foundation, Southern Trust Co., and MexBank S.A. de C.V. collectively, "McDuff")" The conclusion -without investigation - is reckless for someone who is a lifetime receiver for SEC investigations. First he did not speak to any at the principles of the above noted companies. (HT p.215:12-220:3) (RX 32) (RX 33) (RX 34) (RX 35) (RX 36) (RX 37, plus Exhibits A-O) (RX 38) (RX 39) (RX 41) (RX 69) (RX 70). These include Affidavits of attorneys, former federal agents, non-interested parties, as well as McDuff.

14) Quilling didn't bother to distinguish between the two "Gary McDuff's" - both alleged to be involved in the property in particular in his receivership. Gary L. McDuff and Gary S. McDuff (HT p.209:9-21).

15) Quilling opines that Lancaster was credible (HT p.131:5-21) and yet his sentencing transcript (Lancaster) and two depositions do not agree with Quilling's statements. (RX 9) (RX 29) (RX 31) (RX 61) (DOE Tab 36) (DOE Tab 37).

16) Quilling alleges that McDuff threatened people. (HT p.132:13-21) However as explained in the deposition of Steven Renner from Cash Cards those did not come from McDuff and were not threats - merely demands to obtain a court order before releasing private documents. (RX 13-A, p.24:17-26:5).

17) Quilling in his Declaration opines that McDuff introduced at least 100 investors to Megafund. (DOE Tab 30) ¶ 9. Not true. See Lancaster depositions (DOE Tab 36 and Tab 37). McDuff did not introduce anyone to Megafund - that was his father John McDuff who spoke to Lancaster about investing his personal IRA in Megafund, Lancaster then on his own invested Lancorp Trust I into Megafund. (RX 10) (Deposition of John McDuff) (RX 53) (Deposition of

Roger McDuff) (DOE Tab 36 and Tab 37) (Lancaster introduced to Megafund through Gary McDuff's father, John McDuff.)

18) MexBank S.A. de C.V. - a McDuff sham entity. (DOE Tab 30) ¶ 13. Is a bold face lie! McDuff was an employee / associate of MexBank. (RX 12) (RX 15) (offered but not admitted - noted for purposes of a bill of exception against the court's ruling excluding (RX 15) (RX 33) (RX 34) (RX 44) (RX 69) (RX 70) (HT p.376:25-379:7)

19) The remainder of Quilling's allegations in his civil declaration are unsubstantiated conclusions..."ill-gotten" gains which are not germane to the broker dealer issue and are ad homin attacks.

20) Quilling opines that MexBank, First Global foundation, Secured Clearing and Southern Trust were "alter egos" of McDuff (HT p.141:14-145:4). But later acknowledges he didn't really do any investigation, but merely relied (as he testified previously in the hearing) on Lancaster, who didn't know anything about MexBank. (HT p.162:24-170:13) See (RX 2) (RX 3) (RX 4) (RX 5) (RX 6) (RX 7) (RX 8) (RX 8-A) (RX 8-B) (RX-C) (RX-D) (RX 9) (RX 11) (RX 12) (RX 16) (RX 22) (RX 23) (RX 24) (RX 26) (RX 31) (RX 32) (RX 33) (RX 34) (RX 35) (RX 36) (RX 37 and Exhibits A-O appended throughout) (RX 38) (RX 39) (RX 41) (RX 46) (RX 47) (RX 61) (RX 62) (RX 63) (RX 69) (RX 70) The volume of the documentation that undermines Quilling's opinions is virtually limitless, literally hundreds more documents could be noted which show that MexBank existed (RX 12) that it is a legitimate private investment bank, there was no investigation of MexBank having anything to do with McDuff's activities there, MexBank's capital was in Bear Stearns, Refco-ACM and Lehman Brothers...; the same goes for First Global; Secured Clearing and Southern Trust. With no foundation Quilling makes outlandish allegations that are parroted by Loecker - without bothering to investigate the truth at

their allegations - by both Quilling and Loecker's own admission. It would appear that Quilling could have done a more thorough investigation for his $1,456,877.21 fee as a receiver.

21) Quilling's explanations are so sophomoric as to be moronic. (i.e. all these entities were McDuff because the people I spoke with spoke with McDuff) (HT p.142:8-11). Personally having never spoken to anyone at the White House, therefore the White House and all its thousands of employees are a shame (using Quilling's logic) or they must all be alter egos of the Press Secretary because he is the only one who speaks for the White House - the breath-taking simplicity of Quilling's conclusions are simply unfounded and bespeak gross negligence or recklessness in his opinions.

22) Further, as Quilling was not designated as an expert his opinions - as opposed to his direct testimony are not to be relied upon - further as demonstrated his reliance on rank hearsay, that has none of the "indices of truthfulness" that is required for the ALJ to use to determine the weight also weighs against all of his testimony. Perhaps his lack of candor has more to do with protecting his million dollar fee that with the actual facts. (What someone is being paid for their testimony or for their conclusions is always subject for impeachment - citations omitted) (goes to bias)

23) Next, Quilling opines about proper service in the civil case, but as that case is under attack at the trial court/5th Circuit currently, and not final - pending "venue and jurisdiction" arguments and it is addressed further herein no attack specifically under Quilling's assertions are warranted. (HT p.142-172)

24) Next, Quilling, as he is so want to do when he believes there are no witnesses to contradict his lies, opines that Reese worked for McDuff. Quilling's selective memory is typical of persons who are untruthful. On page 175 (HT p.175:4-176-24) he opines about specifics that

Quilling alleges Reese told him. Reese subsequently in a rather perverse *mea culpa* makes a series of statements, pleads guilty, and commits suicide prior to serving any sentence - no doubt due to the pressure of Quilling and Huseman (read the tone of the depositions) (See RX 31) (Reese response to subpoena sent by the SEC) In particular ¶ 4 is significant "I had no compensation agreement, employment agreement, trust resolutions, salary statements, or any other type of agreement whatsoever between Mr. Lancaster or the Lancorp Financial Fund, or Gary McDuff or any of the individuals or entities you mentioned in Number 3 of your requested documents. I received no compensation from any of these persons or companies." (RX 31). Reese was responding to the SEC subpoena duces tecum that asked in essence: In response to Huseman's request for production questions 3 & 4 (responded to by Reese) attached hereto as (RX 31-B). RX 31 is page two of a six page fax sent by Reese to Huseman. The complete fax is offered as RX 31-B which includes RX 31-.

The questions by the SEC to which Reese was responding were: "Produce the following:"

> 3) Documents reflecting any and all payments you received from Lancorp or Megafund, Stanley Leitner, CILAK International, CIG, LTD. or James Rumpf, including but not limited to, returns on investment and commissions;
>
> 4) Any and all agreements that exist between you and/or Lancorp and Gary L. Lancaster or Gary L. McDuff including, but not limited to any employment agreements, compensation agreements, Trustee resolutions, salary statements, cancelled

checks or wire transfers reflecting payment for commissions, employment or other compensation, W-2 Forms, and Form 1099;

See also (RX 31-A) Loecker's interview with Reese. And although Loecker admittedly writes down a "selective" set of facts that he believes is most favorable to the government, these biased facts nevertheless believes Quilling allegations. Specifically:

¶ 3 Reese met Gary McDuff after investing in High Yield...based in England...with Dodd White [an large English accounting firm]...White provided Reese with McDuff's information.

¶ 6 Reese contacted Lancaster for the PPM - as McDuff was involved in the "Publicly Regional Offering."

¶ 10 Reese admitted he failed to advise of his Desist and Refrain order. (Notably Loecker omits the time frame of the order - August 2004 - Long after McDuff was no longer involved with the investors or any type of fund relationship for new investors precluding any necessity to disclose on McDuff's part.) Reese's denial would go, if at all, to Lancorp II, which it is undisputed was created by Lancaster without McDuff's knowledge and marketed by Lancaster and Reese.

¶ 21 Reese working for MexBank run by Edvendo Trejo and Adolfo Noreiga.

¶ 22 Reese has approximately 100 investors in MexBank with over $20,000,000 in investments (some sham or shell with 20mm).

¶ 23 Reese is in general partnership with MexBank. Reese is invested in MexBank.

¶ 24 MexBank trades currency utilizing the trading firm Valve Asset Management.

Those exhibits and statements directly refute much of the testimony of Quilling.

25) Next, Quilling acknowledges he cannot produce any documents to confirm his allegations. (HT p.177:2-22) (In true pettifogger form.)

26) Next, Quilling notes that his testimony is not consistent with Lancaster's Deposition. (HT p.180:5-20) Not only that it is not consistent with his sentencing transcript - in 2010 - when Quilling and Loecker assert the Lancaster was "totally truthful." (HT p.180:21-181:24) See generally (HT p.181:25-184:21)

27) Next, Quilling back tracks on the "McDuff couldn't do certain things because he was a felon so Lancaster had to be the face of the transaction." [paraphrase] (HT p.184:22-190:13)

28) Initially Quilling argues that documents and records are not accurate in white collar cases. (HT p.177:17-22) But then reverses himself. (HT p.192:17-21) Not to split hairs, but this type of hair splitting has been the basis of the DOE's entire case and as noted in *Kramer*, *supra* none of this supports a finding of McDuff being a broker or dealer. The Quilling cross and impeach is to demonstrate his lack of creditworthiness as a witness.

29) Quilling acknowledges the Lancaster transcripts (HT p.204:12-25) different from his testimony. (He is flippant about it.)

30) Quilling doesn't know how many "Gary McDuffs" there are. (HT p.208:11-21) (relevant to service issue)

31) Quilling acknowledges that Lancaster created a Second Lancorp Trust Fund...Lancorp II in May 2005. (HT p.221:1-222:11) Lancaster never disclosed fund II - raised money independently for fund II. Which directly contradicts Quilling's testimony that McDuff did the marketing. (Lancaster and Reese created and marketed Lancorp II without disclosing anything to McDuff)

32) Quilling at McDuff's criminal trial lied. Specifically, he identified Gov. Exhibit 29 as PPM given all the investors. (See RX 54) That is actually Lancorp II - the fund that

Quilling now freely acknowledges McDuff knew nothing about. The fund that Reese and Lancaster illegally raised funds for. In a knowing and despicable sleight of hand Quilling, created the impression that McDuff was involved in criminal activity that was exclusively Lancaster and Reese's doing, not McDuff. (RX 54) (See all the voluminous emails - none of them include McDuff.) (Full PPM at DOE Tab 9.) Such clever liars.

Quilling Summary

1) Quilling demonstrated hostility, ad homin attacks, condescending, arrogant and non-professional in conduct in his demeanor at the Hearing. Even the transcript reads with his emotional demeanor. Bias would have to be presumed.

2) Quilling's reliance on purported hearsay which is not supported by the documents, depositions, sentencing transcripts, sworn testimony or otherwise demonstrate that Quilling's hearsay is unreliable. None of the exceptions to the hearsay rule noted in the Benyo Summary are applicable here. (Using Calhoun analysis.)

None of the statements (hearsay) that Quilling relied on (purportedly) are made by McDuff and therefore they are not statements against interest (Lancaster opposed to McDuff).

3) Quilling defers to the documents which do not support his testimony. He offers no credible testimony on the broker dealer issue. None of his testimony bears the indices of credibility.

4) Quilling's testimony has also - like Benyo's testimony been attacked with brevity - much more documentation is available to rebut any argument otherwise.

C. BILES TESTIMONY

1) "Introducer" put them in contact with McDuff (HT p.242:15-19). McDuff did not solicit Biles. Introducer, Kevin Herring, not McDuff, contacted Biles.

2) Kevin Herring proposed the investment (HT p.242:24-243:3).

3) Biles met McDuff August 2003 (HT p.243:19-23). One year prior to Reese's refrain and desist order (DOE Tab 12).

4) Calls McDuff "the sales representative for lack of a better term" (HT p.244:1-6). Biles' testimony is nonsensical - for lack of a better term.

5) Wanted insurance (HT p.245:22-246:14) but elected to not get the insurance when he actually purchased the shares (reconfirmed in April 2004) (DOE Tab 61, App 902). As noted *supra*, the date of sale, as noted by the 21 U.S. District Courts, took place in April 2004 a subsequent intervening event modifying the PPM. (See also DOE Tab 64)

6) Biles is not sure of the documents that McDuff gave him. Did get prospects from Gary Lancaster (HT p.247:10-15). Point of order is needed here. None of the witnesses testified much on direct. While McDuff is not a lawyer, Ms. Frank completely led all the witnesses through their testimony. Had McDuff had, even a bad lawyer, he would have objected to the leading testimony on direct by Ms. Frank - and substantively none of the witnesses could recall anything without being led and/or told by Ms. Frank what to say (goes to show the credibility of witnesses).

7) Biles memory not good (HT p.248:2-8).

8) Ms. Frank as disingenuous as possible, asks Biles:

Q: "Did Mr. McDuff maintain that one of the people that they were working with, a man named Robert Reese had been barred by the State of California from selling investments?" (HT p.249:17-20) How could McDuff know that 12 months later during August 2004 that Reese would be "barred"? How could McDuff have known that it (the Desist Order)

would be remanded? It was! (See DOE Tab 12). DOE so misleading on the facts. Even citing to a Desist Order that had been remanded is improper without noting to the Court that it had been remanded. Every lawyer knows that counsel owes a duty of candor to the tribunal it is part of the MPRE which all counsel is required to pass to be licensed. Next the "desist" order was not a bar - Ms. Frank characterizing it as one is more deception on the part of the DOE. This is akin to citing (knowingly) bad case law to a tribunal.

9) What is more definitive is as follows: The State of California issued its Desist and Refrain Order on August 16, 2004. After Amendments and remand the OAH issued its decision dated November 2, 2009. What has been determined - as a matter of law by the Department of Corporations in California is as follows:

Proposed Decision After Remand

¶ 11(c) Reese represented [to investors] that he knew McDuff personally and that McDuff was an experienced banker who was trustworthy, when Reese knew there were issues with McDuff and Overseas Development Bank and Trust that reflected negatively on his trustworthiness; Ms. Frank asks Benyo, "Did you know McDuff had a felony?" Ms. Frank asks Biles the same (HT p.249:8-16) and tries to solicit that McDuff's felony was intentionally being hidden. Not true. As (DOE Tab 12) p.3 ¶ 11(c) Remand Order demonstrates Reese knew, had a duty to disclose and did not. McDuff did not hide it. Lancaster knew about the felony and testified he did not think disclosure was material (DOE Tab 36) in his sentencing (RX 61). McDuff had a webpage discussing same (RX 17). The persistent DOE arguments to the contrary are nonsense. (McDuff's prior 1993 felony is not relevant in the security context) see *supra*.

10) Does Ms. Frank bother to advise the Court that the Desist Order was remanded? NO. (DOE Tab 12). The perpetual sleight of hand by the DOE is dishonorable.

11) Biles sent his investment to Retirement Accounts, Inc. (HT p.250:15-19). RAI was Benyo's broker as well.

12) Biles noted Kevin and Salena Herring as the referring party not McDuff (HT p.251:15-25). Benyo wrote Levoy Dewey - but despite the paperwork, Ms. Frank fishes for an allegation of McDuff even though her witness testifies otherwise.

13) Ms. Frank doesn't establish any of the elements noted in ***Kramer*** (as to "broker dealer") with Biles.

14) Biles does recall testimony to investigator (HT p.253:20-25).

15) Biles does not recall how he got to Retirement Accounts, Inc. (HT p.254:8-11). But not by McDuff.

16) Biles does not recall asking about Megafund (HT p.12-15).

17) Biles said he would not invest without insurance (HT p.255-259). And yet he signed the amendment and acknowledgement dated April 5, 2004. His actual signature date was April 9, 2004 (See DOE Tab 62). (See also DOE Tab 64)

18) On page 260 (HT 260-263), Biles provides a rather humorous description of insurance - and why his investment, despite the material intervening event, the acknowledgment of no insurance on April 9, 2004, was actually insured. "...if I go buy a hundred dollar Rolex and I can sell it for a thousand dollars, then that Rolex is basically insured." (HT p.262:25-263:2). Unfortunately for the DOE, no one at law acknowledges such a creative definition of insurance. Black's Law defines insurance as: "A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by perils." (6th ed. p.802) See

The O.N. Equity Sales Co. v. Pals, et al., 551 F.Supp. 2d 821, 825 (N.D. Iowa 2008) ("The court also found that, contrary to ONESCO's contentions, the record showed beyond dispute that 'the terms of the Lancorp Fund private placement offering were materially changed in April 2004, which required all subscribers to reconfirm their subscriptions or receive back all of their funds...'") All other cases came to similar conclusions on ONESCO's liability based on the above determination.

A significant materiality is important to note here. In law, words mean things. We uphold the law by specific definitions for specific words. Often times - words at law are "terms of art" and those terms have special meanings and specific elements. Take "insurance" for example: It is (1) a contract (under Statute of Frauds - a written contract); (2) for a stipulated consideration (contract required consideration for enforcement); (3) whereby one party undertakes to compensate the other for loss on a specified subject of perils. So as a matter of law, Insurance would have to have the above three elements. At law, words mean something - and the DOE's reckless abandonment of the principles of law and its foundations of the basic elements of law is mind-boggling.

The fact that Biles' impression of insurance - offered by the DOE - is nonsensical and demonstrative of this. Biles equates "profit" (buying for $100 and selling at $1,000) as insurance. (Perhaps - as Loecker is an IRS Agent - I could use that on my taxes..."No, no, Mr. IRS Agent. I didn't earn a profit - I got insurance and shouldn't pay taxes on that.") How could one ere have a meeting of the minds which all contracts (and frauds) require such that a misrepresentation could possibly even occur? If I believe my car is an airplane, then, notably, I will be upset when my car doesn't fly. In any event, this conduct - this convoluted understanding regarding insurance could never form the basis for a broker or dealer determination. After the

insurance analysis, Biles' understanding of anything is questioned, equating a car salesman to...? (for lack of a better word) .... no license required to be a car salesman, no fiduciary duty, not regulated by the SEC, no term of art like "broker" or "dealer" ... these DOE witnesses and arguments are frivolous and nonsensical.

19) On page 290 (HT 270:6-22) Ms. Frank argues the alleged McDuff oral representations purportedly made to Biles constituted the "Broker" "dealer" conduct - which triggers the running of the Statute of Limitations. ("Commenced within five years from the date when the claim first occurred") *Zubkis*, No. 52876, 2005 WL 3299148 (Dec. 2, 2005). It is undisputed that Biles had been spoken to by McDuff after Benyo so under the Frank argument, the conduct that the DOE alleges was broker or dealer conduct (which is expressly denied) occurred prior to the end of August 2003. One year as to these two investors - the only DOE witnesses - prior to the Desist Order for Reese - 5 years before the Remanded Desist Order was signed in 2009. For purposes of a Statute of Limitations bar the DOE had five years to bring this action. See *Johnson v. SEC*, 87 F.3d 484 (D.C. 1996) (Finding a five-year statute of limitations under 42 USC § 2642.) See also *Zubkis*, Exchange Act Release No. 52 876, 2005 WL 3299148 (Dec. 2, 2005). Ms. Benyo met with McDuff in 2001 - there was only one meeting. Her testimony was that it occurred in 2001-2003. Then later she said 2002. RX 4 shows her CD which matured 12 months after invested - matured on 10/9/2002. See RX 3. She testified that she reinvested when it matured. That would be 2002. So giving the DOE the benefit of the doubt the alleged "broker" - "dealer" conduct described by Ms. Frank - during the face-to-face meeting occurred more than 5 years prior to the original complaint being filed on March 26, 2008, making any Benyo allegations by the DOE barred by the Statute of Limitations. (Material

is the basis of the DOE's allegations. Ms. Frank's counsel for the DOE, binds the DOE and the tribunal and McDuff are entitled to rely thereon (citations omitted).

See Ms. Frank's argument - binding the DOE (HT p.270:9-21). ("...to the point of what representations Mr. Biles is testifying were made to him by Mr. McDuff, that's the point, that's the issue that's relevant to whether or not Mr. McDuff acted as a broker.") Therefore, under the theory that the DOE is proceeding - the cause of action - the claim occurred in 2001 or 2002 - both before Biles. Further those dates are more than five years prior to the filing of the complaint in 2008, and barred by the Statute of Limitations. McDuff asks for a ruling on his Statute of Limitations argument.

20) Addressing Ms. Frank's continued disingenuous questions about McDuff's felony as it pertains to Reese or Lancaster and his lack of clairvoyance as to Reese's receiving a Desist Order 12 months-post (in the future) or in Benyo's case, 2 years in the future - as a matter of law McDuff cannot be penalized for not being clairvoyant. Specifically, "mere allegations that statements in one report should have been made in earlier reports do not make out a claim of securities fraud." *Denny v. Barber*, 576 F.2d 405, 470 (2nd Cir. 1978); See *Dileo v. Ernst & Young*, 901 F.2d 624, 627-28 (7th Cir.), cert.denied, 458 U.S. 941 (1990). Moreover, conclusory allegations of fraud do not satisfy the pleading requirements of Rule 9(b), see *Wexner v. First Manhattan Co.*, 902 F.2d 164, 172 (2nd Cir. 1990), and defendant's lack of clairvoyance simply does not constitute securities fraud, see *Denny*, 576 F.2d at 470 (holding that defendant's failure to anticipate future events did not constitute securities fraud). Perhaps Ms. Frank should have asked if McDuff could predict who would win the World Series some years in the future - and wouldn't Biles and Benyo like to know so they could bet heavily on McDuff's special ability to prognosticate? Again, the DOE conduct is repugnant.

Ms. Frank's concept of "red flag" theory, or "did you know" methodology, or "wouldn't you have liked to have known," or "would it have changed your investment if you had known," is roundly rejected in principle.

"The 'red flag' theory of Scienter has been rejected in the Madoff-related federal securities law litigation because it amounts to pleading fraud by hindsight. E.g. *Delollis v. Friedberg, Smith Co.*, 600 F. APPX 792 (2nd Cir. 2015) ("Numerous actions brought against auditors and investment advisors by victims of Madoff's fraud have been dismissed despite the presence of 'red flags,' which in hindsight arguably should have called attention to Madoff's illegal conduct.") *Meridian Horizon Fund, LP v. KPMG (Cayman)*, 487 F. APPX. 636, 640 (2nd Cir. 2012) (describing the red flags as "an archetypical example of impermissible 'allegations of fraud by hindsight.' ") (quoting *Novak v. Kosaks*, 216 F.3d 300, 309 (2nd Cir. 2000) (quotations marks omitted) As the court noted, "Hindsight is infallible, but connecting the dots in real time may require clairvoyance." *Picard v. Legacy Capital*, 548 BR. 13 (March 14, 2016) The argument is that McDuff cannot be pursued, as Ms. Frank attempts to do, because he is not clairvoyant.

See also *Rio Grande Lodge of Free & Accepted Masons of Penn. v. Meridian Capital Partners, Inc*. No. 15-1004-cv-2015 U.S. App. Lexis 21626, 2015 WL 8731547, at *2 (2nd Cir. Dec 15, 2015) ("Grand Lodge essentially makes a 'red flag' argument that Appellees were aware or had the duty to become aware of red flags...[and] were reckless in ignoring the red flags. This Court [2nd Cir.], along with many district courts in this circuit has rejected similar claims based upon a failure of due diligence to uncover Madoff's infamous Ponzi scheme.")

Next note (RX 61) - Lancaster's sentencing transcript where both Quilling and Loecker acknowledge that Lancaster was truthful - (it is not different than his depositions for that matter) p.31:6-11.

"But as far as due diligence, as Mr. Shipchandler stated and Mr. Lancaster agrees, he should have done more to find out exactly what Leitner was doing with the money..." This exact conduct that Lancaster pled to...is not even grounds for civil liability - much less criminal liability.

"...in retrospect, certain actions or statements may be interpreted or characterized as demonstrating awareness of fraud, 'fraud by hindsight' is not a cognizable theory of relief; indeed, 'fraud is always obvious in retrospect, but it is not reckless to lack clairvoyance.' " *In re Longtop Fin. Techs. Ltd.* SEC Litigation, 910 F.Supp. 2d 561, 579 (S.D.N.Y. 2012) *Athale v. SinoTech*, 2015 U.S. Dist. Lexis 176007 (Jan. 23, 2015).

Additionally, see *Special Sit. Fund v. Deloitte Touche*, 96 F.Supp. 3d 325, 344 (2015) "...in retrospect, certain actions or statements may be interpreted or characterized as demonstrating awareness of fraud, 'fraud by hindsight' is not a cognizable theory of relief, indeed, 'fraud is always obvious in retrospect, but it is not reckless to lack clairvoyance.' " citing *In re Longtop Fin Techs*. SEC Litig., 910 F.Supp. 2d 561, 579 (S.D.N.Y. 2012) ("Longtop I")

21) Biles is clear that he got a prospectus from Lancaster and does not remember what he got, if anything, from McDuff. (HT p.274:8-21).

22) Lancaster sent Biles information to transfer money (HT p.274:22-25).

23) Biles can't identify a single document given to him by McDuff (HT p.279:5-13).

24) Biles car-salesman analysis is inapposite for numerous reasons - it is enough to say that "car salesman" like activity - is nowhere used in the *Kramer* "broker - dealer" analysis.

25) Whether Biles and his wife understood DOE Tab 62 to be insurance is also disingenuous. See (DOE Tab 62, Supp. App. 902) which has the word "insurance" on the right hand side - that is a copy with the word "Insurance" added afterwards - How convenient. The original sent to Lancaster is found at (Supp. App. 000924) (RX 55). The (DOE Tab 62) provided to the Court as Tab 62 (McDuff's copy) does not have the original document "Without the word Insurance". The DOE intentionally - knowingly - willfully, with intent to deceive the ALJ made a copy (or obtained a copy that had the word insurance added - purportedly by Biles' wife) and filed it with the court without letting the ALJ know that the original HAD NO SUCH ADDED WRITING by Biles' wife. See (RX 55) attached hereto. Notable here also is the fraud by the DOE in the criminal case as well. Note (DOE Tab 62 Supp. App. 902) marked as Government Exhibit No. 16 at the criminal trial - but the original sans the after added word "insurance" at the DOE's Supp. App. 924 is not marked as an exhibit. The DOE clearly offered in this case and in the criminal case a knowingly fraudulent document into the evidence. The fraudulent copy of the insurance correspondence (Exhibit 16 in the criminal trial) was offered by Ms. Lopez and admitted (DOE Tab 53, p.143:14-23).

26) Altering exhibits and filing those exhibits with two courts is a knowing and intentional act of perjury - if not subornation of perjury. The original - unmarked - unworded Insurance was in the DOE's investigative file - and should have been included in Tab 62 of the DOE's binder - but was knowingly excluded and not provided to McDuff at the criminal trial either. Such conduct should result in an immediate dismissal of the case and a referral to The State Bar of Texas for investigation. (Along with Jessica Magee's deliberate lie to the criminal court regarding Lancaster not being licensed - a fact the ALJ took judicial notice of...e.g.. not

reasonably disputed.) Both U.S. District Judge Hughes and Hitner have barred attorneys from their courtrooms for lesser conduct.

27) Notably in Biles and Marsha Biles 302 (RX 47) neither one call McDuff a "salesman" or "sales representative" or make any such statement. None call him a "broker" or "dealer."

28) Ms. Lopez at the criminal trial continues the perpetual "did you elect to have insurance" lies that the DOE perpetuates even though both Biles and Benyo elected to proceed without insurance. (DOE Tab 36, p 136:16-25) (Did you elect to have insurance - yes - would that have effected your investment if you knew there was no insurance - absolutely) Bold face lies. Not only did Biles know there was no insurance, he signed a form acknowledging same. And then the DOE offered a doctored document in evidence to support the subornation of perjury at both the criminal and this proceeding. (March 12, 2004 letter acknowledges in no uncertain terms - as the 21 U.S. District Court's found - no insurance - a material change.) (RX 55) (RX 60)

Biles Summary

1) Biles establish that; beyond the pale personal animus that Ms. frank and Mr. Quilling and Ms. Magee have for Mr. McDuff. A man who did not cooperate, misguided in his beliefs as he was and so they framed him in his criminal trial and attempted to do the same in this civil follow-on proceeding. Ms. Magee lying about Gary Lancaster not having any licenses at the criminal trial (no series 6, 7, 63, 65) and then Ms. Lopez and Ms. Frank offering an altered document - materially altered document as evidence in both the criminal and in this civil proceeding. (RX 55) p.000924 and (DOE Tab 62) p.002. The DOE's conduct is beyond the pale of permissible conduct for an attorney and the ALJ should seek sanctions including referrals to

the State Bars for subornation of perjury. (Not to mention the lies about registration of Lancorp I within the SEC.)

2) McDuff references several cases *supra* dealing with securities fraud to illustrate the "Red Flag" arguments and to provide context to the improper allegations of the DOE. Specifically, allegations of "willfully and/or recklessly crafting" ...."deliberately and/or recklessly fail[ings]" *Special Situations Fund III QP, L.P.J. v. Deloitte Touche et al.*, 96 F.Supp. 3d 325, 337, 2015 U.S. Dist. Lexis 43323. "[T]heir allegations amount to no more than an allegation of a lapse in professional judgment." *Id* at 37. Allegations that the "parties had 'no legitimate business relationship.' *Id.* at 338....was not an operating entity *Id.* at 39 n. CCT BVI was a holding company with no revenue generating operations of its own" ID. at 341. "Deloitte refused to cooperate...once the fraud was revealed." *Id.* at 343.

The point to all of the above allegations is the court held "fraud by hindsight" is not a cognizable theory of relief; indeed, "fraud is always obvious in retrospect, but it is not reckless to lack clairvoyance." *Citing In re Longtop Fin. Techs. Ltd. Sec. Litigators*, 910 F.Supp. 2d 561, 579 (S.D.N.Y. 2012) The point of all these citations and language is the scienter requirement. The DOE has made no attempt at scienter in the "broker" or "dealer" format. No attempt to establish that McDuff intended to behave as a "broker" or "dealer" and as *Kramer* makes clear by all the elements that the ALJ is to consider, scienter is implied by the analysis the ALJ undertakes.

The DOE simply makes statements or attributes statements to McDuff (which are contested) through second-hand or even third-hand hearsay. But none of those statements go to McDuff's state of mind - nothing but rank speculating - such as "what did McDuff intend etc... - or Lancaster told me (Quilling) that McDuff thought..." But all that is nonsense...not just in the

hearsay format, but to allow speculation inside the hearsay format has none of the "indices of credibility" required by the ALJ to garner any weight and should therefore be disregarded.

No attempt has been made to establish that at the time McDuff made any alleged statement. (McDuff argues in the alternative.) That he believed those statements to be false. It is undisputed that Lancorp Trust I did not become active until after April 2004, and all of McDuff's statements to Benyo and Biles about Lancorp I were in 2002 or 2003. But because the DOE continues with the fraud allegations (to the extent that any is relevant) the Supreme Court has held that to bring a fraud claim based on an alleged misstatement in an opinion, a plaintiff must plausibly assert that "defendants did not [subjectively] believe the statements...at the time they made them." *City of Omaha, Neb. Civ. Employees' RCT. Sys. v. CBS. Corp.*, 679 F.3d 64, 67 (2nd Cir. 2012). As the Supreme Court recently explained, "[A] sincere statement of pure opinion is not an 'untrue statement of material fact,' regardless whether an investor can ultimately prove the belief was wrong." *Omnicare, Inc. Laborors Dist. Counsel*, 135 S.Ct. 1318, 2015 U.S. LEXIS 2120, 2015 WL 1241916 at *7 (U.S. 2015).

D. LOECKER TESTIMONY

Initially, to ensure objections for any future proceeding, McDuff would note the dichotomy that arises when the government runs parallel investigations. (HT p.221:6) (Ms. Huseman and I were running parallel [investigations] at this time in that part of the world interviewing people and looking at documents). (HT p.221:4-8) Loecker was involved in a parallel criminal investigation in conjunction with the SEC and Quilling who was operating as a receiver. As the legal parameter and Due Process implications do not appear to be related to the "broker" "dealer" issue, McDuff does not elaborate on his objection herein, but notes the same as in the civil prosecution and parallel criminal prosecutions will be adding subsequently to this

hearing and McDuff raises the issue so as not to waive it herein, when it is considered at a later date. At the time of this investigation (pre-2013), the U.S.A. for the Eastern District of Texas wrote a law review article on the perils of parallel civil and criminal investigations. (Matthew ?). In his article, he admonishes prosecutor to avoid the same consequences here - under his watch in the Eastern District of Texas. I do not recall his admonitions on perjury or suborning perjury.

Next, Loecker throughout his testimony suffered the same affliction as Quilling in that (1) he was not qualified as an expert, (2) testified as a summary witness without a proper foundation having been lain as a predicate for his testimony and familiarity with any particular document, (3) Loecker fails to identify any specific statement or statements upon which he relied as a basis for his testimony (the same as Quilling) (i.e. "I looked at everything and based on my analysis the moon is made of cheese" - or some other silly conclusion), (4) on cross, Loecker states he relied on Quilling who in turn relied upon Lancaster, who in turn relied upon someone else, who in turn relied upon someone else (the levels of hearsay are virtually impossible to ascertain - but are certainly not credit-worthy nor have any indicies of truthfulness), and (5) Loecker's conclusions do not logically follow from his purported undefined documents and statements that he reviewed. All together, these make his testimony totally unreliable. The specifics are as follows:

1) Loecker describes, without foundation, McDuff "as a leader or organizer." (HT p.290:20-21) Interesting is Loecker's use of the Sentencing Guidelines language (USSG - United States Sentencing Guidelines). Then he sophomorically concludes that McDuff "was the middleman." (HT p.291:4-5) Loecker does not identify any document or sworn statement or otherwise credible evidence upon which he relies. However, his statement is rebutted by virtually all of the respondent exhibits offered herein. (RX 3); (RX 8, 8-A, 8-B, 8-C, A-D); (RX

9); (RX 10); (RX 12); (RX 13); (RX 14, Lancorp II which Quilling acknowledges McDuff knew nothing about -offered by Quilling in McDuff criminal trial as Gov. Exhibit #29 to establish McDuff's wrongful conduct - although in the hearing on June 15 - Quilling acknowledged McDuff knew nothing about it. HT p.222:2-11); (RX 15); (RX 22); (RX 23); (RX 24); (RX 31); (RX 32); (RX 33); (RX 34); (RX 35); (RX 36); (RX 37, and Exhibits A-O); (RX 38); (RX 39); (RX 41); (RX 44); (RX 46); (RX 47); (RX 50); (RX 52); (RX 61); (RX 62); (RX 63); (RX 69); (RX 70). Notably, McDuff does not make blanket allegations, without foundation but notes with specificity, affidavits, documents, certified documents, transcripts, etc. McDuff's allegations are supported by either non-hearsay documents and materials or the same documents and materials that has been identified (by statute and common law) with indicies of credibility - whereas Loecker and Quilling simply pull their statements out of thin air without any support identified in the record. It would seem, out of fundamental fairness, Ms. Frank should have been put to the same standard - having to proffer the basis of each of her 77 documents - rather than the ALJ accepting them wholesale, without proffer, without foundation, without basis - McDuff would further object, to the extent not referenced by McDuff affirmatively as rebuttal evidence, as they have as of yet not been offered and admitted with a proper foundation and purpose. McDuff requests a ruling on his objection.

2) Next, Loecker, in the mold of Quilling, opines and out and out lies regarding McDuff and Lancorp Fund. First he notes that Mcduff had "substantial initial contact with a few investors." (HT p.291:9-12) Then he qualifies it to 90% was Reese. (HT p.291:1-292:24) And then opines that it was based on interviews with all investors" but provides no investor statements whatsoever from the investors or even his own notes from the interviews.

. In fact, the 302 and interviews of Biles and Benyo contradict this statement. (RX 4-A) (RX 4-B) (RX 47) There are so many fabrications in Loecker's statement, but for the broker dealer issue here Loecker identifies a few items (these items are subsentively denied by McDuff) that even if true do not support the broker - dealer issue herein. Those items are:

(1) limited contact with a few investors (HT p.241:10-12) (HT p. 295:2-6)

(2) Provided information to Benyo

(3) Answered questions investors might have had (HT p.291:10-25). Notably none of the alleged conduct are "broker" "dealer" issues. (e.g. (1) works as employee of the issuer. (undisputed McDuff was not an employee of Lancorp Trust Fund) (2) receives a commission rather than salary (no evidence of commission as opposed to MexBank profit) (3) sells or sold securities of another (no allegation of this) (4) participates in negotiations between issuer and investor (no evidence) (5) provides either advice in valuation as to the merit of an investment (no evidence of that only involved in answering questions) (6) actively rather than passively finds investors. (even allowing the DOE every inference Benyo met McDuff at a home based business party - Biles was referred to McDuff through Kevin Herring) (See *supra*) (RX 46) Also not supported by the DOE's pleading. Nowhere does the DOE identify the *Kramer* factors for the ALJ to consider, and then support each factor with an allegation of evidence - nor do they support them (the non existing pleadings) with evidence. In fact, using the *Apex* and *Salaman* paradigm - all of Loecker's testimony supports the conclusion that McDuff was not acting in a broker or dealer capacity. Nor any evidence that he was associated or seeking to be associated with a broker or dealer.

3) Both Benyo and Biles used RAI as their brokers so Loecker's statement is false. (HT p.293:11-16)

4) Loecker's conclusions should be expected as a non-lawyer, non-CPA, non-securities license holding lay person - who opines beyond his level of expertise.

5) Next, Loecker, a non-lawyer, offers a legal opinion which should be regarded out of hand. (HT p.294:13-21) McDuff objects.

6) Next, Loecker qualifies a statement - that McDuff had a relationship with Leitner through his father John McDuff. As Loecker, Quilling, Huseman, (the list is endless) all knew the story; that John and Roger McDuff met Leitner in December 2004. On request, McDuff introduced his father to Lancaster, as John McDuff and Vivian McDuff invested their personal IRA money in Lancorp Fund I. John McDuff contacted Lancaster about Megafund not Gary McDuff. (RX 10) (RX 53) (RX 52) The government mantra - that if they repeat a lie enough times it becomes the truth - this contrived allegation is false (RX 42).

7) Next, Loecker misrepresents McDuff's contact with Mia Flannery. (HT 318:10-319:4) It is not contested that McDuff worked with Value Asst. Management, MexBank, and First Global Foundation as part of his employment with Secured Clearing. (RX 24) (RX 26) (RX 31) (RX 31-A) (RX 31-B) (RX 32) (RX 33) (RX 34) (RX 35) (RX 36) (RX 37) (RX 38) (RX 39) (RX 41) (RX 42) (RX 44) (RX 52) (RX 61) (RX 62) (RX 69) (RX 63). Taken together these refute the unsubstantiated, baseless allegations and conclusions of Loecker. It is important to note that the vast majority of these documents were unavailable to McDuff at the criminal trial and not provided until mid-hearing or after the hearing in this case.

8) Next Loecker misrepresents his testimony in the criminal trial. (HT p.296:15-24) When the documents that formed the foundation of his testimony was presented at the criminal trial - those were not his documents they were Quilling's documents - Loecker offered documents as a Summary Witness at the Criminal trial (improper) and those documents came

from a private person - Quilling - they were not even addressed in that format and certainly not permitted to be testified off of (for purposes of a hearsay objection - no first hand knowledge in third party documents no exception under 803(a)- Loecker not qualified as an expert in either hearing (criminal or follow-on proceeding))

9) Next, Loecker, as the DOE has done throughout both the criminal and this hearing, plays fast and loose with the truth. In the criminal trial (at p.336:12-14) Loecker opines about transfers from Megafund to companies noted by a fax to Mia Flannery. (RX 56) These companies have been associated with Mr. McDuff's work for those specific companies. The fax to Mia Flannery does not pertain to Lancorp I - rather Megafund had sent notice that it was going to shut down and reopen as a 506 Reg-D fund and this correspondence was for that purpose. See (RX 56, including Leitner's criminal trial testimony. Notably, no action taken in response to fax. Lancaster had secretly opened Fund II as Megafund was shut down.

10) And again, Loecker was solicited by Ms. Lopez to deceive the jury in the criminal case as to the Refrain and Desist Order. That having been adequately addressed herein *supra.* (Aug 2004, 1-year post Biles, 2 years post Benyo.)

11) Next, Loecker is a parrot for Quilling. (HT p.298:5-11)

12) Next, Loecker can't keep his lies straight. He opines that "his [McDuff's] involvement running another investment fraud called MexBank." (HT p.321:12-15) Do the lies never end with Loecker and Quilling and the DOE? Loecker notes in his interview with Michael Bankert "...I advised him that I do not have adequate evidence that MexBank was an illegitimate investment..." (RX 57) He confirms on cross he did no investigation and simply speculated.

13) The rest of Loecker's lies regarding MexBank do not need to be addressed as to the broker-dealer issue.

14) Interesting is Loecker's disclosure that Lancaster gave a confession at the U.S. Attorney Office (HT p.328:9-11) A confession that was never disclosed to McDuff at the criminal trial. But in violation of "reverse Brady," Jenks, Giglio the AUSA Shipchandler did not produce Lancaster's purported confession to McDuff - either before, during, or after trial. A fact never disclosed previously and obviously kept from McDuff.

15) Apparently, due to his lack of legal training, CPA etc..., Loecker simply assumes that Lancorp Fund and Lancorp Group are the same entity - they are not. Quilling actually had to make two applications for receivership as it relates to Lancorp. One for Lancorp Group and one for Lancorp Business Trust. (HT p.340:5-14) Loecker's lack of basic understand of law is astounding.

16) Interesting is the fact that Loecker lies in this case regarding control and McDuff. In the hearing on June 15, and June 16, Loecker takes a materially different position than in the criminal trial of Leitner.

It is easy to explain. Loecker testifies however he needs to in order to get a conviction. Such recklessness is shameful for a U.S. government agent. In point one and two of this section, Loecker was attacked for his testimony as (HT p.290:20-21) (HT p.291:4-5) (HT p.291:9-12) (HT p.291:1-292:24). In the Leitner trial, Loecker testified:

> Q: And based upon your investigation, did you determine what Lancorp [sic] is?
>
> A: Lancorp [sic] is what I would call an aggregator of funds. Lancorp [sic] is made up of well over a hundred investors who deposited their money to Lancorp [sic] who transferred it to Megafund.
>
> Q: When you say he, who are you referring to?
>
> A: The individual responsible for Lancorp [sic] is Gary Lancaster.

Filed with the ALJ on June 24, 2015 (Appendix 1). As part of the filing is McDuff's Motion for Leave of Court to File Supplemental Evidence in Support of Gary L. McDuff's Rule 60(b)(d) Motion attached thereto as 'Exhibit 1' is an excerpt of Loecker's trial testimony in Cause No. 3:07-CR-00261-G (p.347-384) On page 359, lines 7-15, Loecker states specifically that Lancaster is responsible for Lancorp Fund. No equivocation at all. The facts are sometimes messy - and Loecker nor anyone else, is entitled to lie out of convenience. Material omissions are just as much perjury as material misstatements. The DOE cannot have it both ways. In one case argue one set of facts and in another case argue a different set of facts. Facts are facts. Only the law can be argued in the alternative.

E. Other Evidence Is Contradictory, Illusory, Unreliable, And Total Fabrications

1) Much ado has been made about the "insurance policy" and the amendment to the Lancorp Fund I. Those amendments are noted here specifically to Benyo and Biles. Interesting to note is an investor in the stream of the investment paid $50,000.00 for the insurance policy. Larry Frank who testified in Stanley Leitner's (of Megafund) criminal trial, testified about his payment for the insurance policy. His testimony in the Leitner trial transcript is found at pp.631-662. The relevance herein, is that the insurance policy, a copy thereof was found in the DOE's investigative file. See (RX 59)

This begs the question: If this is a fraud case, and the fraud is about a promise of insurance, and an investor paid $50,000 for an insurance policy, and the DOE had the insurance policy in its files - why not disclose that in the criminal and follow-on proceedings? Only one obvious reason - so they, the DOE, **COULD LIE ABOUT IT!**

2) Next is the testimony of attorney Humphries in the Stanley Leitner trial (2007) wherein he testifies about sending a letter to Lancaster regarding the insurance policy (RX 64)

There is no allegation that Lancaster or McDuff were privy to the insurance policy - nor to Humphries. In fact, the testimony of Humphries from Leitner's trial pp.390-417 indicates that the purpose of the Humphries letter -attesting to insurance to cover the Lancorp Fund investors money - was based on this policy. Humphries confesses in Leitner's trial that he never actually saw the policy but relied on Leitner's representation. (Not disclosed in the criminal on this case.)

3) The insurance misrepresentation does not belong to McDuff or Lancaster but to Leitner, who it is undisputed did not disclose that fact to either Lancaster or McDuff. The purpose of the insurance policy, which is not germane to the broker - dealer issue is the government's persistent deception to the various courts. (RX 58) (RX 58-A) (RX 59) This is raised as the April 5, 2004 acknowledgment by Benyo and Biles reference either a Broker's guarantee or insurance. Either way, the DOE raised the insurance issue in the hearing - and raised it falsely!

4) McDuff, due to the early recalls at this BOP facility during the week of August 1 - August 8, (one every day) incorporates his prior arguments herein and reserves his right to offer rebuttal evidence herein, in response to the DOE's initial post-hearing brief.

V.
THE DOE HAS UNCLEAN HANDS

Throughout the post-trial (criminal trial) period, and post-hearing June 15, 2016, and June 16, 2016, McDuff has discovered numerous irregularities based on documents in the DOE's investigative file - none of which were produced by the DOE, AUSA, or Quilling, and none of which were provided as required by Brady, Giglio, or Jenks - or until ordered in this case.

These include copies of insurance policies obtained by the DOE during their investigation. Those insurance policies undermine the DOE's arguments that McDuff without

foundation represented that there was insurance. This along with the acknowledgments by Biles and Benyo of the April 5, 2004 addendum belie the DOE's arguments - and yet they were withheld and the DOE disingenuously argue the "fraud" case - despite knowing their allegations were in part by a fraud upon the criminal court.

Next, Jessica Magee just lied to the trial court about Lancaster being licensed. In fact, as noted herein she said Lancaster was not licensed, when in fact he was. The ALJ took judicial notice of same.

Next, Jessica Magee lied, or at best, misled the criminal court and the jury about the registration of Lancorp Fund I. It was, in fact, filed.

Next, Quilling lied about Lancorp Fund II in the criminal trial of McDuff - asserting that it was related to McDuff. In the hearing, on June 15, 2016, Quilling acknowledged that McDuff had no knowledge of the Lancorp Fund II.

Next, neither Benyo nor Biles identify McDuff as a Broker. In fact, they identify Retirement Accounts, Inc., as their broker.

Next, Loecker acknowledges that the allegations he makes about McDuff and MexBank were based on Quilling or based on things he did not investigate.

Next, the DOE offered *altered evidence* under Biles - the April 5, 2004 addendum to which the DOE withheld the original and offered doctored evidence. The original noted *supra* - was found in the DOE investigative file.

In support, McDuff offers this summary and notes the BOP's interference in McDuff's declaration as a sufficient basis to impute to the DOE unclean hands to support dismissal and judicial estoppel requested herein.

VI.

NO CREDIBLE EVIDENCE OF PUBLIC INTEREST FACTOR

The DOE has an unwinning Hobson's choice. If McDuff prevails on his civil and criminal challenges, then the foundation of the DOE's case falls apart and this proceeding is a waste of time. However, if McDuff loses his pending civil and forthcoming criminal challenges, his release date is March 2032, at which time McDuff will be 77 years of age and unlikely to take up a career investing. Notably the life expectancy of white males in the U.S. is 77 years. Either way, the DOE cannot show any danger to the public at all. Additionally, as the Commission specifically noted in their June 2016 denial of McDuff's appeal, one of the aspects of the hearing was to address the public interest factors. Most if not all of the witnesses excluded, would have testified in part to the public interest factors (i.e. that Mcduff broke no law, did not deceive them, etc...) but they were previously excluded by the ALJ - absent a rehearing to consider the public interest factors, and the opportunity to call these witnesses live and prepare a record of their testimony as to the public interest factors - McDuff has been denied due process as to this specific issue. McDuff acknowledges that the Commission's ruling came on the eve of the hearing after the ALJ has made his rulings on the witnesses.

McDuff raises a single point to protect a constitutional challenge. The U.S. Constitution allows an individual to maintain his innocence and to preclude the government from punishing him for maintaining such innocence. As the ALJ is aware, more than 300 innocent inmates have been released after being on death row. McDuff maintains that for the DOE to seek punishment (sanctions, fines, etc.) based on McDuff's refusal to say he is guilty and sorry for something he did not do is frankly repugnant and abhorrent to the U.S. Constitution.

VII.
UNDERLYING BASIS FOR THIS FOLLOW-ON PROCEEDING IS UNAVAILABLE

As part and parcel of this follow-on proceeding the DOE used fraud upon the various courts to obtain the underlying results. The civil case is currently on appeal at the Fifth Circuit. The criminal case, due to the thousands of pages of newly discovered evidence from the DOE's file produced in the follow-on proceeding and the joint trial team from the criminal case (Loecker was the party representative in the criminal case) lays the underlying foundation for a Motion for New Trial Under Federal Rules of Criminal Procedure 33b (as the evidence is within 3 years of sentencing) which establishes that the United States withheld Brady, Giglio, and Jenks evidence from McDuff during his criminal trial. Such evidence was knowingly withheld by the U.S. and such evidence is in the 1,000s of pages and is exculpatory.

As a result, neither the criminal trial's outcome nor the civil trial now on appeal form a good foundation for this follow-on proceeding.

VIII.
HEARSAY OBJECTIONS UNDER COMMISSION GUIDELINES

McDuff objected as hearsay to the entire submissions by the DOE. The ALJ overruled the objection and alerted McDuff to the *In the Matter of Joseph Abbondante*, which in turn relied up on *Calhoun v. Bailer*, 626 F.2d 145, 148-149 (9th Cir. 1980) for the purposes of a hearsay determination in an administrative hearing. McDuff having addressed the issue initially in the brief expands herewith while preserving his prior objections

Calhoun emphasized essentially a "indicies of credibility" analysis for the ALJ to perform, initially, about all the evidence, prior to analyzing the case. It is axiomatic that the ALJ on admission can make a determination of the evidence, but not without first determining some very basic questions which can be guided by the rules of evidence (FRE 803 rules), and the guidance of the seven factors promulgated in *Calhoun* 626 F.2d at 149 However some of the

evidence will necessarily be determined by other evidence offered. An analysis of the DOE's 77 index is in order. It can be divided up into (1) summaries, (2) Public Records, (3) Business Records, (4) Transcripts and prior exhibits (unknown if offered or admitted in prior proceeding - many are business records).

All of it is hearsay and not generally admissible unless it meets one of the hearsay exceptions. And while the FRE is not controlling, it is instructive. Further as *Calhoun* instructs the administrative proceedings under the Administrative Procedures Act is not a free for all or the wild wild west, but rather requires for the exclusion of irrelevant, immaterial, and evidence that does not bear "satisfactory indicia of reliability, the evidence must be probative and its use fundamentally fair." *Hednsilapa v. INS*, 575 2d 735, 738 (9th Cir. 1978).

This along with the *Calhoun* 7 elemental test forms the foundation for the ALJ analysis.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. The rules and common law provide for an exhaustive list of exceptions to the hearsay exclusionary rule, because "prudence has determined" that hearsay evidence is unreliable. As a result, the DOE bears the burden to demonstrate the relevance, probity, fairness, reliability, purpose, and purported use of its wholesale offer of 77 documents. The majority of which were not discussed by a single witness. For example, of the four identified hearsay categories, none of the business records are in proper format, they were not authenticated, proffered by a witness, described, referenced - nor has any attempt been made to put them in context of testimony - whether they were offered for proof of their existence - or the truth of the matter therein. Nor did the witnesses testify of or about the hearsay in the records, mostly their existence after being shown the 1st page after 13 years - disingenuous. Another example - numerous documents from the criminal trial and other

unrelated criminal trials were offered. And while they are in acceptable form even though they are hearsay, there is no basis (lawful) on which they can be offered. Expanding further, DOE Tab 48 is a settlement, and while it is hearsay, it is also excluded under fundamental fairness which underlies FRE 408 offers of settlement and contains an express denial of liability and is therefore no-evidence whatsoever.

Further still, Final Judgments as to third parties are completely irrelevant, immaterial and hopelessly prejudicial and unfair. This excludes numerous other documents offered by the DOE such as Tab 49, 50.

Further still, CNA - Certificate of Non-Appearance, is not relevant for any matter before this court.

Additionally, Summary Charts can only be for demonstrative purposes only - as they lack any supporting documentation - and as such have no indicies of reliability - nor are they readily impeachable because their basis is unknown.

Next, as to summaries, the Texas Supreme Court has a well thought-out analysis of what is traditionally excluded under the common law as it were. In *Aquamarine Associated v. Burton Shipyard*, 659 S.W. 2d 820, 821 (Tex. 1985) the court noted "In order to rely on summaries, the sponsoring party must demonstrate that the underlying records were voluminous, were made available to the on opposing party for inspection and use on cross examination and were [otherwise] admissible..." Here, that was not done - the DOE merely offered charts, summaries, and diagrams without the underlying basis, without foundation, without supporting documents, without an opportunity to review by McDuff and certainly without opportunity to cross - the individual who prepared the summaries - charts - diagrams - and as such they violate due process and should be excluded or afforded no weight.

Next, as to the public records - none were certified or otherwise in proper admissible format (save Tab 12) - they were not offered as business records or as records kept in the ordinary course of business they are therefore merely non-certified public records that are not even offered with a modicum of foundation for prejudice, fundamental relevance, fairness, considerations... While the APA requires each agency to establish ("shall establish") a paradigm for the admission of relevant documents - the analysis does not end there. As the common law teaches, relevant evidence is routinely excluded. For example, FRE Rule 403 instructs that relevant evidence may be excluded if it's probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, etc... The Advisory Committee Notes from 1972 note specifically that "unfair prejudice" [the type the DOE proposes to use with the bulk of its submissions herein] within this context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one."

The DOE's perpetual line of questioning of Biles and Benyo and their offer of irrelevant, though prejudicial documents are specifically and improperly designed to portray McDuff "as a bad guy" without much analysis of the facts. And based on the ALJ's comments at the Hearing, (HT p.485:9-493:25) there is concern that the ALJ may have been improperly persuaded by the DOE's conduct. Specifically, what, if anything, does the Eric Holder fiasco have to do with the "broker" "dealer" issue? The DOE had no evidence of the "broker" "dealer" issue, laid no foundation predicate (i.e. these are elements of the "broker" - "dealer" findings an ALJ is required to make...and here are the facts to support same) - and rather went on a witch hunt to impugn McDuff. Based on Ms. Magee's perjury, the submission of altered documents, the untruths of Quilling and Loecker, the testimony of Biles and Benyo (Biles with his nonsensical definition of insurance and Benyo with her false "it was every penny I had in the world" - none

of which is germane to the "broker-dealer" issue and is solely calculated to obtain an emotional response from the ALJ) the hiding of evidence (insurance policy - fraudulent one at that - but used to dupe people by Stark, Rumpf, and Leitner) the purported reliance on insurance when both Biles and Benyo knew there was no insurance ... all in a disjointed attempt to lay this at the feet of McDuff. But in any event, none of those documents and allegations are relevant or probative as to the basis of the hearing (broker-dealer issues under the *Kramer-Hansen* paradigm).

Next, as the court well knows the statements of fact by Reese and Lancaster have nothing to do with this case and constitute no evidence. They are, in fact, inconsistent with the testimony, and laughable. They were part of criminal plea agreements - not admissible in McDuff's trial (on information and belief) (DOE Tab 15 & 16). For example, in DOE 15 Reese is alleged to have said - it is his (Reese's) statement of facts - "From on or about September 19, 2003..." No one but prosecutors talk or write like that - this was not Reese's statement but part of his plea agreement. As the court knows a "plea agreement" and its supporting documents are not admissible against anyone but the defendant making the plea. Judicial notice requested. The rest of the "statement of facts" is nonsensical. For example, ¶ 7 regarding his Cease and Desist Order from California is simply false. He was not under a Cease and Desist Order. See the actual order and remand in 2009. The statement of fact involves conduct (purported) through July 5, 2005 - at which time Reese was not under a Cease and Desist Order but a "Desist and Refrain" order - which was amended on August 19, 2008 and a decision on November 2, 2009. (DOE Tab 12). The basis of Reese's Desist and Refrain was for a set of securities that were in question at that time and he was to refrain "...unless and until qualification has been made under the law."

Next, Reese was to desist and refrain from effecting any transaction in securities ... "until [he] has applied for and secured..." a license. The bold face lies and misrepresentation continue to be breath-taking! These facts and particulars are in the DOE's own documents making their offers of half truths at best reckless - but more probable knowingly attempts to mislead all these courts. Be that as it may, Reese who was the subject of the refrain order would have known - this is another reason that these types of documents are never admissible against any third party (citations omitted).

Next, Lancaster's Statement of Facts seems strangely written by a prosecutor, where Lancaster was forced to sign (or face 25 years in prison) - definitely not something written by someone "as dumb as a box of rocks." (DOE Tab 16)

Next, Judgments to Lancaster and Reese have no bearing on this case. (DOE Tabs 48-50) Next, the indictment AS EVERY CRIMINAL JUDGE instructs the jury IS NOT EVIDENCE. (DOE Tab 32)

Next, Tab 74, McDuff's prior felony is interesting for its preclusive value. First it is not a relevant crime for purposes of securities licenses, and second it's more than 10 years before, it actually supports McDuff's Statute of Limitations asserted herein.

The list is endless of the irregularities in the DOE's Submission of 77 exhibits wholesale - all hearsay - some with exceptions noted, none with proper predicate or with a basis under which they are being offered.

Finally, with respect to exhibits 75-77. McDuff did not know it would have been proper to withdraw the documents on discovery the documents were false - he is not a lawyer. And second, as the Supreme Court noted - a statement is not false if it is believed by the person making the statement - if it is believed at the time it was made.

IX.
NEW EVIDENCE

Respondent's Exhibit List RX 1 through RX 70 -
Date of Document - Document Description - Admitted at Hearing with Noted Exceptions

1. May-June 2016 - Emails from Shiloh McDuff re: boxes of legal material
2. 01/07/02 - Overseas Development Bank and Trust, Now Offer and assorted documents
3. 01/07/02 - Confirmation of Class "A" Time Deposit, and assorted documents
4. April-June 2003 - Retirement Accounts, Inc. and Benyo, statements
4-A. October 24, 2006 - FBI 302 with Frances Lynn Benyo [POST HEARING OFFERED]
4-B. July 19, 2006 - IRS agent Loecker interview with Frances Lynn Benyo [POST HEARING OFFERED]
5. Overseas Development Bank and Trust, Index A-D
6. Retirement Accounts, Inc., information
7. July 27, 2006 - Letter to Michael Quilling from Roy Cadie
7-A. August 14, 2006 - signed letter to Michael Quilling from Roy Cadie [POST HEARING OFFERED]
8. August 15, 2006 - "Apostille" Belize, Notary Certification re Wilhelm Roy Cadie
8-A. August ___, 2016 - Affidavit of Marilyn Williams and Aaliyah Whittaker [POST HEARING OFFERED]
8-B. July 21, 2016 - Email from Williams Law Office with attachments regarding Secured Clearing Corporation [POST HEARING OFFERED]
8-C. July 21, 2016 - Email from Williams Law Office with attachments regarding ownership of Secured Clearing Corporation and Southern Trust Company [POST HEARING OFFERED]
8-D. July 21, 2016 - Email from Williams Law Office with attachments regarding public records registration of Southern Trust Company, Belize [POST HEARING OFFERED]
9. March 25, 2006, November 17, 2006 - Gary Lancaster sworn depositions
10. February 1, 2006 - Testimony, John McDuff in /Megafund Corporation/
11. April 26, 2006 - Deed without warranty
12. Wiring instructions Banamex, S.A., MexBank S.A. de C.V.
13. May 12, 2006 - Testimony, Steven Renner in /Megafund Corporation/
13-A. May 12, 2006 - Full transcript of Renner testimony [POST HEARING OFFERED]
14. June 1, 2005 - Lancorp Financial Fund Business Trust II, Private Placement Memorandum
15. June 27, 2003 - Letter from MexBank to Terence de'Ath NOT ADMITTED
16. May 8, 2006 - List of people and entities from MexBank S.A. de C.V.
17. September 12, 2003 - Gary McDuff, pages from website and assorted documents
18. March 2011 - Google Maps Photos, Deer Park, Texas
19. Photos: Cleopatra's and Darque Tan, strip mall

20. June 6, 2006 - Affidavit of Service, County of Northern Texas, Quilling v. McDuff
21. Bankers Acceptance from Wikipedia, et al.
22. Exhibit F to Affidavit of David Deaton
23. June 18, 2001 - Letter to Gary McDuff from Norman Reynolds at Jackson Walker, LLP, and assorted documents
24. Exhibit H to Affidavit of David Deaton
25. Employee Retirement Income Security Act (ERISA), Department of Labor website
26. US Bancorp, Account Protection: A reassuring benefit; and assorted documents
27. December 23, 2014 - Letter to Gary McDuff from D. Kyle Kemp, Attorney, SEC Form D
28. Lancorp Financial Fund Business Trust "Dear Investor" letter from Gary Lancaster
29. August 15, 2003 - Email from lancorp Financial Group, Gary Lancaster to Lynn Hodge and assorted documents
30. June 5, 2003 - Email from Norman Reynolds to Lancorp, Gary Lancaster
31. November 1, 2005 - Robert T. Reese Statement

31-A. August 12, 2008 - IRS agent Loecker interview with Robert Reese [POST HEARING OFFERED]

31-B. November 2, 2005 - 6 page fax from Reese to Julia Huseman [POST HEARING OFFERED]

32. August 7, 2015 - Declaration of Shinder Singh Gangar
33. September 11, 2013 - Witness Statement and Affidavit of Shinder Gangar
34. August 8, 2014 - Affidavit of Alan White
35. March 24, 2014 - Affidavit of Mike Steptoe
36. March 24, 2014 - Affidavit of Lance Rosenberg
37. March 7, 2014 - Affidavit of David Deaton

37-A. Exhibits 'A' through 'O' of David Deaton's March 27, 2014 Affidavit [POST HEARING OFFERED]

38. March 7, 2014 - Affidavit of David Taylor
39. April 8, 2014 - Affidavit of Facts, Michael J. Boyd
40. December 16, 2002 - Funds and Bridger Systems, Inc. Combine Strengths for New USA PATRIOT Act Section 326 Compliance
41. April 12, 2014 - Affidavit of Material Fact, LeVoy Dewey
42. July 31, 2015 - Affidavit and Declaration of John McDuff
43. April 15, 2014 - Letter to Judge Richard Schell, from Vivian McDuff
44. November 18, 2013 - Affidavit of Fact, Gregg J. Harris
45. May 20, 2016 - Translation from Spanish, Certify of Regional Coordinator of the Citala, Manuel Alejandro Murillo Lizola, re Gary Lynn McDuff Inman ADMISSION RULING PENDING
46. March 13, 2008 - IRS agent Loecker interview with Kevin Herring

46-A. September 8, 2015 - Letter from Kevin Herring [POST HEARING OFFERED]

47. October 17, 2006 - FBI 302 with Jay Biles
48. 2005 - Email correspondence between Oasis Foundation, Lancaster and attorney Reynolds reflecting no McDuff involvement in Lancorp affairs

49. March 12, 2004 - Lancorp letter to all investors (including Biles and Benyo) advising elimination of purchasing insurance
50. 1996 - Articles of Organization, Tax ID# and Apostille for Lancorp Financial Group, LLC
51. March 27, 2008 - Final civil judgment as to Robert Reese
52. July 15, 2013 and October 20, 2013 - Affidavits of Stanley A. Leitner owner of Megafund
53. February 1, 2006 - Testimony, Roger McDuff in /Megafund Corporation/
54. Lancorp Fund II of 2005 created without attorney Reynolds or McDuff's help or knowledge and multiple emails between investors and Lancaster - all devoid of any mention of McDuff; many CC'd or contain mention of Reese - but never of McDuff.
55. Jay Biles April 9, 2004 original Memorandum (PPM) signed modification acknowledgment from Lancorp client records and altered version offered during June 16, 2016 hearing.
56. May 20, 2005 and May 30, 2005 - fax to Mia Flannery by Gary McDuff never acted upon
57. March 10, 2008 - IRS agent Loecker interview with Michael Benkert advising Benkert that Loecker does "not have adequate evidence that MexBank was an illegitimate investment."
58. January 24, 2014 - Affidavit of Larry W. Frank with attached email from Brad Stark presenting the Nationwide and ACE insurance policy pages 14-40780.853 to 14-40780.870

58-A. October 5, 2004 - letter (or fax or email) from Bradley Stark to James Rumpf regarding Barclay's and Goldman Sachs and "Re: Insurance policy for Chase account" (11-page policy) see RX 58 ACE policy

59. August 16, 2004 - Invoice for $50,000 from Bradley Stark-Sardaukar Holdings for payment of ACE insurance premium; and, copy of Nationwide "Verification of coverage" from the DOE investigative file on XIAN DING LI
60. Frances Lynn Benyo April 8, 2004 original Memorandum (PPM) signed modification acknowledgment from Lancorp client records
61. October 6, 2010 - Transcript of Sentencing Hearing for Gary Lynn Lancaster
62. April 21, 2006 - Testimony, Norman Tower Reynolds in /Megafund Corporation/
63. October 17, 2013 - and December 20, 2013 - Affidavit of Lynn Hodge with exhibits
64. February 5, 2004 - Opinion letter from attorney Kenneth Humphries to Gary Lancaster regarding Megafund insurance protection
65. June 29, 2016 - SEC Response to McDuff's "Motion to Set Aside Judgment"
66. June 29, 2016 - SEC's Appendix In Support of SEC Response To McDuff's Motion to Set Aside Judgment
67. [Reserved for expansion]
68. [Reserved for Expansion]
69. March 11, 2014 & August 12, 2016 - letter and Declaration of J. Stephen Coffman regarding MexBank. McDuff has never been provided a copy of the Coffman deposition given to the SEC. McDuff asks for that deposition of Coffman (which has apparently been withheld by the DOE - not surprising

considering all the other illegal and shady conduct discovered thus far) - and the specific name of the court reporter who transcribed the deposition so obstruction of justice may be further explored by McDuff.

70. August 12, 2016 - Declaration of Gary L. McDuff with GLM - Exhibits.

[NOTICE: Exhibits RX 46 through RX 70 are offered Post-Hearing. The documents attached post-hearing are described in detail, as instructed by the ALJ in the brief itself]

For example. RX 7 is a letter by Roy Cadle to Quilling. RX 7-A - offered post-hearing - expands on RX 7 - it is a signed letter from Roy Cadie to Quilling on the same topic as raised at the hearing.

It is believed that every document is specifically referenced in the brief or offered and admitted at the hearing. Notable exception is exhibit 15 which was not admitted at the hearing. However, for purposes of my bill of exception, it is noted in the brief a single time to lay the foundation for its admissibility and to establish the basis for its relevance. McDuff would reurge its admission.

A final examination of the brief has been performed and if additional foundation is required, it is being included under the final Post-Hearing Brief.

McDuff has elaborated on his hearsay objection in the brief - and would note those same objections as to relevance, admissibility, etc...in response to the DOE's exhibits.]

X.
ARGUMENT ANALYSIS

First, the ALJ required McDuff to lay a proper foundation for each exhibit - the same was not required of the DOE. But as a result, McDuff's exhibits are either sworn affidavits, documents from the DOE's investigative file and offered as impeachment and for alternate grounds apparent from the document itself or a foundation was laid in McDuff's live testimony or in the closing brief.

Second, the business records are supported by affidavits (the DOE had no business record affidavits) or are apart or related to a specific affiant's or witness's testimony. For example, (RX 4, 4-A, 4-B) pertain to Benyo and are documents or events she previously testified about with particularity - notable none of this underlying basis was done by Quilling or Loecker or the DOE.

Next, many of the DOE documents are not under oath, not proper business records, not properly admitted, no foundation, no predicate was laid, no purpose was identified for their being offered. Just take for example (DOE Tab 16), Gary Lancaster's "Statement of Fact." It is as rank hearsay as could be offered. Just above Lancaster's signature on page 8, it reads "I have read this factual statement and have discussed it with my attorney. I fully understand the contents of the Factual Statement and agree without reservation that it accurately describes my acts." Not that the statement is true and correct to the best of his knowledge - not that it is under oath - not that it is subject to the penalties of perjury - I could go on and on. Offering a third-party stipulation is asinine. For example, the ALJ and I could stipulate between ourselves in a friendly suit that Ms. Frank was in fact a Disney princess and then proceed to offer that in evidence in any third-party case we wanted to establish that Ms. Frank was, in fact, the negligent party as to her duties as a Disney princess. While the judge would not admit or consider the third-party stipulation he might have a good laugh.

The FRE Rule 401 Comments - Instructive as to the relevancy that has to be determined by the ALJ opine as follows:

"Relevancy is not an inherent characteristic of any item of evidence but exists only as relation between an item of evidence and a matter properly provable in the case." (1972 Committee Notes) Therefore absent a proper foundation, none of the DOE's documents should

have been admitted for lack thereof. Without imposing such a standard (requirement for a relevance foundation, or a hearsay exception, or application under *Calhoun*, or a hearsay application, or a purported purpose) the ALJ is without objective basis to make any determination and his ruling thereon becomes totally subjective and arbitrary and capricious. This could never provide any consistency in any of the ALJ's rulings, which would preclude any rational finding under the *Hansen* or *Kramer* standards for which the ALJ must rule. Nor could the ALJ be properly analyzed under the *Calhoun* Standard. Rulings based on vagaries in the evidence and the methodology often lead to a pedagogy which makes the ALJ's rulings themselves subject to attack for their lack in logic and should be discouraged.

Kramer and Hansen, Apex and Salaman

Kramer and *Hansen* (and the internal cases therein) provide the structural framework under which the ALJ must make his decisions. As noted above, the DOE's complete abandonment of structural legal methodology: ((1) here are the elements of "broker" or "dealer" we must prove; (2) here are the facts that prove McDuff was a "broker" or "dealer"; (3) here are the public interest factors, here are the facts that support the public interest factors; (4) here is the case law that identifies such facts as supportive of those elements; and finally, (5) here is the reasoning by the courts supporting our actions) has left us with a pettifoggers case of ineptitude where nothing of any substance was proved: except that Jessica Magee lied in a criminal case; AUSA Shipchandler suborned perjury; Ms. Frank offered altered evidence; the DOE's own records impeach all of the allegations (i.e. insurance, etc.); the DOE evidence has no basis on which to be considered; Quilling was untruthful about what Lancaster is purported to have said; Loecker contradicts his prior sworn testimony; Loecker acknowledges he did not investigate but relied on Quilling; Loecker is untruthful about the existence of a 20mm investment Bank,

MexBank; Biles has a comical understanding of insurance; Benyo has no credible memory from 13-15 years ago; and losing "every penny in the world you have" means that you still have "a slush fund." But none of that is relevant to (other than potential sanctions against the DOE for pettifoggery) to (1) whether McDuff was an employee of the issuer; (2) whether McDuff received a commission rather than a salary; (3) whether McDuff sold the securities of another issuer; (4) whether McDuff participated in the negotiations between the issuer and investors; (5) whether McDuff provided advice or a valuation as to the merit of an investment (i.e. the value of the investment); and (6) actively (rather than passively) finds investors. *Kramer*, 778 F. Supp. 2d at 1334. Or associating with the same.

Neither has the DOE addressed the *Apex* or *Salaman* line of cases which conclude that the conduct of McDuff does not require a broker or dealer's license - and therefore no misconduct.

Neither the injunction nor the criminal trial itself have any basis to support the ALJ here - as wire fraud is not related to the broker dealer issue itself under *Kramer, Hansen, Apex,* or *Salaman* paradigms.

After all this effort the ALJ is no further along than prior to the hearing as the DOE did not meet its burden. The *Apex* and *Salaman* paradigm provide that the "merely bringing together" of "parties to transactions" for the "purchase and sale" of securities is not broker activity. *Apex Global Partners, Inc.*, 2009 U.S. Dist. Lexis 77679, 2009 WL 2777869, *3. And "performing a narrow scope of activities" does not "trigger the broker/dealer...requirements." *Salaman*, 2008 U.S. Dist. Lexis 42112, 2008 WL 227094, *8 (internal citations omitted).

If all the lies, fabrications, obstructions of justice, unethical, and/or illegal conduct of the DOE and its witnesses are removed from the analysis - and the ALJ were to exclude all McDuff's

exhibits (*in arguendo*) the testimony of the DOE fails because of Statute of Limitations, *In Personam* jurisdiction, judicial estoppel, Due Process, fundamental fairness, obstruction of justice (BOP), and under the *Apex* and *Salaman* standards the testimony, even in light most favorable to the DOE is not supportive of a finding of broker or dealer - much less the public interest factors.

Finally, as noted in the McDuff Declaration - under penalties of perjury - the degree of interference conducted by the BOP in obstruction of his preparation and attendance of this hearing is beyond any possible excuse. The ALJ should make a referral to a U.S. District Judge with a request that an independent investigation be launched against [redacted]-Beaumont Low for their unconstitutional interference with McDuff's legal materials, both in the criminal case and in this hearing - despite the ALJs best efforts to stem such unconstitutional interference. McDuff requests such a referral.

The lack of Due Process as to the witness; openness to the public, bias of staff (for example Ms. Frank was permitted into the facility for a tour - neither the ALJ nor McDuff's family were afforded such a courtesy); destruction of legal mails; imposition of sanctions by Counselor Landry; abuse of office by Counselor Landry; official oppression by Counselor Landry; obstruction of justice by Counselor Landry, destruction of McDuff's legal materials by C.O. Michaels - perhaps at Counselor Landry's behest - because McDuff spoke to the Warden about Counselor's interference with McDuff's legal mails - all this retaliation is the stuff of fiction in a John Grisham novel - but unfortunately it is the reality of [redacted] Low.

As such, the ALJ is left with conundrum: Whether to dismiss the case or to dismiss the case and make a referral to a U.S. District Court with a recommendation for an independent investigation. What to do about Ms. Magee's perjury - notably Ms. Magee has not notified Judge

Schell that she lied or misspoke about Lancaster not having a license - or the altered document, etc..., or all of the other irregularities is of course left to the sole discretion of the ALJ. But as to the merits of this case the only response is a dismissal with prejudice. However, out of an abundance of caution, should the ALJ not choose to dismiss, McDuff would request another hearing to impeach all the witnesses with all the newly discovered evidence and newly produced to McDuff, to call all the witnesses regarding the public interest factor that he was denied the opportunity to do so - as the Commission's order arrived after all his witnesses had been excluded.

XI
CONCLUSION

The DOE has failed to meet its burden in the matter. McDuff would request the opportunity to present Findings of Fact and Conclusions of law if the case is not dismissed out of hand, and alternatively requests an additional hearing to impeach the witness on their prior untruths and to present the public interest factors. McDuff requests the matter be dismissed with prejudice.

Respectfully submitted,

Gary L. McDuff, In *Pro Se*
[redacted]
P.O. Box [redacted]
Beaumont, TX [redacted]

As an aside, McDuff is most grateful for the efforts made on his behalf. In the DOE's zeal and the ALJ's orders to produce the investigational file, McDuff has found the evidence to earn a reversal of his criminal and civil judgments and to allow him to try and return to his home and life with his wife and family, to whatever is left of it.

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of August 2016, I mailed the foregoing Respondent's Opening Post-Hearing Brief to DOE attorney Janie Frank at 801 Cherry Street, Suite 1900, Fort Worth, TX 76102-6882

Gary L. McDuff

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
GARY L. MCDUFF

ADMINISTRATIVE PROCEEDING
File No. 3-15764

DECLARATION OF GARY LYNN MCDUFF

I, GARY LYNN MCDUFF, do hereby declare under penalty of perjury, in accordance with 28 USC ||1746, that the following stated facts are true and correct, and further that the facts in this affidavit are based on my personal knowledge of the events and occurrences stated herein.

1. I was born on [redacted] in Baytown, Texas. I presently reside in Beaumont, Texas at the Low[redacted] on [redacted]

2. From 1977 to 2012 I worked in residential subdivision development and private banking.

3. I attended college for two years after graduating high school. I once held a Texas license to sell life insurance (1991-1993). I have held no other state or federal licenses of any type.

4. In 2001 I was employed by Secured Clearing Corporation which was owned by Terrance de'Ath of London, England (now deceased). I was not an owner of any stock in that company. Mr. de'Ath sold his shares to Sir George Brown of Belize in 2005. Mr. Brown retained me as an employee until his death in 2007 when the corporation ceased operating. I was a Director of Secured Clearing. (Director as in manager, not as in Board of Directors.) RX 33, p. 14-40780.828 [P]25-26, RX 34, RX 35.

5. In late 2002 Mr. de'Ath, through Secured Clearing Corporation, advanced venture capital to Gary Lynn Lancaster to form a Fund that was completed on March 17, 2003. Mr. Lancaster was employed as a Private Wealth banker in Trust Department of US Bank in LaJolla, California when he was first introduced to me in 2001 by one of his trust clients, Lynn Hodge. RX 26, 63.

6. Mr. Lancaster represented to me that he held multiple securities licenses and had over twenty years of business experience. I introduced Mr. Lancaster to Mr. de'Ath.

7. Mr. de'Ath instructed me to ask Mr. Lancaster to fly to London for meetings where they would negotiate the terms of a business agreement. I did not attend that

meeting or any other business meeting with Mr. Lancaster and Mr. de'Ath. See Norman Reynolds deposition excerpts referenced in the brief. See (RX 62)

8. The result of the London meeting, was that Mr. Lancaster would form, own, and manage the Lancorp Financial Fund Business Trust (Lancorp Fund) using venture capital provided by Mr. de'Ath's Secured Clearing Corporation. RX 33 [P]9 of p. 14-40780.822. (Hereinafter referred to as Lancorp Fund I.)

9. I was never an officer, director, employee, trustee, agent, owner, "control person" or "associated" with the Lancorp Group, the Lancorp Fund I, Mr. Lancaster or any entity owned, managed, operated or controlled by Mr. Lancaster. Quilling June 15, 2016 Hearing testimony transcript and DOE Tabs 36 and 37 generally.

10. I was never authorized by Mr. Lancaster to represent the Lancorp Fund I nor did I represent Lancorp Fund in any capacity. See Lancaster's depositions. DOE Tab 36 and 37.

11. I never had signature authority over any Lancorp Fund I accounts or Lancorp Group accounts of any type, or any other entity owned, managed, or controlled by Mr. Lancaster, nor were any Lancorp funds ever under my custody or control. I never received any Lancorp funds. I never transferred any Lancorp funds. I never possessed any Lancorp funds. I never had any fiduciary obligation regarding Lancorp funds.

12. I was not authorized by Mr. Lancaster to distribute Lancorp Fund I Subscription Agreements and Private Placement Memorandums (PPM) nor to accept money from prospective investors/subscribers on behalf of the Lancorp Fund I, therefore, I did not.

13. I did not know where Mr. Lancaster held bank accounts for the Lancorp Group or Lancorp Fund I other than US Bancorp Piper Jaffray reflected in the Lancorp Fund Memorandum.

14. I do not recall seeing a Lancorp Fund I check, nor did I see Mr. Lancaster sign a Lancorp Fund I check.

15. I do not recall seeing Mr. Lancaster's signature on any check for the Lancorp Fund I or for any entity which Mr. Lancaster owned, controlled or was employed by.

16. I never visited the Lancorp Fund I offices or any office of any company owned, operated, managed or controlled by Mr. Lancaster, other than my initial meeting in 2001 with Mr. Lancaster at US Bank, LaJolla, California, where he was employed.

17. The Lancorp Fund I began, as I understand it, accepting investor subscriptions on March 17, 2003. All subscribers' money was held in escrow until May 14, 2004

when the first shares of Lancorp Fund I were sold and the Fund went effective. (See ONESCO cases - referenced in the brief.)

18. Robert Reese contacted me by telephone after the Lancorp Fund I had been completed. That would have been in July of 2003. Approximately four months after Mr. Lancaster began accepting subscriptions for Lancorp Fund I shares. He introduced himself as a financial planner with a number of long-time clients he advised regarding their investments. And that Mr. de'Ath's associates in London, Alan White and S.S. Gangar of the Chartered Accountancy firm of Dobb White & Co., had suggested he call me to ask questions about my knowledge of Mr. Lancaster's newly formed Fund (the Lancorp Financial Fund Business Trust I formed March 17, 2003), his professional reputation and how to contact him to get more information. I answered his questions based on my past meeting with Mr. Lancaster at U.S. Bank. I had been advised by U.S. Bank representatives, Mr. Lancaster's co-workers, and supervisors, that he was their (U.S. Bank) representative and expert involving high net worth clients in U.S. Bank's La Jolla office (RX 26). I advised Mr. Reese the basis of my answers. I am certain of when Mr. Reese first contacted me for the following reason. De'Ath provided the stand up capital to Lancaster for Lancorp Financial Fund Business Trust I (Lancorp I) because it was anticipated the refunds from Overseas Development Bank & Trust CDs would be maturing and those proceeds would be invested in the Lancorp I. These were proceeds that belonged to Mr. de'Ath's clients. However, due to Overseas Development Bank & Trust going into receivership and settlement taking two years, funding for Lancorp I would be delayed. That is why Mr. de'Ath sent one of his investors Robert Reese to inquire of me what I knew about Lancaster. The investors came from Robert Reese to invest into Lancorp I. Other than personal family friends of myself (parents, uncles) and others they (my family and friends) told about Lancorp I. Mr. Lancaster had expected to be directed to him from each ODBT depositor within 90 days. If Mr. Lancaster failed to launch the Fund I and go effective within the time specified in the PPM, he would be required to return all the subscribers money and close-down the Fund I permanently. To alleviate that potential problem for Mr. Lancaster, Mr. de'Ath called on Mr. White and Mr. Gangar to encourage their investment advisor clients in the U.S. and ask them to consider directing their clients to Mr. Lancaster's Lancorp Fund I. One of those persons was Robert Reese. That is how and why he first contacted me.

19. The extent of my relationship with Mr. Reese consisted of him calling me from time to time in 2003-2004 to ask me questions his clients asked him about the Lancorp Fund I. Since most of his questions were legal in nature, I directed him to Mr. Norman Reynolds who was legal counsel for the Lancorp Fund I July 2003 until approximately July 2004. Subsequently to that time he dealt with Lancaster directly. See emails, RX 54.

20. I did not know Mr. Reese, prior to the calls from him in 2003-2004, nor did I know any of his clients or the means by which he acquired them.

21. In 2001 I was introduced to Frances Lynn Benyo by Rev. Levoy Dewey, when I was employed by Overseas Development Bank & Trust. Ms. Benyo instructed her broker; Retirement Accounts, Inc. (RAI) to purchase a CD from that bank after I told her how to contact the bank. Her CD matured in 2002 and her money was returned to her broker RAI. See RX 2, 3, 5, and 6.

22. My next communication with Mrs. Benyo was in March 2003 over the telephone. My father, John McDuff, had been a friend of Levoy Dewey for almost 50 years. My father told Levoy Dewey, also a minister, about his investment into Lancorp Fund I and advised that Levoy might be interested. Levoy contacted Ms. Benyo directly. Ms. Benyo told me that Levoy Dewey had contacted her directly and recommended that she call me to find out how to reach Mr. Lancaster and obtain information about the Lancorp Fund I. I told her how to contact Mr. Lancaster, and what documents she could expect to receive from him. I provided her with the names of the documents based on what Mr. Lancaster had sent to my parents when they subscribed to purchase Lancorp Fund I shares. See RX 41 and 42.

23. I did not know when Ms. Benyo invested in the Lancorp Fund I or how much she invested.

24. I did not provide Ms. Benyo with any Lancorp Fund I documents in person, by mail, fax, email or any other means. I did tell her that only Mr. Lancaster was permitted to send her such information.

25. Ms. Benyo did call me and confirm that she had contacted Mr. Lancaster, who answered her questions to her satisfaction sufficiently for her to decide to invest with him. I did not have any further communication with Ms. Benyo until after Mr. Lancaster notified her that the Lancorp Fund I had been placed in the hands of a Receiver.

26. My last telephone contact with Ms. Benyo was in 2006. Ms. Benyo confirmed that Mr. Lancaster had distributed a memo to all investors advising them that he had been ordered to cease all communications with Lancorp Fund I investors and instruct them to contact the Receiver Michael Quilling.

27. I discovered in late 2013 that Ms. Benyo had invested directly in the Megafund on recommendation of Rev. Levoy Dewey. RX 41.

28. Personal friends and neighbors, Kevin and Salena Herring, introduced me to their relative Jay Biles. In February 2004, Mr. Herring arranged for Mr. Biles to meet me at a restaurant in Houston. The Herrings were aware of my 1993 conviction. In 2003, perhaps from reading the website or we may have told her directly, we informed all our social friends about the government's conduct as it related to me. See RX 17, 46 and 47.

29. Mr. Biles' questions of me were similar in nature as those asked by Ms. Benyo. I told him what I knew of Mr. Lancaster's background and how to contact him. I never met with or spoke to Mr. Biles after the first meeting referred to above. He did not recognize me at the criminal trial.

30. I did not know if, when or how much money Mr. Biles invested in the Lancorp Fund I, until I saw the Receiver's investor lists in late 2013 and early 2014 (post criminal trial).

31. Until late 2013 I was unaware of the 21 ONESCO cases. Pursuant to my understanding the 21 United States District Courts made findings that no shares of the Lancorp Fund I dated March 17, 2003 were sold before May 14, 2004, and all such sales were executed by Mr. Lancaster. O.N. Equity Sales Co (ONESCO) was the broker-dealer that employed Lancaster at the time.

32. I received no commission from the Lancorp Fund I directly or indirectly in relation to the sales of Lancorp Fund shares.

33. Through a private investigator in 2014 I confirmed that Mr. Lancaster was listed as an Investment Advisor Representative on the NASD-FINRA website holding multiple securities licenses, during the times when Lancorp Fund I shares were sold, and that the SEC had not revoked those licenses until August 10, 2006 by the NASD District No. 4 Department of Enforcement. RX 67.

34. Based on Mr. Lancaster's representation to me in 2001, I believed that Mr. Lancaster was a holder of multiple securities licenses one of which was that of an Investment Advisor under his series 65 license. RX 67.

35. My next to last communication with Mr. Lancaster by any means was a telephone call in early 2006 when he informed me that the SEC and the Receiver had ordered him to cease talking to all his Lancorp Fund I investors including me because I was employed by Secured Clearing Corp and Mr. de'Ath who had invested venture capital into Lancorp Group to form Lancorp Fund I.

36. On June 7, 2006, I moved to Cuernavaca, Mexico (near Mexico City) to continue my employment with Secured Clearing Corporation.

In 2008, the SEC filed a civil complaint against me, Robert Reese and Gary Lancaster claiming we're jointly liable for Lancorp Group's loss to Megafund of Lancorp Fund I money ($9,365,000.00). Both Gary Lancaster and Robert Reese called me in Mexico, where I had been living and working since June 2006. They informed me of the suit filed against all three of us. Lancaster informed that he had not been in contact with me since the Megafund closure because Michael Quilling had instructed him not to speak to me. He made it clear to me that he felt betrayed by the SEC and Quilling for designating him as a victim of the Megafund from 2005 to 2008 and receiving his full cooperation - then turning on him in 2008 claiming he was a perpetrator of the

fraud along with Stan Leitner, James Rumpf and Bradley Stark - when he was clearly not. He told me he could no longer speak to me or Mr. Reese. That was the last time I spoke to Mr. Lancaster. Prior to that phone call, I had not spoken to Mr. Lancaster since the last quarter of 2005, or first quarter of 2006.

Upon learning of the SEC filed complaint (3:08-cv-526-L) I contacted David Deaton at the Jackson Walker Law Firm and requested that he make copies of all the documents given to Norman Reynolds by Mr. de'Ath when Mr. Reynolds flew to London to meet him in 2002. Mr. Deaton informed me that Mr. Reynolds had taken all those documents with him in 2003 when he left the Jackson Walker Law Firm and moved to the Glast, Phillips & Murray Law Firm. The only document Mr. Deaton could locate was the electronic version of the Avenger Fund and the Cash Management Agreement Mr. Reynolds and he had worked on together for Mr. de'Ath in 2001 and 2002.

I contacted Norman Reynolds, at the Glast, Phillips, & Murray Law Firm, and told him what Mr. Deaton had said about the documents I needed to send to the SEC to clear up their obvious misunderstanding of the truth - who, what, when and where - in relation to the Lancorp Fund I business model source being Mr. de'Ath (deceased) and not me. Mr. Reynolds told me that he had not taken any of the documents related to Mr. de'Ath's projects from the Jackson Walker Firm when he left because Mr. de'Ath had not said he wished to change firm representation. All he took was his work product on The People's Avenger Fund and the Lancorp Fund I of 2003 because he was hired by Mr. Lancaster (and not Mr. de'Ath) to work on those entities, and Mr. Lancaster had elected to follow him to the new law firm. Mr. Reynolds speculated saying it was possible that the Jackson Walker Firm may have destroyed any documents he left behind.

Mr. de'Ath died at age 77 in 2008. With Mr. de'Ath no longer living and both attorneys - Deaton and Reynolds - who had done work for Mr. de'Ath's Secured Clearing Corporation - telling me they no longer had the documents which I needed to send to the SEC as proof that the allegations were wrong, I could see no way to present a clear and incontrovertible defense. The attorneys for MexBank had no understanding of U.S. laws and suggested the matter be presented to someone trained in U.S. law for guidance. A client of MexBank (Wayne Bevan) visiting Mr. Trejo and Mr. Noriega suggested they turn the matter over to Gordon Hall. Gordon Hall was contacted and asked to travel to Mexico City to meet with the MexBank lawyers and myself. Mr. Hall brought law professor Jack Smith with him. This took place in 2010. See RX 68.

Gordon Leroy Hall from Arizona, and Jack Smith from Ohio traveled to Mexico City to meet with the Chairman, CFO and attorneys for MexGroup (formerly MexBank). The meeting lasted for three full days. I was present for all three days. The purpose for the meeting was to discuss the best way to resolve the legal matters brought against me by the SEC, which also mentioned MexBank in the U.S. Court filings.

I was asked to explain to Hall and Smith my past efforts to obtain proof [from the Jackson Walker Law Firm in Houston (attorney David Deaton) and Glast Phillips & Murray Law Firm in Houston (attorney Norman Reynolds)] why they had created the 2003 Lancorp Fund I, for Mr. Lancaster. I explained how my (deceased) boss Terence de'Ath had extended venture-capital to Lancaster to form that Fund and how its business model had been adopted from a "Cash Management Agreement" (CMA) created in 2000 by the Washington DC law firm of Covington for Citibank and a New York brokerage firm named Emerging Market Securities. And how the Lancorp Fund was intended by Mr. de'Ath to provide Mr. Lancaster a means by which he could accept retirement money from ERISA approved trustees and then use that money to participate in underwriting syndications, or security sales for a fee or profit. Mr. de'Ath also agreed to have his network of financial planners direct their clients to Mr. Lancaster. Mr. Lancaster could - as a Fund Manager - then join the pre-existing group of money managers for whom Mr. de'Ath coordinated syndication participations for.

All of the documents given to attorney Norman Reynolds by Terrence de'Ath explained these matters in detail. Upon Mr. Reynolds' return from England with those documents, I met with Mr. Reynolds several times as he used them to construct the 2003 Lancorp Fund I for Mr. Lancaster. Mr. Reynolds had already constructed a larger Fund (named Avenger Fund) for Mr. de'Ath and Mr. de'Ath sent me to Mr. Reynolds' office often in relation to matters involving the Avenger Fund.

The business idea as I understood it was that the 2003 Lancorp Fund I was to be a junior fund to the larger Avenger Fund and together they would participate in syndications to earn fees and profits due to each syndication member, coordinator and offeror.

In late 2004, Mr. de'Ath sold his shares of Secured Clearing Corporation to Sir George Brown in Belize City, a retired Chief Justice of the Supreme Court of Belize, knighted by Her Majesty, Queen Elizabeth II. As an employee of Secured Clearing, I had a new boss to take instructions from. One of the first things Mr. Brown did was to sell Secured Clearing's venture-capital repayment rights owed to it by the Lancorp Group (owned by Mr. Lancaster) to MexBank in Mexico City (owned by Eduardo Trejo) and purchase 1% of MexBank's common stock.

As of January 2005, the Lancorp Group had made no venture-capital repayments via profit participation to Secured Clearing Corporation or any other party associated with Secured Clearing. Secured Clearing Corporation had an initial (2003) 50/50 profit participation plan which Mr. Lancaster negotiated with Mr. de'Ath to a 60/40 in Lancaster's favor. Secured Clearing never participated in any Lancorp profit before selling those rights to MexBank in 2005. Mr. Lancaster further negotiated a 35/65 in his favor related to his venture-capital repayment obligation which had been vested from Secured Clearing to MexBank. See DOE Tab 44 and 45.

I explained how MexBank had received its 35% share of Lancorp Group earnings. Those two months' payments came from Megafund. Megafund had misrepresented its legitimacy entirely. The misconduct of the Megafund operator and its contract partners had brought the SEC, IRS and FBI into the mix. Men named James Rumpf and Bradley Stark, whom I knew nothing about, were blamed for the losses of Megafund and Lancorp money.

After hearing me tell the history of the events I was aware of, Eduardo Trèjo told them of the agreement he had reached with Sir George Brown in late 2004 which resulted in Secured Clearing Corporation getting 1% ownership of MexBank and MexBank getting the (venture-capital repayment via profit-sharing) rights in Lancorp Group from Secured Clearing Corporation. And that for reasons never presented to MexBank, the SEC and the Lancorp Group receiver, appointed by the federal court on recommendation of the SEC, had wrongly concluded that MexBank and myself were somehow aware of whatever wrong was done by Mr. Lancaster and Mr. Leitner. And finally that the COO for MexBank (Adolfo Noriega) had sent the SEC a formal notice in 2006 offering to assist them in the Megafund investigation in relation to freezing any money it had received from Megafund, but the SEC never responded to that offer.

It was 2010 and both Terrence de'Ath and Sir George Brown had died of natural causes related to age. Mr. Trejo told me that with the passing of those men, his knowledge base of the specific type of syndications they had many years of experience in was lost to him. He (Mr. Trejo) had experience in property lending and private banking, not financial syndications. Mr. Trejo wanted to know how to defuse the SEC and the U.S. Attorneys office in Plano Texas from prosecuting me for conduct of others I did not know or was not aware of and had no control over. He said he simply wanted to know how to set the record straight and end the misunderstanding by the SEC so the criminal and civil charges against me would be dropped. And so that the SEC would be properly informed as to the contract reason MexBank had received profit participation from Lancorp Group legitimately. Mr. Trejo expressed concern that all the efforts on MexBank's part to help had been rebuffed by the SEC. He told them that he had even paid the expenses of a private investigator - Stephen Coffman - to travel to the SEC Fort Worth Office and present the facts accurately. I do recall him saying that Mr. Coffman had even requested the SEC send him a subpoena so that his statements would become part of the investigative record and contain accurate information about Gary L. McDuff and about who owned MexBank. To my knowledge, Mr. Coffman went to the SEC offices under subpoena and gave a statement or sworn deposition. However, I have never been provided with a copy of it. At that time, DOE attorney Julia Huseman was conducting the investigation of the Megafund matter. Rx 69.

After hearing the history and facts outlined above, Gordon L. Hall and Jack Smith (who had been recommended to MexBank by someone that knew Sir George Brown before his passing) proposed a remedy. For three long days they presented what they described as the doctrine of "offer and acceptance" protected by private

contract law rights vested to every U.S. citizen by the Constitution. Their counsel to me and to MexBank was persuasive in theory. It was like nothing I had heard before. It sounded unconventional to me, but they insisted it was done in commerce all the time and fully recognized by the U.S. Treasury. Holding themselves out to be - not lawyers or attorneys - but trained in the practice of contract law as protected by the United States Constitution. They explained that a U.S. citizen (me) could offer a private bond-backed by my promise to pay - to the plaintiff in any civil or criminal action, as consideration to set-off and settle any claim by the government, which by statute declares that the penalty for a violation is either "a fine; a term of imprisonment; or both." That by offering to pay any charge (allegation) with a bond presented to the plaintiff and provided the plaintiff retains the bond tendered - and does not return or reject it - then the legal binding principles of "offer and acceptance" control, and any obligation between the parties is by law deemed "discharged, set-off and settled."

To support their proposal they allowed me to contact one of their clients in Austin, Texas, by the name of Don Robinson who had followed their advice and used his private bond to settle a criminal charge against him. He told me that the "a fine" language in the criminal statute is what allowed him to offer to settle with the government by paying the "fine" with his private bond, instead of being subjected to "a term of imprisonment, or both." Mr. Robinson made it very clear to me that the AUSA on his case was not interested in the facts of the case, but very interested in the settlement after which was accepted. He tendered his private bond to the CFO of the court (as I too later did) who kept it, and an in camera hearing with the judge and prosecutor followed where he was released without serving a prison term or supervised release. He had a conviction though. And according to him the private bond is what had ended the controversy and settled the case. He told me he had followed Mr. Hall and Mr. Smith and Mr. Brandon A. Adams' instructions not to argue or contest anything. But instead to steadfastly stand on the private settlement agreement he had completed by tendering the unrejected bond as payment to the plaintiff (the United States of America).

Those men explained to me that because I was a U.S. citizen, I had the ability to settle the entire matter as a "third-party-intervener" regardless who was actually liable. And that by doing that I would be acting in honor and not dishonor. They told everyone in attendance for those three days that - not Mexican citizens but - U.S. citizens like me, could discharge any debt owed to or claimed by the U.S. government by presenting them with a private bond equal to the claim/charge including any interest due. And by doing that the claim against me by the SEC and United States of America would be paid in full. As would any debt owed by any other party named in the complaint and indictment. To do this, they would charge me $32,000 USD. They would process it all through the Court of International Claims Arizona Division, conducted by a member adjudicator of the International Adjudicators Association (IAA). The documents they produced reflected Brandon Adams and Benton Hall as the IAA adjudicators for the civil and criminal case. They

sent me documents to sign. I returned them signed and they filed them with the courts.

Mr. Hall and Mr. Smith and Mr. Adams assured me that because the civil and criminal courts had kept and not rejected the private bonds I gave each court that these matters (cases) (charges) had been settled and I would be "discharged" (released) without any further obligation in either case. Things did not go as they assured me they would.

The courts did not acknowledge the receipt of the private bonds I sent them. They did nothing in response. They did keep them though. The bonds were not returned to me. It was Mr. Adams who told me not to be concerned. The settlement agreement had conveyed to me a power of attorney by the plaintiff (the United States of America Department of Justice) to execute any "order" necessary to discharge any further obligation on my part to the plaintiff, because my paid and accepted (plaintiff-kept) bond had paid-off and settled the claim owed to the plaintiff. The only thing that needed to be done was to file a "motion to dismiss" the indictment signed with permission of the representative of the plaintiff. Mr. Adams explained that the settlement agreement had been reached with Eric Holder as attorney for the plaintiff. And part of that settlement was the granting of a specific and limited power of attorney to execute any document necessary to discharge set-off and settle the claim/charge against me. Mr. Adams provided me with the documents to send to Eric Holder informing him that the authority to execute the motion to discharge/dismiss via POA would be used unless he objected to me doing it that way. Three notices were sent certified mail to Mr. Holder per Mr. Adams' instructions. When no objection came back, I filed the supplied motion to dismiss. I was fully persuaded by Mr. Adams, Mr. Hall, and Mr. Smith that I had properly obtained legal permission to sign the motion to dismiss. The deficiency of the legal basis touted by Hall, Smith and Adams, which they convinced me to follow has become glaringly apparent. It was not the law. It is not the law. And its only effect was to cause me to not participate at all in the criminal proceedings resulting in a conviction for something I did not do, nor have the power to do. They themselves have since been charged and convicted for dispensing bogus defenses and misapplications of the law for substantial legal fees to others like myself who believed them also. GLM Exhibit 28.

37. I discovered post-trial in 2014 that the records maintained in Washington, D.C. headquarters of the SEC reflected that Gary Lancaster filed the appropriate Form D filing with the SEC for Lancorp I as verified to me verbally by attorney Norman Reynolds in 2003 when he confirmed same to Mr. de'Ath. See Lancaster's FORM D filing. RX 27.

38. I discovered in post-trial (March 2013) "discovery" that Mr. Lancaster had formed a second Lancorp Fund in June of 2005. I had no knowledge of its creation or any of the activities it engaged in or persons involved with that Fund. It was named Lancorp Financial Fund Business Trust II. In review of DOE evidence and

criminal trial evidence provided by the DOE I discovered that Quilling had only identified Lancorp Fund II (which was not associated with me) in the criminal trial. I only knew about Lancaster forming Lancorp Fund I. Lancorp Fund I was filed with the SEC. Lancorp Fund II was not filed with the SEC according to SEC and EDGAR filing databases. (Searches conducted by Kyle Kemp, esq. and Shiloh McDuff - mailed to me.) RX 54.

39. I discovered during trial (March 2013) that Mr. Lancaster had created a Cash Management Agreement dated August 31, 2005 I had never seen and was unaware of its existence. Post-trial I discovered the SEC had taken depositions wherein Mr. Lancaster confirmed he, without assistance of anyone, created several of those "Agreements" using the documents created by attorney Norman Reynolds as a template.

40. I discovered in post-trial (March 2013) that the June 1, 2005 Lancorp Fund II PPM and the August 31, 2005 Cash Management Agreements, which I had no knowledge of, were used in conjunction with transactions Mr. Lancaster engaged in with entities contracted with or owned or controlled by Robert Tringham, whom I did not know and was unaware of his existence. RX 48.

41. Upon being taken into custody on May 24, 2012, and transported to Fannin County Jail in Bonham, Texas (the Sherman Division, Eastern District of Texas Federal District Court hold-over pre-trial facility) I was arraigned and ordered detained pending trial. Approximately two weeks prior to trial an FBI agent (Mr. Smith) delivered a binder containing the exhibits the government intended to rely on at trial. I looked through the binder and noticed it contained no transcripts of anyone I know to be involved in the Megafund or Lancorp Fund. It contained uninformative documents that shed no light on what government witnesses would say about me.

42. On February 21, 2014, the Commission mailed to me, at the Fannin County jail, the Order Instituting Proceedings.

43. On March 11, 2014, another letter from the DOE was mailed to me C/O Fannin County Jail where I was being held on the related criminal case. It offered to allow me to inspect and copy the DOE's files related to this matter, provided I did so at the SEC Fort Worth, TX Office. The letter offered no provision to allow me to see the files myself unless I could get myself there. I was incarcerated and unable to attend that office and inspect the files. No offer to bring the files to me was made by the DOE. GLM Exhibit 1.

44. On July 7 and 8, 2014, the DOE allowed my mother, Vivian McDuff (age 83), to attend the DOE Fort Worth offices in my stead to examine the DOE investigative files consisting at that time of "16 legal boxes, containing thousands of pages and additional stacks of transcripts." Though she examined the files on my behalf, she

did not have the necessary understanding of relevant matters to know what documents were exculpatory and needed for my defense.

45. Again, I contacted David Deaton with the Jackson Walker Law Firm and asked him to search for something I knew he would have kept because Mr. de'Ath hired him (not Reynolds) to do a special opinion of the Texas banking laws. Mr. de'Ath requested an opinion on what was required to open an administration office in Texas that provided no commercial banking services to its customers. Mr. Deaton remembered. On searching his archives, he found that opinion as well as ALL the documents he previously thought Mr. Reynolds had taken with him when leaving the firm. Those documents provide the accurate history of where the Lancorp Fund I business model originated BEFORE I became involved with Mr. de'Ath, Secured Clearing Corporation, First Global Foundation, Value Asset Management, Southern Trust Company, Belize, or anyone involved prior to 2000. It is my understanding that Mr. de'Ath had semi-retired in 1996 from a 30 year banking career specializing in fixed income product syndications. The Jackson Walker Law Firm has been the custodian of these records, opinions and transaction documents since 2002 to present, and that fact is confirmed in Mr. Deaton's affidavit. See RX 37, 37-A with Exhibits A-O.

46. On July 10, 2014, DOE attorney J. L. Frank sent a letter to my mother informing her that the documents she had "marked for copying" had been redacted. GLM Exhibit 2.

47. On July 20, 2015, the DOE mailed me a copy of its "DOE_SUPP_APP" pages 001 through 443 which it filed with the ALJ court in support of its Motion for Reaffirmance of Summary Disposition after Remand. It contained documents, or versions of documents I had never seen or been provided prior to that by the SEC, U.S. Attorney's Office or the DOE.

48. From the time of my May 2014 arrival at the [redacted] (LOW) prison, I have encountered consistent disregard for receiving (or sending) any legal documents in or out of this facility. I have also been punished multiple times for - receiving legal mail sent to me by my family (as I am pro se); possessing my legal documents in my cubicle (2 man cube) in a locker approved by the former warden; possessing plastic storage boxes containing my legal papers - given to me by my Unit Manager to keep under my bed; and asking to make a legal call to my appellant attorney who had formally requested me to be allowed to make a legal call on that day. In all I was sanctioned a total of eleven months by an oppressive Counselor (Mr. Landry). He took away my - telephone, email, visitation, and commissary. [redacted]. The attached "Appendix" to my Declaration identified as "Exhibit GLM-A" contains the BOP forms (BP-8, BP-9, BP-10, BP-11) required by the prison to follow their administrative remedy procedure. They chronicle each incident of the BOP which hindered my ability to access the courts and present a full and fair defense in the civil, criminal,

and DOE follow-on proceeding. All my proceedings were and continue to be at some stage of the appeal process. All appeals were resolved in my favor. My civil and criminal matters have had and continue to have relatively parallel filing schedules which require me to work on three separate defenses in three separate courts, for the same conduct, simultaneously, while being incarcerated - with limited access to relevant case law or assistance. All the incident reports (BOP lingo is "shots") levied against me were appealed and the evidence presented to the warden, regional and central offices of the BOP supported my defenses and they were eventually expunged. However, in each incident, I was fully punished and served out the sanction imposed before each expungement was rendered on appeal. I was punished and then declared innocent, each time. See GLM Exhibit 4, consisting of 175 pages of BOP administrative procedure exhaustion over the past two years, and all related to my criminal appeal, civil appeal, and this hearing.

49. On 9/17/14 and 12/1/14 respectively, BOP Counselor Landry - against written BOP policy - prohibited me and appellant attorney Kyle Kemp from exchanging legal papers or notes. Thereby rendering the visits void of any ability to advance my defense. That denial prevented me from showing or examining case documents and post-trial discovery crucial to my appeal.

50. Following the non-constructive legal visits by Mr. Kemp and the filing of my formal complaint against Counselor Landry for his non-compliance with BOP legal visit policy, he prevented me from receiving copes of the court-certified Record-on-Appeal from the district court which I needed to prepare my appeal brief. My criminal case had two parallel appeals. One, a direct appeal which attorney Kemp was appointed to prepare; and, the other a non-direct appeal or interlocutory appeal which I was prosecuting pro se. I needed the district court record to assist attorney Kemp with the direct appeal and for my preparation of the interlocutory appeal which the 5th Circuit designated me as acting pro se, thus placing the burden on me to prepare that brief. Three weeks later, I was finally provided with the district court record. During that time, the Deputy Clerk of the 5th Circuit Court of Appeals consolidated the two appeals no.14-40780 & 14-40905.

The dates of the incidents and the BOP incident numbers are:
#2629726 Unauthorized legal boxes 9/14/14 - 10/24/14
#2621646 Abuse of legal mail 10/01/14 - 12/01/14
#2692751 Unauthorized use of a locker for legal paperwork 03/16/15 - 06/16/15
#2692752 Possession of pillow 03/16/15 - 06/16/15
#2692753 Unauthorized use of BOP envelopes for legal mail 03/16/15 - 06/16/15
#2723048 Requesting a legal call 06/17/15 - 07/17/15

Each of these resulted from my diligent efforts to obtain, review, and prepare legal papers related to the civil and criminal proceedings on appeal. The sanctions were imposed when the staff members who had "authorized" me to have/use these items

were on vacation or relocated to another prison. During the process of my appeal of each incident, those staff members were contacted by regional investigators who overturned the sanctions, only after I had served them in full. See GLM Exhibit 4, consisting of 175 pages of administrative procedure exhaustion consuming two years and all related to BOP frustrated appeal preparation.

The two Counselor-thwarted legal visits took place on Sept. 17, 2014, and Dec. 1, 2014, respectively in the legal-visit area of the visitation hall of [redacted], Texas [redacted] (LOW) security prison. GLM Exhibit 4.

51. Following my "write-ups" against Counselor Landry for his oppressive treatment of my legal efforts, my Unit Manager D. Sorrels informed me that Mr. Landry had rallied other Unit-Team members in my housing unit to place me on a [redacted]" GLM Exhibit 4.

52. In January of 2015, Vivian McDuff (my mother) made a written request of Janie Frank for copies of specific documents from the investigative file my mother had been unable to locate that I needed to file in this administrative proceeding motion for summary disposition. Ms. Frank denied her request stating that she had already provided all that she was required to provide. See Vivian McDuff affidavit. GLM Exhibit 3.

53. After the 4/22/2015 Commission's Remand of the Initial Decision, ALJ Elliot ordered the DOE to make the investigative file available to my family for inspection and copying so that I may use whatever materials from those files I maybe needed for the Hearing, which was finally fixed for June 15 and 16, 2016.

54. My mother [redacted]. She was [redacted]. She was [redacted] to the DOE offices to inspect and copy the files. She arranged for my son, daughter, and a private investigator to take off from work for three days to go do what my mother could no longer do for me. On May 19 and 20, 2016, my son Shiloh McDuff, daughter Christa McDuff and former federal agent and current private investigator J. Stephen Coffman went to the DOE Fort Worth, Texas offices to inspect the investigative file on my behalf. Christa McDuff went back again on May 23, 2016 to finish inspecting and copying the remaining files that were not able to be copied before close of business on the 19th and 20th. It took them three days to inspect approximately 50,000 pages and copy approximately 6,000 pages leaving some 2,000 pages to be copied by a copy service used by the DOE near their office. In discussions with the para-legals who have assisted me in preparing this brief, it is obvious to me that those remaining 44,000 pages have 1,000's more that are relevant to my cases and I request the opportunity to have a copy service copy the entire file to be delivered to me. While at the DOE offices inspecting the investigative file (consisting of 16 boxes) Mr. Coffman noticed that the boxes and files were all identified with markings naming Bradley Stark, James Rumpf, Stanley Leitner, Gary Lancaster, and Robert Reese as what appeared to him as being the DOE's method of labeling as the "targets" of the investigation.

Missing from those files and boxes was any section devoted to or identifying Gary Lynn McDuff as being a similar target or even a person of interest. I was on the telephone listening to Mr. Coffman ask Janie Frank why none of the investigative files were labeled "Gary McDuff" as a "bad guy" or person of interest like the others were. Ms. Frank responded saying that their interest in me came from the work product of lead agent Ron Loecker and receiver Michael Quilling. I was on that call for six hours as Mr. Coffman, my son and daughter, over DOE office speaker-phone, described the files they were locating for me so that I could (blindly) tell them which ones to copy and send to me. During that call I asked Ms. Frank to please provide Mr. Coffman with the contact details for Mr. Loecker, Mr. Quilling, Mr. Biles and Ms. Benyo so that he could interview them prior to the hearing.

She told me she would not do that. Her only obligation was to allow inspection of DOE files and she would do nothing beyond that point.

a) On May 8, 2016, dorm guard Watson refused to unlock the storage room and allow me access to my legal documents needed for hearing preparation. I requested her to unlock the door at 8:30 AM and waited until 3:30 for her to unlock the door. As she passed by it, I was standing there waiting and asked her again. She told me she was busy and I would need to ask the next shift officer to unlock it. Which I did. Officer Chatham came on duty and at 4:30 PM after the 4:00 PM count, he unlocked the door and at my request timed how long it took me to get my legal boxes out of the room. It took 35 seconds.

b) On May 12, 2016, Mr. Sorrels agrees to items "1), 2), 5), and 7)" of my May 9, 2016 Inmate Request to Staff form - for items and assistance I needed to prepare for the June hearing. See GLM Exhibit 5.

c) On May 13, 2016, Mr. Sorrels reversed his May 12th approval of "5) and 7)" and informed me that prison attorney Tina Hauck would be responding to request no. "8)". GLM Exhibit 5. That she had instructed him to deny me inmate assistance in my unit where my legal documents and work table was kept.

d) On May 16, 2016, I filed my declaration and motion to dismiss the Administrative Proceedings for BOP court-access denial because prison attorney Tina Hauck had:

i) denied my Unit Manager approved trial preparation work area,
ii) denied legal assistance from paralegal trained inmates in my trial preparation work area, located in my dorm, which is significant because of time limitations, and because it is where all my legal papers are. Had the inmates willing to help me

prepare for the hearing been allowed to come into my dorm where my case documents and transcripts could be viewed by them, and remain there with me during the day for the few weeks prior to the hearing, I would have been properly prepared to present a much more cogent defense at the June 15th/16th Hearing. My cross-examination of DOE witnesses would have been more effective in impeaching their testimony. Furthermore, if the six boxes of documents from the DOE investigative file had been allowed in by the BOP pursuant to Counselor Landry's original instructions, I would have had sufficient time to construct a trial brief, containing vast amounts of newly discovered exculpatory evidence from the DOE files, with the help of legally trained inmates, that would have been as on-point with the broker-dealer issue as my post-hearing opening brief.

iii) denied assistance from my family or anyone else at the trial/hearings, and

iv) denied copying of legal papers for court filing or trial use be made for me by BOP staff unless I paid $0.15 per copy.

v) denied my request for unmonitored legal calls to interview witnesses or have trial strategy conversations with private investigator, Mr. Coffman, or anyone else. GLM Exhibit 6.

e) On May 21, 2016, a storm caused the transformers to the prison to short out. They were destroyed and had to be replaced. That would require them to be custom built which would take months. [As of August 12, 2016, my building (living quarters) is still operating on portable generator power.] Routine and perpetual power outages leaves the dorm in complete darkness. This facility had no generators on hand which kept everyone in total lockdown until the 23rd of May when rented generators could be brought in. I was unable to do any preparation for the hearing in the darkness.

f) On May 24, 2016, portable storm generators arrived and the law library was opened. My May 9, 2016 Inmate Request to Staff listed items was approved by my Unit Manager and the head of the Education Department (Mr. Sorrels and Ms. Robinson). Included in that approval was permission for me and several paralegal trained inmates to use the law library from afternoon closing until the 8:00 PM recall when all inmates are required to return to their respective housing units for the evening. See GLM Exhibit 7.

g) At 7:20 PM on May 24, 2016, an inmate raced to the law library where I was working on the hearing preparation. He was frantic as he told me that the night guard (M. Michaels) was in the recycle trash room where my work-table and legal papers were laid out.

And that he was destroying all my legal papers by pouring gallons of water on them and into the 12 boxes containing them. In all about 14,000 pages were destroyed beyond salvage because he proceeded to stuff them into a large military duffle bag in their soaking wet condition causing them to disintegrate like toilet paper. No logical reason was ever provided as to why he had done that act of destruction. He had seen me working in that spot for at least two weeks. He was a guard (new) I did not know and had never spoken to. He had no reason to dislike me and we had never had any conflict whatsoever. Other inmates informed him before he destroyed my papers that I had permission from BOP staff to be in that spot to assemble my defense paperwork in preparation for the June hearing ordered by ALJ Elliot. OIG investigators asked me "who" I thought might have told him to destroy my paperwork? I told them I had no idea and the only parties I was aware of that could benefit from it was the government prosecutors and their related interested persons. See GLM Exhibit 8 which is the Formal Complaint the SIA-OIG investigator asked me to submit to him, and a Declaration by eye-witness to the destruction of my legal papers by night guard Michaels. David McMasters is but one of dozens who witnessed the incident. If the ALJ desires, many more inmates who watched will provide their Declarations to verify the deliberate conduct of the officer.

h) Wednesday, May 26, 2016, the law library was closed until 6:00 PM and opened until the 8:00 PM recall.

i) On Friday evening, May 27, 2016, Unit Manager Sorrels contacted education director Robinson with instructions to inform me and the paralegals helping with me that the prison attorney (T. Hauck) and the Captain had overridden Sorrels and Robinson's decision to allow me evening use of the one small room in the library. The reason given was because the "union" for the guards prevented any guard from any duty (checking on me in that room once each hour) unless extra pay was requisitioned for that temporary task. That task consisted of the common areas on the 4:00 PM to 11:00 PM watch, to walk by once and look through the window to make sure we were doing legal work and not clowning around. The word to me was: "Court order or no court order - no officer is going to be asked to let you in and out of that room each evening unless the court, the SEC, or someone pays for that extra duty."

j) On May 28, 2016, there was an 8:30 AM early recall for unexplained reasons which kept us in all day lock-down, thus affording me no access to the law library or assistance.

k) May 30, 2016 was Memorial Day. The library was closed for the holiday. Again no assistance possible.

l) May 31, 2016, DOE attorney Janie Frank and prison attorney, Tina Hauck, came to my dorm and inspected my trash recycle room work area where the guard had destroyed my legal papers and exculpatory evidence from overseas. One of the inmates who had witnessed the guard destroying my papers tried to tell Ms. frank what he had seen but Tina Hauck and Counselor Landry prevented him from speaking about it to her. GLM Exhibit 9.

m) At 7:35 AM on June 1, 2016, I requested Counselor Landry to call the mail room and ask them to locate the 6 boxes containing my copies of the DOE investigative file mailed to me according to the exact instructions given by him to my son. Mr. Landry was very aware of those documents being mailed in to me. It was discussed by me, him and Ms. frank the day before while she was here. See GLM Exhibit 10 and RX 1, the email from my son informing me that the 6 boxes had arrived at the prison on May 28th, before the Memorial Day weekend. Mr. Landry refused to call the mail room. With only 14 days remaining before the scheduled hearing, I went to the Captain (Joel Martinez) at 7:50 AM and asked for him to call the mail room since Landry had refused. He told me he could, but it was Landry's job and he should do his job, and if he didn't he (the Captain) would "write him up." The Captain told me he would speak to Landry and his boss Mr. Sorrels about it and I should wait until I was called. I was never called. From 8:30 to 10:20 AM Ms. Robinson allowed me to use the education department copy machine in her office to make copies of the papers I had been able to salvage and dry following the guard's deliberate attempts to destroy them. From 2:30 to 4:00 PM, Mr. Sorrels made copies in his office of the remaining damaged (salvaged) papers. I sorted them out in the law library from 6:00 PM to 8:00 PM. The six boxes were not given to me. They were in the mail-room though. RX 1.

n) At 6:25 AM on June 2, 2016, there was another power outage. Total lock-down all day. No lights to read or write by.

o) On June 3, 2016, replacement generators were rolled in, but the entire compound remained in total lockdown. The six boxes had not been given to me on that day either. They had been sitting in the BOP mail room waiting for Counselor Landry to get them for six days. Due to Counselor Landry's refusal to alert the mail room of the urgency on the expectancy of them - the boxes were returned to my son on 6/6/2016. See RX 1.

p) On June 7, 2016, ALJ Elliot issued an Order granting "McDuff's request that members of the public be permitted to assist me at the hearing." It was my understanding that the Securities and Exchange Commission Rules of Practice required the hearing be a "public hearing" and that members of the public must be allowed to attend. GLM Exhibit 11.

q) On June 8, 2016, prison attorney Tina Hauck sent a letter to DOE attorney Janie Frank informing her that the six boxes had been returned as "unauthorized" because they were marked as "special mail" and mailed in by my son (who was not an attorney), and because I had not followed "Bureau policy" of using an "Authorization to Receive Package or Property" form (PB-A0331). It did not seem to matter to staff, particularly Counselor Landry, that the procedure for mailing those 6 boxes to me had been prescribed in detail by Mr. Landry and followed exactly by my son. See GLM Exhibit 12 and RX 1, emails to me.

r) On June 7, 2016, DOE attorney Frank sent an email to my son informing him that the prison staff told her I had failed to submit a "Package Authorization Form" required to get the 6 boxes cleared through the prison mail room and delivered to me via my Counselor. I would need to obtain the signature from Mr. Sorrels (my Unit Manager) on the form(s). My son sent that email to me. GLM Exhibit 13.

s) On June 9, 2016, ALJ Elliot modified his June 7, 2016 Order after receiving a copy of the letter sent to DOE attorney frank by prison attorney Hauck. The modification consisted of making it clear that I would only be allowed preparatory assistance from other inmates and hearing assistance from certain members of the public if those individuals were present at the hearing. Provided only if that request did not violate the rules or procedures of [redacted] and all his requests would be subject to those rules. GLM Exhibit 14.

t) On June 7, 2016, I obtained 6 'Authorization to Receive Package or Property' forms and had Mr. Sorrels sign them. I mailed them out to my son to place in each of the 6 boxes and mail the boxes back to the prison (causing a second cost of $185.00 to him for the instruction blunder of Counselor Landry. GLM Exhibit 15.

u) On June 9, 2016, I was on four "call-outs" so that from 10:30 until 3:00 PM I was unable to do any hearing preparation work (Call-out required the inmate's attendance or face disciplinary punishment.)

GLM Exhibit 16.

v) On June 14, 2016, at 10:21 AM I received an email from my son informing me that the six boxes with the BOP Forms inside had been tracked online and showed as being delivered at 8:06 AM that morning. I took the email to Counselor Landry and asked him to please call the mail room and request they assist him in getting those boxes to me as soon as possible so I would have at least one day to look through them prior to the Hearing scheduled for the next day. Mr. Landry replied; "I am not calling the mail room." I protested and reminded him of the urgency and that I would have had them two weeks prior had he not provided the wrong mailing-in instructions to me and my son. He refused to answer me. Ignored me completely. GLM Exhibit 17.

w) On June 14, 2016, at 4:21 PM, my son forwarded to me an email from the DOE Janie Frank informing him that the individuals I wanted to attend the 15th and 16th Hearing to assist me in the hearing were not on my approved visitors list and their submission had not been made to the prison in time for the BOP to approve them (Stephen Coffman, Christa McDuff and Ashley Joyner). And that he (Shiloh) would be admitted because he was already on my visitors list but not the others. GLM Exhibit 18. I had been asking Mr. Sorrels and Mr. Landry for over a month prior what procedures needed to be followed for those people to be approved and allowed in to sit with me at the defense table and assist me. Each time they said it was a decision being made by "legal," referring to prison attorney Tina Hauck. Every time I asked Mr. Sorrels told me he had not heard back form Ms. Hauck. I tried several times each week before the hearing to obtain specific instructions on how to get those persons approved to assist me according to ALJ Elliot's order, but no instructions were provided to me until I received a copy of this email and the letter sent by Ms. Hauck to Ms. Frank on June 8th. Such late instructions left no time for the BOP to approve them. I was told by Mr. Sorrels that if Ms. Frank had instructed him or Mr. Landry to approve them, it could have been done in a matter of minutes. GLM Exhibit 18.

x) On Wednesday morning, June 15, 2016, members of my family tried to attend the hearing and provide me with the assistance I needed in presenting my defense. They were all relatives who were on my approved visitation list, and had been long before the hearing. However, BOP staff at the entrance denied their entrance and turned them away. They telephoned others who were driving to the prison - who were also on my approved visitors list - to turn around and go back home because they would be denied entrance.

See GLM Exhibit 19 - Declaration of Vivian McDuff; and see Exhibit 21 - Declaration of Walter Robbins. Exhibit 22 is an email of a list of persons who wanted to attend, expecting it to be a "public hearing."

y) On June 15, 2016, at the conclusion of the first day of the Administrative (public) Hearing, pursuant to the AP File No. 3-15764 Order Initiating Administrative Proceedings, I informed ALJ Elliot that the six boxes containing the DOE investigative file documents I urgently needed for the hearing had arrived for the second time here at the Beaumont prison mail-room. I requested that ALJ Elliot ask BOP staff to please go to the R&D mail-room and get the six boxes so that I may at least have them to review prior to court convening again the next morning. ALJ Elliot stated that Mr. Sorrels was present and heard my request and the matter was in the hands of the prison officials. Court adjourned about 3:15 PM. At approximately 3:45, I was escorted by Mr. Sorrels where the six boxes were sitting in a canvas mail cart. By 4:00 PM I had the six boxes of documents consisting of six large ring-binders - filled with approximately 1,000 three-hole punched pages in each binder. I spent the evening reviewing the contents as quickly as I could before (mandatory) lights-out at 10:30 PM. There was an abundance of never-before-seen exculpatory evidence that would have impeached every government witness at my criminal trial or, in the alternative, substantially strengthened my direct appeal. It would have equally overcome the SEC allegations in the underlying civil case.

z) Nineteen days after the hearing, on July 5, 2016, I received an email informing me that the last two boxes of the DOE investigative files had been delivered to the prison mail-room. Those two boxes had been sent to the DOE outside copy service when my son, daughter, and Stephen Coffman had spent three days examining and copying files to a high speed scanner. At 7:00 PM on that third day being a Friday (of my family's attendance at the DOE offices), it was decided that the last two boxes should be sent to a copy service trusted by the DOE to be copied and mailed from there directly to me. Upon the arrival at the prison, they were rejected and returned before the hearing in the same fashion and for the same reason as the prior six boxes. They too had to be resent with the special BOP form inside. They did finally arrive, but 19 days after I needed them. Important documents found in them have been incorporated into the post-hearing brief and this Declaration. See GLM Exhibit 23. Upon their arrival, I asked Counselor Landry to contact the mail room and insure the boxes would not be returned or refused yet again. He refused. I went to Mr. Sorrels and he

called the mail room who instructed him to tell me to listen for a call over the public address system to go to the R&D mail room to get the boxes. SEVEN days later (July 12, 2016) I was called to R&D to collect the boxes, where they had sat since the 5th. See GLM Exhibit 24.

aa) On July 8, 2016, I asked my son to send Janie Frank an email informing her that the transcript of the June 15th and 16th hearing she mailed to me (that arrived on July 8th) was missing the 2nd day altogether. I had been waiting on it since June 21st so I could begin preparing the post-hearing brief. At the conclusion of the hearing, ALJ Elliot asked the court reporter when he would have a transcript of the hearing ready. The reporter responded saying that the DOE had that morning requested him to have it ready within five days. If the DOE received it five days later, I should have received my copy on or near that same time. However, my copy of the first day transcript arrived some 14 days after the DOE presumably received their copy. Still needing the 2nd day hearing transcript, I asked my son to find out from Ms. Frank when it would be sent to me. The time set by the ALJ to have my post-hearing brief filed was July 22nd, which was only a few days away. See GLM Exhibit 25.

bb) On July 12, 2016, the 2nd day of the hearing transcript arrived from Janie Frank and was given to me by BOP staff. GLM Exhibit 26.

cc) On July 13, 2016, with only nine days remaining for me to review the entire hearing transcript (both days) and the newly received 2,000 pages of DOE case documents, I finally had what I needed to construct the post-hearing brief, but very little time to construct it properly. I sent a letter to ALJ Elliot explaining how all my pre-hearing assistance had been taken away as soon as the hearing concluded on June 16th and because my dorm was still operating on portable generator power (and still is as of August 12, 2016), with constant unexpected early recalls and lock-downs, I may need a filing date extension in order to complete the brief. See GLM Exhibit 26. ALJ Elliot responded by extending the filing due date to August 12, 2016.

dd) On July 13, 14, 15, 20, and 30, there were unexpected, early recalls. On August 1, 2, 3, 4, 5, 6, 8, 9, and 10, there were unexpected, early recalls. It is never announced as to why everyone gets called back to their housing units and locked down. It just happens. The constant result for me is that it brings my brief preparation to a halt for the remainder of the day. My legal work and the 8,000

pages of DOE investigative files are kept in a designated location in the law library. That is the only place I am allowed to have any assistance from (legally trained) inmates willing to help me construct a brief that properly addresses the issue(s) required by the Commission on remand. When early recalls (almost daily lately) occur, I am unable to access the materials kept in the library needed to work on completing the brief. I have no means to further it until the next day, or whenever the lock-down ends and I am allowed to return to the library.

ee) Upon my review of the complete hearing transcript and the Commission's ruling on my Rule 400 Motion, I prepared my brief.

ff) On a prior pre-hearing teleconference the ALJ denied my request to subpoena specific witnesses. I anticipated needed those witnesses to rebut the testimony and evidence presented by the DOE and their witnesses. Indeed, all those non-broker-dealer issues were raised by the DOE attorney's case-in-chief, creating the need for me to call my (anticipated but denied) witnesses in rebuttal. The witnesses who would not have been cumulative and who would have provided the ALJ with non-hearsay personal knowledge of the side of the story not revealed by the DOE, and whose testimony would have controverted the DOE witnesses and evidence mischaracterized are:

1. Vivian McDuff (one of the first Lancorp Fund I investors)

2. Rev. John McDuff (introduced Lancaster to Leitner)

3. David Taylor (Benyo's ODBT/IBT CD salesperson-broker)

4. Alan White (McDuff worked for Mr. de'Ath)

5. Shinder Gangar (he, not McDuff, recruited Reese)

6. Mike Steptoe (he, not McDuff, marketed CMA's to investors for Mr. de'Ath)

7. David Deaton (Lancorp Fund business model came from the 2,000 EMS business model which predated McDuff's involvement)

8. Michael Boyd (he, not McDuff, created the CMA product used by EMS and Secured Clearing)

9. Lynn Hodge (he introduced McDuff to Lancaster and Lancaster was a trusted, experienced banker and licensed investment advisor dealing with private, high net-worth clients of U.S. Bank and not "dumb as a box of rocks.")

10. Lance Rosenberg (he, not McDuff, negotiated the Citibank/Tricom investment Lancaster participated in using Lancorp money, and he, Rosenberg, did not know McDuff at all.)

11. Gregg Harris (attorney Aaron Keiter and Stanley Leitner assured him and everyone that the Megafund JV's were not securities subject to SEC guidelines.)

12. Gordon Brown (he, not McDuff, arranged for attorney Kenneth Humphries to send Lancaster an opinion letter confirming insurance protecting all money invested by Lancaster in Megafund.)

13. Sondra Martin Hicks (someone on the government prosecution team forged her signature on a victim statement falsely naming Gary L. McDuff as who introduced her to invest in Megafund.)

14. Stanley Leitner (that he told agent Loecker that Gary L. McDuff did not have any relationship with him or his Megafund beyond being an investor separate and independent from Lancaster. And he dealt with Lancaster directly at all times regarding the Lancorp investment, never McDuff.)

15. Larry Frank (that he never knew McDuff, and on James Rumpf's instructions, paid Nationwide/ACE insurance premium of $50,000 to Bradley Stark to protect all money invested by Lancorp into Megafund.)

16. Levoy Dewey (that he, and not McDuff, told Ms. Benyo about the ODBT/IBT bank CD product, the Lancorp Fund opportunity as well as the Megafund opportunity. That he routinely shared investment opportunities with Benyo. That Rev. McDuff, a friend for over 50 years of the Dewey family, often shared career updates of each other's children, including me.)

17. J. Stephen Coffman (that he traveled to Mexico and met with the principle officers and attorneys of MexBank, (Antonio Castro, Eduardo Trejo, Adolfo Noriega, Jesus Guarjado, Juan Harris, Irvin Navarette). That it was a private bank with a physical office in Mexico City, and that he was retained by Mr. Trejo to conduct PI work for the bank on persons and entities the bank was negotiating with to provide Mexican Union workers (CTM) with payroll debit cards. That Gary L.

McDuff served as a compliance department contractor, but no position of authority.)

18. Kevin Herring (that he was aware of my 1993 conviction prior to introducing his relative, Jay Biles, to me. That my son, Shiloh, was the person who informed him (Herring) about the Lancorp Fund.)

19. Norman Reynolds (that he traveled to London in 2002 to meet with Terrence de'Ath who owned Secured Clearing Corporation, to obtain all the information and documentation he needed to create an EMS-type Cash Management Agreement and the Avenger Fund - People's Avenger Fund and Lancorp Fund I. That he dealt directly with Mr. de'Ath on all important Lancorp-related decisions. That McDuff never gave any instructions or made any decisions. At most, he relayed them. That he, Reynolds, or his firm, did not construct or have any knowledge of Lancorp Fund II being formed by Lancaster in 2005.)

20. Gary Lancaster (that I never asked to be, and was not, an officer, director, employee, sales rep, decision maker, control person, signatory, investment evaluator or any other capacity over his Lancorp Group, Lancorp Fund I, or Lancorp Fund II. That I did not employ him or pay him, nor did he employ me or pay me any salary, fee, or commission. That I knew nothing of Lancorp Fund II or the August 31, 2005 CMA's he created to conduct business with Robert Tringham whom I did not know.)

21. Steven Renner (that the MexBank "white-label online portal" and v-cash accounts of MexBank, he made available via his company (CCI) were opened, owned, and controlled by MexBank, not McDuff. That the "know-your-customer" account records/documents are for Mr. Trejo in relation to MexBank, not McDuff.)

22. Bradley Stark (that he, for $50,000, provided James Rumpf with a bogus Nationwide/ACE insurance policy to present to Stanley Leitner of the Megafund. That he did not, and does not know Gary McDuff, or any McDuff related to me.)

23. Sue Dignon (that the EMS CMA account she provided custodian services over at Wells Fargo Bank from 2000 to 2003 conducted millions of dollars in transactions equal those described in the Lancorp Fund I PPM. That the transactions were a normal business activity in the fixed income product industry.)

24. Iain McWhiter (that he met Lancaster in London with Terrence de'Ath, attorney Colin Riseam and Mr. Gangar, when Mr. de'Ath

presented the venture-capital proposal to Lancaster to form and own a U.S.-based Fund to accept an existing client base whose monies were being released by Price Waterhouse from the closure of ODBT/IBT Bank in Dominica. That Lancaster accepted the proposal and agreed to a 50/50 profit sharing agreement once the Fund was up and generating income. That Gary McDuff had no part in those negotiations and was not present.)

gg) On August 8, 2016, I sent a letter to DOE Janie Frank requesting her to stipulate to the corrections to the June 15th and 16th hearing transcript which I made based on my knowledge of what was said by each person present in the hearing. I asked her to agree or disagree so I would know whether to move for an order from the court to require the court reporter to correct the errors. As of August 12, 2016, she has not responded; therefore, I presume she objects and I will file a motion accordingly with the ALJ for a decision. See RX 71.

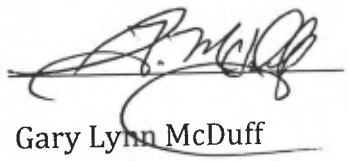
hh) On August 10, 2016, I received a BP-A0328 notice from A. Girouardin, the BOP Beaumont mail-room informing me that I had received an envelope from my son containing "Labels" and they were "Rejected and Returned" See GLM Exhibit 27. On August 9, 2016, I informed Unit Manager Sorrels that the labels were being mailed in so that I could properly label my post-hearing brief Exhibits being submitted with the brief and referenced therein. Mr. Sorrels instructed me to "get with him" the following day so he could inform the mail-room and "legal" (meaning Tina Hauck) to watch for the incoming labels "so they would not be rejected." BOP policy allows legal supplies to be mailed in. The envelope contained 100 yellow exhibit stickers/labels only. Upon my receipt of the return/rejected notice from the mail room, Ii took it immediately to Mr. Sorrels, who for the first time that day, arrived to his office. He sent an email to prison attorney, Tina Hauck, asking her to contact the mail-room and see if the labels were still there. If I need to, I will create makeshift labels and mail the exhibits to the court in that condition, which is my only alternative.

55. In expectation of receiving 8,000 pages of new evidence to use in preparation for the June hearing, I made a written request for the ALJ to require the DOE to cover the cost of copies being sent to me from their files I had never been able to see. I made the request because I am indigent and the district court and appellate court have both declared me as such. That request was denied by the DOE, thus placing the financial burden on my son, Shiloh, to pay that cost, or forego the opportunity for me to ever see the investigative files of the DOE which may contain exculpatory evidence.

Declaration pursuant to 28 USC ||1746:

I, GARY LYNN MCDUFF, declare under the penalty of perjury that the above stated facts and the information therein are within my personal knowledge and are true and correct.

Dated: August 12, 2016



Gary Lynn McDuff