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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

RESPONDENT'S SPECIAL APPEARANCE
March 17, 2014

AMINISTRATIVE PROCEEDING
File No. 3-15764

In the Matter of GARY L. MCDUFF	RESPONDENT'S RULE 220 INITIAL ANSWER

So as to be found in compliance with the February 21, 2014 ORDER INSTITUTIONG ADMINISTRATIVE PROCEDEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND NOTICE OF HEARING served on Respondent on February 27, 2014, Respondent makes this special, and not general, appearance for the specific purpose of assisting Administrative Law Judge Cameron Elliot in determining *"whether the allegations set forth in Section II in the above identified Order are, or are not, true".*

The Order specifies the subject matter to be considered is the Division of Enforcement allegations referenced in Section "II" A.1., B.2. and 3. The U.S. Securities and Exchange Commission's Rules of Practice, hereinafter ("Rules") express in Rule 200(b)(3) that *"The order constituting proceedings shall contain a short and plain statement of the matters of fact and law to be considered and determined, unless the order directs an answer pursuant to Rule 220 in which case the order shall set forth the factual and legal basis alleged therefore in such detail as will permit a specific response thereof;."* The order does invoke

Rule 220. Therefore, this answer to each allegation identified in Section II of the order is presented in compliance with Rule 220(c) in the maximum degree possible with the information known to Respondent, but without the benefit of being afforded any Rule 230 *et al* access to the Division of Enforcement's Documents for "*Inspection and Copying*" to aid in the preparation and presentation of this *"Answer".* The lack of that mandated opportunity places Respondent in denied due process and prejudices the full and fair opportunity to establish and present complete defenses to the allegations.

Despite multiple requests to be allowed access to the Rule 230 documents for inspection and copying (which should have been allowed to begin on March 6, 2014), the facility detaining Respondent, has continuously refused to allow Respondent to comply with the order. Chief Stephens of the Fannin County CEC facility refuses to even look at the order. He states that he *"Only takes orders from the US Marshal Service; and unless they instruct him to allow Respondent to visit the SEC regional offices in Fort Worth, Texas, to review and copy documents; call and confer with coordinating counsel for the SEC, in preparation for the hearing, then, he, Chief Stephens, has no duty to allow Respondent to do any of the things contained in the "Orders" of Judge Brenda P. Murray, or the Commission Secretary Elizabeth M. Murphy."*

Those limiting factors significantly hinder Respondent's ability to properly comply with Rules 221(c) and 222(a) and (b) *et al.* To not be found in default under Rules 155(a), 220(f), and 310, Respondent hereby presents this prejudiced answer relying solely upon facts and law known to Respondent but unaware of any inculpatory or exculpatory Brady/Jencks material in the control and custody of the Division of Enforcement or any direct or indirect agent or representative of the SEC's interests in this matter. For this reason, Respondent reserves the right to supplement and/or amend this "Answer" as allowed under Rule 220(c),(d), and e), without threat of Section (f) [default] being imposed for failing to file an answer which addresses any defense to any allegation not yet known by Respondent resulting from the denial of access to the Brady/Jencks material et al; or any of the items listed in Rule 230(a) through (h).

Respondent herby moves this honorable Court to require the Division of Enforcement to produce the Rule 231 statements, depositions, notes, writings or recordings of any person obtained during the Megafund and Lancorp Fund investigations, or from any subsequent related proceedings in which they were called upon to testify, as well as in relation to any person who shall be called as a witness in any hearing of these proceedings.

NOW THEREFORE, pursuant to Rule 220(c), Respondent specifically answers that:

1. Section II A.1. of the February 21, 2014 Order Instituting Administrative Proceedings, Release No. 71594, hereinafter "Order", states that,

"After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. McDuff, age 59, is a former resident of Deer Park, Texas. He has never been associated with a registered broker dealer or investment advisor."

ANSWER:

This is correct information.

2. Section II B.2. of the Order Instituting Administrative Proceedings states that, the Division of Enforcement alleges that:

"B. ENTRY OF INJUNCTION

2. On February 22, 2013, the Commission obtained a default judgment against McDuff, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Gary L. McDuff, Civil Action Number 3:08-CV-526-L, in the United States District Court for the Northern District of Texas".

ANSWER:

Respondent conditionally accepts the Division of Enforcement's allegation that it obtained a valid Default Judgment on February 22, 2013 against Defendant-Respondent

GARY L. McDUFF, provided it is required to appear and show cause why it is not in supreme dishonor for violating its tacit agreement and acquiescence with the terms, conditions, and stipulations set forth in the record of settlement in case # PR-20111216-A, wherein it agreed that in exchange for the Tender presented by the Defendant-Debtor on December 28, 2011 to the Securities and Exchange Commission it would credit Complaint number 3:08-CV-00526-L *"with the TENDER and discharge any and all public and private claims, levies, liens, or holdings of the Defendant-Debtor"*. Furthermore, the Commission agreed to execute a *"Notice of Rescission"* and file said Notice of discharge and dismissal of the *"COMPLAINT"* in the U.S. District Court Northern District of Texas, Dallas Division in relation to Defendant-Debtor GARY L. McDUFF.

The TENDER was deemed accepted for setoff of the COMPLAINT on December 28, 2011 and that acceptance became final and binding on the Commission by operation of law as of January 12, 2012.

HISTORY:

1. On March 26, 2008, some two years after McDuff left Texas to take a compliance job in Mexico City, Mexico, the Commission Division of Enforcement brought civil action no. 3:08-CV-526-L against McDUFF. That action also named GARY L. LANCASTER and ROBERT T. REESE. Lancaster and Reese, *"without admitting or denying the allegations of the Complaint (except as to jurisdiction) waived findings of facts and conclusions of law; and waived any right to appeal from Final Judgment"*. The Commission was provided with the Mexico address and telephone number of McDuff, yet it never called McDuff or mailed a Summons or any communication to inform him that McDUFF had been named in the civil action.
2. McDuff discovered from his own efforts that civil action 3:08-CV-526-L named McDUFF as a defendant, and sent the Commission a notice on May 5, 2008 through the court to identify the Party in Interest in the case and to provide evidence from the record of Plaintiff's standing to sue. In that notice, McDuff declared that he was exercising his common law right not to be compelled to perform under any contract he did not enter into knowingly, willingly, voluntarily, and that does not contain his valid signature. The court

was required to respond to the Mexico address provided, within 10 days of receipt, or request an extension of time and show cause why the claim was valid and the Plaintiff had established standing with the court to sue, otherwise the court would agree that after receipt of a valid, verified notice of non-response it would constitute agreement that the Plaintiff had no standing to sue and become a *"judgment in estoppel and bar to a plea"*, and that the judgment would be *"enforceable by any judicial or non-judicial remedy available to McDuff in any jurisdiction"*.

3. The Plaintiff failed to rebut or object to the agreement that it had no standing to sue and was unable to demonstrate its ability to produce any evidence or any rule, law, statute, regulation, code, contract, or injured party to which McDuff was liable. By operation of law the Plaintiff defaulted and forfeited any actual or presumed standing to continue prosecuting cause number 3:08-CV-526-L in relation to McDUFF. See Docket entries "9" filed on 05/06/08, "10" filed on 05/12/08, and "11" filed on 05/12/08. "A FIRM OFFER TO SETTLE" was made to the Plaintiff provided the Plaintiff demonstrated that McDUFF had an obligation or duty to do so. For reasons only known to Plaintiff, no written communication was ever sent by Plaintiff to the address provided in Mexico to discuss the FIRM OFFER TO SETTLE. The court mailed recorded filings back to the address in Mexico after filing, therefore, communication with McDuff was established by the court, but never by the Plaintiff. The Plaintiff never served anything on McDuff prior to the case being closed on September 30, 2010.
4. After Reese and Lancaster entered into an agreed judgment with Plaintiff *"without admitting or denying the allegations and waived findings of facts and conclusions of law;"* the court released the Plaintiff from its duty to present evidence in support of its claim and entered a final judgment against Reese and Lancaster.
5. Upon realizing that the Plaintiff had not done anything proactively to further its claim against McDUFF from May 23, 2008 to March 10, 2010 the court instructed the District Clerk to remove the case from the statistical records and administratively close it because *"no purpose is served by the case remaining active"*. The case was closed without prejudice on September 30, 2010. See Docked entry "15".

6. McDuff received the "ORDER" from the court informing him that the case had been closed. It arrived at the address in Mexico that was provided to the court.
7. McDuff had been unaware of the activities of Reese and Lancaster, which caused the Commission Division of Enforcement to file the Complaint naming them as defendants. McDuff's only knowledge of wrongdoing by anyone was in relation to the insurance protection (which was represented by Mr. Leitner of the Megafund) being revealed by investigators as being non-existent. McDuff learned from the court filings made public that someone named Bradley Stark had provided someone named James Rumpf with proof of insurance that would protect all monies placed in a special trading account at a major U.S. Bank against all forms of loss. And, that Mr. Rumpf had, by contract, assigned that insurance coverage to the Megafund investors, one of whom was Mr. Lancaster, the trustee of the Lancorp Fund.
8. Upon learning from McDuff's father that the promises Mr. Stark made to Mr. Leitner (to return all the money) were lies, and at least 60% of the money was lost, it became apparent that the harm done by Mr. Stark to the investors in the Megafund and Lancorp Funds was permanent. Several ministers, including McDuff's father, Rev. Harris, Rev. Hobs, Rev Brown, Rev. Frank, and Rev. White, were devastated by the betrayal of Bradley Stark, whom they had never met. Even though McDuff was guilty of nothing more than believing the lie told to him by the others who also believed the lie, he chose to act as a third party intervener accommodation party and settle the claim made in the Securities and Exchange Commission civil action no. 3:03-CV-00526-L on behalf of the Lancorp investors. The case had already been closed by the court on September 30, 2010. On December 28, 2011 McDuff reopened the case by filing a Notice of Tender For Setoff to settle any and all outstanding unpaid claims. The Tender was accepted and not rejected on January 9, 2012 by the United States Treasury as Tender Agent for the U.S. District Court Northern District of Texas as full and final payment and set-off dollar-for-dollar any and all past, present, or future debts, liabilities, encumbrances, deficiencies, deficits, liens, charges, interest, fees, taxes, obligations of contract, instruments of debt and all other obligations jointly and severally attributed to cause no.3:08-CV-00526-L.

See Docket entries 17 filed 01/04/12, 21 filed 01/23/12, 23 filed 01/30/12, 25 filed 01/15/12, 30 filed 06/26/12, and 31 filed 08/09/12.

9. The unopposed, lawfully arbitrated, Administrative Settlement action number PR-20111216-A resolved the matter of SECURITIES AND EXCHANGE COMMISSION vs. GARY L. McDUFF, Civil Action: 3:08-CV-526-L and ended the controversy *res judicata* and *stare decisis*. The Plaintiff failed to act in honor and file the agreed *"Notice of Discharge and dismissal of the COMPLAINT"*, leaving McDUFF an aggrieved party entitled to a remedy. That non-performance by the Commission resulted in a petition for a judgment August 2, 2012 (see Docket entry no. 31), which resulted in a default judgment issuing on August 16, 2012. On September 14, 2012 the Notary for the Secretary of State for Arizona, State Northeast Region Court District, Maricopa County filed and mailed to the Commission, and the U.S. District Court Northern District of Texas, Dallas Division a "NOTICE CONCERNING RIGHTS OF APPEAL" allowing 23 days to give notice of appeal and failure to do so would be deemed a waiver of any rights of appeal and result in the judgment being certified as final. No Notice of appeal was presented within the 23 days provided or at any time thereafter. Therefore, the judgment became final and non-appealable on October 7, 2012. Any and all claims of the Securities and Exchange Commission against GARY L. McDUFF terminated on the day the right to appeal expired, and the judgment became final by operation of law, because equality under the law is paramount and mandatory.
10. In violation of the McDade Act 28 USC 530 B (ethical standards for attorneys for the government) the Division of Enforcement, in bad faith, petitioned the U.S. District Court to re-open case no. 3:08-CV-00526-L knowing that they had already settled the matter through a completed administrative proceeding. That constituted a willful misrepresentation by an officer employed by the Department of Justice (Jessica B. Magee) which is actionable under the McDade Act. See Neville vs. Classic (Jan 2001) 141 F. Supp. 2d 1377, and McKeen 101 F. Supp.2d at 87, quoting 424 US 409 at 427 (11th Cir) Dishonest action resulting in case dismissal. The Clean Hands Doctrine requires one who comes into court as a plaintiff with clean hands must keep those hands clean throughout the pendency of the litigation and if the plaintiff

violates this rule the plaintiff must be denied all relief, whatever may have been the merits of his claim. 269 F. 2d 882. The Division of Enforcement operated a fraud on the court in the Northern District of Texas by moving that court to reopen case no. 3:08-CV-526-L and issue a default judgment on February 23, 2013, knowing that the case had been closed and settled with *res judicata-stare decisis* affect by their own consensual stipulations six months prior.

For the self-authenticating reasons outlined above, and preserved in the record of case no. 3:08-CV-526-L which was collaterally estopped, settled, and set-off by case no. PR-20111216-AJ and thereby making void any subsequent judgment rendered contrary to the operations of preclusion law and the Rooker-Feldman doctrine, Section II. B.2 of the Commission Secretary's Order Instituting Administrative Proceedings dated February 21, 2014 is not correct in fact or law.

The legal standing upon which Respondent relies is set forth in the following Points and Authorities:

Respondent would direct this honorable court to find that the principals of finality in the law of a properly mediated proceeding, affording both parties due process notice and ample opportunity to present evidence, object to any process within the proceeding, and appeal any final decision, finding, ruling, or judgment, must act as a bar against re-litigating an already litigated matter. As a result, the Respondent was not "enjoined" and the Commission never established any facts in support of the allegations made in 3:08-CV-526-L complaint relied upon to seek further remedial action.

Respondent would further direct this honorable court to the specific wording chosen by the Commission Secretary and placed in the Order Instituting Administrative Proceedings wherein she informs Respondent in Section I that the Commission deems it appropriate in the public interest to institute administrative proceedings against Respondent. Then, in Section III she goes on to say that the purpose of the administrative proceedings is that *"In view of the **'allegations'** made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceeding be instituted to determine: A. Whether the allegations set forth in*

*Section II hereof are **'true'**, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;* B. *What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and IV. IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed..."* She then instructs Respondent to file an *"Answer" to the allegations"*....and *"appear at a hearing"* when duly notified or the allegations may be deemed to be true. The Commission Secretary does not specify what remedial action pursuant to Section 15(b) of the Exchange Act the Administrative Law Judge may seek to impose on Respondent if he finds the allegations to be true. Section 15(b) of the Act contains a variety of prohibited conduct and corresponding penalties. Any action by government or its agencies seeking to deprive one of *"we the people"* any right, privilege, or property must inform the man, woman, or their entity with specificity what right, privilege, or property such agencies seeks to take away by any invocation of statutory positive law. The right to know the alleged breach of law or contract which gave rise to the instant cause of action and the right to know with specificity what penalty or punishment is being sought, is an absolute requirement of law. The Order does not so inform the Respondent of any potential consequences if the allegations are found to be true.

Respondent respectfully contends that the Secretary's Order does not specify what, if any, new conduct of Respondent after July of 2005 occurred which falls within any statute of limitations extending to February 21, 2014 which allows the Commission to seek any new sanctions beyond those specified in civil action 3:08-CV-526-L. A body of well- established law restricts the plaintiff from seeking a second bite of the apple in subsequent or successive proceedings brought by the same plaintiff against the same Defendant for the same conduct merely for including an additional statute violation which could have been brought in the initial proceeding, or to impose an additional penalty which could have been sought in the initial proceeding. Federal courts apply preclusion law of the state whose courts, or any tribunal within the state, rendered the first decision, and Title 28 USC 1738 does not permit a federal district court or appellate court of any federal circuit to second-guess the correctness of a state court or tribunal's decision which is barred by the doctrine of res judicata. 126th Ave. Landfill, Inc. v. Pinellas County 459 Fed. Appx. 896 US Court of

Appeals Fifth & Eleventh Circuits (2012). And, in Woods vs. Orange County 715 F.2d 1543 (11th Cir 1983), the court held that under the Rooker-Feldman doctrine, federal district courts may not decide federal issues that are "inextricably intertwined" with a state court's judgment. This is true even if the plaintiff failed to raise the federal issue in the state court. Such judgments are not open to collateral attack. Casale v. Tillman 558 F.3d 1258 (Feb. 17, 2009), the Rooker-Feldman doctrine prevents lower federal courts from reviewing final state court judgments. Such review is a function reserved in the federal system for the United States Supreme Court. Article III of the Constitution limits federal court jurisdiction to live cases or controversies, not matters settled in state courts. In such cases, no federal subject matter jurisdiction exists. Stanley v. Ledbetter 837 F.2d 1016 at 1018.

Respondent gives notice to this honorable court that federal jurisdiction terminated when the Arizona court judgment became final, because 28 USC 1738 does not allow Federal Courts to apply their own rules of res judicata for issue preclusion and must accept the rules chosen by the state from which the judgment was taken. 449 US 90, 66L. Ed 2d 308. Foreign judgments are in any case to be held conclusive with us. 159 US 113 at 167.

Federal jurisdiction was lost in the course of the Arizona proceedings. The Arizona judgment cannot be impeached collaterally in the courts of the United States. It has the effect of an estoppel. Murray v. Magnolia Petroleum Co., 23 F.2d 347 (5th District Dec. 5, 1927). Rooker-Feldman Trust Co., 263 US 413 (1923) and D.C. Court of Appeals v. Feldman 460 US 462 (1983). The court must determine whether the claim in the new [this] suit, was, or could have been, raised in the prior action. If the answer is yes, res judicata applies. A later-filed suit it barred. Respondent suggests that the new Administrative Proceeding is tantamount to a "later-filed suit" inasmuch as it is seeking additional penalties for the same conduct alleged in the first action against Respondent by the Securities and Exchange Commission.

Disposition of federal action, once a State court adjudication is complete, would be governed by preclusion law. Parsons Steel v. First Alabama Bank 474 US 518, 523, Fed R of Civ P 8(k). State law [Arizona] determines whether the defendant prevails under preclusion principles in federal court action.

The Arizona final judgment ended the controversy of civil action no. 3:08-CV-526-L, and for a federal court to have jurisdiction, "an actual controversy must exist at all stages of litigation". Biodiversity Legal Foundation v. Badgley 309 F. 3d 1166m 1173 (9th Cir 2002), "When a controversy no longer exists, the case is moot." This is true whether the case is settled or time barred. Cole v. Ovoville Union High 228 F. 3d 1092, Arizonans for Official English 520 US at 45, 133 F. 3d 1159 at 1172, 232 F.2d 1300 at 1303.

The Arizona final judgment against the Securities and Exchange Commission forbids the allowance of a retrial of the cause of action # PR-20111216-AJ, as a right, where due-process time to appeal has expired. The rights of the judgment creditor, Gary Lynn McDuff, were thus fully acquired by operation of law.

Respondent became aware that the policy of every agency of the government is to resolve matters by way of Administrative Settlement whenever possible. Gary Lynn McDuff acted on this provision and tendered the above identified contract administrative settlement offer, which was accepted.

The Federal Administrative settlement policy states that a person who has resolved liability to the United States through any lawful administrative settlement process shall be discharged from any liability in relation to that claim and any other person's potential liability in relation to that claim is reduced by the amount of the agreed settlement. Each federal agency may use arbitration, or any other alternative means of dispute resolution. Any such award, settlement or determination shall be final and conclusive on all offices of the Government. Congress had two purposes in enacting provisions for every agency to settle claims through the administrative settlement process; first, to ease court congestion and avoid unnecessary litigation; and second, to provide for "more fair and equitable treatment of private individuals and claimants when they deal with the Government or are involved in litigation with their Government." S. Rep. at 2, reprinted in 1966 USCCAN at 2515-16.

Respondent entered into the administrative settlement process by exercising the unlimited right to contract protected by Article 1, Section 10, of the Constitution. The Supreme Court has affirmed that a legislative body can pass no law impairing the obligation of contracts. There can be no invasion by the Federal Government 332 US 46 at 120, Adamson v. California (1947).

Since the claim made by the Commission in action no. 3:08-CV-526-L was based on a claim of interstate commerce it was appropriate to effect the administrative settlement agreement under the system which Congress adopted to govern all monetary activity. The legislative history of the Federal Tax Lien Act of 1966, P.L. (Public Law) 89-719 explains that the entire taxing and monetary systems were placed under the Uniform Commercial Code to regulate them. Therefore, the UCC rules are appropriate to govern the offer and acceptance elements of the administrative settlement offer tendered to the Commission and not rejected or said to be insufficient within those rules.

First, the Respondent established that the law allowed the government and its privy agencies to enter into contracts:

In Unites States v. Perkins, 16 S. Ct. 1073, 163 US 625, 41 L Ed 387, the Supreme Court observed that; "The United States government is a foreign corporation with respect to its presence in any of the several states" And in Eric R. Co. v. Thompkins 304 US 64 (1938), and Bank of U.S. v. Planters Bank 9 Wheaton (22 U.S.) 904, 906, the Supreme Court explained that: "The government descends to the level of a mere private corporation and takes on the character of a mere private citizen as an entity entirely separate from government. For purposes of suit, such corporations and individuals are regarded as an entity entirely separate from government." And, in United States v. Tingey 30 US 115, 8 L Ed 66, the Supreme Court found that, "The United States in their political capacity may enter into contracts, or take bonds in cases not previously provided for by some law. A bond voluntarily given to the United States and not prescribed by law is as a valid instrument upon the parties to it, in point of law. A voluntary bond taken by authority of the proper officer of the Treasury Department, to whom disbursement of public money is

entrusted.....[to make disbursement to the Securities and Exchange Commission] is a binding contract.....Upon full consideration of this subject, we are of the opinion that the United States have a capacity to enter into contracts", Peters at 128. This principle has been already acted on by this court in the case of Dugan, Exec. v. The United States, 3 Wheat. Rep. 172.

Respondent had a contract right to exercise UCC 3-603 (b); where any party, be they a principal or a third party intervener can present tender of payment or consideration of an obligation to pay an instrument to a person entitled to enforce the instrument and thereby obtain discharge. Acceptance of the tender made by the accommodation party, Gary Lynn Mcduff, to the United States Treasury for further credit to the U. S. district Court Northern District of Texas (Dallas) as fiduciary for Commission's claim no. 3:08-CV-00526-L constituted lawful discharge of any further obligations of the defendant GARY McDUFF.

Neither the form nor the substance was rejected, refused, objected to, or returned for dishonor by the Payee. Acceptance of the tender equated to a compromise settlement wherein the Commission agreed to the terms set forth in the unopposed settlement record of case no PR-20111216-AJ, in which the accepted tender would set-off any and all obligations of GARY L. McDUFF in relation to civil action no. 3:08-CV-526-L. The Commission defaulted on its obligation thereto and a default judgment issued, after providing the Commission with due process time to appeal. The present situation is one that falls within the rule that one who has consented to the entry of a judgment has no status to contest the result, or continue any claim or litigation related to that judgment, (149 F. 2d 354 at 355). Once consideration is offered and accepted, even that of a peppercorn, in agreement not to seek any further charges, the agreement is binding, and the substance of that offered is no longer a contestable element of the negotiated settlement. Distinguished and supported as a maxim in United States v. Miller 214 Fed. Appx. 63 (8th Cir.)

The terms set forth in the written record intended by the parties [Gary Lynn McDuff and Securities and Exchange Commission] wherein it affirmed that it was intended to have legal

consequences, as a complete and exclusive statement of their agreement may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement. Terms of such agreement are binding on both parties provided there is opportunity for objection to any act, claim, or affidavit which was used to define the specific terms of the agreement. If there is no objection to any terms set forth in the writing within the time provided for objections, and there is performance by one party, the other has acquiesced and is bound to the written terms.

For these reasons the Commission, by operation of law, forfeited and voluntarily waived its claims against Respondent in civil action no. 3:08-CV-526-L. Therefore, this Administrative Proceeding File No. 3-15764, which is believed to derive its foundation on the reliance of the void judgment of case no. 3:08-CV-526-L to presume joinder and determine if further remedial action is warranted, must also be deemed inaction-able due to the prior binding agreement by the Commission to dismiss the case upon performance by the defendant of the agreed terms of settlement. Settlement has been lawfully established as a self-authenticating and fully authenticated record of a prior proceeding which resolved the controversy.

Pursuant to Federal Rules of Evidence Rule 201(d) Judicial Notice of an adjudicative fact can be given anytime at any stage of any proceedings; (b) (2) that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned; the court must take notice if a party requests it and the court is supplied with the necessary information; In a civil case the court must accept it as conclusive. Rule 402 provides that all relevant evidence is admissible. 166 F.3d 1119 (Feb. 3, 1999) 5th and 11th App. Crt., 528 US 889, 120 S. Ct. 212 A foreign "Record" presented for Judicial Notice is to conform to 18 USC 3491-3496, 22 USC 1204 and 1741, whether civil or criminal . Any record when duly certified as provided in Section 3494 of this title shall be admissible in evidence in any proceeding in any court of the United States when authenticated by any United States Citizen designated to perform notarial functions pursuant to Section 1750 of the Revised Statutes as amended 28 USC 4221 and 18 USCS 3493-96, which states that the "record" shall be admitted.

Respondent hereby invokes Rule 201 et al for this honorable court to take Judicial Notice of the attached certified record of case no. PR-20111216-AJ, and to accept the noticed fact as being conclusive, by operation of law, having collateral estoppel effect on this Administrative Proceeding File No. 3-15764.

Respondent further invokes provision of Rule 201 of the Federal Rules of Evidence, wherein:
"On timely request [now being made by Respondent], a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request [now being requested by Respondent], is still entitled to be heard."

Respondent does not waive the right to be heard as provided by this Rule.
See: Silicon Graphics SEC Litigation 1997 970 F. Supp 746 at 758. Even if the court cannot properly take judicial notice of defendant's SEC forms....the court may consider them under the incorporation by reference doctrine. Venture Assoc. 987 F.2d at 431.

Respondent would also show that the civil action no 3:08-CV-526-L was time barred because 15 USC 78r (a) provides that any person who makes a statement which in light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable....unless the person shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. Title 15 USC 77z-2 (c) allows for the application of safe harbor, and states that a person "shall not be liable with respect to any forward looking statement, written or oral".....provided they contain clear language of cautionary statements sufficient to meet the "bespeaks-caution doctrine " which renders such statements non-actionable. Smith & Wesson Holding Corp. SEC Litig. (2009 C D Mags) 604 F. Supp 2d 332. 15 USCS 77 u-5, Grissin v. Endres (2010 SD NY) 739 F. Supp 2d 488. Defendant's lack of clairvoyance simply does not constitute securities fraud...."defendant's failure to anticipate future events did not constitute securities fraud. Denny v. Barber 576 F.2d 465 at 470. Plaintiff did not show by any preponderance or clear and convincing standard that defendant [Respondent] was aware of the omitted fact which

allegedly made his statement misleading. Scienter must be shown as to each individual speaker. 2013 U.S. Dist. LEXIX 15922 In re BP P.L.C. Sec. Litig. Feb. 6, 2013 Fifth District. Scienter participation must be willful and knowing; simply aiding and abetting is not sufficient to trigger liability. Reves 113 SCT at 1170 and Store v. Kirk 8 F.3d 1079 at 1091-92 (1993). "Statements" were the result of merely mistakes by the defendants based on false information fed to them by others. 531 F. 3d at 197 and 513 F.3d at 709. The language of 10(b) gives no indication that Congress meant to prohibit any conduct not involving manipulation or deception. 15 USCS 78ff, Penalties, in relation to violations of 78 a et seq provides that no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation. Chiarella 445 US at 231.

No facts presented, in light of the newly discovered evidence, can remotely be deemed to have demonstrated in any proceeding, which could strongly imply Respondent's contemporaneous knowledge of statements being false when made. At most, the statements were a later sobering revelation. Such revelation, however, does not turn Respondent's statements into a falsehood.

The above provisions of securities laws and the fraud statutes upon which they are derived place any person who makes statements or representations, believing them to be true when made, and that are not made with any knowledge that reliance upon them would or could cause harm to the listener, then that person is not liable for civil or criminal penalties unless it is demonstrated by clear and convincing evidence he acted with reckless disregard or willful blindness to the truth. This unaware designation places such a person within specific statutory time limits for actionable conduct for any claim for damage or violation of related Securities laws. Title 15 USC 77m, 78i€, 78r (c() and 78cc(b) was set by Congress granting a right to sue for violations thereunder to be actionable for one year after the plaintiff discovers the facts. The limitations period begins when the fraud is discovered or should have been discovered. The only exception is the "unlawful profit statute", Section 16 (b), 15 USC 78p (b) sets two years as the period of repose. Norris v. Wirtz 7th Cir 1987, 818 F.2d 1329 at 1331. They all have a uniform federal limitation

period that reflects the purpose of the original Securities Act of 1933 to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent the sale thereof, and for all other purposes. All aim to compensate the same type of injury. It would be bizarre if not anomalous to go beyond the express statutes of limitations contained in the provisions of the 1934 Act. Blue Chip Stamps v. Manor Drug Stores 221 US 723 at 728. And, Data Access Systems Sec Litigation, 843 F.2d 1537.

The Securities and Exchange Commission Division of enforcement became aware of the violations of the Megafund and Lancorp Fund, and the underlying alleged conduct of Respondent on or before May 30, 2006 when the commission's privy, Michael Quilling as "receiver", provided the Commission with completed investigation materials in relation to Respondent. Twenty- two months later the Commission filed civil action no. 3:08-CV-526-L. That exceeded the one-year period of limitations for a Section 10(b) and Rule 10 b-5 action after the plaintiff discovers the facts. Davis v. Birr, Wilson & Co. 839 F.2d 1369 (9th Cir 1988).

For these reasons, the Division of enforcement being an agency of government and "the government descends to the level of a mere private corporation and takes on the character of a mere private citizen as an entity entirely separate from government" and thus for purposes of suit, the Division of enforcement is a foreign Corporation with respect to its presence in Texas. Therefore it is subject to the same statutes of limitations to file suit against an inhabitant of Texas as any private corporation or private citizen, which is one year from discovery.

The delay of 22 months from discovery by the Division of Enforcement, by operation of law, constituted a bar from bringing civil action suit 3:08-CV-526-L against Respondent. Thus joinder in that action was prohibited by law.

Section II B.2. of the Order is not procedurally correct in relation to the public proceedings of Civil action Number 3:08-CV-526-L in Relation to Respondent. The collateral administrative proceedings PR-2011-1216-AJ resolved that controversy prior to February

22, 2013 with Rooker-Feldman preclusion effect not yet honored and thereby leaving GARY L. McDUFF an aggrieved party entitled to a remedy, thus justifying these proceedings to bring overdue recognition of the lawful administrative due-process by Respondent.

Section II. B. 2. Has been made moot by the settlement in case no. PR-20111216-AJ which pre-dated 3:08-CV-526-L and stands as an authenticated record of fact.

Lastly, Section II. B. 3. Of the Order Instituting Administrative Proceeding dated February 21, 2014, File No. 3-15764 alleges that:

"The Commission's complaint alleged that McDuff was the mastermind behind the scheme to create and operate an entity named Lancorp Financial Fund Business Trust ("Lancorp Fund"), which was touted to investors as an unregistered, closed-end, and non-diversified management investment company that invested solely in highly rated debt securities. Through Lancorp Fund and its affiliated entities, McDuff materially misrepresented to investors the nature of the offering, the risk of the purported investment, and the ways investor funds would be used. McDuff and two associates, Gary L. Lancaster and Robert T. Reese, raised more than $11 million. Among the false representations McDuff made to investors were the statements that the fund would invest only in A+ or A1 rated bonds; that the principal of each investment would be insured and never at risk; and that Lancaster had experience operating this type of investment (when he did not). In addition, McDuff failed to disclose his prior felony conviction."

3. Section II B.3. of the Order consists of one paragraph that condenses the multiple allegations made in civil action no. 3:08-CV-526-L. The pertinent part of the paragraph that: "Among the false representations made to investors were the statements that the fund would invest only in A+ or A1 rated bonds; that the principal of each investment would be insured and never at risk; and that Lancaster had experience operating this type of investment (when he did not). In addition, McDuff failed to disclose his prior felony conviction."

Section II of the Order lists Section 5(a), 5(c), and 17(a) of the Securities Act of 1933,and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder as the "allegations" set forth in Section II which Section III identifies as the specified matter the upcoming hearing is to determine as being or not being **true**, and to provide relief or impose remedial action based on the findings of fact by Administrative Law Judge Cameron Elliot. Section II does not list or specify the Investment Advisors Act of 1940, Sections 206(1) and 206(2), 15 USC 80b-6(1) and (2), Aiding and Abetting, which is alleged in the SEC civil action 3:08-CV-526-L. Specifically, that *"Reese and McDuff knowingly provided substantial assistance to Lancaster in his capacity of investment advisor, intentionally, knowingly or recklessly employed devices, schemes and artifices to defraud clients, which operated as a fraud."*

Respondent believes that the plain language used in the Order Instituting Administrative Proceedings in Section III and IV require a *"hearing for the purpose of taking evidence of the questions set forth in section III"*. There are three allegations made requiring an answer:

1. Question/Allegation A.1. Is correct
2. Question/Allegation B.2. Has been shown by the attached self-authenticated record of settlement to be incorrect.
3. Question/Allegation B.3. As a result of the record of settlement which ended the allegation which ended the Section B.2., the allegation Section B.3. is to be considered vacated as well by operation of law. However, since the order by the commission's secretary requires an answer to all three allegations, respondent shall provide newly discovered evidence not known until 2013 after the conclusion of public proceedings against respondent. It consists of affidavits and documents identified by the affiants which have the equivalent legal effect of DNA evidence establishing irrefutable innocence of GARY L. McDUFF. It is attached to this answer in the chronological order of events by dates of actual happenings.

   Together they reveal the never before exposed full truth step by step progressively. It is all firsthand, or eyewitness, sworn testimony given by men and women present at the events, and therefore qualified to attest to the truth of the matters they affirm.

Each affiant provides direct insight to what knowledge and belief respondent had at each stage of the events investigated by the commission from 2001 through July 5th 2005.

It is a fact that the activities conducted by Dowdell, Stark, and Tringham were unlawful. They all perpetrated their schemes by bringing in people who believed their lies and passed them on. The persons they recruited into their web thought they were telling the truth. When those recruits spoke to Gary McDuff, they honestly believed they were passing on truthful information. All the speakers who made representations to Gary McDuff have confirmed this with formal affidavits, so it is not speculation.

Gary McDuff's conduct, intent, motive, and results, in relation to his association with Mr. Lancaster's operation of the Lancorp Fund of 2003, were those of a professional assigned to a task by his employers, who hired him to work in strict compliance with the relevant laws and regulations.

The US District Court Northern District of Texas was deprived of the facts and evidence, of which you now have knowledge. What inferences can be drawn from this body of evidence? There is little doubt that a judge or jury given access to all evidence would find that Gary McDuff lacked the motive, intent or even the opportunity to commit the violations alleged. The actions alleged in the Complaint are only violations if Gary McDuff knew the representations made to him were not true. What do you think the evidence shows?

What is presented, in detail, is the lack of criminal intent, in relation to each and every allegation.

The transactions that resulted in this litigation represent the only ones out of thousands of transactions completed by the entities who employed Gary McDuff without any suggestion of impropriety, in all parts of the world.

Take this into account: The Northern District of Texas Federal US Attorney's Office where the SEC filed civil claims against LANCASTER, REESE and MCDUFF turned down the request by the SEC to elevate their claims to criminal charges.

WHAT DID Gary McDuff DO? Evidence from all sources show that Gary McDuff conducted himself in compliance with the laws, not in violation of them. At the very most, his conduct falls into the exact category described by the Supreme Court and other quoting courts, see 531 F.3d at 197 and 513 F.3d at 709: *"the statements were the result of merely careless mistakes by the defendants based on false information fed to them by others."* The statements and representations that he made to people who contacted him about Mr. Lancaster and the Lancorp Fund of 2003 were the result of nothing more than mistakes based on false information fed to him by others, that at that time, he believed to be true. Further, Gary McDuff could not have known of Lancaster's violations, because Lancaster has made it clear that he never told Gary McDuff what he was doing after May of 2005. He had no interaction with Lancaster after that date, so he could not have known of any of Lancaster's actions after May 2005.

To preserve and not waive any defense, Respondent does not waive the hearing ordered by Commission Secretary Elizabeth Murphy, to determine if the allegations contained therein are true. Your review of all the evidence will provide the *"show cause"* necessary for you to contribute to righting a wrong. Gary McDuff loves and respects the law. His years of studying its foundation in the natural order of things have caused him to recognize that it is the product of a perfect Creator who spoke it into existence. It is truly a beautiful thing when properly applied by those who have been entrusted to administer it over mere mortals.

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Gary Lynn McDuff

The following case law is relevant and applicable to the facts and issues outlined in this Answer.

1) Case 3:08-CV-00526-L Document 9 filed 05/06/08 PageID 52-60. NOTICE OF SPECIAL APPEARANCE
2) Case 3:08-CV-00526-L Document 10 filed 05/12/08 PageID 61-64. CORRECTED ATTACHMENT TO NOTICE OF SPECIAL APPEARENCE
3) Case 3:08-CV-00526-L Document 11 filed 05/12/08 PageID 65-93. FIRM OFFER TO SETTLE.
4) Case 3:08-CV-00526-L Order administratively closing Case 3:08-CV-00526-L on September 30, 2010 signed by United States District Judge Sam Lindsay. Document 15 PageID 103 & 104.
5) Case 3:08-CV-00526-L Document 17 filed 01/04/12 PageID 109-146. NOTICE OF TENDER FOR SETOFF, together with TENDER.
6) Case 3:08-CV-00526-L Document 21 filed 01/23/12 PageID 189-223. NOTICE OF DEFAULT
7) Case 3:08-CV-00526-L Document 23 filed 01/30/12 PageID 281-292. CONSENT TO JUDGMENT.
8) Case 3:08-CV-00526-L Document 25 filed 02/15/12 PageID 294-307. NOTICE OF FILING FOREIGN JUDGMENT.
9) Case 3:08-CV-00526-L Document 30 filed 06/26/12 PageID 358-362. NOTICE OF OMISSION TO FILE 1099A.
10) Case 3:08-CV-00526-L Document 31 filed 08/02/12 PageID 363-371. MOTION FOR SUMMARY JUDGMENT.
11) Case PR-20111216-AJ Record of Settlement Documents Docket #1-11??(Benton Hall 1-11
12) Affidavit of Gary Lynn McDuff
13) 3 Flow Charts – DOWDELL, STARK & TRINGHAM, the identified embezzlers.
14) Government's flow chart "EXHIBIT A"
15) Affidavit of Shinder Ganger dated 2/18/14 with INDEX of referenced documents, former partner of the Dobb White & Co. accounting firm, UK.
16) Affidavit of Michael Boyd, creator of Cash Management Agreement structure.

17) Affidavit of David Taylor, former associate of the Dobb White & Co. accounting firm, UK.

18) Affidavit of Mike Steptoe with attachments, former associate of Fiscal Holdings, UK,

19. Affidavit of Allan White former partner of the ? Account Firm, UK

20. Affidavit of Attorney David Deatson of the Jackson Walker Law Firm custodian of records since 2001 with attachments

21. Affidavit of Attorney Norman Reynolds who prepared the LanCorp Fund memorandum

22. Affidavit of Lynn Hodge with attachments

23. Affidavit of Rev. John McDuff who introduced his son, GARY McDUFF, to Stan Lightner, owner of the mega fund.

24. Affidavit of Rev. Gordon Brown who advised Stan Lightner on supporting ministries. (Statement dated 11/23/13).

25. Affidavit of Greg Harris who participated in the creation of the mega fund and was present until it was closed. (Affidavit dated Nov. 18, 2013 only)

26. Affidavits of Stanley A. Lightner, founder and sole owner of the mega fund (statements dated 7/15/13 and 10/20/13).

27. Affidavit of Larry Frank with attachments. Mr. Frank was present when premium was paid for the ACD/Nationwide Insurance Policy believed to cover the mega fund investors from loss of principal.

28. Affidavit of Levoy Dewey who introduced investor Francis Lynn Benyo to the LanCorp fund.

29. Affidavit of Francis Lynn Benyo, LanCorp Fund investor

30. Affidavit of Jay Biles, LanCorp Fund investor

31. Affidavit of Sandra Martin Hicks and victim impact statement. Mega fund investor

32. Affidavit of Kelly Dyer or Darrell Guthrie or Stephen Caughman referencing the GARY McDUFF website with those attachments