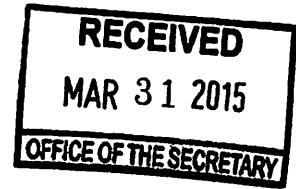


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-16175**



In the Matter of

**KENNETH C. MEISSNER,
JAMES DOUG SCOTT, and
MARK S. "MIKE" TOMICH,**

Respondents.

**DIVISION OF ENFORCEMENT'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY DISPOSITION**

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The Division of Enforcement (Division) submits this reply in support of its Motion for Summary Disposition (Motion) against Respondents Kenneth C. Meissner (Meissner) and James Doug Scott (Scott) as provided in the Administrative Law Judge's (ALJ) order issued on March 4, 2015. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2387 (Mar. 9, 2014).

The ALJ found in its Order on Motion for Summary Disposition and Order to Show Cause that there was no issue of material fact as to liability, and both Meissner and Scott violated Section 15(a)(1) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78o(a)(1). He also found that there were no genuine issues of material fact as to most issues pertinent to sanctions. The responses submitted by Meissner and Scott do not contain evidence of any disputed facts that change these findings.

The ALJ did raise questions about whether there existed genuine disputes over three material facts. As discussed below, the undisputed facts establish that Meissner's conduct was egregious and a penalty should be imposed regardless of his financial condition. In addition, Scott's admissions establish that he knew or was reckless in not knowing that he was selling securities while he was barred from acting as a broker-dealer and a second-tier penalty is appropriate. Where Scott's conduct was so intertwined with Meissner's, he should be jointly and severally liable to pay Meissner's disgorgement. In addition, Scott presented no evidence on his inability to pay a monetary sanction and should be ordered to pay full monetary sanctions. For the reasons discussed below, the Division requests the ALJ find there are no issues of disputed fact, and enter a cease-and-desist order, full associational bars, orders for payment of disgorgement and prejudgment interest, and impose second-tier civil penalties against Meissner and Scott.

A. Meissner

1. It is Undisputed that Meissner Acted as an Unregistered Broker in the Sale of Arete's Securities and Should Pay Disgorgement and Prejudgment Interest.

Meissner filed an untimely Response (Meissner's Response) to the Division's Motion on March 4, 2015, which the ALJ accepted although Meissner was in default.¹ *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2387. Meissner's Response is essentially the same as his Answer filed on November 13, 2014. In both documents, Meissner admits that he was not licensed as a broker while he offered the securities of Arete LLC to his clients. *See* Meissner's Response ¶ 1. In Meissner's Response, he presented no additional evidence and no genuine issue of material fact as to his liability for violating the broker registration provisions of Section 15(a)(1) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78o(a)(1). Entry of summary disposition against him on liability is appropriate. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2376 at p. 2 (Mar. 3, 2015).

Meissner also does not dispute that he received \$17,737 in transaction-based commissions for his sales or the Division's calculation of prejudgment interest of \$1,531.70. "Financial hardship does not preclude the imposition of an order of disgorgement,' and [Respondent's] current financial net-worth is irrelevant to the Court's consideration of the disgorgement award." *See SEC v. Elliott*, 2011 U.S. Dist. LEXIS 91946, *49 (S.D.N.Y. Aug. 17, 2011), citing *SEC v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395, 2011 U.S. Dist. LEXIS 14797, 2011 WL 666158, at *1 (S.D.N.Y. Feb. 14, 2011) (quoting *SEC v. One Wall Street, Inc.*, No. 06 Civ. 4217, 2008 U.S. Dist. LEXIS 3162, 2008

¹ In the prehearing conference attended by Meissner and Scott, and the subsequent order, the ALJ was clear that oppositions to motions for summary disposition were due on February 20, 2015. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 1978 (Nov. 3, 2014). The Division also set out the due date for responses in its Motion at p. 3, which was served on the Respondents. Both Meissner and Scott failed to file any opposition by February 20, 2015, and were in default. *See* Rule 155(a)(2) of the Commission's Rules of Practice. On March 3, 2015, the ALJ issued an Order on Motion for Summary Disposition and To Show Cause and then held a prehearing conference on March 6, 2015. The Court allowed Meissner and Scott to submit responses to the motion for summary disposition by March 20, 2015. Meissner filed his Response on March 4, 2015 and Scott filed his Response on March 20, 2015.

WL 63256, at *3 (E.D.N.Y. Jan 3, 2008)). The “Court may order disgorgement in the amount of the wrongdoer’s total gross profits, without giving consideration to whether or not the defendant may have squandered . . . the ill-gotten profits.” *SEC v. McCaskey*, 2002 U.S. Dist. LEXIS 4915, at *17-19 (S.D.N.Y. Mar. 26, 2002), citing *SEC v. Rosenfeld*, No. 97 Civ. 1467, 2001 U.S. Dist. LEXIS 166, 2001 WL 118612, at *2 (S.D.N.Y. Jan. 9, 2001); *SEC v. Grossman*, 1997 U.S. Dist. LEXIS, at*28-29, 1997 WL 231167, at *10 (S.D.N.Y. May 6, 1997) (“there is no legal support for [defendant's] assertion that his financial hardship precludes the imposition of an order of disgorgement”), *aff'd in part, vacated in part on other grounds sub nom. SEC v. Hirshberg*, 173 F.3d 846 (2d Cir. 1999); *SEC v. Thomas James Assoc., Inc.*, 738 F. Supp. 88, 95 (W.D.N.Y. 1990) (“Nor may a securities law violator avoid or diminish his responsibility to return his ill-gotten gains by establishing that he is no longer in possession of such funds due to subsequent . . . other forms of discretionary spending.”). Entry of an order for disgorgement is appropriate “despite a defendant's inability to pay, given that the defendant may subsequently acquire the means to satisfy the judgment.” *Grossman*, 1997 U.S. Dist. LEXIS, at *29, 1997 WL 231167, at *10 (citing cases).

In addition, a court has discretion to award prejudgment interest on the amount of disgorgement and to determine the rate at which such interest should be calculated. *SEC v. Elliott*, 2011 U.S. Dist. LEXIS 91946, at *33. Both disgorgement and prejudgment interest are “meant to deprive wrongdoers of the fruits of their ill-gotten gains from violating securities laws.” *SEC v. Lorin*, 877 F. Supp. 192, 201 (S.D. N. Y. 1995), *aff'd in part and vacated in part, Lorin, supra*, 76 F.3d 458. Where there is no dispute the amount of disgorgement or prejudgment interest, the ALJ should order Meissner to pay \$19,268.70 in disgorgement and prejudgment interest. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2376 at p. 3.

2. The Undisputed Facts Establish Meissner Acted in Deliberate or Reckless Disregard of a Regulatory Requirement and His Conduct Merits Sanctions.

There is also no genuine dispute that Meissner acted in deliberate or reckless disregard of a regulatory requirement and that his conduct merits entry of a cease-and-desist order, a full associational bar and imposition of a second-tier civil penalty. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2376 at p. 3. Meissner's Response does not present any material issues of disputed fact related to the imposition of these sanctions.

Meissner knew, or was extremely reckless in not knowing, that he was required to register as a broker to offer and sell the securities of Arete LLC to his clients. He had been associated with registered broker-dealers from 1968 through June 2000,² which gave him familiarity with the federal securities laws and the need to register as a broker. He knew that he had been barred in June 2000 from associating with any National Association of Securities Dealers member, for failing to disclose to his firm that he was receiving compensation in connection with private securities transactions.³

Meissner also knew from reading Arete's Form D⁴ and the private placement offering document⁵ that Arete was offering securities and he must register as a broker to be involved in the sales of these securities. Meissner states that he conducted "additional due diligence concerning the Reg[ulation] D offering" being made by Arete LLC. *See* Meissner's Response ¶ 7. Regulation D relates to the offer or sale of *securities* by the *issuer* in transactions exempt from the securities registration requirements of Section 5 of the Securities Act of 1933 (Securities Act). 17 C.F.R. §

² Meissner Tr. at p. 31:18-32:12 (Meissner held a securities license until 2000); 34:10-35:25 (Meissner was barred from the securities industry in 2000); 42:20-21 ("I did not have a securities license.").

³ Meissner Tr. at p. 31:25-32:11; 34:17-36:21; Exhibit 11 (Excerpt from NASD Notice to Members August 2000, p. 1-2, 77, NASD Case #C06000010).

⁴ Meissner testified that he read the Form D for Arete. Meissner Tr. at p. 70:8-11. *See also* Exh. 19, which is a copy of the Form D that Meissner produced.

⁵ *See e.g.* Exh. 5 and Exh. 7, at p. 3 ¶ 1 of both exhibits. *See also* Exh. 15, copy of PPM produced by Meissner with highlights of Disclosure No. 1 at p. Meissner-P-000039.

230.500(a) (emphasis added). “Such transactions are not exempt from . . . other provisions of the federal securities laws.” *Id.* Specifically, Regulation D does not obviate the need to comply with the laws relating to the registration of persons who receive remuneration in connection with the offer and sale of securities. *See* 17 C.F.R. § 230.500(b); *see also* 17 C.F.R. § 230.501, Note 1 (“A person acting as a purchaser representative should consider the applicability of the registration and antifraud provisions relating to brokers and dealers under the Securities Exchange Act of 1934”). Meissner’s reading of the private placement document, Arete’s Form D, and his additional due diligence on Regulation D would have disclosed that the company was offering securities and that he needed to register as a broker to sell them.

Furthermore, Meissner did not disclose his compensation arrangement with Arete to his customers. Regulation D provides that a purchaser representative must disclose to the purchaser in writing a reasonable time prior to the sale of the securities any material relationship between himself and the issuer and any compensation to be received as a result of such relationship. *See* 17 C.F.R. § 230.501(h)(4). Contrary to this requirement, Meissner never made any written disclosure to his clients that he was to receive commissions from Arete, which were paid through Scott’s company, The Cromarty Group.⁶

These undisputed facts establish that Meissner acted willfully in deliberate or reckless disregard of the regulatory requirements of Section 15(a) of the Exchange Act, and his conduct merits entry of a cease-and-desist order, a full associational bar and imposition of a second-tier civil penalty. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2376 at p. 3 (Mar. 3, 2015).

⁶ Meissner’s investigative testimony was previously submitted as Exhibit 2 with the Motion, and is referred to as Meissner Tr. at p. __. Meissner did not disclose in writing to his clients that he was receiving five percent commission on their investments. Meissner Tr. at p. 124:1-20.

3. Entry of a Penalty Against Meissner is in the Public Interest and is Warranted by His Egregious Conduct, Even With Consideration of his Statement of Financial Condition.

Meissner's egregious violation of the broker registration provisions, while he was barred from acting as a broker, warrants imposition of a second-tier penalty regardless of the evidence of his inability to pay such a penalty. In determining whether entry of a penalty is in the public interest, the Commission may consider six factors, *see* 15 U.S.C. § 78u-2(c); all of which in this case weigh in favor of imposing a penalty.

First, Meissner acted with deliberate or reckless disregard of the regulatory requirement that he be registered as a broker. Second, his actions harmed his clients, all of whom were over 55 years old and invested a substantial amount of their retirement funds in Arete's unproven program, for which Meissner conducted virtually no due diligence. His clients lost over half of their \$355,242 in investments and would have lost more but for the forfeiture action by the U.S. Attorney's Office. Third, Meissner never disclosed to his clients the \$17,737 in commission that he received and he was unjustly enriched. Fourth, Meissner acted as a broker even though he had been previously barred from acting as a broker by the National Association of Securities Dealer. Fifth, a substantial civil penalty is necessary to deter Meissner, a recidivist who ignored the associational bar, and it is necessary to deter other persons who act as unregistered brokers. Sixth, justice requires imposition of a penalty even though Meissner's Statement of Financial Condition on its face shows he has a negative net worth, because as a recidivist, Meissner's actions demonstrate that the previous bar failed imbue him with an appreciation of the wrongfulness of his actions or to deter him from this most recent violation. All of these factors establish that a second-tier penalty is warranted.

In determining whether a penalty is in the public interest, an ALJ may, in its *discretion*, consider evidence of a respondent's ability to pay such a penalty. 15 U.S.C. § 78u-2(d)

(emphasis added). However, it is but one factor to be considered in determining whether a penalty is in the public interest. See *Marie T. Giesige*, 2009 SEC LEXIS 1756, at *28, (Oct. 7, 2008), citing *Bearcat, Inc.*, 57 S.E.C. 406, 429 (2004). “Where the egregiousness of an applicant’s conduct outweighs any consideration of the respondent’s inability to pay the civil penalty, the public interest requires that the civil penalty be imposed.” *Giesige*, at *28.

Even when a respondent demonstrates an inability to pay, the ALJ has discretion not to waive the penalty, particularly when the misconduct is sufficiently egregious. *Giesige*, at *24 n.18, citing *David Henry Disraeli and Lifesplan Associates, Inc.*, 2007 SEC LEXIS 3015, at *82 n. 124, Securities Act Rel. No. 8880 (Dec. 21, 2007); see also *Brian A. Schmidt*, 2002 SEC LEXIS 3424, at *43, Securities Act Rel. No. 8061 (Jan. 24, 2002) (finding that, although respondent’s “financial statements, on their face indicate that he is impecunious, the egregiousness of his conduct outweighs any consideration of his ability to pay”); *Charles Trento*, 2005 SEC LEXIS 389, at *349, Securities Act Rel. No. 8391 (Feb. 23, 2004) (“Even accepting [respondent’s] financial report at face value, we find that the egregiousness of his conduct far outweighs any consideration of his present ability to pay a penalty.”); see also *Philip A. Lehman*, 2006 SEC LEXIS 2498, at *15, Exchange Act Rel. No. 54660, 89 SEC Docket 536, 549 (Oct. 27, 2006 (“Further considerations affecting our decision not to reduce or waive the penalty include [respondent’s] recidivism and our view that his misconduct is egregious.”). In this case, even accepting Meissner’s Statement of Financial Condition at face value, entry of a penalty is appropriate. However, as discussed below, Meissner’s financial statement should be given little weight.

The respondent has the burden of demonstrating inability to pay. *Lehman*, 2006 SEC LEXIS 2498, *16. Meissner submitted a Statement of Financial Condition dated November 5, 2014 with his Answer and asserted at the settlement conference held on November 20, 2014 that he

does not have the financial ability to pay a civil penalty. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2041, 2014 SEC LEXIS 4434 (Nov. 21, 2014).

For the reasons discussed below, Meissner's Statement of Financial Condition should be given little credence for four reasons. First, Meissner made an error on the Statement of Financial Condition when he listed his total assets at [REDACTED]; the correct total for the assets that he listed is \$[REDACTED]. Meissner admitted this error and apologized in a letter on December 1, 2014.

Second, Meissner substantially under estimated his average monthly income from insurance commissions. In his Statement of Financial Condition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Third, Meissner undervalued his residence at [REDACTED] and provided no information on how he determined that value. Meissner previously submitted a Statement of Financial Condition dated June 1, 2014, in which he listed the value of the house at [REDACTED]. See Declaration of Leslie Hughes at ¶ 2, Exhibit 54.⁸ At the same time, Meissner had listed his house for sale at [REDACTED] on May 12, 2014, which was a value [REDACTED] higher than he listed on his financial statement. *Id.* at ¶3 & 4, Exhibit 55. Even if the ALJ accepts the face value of Meissner's house at [REDACTED], which is subject two mortgages that total [REDACTED] he maintains equity of at least [REDACTED] that he could liquidate to pay a civil penalty.

Fourth, Meissner initially included in his Assets [REDACTED]

[REDACTED]

[REDACTED] Meissner provided no documentation on the

⁷ For example, Meissner's October 17, 2014 statement from [REDACTED] See Matticks Decl. ¶8; Exhibit 59.

⁸ The Division previously submitted fifty-two exhibits with its Motion and one exhibit with its Reply and Supplement to Motion for Summary Disposition filed on March 2, 2015. Additional exhibits submitted with this Reply are numbered starting with fifty-four.

disposition of [REDACTED]

For all the reasons discussed above, Meissner has not demonstrated that he is unable to pay a second-tier penalty. He was not candid about his income from insurance commissions. In addition, he undervalued his house, and failed to explain his dissipation of three Life Settlement Contracts. Meissner has the ability to pay a second-tier penalty. While the ALJ has discretion to consider Meissner's financial condition in assessing, the public interest in protecting the investing public from repeat offenders should weigh heavily in favor of imposing a sanction. Meissner's fiscal irresponsibility does not justify entry of no penalty against him. Moreover, he was barred from acting as a broker and yet ignored that prohibition to sell the securities of Arete LLC to his clients. Meissner ignored a regulatory order that he not serve as a broker and put his own financial interests in earning a commission before the well-being of his clients who, but for government intervention, would have all of their investments in this fraudulent scheme. In these circumstances, the public interest in stopping recidivists from harming investors warrants imposition of a second-tier penalty against Meissner.

B. Scott

1. It is Undisputed that Scott Acted as an Unregistered Broker in the Sale of Arete's Securities and Should Pay Disgorgement and Prejudgment Interest.

Scott filed an untimely Response (Scott's Response) to the Division's Motion on March 19, 2015, which the ALJ permitted although Scott was in default. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2387.⁹ In his Response, Scott denies that he "willfully" violated the broker registration provisions of Section 15(a)(1) of the Exchange Act, because he claims that he

⁹ See footnote 1 *supra*.

did not realize that the investment that he offered in Snisky's program was a security.¹⁰ Scott Response pp. 1 & 3. However, his denial is not supported by any evidence and does not create a genuine issue of material fact that prevents a decision on summary disposition. Once the moving party has carried its burden of establishing that it is entitled to summary disposition on the factual record, the opposing party must present specific facts showing a genuine issue of material fact for resolution at a hearing. *Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 WL 4160054, at *2 (Aug. 21 2014). Scott previously admitted in his Answer that he introduced sales agents to Snisky so they could sell investments in Arete to their accredited investors, received transaction-based compensation, was not registered as a broker, and had previously barred by the Pennsylvania Securities Commission. Scott Answer ¶ 4, 11-13, 17. Viewing the record evidence in the light most favorable to Scott, as required by Commission Rules of Practice Rule 250(a). there is no genuine issue of material fact as to liability. Scott violated Section 15(a)(1) of the Exchange Act. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2376 at p. 2-3.

To establish that Scott committed a willful violation, the Division need only show that a respondent intentionally committed the act that constitutes the violation; there is no requirement that the actor also be aware he is violating any statute or regulation. *See Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); *James E. Ryan*, 47 SEC 759, 761 n.9 (1982). The undisputed evidence establishes that Scott intentionally offered the securities of Arete¹¹ when he was not registered as a broker in violation of Section 15(a)(1). *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2387, at p.3.

¹⁰ To establish a violation of Section 15(a)(1), does not require a showing that a person acted willfully or with scienter. *Ox Trading LLC*, 2012 SEC LEXIS 2810, *25 n.8, Admin. Proc. Rel. No. 2810 (Sep. 5, 2012).

¹¹ Scott admitted in his Answer that Snisky asked him to introduce Arete's investments to agents who worked with Accredited Investors, Scott sent materials to the agents, and he and they were paid a "value" [or commission] based

Scott's Response provides not additional evidence to change this conclusion. In addition, Scott admits receiving \$26,297.84 in compensation and does not dispute the Division's calculation of prejudgment interest at \$2,294.22. *See* Scott's Response at p. 1, response to I. On the basis of the undisputed facts, the ALJ should find that Scott willfully violated Section 15(a)(1) of the Exchange Act, enter a cease-and-desist order, a full associational bar and impose disgorgement and prejudgment interest totaling \$28,592.06. *See id.* at p. 3.

2. The Undisputed Facts Establish Scott Acted in Deliberate or Reckless Disregard of a Regulatory Requirement and His Conduct Merits Sanctions Including a Second-Tier Penalty.

The undisputed evidence discussed below establishes that Scott knew or was reckless in knowing that he was selling securities in deliberate or reckless disregard of the regulatory requirement that he be registered as a broker. Scott submitted no evidence to support his statements that he did not know that the securities he brokered were, in fact, securities. *See* Scott Answer ¶¶ 2, 4, 17; Scott Response ¶ IV. D. 4. Moreover, he does not dispute the following facts that demonstrate he knew or was reckless in not knowing that the securities he brokered were securities. In addition, Scott was previously sanctioned by the Pennsylvania Securities Commission and permanently barred from acting as a broker-dealer, and therefore knew of the regulatory requirement to be registered as a broker to offer securities.¹² Scott Answer ¶ 4.

Scott admits to attending training sessions with Snisky in Colorado along with other salesmen, including Tomich and Meissner,¹³ at which Snisky showed Bloomberg screen shots of

on the amount invested. Scott Answer ¶ 11-13, 17. Scott also admits he never held any securities licenses. *Id.* at ¶ 4.

¹² Scott Tr. at p. 35:15-38:10; Exh. 8 at p. 7, question 28. *See* also Exh. 9, Orders from PSC, Dkt No. 9910-06 and 0102-36.

¹³ *See* Exh. 1, Scott Tr. at pp. 169:20-171:9; 172:2-25; (Scott's second trip to Colorado was to attend Snisky's training with Meissner and Tomich); Exh. 12, Scott Statement at ¶ 3.

the bonds that he was acquiring for Arete.¹⁴ Bonds are defined as “securities” in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, 15 U.S.C. §§ 77b(a)(1) and 78c(a)(10). Scott knew the Arete investors did not own the individual bonds but rather a proportionate share of the bonds and the interest earned.¹⁵ Scott knew that Snisky represented that that investors’ funds were pooled to purchase Agency Bonds, which paid interest of six to seven percent.¹⁶ The investments in Arete were “investment contracts” which are also defined as “securities.” *Id.*

Scott also admits that he received Arete’s private placement offering document¹⁷ and Form D, which he forwarded to the sales agents.¹⁸ Scott Answer ¶ 17. Both documents disclose that Arete was selling securities. Scott admits that Snisky advised him the program could be discussed with “Accredited Investors,” which is a term of art used when *securities* are offered under Regulation D.¹⁹ Scott Answer at ¶ 2. All of these undisputed facts, when taken together establish that Scott knew or was extremely reckless in not knowing that the investments he was offering in Arete were securities.

¹⁴ Scott Answer at ¶ 9.

¹⁵ Exh. 12, see Scott statement at 1, “Summit’s role was to aggregate the funds of investors into one ‘separately managed account’ and to distribute the quarterly interest proportionately.” *See also* Exh. 5 Arete PPM at p. 1 under heading “Contributions in Company” disclosing investors’ contributions are held in “Book Capital Accounts”. Scott Tr. at p. 154:8-13.

¹⁶ Scott Tr. p. at 151:24-152:20; 178:5-17; Exh. 13, Scott’s notes at p. 1: “1. Buy Bonds – provide int[erest] from Bonds to pool of investors [without] buy[ing] it! Agency Bonds – buy @ 6%- pay back to people 7% for 10 years (keep 1st 5 years in house).” *See also* Meissner Tr. at p. 76:19-77:14 (investors’ funds were collected with funds of other investors to purchase bonds). Tomich Tr. at p. 85:13-86:2.

¹⁷ *See* Exh. 16, copy of Arete’s private placement offering document produced by Scott, which states at p. 3, “The Securities offered have not been and will not be registered under the Securities Act of 1933 or the Securities laws of any of the states of the United States.” (Emphasis added.) *See also* first paragraph on p. 1 in which Arete discloses that its purpose is to acquire Agency Bonds and prepare a proprietary working model of a trading program.

¹⁸ *See* Exh. 18, Scott email to Rasmussen sending Form D for Arete; *see also* Exh. 19, copy of Form D, titled “Notice of Exempt Offering of Securities” (emphasis added), which discloses in Item 9 the types of securities offered are Equity and Debt.

¹⁹ The term “Accredited Investor” is also described in Arete’s private placement offering document. *See* Exhibit 16 at p. 1 under heading “Contributor’s.”

Scott admits to introducing Tomich, Meissner and others advisers who worked with accredited investors to Snisky to learn about the investment program and to sending documents to the agents that were required for the accredited investors to participate in Snisky's program. Scott Answer ¶ 13. As compensation for his introductions to the agents and their success in obtaining investments in Arete, Scott received commissions, which he calls a "value" based on the amount invested with Snisky; he disbursed the commissions to the agents. *Id.* at ¶ 4, 12; Scott Response at p. 1, response to I, and III. E. Scott intentionally engaged in offering Snisky's investment program to various agents and was compensated for his actions.

To commit a willful violation a respondent need only have intentionally committed the act that constitutes the violation; there is no requirement that the actor also be aware that he is violating one of the Rules or Acts. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); *James E. Ryan*, 47 SEC 759, 761 n.9 (1982). Scott's intentional acts in offering Arete's securities makes his violation of Section 15(a)(1) willful.

Where Scott knew or was reckless in not knowing from his discussions with Snisky and the documents that he received from Arete that he was selling securities, he acted with deliberate or reckless disregard of the regulatory requirement that he be registered as a broker. Furthermore, Scott was previously sanctioned by the Pennsylvania Securities Commission and permanently barred from acting as a broker-dealer, and therefore knew of the regulatory requirement to be registered as a broker to offer securities.²⁰ Scott Answer ¶ 4. In these circumstances entry of a second-tier penalty is appropriate, because Scott was a recidivist, and the previous bar failed to

²⁰ Scott Tr. at p. 35:15-38:10; Exh. 8 at p. 7, question 28. See also Exh. 9, Orders from PSC, Dkt No. 9910-06 and 0102-36.

imbue him with an appreciation of the wrongfulness of his actions or to deter him from this most recent violation.

3. Scott Should Be Held Jointly and Severally Liable for Meissner's Commissions.

Scott's activities were inextricably intertwined with Meissner, and he should be held jointly and severally liable for Meissner's disgorgement. Scott's arrangement with Snisky was to locate agents who would offer the investments in Arete to their clients. Scott's Answer ¶ 13. Scott was to receive a seven percent commission on the sales, and then pay five percent to the agents.²¹ He introduced Meissner and others to Snisky, received their commissions, which after taking his cut, Scott disbursed commissions to Meissner. Scott Answer ¶ 2, 4, 12, 17; Scott's Response at p. 2, III.E. Kevin Brown, the president of Summit Trust, described Scott as the quarter-back coordinating the clients' investments in, and transfers of funds to Arete.²² This level of collaboration supports finding that Scott is jointly and severally liable for Meissner's commission. *See e.g. Montford and Co., Inc., d/b/a/ Montford Assoc. and Ernest V. Montford, Sr.*, 2014 SEC LEXIS 1529, Investment Advisers Act Release No. 3829, at *101-2 & n. 205 (May 2, 2014) ("Numerous courts recognize that 'where two or more individuals or entities collaborate or have a close relationship in engaging in the violations of securities laws, they have been jointly and severally liable for the disgorgement of illegally obtained proceeds.") (citations omitted).

4. Scott Filed No Statement of Financial Condition, and Should Be Ordered to Pay a Second Tier Penalty.

In response to the Order to Show Cause, Scott submitted his Response, but did not include a sworn Statement of Financial Condition or other evidence suggesting that he has an inability to pay a penalty. He has the burden of demonstrating his inability to pay. *Lehman*, 2006 SEC LEXIS

²¹ Scott Tr. at p. 135:13-136:19 (Snisky to pay 7 percent to Cromarty Group and it was to pay 5% to the advisers who sold the security to the investors).

²² Brown Tr. at p. 171:21-172:12; 201:6-202:14.

2498, *16. As discussed above, the undisputed evidence establishes that Scott willfully violated Section 15(a)(1) of the Exchange Act while he was barred from acting as a broker-dealer.

Moreover, as a result of his conduct investors lost hundreds of thousands of dollars. Where Scott has presented no evidence of his inability to pay, the ALJ should order Scott to pay a second-tier penalty of \$75,000.

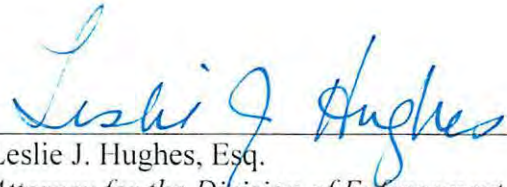
C. Conclusion

The Division has demonstrated that it is entitled to an order for summary disposition as a matter of law based on the undisputed facts that Meissner and Scott violated Section 15(a)(1) of the Exchange Act. There is no genuine dispute that Meissner and Scott acted in deliberate or reckless disregard of a regulatory requirement, and their conduct merits entry of second-tier civil penalties. The Division requests that the ALJ enter a cease-and-desist order, a full associational bar, and disgorgement and prejudgment interest against Meissner in total of \$19,268.70 and against Scott in total of \$28,592.06.

In addition, the Division requests that the ALJ find that Scott is also liable jointly and severally to pay Meissner's disgorgement of \$17,737, because their actions were inextricably intertwined. Furthermore, the Division request that the ALJ find that imposition of a civil penalty against Meissner is warranted, in spite of his Statement of Financial Condition, because his conduct in acting as an unregistered broker when he was previously barred was egregious, and a penalty is necessary to deter him from further violations. The Division requests that the ALJ order Meissner and Scott to each pay a civil penalty of \$75,000.

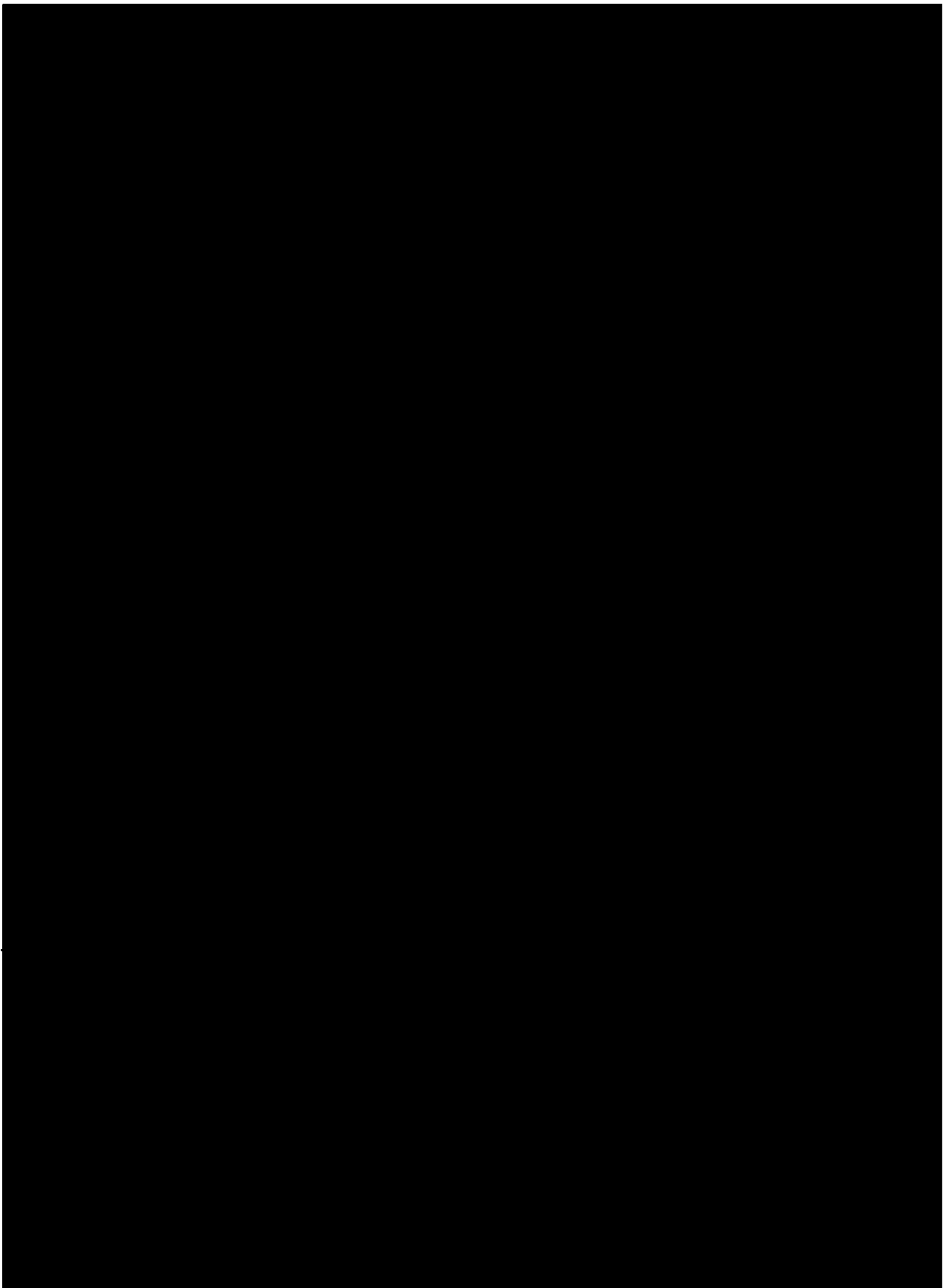
Dated March 30, 2015.

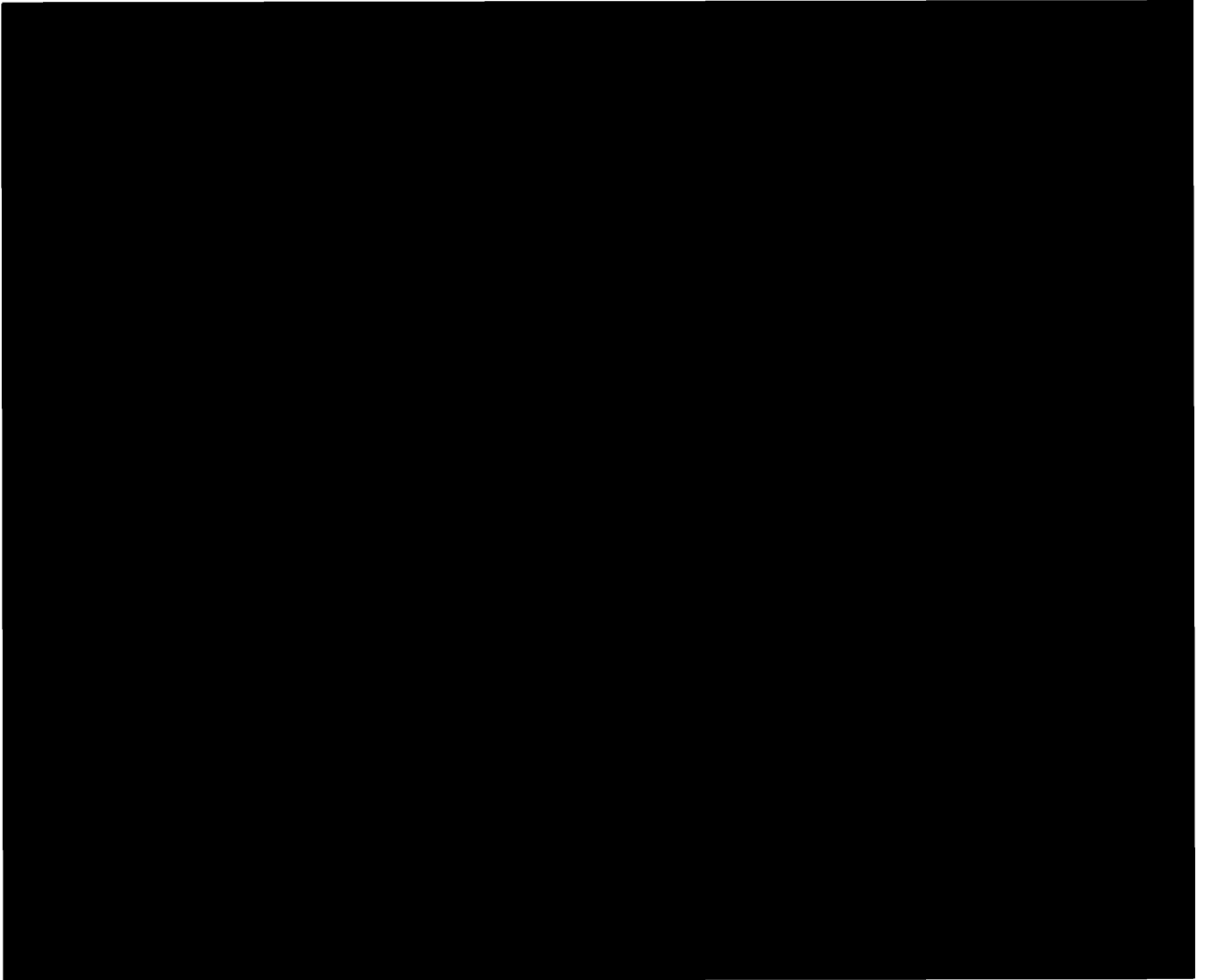
Respectfully submitted,

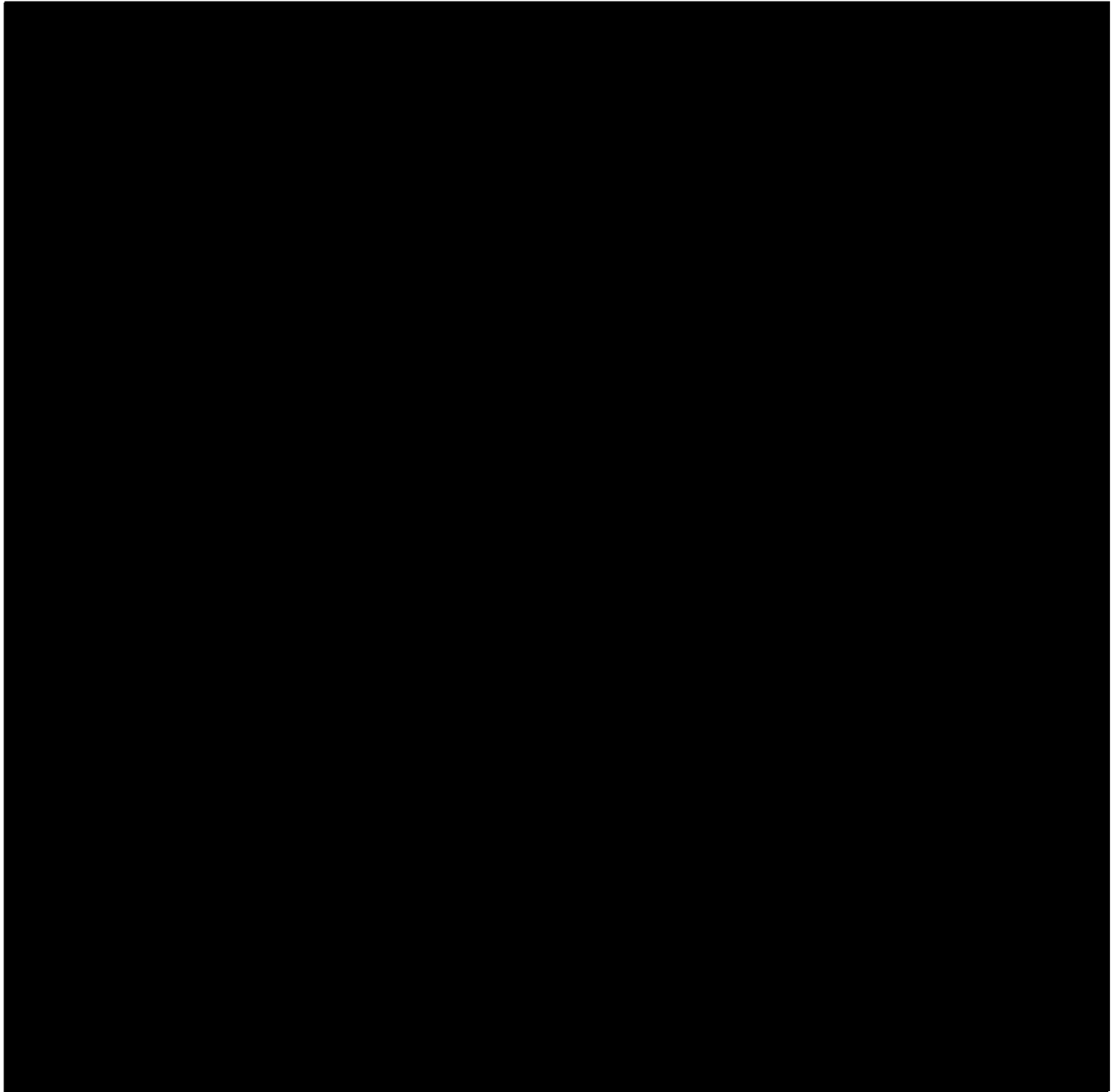


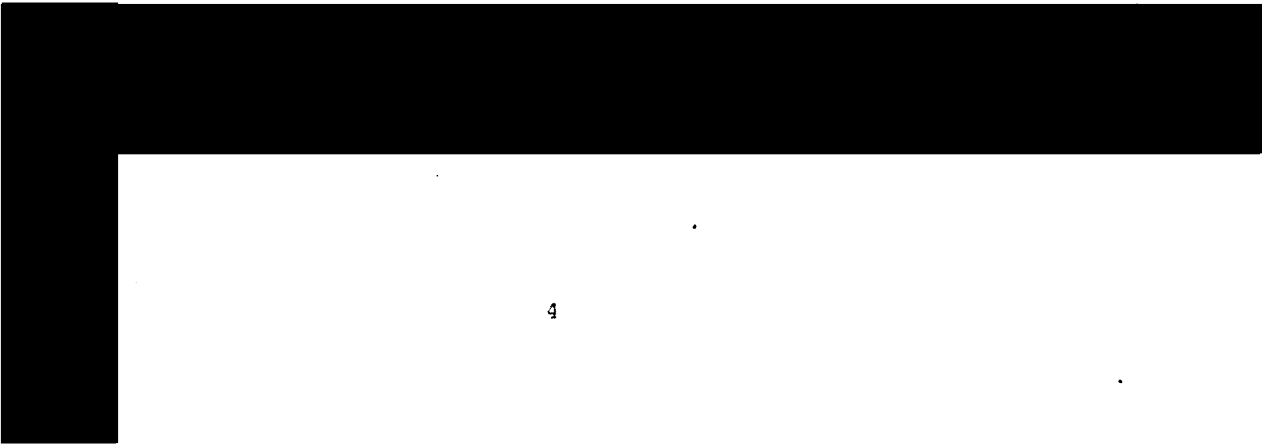
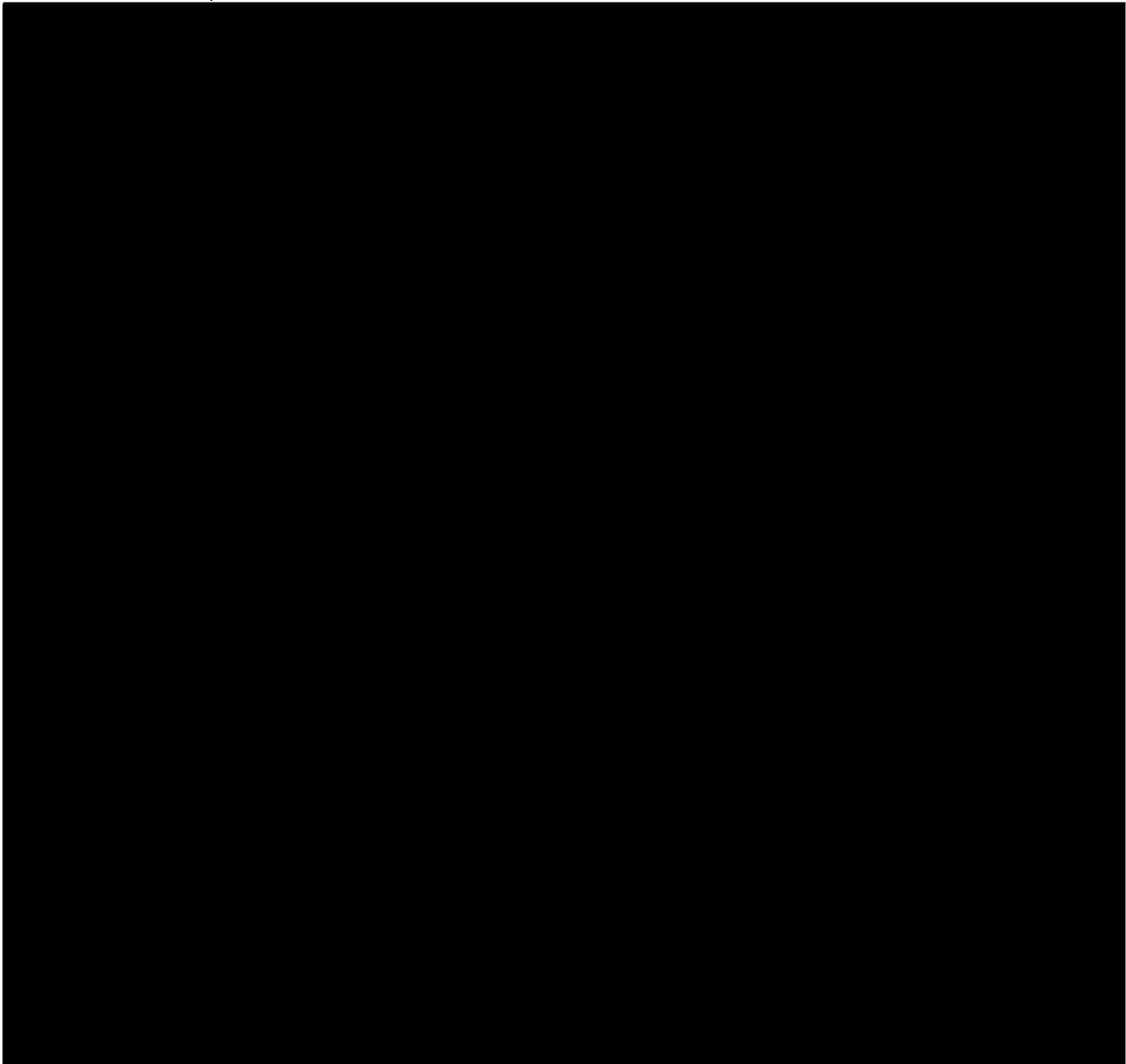
Leslie J. Hughes, Esq.
Attorney for the Division of Enforcement
Securities and Exchange Commission
Byron G. Rodgers Federal Building
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
(303) 844-1086
hugheslj@sec.gov

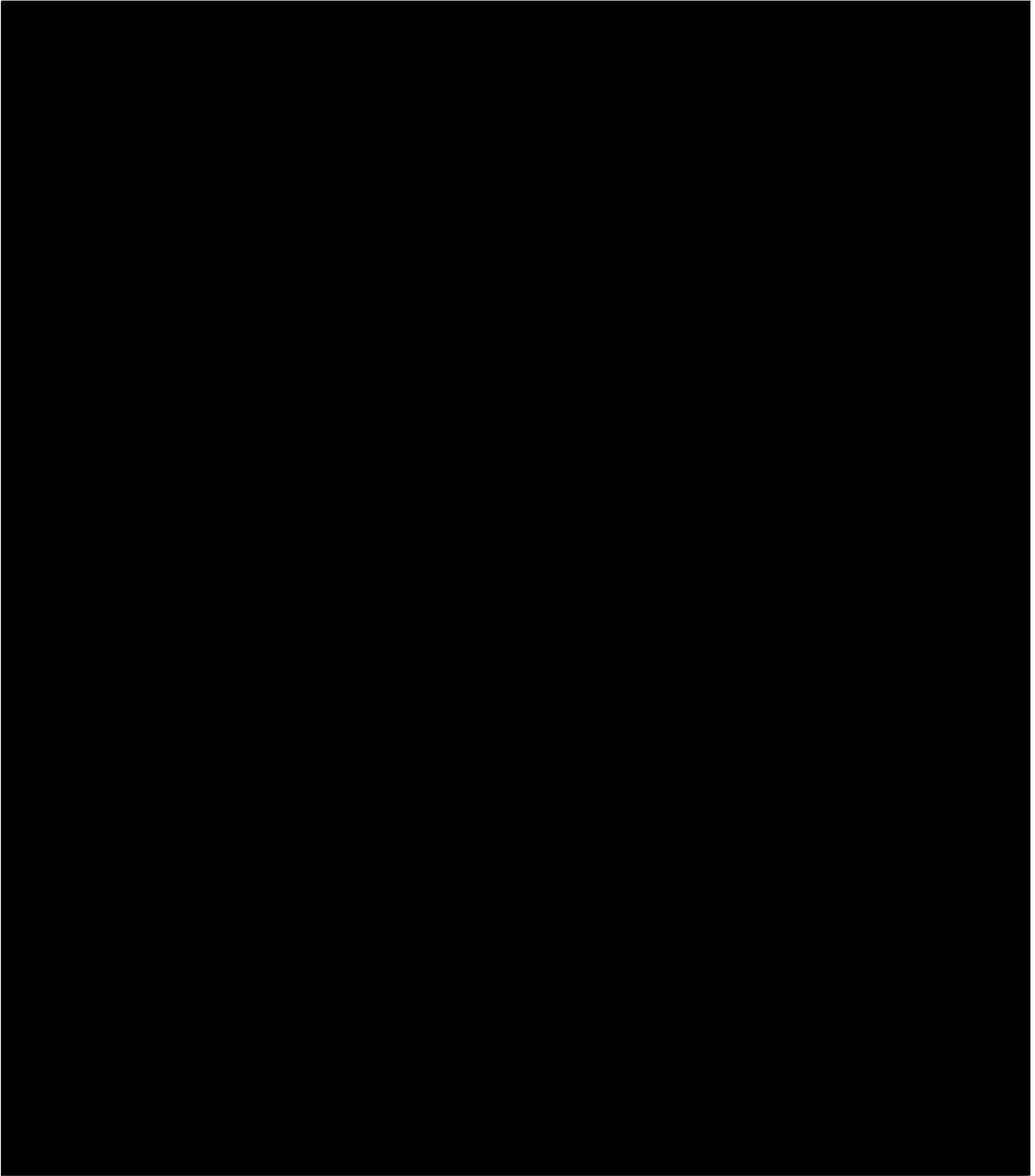
EXHIBIT 54

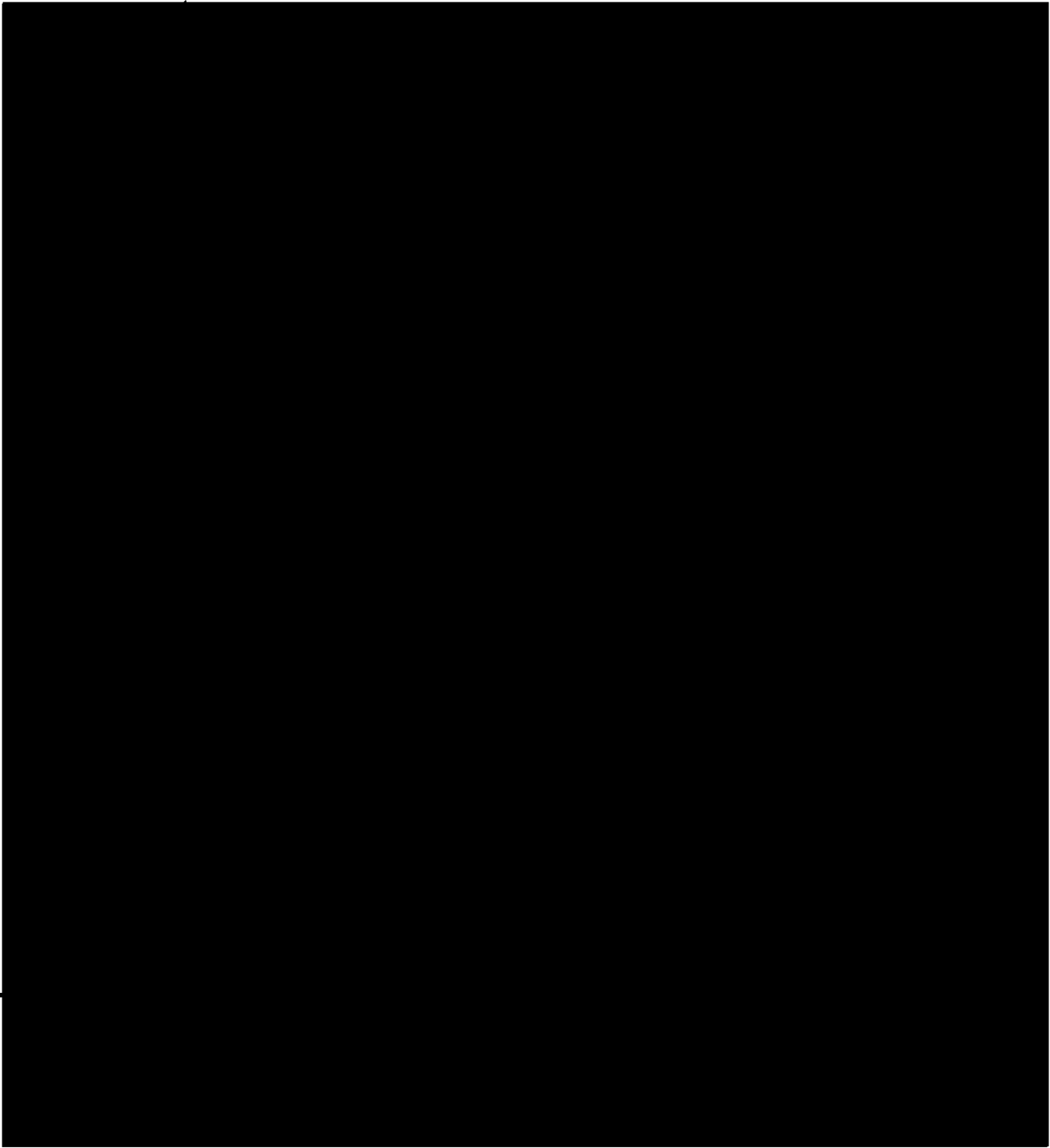












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Under penalties of perjury, I declare that I have examined the information given in this statement, and attached hereto, and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein or in any attachments hereto may constitute criminal violations, punishable under 18 U.S.C. 1001.

Kenneth Meissner
Kenneth Meissner

06/05/2014
Date

Sworn before me this 5 day of June, 2014.

B. A. Smeby
Notary Public

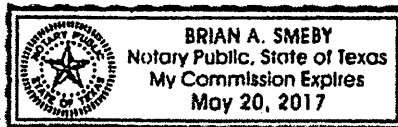


EXHIBIT 55



8114 Pimlico Ln

Fair Oaks Ranch, TX 78015
5 Bed | 5 Bath | 4,361 Sq Ft | 1.19 Acres

Estimated Values



Public Records Property Information from local public records.

Beds	5 Bed	Baths	4.5 Bath
House Size	3,695 Sq Ft	Lot Size	1.19 Acres
Year Built	1994	Price	-
Property Type	Single Family Home	Stories	2
Style	Custom Desig	Garage	Attached Garage
Units	1	Cooling	Central
Pool	-	Construction	-
Heating	Forced Air	Year Renovated	
Rooms	10	Roofing	Asphalt
Fireplace	Yes		

Location



On Site

Direct access URL [http://www.realtor.com/realestateandhomes-detail-\[REDACTED\]](http://www.realtor.com/realestateandhomes-detail/[REDACTED])

Homes Near [REDACTED]

Address	Status	Price	Beds	Baths	Sq Ft
[REDACTED]					

Assigned Public Schools

is assigned to the following public schools:

School Name	Distance	Grades	Student/Teacher Ratio	GreatSchools Rating*
Boerne Middle South School Boerne Isd School District	6.7 mi	7-8	15:1	
Fair Oaks Ranch Elementary School Boerne Isd School District	1.9 mi	K-6	17:1	
Boerne - Samuel V Champion High School Boerne Isd School District	8.7 mi	9-12	15:1	

Nearby Schools

Public Elementary Schools Public Middle Schools Public High Schools

Private Schools

School Name	Distance	Grades	Student/Teacher Ratio	GreatSchools Rating*
Aue Elementary School	6.2 mi	PK-5	17:1	
Leon Springs Elementary School	7.4 mi	PK-5	16:1	
Meadowlands School	7.6 mi	K-12	N/A	
Cibolo Creek Elementary School	8.0 mi	PK-6	16:1	

* School data provided by National Center for Education Statistics, Maponics, and GreatSchools. Intended for reference only. GreatSchools Ratings compare a school's test performance to statewide results. To verify enrollment eligibility, contact the school or district directly.

Neighborhood Information

Fair Oaks Ranch neighborhood of Fair Oaks Ranch, TX

Compare average prices in other areas:

Area	Average Listing Price	Price per Sq Ft	Average Sales Price
Fair Oaks Ranch	N/A	N/A	N/A
Fair Oaks Ranch	N/A	N/A	N/A
Texas	N/A	N/A	N/A

Area	Average Listing Price	Price per Sq Ft	Average Sales Price
United States	N/A	N/A	N/A

Price History

Date	Event	Price	Price/Sq.Ft.	Change	Source
09/26/2014	Delisted	—	—	—	SanAntonio
09/14/2014	Price Changed	\$474,000	\$109	-1.04%	SanAntonio
07/28/2014	Price Changed	\$479,000	\$110	-4.01%	SanAntonio
05/12/2014	Listed	\$499,000	\$114	—	SanAntonio

Property Taxes Tax data from local public records.

Year	Taxes	Land	Additions	Total Assessment
2014	\$8,066	\$71,580	+ \$276,420 =	\$348,000
2013	\$8,095	\$71,580	+ \$275,780 =	\$347,360
2012	\$2,591	Price Unavailable	+ — =	\$350,600

Source: Public Records

The Property Price and Tax history data displayed is obtained from public records and/or MLS feeds from the local jurisdiction in which the applicable property is located. As realtor.com® cannot guarantee that all public records and MLS data is accurate and error-free, it is important that you contact your REALTOR® directly in order to obtain the most up-to-date information available.

Formatted for easy printing so you can take this with you. Remember to say you found it on realtor.com®.

This information has been secured from sources we believe to be reliable, but we make no representations or warranties, expressed or implied, as to the accuracy of the information. You must verify the information and bear all risk for inaccuracies.



Scan this QR code to see this listing online.

Fair Oaks Ranch, TX 78015

<http://www.realtor.com/realestateandhomes-detail/>

EXHIBIT 56

PRIVATE PROCESS

Case Number: 2014-CI-17576



2014CI17576 S08081

THOMAS L COLE

VS.

KENNETH C MEISSNER

(Note: Attached Document May Contain Additional Litigants.)

IN THE DISTRICT COURT
166th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: KENNETH C MEISSNER

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 7th day of November, 2014.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 13TH DAY OF NOVEMBER A.D., 2014.

PETITION

SCOTT M NOEL
ATTORNEY FOR PLAINTIFF
300 CONVENT ST 910
SAN ANTONIO, TX 78205-3730



Donna Kay McKinney
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

By: *Lisa Morales*, Deputy

OFFICER'S RETURN

I received this citation on _____ at _____ o'clock ____ M. and: () executed it by delivering a copy of the citation with the date of delivery endorsed on it to the defendant, _____ in person on the _____ at _____ o'clock ____ M. at: _____ or () not executed because _____ Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____ County, Texas

By: *Kelley Mark Schepers 11/13/14*

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO this _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ (County).

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, 20____.

Declarant

ORIGINAL (DK002)

cut PPS

?

NO. 2014CI17576

THOMAS L. COLE
Plaintiff,

V.

KENNETH C. MEISSNER
Defendant.

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IN THE DISTRICT COURT

166TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff, THOMAS L. COLE (hereafter referred to as "Plaintiff" and "Cole" interchangeably), files this its Original Petition complaining about Defendant, KENNETH C. MEISSNER (hereinafter referred to as "Defendant" and "Meissner" interchangeably), and for cause of action respectfully shows:

I.
DISCOVERY LEVEL

1.01 Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

II.
PARTIES

2.01 Plaintiff, THOMAS L. COLE is an individual residing in Charlotte, Mecklenburg County, North Carolina.

2.02 Defendant, KENNETH C. MEISSNER, is an individual residing in Bexar County, Texas. Kenneth C. Meissner may be served with process at [REDACTED] Ranch, Texas 78015, or wherever he may be found.

III.
JURISDICTION AND VENUE

3.01 The amount in controversy exceeds the minimum jurisdictional limit of this Court.

3.02 Venue is proper in this Court under section 15.002 of the Texas Civil Practice and Remedies Code because a substantial part of the events on which this case is based occurred in Bexar County, Texas.

IV.
BACKGROUND FACTS

4.01 Plaintiff agreed to lend to Defendant the total amount of Ninety Thousand and No/100 Dollars (\$90,000.00) (hereinafter "**Principal Amount**") plus interest at the rate of twelve-percent (12%), on all matured amounts.

4.02 Defendant intended to invest the Principal Amount and repay Plaintiff the full Principal Amount which was memorialized by a Secured Note (hereinafter "**Note**"), attached hereto as Exhibit "**A**," and incorporated herein by reference. In addition, Defendant further agreed to pledge a security interest in certain Mutual Benefits Policies (hereafter "**Policies**" and "**Collateral**," interchangeably), attached hereto as Exhibit "**A-1**".

4.03 Defendant failed to comply with the terms of the Note. Therefore, Plaintiff files this suit seeking payment in full.

V.
CAUSES OF ACTION

A. SUIT ON SWORN ACCOUNT

5.01 Plaintiff hereby incorporates by reference the foregoing paragraphs as if fully set forth verbatim.

5.02 On or about September 18, 2007, Meissner entered into a written agreement. In

this agreement, Meissner, maker, made an unconditional promise to repay Cole, payee, the Principal Amount plus an annual interest rate of eight-percent (8%) on the unpaid Principal Amount and an annual interest rate of twelve-percent (12%) on the matured, unpaid Principal Amount. On the same day, Cole advanced Ninety Thousand Dollars (\$90,000.00) to Meissner. According to the Note, Meissner was required to repay Cole, plus interest, on or before September 17, 2008.

5.03 On December 15, 2008, Meissner entered an Addendum to the Secured Note, Dated, September 18, 2007 (hereinafter “**Addendum**”). See attached Exhibit “**B.**” According to the Addendum, Meissner agreed to increase the interest rate on the unpaid Principal Amount from eight-percent (8%) to nine-percent (9%), to take effect on September 18, 2008.

5.04 Defendant has failed to pay any accrued interest since 2009. The dates and amounts of Defendant’s payments are fully accounted for and credited to the account. On July 29, 2014, Defendant acknowledged the indebtedness and agreed to repay the debt.

5.05 Defendant defaulted by failing to make interest payments and failed to make any payments on the initial Principal Amount. The principal balance due Plaintiff on the account is Ninety Thousand and No/100 Dollars (\$90,000.00). As of October 31, 2014, Plaintiff further owes contractual interest in the amount of Forty Five Thousand Nine Hundred and No/100 Dollars (\$45,900.00), which continues to accrue. The total balance of principal and interest is due and all just and lawful offsets, payments, and credits have been allowed, as shown on the Affidavit of Thomas L. Cole attached hereto as Exhibit “**C**” and incorporated herein.

5.06 All conditions precedent has been performed or has occurred.

B. BREACH OF CONTRACT

5.07 Plaintiff hereby incorporates by reference the foregoing paragraphs as if fully

restated herein verbatim, and pleads in the alternative.

5.08 Plaintiff sues Defendant for breach of contract.

5.09 The Note signed by Meissner constitutes a valid contract under applicable law. Meissner's failure to pay Cole pursuant to their agreement constitutes a breach of the contract. Said breach has proximately caused damages to Cole for which he now seeks full recovery from Meissner. Accordingly, Plaintiff hereby sues Defendant for amounts in excess of the minimum jurisdictional limits of this Court.

5.10 Plaintiff seeks actual damages in the amount of Ninety Thousand and No/100 Dollars (\$90,000.00), plus interest that has and may accrue until all monies owed by Defendant are paid in full.

C. CIVIL THEFT

5.11 Cole hereby incorporates by reference the foregoing paragraphs as if fully set forth verbatim.

5.12 In addition to the other counts, Defendant violated the Texas Theft Liability Act, by unlawfully appropriating property under Texas Penal Code Section 31.03. Cole was entitled to a security interest in four (4) Mutual Benefits Policies as Defendant used as collateral in the Note. It is believed that Meissner received proceeds from two (2) of the Policies and did not pay on the Note as promised.

5.13 Defendant's unlawful appropriation was made with the intent to deprive Cole from perfecting and/or foreclosing on the pledged Collateral as a whole.

5.14 Defendant's wrongful and malicious conduct caused injury to Cole which resulted in the loss of certain interest on Defendant's pledged Collateral.

5.15 Upon proof of actual damages, Cole is entitled to additional statutory damages of up to \$1,000.00 from Defendant under Texas Civil & Practice Remedies Code section 134.005(a)(1).

5.16 Cole is entitled to recover its reasonable and necessary attorney fees under Texas Civil & Practice Remedies Code section 134.005(b).

VI. **DAMAGES**

A. ACTUAL DAMAGES

6.01 Plaintiff reasserts the allegations in the foregoing paragraphs and incorporates those paragraphs herein by reference.

6.02 As a result of Defendant's breach of contract as described herein, Plaintiff seeks actual damages in the amount of \$90,000.00 with pre-judgment interest, up to and including the date this Judgment is entered, plus post-judgment interest at the highest amount allowed by law from the date the Judgment is entered until full payment is received, on the contractual note, whichever is higher.

B. STATUTORY DAMAGES

6.03 Statutory damages of up to \$1,000.00 from Defendant under Texas Civil & Practice Remedies Code section 134.005(a)(1), for each violation.

VII. **ATTORNEYS FEES**

7.01 Plaintiff reasserts the allegations in the foregoing paragraphs and incorporates those paragraphs herein by reference.

7.02 Pursuant to §38.001 of the Texas Civil Practice & Remedies Code, Plaintiff is entitled to recover the reasonable and necessary attorney's fees from Defendant for the breach of

contract. Specifically, Plaintiff would show that as the result of Defendant's actions, Plaintiff was forced to retain the undersigned counsel. Plaintiff seeks all reasonable and necessary attorneys' fees required to assert and litigate the claims against Defendant.

VIII.
CONDITIONS PRECEDENT

8.01 All conditions precedent to Plaintiff's claim for relief has been performed or has occurred.

IX.
PRAYER

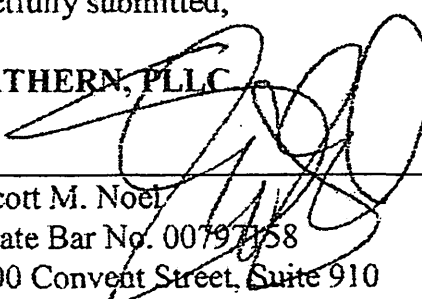
WHEREFORE, PREMISES CONSIDERED, Plaintiff Thomas L. Cole, requests that this Court cite Defendant, Kenneth C. Meissner, to answer and appear and, upon final trial of the merits, that Plaintiff recover judgment against Defendant, as follows:

- a. actual damages as plead herein;
- b. statutory damages as plead herein;
- c. pre-judgment and post-judgment interest;
- d. costs of court;
- e. reasonable attorneys' fees and related costs; and
- f. such other relief, both at law and in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

McCATHERN, PLLC

By: _____


Scott M. Noel
State Bar No. 00797158
300 Convent Street, Suite 910
San Antonio, TX 78258
Telephone (210) 853-2681
Facsimile (210) 200-8387
Email: snoel@mccathernlaw.com

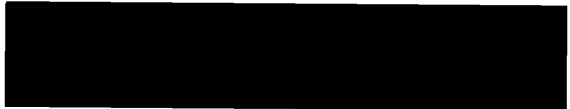
ATTORNEY FOR PLAINTIFF,
THOMAS L. COLE

Date: September 18, 2007

Maker: Kenneth C. Meissner



Payee: Thomas L. Cole



Place for Payment: 4127 Bretton Ridge
San Antonio, Texas 78217

Principal Amount: \$90,000.00

Annual Interest Rate on Unpaid Principal from Date: 8%

Annual Interest Rate on Matured, Unpaid Amounts: 12%

Terms of Payment:

Principal and interest shall be due and payable as follows:

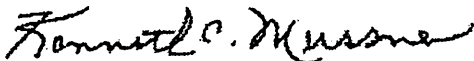
Interest only in four quarterly payments of \$1,800.00 each. The quarterly payments of interest shall be due on December 17, 2007; March 17, 2008; June 17, 2008; and September 17, 2008.

Principal may be repaid in any amounts until September 17, 2008, at which time any unpaid principal and interest shall become due. Maker agrees to make principal and interest reductions from the total amounts received by Maker from the maturity of any policies attached and incorporated herein as Exhibit "A" during the term of this Note. This Note may be prepaid without penalty if enough maturities on the policies occur during the term of this Note to pay all interest and principal due. Interest shall be calculated at any time based upon the unpaid principal balance due.

Security for Payment:

Maker hereby assigns as security for the repayment of this loan a security interest in all policies attached and incorporated herein as Exhibit "A" in amounts to repay this loan, both principal and interest, as any repayment of amounts due under this Note become due. If there is any default under the terms of this Note, Payee may perfect his security interest in all those policies and foreclose on his

security interest to repay this Note in full after giving Maker ten (10) days notice by certified mail return receipt requested to Maker's address indicated above. Maker agrees at all times to execute any instruments necessary to accomplish the purpose and intent of this loan and the repayment of the same.



KENNETH C. MEISSNER, Maker

MUTUAL BENEFITS POLICIES

1. INSURED CASE FILE #: 10-0000653
TOTAL MATURITY AMOUNT: \$23,627.50
PAID TO MAY 9, 2008
SEX/AGE: FEMALE/92
2. INSURED CASE FILE#: 99-0007857
TOTAL MATURITY AMOUNT: \$43,020.00
PAID TO JUNE 21, 2008
SEX/AGE: FEMALE/87
3. INSURED CASE FILE#: 99-0007989
TOTAL MATURITY AMOUNT: \$29,557.50
SEX/AGE: MALE/87
4. INSURED CASE FILE#: 99-0007829
TOTAL MATURITY AMOUNT: \$63,711.00
PAID TO DEC. 9, 2008
SEX/AGE: MALE/85

TOTAL MATURITY AMOUNT: \$159,916

ADDENDUM TO SECURED NOTE
DATED, September 18, 2007

Effective September 18, 2008 the annual interest rate on unpaid principal shall increase from 8% to 9%. Interest only, in four quarterly payments of \$2,025 each. The quarterly payments of interest shall be due on December 17, 2008, March 17, 2009, June 17, 2009 and September 17, 2009.

Kenneth C. Meissner
Kenneth C. Meissner, Maker

12 / 15 / 2008
Dated

THOMAS L. COLE
Plaintiff,

v.

KENNETH C. MEISSNER
Defendant.

§
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§
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IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

AFFIDAVIT OF THOMAS L. COLE

STATE OF NORTH CAROLINA §
 §
COUNTY OF MECKLENBURG §

BEFORE ME, the undersigned authority, on this day personally appeared Thomas L. Cole, who swore on oath that the following facts are true:

“1. My full name is Thomas L. Cole. I am over twenty-one (21) years of age, have never been convicted of a felony or a crime involving moral turpitude, have no legal disabilities, and am fully and legally competent to make this oath and affidavit, and I have personal knowledge of the facts stated herein, and they are all true and correct.

“2. On or about September 18, 2007, Kenneth C. Meissner executed and entered into a Secured Note wherein (a) I agreed to loan Mr. Meissner a sum of money; (2) Mr. Meissner made an unconditional promise to repay the loan plus an annual interest rate of eight-percent (8%) on or before September 17, 2008; and (c) Mr. Meissner assigned his security interest in four Mutual Benefits Policies if there is any default under the terms of the Secured Note. On the same day, I advanced Mr. Meissner Ninety Thousand and No/100 Dollars (\$90,000.00).

“3. I kept a systematic record (the “Ledger”) of the amounts owed by Kenneth C. Meissner. I have custody and control of the Ledger and after having allowed for all just and lawful offsets, payments and credits, as of this date, there remains a balance due and owing on the Ledger in the amount of Ninety Thousand and No/100 Dollars (\$90,000.00) in principal, Forty Five Thousand Nine Hundred and No/100 (\$45,900.00) in interest, due and payable by Defendant, Kenneth C. Meissner. This amount is just and true.

"4. Demand for payment of the just amount owing to Plaintiff by Defendant has been made on Defendant, more than thirty (30) days prior hereto and payment for the just amount owing has not been tendered."

Thomas L. Cole
Thomas L. Cole
Affiant

SIGNED under oath before me on this the 5 day of NOVEMBER, 2014.



[Signature]
Notary Public, State of North Carolina

EXHIBIT 57

Kenneth C. Meissner
Income Analysis

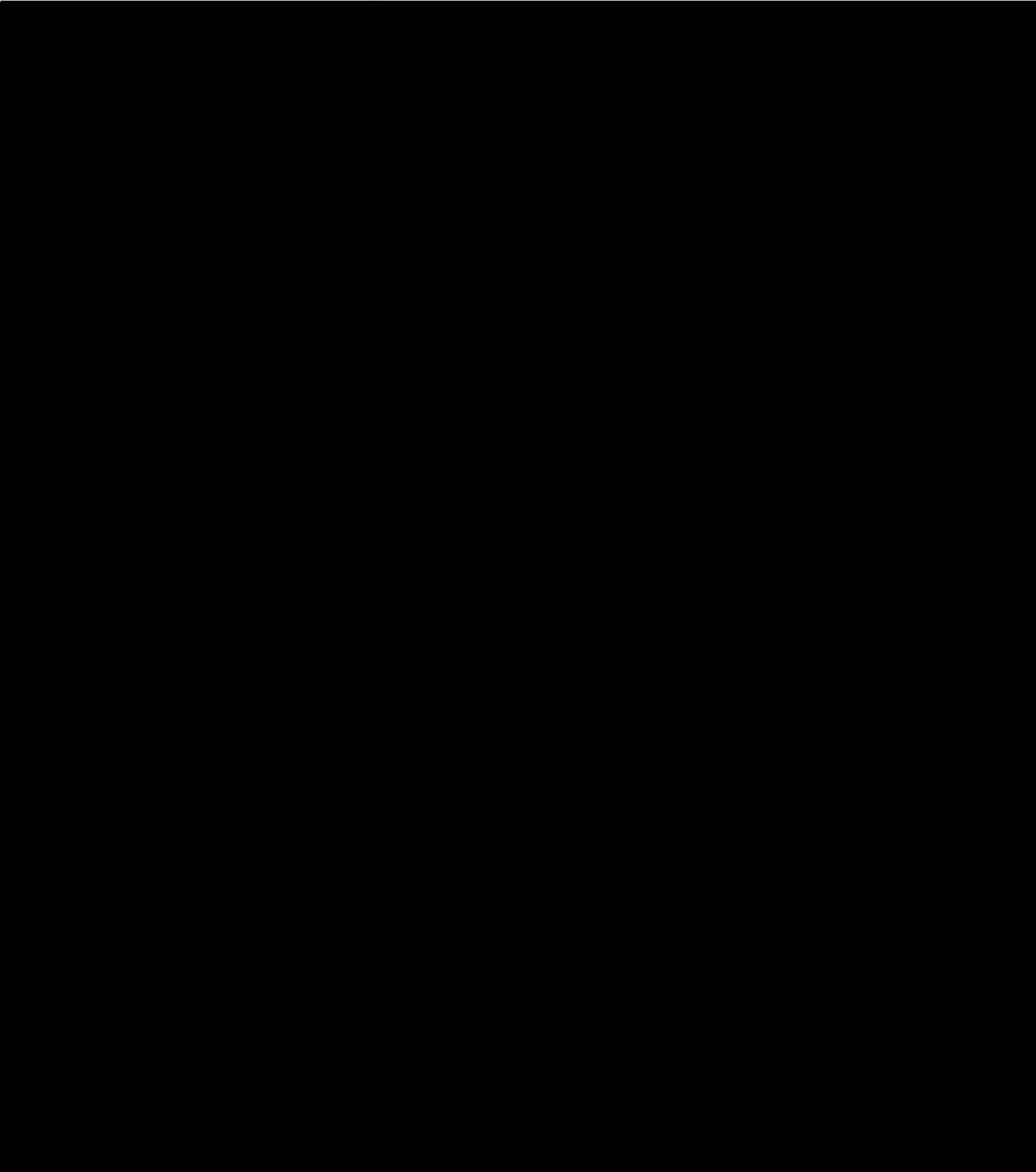
[REDACTED]

[REDACTED]

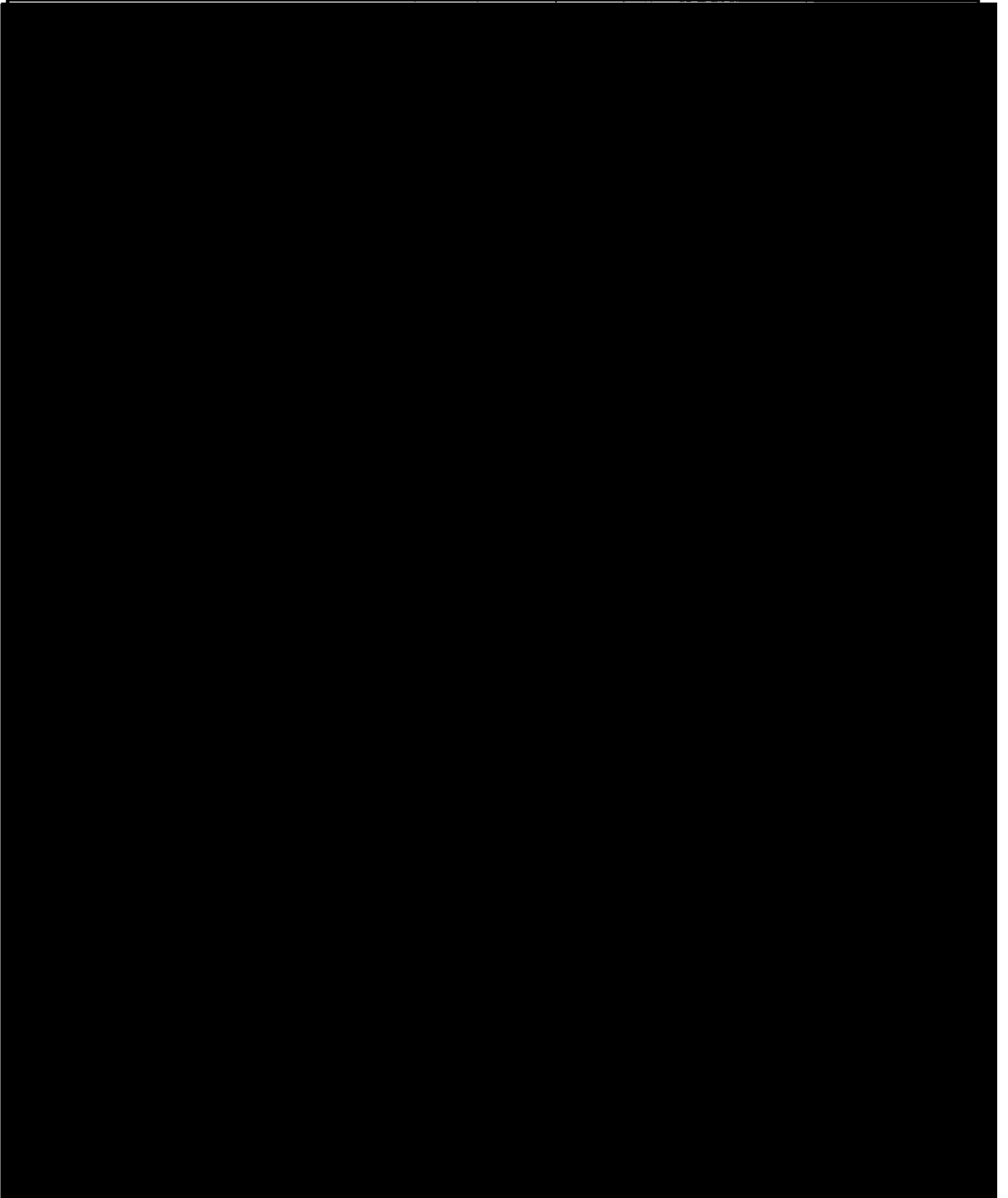
Kenneth C. Meissner

[REDACTED]

[REDACTED]



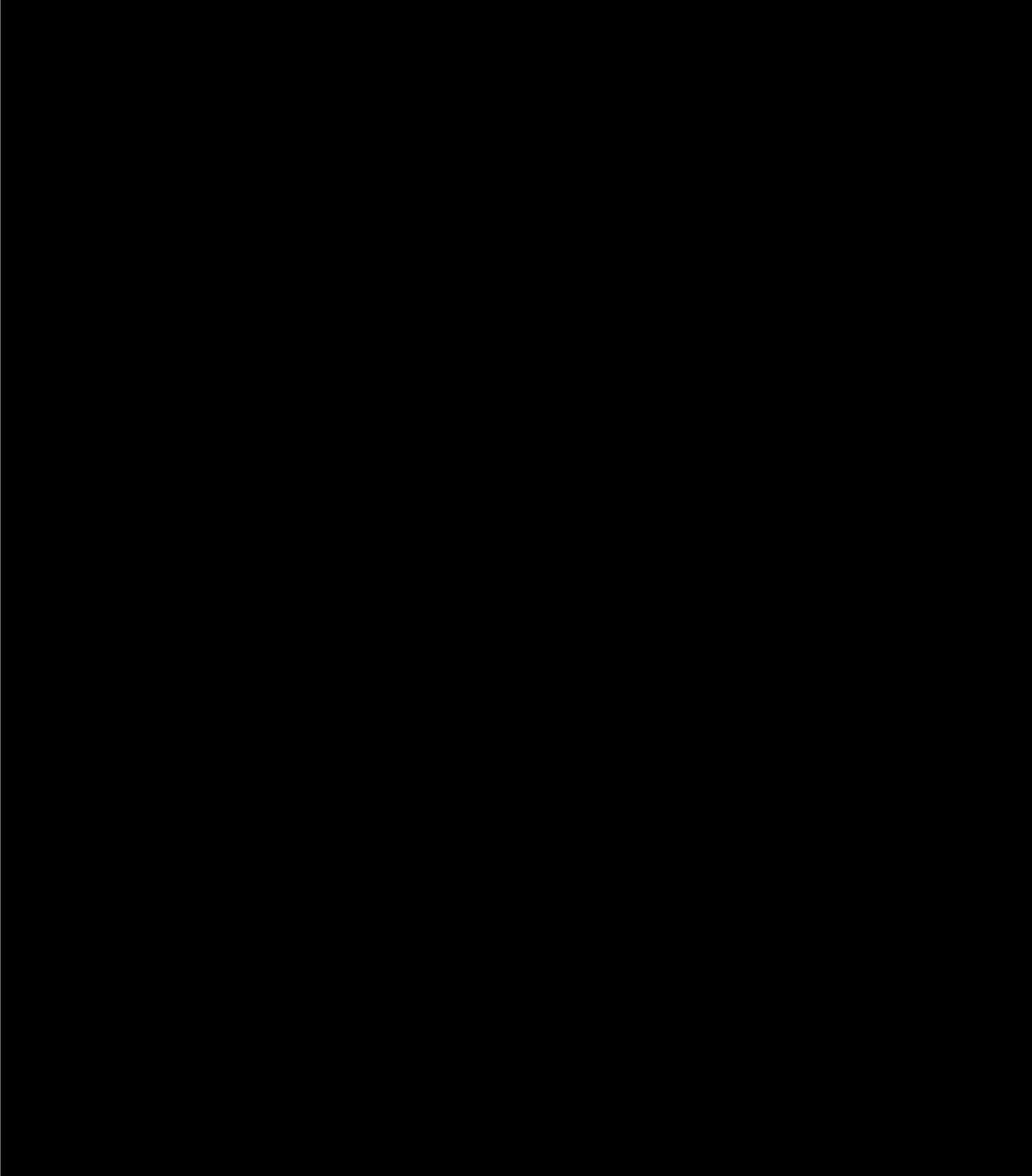
Kenneth C. Meissner
Income Analysis



Kenneth C. Meissner
Income Analysis

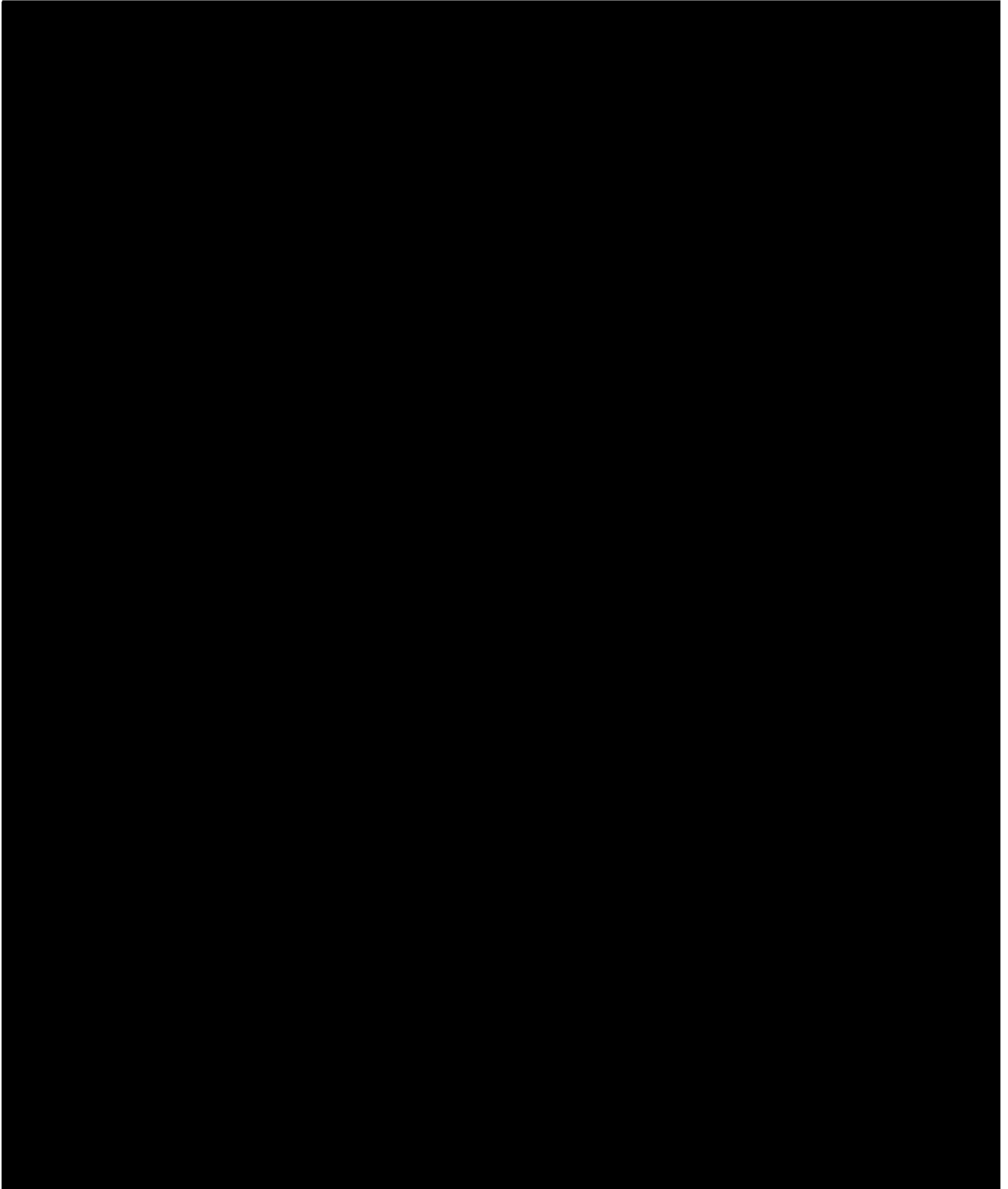
[REDACTED]

Source	Deposit	Total Income Bank Records	Bate No.
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Kenneth C. Meissner
Income Analysis

2011-2012



Kenneth C. Meissner
Income Analysis

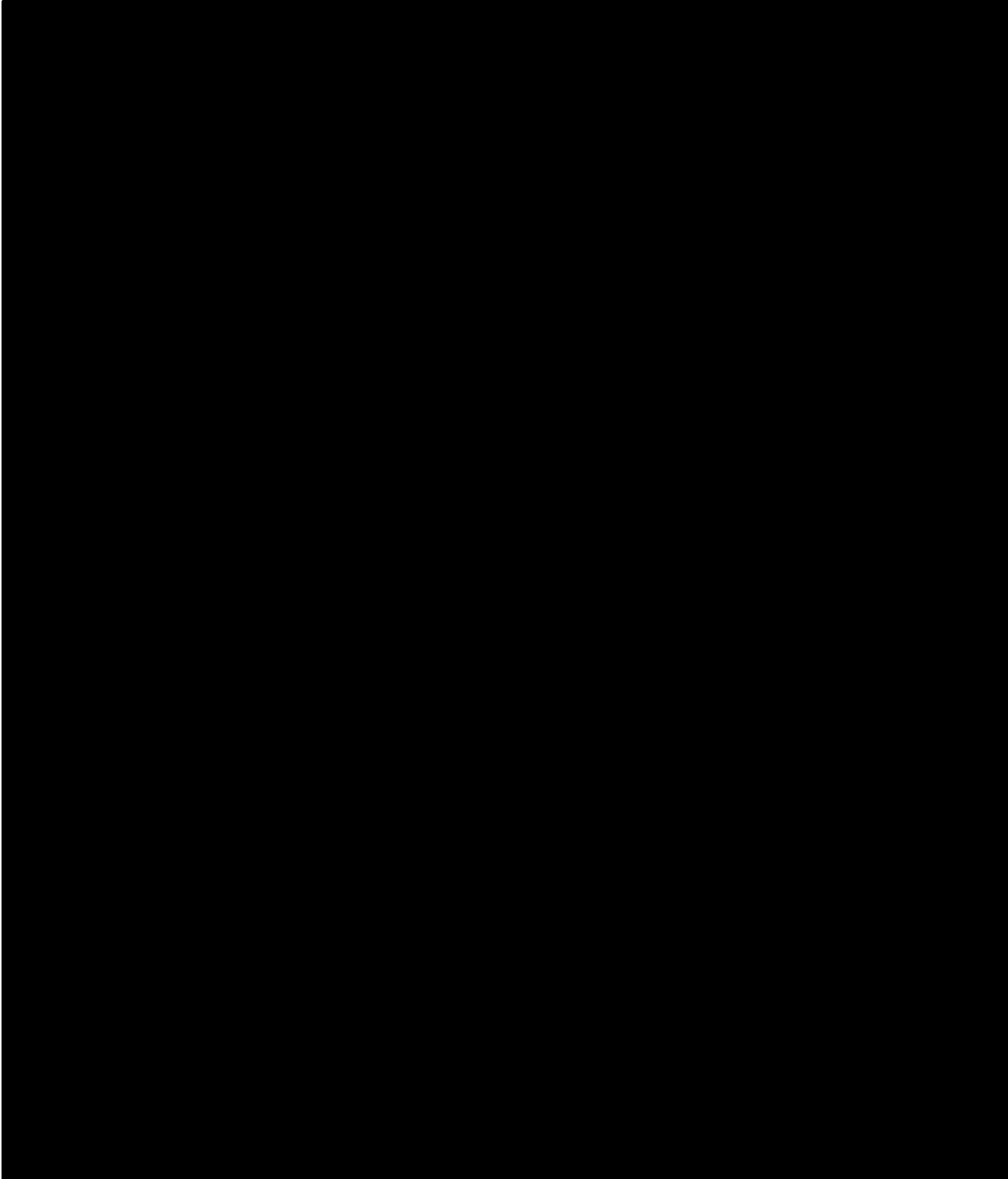


EXHIBIT 58


DEPOSIT TICKET

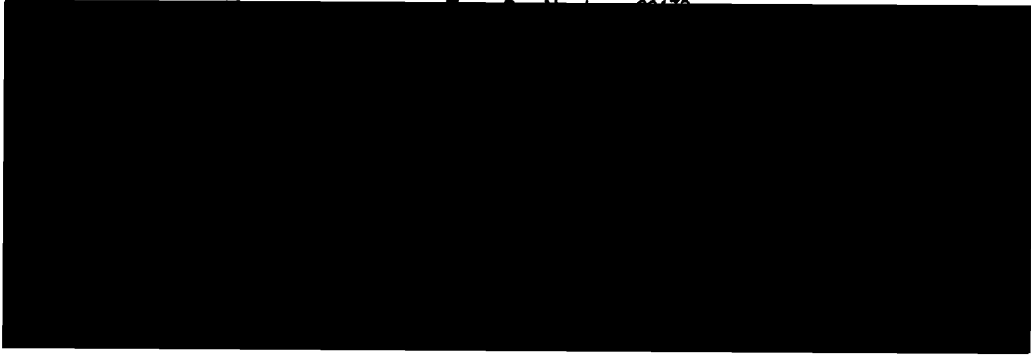
30-9/1180

PLEASE CHECK THIS AND RETURN TO THE OFFICE
FOR INFORMATION ONLY TO THE OFFICE

Acc
Ser
Che
TrR
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Item
Pro
Cus

Acc
Ser
Che
TrR
Tra
Item
Pro
Cus

 **Cash Out**










EXHIBIT 59