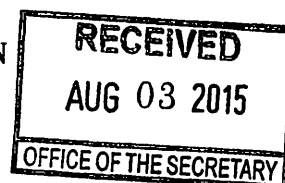


**HARD COPY**

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



**ADMINISTRATIVE PROCEEDING  
File Nos. 3-16311**

**In the Matters of**

**RELIANCE FINANCIAL  
ADVISORS, LLC, TIMOTHY S.  
DEMBSKI and WALTER F.  
GRENDA, JR.,**

**Respondents.**

**DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENT TIMOTHY S.  
DEMBSKI'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Dated: July 31, 2015

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The Division of Enforcement (“Division”) respectfully submits this response to the Proposed Findings of Fact and Conclusions of Law submitted by Respondent Timothy S. Dembski (“Dembski”).

**DIVISION OF ENFORCEMENT’S RESPONSE TO TIMOTHY DEMBSKI’S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Division objects to Dembski’s Proposed Findings of Fact in its entirety based on Dembski’s failure to comply with this Court’s May 21, 2015 Order requiring that “[e]ach citation shall be accompanied by quotations(s) of the key language that best supports the proposed finding [and where] the language is drawn from witness testimony or an expert report, the witness or expert should be identified.” Dembski’s failure to identify speakers is particularly problematic where he cites to statements from his own attorney as “support” for his proposed findings rather than any admissible evidence. Furthermore, and as set forth in greater detail below, many of Dembski’s proposed findings are not supported by the text of the testimony at the pages Dembski cites.

**I. Dembski Proposed Findings of Fact**

1. This proceeding was initiated on December 10, 2014 pursuant to the “Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing” (the “Order”).

Not disputed.

2. The hearing in this proceeding was conducted from May 11 through May 15, 2015 and on May 18, 2015.

Not disputed.

3. Mr. Dembski was 42 at the time the Order was filed. (*See* Order ¶9).

Not disputed.

4. Mr. Dembski was, with Scott M. Stephan (“Stephan”), the joint owner of Prestige Wealth Management, LLC (“Prestige”). *Id.* ¶1.

Not disputed.

5. Prestige was the investment adviser to Prestige Wealth Management Fund, LP (the “Prestige Fund”).

Not disputed.

6. In 2010, Holland & Knight LLP (“Holland & Knight”), after paying fees for advertising on an internet entity known as HedgeCo Securities (“HedgeCo”), became counsel to Mr. Dembski, Stephan, Prestige and the Prestige Fund. HedgeCo listed Holland & Knight as experts in “hedge fund” representation as a result of Holland & Knight's payment of an advertising fee (Tr. at 760).

The record cited by Dembski does not support Dembski’s Proposed Finding of Fact 6. In particular, the record does not support that Holland & Knight ever served as counsel to Dembski or Stephan personally.

7. Neither Stephan, Dembski, Prestige nor the Prestige Fund had any prior experience in, or knowledge, of hedge funds.

Not disputed.

8. Holland & Knight, which claimed extensive experience in connection with “hedge funds” (Tr. 533-536), prepared a document entitled “Confidential Private Placement Memorandum” dated February 1, 2011 (the “PPM”) for the Prestige Fund. *See* Exhibit 90.

Transcript Pages 533-536 do not support Dembski’s claim that Holland & Knight claimed extensive hedge fund experience or make clear Holland & Knight’s role in preparing the PPM.

9. Among other things, pages (i) through (iii) of the PPM, which immediately follow the cover sheet of the PPM, stated in prominent capital letters in relevant part as follows:

PROSPECTIVE INVESTORS SHOULD READ THIS  
CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM  
(THE "MEMORANDUM") CAREFULLY BEFORE DECIDING  
WHETHER TO PURCHASE INTERESTS (THE "INTERESTS") IN  
PRESTIGE WEALTH MANAGEMENT FUND, LP (THE "FUND")  
AND SHOULD PAY PARTICULAR ATTENTION TO THE  
INFORMATION UNDER THE HEADING "CERTAIN RISK  
FACTORS."

\* \* \*

INVESTMENTS IN THE FUND ARE NOT BANK DEPOSITS AND ARE NOT COVERED BY FDIC INSURANCE. INVESTMENTS IN THE FUND MAY RESULT IN THE LOSS OF PRINCIPAL INVESTMENTS IN THE FUND [AND) MAY BE RISKY AND SUBJECT TO TOTAL LOSS.

\* \* \*

NEITHER THE FUND, THE GENERAL PARTNER, NOR ANY OF THEIR REPRESENTATIVES OR AGENTS IS MAKING ANY REPRESENTATION TO ANY OFFEREE OR PURCHASER OF THE INTERESTS REGARDING THE LEGALITY OF ANY INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER. [EXHIBIT 90 AT (i) - (iii).]

The Division does not dispute that the quoted language is cited in the PPM at pages “i” to “iii.”

10. Mr. Dembski provided each of the individuals who were his investment advisory or tax-preparation clients clients (sic) who expressed an interest in the Prestige Fund full copies of the Holland & Knight-prepared PPM and other documents prepared by Holland & Knight. *See* Tr. at 12, 35.

Dembski fails to cite to any document or testimony in support of Proposed Finding 10, citing instead to the parties’ attorneys’ opening statements. The Division does not dispute that Dembski gave many of his clients copies of the Prestige Fund PPM but disputes that the PPM and other Fund documents were prepared entirely by Holland & Knight.

11. Prior to the filing of the Order in this proceeding, Mr. Dembski was never accused by anyone of misconduct or improprieties in his career in the securities industry and was never disciplined or held liable by any regulatory authority or any other governmental authority or court. *See* Tr. at 29.

The Division lacks knowledge as to whether Mr. Dembski was ever “accused by anyone of misconduct or improprieties in his career in the securities industry” but submits that the Court should disregard Dembski’s Proposed Finding 11 due to his failure to cite any evidence in support of his claim. Instead, Dembski cites only to his own attorney’s argument made in his opening statement at the Hearing.

12. Holland & Knight advised Mr. Dembski and Stephan that Mr. Dembski should play no role in any investment or investment decisions of either Prestige or the Prestige Fund. *See* Tr. at 34.

The Division objects to Dembski's Proposed Finding of Fact 12 based on his failure to cite any evidence in support thereof (again, citing only to his attorney's opening statement).

13. The PPM Mr. Dembski provided to each investor or potential investor in the Prestige Fund described the Prestige Fund in "the most dramatically negative, cautionary terms that a hedge fund could utilize." *See* Tr. at 35, SEC opening statement.

The Division disputes Dembski's Proposed Finding of Fact 13. Transcript page 35, cited by Dembski, is not a statement by the Division's counsel. It is *Dembski's attorney's opening statement*, and is not supported by any record evidence.

14. Every witness called to testify at the hearing by the SEC either has initiated, or will soon initiate, a claim or lawsuit against Mr. Dembski seeking damages from him. *See* Tr. at 40.

The Division disputes that "[e]very witness called to testify at the hearing by the [Division] either has initiated, or will soon initiate, a claim or lawsuit against Mr. Dembski seeking damages from him." Dembski fails to cite any record evidence in support of his claim, again citing only to his attorney's opening statement.

15. Stephan became an employee of Reliance Financial Advisors, LLC ("Reliance") in 2007. *See* Tr. at 55.

Not disputed that Dembski became an employee of a Reliance entity in 2007, but that entity was Reliance Financial Group. (Div. FoF ¶ 166.)

16. At the time he joined Reliance in 2007, Stephan was "interested" in learning the "investment business." *See* Tr. at 58.

Not disputed.

17. Reliance was "an investment firm." *See* Tr. at 59. At the time Stephan was hired at Reliance, the firm had "[f]our or five" other full time employees. *See* Tr. at 60.

Not disputed.

18. Stephan obtained securities licenses from relevant authorities, including the Financial Industry Regulatory Authority ("FINRA"), including a Series 7 license in August 2009, a Series 63 license in August 2009 and a Series 66 license in October 2009. *See* Tr. at 66.

Not disputed.

19. Prestige Fund began its trading activities in March 2011. *See* Tr. at 66.

Not disputed.

20. Stephan originated the idea for the Prestige Fund. *See* Tr. at 67.

Not disputed.

21. Stephan originated on his own the concept of the hedge fund based on "a lot of market research [Stephan did] on stocks," such as "looking at charts, [and] running through certain scenarios on the fluctuation of certain stocks on a daily basis ... " *See* Tr. at 69.

The Division disputes that the quoted text accurately reflects Stephan's testimony. The Division does not dispute that Stephan claimed to come "up with the idea for the trading strategy and the fund itself," and claimed to do "a lot of research on stocks ... [l]ooking at charts, running through certain scenarios on the fluctuation of certain stocks on a daily basis... ." <sup>1</sup>

22. Stephan, without initially informing Mr. Dembski that he was doing so, created a formula - also referred to as an "algorithm" - by "[taking] roughly 100 stocks and I used specific times during the day to set a trigger to - my example would be at 9:45, if 'X' stock goes up one percent or down one percent, if it goes down ... one percent to go and short the stock. If it goes up one percent after that 9:45 price point to go long with the stock." *See* Tr. at 68.

The Division disputes Dembski's Proposed Finding of Fact 22. Dembski does not cite to any support for his statement that Stephan took the actions described therein "without initially information Mr. Dembski." Furthermore, the language Dembski quotes misstates "500 stocks" as "100 stocks."

23. Stephan's "formula" or "algorithm" also involved the following: "Once the position was entered, then it would be - if the stock made a three percent return that day to exit it out of it. If it took a one percent loss, if it was down one percent to take a loss at one percent." *See* Tr. at 69.

Not disputed that Stephan's formula was intended to work in the way described in Dembski Proposed Finding 23.

24. Stephan alone selected the stocks for the algorithm. *See* Tr. at 69.

Not disputed.

25. Stephan ultimately invested in only five stocks for the Prestige Fund. *Id.*

The Division does not dispute that Stephan invested in only five stocks for the Prestige Fund when he used the formula, but disputes Dembski's Proposed Finding 25 to the extent it

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<sup>1</sup> Tr. at 67-68 (Stephan).

seeks to describe trading after Stephan began trading manually, including options trading. *See* Division's Proposed Findings of Fact ("Div. FoF") ¶¶ 23, 27, 29.

26. It was Stephan's idea to place his trading strategy into a hedge fund. *See* Tr. at 69-70.

Not disputed.

27. Before actively establishing the Prestige Fund, Stephan tested the formula he alone had developed by a test known as "MultiCharts," a software program for "backtesting where I could go back as far as seven years, put in the formula, and run through on a daily basis. And I ran that daily from 2000 - for seven years to give the returns of each stock on every single year." *See* Tr. at 70.

Not disputed.

28. Stephan eventually discussed his formula (or algorithm), as well as the backtesting, with Mr. Dembski. *See* Tr. at 72.

Not disputed.

29. Stephan decided to start the Prestige Fund with Mr. Dembski because Stephan believed Mr. Dembski had "a significant amount of clients." *See* Tr. at 74.

Not disputed.

30. Stephan selected Holland & Knight solely through the recommendation of HedgeCo. *See* Tr. at 76.

The Division disputes that Stephan alone selected Holland & Knight. Dembski participated in the selection of Holland & Knight.<sup>2</sup> The Division further disputes that the decision to select Holland & Knight was based "solely" on HedgeCo.'s recommendation. Dembski explained he was favorably impressed with Holland & Knight based on a conversation he claims to have had with Scott MacLeod and, following that conversation, "there was no question who we were going to use."<sup>3</sup>

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<sup>2</sup> Tr. 533:9-21 (Dembski) ("Q: And what happened after that? A: The next part then were the attorneys. And, again, I went through a couple of different attorneys, but the gentleman at HedgeCo mainly knew, I said, you know what ... In your eyes, who would you suggest to be the best? And he said without a doubt Holland & Knight. And I said, well, I would like to talk to them. Q: Did Holland & Knight call you? A: Yes, they did."); *see also* Tr. 457:3-5 (Grenda) ("Q: You used the expression Holland & Knight. What is that? A: That was the legal firm Tim [Dembski] hired to put the memorandum together.").

<sup>3</sup> Tr. 538:7-20 (Dembski) ("Q: How did you leave it with—just focusing on this initial conversation with MacLeod of Holland & Knight, how did you leave it with him? Did you say

31. In an email dated November 28, 2010, Amy Rigdon ("Rigdon") of Holland & Knight wrote Stephan and Mr. Dembski in relevant part: "In order to make the two work the way you to desire without any issues, I will need to amend the operating agreement of Prestige Wealth Management LLC so that Tim [Dembski] (although a 50 percent owner) will not have any decision-making powers over the investment/portfolio management of the fund." *See* Exhibit 10.

The Division does not dispute Dembski's Proposed Finding 31 except to the extent he means to suggest that the quoted language is the only "relevant part" of Rigdon's November 28, 2010 email.

32. Rigdon also wrote in the same email that "Tim cannot have anything to do with the day-to-day management of the fund." *Id. See also* Tr. at 79.

Not disputed.

33. The basis for Stephan's and Mr. Dembski's agreement to Holland & Knight's direction was, as Stephan stated, "when speaking to Holland & Knight, in order for a performance fee and a management fee to be charged to the clients, because [Mr. Dembski] had a certain dollar amount of assets under management, that the fees, the performance fee[,] could not be assessed to a client. Because I didn't have any assets under management, I met that criteria, so I had to be, per Holland & Knight, I had to be listed as the sole fund manager." *See* Tr. at 80.

Not disputed.

34. This was decided before the Prestige Fund started. *Id.* at 80.

Not disputed insofar as the reference to "[t]his" in Dembski Proposed Finding 34 refers to Stephan's and Dembski's decision to exclude Dembski from investment decision-making for the Fund.

35. The Limited Liability Operating Agreement for Prestige Wealth Management LLC ("Operating Agreement") (see Exhibit 88) was, according to Stephan, the operating agreement applicable to himself and Mr. Dembski. *See* Tr. at 81.

Not disputed.

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you're hired, you won? A: It was one of those moments where you're like – it was an eye opener. It was a ton of information in a short period of time that changed our whole thought from prior meetings. You know, it was one of those things, wow, this guy knows what he is talking about. He really does. And there was no question who we were going to use.”).



36. At all times Stephan continuously kept Mr. Dembski separated from the day-to-day investments of the Prestige Fund. *See* Tr. at 83.

The Division does not dispute that Mr. Dembski was “separated from the day-to-day investment management of the Prestige Fund.”<sup>4</sup> To the extent Dembski means to suggest Stephan prevented him from viewing investments—as opposed to “management” of those investments—the text Dembski cites does not support that proposed finding.

37. Only Stephan had access to the trading account for the fund, not Mr. Dembski. *See* Tr. at 84.

Not disputed.

38. Only Stephan had access to the performance results. *See* Tr. at 85.

The Division does not dispute that Stephan was the only person associated with the Fund with “real time” access to performance results. The testimony at page 85 does not support that only Stephan had access to performance results at any time.

39. Holland & Knight created all the documents relating to Prestige and the Prestige Fund. *See* Tr. at 86.

The Division does not dispute that Holland & Knight played a role in helping prepare Prestige Fund Documents. Holland and Knight was assisted in preparing those documents by Dembski and Stephan. (Div. FoF ¶¶ 189-192, 198.)

40. The PPM was finalized by Holland & Knight in or about January or February 2011. *See* Tr. at 89.

Not disputed.

41. Anthony Casino ("Casino") was an engineer retained by Stephan to put Stephan's formula or algorithm "into a mathematical equation in computer language." *See* Tr. at 101. Stephan was satisfied with Casino's work. *Id.* at 102.

Not disputed, though the Division notes the proper spelling of “Casino” (corrected in the Transcript as proposed in the Division’s June 5 Motion to Correct Hearing Transcript, granted as per the Court’s June 15, 2015 Order Granting Motion to Correct Hearing Transcript).

42. The minimum investment in the Prestige Fund was \$250,000. *See* Tr. at 104.

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<sup>4</sup> Tr. 83:15-18 (Stephan) (“Q: And did you, in fact, keep Mr. Dembski separated from the day-to-day investment management of the Prestige Fund? A: Yes.”).

The minimum investment in the Prestige Fund was \$250,000 *unless* Prestige LLC authorized otherwise.<sup>5</sup> Some investors did, in fact, invest less than \$250,000.<sup>6</sup>

43. Stephan anticipated that Mr. Dembski and Walter F. Grenda, Jr. ("Grenda") would find or solicit investors for the Prestige Fund. *Id.* at 105.

Not disputed.

44. Stephan received \$123,505.91 in management and performance fees from the Prestige Fund from July 7, 2011 to December 3, 2012. *Id.* at 107.

Not disputed.

45. Stephan himself on multiple occasions met with potential investors in the Prestige Fund before they invested. *See* Tr. at 109.

The Division disputes that Stephan met with multiple potential investors in the Prestige Fund before they invested except as that statement may pertain to occasional meetings with potential investors when Stephan "would go into the paperwork [and] some clients would ask [Stephan] a few questions about the trading strategy." Stephan never had substantive conversations with any of Mr. Dembski's clients about the Prestige Fund.<sup>7</sup>

46. The PPM was given to all actual and potential investors in the Prestige Fund. *Id.* at 110.

The Division disputes that the PPM was given to all actual and potential investors in the Prestige Fund. The page Dembski cites as supporting Proposed Finding 46 states only that "the Prestige Fund PPM [was] given to clients," and the record indicates Dembski failed to provide any paperwork to at least some investors. (Div. FoF ¶ 80 (Barrett never received any paperwork concerning the Prestige Fund before investing in the Fund); ¶ 96 (Mr. Blaszkiewicz received Fund documents after he and Mrs. Blaszkiewicz decided to invest in the Fund).)

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<sup>5</sup> Div. Ex. 90 ("PPM") at 9 ("The minimum investment for an investor is \$250,000 ... the General Partner [Prestige Wealth Management, LLC] may increase or waive the foregoing minimums in its sole discretion"). *See also* Tr. 104:8-11 (Stephan) ("Q: Unless you were authorized otherwise, what was the minimum investment in the Prestige Fund? A: \$250,000.").

<sup>6</sup> *See* Div. Ex. 87 (list of investors and their investments) at line 1.

<sup>7</sup> Tr. 109:6-18 (Stephan) ("Q: So is it fair to say ... you only met Mr. Dembski's clients who became investors in the Prestige Fund after they decided to invest? A: No. At times when I would go into the paperwork, some clients would ask me a few questions about the trading strategy. Q: Outside of the presence of Mr. Dembski, did you ever have substantive conversations with any of Mr. Dembski's clients about the Prestige Fund? A: No.)

47. As soon as the Prestige Fund began trading in March 2011, Stephan utilized the trading formula. *See* Tr. at 111.

Not disputed.

48. Stephan never told Mr. Dembski that Stephan stopped trading manually rather than through the algorithm. *Id.* at 115.

Not disputed.

49. It was Stephan, not Mr. Dembski, who by December 2012 "lost 85% of the [clients'] money" in the fund. *Id.* at 117.

The Division does not dispute Dembski's Proposed Finding 49 insofar as it means Stephan traded the securities that led to Dembski's clients losing approximately 85% of their money. The Division disputes Proposed Finding 49 to the extent it expresses a legal conclusion as to who is responsible for the trading that led to Dembski's clients' losses.

50. Given the advice Stephan and Mr. Dembski had received from Holland & Knight, Mr. Dembski even in December 2012, nor at any other time, had knowledge of Stephan's trading activities or the losses. *See* Tr. at 117.

Disputed. First, Dembski's Proposed Finding 50 is unclear as to whether Dembski claims ever to have had knowledge Stephan's trading. To the extent Dembski means he never had such knowledge, Trial Transcript Page 117 (which is Stephan's testimony) does not support his proposed finding.

51. Stephan never heard Mr. Dembski say or communicate to any actual or potential investor that the Prestige Fund was insured by the FDIC. *See* Tr. at 135.

Not disputed.

52. Stephan never heard Mr. Dembski say or communicate to any actual or potential investor in the Prestige Fund that a "big bank" was interested in investing in the Prestige Fund. *Id.* at 135.

Not disputed.

53. Stephan never heard Mr. Dembski say or otherwise communicate to any actual or potential investor in the fund that it was a "safe investment." *Id.* at 135-136.

Not disputed.

54. Stephan never heard Mr. Dembski say or communicate to any actual or potential investor that the formula or algorithm was "guarant[eed]" to work. *See* Tr. at 136.

Not disputed.

55. Stephan never heard Mr. Dembski say or communicate to any actual or potential investor that an investor would receive a certain level of investment return. *Id.*

Not disputed.

56. Mr. Dembski never asked Stephan to develop the formula or algorithm. *See Tr.* at 137.

Not disputed.

57. Stephan developed the formula in "good faith" and had no intent "to cheat anyone in developing that formula." *Id.* at 137-138.

Disputed. *See generally* Division's Post-Hearing Brief Seeking Relief Against Respondent Scott M. Stephan, File No. 3-16312.

58. Stephan learned of "Holland & Knight for the first time through HedgeCo.," a firm which Holland & Knight had paid to advertise Holland & Knight, and Stephan spoke to Holland & Knight attorneys approximately 20 to 30 times. *See Tr.* at 140.

Not disputed as to Stephan first learning about Holland & Knight through HedgeCo. The Division also does not dispute that Stephan may have communicated with Holland & Knight approximately 20 to 30 times, but that figure appears to include both spoken and emailed communications.<sup>8</sup>

59. During Mr. Dembski's and Stephan's initial conversations with Holland & Knight, Mr. Dembski and Stephan explained that they "needed guidance because this was our [Stephan's and Mr. Dembski's] first experience setting up a hedge fund." *Id.* at 141.

The Division disputes that Mr. Dembski explained anything to Holland & Knight about needing guidance. The language Dembski cites in support of his Proposed Finding 59 is Stephan's testimony stating "I explained to [Holland & Knight] that we were starting up a hedge fund, that we needed an attorney and we needed guidance because this was our first experience setting up a hedge fund."<sup>9</sup> MacLeod does not recall ever speaking with Dembski during the time Holland & Knight worked to help set up the Prestige Fund. (Div. FoF ¶ 193.)

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<sup>8</sup> Tr. 772: 2-7 (Rigdon) ("Q: Can you give us a rough estimate of the number of times that you spoke to Mr. Stephan? A: I can't tell you, no. Q: Was it more than ten times? A: By e-mail and phone, yes.").

<sup>9</sup> Tr. 141:9-20.

60. Scott McLeod ("McLeod") of Holland & Knight assured Mr. Dembski and Stephan that Holland & Knight "can set the hedge fund up for you .... " *Id.*

The Division disputes that MacLeod ever communicated directly with Dembski (Div. FoF ¶ 193), but otherwise does not dispute that MacLeod represented he could assist in setting up a hedge fund for Stephan and Dembski.

61. It was Mr. Dembski's and Stephan's "intention to rely on Holland & Knight for legal advice in terms of setting up and operating the hedge fund." *See* Tr. at 142.

The Division disputes that it was Dembski's intention to rely on Holland & Knight to operate the Prestige Fund. The testimony Dembski cites in support of his Proposed Finding 61 is that of Stephan and does not address Dembski's intentions.

62. Stephan and Mr. Dembski expressly desired to have the "best people" including Holland & Knight - establish the fund and provide guidance and assistance. *Id.* at 142.

The Division disputes that Dembski desired to have the "best people" establish the Prestige Fund and provide guidance and assistance. As Dembski acknowledges, he knew the person with whom he was creating the Fund—Stephan—had virtually no experience with hedge funds or managing money at all but nevertheless chose to establish the Fund with him. (Div. FoF ¶¶ 169-177.)

63. The PPM, the Operating Agreement and the subscription agreement "were written entirely by Holland & Knight." *Id.*

The Division does not dispute that Holland & Knight played a role in helping prepare Prestige Fund Documents. Holland and Knight was assisted in preparing those documents by Dembski and Stephan. (Div. FoF ¶¶ 189-192, 198.)

64. Mr. Dembski did not prepare the biographical description of Stephan that appears in the PPM. *See* Tr. at 143.

The Division does not dispute that Stephan prepared the initial draft of the biographical description of Stephan that appears in the PPM. As Dembski acknowledges, Dembski transmitted the draft Stephan biography to counsel for inclusion in the PPM without sharing any concerns about the veracity of the text Dembski sent to counsel. (Div. FoF ¶¶ 198-200.)

65. Stephan provided information about himself to Holland & Knight. *Id.*

Not disputed.

66. Stephan advised Holland & Knight that Stephan had experienced two prior bankruptcies before the biographical description of Stephan was included by Holland & Knight in the PPM. *Id.*

Not disputed.

67. After the Securities and Exchange Commission (the "SEC") raised issues about Stephan's biographical information, Stephan contacted Holland & Knight to discuss the SEC's concerns and was told by Holland & Knight that the description was "not a problem." *Id.* at 144.

The Division does not dispute that in 2013, Stephan asked counsel—Scott MacLeod—about Stephan's biography as it appeared in the Prestige Fund PPM following inquiries from the SEC. The Division does dispute that MacLeod said the description was "not a problem." As MacLeod testified, he understood the SEC staff to be concerned that the biography was "at least incomplete" because it did not specify the kind of securities Stephan purportedly had experience trading, and MacLeod himself found the disclosure to be incomplete based on his understanding of Stephan's work history.<sup>10</sup>

68. In this as in all other instances, Stephan "relied on Holland & Knight's advice." *Id.* at 144.

The Division disputes that Stephan relied on Holland & Knight's legal advice in "this as in all other instances." First, Dembski does not cite to any support for his Proposed Finding 68 concerning "all other instances." Stephan's testimony at Trial Transcript at 144 speaks only to Stephan's interaction with Holland & Knight regarding an interaction that took place in 2013 and does not mention any action Stephan took in reliance on Holland & Knight's purported legal advice.

69. Stephan and Mr. Dembski, throughout the process of establishing and operating the Prestige Fund, had the "objective" of being "fair and helpful to the clients of the fund." *Id.* at 145.

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<sup>10</sup> Tr. 824:11—826:6 (MacLeod) ("Q: Can you tell me in any more detail what [Stephan] said about the bio or about the questions in the bio? A: Yes. He said specifically that the staff, part of the bio said I had experience managing portfolios 500 million dollars. And he said the staff was questioning the 500 million dollar number, and they were also raising questions about the fact that that sentence didn't identify the assets that were being managed. And what Stephan told me was, in fact, what he had managed at his previous employer was a portfolio of car loans, which were not the kind of securities that the fund was buying, and the staff was understandably concerned that the statement as written might have been at least incomplete. Q: So at that point, based on that conversation with Mr. Stephan, was it your understanding that Mr. Stephan had experience with securities at all? A: Yes... Q: At the time that you had that conversation with him ... what was your understanding of Mr. Stephan's professional experience as it related to securities? A: Based on what he told me on that call, I understood that he had, in fact, traded in securities and they were just a different asset class from what the fund was buying. So what he told me on that phone call was that the 500 million number was true... What he said was incomplete in that statement, which was new to me at the time, was that he actually managed a portfolio of car loans, automobile receivables.").

The Division disputes that Stephan and Dembski had the objective of being fair and helpful to their clients. Both individuals intentionally defrauded Prestige Fund investors. *See generally* Division's Moving Briefs seeking relief as to Stephan and Dembski.

70. John S [REDACTED] ("S [REDACTED]") became an investment client of Mr. Dembski in or about February 2001. *See Tr.* at 169.

Not disputed.

71. During the years in which S [REDACTED] utilized Mr. Dembski as an advisor, S [REDACTED] "never really lost money." *Id.* at 170.

Not disputed as to those years Dembski served as S [REDACTED]'s investment adviser prior to S [REDACTED]'s Prestige Fund investment.<sup>11</sup>

72. S [REDACTED] invested \$250,000 in the Prestige Fund. *Id.* at 171.

Not disputed.

73. Mr. Dembski advised S [REDACTED] that Mr. Dembski would not be the investment manager of the Prestige Fund. *Id.* at 147.

Disputed. As S [REDACTED] explained at Trial Transcript page 174 (the page the Division believes Dembski intended to cite in Proposed Finding 73), Dembski told S [REDACTED] he "wasn't going to be the *direct* manager, but because he had his investment in it, he is going to look at it daily to make sure things were performing."<sup>12</sup>

74. Mr. Dembski gave the PPM to S [REDACTED] and advised S [REDACTED] to "take it home and read it, which I [S [REDACTED]] did." *See Tr.* at 176.

Not disputed.

75. S [REDACTED] met with Stephan before S [REDACTED] made his investment in the fund. *Id.*

Not disputed.

76. Before investing in the Prestige Fund, S [REDACTED] had \$500,000 under Mr. Dembski's investment advisory services. *See Tr.* at 184.

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<sup>11</sup> Tr. 170:4-15 (S [REDACTED]) ("Q: And so over the time between when you first started working with Mr. Dembski and when you invested in Prestige Fund, Mr. Dembski put you in various different investments. Is that fair to say? A: Yes. Over the years, we never really lost money...").

<sup>12</sup> Tr. 174:16-22 (S [REDACTED]) (emphasis added).

Disputed. S█ testified that he had “a little less than 500,000” with Dembski before investing in the Prestige Fund.<sup>13</sup>

77. S█ has a lawsuit regarding the Prestige Fund pending against Mr. Dembski. *See* Tr. at 186.

Not disputed.

78. S█ read every word of the PPM Mr. Dembski had given to him. *Id.* at 190.

Not disputed.

79. S█ concluded that “everything in that PPM was bad for the investor. There was nothing even positive.” *Id.* at 191. S█'s wife also read the PPM. *Id.* at 192.

Not disputed.

80. In particular, S█ read the first two pages of the PPM and its bold-face warnings. *Id.* at 193.

The Division does not dispute that S█ read the first two pages of the PPM. To the extent Dembski means to proposed a finding that S█ paid any “particular” attention to those pages, the Division disputes that claim as unsupported by the record Dembski cites.

81. S█ did not see or rely on the biographical description of Stephan in the PPM. *See* Tr. at 194. But S█ did meet Stephan before S█ invested in the fund. *Id.* S█ was told by Mr. Dembski that Stephan would be the “full-time overseer of the fund.” *Id.*

The Division disputes that S█ did not see the biographical description of Stephan in the PPM. As Dembski notes in his Proposed Finding 78, S█ read the entire PPM. As to the biography, the testimony Dembski cites in support of his Proposed Finding 81 supports only that S█ did not recall reading Stephan’s biographical information.<sup>14</sup> The Division does not dispute the balance of Dembski’s Proposed Finding 81.

82. S█ invested his \$250,000 in or about April or March 2001. *See* Tr. at 197-198.

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<sup>13</sup> Tr. 184:10—185:3 (S█) (“Q: How much money roughly did you have with Mr. Dembski during that 12-year period? A: Probably a little less than 500,000 in the end. Q: Put aside what happened with the Prestige Fund. Prior to the Prestige Fund, how much money was – A: A little less than 500. Q: A little less than 500,000; is that what you said? A: Yes, which the majority of it was insurance money. My life savings...”).

<sup>14</sup> Tr. 194:4-7 (S█) (“Q: When you read the PPM, did you read any description of Scott Stephan? A: I don’t recall that. If I did, I don’t remember.”).



Disputed. S■■■■ invested \$250,000 in 2011.<sup>15</sup>

83. S■■■■ did not ask Mr. Dembski how much of Mr. Dembski's or Mr. Dembski's children's money was being invested in the fund. *Id.* at 200.

Not disputed.

84. S■■■■ and his wife - and not Mr. Dembski - made the decision to invest in the fund. *Id.* at 202.

Not disputed.

85. Thomas Krajewski ("TK") was an investment advisory client of Mr. Dembski beginning in 2004. *See* Tr. at 205.

Not disputed.

86. TK invested \$250,000 in the Prestige Fund. *Id.* at 207, 223.

Not disputed.

87. TK was given the PPM before he invested. *Id.* at 215.

Not disputed.

88. TK met with Stephan before TK made his investment. *Id.* at 220.

Not disputed.

89. TK has no recollection of reading the Stephan biography in the PPM. *See* Tr. at 224.

Not disputed.

90. TK had the PPM for six months before he invested in the Prestige Fund. *See* Tr. at 225.

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<sup>15</sup> Tr. 197:12—198:19 (S■■■■) (“Q: And at what point in time did you make the \$250,000 investment in the Prestige Fund? In 2001, around April. Q: And that was not at the same moment that you signed the documents? A: Oh, I’m sorry. That’s when we invested the insurance money. ... THE JUDGE: Excuse me, just so that record is clear... So March 2011 is the point in time in which you invested the \$250,000? THE WITNESS: Yes.”).

Disputed. The testimony Dembski cites in support of his Proposed Finding 90 does not support the assertion that Krajewski had the PPM for six months before he invested in the Prestige Fund.<sup>16</sup>

91. It was TK's decision to invest in the fund, not Mr. Dembski's. *Id.* at 226.

Not disputed.

92. Arthur Laby ("Laby") is a professor at the Rutgers University Law School. *See* Tr. at 231.

Not disputed.

93. Laby was employed by the SEC for nine years, from 1996 until 2005. *See* Tr. at 244.

Not disputed.

94. The two SEC attorneys who were the agency's trial lawyers at the hearing requested that Laby prepare a report. *Id.* at 246.

Not disputed.

95. Laby provided one or more drafts of his report to the SEC lawyers who appeared for the agency at the hearing. *See* Tr. at 248.

Not disputed.

96. Laby "follow[ed]" the comments of the SEC counsel regarding the drafts. *Id.* at 249.

Disputed to the extent Dembski seeks a finding that Laby did anything more than consider the Division's comments regarding drafts of his report. The testimony of Professor Laby Dembski cites in support of his Proposed Finding 96 does not support the assertion that Laby "followed" the Division's comments.<sup>17</sup>

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<sup>16</sup> Tr. 225:2-8 (Krajewski) ("Q: How long after you received the PPM in the mail did you sign those documents? A: Again, I don't recall exactly when I received the document. Q: Not exactly, six weeks, six days, six yours, a rough estimate? A: Well, a couple months.").

<sup>17</sup> Tr. 249:7-16 (Laby) ("Q: Is it fair to say that you followed Mr. Frouge's or Mr. Birnbaum's suggestions or comments? A: I'd like to say that I usually follow those. I can't be sure that I did in every single case. Typically if it was suggested that I take a look at certain materials, I not only would have read those materials, but I would take a second look to review those materials.").

97. Laby's hourly rate was \$650.00 and he spent between 30 and 50 hours preparing the report. *Id.*

Not disputed.

98. Laby did not "feel equipped" (*see* Tr. at 256) to offer a view on the impact of Holland & Knight's advice to Stephan and Mr. Dembski in establishing and operating a hedge fund. *See* Tr. at 255-256.

Disputed. Laby did not "feel equipped" to answer a broad question asking "[u]nder what circumstances then, would a lawyer's explicit advice to an investment advisor have any significance."<sup>18</sup> Laby was clear, however, in testifying that Dembski's fiduciary duty of full disclosure "regardless of what a lawyer might say." Div. FoF ¶ 212.

99. Renee ██████████ ("RB") became an investment advisory client of Mr. Dembski in 2003. *See* Tr. at 279.

Not disputed.

100. RB invested \$250,000 in the Prestige Fund. *See* Tr. at 281.

Not disputed.

101. RB removed \$210,000 from the fund. *Id.* at 288.

Not disputed.

102. RB met with the SEC trial attorneys the day before her testimony, as well as on earlier occasions. *See* Tr. at 288-289.

Not disputed.

103. RB sued Mr. Dembski for the \$40,000 in losses she allegedly sustained. *Id.* at 304.

Not disputed.

104. Mr. Dembski never told RB that there were banks that were considering investing in the fund. *Id.* at 305.

Not disputed.

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<sup>18</sup> Tr. 255:24—256:9 (Laby).

105. Mr. Dembski never told RB that there were investment companies that were considering investing in the fund. *Id.*

Not disputed.

106. Anna ██████ ("AB") "lost" \$280,000 of her investment in the Prestige Fund. *See* Tr. at 312.

Anna ██████ lost approximately \$208,000 in the Prestige Fund. Div. FoF ¶ 84 (clarifying that what previous testimony about \$280,000 in losses referred to \$208,000 in losses on a \$225,000 total investment).

107. AB spoke with the SEC trial counsel on the day before her hearing testimony. *Id.* at 316.

Not disputed.

108. It was AB's decision to invest in the fund. *Id.* at 317.

Not disputed.

109. At the time she invested in the fund, AB had more than \$1 million in assets. *See* Tr. at 319.

Not disputed.

110. The only information that Mr. Dembski mentioned to AB about the fund was that there were other investors. *Id.* at 319.

Disputed. The testimony to which Dembski cites in support of his Proposed Finding 110 does not state that Dembski never said anything to Barrett about the Fund beyond mentioning other investors. To the contrary, Barrett's testimony that Dembski "didn't say anything else other than [mentioning other investors] came in response to a question asking whether Dembski said "anything else to [Barrett] at that initial meeting about the Prestige Fund about other investors in the fund."<sup>19</sup>

Before answering that question, ██████ had already described numerous misrepresentations Dembski told her about the Fund, including that he developed the Fund, would monitor the fund, and could take Barrett's money out of the Fund immediately if she so desired. Div. FoF ¶ 78. Dembski also told ██████ the Fund would make her granddaughter very rich. *Id.* ¶ 79.

111. It was AB's decision to invest in the Prestige Fund. *Id.* at 321.

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<sup>19</sup> Tr. 319:18-23 (Barrett).

Not disputed.

112. AB has either filed a lawsuit or commenced an arbitration against Mr. Dembski. *Id.* at 322.

Not disputed.

113. Richard B. [REDACTED] ("Richard") invested \$250,000 in the Prestige Fund. *Id.* at 330.

Not disputed.

114. Richard withdrew approximately \$220,000 to \$216,000 from the fund. *Id.* at 335.

Not disputed.

115. Richard met the day before his hearing testimony with the SEC attorneys. *Id.* at 337.

Not disputed.

116. Richard received the PPM. *Id.* at 339. Richard did not read it. *Id.* at 340.

Not disputed, except to the extent Dembski means for his Proposed Finding 116 to mean Mr. Blaszkiewicz received the PPM in advance of his decision to invest in the Prestige Fund or had an opportunity to read it before investing in the Fund. Mr. Blaszkiewicz received the Prestige Fund PPM after deciding to invest in the Prestige Fund. Div. FoF ¶ 96.

117. At the time of Richard's and his wife's investment in the Prestige Fund, they had a net worth of approximately \$800,000. *Id.* at 344.

Not disputed.

118. When he removed his money from the Prestige Fund, Richard sustained losses of \$38,000. *Id.* at 346.

Not disputed, except to note the \$38,000 was an approximate figure in line with the \$40,000 noted in Dembski Proposed Finding 125.

119. Richard intends to sue or otherwise bring claims against Mr. Dembski. *See* Tr. 348-34.

Not disputed.

120. Vicky B [REDACTED] ("VB") was employed as an insurance broker and insurance auditor. *See* Tr. at 351.

Not disputed.

121. Mr. Dembski was the financial advisor to VB and Richard. *Id* at 352.

Not disputed.

122. Mr. Dembski told VB the minimum investment in the Prestige Fund was 250,000. *See* Tr. at 354.

Not disputed.

123. Richard, who was VB's husband, knew Stephan because, among other things, Richard and Stephan had golfed together. *Id.* at 358.

Not disputed.

124. Mr. Dembski told VB and Richard that "many people were going to be in this fund ... everybody was paying the same amount" of \$250,000. *Id.* at 359.

Disputed that Dembski told the B [REDACTED] many people were going to be in the Fund, but not disputed that Dembski said everyone was paying the same amount, \$250,000. Mrs. B [REDACTED] testified that she and her husband "asked [Dembski] how many people were going to be in this fund, was everybody paying the same amount. He said yes, everyone was paying the same amount, the \$250,000."<sup>20</sup>

125. VB and Richard "lost" \$40,000 after redeeming their investment in the Prestige Fund. *Id.* at 363.

Not disputed, except to note the \$40,000 was an approximate figure in line with the \$38,000 noted in Dembski Proposed Finding 118.

126. VB and Richard never communicated in writing with Mr. Dembski regarding their conversations that concerned the Prestige Fund. *Id.* at 365.

Not disputed.

127. Mr. Dembski "showed" printed material to Richard and VB regarding the fund. *Id.* at 367.

Not disputed.

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<sup>20</sup> Tr. 359:15-23 (V. Blaszkiewicz).

128. VB understood that the value of investments can rise or fall. *Id.* at 368.

Not disputed.

129. Richard and VB made the decision to invest in the Prestige Fund. *See* Tr. at 370.

Not disputed.

130. Richard and VB will sue Mr. Dembski regarding their alleged losses. *Id.* at 372.

Not disputed that the B [REDACTED] have retained an attorney with the intention of filing an action against Dembski.

131. VB met the day before her hearing testimony with the SEC lawyers conducting the hearing. *Id.* at 373. The SEC lawyers were at that time preparing VB for her hearing testimony. *Id.* at 375.

Not disputed.

132. William H [REDACTED] ("WH") invested \$250,000 in the Prestige Fund in February 2011. *See* Tr. at 384, 385.

Not disputed.

133. WH recovered \$18,000 from the fund after redeeming his investment in the fund. *Id.* at 387.

Not disputed that H [REDACTED] lost all but \$18,000 of his \$250,000 investment in the Prestige Fund. The testimony Dembski cites in support of his Proposed Finding 133 does not address what amount, if any, H [REDACTED] ultimately "recovered."

134. WH was provided with the PPM before he invested in the fund. *See* Tr. at 389. He did not read the PPM. *See* Tr. at 390.

Not disputed.

135. In the ten years before he invested in the fund, WH had been satisfied with Mr. Dembski's performance as WH's investment advisor. *Id.* at 391.

Not disputed.

136. WH made the decision to invest in the Fund. Tr. at 394.

Not disputed.

137. WH met on the day before his hearing testimony with the SEC lawyers handling the hearing. *Id.* at 395.

Not disputed.

138. WH intends to sue Mr. Dembski for \$231,000. *Id.* at 396.

Not disputed.

139. George T [REDACTED] ("GT") invested in the fund in or about May 2012. Tr. at 419.

Not disputed.

140. Mr. Dembski showed information to GT about the fund before GT made his investment. *Id.* at 420.

Not disputed.

141. GT knew about the algorithm before GT invested. *Id.* at 422.

The Division does not dispute that T [REDACTED] was aware an algorithm existed that was created as a means to trade for the Fund, but the Division disputes that T [REDACTED] was aware that the Fund had abandoned using the algorithm in favor of trading manually. Div. FoF ¶¶ 120, 121.

142. GT reviewed the PPM before he invested in the fund. *Id.* at 426.

Not disputed.

143. GT received \$49,000 when he redeemed his investment in the Prestige Fund. *Id.* at 429.

Not disputed.

144. Mr. Dembski gave GT the PPM before GT invested. *See* Tr. at 433.

Not disputed.

145. GT met on the day before his hearing testimony with the SEC attorneys conducting the hearing. *Id.* at 436.

Not disputed.

146. According to Grenda, Holland & Knight was the law firm Mr. Dembski hired to prepare the PPM. *See* Tr. at 457.



Not disputed.<sup>21</sup>

147. Grenda desired to become a partner of Stephan and Mr. Dembski in Prestige. *Id.* at 461. Grenda was disqualified because he had "marks" on his FINRA license. *Id.*

Not disputed.

148. Grenda was "confident" regarding Holland & Knight's preparation of the PPM. *Id.* at 463.

Not disputed that Grenda was "confident that Holland & Knight did their job" concerning their role in preparing the PPM.

149. Grenda had investment advisory clients who invested in the Prestige Fund. *Id.* at 464.

Not disputed.

150. Grenda never told any of his clients that the Prestige Fund was insured by the FDIC. *Id.* at 464-465.

Not disputed.

151. Grenda did not tell any of his advisory clients that a "big bank" had made an investment in, or was considering investing in, the Prestige Fund. *Id.* at 465. Nor did Grenda tell his clients that gains were "guaranteed." *Id.*

Not disputed.

152. Grenda told his clients there was "risk" in investing in the fund because of the absence of federal insurance. *Id.*

Not disputed.

153. 25 of Grenda's customers invested in the Prestige Fund. *Id.* at 466.

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<sup>21</sup> In an effort to narrow disputed factual issues before the Court, the Division has declined to dispute numerous findings proposed by Dembski that are not supported (or are contradicted) by the record where those facts are not material to the resolution of the matter as to Dembski. Similarly, the Division chose not to adduce certain evidence at the Hearing that might be relevant to Grenda or Reliance but not to Dembski or Stephan. Accordingly, the Division's decision not to dispute certain of Dembski's proposed findings is not intended to convey agreement or a stipulation to be relied upon outside the context of this matter as it relates to Dembski.

Not disputed.

154. Grenda "trusted" Mr. Dembski to fully and properly inform Mr. Dembski's customers about the fund. *Id.* at 467.

The Division does not dispute that Grenda "trusted" Dembski, but disputes that he trusted Dembski to "fully and properly inform Mr. Dembski's customers about the fund." The testimony Dembski cites in support of his Proposed Finding 154 does not support that statement.

155. Grenda "felt very comfortable and confident in the formula, the algorithm." *Id.* at 473.

Not disputed.

156. Grenda understood, and explained to his own clients, that Stephan had "exclusive responsibility to manage the fund and make its investment decisions." *Id.* at 487.

Not disputed.

157. Grenda believed Stephan had knowledge of investment markets. *Id.* at 488.

Not disputed.

158. Mr. Dembski personally "funded all of the startup costs" of the Prestige venture, including Holland & Knight's legal fees. *Id.* at 491.

Not disputed.

159. Statements regarding the Prestige Fund were sent regularly on a quarterly basis to investors in the fund. *Id.* at 470.

Disputed. Investors testified that the quarterly reports they were promised often came late or sporadically. *See, e.g.*, FoF ¶ 106 (Haubrick received Fund statements "sporadically") ¶ 126 (Thuman invested in May 2012 and did not get any Fund statements until September 2012).

160. Mr. Dembski acquired a Series 7 license from FINRA in 1995. *See* Tr. at 507.

Not disputed.

161. In 2011, Mr. Dembski became Grenda's "partner" in Reliance Financial Advisors, LLC. *Id.* at 509. Reliance Financial Advisors was a "registered investment advisor" with the SEC. *Id.* at 509.

Not disputed.

162. By the time Reliance Financial Advisors was formed, Mr. Dembski rendered investment advisory services to approximately 250 people. *Id.* at 510.

Not disputed.

163. Prior to the Order entered in this matter, Mr. Dembski had never been the subject of any proceedings by FINRA, its predecessor, the SEC or any other regulatory authority. *See Tr.* at 510. Nor had he ever been the defendant in a litigation or respondent in an arbitration. *Id.*

Not disputed, except as to litigation and/or arbitration commenced prior to the Order entered in this matter but relating to the same or overlapping underlying facts.

164. At seminars sponsored and operated by Reliance, Stephan was listed as a "vice-president" and "co-chairman of investment" of Reliance. *Id.* at 513.

Disputed. Stephan was never a Vice President at Reliance. Div. FoF ¶ 157. In fact, Dembski knew Stephan was not listed in Reliance's corporate documents as a Vice President. *Id.* ¶ 183.

165. When Stephan received his Series 7 license in 2009, he was entitled to function as an investment advisor or broker. *Id.* at 513.

Not disputed.

166. Stephan began to develop a formula or algorithm in 2010. *Id.* at 515.

Not disputed.

167. Mr. Dembski "stay[s] very far away from any lying, and everyone knows that about me, being close to any type of risk." *Id.* at 516. Mr. Dembski insisted that Stephan with respect to the algorithm "prove things to me. Show me what you're saying works." *See Tr.* at 516.

Disputed. Dembski offers no support for his Proposed Finding 167 beyond his own self-serving testimony. Eight of Dembski's clients testified to how Dembski did not stay far away from lying at all when it came to the Prestige Fund. *See generally* Div. FoF ¶¶ 45-129.

168. Mr. Dembski did not ask Stephan to develop the algorithm. *Id.* at 517.

Not disputed.

169. Throughout 2010, Stephan "show[ed] me [Mr. Dembski] graphs on a screen displaying different stocks, and the motions that they would have after certain time periods .... The market would gyrate in one direction or another from 9 o'clock to 9:30 but after that point in time, it showed consistency in one direction or another." *See Tr.* at 518.

Not disputed.

170. Stephan spent at least one year developing the algorithm. *Id.* at 518.

Not disputed.

171. "Backtesting" was performed with respect to the algorithm. *Id.* at 519. Mr. Dembski insisted that Stephan had to "prove" the algorithm to Mr. Dembski. *Id.*

The Division does not dispute that Stephan performed backtesting, but disputes that Dembski insisted that Stephan "prove" the algorithm to Dembski. Dembski, who had the opportunity to question Stephan about this assertion, fails to cite anything in support of his Proposed Finding 171 other than his own self-serving testimony.

172. The "backtesting" utilized independent programs called "DTNIQ" and "MultiGraphs." *Id.*

The Division disputes that the backtesting used programs DTNIQ and MultiGraphs. Stephan, who performed the backtesting, was asked how he tested the formula or trading strategy and answered: I used a software called MultiCharts, and that was a backtesting where I could go back as far as seven years, put in the formula, and then run it through on a daily basis...."<sup>22</sup>

173. The backtesting of the algorithm, as confirmed by the independent programs, revealed "solid performance" and Mr. Dembski was satisfied with the algorithm. *Id.* at 5621.

The Division does not dispute Dembski was satisfied with the algorithm, but disputes that the backtesting revealed "solid performance." Dembski does not cite any evidence in support of his Proposed Finding 173 other than his own testimony, and Dembski was aware of the limitations associated with Stephan's backtesting as well as Stephan's concerns about the backtesting he performed. Div. FoF ¶¶ 13-15.

174. Mr. Dembski understood a "hedge fund" to be "a pooling of dollars, and somehow [a] manager had a strategy that produced returns better than average returns." *See* Tr. at 522.

The Division does not dispute that Dembski had some understanding at the time of the Hearing what a hedge fund is. The Division does dispute that Dembski had any such understanding when he co-founded the Prestige Fund. Dembski has admitted that before creating the Prestige Fund he did not know what a hedge fund was. Div. FoF ¶ 38.

175. After Mr. Dembski's investigation of the functioning of the algorithm, Stephan called HedgeCo, a company whose name Stephan found on the Internet. *Id.* at 523.

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<sup>22</sup> Tr. 70:14-22 (Stephan).

Not disputed.

176. Mr. Dembski participated in a conference call with HedgeCo in which HedgeCo executives told him and Stephan that HedgeCo was "going to make sure you're connected to the right people, people that will take care of the administration, people that will take care of the accounting for it." *See* Tr. at 525.

Not disputed.

177. During the conference call with HedgeCo executives, Mr. Dembski was advised by HedgeCo that "the attorney was the most important part. They will give you the guidance on what needs to be done." *Id.* at 527.

Not disputed.

178. Mr. Dembski, with respect to his establishing a hedge fund, "wanted everything to be the best they could be .... I wanted the best attorney ...." *Id.* at 530.

The Division does not dispute that Mr. Dembski wanted to have a qualified attorney help set up the Prestige Fund, but disputes Dembski's self-serving statement that he wanted everything to be the best they could be. As Dembski acknowledges, he knew the person with whom he was creating the Fund—Stephan—had virtually no experience with hedge funds or managing money at all but nevertheless chose to establish the Fund with him. (Div. FoF ¶¶ 169-177.)

179. Mr. Dembski was advised by HedgeCo that Holland & Knight was the "best" law firm in the field of establishing, advising and operating a hedge fund. *See* Tr. at 533.

Not disputed.

180. McLeod of Holland & Knight called Mr. Dembski, who described McLeod as ostensibly "very knowledgeable, very powerful speaker. He enlightened us .... He went top to bottom with what needs to be done, how it needs to be done ... ." *Id.* at 534.

The Division does not dispute that Dembski described MacLeod as set forth in Dembski's Proposed Finding 180. The Division disputes that MacLeod called Dembski or ever communicated directly with Dembski before the Fund was created. (Div. FoF ¶ 193).

181. McLeod told Mr. Dembski that non-accredited investors "could get in the fund." *Id.* at 535.

The Division does not dispute that Holland & Knight told Dembski or Stephan that non-accredited investors could invest in the Prestige Fund, but disputes that it was MacLeod who communicated that to Dembski directly. (Div. FoF ¶ 193.)

182. Holland & Knight "really held our hand throughout the process. [McLeod] told us that this is the way it should be set up. This is how it should be done. If we're talking about not having accredited investors, and, Tim, how much money do you manage outside, I told him - was it in excess of \$25 million, and I said yes, and he said because of that, you can't be a part of the management of the fund, your role can only be the owner of the fund. There needs to be that separation." *See Tr.* at 536.

The Division does not dispute that Holland & Knight advised the Prestige Fund and its General Partner as to how to set up a Fund, including advice regarding the separation of certain management functions.

183. Mr. Dembski and Stephan "asked [McLeod] if it was okay that we remain in the same office. He said that shouldn't be a problem so long as you [Mr. Dembski] don't have access to the investment itself." *Id.* at 537.

Not disputed.

184. Mr. Dembski reacted to his conversation with McLeod of Holland & Knight as follows: "[I]t was one of those things, wow, this guy knows what he is talking about. He really does. And there was no question who we were going to use." *Id.* at 538.

Not disputed that Dembski believed MacLeod "knew what he was talking about" and that Dembski knew he wanted to hire MacLeod, but disputed that MacLeod spoke directly with Dembski before the Fund was created. (Div. FoF ¶ 193).

185. McLeod said that the legal fee would be at least \$25,000 for Holland & Knight's services. *Id.* at 539.

Not disputed.

186. Holland & Knight, after receiving payment of legal fees from Mr. Dembski, then sent Mr. Dembski and Stephan a questionnaire. *Id.* at 541. Mr. Dembski and Stephan were put in contact with Rigdon of Holland & Knight with respect to the questionnaire. *Id.* at 543.

Not disputed.

187. Stephan had numerous contacts with Rigdon of Holland & Knight. *See Tr.* at 550.

Not disputed.

188. Insofar as Stephan's biography for the PPM was concerned, Stephan was "having issues with his" biography. "Just like anything else, [he] told me he went and talked to somebody at Holland & Knight to help him with it." *Id.* at 551.

Disputed. Stephan has no recollection of asking Holland & Knight to help with his biography, receiving any advice regarding his biography, or telling Dembski that he had done so. *See* Div. FoF ¶¶ 208-210. Likewise, Rigdon and MacLeod testified that they did not discuss with Stephan the contents of his biography. *See id.* ¶¶ 195, 196, 202-206.

189. Mr. Dembski looked at Stephan's proposed biography for the PPM, and "that's when I questioned him, and I said how did you come up with this, and he said from Holland & Knight." *Id.* at 552.

Disputed. Dembski does not cite any evidence in support of his Proposed Finding 189 other than his own self-serving testimony, but that testimony is contradicted by Stephan, Rigdon and MacLeod. *See* Div. FoF ¶¶ 195, 196, 202-206, 208-210.

190. Holland & Knight advised that the "500 million dollar book or portfolio that can be construed as a debt, and that debt could be a portfolio or a security .... And I [Mr. Dembski] said that's what [Holland & Knight] are telling you that it should say, and he said yeah. Even the verbiage of the bio, I could clearly see that's not something Scott Stephan would write. It looked very much like an attorney wrote it." *Id.* at 552.

Disputed. Dembski does not cite any evidence in support of his Proposed Finding 190 other than his own self-serving testimony, but that testimony is contradicted by Stephan, Rigdon and MacLeod. *See* Div. FoF ¶¶ 195, 196, 202-206, 208-210.

191. For Mr. Dembski, "I did not think above and beyond what Holland & Knight's opinion was. I felt that Holland & Knight gave it the stamp, they said it was good, it was okay, and that's what they helped him do, so I agreed with it." *Id.* at 553.

Disputed. Dembski did, in fact, form an opinion as to whether Stephan's biography was truthful. He believed that the biography was, in parts, inaccurate, unclear, and occupied a "gray area" of truth. Div. FoF ¶¶ 178-181.

192. Mr. Dembski "trusted Holland & Knight's advice. That was it." *Id.* at 554.

The Division does not dispute that Dembski trusted Holland & Knight's advice, but disputes that Holland & Knight provided any legal advice regarding the PPM's description of Stephan's work experience. Div. FoF ¶ 209.

193. Mr. Dembski *never* told the Blaszaiewiczes "at any point ... that a big bank was going to invest in the Prestige Fund." *See* Tr. at 668.

Disputed. Div. FoF ¶ 93(c).

194. Mr. Dembski never at any point told the Blaszaiewiczes "that [he was] guaranteeing them through the fund a 10 to 20 percent return." *Id.*

Not disputed.

195. Mr. Dembski never told the Blaszaiewiczes "that by investing in the fund that they could not lose." *Id.* at 558.

Not disputed that Dembski never used the quoted language in communicating with the Blaszkiewiczzes, but Dembski did tell the Blaszkiewiczzes that the Fund was protected against losses by the FDIC insurance. Div. FoF ¶ 93(d).

196. Mr. Dembski never told the Blaszaiewiczes "that the Prestige Fund was insured by the Federal Deposit Insurance Corporation." *Id.* at 559.

Disputed. Both Richard and Vicki Blaszkiewicz specifically recall Dembski assuring them that the Fund was insured by the FDIC, and Mrs. Blaszkiewicz's recollection is supported by her handwritten notes. Div. FoF ¶ 93(d).

197. Mr., Dembski told the Blaszaiewiczes "that statements of their account would be generated by G&S." *See* Tr. at 650. Nor did Mr. Dembski ever tell them that he "had put \$250,000 of [his] own money" or his children's money into the fund. *Id.*

Not disputed.

198. In his conversations with all potential investors in the Prestige Fund, Mr. Dembski "had a very consistent message .... If I thought somebody was interested ... I went through it very specifically and told them this is first the algorithm, all right, this is the algorithm that Scott came up with, and this is how it works .... I showed them that binder that Scott had gone through to show he did backtesting, let people talk to Scott, explain the fund to them and how it was structured. Scott would be the manager. I made sure I handed everyone the PPM. They all had the PPM prior to signing it. They all did." *Id.* at 561-562.

Disputed. The sampling of investors who testified made clear that Dembski did not fully and truthfully describe the Prestige Fund to them in a consistent manner. Dembski not only failed to tell some of his clients that Stephan would be the Fund's manager, he told some that he (Dembski) would personally manage their money. *See, e.g.,* Div. FoF ¶¶ 70(c), 93(b). Not all investors had the PPM before investing in the Fund. *See, e.g., id.* ¶ 80.

199. Mr. Dembski "encouraged" all potential investors to read the PPM. *Id.* at 562. "I never used a term like legalese when Mr. Krajewski said it. I never heard that term before. I never told anyone that it is not important to read the PPM and what's in it isn't important. I made it very apparent that they should read it and Scott is the manager." *Id.* at 562.

Disputed. Dembski did not encourage all potential investors to read the PPM. Dembski did not even provide all investors with the PPM before they invested. *See, e.g.,* Div. FoF ¶ 80. And when investors did receive and read the PPM and had questions about it, Dembski told them they could disregard sections of the PPM as "boilerplate" or "legalese." *See id.* ¶¶ 53-54, 61.



Dembski also did not make clear that Stephan would manage the Fund. To the contrary, Dembski told investors *he* would manage the Fund. *See, e.g., id.* ¶¶ 70(c), 93(b).

200. As to the S■■■■s, RB, Haubrick, AB, TK, Thuman - indeed, as to each of the witnesses who were investors called by the SEC to testify against Mr. Dembski, he (i) never told any of them that the Prestige Fund was insured by the FDIC, (ii) that they were guaranteed 10 percent to 20 percent returns, (iii) that a big bank or investment firm was interested in investing in the fund, or (iv) that he or his children had invested in the fund. *See generally* Tr. at 566-593.

Disputed. Dembski's improper citation to 28 pages of his own self-serving testimony is contradicted by each of the investors who testified at the Hearing. *See, e.g.,* Div. FoF ¶ 93(d) (Dembski told the Blaszkiewiczzes the Fund was insured by the FDIC); ¶ 70(c) (Dembski told Broderick he invested his own money in the Fund); ¶ 103(a) (Dembski told Haubrick he had more money invested than Haubrick did, meaning more than \$250,000); ¶ 52(c) (Dembski told S■■■■ of interest from New York investment bankers) ¶ 93(c) (Dembski told the Blaskiewiczzes a big bank was interested in investing millions of dollars in the Fund).

201. Each of the seven investors who testified against Mr. Dembski has either initiated or will initiate lawsuits or arbitrations against him.

Dembski fails to cite any evidence in support of his Proposed Finding 201. The Division does not dispute that several of the investor witnesses who testified at the hearing either have filed a claim against Dembski or indicated an intent to do so.

202. A total of 19 of Mr. Dembski's advisory clients invested in the Prestige Fund. None of these others-a total of approximately 12-have brought claims against him.

Dembski fails to cite any evidence in support of his Proposed Finding 202.

203. Indeed, of the investors in the fund who were Mr. Dembski's clients, the following remain his clients: Joanne Brown; Amy Burns; Gunther Commichau; Adam Dembski; Julia Goeltz; Jerry May; Maryarm Neary; Randy Sattleberg; John Shriner; Catherine Sensor; Karen and Charles Streit; Jim Sapler; and John White. *Id.* at 602-605.

Disputed. Amy Burns, for example, is no longer Dembski's client and was not his client at the time Dembski submitted his proposed findings of fact.<sup>23</sup>

204. Holland & Knight provided services to Reliance as well. *See* Tr. at 610.

Not disputed.

205. Without ever providing an explanation, Holland & Knight sent a "disengagement letter" to Mr. Dembski.

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<sup>23</sup> *See* attached July 28, 2015 Declaration of Amy L. Burns.

Disputed. Dembski does not cite to any evidence in support of his Proposed Finding 205.

206. Mr. Dembski had one last conversation with McLeod of Holland & Knight, a conversation which Mr. Dembski recorded and about which Mr. Dembski testified as follows:

**Q Did there come a time when you separately had a conversation with Scott MacLeod?**

A. Yes, we didn't - the audit kind of hung there for a while and it was certain responses with Walter [Grenda]. He had access to the SEC website or e-mail system. And out of nowhere, I received a disengagement letter from Holland & Knight and I was floored by it. They had everything that we needed for the fund, the RIA, tied it all together, and here we are in an SEC audit and you just pick up and leave and call it a day. So I called them immediately and I said you can't just leave.

And I said I need you guys to at least help me with a couple of questions before we end our relationship, and understand you probably have the wording in your contract that say this, and I'm not going to fight you on it, but I have paid you for certain things and you know I'm in the middle of an audit, I don't know the answer to these things, please help me with these two things, three things. Sure. So I sent the actual document that the SEC had sent about the three things, registered, paying back the fees to get accredited, and Scott's bio.

I talked to Scott MacLeod and Amy. I told him exactly what the conversation was about. They made it very clear they are not charging me, but this is our last conversation.

**Q And MacLeod said what?**

[SEC Counsel]: Objection as to relevance.

THE COURT: Overruled.

A He started first about the being registered, unregistered, saying that there wasn't a problem with it as long as we did have that separation. He said there might be issues in the office based on creep. I think he used the word creep. That we might hear conversations or that and the other and it might have creep, I remember. that word specifically, in the office and it is probably not a bad idea to think about moving Scott out of the building, if that's what the SEC is recommending or it that's the way they are saying.

The second part had to do with if this, in fact, should have been registered, then all of the people that were charged a fee that were unaccredited, those fees should be paid back which at that time I think it might have been 40,000 or 60,000. I don't remember the specific amount. They are saying those fees should be paid back.

And then finally I said what about the bio. I have no idea why you did what you did or why you guys wrote what you wrote, and he clearly stated exactly what Scott had told me the first time I had seen the bio, that it is not, it is not a big deal, you can change it. And things can be construed like debt. The debt on those cars is considered a security and that is a book of business that the owner of that business needed Scott to manage. And he went through the entire thing. That was the last time I talked to him.

**Q And you recorded that conversation?**

**A** I did. [*See* Tr. at 612-615.]

Not disputed that Dembski had a conversation with Holland & Knight in 2013 and recorded that conversation. The Division also does not dispute that Dembski testified about that call as quoted above. Disputed to the extent Dembski seeks a finding of fact inconsistent with the actual statements made on the call, a recording of which is Division Exhibit 294 and a transcript of which is Division Exhibit 295.

## **II. Dembski Proposed Conclusions of Law**

1. As previously indicated, Mr. Dembski is accused, according to the initiating Order, of violating Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940.

Disputed. The action as to Dembski was initiated pursuant to the foregoing provisions. As set forth in the Order Instituting Proceedings (“OIP”) against Dembski, among others, the Division alleges Dembski violated Section 17(a) of the Securities Act of 1934, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, Sections 206(1) and (2) of the Investment Advisers Act of 1940; and aiding and abetting and causing (i) Prestige Wealth Management LLC’s violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and (ii) Reliance Financial Advisors, LLC’s violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act. OIP ¶¶ 56-58.

2. Central to each of these enumerated alleged violations are the fraud provisions of Section 10(b) of the Securities Exchange Act of 1934 (the "1934 Act") and Rule 10(b)(5) thereunder.

Not disputed to the extent that “these enumerated alleged violations” refer to those violations alleged in the OIP.

3. The SEC itself recently summarized the conduct that may violate Section 17(a) of the Securities Act of 1933 (the ("1933 Act") and Section 10(b) of the 1934 Act and Rule 10b-5 in *Matter of John P. Flannery*, Exchange Act Rel. No. 73840, 2014 WL 7145625 (S.E.C. Dec. 15, 2014). "Section 10(b) makes it 'unlawful for any person directly or indirectly ... to use of employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of' Commission rules. *Id.* at \*10 (quoting 15 U.S.C. §78j(b)).

Not disputed that the quoted language applies to Section 10(b) of the Exchange Act. The Commission went on to explain, in *Flannery*, that Section 17(a) prohibits similar conduct to that targeted by Rule 10b-5, but has no “in connection with” requirement and extends to “offers” of securities. Div. CoL ¶¶ 5-7.

4. Rule 10b-5 implements the SEC's authority under Section 10(b) in three "mutually supporting" ways: Rule 10b-5(a) prohibits 'directly or indirectly ... employ[ing] any device, scheme, or artifice to defraud.' Rule 10b-5(b) prohibits "directly or indirectly . . . mak[ing] any untrue statement of a material fact or [omitting] to state a material fact necessary in order to make the statements made . . . not misleading." And Rule 10b-5(c) prohibits "directly or indirectly ... engag[ing] in any act, practice, or course of business which operates or would

operate as a fraud or deceit upon any person." Liability under all three subsections requires a showing of scienter. [*Id.* (citations omitted).]

Not disputed.

5. "Scienter is an 'intent to deceive, manipulate, or defraud.'" *Id.*, at \*10 n.24, quoting *Ernest & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n.12 (1976).

Not disputed.

6. Section 17(a) of the 1833 Act prohibits conduct similar to that proscribed by Rule 10b-5, though Rule 17(a) has no "in connection with" requirement and extends to "offers" of securities.

Like Rule 10b-5, Section 17(a) expresses its prohibitions in three "mutually supporting" subsections. Section 17(a)(1) prohibits "employ[ing] any device, scheme, or artifice to defraud." Section 17(a)(2) prohibits "obtain[ing] money or property by means of any untrue statement of a material fact or any [material] omission." And Section 17(a)(3) prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." A showing of scienter is required under Section 17(a)(1), but a showing of negligence suffices under subsections (a)(2) and (a)(3). [*Flannery*, 2014 WL 7145625, at \*10 (citations omitted).]

Not disputed.

7. Given these standards, Dembski was not guilty of fraud. Among other things, he did not act with the scienter that is the crux of any fraud claim.

Disputed. *See generally* Division's Post-Hearing Brief as to Respondent Timothy S. Dembski ("Div. Moving Brief").

8. Moreover, Dembski was entitled to rely on Holland & Knight to pass on the veracity of statements about Stephan in the PPM and in all other respects. Specifically, and among other things, Dembski was not responsible for the Stephan biography because attorneys at Holland & Knight wrote, approved and urged the propriety of that language Mr. Dembski relied entirely on advice of counsel with respect to the quoted language.

Disputed. *See* Div. Moving Brief at 10-12.

9. Omitted by Dembski.

10. Omitted by Dembski.

11. In this case, Mr. Dembski has met the burden of asserting the advice of counsel defense. He has "show[n] that he made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith." *SEC v. Markowski*, 34 F.3d 99, 104-105 (2d Cir. 1994).

The Division does not dispute the legal standard set forth in Dembski Proposed Conclusion of Law 11 but disputes that Dembski has met his burden under that standard. *See* Div. Moving Brief at 10-12.

12. Mr. Dembski has satisfied each of these elements. His testimony, as well as the testimony of Stephan, bears out each of these elements, as does the recorded conversation with Holland & Knight.

Disputed. *See* Div. Moving Brief at 10-12. As to Dembski's reliance on a "recorded conversation with Holland & Knight," that call—which does not reflect informed legal advice on which Dembski could reasonably rely—took place after Dembski finished selling investments in the Prestige Fund. Div. FoF ¶ 201.

Dated: New York, NY  
July 31, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT



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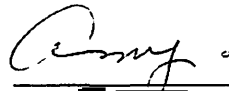
**DECLARATION OF AMY L. BURNS**

I, Amy [REDACTED] pursuant to 28 U.S.C. § 1746, declare as follows:

1. I live in Amherst, New York. Timothy S. Dembski was my, as well as my husband's, financial advisor from the early 2000s until mid-2015.
2. I invested \$250,000 in the Prestige Fund in mid-2012.
3. By January 2013, I lost about \$225,000 of the \$250,000 I invested in the Prestige Fund.
4. I understand that Mr. Dembski was charged by the U.S. Securities & Exchange Commission (the "SEC") for his role in the Prestige Fund. I understand that Mr. Dembski filed a brief defending himself in the SEC's case on or around June 30, 2015.
5. In his brief, I understand that Mr. Dembski said that I am still a client of his. That is not true. As explained to Mr. Dembski on or around June 3, 2015, my husband and I no longer were clients of his and we changed the passwords on our accounts so Mr. Dembski could no longer access them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 28, 2015, in Buffalo, New York.

  
\_\_\_\_\_  
Amy [REDACTED]