UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16509

In the Matter of

EDWARD M. DASPIN,
a/k/a "EDWARD (ED) MICHAEL,"

Respondent.

DIVISION OF ENFORCEMENT'S BRIEF IN OPPOSITION TO EDWARD DASPIN'S PETITION FOR REVIEW OF INITIAL DECISION

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PRELIMINARY STATEMENT

Daspin orchestrated a multi-pronged scheme to defraud investors in Worldwide Mixed Martial Arts Sports, Inc. ("WMMA") and an affiliate, WMMA Distribution, Inc. ("WMMA Distribution" or "WDI"), start-up companies formed to establish an international league of mixed martial arts tournaments.[1] From December 2010 through June 2012, Daspin fraudulently raised over $2 million from seven investors selling unregistered securities in the Companies.

Daspin masterminded the creation of the Companies. Then, because his name was "poison on the internet" due to a bankruptcy fraud conviction and a trail of failed and acrimonious business ventures, Daspin hid his ownership of the Companies through deceptive share transfers. He also used an alias "Ed Michael" during at least the early stages of the investor solicitation process. And Daspin misleadingly assured potential investors that he was only a "consultant" when he actually dominated all aspects of the Companies' operations through consulting agreements that he forced upon the Companies and that gave him "exclusive" control over the Companies' major managerial functions.

Daspin also orchestrated a fraudulent "bait and switch" scheme that lured job seekers to his office with offers of senior executive positions with salaries ranging from $150,000-500,000. Only after prospects arrived for a "job interview" did they discover that they were actually being solicited to make a minimum $250,000 investment in the Companies as a condition of being "hired," and that there was no actual salary until the Companies were successful. Daspin called this "selling jobs." He also falsely represented that everyone at the Companies had "skin in the

[1] WMMA, WMMA Distribution, WMMA Holding, Inc. ("WMMA Holdings" or "WHLD") their parent company, and other affiliated companies identified below are hereafter collectively referred to as the "WMMA Companies," or the "Companies."

game," *i.e.*, had invested cash, to convince potential investors they too had to invest cash to join the Companies.

Daspin also created and sent Private Placement Memoranda ("PPMs") to hundreds of potential investors that omitted all mention of Daspin's name, his troubling background and role at the Companies. The PPMs also misleadingly referred to a non-existent $33 million in "cash" and contained baseless revenue projections.

Daspin also caused WMMA to enter into a contract with International Marketing Corporation ("IMC") to use IMC's ostensible database of 840 million emails. Daspin touted the database as the centerpiece of the Companies' marketing strategy. The IMC database was baselessly valued at $5 million in the July 2011 PPMs, even though Daspin did not know its actual contents, then he insisted, without justification, on increasing that valuation to $82 million in the January 2012 PPMs to lure more investors, over the strong objections of board members and others.

Through the consulting agreements, Daspin charged the Companies excessive fees, paid out of investor proceeds, for an array of useless contracts and unneeded services. However, his anticipated bonanza was curtailed. The one tournament WMMA put on in March 2012 was an abysmal failure, losing most of the Companies' remaining capital and the scheme collapsed shortly thereafter. The investors lost almost all their money, leaving many financially devastated.

After a ten-day trial, Chief ALJ Murray found that Daspin violated Section 5(a) and (c) and 17(a) of the Securities Act of 1933 ("Securities Act"); Section 10(b), Rule 10b-5 thereunder and Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"); and caused violations of Section 10(b) of the Exchange Act and Rule 10b-5 as prohibited by Section 20(b) of the Exchange Act. Finding Daspin's violations "egregious," Initial Decision ("ID") at 49, she

imposed a cease and desist order and industry bar, ordered Daspin to disgorge $322,681.50 in ill-gotten gains, plus prejudgment interest, and imposed third-tier penalties totaling $1,350,000.

On appeal, Daspin primarily argues that he was only an outside consultant and did not control the Companies; that he had minimal involvement in the PPMs; was not responsible for the valuations of the IMC database; and did not mislead investors. These claims are rebutted by the overwhelming testimony of the Division's witnesses, and extensive documentary evidence, often in Daspin's own words, demonstrating his domination of all aspects of the Companies and his use, in his own words, of "smoke and mirrors" to deceive investors. Daspin's claims that he was deprived of due process are also baseless.[2]

STATEMENT OF FACTS[3]

I. DASPIN'S SCHEME TO DEFRAUD INVESTORS

A. The Daspins Owned the Companies

In April 2010, Daspin started a business focused on creating a world-wide mixed martial arts tournament. Daspin has admitted that the idea of WMMA came from him; that he and his wife contributed the initial working capital, that he asked Luigi Agostini, a close family friend and associate in prior Daspin ventures, to form the corporate entities that became the WMMA Companies and that the Companies initially operated out of Daspin's basement. DE 481A at Tr. 20; Tr. 3021:3-11; 3050:21-3051:3; 3102:2-6.

Consultants for Business and Industry, Inc. ("CBI") was Daspin's consulting company. DE 481A at Tr. 11:11-19; 12:8-12; DE 147. When the Companies were formed, CBI owned warrants for shares representing a controlling interest in WHLD, which in turn owned a

[2] Daspin filed what he plainly considers his appeal brief on September 1, 2020. The Division responds to that brief, referred to herein as "Br."
[3] The Division refers to its exhibits as "DE" and to the trial transcript as "Tr."

controlling interest in the Companies. DE 147. *See also* Daspin Answer at ¶¶ 13-15. Daspin admitted that he was "in control of these to-be-formed entities" and transferred his interests in these companies to his wife. Tr. 3054:22-3055:15.

Daspin designed a series of transactions that kept ownership of the Companies within his control, to be exercised when he chose, using his wife and the directors of the Companies as straw owners. Daspin, through CBI, transferred the rights to warrants for 92.5% of the stock of WHLD to three Daspin family partnerships. Tr. 3307:2-3308:1-2. *See, e.g.,* DE 69 at p. 1, first paragraph. At Daspin's direction, his wife transferred the rights to these shares to Agostini, Douglas Main and Lawrence Lux, the three board members of WMMA, all appointed by Daspin, "as trustees," in return for warrants entitling her to reclaim the shares at a strike price of $100. [4] Pursuant to a related Trust Agreement, Lux, Main and Agostini acknowledged that they were trustees for, and had fiduciary duties to, the Daspin family partnerships and Mrs. Daspin. DE 69; 77; 78; 80; 80A. *See also* DE 200.[5]

Lux and Main signed these documents at Daspin's request. Tr. 162:19-166-1; 892:1-911:18. Lux understood that he held the shares as fiduciary for Joan Daspin, Tr. 165:11-17; 173:1-174:14; 175:1-183:9. Daspin stated: "This is while my wife, for a couple hundred bucks can own 92 and a half percent of it, of the holding company." Tr. 2782:11-13; "This way if the company did well, my wife could exercise her warrants." Tr. 2874:19-21; "My family would have reaped a fortune if they were successful." Tr. 3118:17-19. He also admitted that these share transfers were done because: "it would be better if the Daspin name were really not part of this

[4] Mrs. Daspin's investigative testimony (admitted into evidence) made clear that her husband was the decision-maker behind these transactions and that she had little understanding of them. DE 484 at Tr. 45:21; 46:4; 57:9-14; 61:4- 64:20; 82:2-6.

[5] Agostini and Lux were also charged in the instant proceeding and subsequently settled with the Commission. *Daspin*, Securities Act Release Nos. 9963 (Oct. 16, 2015); 10243 (Nov. 1, 2016).

company. Not to defraud investors but [to avoid] potshots at the company." Tr. 2873:20-25. As demonstrated below, Daspin's intent clearly was to defraud investors and he did so.

In the spring and summer of 2012, when Daspin believed "a WMMA conspiracy" was underway against him, he dropped the fiction he was just a consultant and first caused himself to be appointed an officer of WMMA (with the title "Senior V.P. of Troubleshooting") and then had his wife approve his request that he reclaim the WHLD shares that Lux and Main held in trust. This gave Daspin official control of WHLD and the Companies. DE 21; Tr. 1058:5-1060:7; DE 469; 506; 507; Tr. 1065:2-1067:16. Daspin then caused himself to be appointed to the boards of the Companies. DE 22; Tr. 1060:19-1062:16. In October 2012, Daspin and Agostini appointed Joan Daspin an officer of WMMA. DE 215.

B. Daspin's Permeating Influence in All Important Functions of the Companies

1. The CBI-McKenzie Consulting Agreements

To maintain control over the Companies, Daspin hand-picked the Companies' ostensible executive officers and board members. First and foremost, Daspin enlisted Agostini, a longtime junior business associate and family friend, to serve as executive chairman of each of the Companies' boards of directors and to control the Companies' checking accounts. As Daspin admitted: "Agostini – who kind of was my son's best friend … we trusted him." Tr. 2874:13-16. Next, Daspin recruited Lux, a former partner in one of Daspin's prior ventures who had fallen on hard times, to serve as a director and CEO. Finally, Daspin appointed Douglas Main – his chiropractor and the first investor – to be the Companies' President and final board member.

In April 2010, Daspin, as CEO of CBI, entered into an agreement with Agostini that provided, in part, that Agostini would form WMMA and WHLD and hold one board seat on each and serve as their Executive Chairman or Director. DE 603 at 1. As a condition of being hired by

Daspin, Agostini agreed that: "CBI shall be the exclusive provider of [merchant banking, negotiation, deal making, consulting, mergers and acquisition, human resource, services] to WMMA and [a number of to be formed companies….]." *Id.*

In November 2010, Daspin, as CEO of CBI, entered into a follow-on consulting agreement with WHLD and WMMA that provided CBI with the "exclusive right" over "human resources," "deal-making," "raising equity," "developing strategic business, action and operating plans," and structuring "mergers and acquisitions," for the Companies. DE 520. The employment agreements and other documents that Daspin required Lux and Main to sign required them to acknowledge CBI's exclusive right to perform these wide ranging services for the WMMA Companies. DE 55; Tr. 77:20-78:23; DE 149; 151; DE 204; Tr. 792:19-793:4; 804:23-806:16.

The CBI agreement, later embodied in a board resolution, DE 204, provided for substantial fees to CBI, including at least $25,000 for every contract it negotiated; at least $37,500 for every investor it recruited; and $200-$350 hourly fees for CBI employees. Neither Lux nor Main negotiated the terms of the CBI agreement ("Consulting Agreement") with Daspin; and Lux, Main and Agostini did not in fact meet as a board to discuss whether this agreement, which they had already been bound to agree to, was a good idea for the Companies. Tr. 94:13-99-15; 874:16-875:8; 877:19-879:9.

In early 2011, CBI's Consulting Agreement was assigned to MacKenzie Mergers & Acquisitions, Inc. ("MKMA"), a company owned by Daspin's close associate Larry May. DE 205. The agreement provided that MKMA could retain CBI to perform its services under the agreement and, in fact, Daspin's daily services to the Companies did not change after the Consulting Agreement was transferred to MKMA. DE 481A at Tr. 60:25-61:1-15. This was not done at Lux's or Main's direction and the board signed the resolution without discussion. Tr.

217:19- 224-5; 226:18-23; 228:2-6; 952:1- 956:5. Daspin admitted he took these steps because: "it would be better if [he] weren't directly involved for the shareholders of the company." Tr. 3076:21-25.

By November 2011, MKMA had charged over $2 million in fees to WMMA. $827,000 was unpaid as of that date (another $1 million of that amount had been converted into equity), putting WMMA in a crippling financial position, as discussed below. *See* DE 94; DE 206.

2. Daspin Defined and Limited the Authority of His Chosen Executives

Daspin dominated the WMMA Companies from the start, including recruiting senior executives, appointing them to executive and board positions and deciding their titles, responsibilities and salaries. Tr. 55:15-25-65; 74:1-75:11; 76:8-77:-19; 87:17-21; 736:12:766:17; 767:8-768:14; 783:13-784:23; 785:21-787:12; 813:5-814:16; 819:21-822; DE 321; 329; 330. Lux had no say in Main's employment agreements or Main's position or responsibilities. Tr. 118:2-5; 120:11-20.

In the fall of 2010, Daspin became Main's chiropractor patient and began soliciting him to invest in the WMMA business, suggesting various investment strategies. Tr. 716:2-731:21; 734:16-735:1; 748:3-6; DE 34. Main offered to invest $100,000 and Daspin responded: "that would not fly with the other investors, they would think it was too little." *Id.* at Tr. 730:21-731-6; 731:7-14 (even though Main was the first investor). Main ultimately agreed to invest $250,000 in December 2010 and another $83,333 by March 31, 2011 in return for shares in WHLD, WMMA and AGI. DE 151; 166; 176; 434. Daspin offered Main the position as President and member of the board of directors of WUSA, WMMA and AGI. Tr. at 783:8-20; 830:11-834:22; DE 329. Main's title at WMMA was increased from "Senior Executive" to President when he agreed to invest more money. Tr. 781:10-782:20; DE 149; 149A and 151.

Daspin hired Lux as CEO but required Lux to sign a Commission Agreement with CBI, AGI and WMMA, that drastically limited Lux's ability to act as CEO and subjected him to written approval from CBI before entering into any contracts. DE 55A at ¶ 2. Lux understood that agreement meant: "That CBI had 100 percent control" over all contracts and that "CBI was Mr. Daspin." Tr. 87:22-88:9. Daspin required Main to sign a similar agreement. DE 369 at ¶ 2; Tr. 879:13-885:4.

Lux, an experienced former senior executive, Tr. 44:10-52:10, did not feel that, as CEO of WMMA, he needed CBI to perform the services specified in these consulting agreements and that it was not his "desire" to retain CBI. Tr. 99:16-24; 102:6-103:3; 110-23-112:9. He had also never seen a contract where the CEO's ability to engage in basic management functions was at the sole discretion of a consultant. Tr. 87:22-89:8. But Lux's financial situation was "dire" due to several contentious divorces when he joined WMMA and he felt he had no choice but to agree to the CBI consulting agreements if he wanted to get paid. Tr. 83:3-85:21; 90:6-91:10; 99:25-100:4.

3. Daspin Devised All WMMA Company Transactions

The July 2011 WMMA PPM contained a section entitled "Related Party Transactions" describing numerous complex transactions. DE 1 at 32-38, ¶¶1-20.[6] None of those transactions were Lux's idea nor to his knowledge Agostini's (233:22-235:21) nor Main's idea, nor to Main's knowledge Agostini's, nor did the board discuss these transactions in any substantive manner (967:7-969:16). Regarding whether Agostini originated certain transactions approved in a particular board resolution (DE 207), Main replied: "No. …. it's above his pay grade. Mr. Daspin does everything – was doing everything with the company's stock shares and so forth, and Mr. Agostini would type it up for him." Tr. 839:10-841:6. Main testified: "…he [Daspin]

[6] References to DE 1 are to the pdf page.

was directing everything at that point." Tr. 914:24-915:6; and that Daspin "controlled all the conceptual direction of everything." Tr. 848:11-12.

4. Daspin Dominated All Aspects of the WMMA Companies

Lux testified that Daspin was the ultimate authority at WMMA and could make or overrule any decisions. Tr. 346:20-347:4. Daspin would remind people that the Consulting Agreement prevented anyone from doing anything without CBI's approval. *Id.* at 347:8-15. Lux had no control over how money was spent and Daspin had the final say on spending and issuing checks. Tr. 320:21-321:19. *See also* DE 200; DE 380. Main testified that it was Daspin's idea that Agostini be sole check signatory, Tr. 848:5-11, and that Daspin controlled the money and instructed Agostini which checks to sign. Tr. 1096:9-21. Main had no control over Agostini's signing checks. *Id.* at 1097:8-13.

Main, who worked at WMMA only two days a week due to his chiropractor practice, Tr. 969:17-970:5), also testified that Daspin ran the company. Tr. 1130:18-20. Thomas Sullivan, an investor, joined the company as CFO in September 2011. Tr. 1654:4-6; he initially had no formal supervisor "[b]ut as time went on, it was clear that my interactions on a daily basis were with Mr. Daspin." Tr. 1656:3-10. Sullivan testified that Agostini was the only person, other than Joan Daspin "at one point," that had check signing authority, Tr. 1675:15-1676:4, and that Agostini paid invoices after he discussed them with Daspin. Tr. 1685:3-7.[7]

[7] In the fall of 2011, Daspin convinced Sullivan, Theresa Puccio and Ara Bederjikian to invest in the Companies by offering all three high-level finance titles. *See* DE 32, 62 and 63. Lux had no role in negotiating these contracts, Tr. 337:19-340:12, and did not think WMMA needed three high-level financial executives when it was a pre-revenue company. Main also did not see the need for three financial executives. Tr. 1040:18-1041:21. Tensions developed because there was not enough work for all three. Tr. 340:17-341:19.

5. Daspin's Insistence on Entering into the IMC Contract

In February 2011, WMMA entered into a contract with IMC (the "IMC contract"), DE 12, 12A, pursuant to which IMC agreed to send WMMA marketing materials through its email and text message databases in return for 10 percent of all resulting sales. IMC warranted that it had "a worldwide email list with Eight Hundred and Forty Million double opt-in addresses" but refused to specify how many were U.S. addresses. DE 12 ¶ 11.1.

The IMC contract was Daspin's idea. Tr. 243:21-23. Lux thought that emails were no longer an effective marketing tool, Tr. 244:24-245:22; 247:21-248:8, and was concerned because they had "no idea" what was in the IMC database. Tr. 258:23-259:1. Lux testified that Beryl Wolk, IMC's owner, refused to provide information verifying the purported 840 email database. Tr. 257:8-17; 250:21-251:17. Daspin also admitted: "Beryl wouldn't let us count it because we – he'd be giving us his value, but he signed a contract as to how big his database was." Tr. 3023:19-22. However, WMMA did not know how many emails were in the IMC database; how many were duplicates; how many were for people in the U.S. or in what other countries; how many were in the WMMA target audience or were even sports fans, Tr. 251:18-253:7; or how many were "double-opt-in emails." Tr. 260:5-261:7.[8]

Lux viewed the IMC contract as of "de minimis" value and certainly not worth the $1 million CBI charged WMMA for negotiating it. Tr. 258:1-2; 261:8-262:1. Main also opposed entering into the IMC contract, DE 608, viewing the database as the equivalent of "a cold call" and advocated obtaining a cheaper, more targeted list of mixed martial arts fans. Tr. 978:12-979:7; 970:6-981:12.

[8] "Double opt-in" refers to an email addressee who has responded to an email and expressed interest in receiving future emails regarding a particular product or service. Tr. 1409:4-1410:10.

Daspin pushed back on these objections as follows:

> … From a marketing perspective, when I tell investors we have a signed contract with an international marketing corporation …that info will sell 20 times more people to invest in WUSA, … Although Mike N. [Nwogugu] has validity to his logic, in this case we will not apply that logic because it would harm our raising investor interest. Mike is an analyst, not a marketer. Mike is a CPS, not a salesman. **Let's leave the smoke and mirrors to me** …. (emphasis added).

DE 608 at 1.

Main did not sign the IMC contract, DE 12; Tr. 985:20-988:23. He was: "aghast I couldn't believe it," Tr. 989:12-21, when he learned that CBI/MKMA had charged WMMA $1 million for the IMC contract: "Because it was an untested concept. I had no faith in it whatsoever. And to pay a million dollars for that was ludicrous." Tr. 989:22-25. Indeed, when WMMA actually tried to use the IMC database to market WMMA's fight in El Paso in 2012, it got no responses to its emails. Tr. 259:11-260:4; 361:24-362:5; DE 103.

Daspin used the IMC contract as a major marketing tool to solicit investors. *See* DE 608 (Daspin email explaining the importance of the IMC database in attracting investors). The PPMs contained extensive, unsupported claims touting the alleged value of the IMC contract to generating income for the WMMA Companies. *See* DE 1 at 16; 31-32; DE 3 at 14; 28, 52. And, as discussed below, Daspin baselessly valued the IMC contract at $5 million in the July 2011 WMMA PPM, DE 1 at 33 ¶ 6, and, without justification, increased that valuation to $82 million, six months later in the January 2012 WMMA PPM, DE 3 at 45-46.

C. Daspin Devised A Fraudulent Scheme to Lure Investors Through Misleading Promises of High-Paying Jobs and Other Material Misrepresentations and Omissions

Pursuant to the Consulting Agreement, Daspin was in charge of raising equity from investors. Daspin lured potential investors to his office with misleading offers of high-paying executive jobs only to press them to make investments of $250,000 or more in the Companies as

a condition of obtaining an executive position which did not pay a salary. As Daspin cynically told Lux, we are "selling jobs." Tr. 285:311; 285:19-286-23; 288:12-289:18. Daspin induced seven individuals to invest a total of $2,470,333 in the Companies. DE 493.[9]

Table 1

	Date	WMMA	WDI	WHLD
(Pre-PPMs) Doug Main	 12/15/10 3/31/11	 $250,000		 $83,333
(July 2011 PPMs) Ara Bederjikian	 9/13/11 9/27/11 12/27/11 12/30/11	 $80,000 $100,000	 $80,000 $56,697.80 $43,302.20	
Theresa Puccio	9/20/11 10/28/11 3/28/12 3/29/12	$120,000 $160,000	$120,000	 $50,000 $50,000
Thomas Sullivan	9/27/11	$175,000	$175,500	
Greg Lange	11/22/11	$125,000	$125,000	
(Jan. 2012 PPMs) Darin Heisterkamp	 2/1/12 2/27/12 4/23/12	 $175,500 $100,000	 $59,717 $15,783	
Donald Lockett	3/12/12 5/4/12	$125,000 $75,000	$125,000	

To "sell" jobs, Daspin first recruited Andrew Young, a recent college graduate to assist him. Tr. 1222:20-1226:22. Young worked entirely under Daspin's direction. Tr. 1233-1294. Young testified that they put up advertisements on two job-seeking websites and e-mailed interested applicants. Tr. 1264:22-1265:5. Daspin caused emails to be sent advertising executive level positions and salaries ranging from $125,000 to $250,000, plus incentive compensation reaching $250,000. Tr. 1269:2-16; DE 157, 336; 422. Daspin wrote these portions of the

[9] Daspin alone negotiated the contracts for investors. Tr. 337:19-340:12; 1036:5-1038:17; 1039:10-1040:17.

outreach emails. Tr. 1269:15-16. Young sent "well more than a thousand" of such emails to prospective investors. Tr. 1271:23-24. Daspin admitted that at least: "250 applicants visited WMMA over 27 months. … ten a month would be 270 – that's maybe an understatement." Tr. 3395:1-4.

After signing a Non-Disclosure Agreement ("NDA") (*see, e.g.*, DE 297), prospects were interviewed by telephone or Skype. During the initial stages of his solicitations, Daspin used an alias, Edward (or Ed) Michael to cover up his fraudulent past. Tr. 299:5-8; 298:4-16. Young testified that Daspin introduced himself as "Ed Michael" because Daspin "said that due to having a felony in the '70s and due to the ongoing litigation of Chamco [one of Daspin's recent failed business ventures], that his last name was currently poison, or at the time poison, and that he didn't want anyone to turn away from the company due to him." Tr. 1278:6-17. Lange and Heisterkamp testified that in soliciting their investments, Daspin used the name "Edward Michael," Tr. 2229:6-12, and "Ed," Tr. 2368:20-2369:5.

Daspin instructed one individual: "Sam, Please stop using my last name. You and I are not WMMA executives. We are MacKenzie executives …." DE 634. Daspin also falsely presented himself as only a consultant to the Companies. Tr. 297:21-299:8; 1278:18-21; 2233:22-2234:3; 2368:20-2369:4.

Multiple witnesses testified consistently regarding Daspin's recruitment tactics. Sullivan received an email inviting him to apply for an officer position paying $125,000-$500,000 in starting compensation. DE 157. The topic of investing in WMMA was not raised before his flight. Tr. 1574:20-22. At the in-person meeting, Daspin falsely told Sullivan that "everyone was an investor and everyone had skin in the game." Tr. 1579:11-13 and asked Sullivan to invest $250,000. Tr. 1582:2-4. Sullivan testified, "I was very surprised by that because it was the first

time it had been brought up. And I was there to interview for a job; I wasn't there to be pitched to make an investment in the company." Tr. 1583:15-19; 1574:20-22; 1593:3-11. When Sullivan told Daspin he didn't have liquid funds to invest $250,000, Tr. 1593:12-23, Daspin told him to use his retirement funds in any IRA or 401(k). Tr. 1594:2-5. After being unemployed since December 2010, Tr. 1653:6-7, Sullivan invested $351,000 in the WMMA companies, all funded through his retirement 401(k) savings. Tr. 1595:2-5, DE 173, 187.[10] Sullivan even raised his investment amount from $250,000, which only "bought" a treasurer position, to $351,000, when Daspin told him he would need to invest that amount to get the CFO position. Tr. 1595:16-22; 1598:5-12.

Before investing, Sullivan was not told about the fees CBI/MKMA were charging the Companies. Tr. 1731:14-24; 1788:24-1789:14. Upon discovering them after joining WMMA, he was concerned about the Companies' ability to "survive that type of outflow [of fees]," Tr. 1733:19-25. When he and another investor, Bederjikian, raised these concerns with Daspin and others: "we had pretty much a knockdown drag-out argument about what we found and what we felt we were lied to about, the fact that the company was going to go bankrupt in three months if we continued to pay these fees." Tr. 1737:14-22. Daspin then "pressured" Sullivan and Bederjikian to sign apologies and releases of any claims against the Companies. Tr. 1815:3-6; DE 139; 466. Sullivan "ended up in the conference room alone with Mr. Daspin who, basically, threatened me into getting – getting me to sign that." Tr. 1738:7-10. Daspin told him "about his time in jail, and there was no way he was going back." Tr. 1738:11-12. Sullivan interpreted Daspin's reference to his jail time as: "[b]asically, that we had – what we had uncovered could

[10] The investment represented roughly 55 percent of Sullivan's total 401(k). Tr. 1837:4-5

be turned into a case against him for some illegal transactions." Tr. 1817:21-23. Several days after signing the release, Sullivan was demoted. Tr. 1821:6-11.

Gregg Lange's story was similar. He was solicited with the same fraudulent offer of a high-paying executive job, Tr. 2219:3-10; DE 336; the topic of investment in the company was not disclosed until he arrived at WMMA for what he thought was a job interview, Tr. 2230:1-3; 15-23; Daspin, using the name "Ed Michael," described himself as a "consultant" to the company; concealed his family partnership's ownership rights and his degree of executive function; and emphasized the lie that everyone there had "skin in the game." Tr. 2228:13-2234:1-3. The claim that "everyone had skin in the game" was material to Lange. In particular, he highly valued Lux's "experience in the field," and if it turned out Lux hadn't invested (as he had not)—"I wouldn't have been very pleased." Tr. 2246:4-2247:1. Lange was solicited to invest "half a million dollars, if not more." Tr. 2232:1-7. He invested what he was told was the minimum, $250,000, and lost all but $20,312.50. Tr. 2235:1-6; DE 494 at 4.

Heisterkamp was also solicited for a high-paying executive job, Tr. 236121-2363:9; DE 422; had an initial Skype interview, Tr. 2366:1-3; travelled from Chicago to WMMA for an in-person interview, Tr. 2368:8-10, where he met Daspin who was introduced as a consultant for the company named "Ed"—nothing more. Tr. 2368:20-2369:5. Daspin pitched "two levels of investment … One for $250,000 and one for $350,000" with "higher compensation and additional vacation benefits associated with the $350,000 investment." Tr. 2372:10-21. "Ed" then suggested that Heisterkamp could rollover his 401(k) as an investment. Tr. 2373:7-11. Heisterkamp invested $351,000—$234,000 of which was financed from practically his entire 401(k) savings, $100,000 from equity in his home and borrowings from family and friends. Tr. 2403:6-11; 2404:1-6; 2411:23-2412:14; DE 58, 59, 60, 185. He lost all but $26,325. DE 494 at 4.

Heisterkamp did not learn "Ed's" last name was Daspin until after investing and joining the company, when someone circulated updated contact information sheet with instructions to refer to Ed as "Ed Michael." Tr. 2424:15-2425:6. He then looked up information about Daspin in the public domain and "found out that there were numerous instances of fraud associated with Edward Michael Daspin. There was – I recall a promissory fraud. I recall a securities fraud. I recall a bankruptcy fraud, among others." Tr. 2426:11-21; 2427:11-22.

Heisterkamp considered Daspin's description as a consultant misleading. Heisterkamp testified that consultants perform limited roles, Tr. 2387:5-12, and: "A company is not run by an outside consultant." Tr. 2423:16-23. After discovering Daspin's true identity: "[i]t was stunning to learn that that background had been in control of that company that I had invested in." Tr. 2429:7-9.

Emails corroborate the investors' testimony. Daspin dictated an email through Young to one investor stating: "We want all people to have skin in the game. … WDI does not have a program where it lets executives become officers, not invest, and run individuals that have put up up to $500,000." DE 296; Tr. 1280:21-23; 1281:9-10; 1283:4-7. *See also*, testimony of potential investor Michael Diamond regarding Daspin's manipulative tactics to get him to invest during the in-person meeting, Tr. 2648-2687. When Diamond returned home he discovered damning information about Daspin on the internet: such as: "Stay away from this man. Run, He's a wolf in sheep's, you know, clothing. Get out of there. Don't talk to him." When Diamond asked Daspin not to contact him again, Daspin sent a disparaging email: ("All that stands in your way is whether you have the balls to invest….because you wimp out when it comes to pulling the trigger. Show me you are a man." DE 631. No investors were paid actual salaries.[11]

[11] Investor-employees' salaries were to be accrued until the Companies became profitable but

D. Daspin's Control Over The PPMs

Daspin admitted that he was the "architect" of the PPMs, DE 481A at Tr. 29:14, and that he participated in preparing them, *id.* at Tr. 29:5-30:2. *See also* DE 520 at 1, "CBI … [is] fully entitled to be paid the hourly fees . . . in connection with CBI's architecture of building a business and action plan and are participating in the preparation of a private placement memorandum …" CBI and MKMA billed WMMA $300,000 (discounted to $237,500) for work on the first round of PPMs. DE 94.

Young testified that during his "eight to nine hour" days, Tr. 1233:19, —or "about a hundred percent of the time," Tr. 1235:22-23, for his first five months at WMMA, Tr. 1236:8-13,—"mainly I was receiving dictation from Mr. Daspin, to make edits and changes to the private placement memorandums, the overviews, or sometimes other legal documents." Tr. 1234:21-1235:3. He further testified: "Over my shoulder, Daspin would be reading through the PPMs, and, as I scrolled, he would have me stop, he would tell me what to delete, what to change, what to edit, completely, you know, making all the revisions like that." Tr. 1236:2-7. During his 18 months at WMMA, "about 30 to 40 percent of my time" was spent taking dictation from Daspin on the PPMs. Tr. 1256:3-9. Young also sent emails to others working on the PPMs with instructions such as: "Do not make any changes to the version I am sending out until Ed approves." DE 251. Young testified that they distributed "somewhere between 100 and 150" PPMs to potential investors. Tr. 1288:16-17.

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they could receive a draw against any accrued salary through the "stock repurchase program," under which the Companies would buy back a fixed percentage of the employee-investor's stock each month. *See, e.g,* DE 63, ¶¶ 5. In short, the investors paid themselves.

Lux also testified that Daspin was in charge of drafting the PPMs and Daspin dictated the contents of the PPMs, including to Michael Nwogugu [an employee hired by Daspin]. Tr. 309:17-311:13. Lux was not involved in drafting the PPMs because he did not think they would be productive in raising money from sophisticated investors. Tr. 313:8-316:8. Agostini played no role in drafting the PPMs to Lux's knowledge. Tr. 317:12-14. Lux did not recall the board being asked to review and approve the final PPMs. Tr. 317:7-11.

Main also testified that Daspin was in charge of the PPMs. Tr. 1082:2-4. Main tried to make grammatical edits to earlier drafts of the PPMs but by June 2011, Daspin told him, in essence, to "butt out." Tr. 1007:6-1008:15. Main testified: "I did nothing relative to the production of the PPM," Tr. 1077:6-12, aside from possibly creating some schedules of planned events. Tr. 1076:7-1079:7. Main also did not recall the board meeting to review and approve the PPMs. In the fall of 2011, Daspin began drafting new PPMs. This was not done at the direction of Lux or, to his knowledge, the other board members. Tr. 373:3-17. Daspin sent PPMs, by email, to prospective investors. *See, e.g.* DE 635.

E. The PPMs Fail to Disclose Daspin's Family Ownership of the Companies

The July 2011 WMMA PPM stated that WHLD owned 91.50% of WMMA. DE 1 at 46. It also listed investors who owned shares of WHLD, *id.,* but neither Daspin, his wife or the Daspin family partnerships were identified as WHLD shareholders. The January 2012 WMMA PPM stated that WHLD owned 91.35% of WMMA. DE 3 at 44. It described the ownership of WHLD as including: Agostini "as trustee" 22.54%; Main "as trustee" 22.54%; Lux "as trustee" 22.54%. *Id.* at 43. The PPM failed to disclose that they were "trustees" for the Daspins.

Sullivan, Lange and Heisterkamp all testified that they would not have invested if they had known that Daspin family partnerships owned the WMMA Companies. Sullivan: Tr.

1874:17-18765:8 (it "would have raised flags to me"); Lange, Tr. 2293:16-2294:23 (he regarded the omission "a breach of faith on behalf of the company" and the hidden ownership structure with "the Daspins controlling the board" "was obviously a behind-the-back kind of operation." Tr. 2296:24-2297:12); Heisterkamp: Tr. 2463:1-23.

F. The PPMs Failed to Disclose Daspin's Substantial Involvement in the Affairs of the Companies or His Connection to CBI and MKMA

Daspin is not named anywhere in the PPMs. The July 2011 WMMA PPM contained an extensive section entitled "WMMA's Senior Executive Management Team and Board of Directors" identifying Agostini, Lux, Main and numerous others, but not Daspin. DE 1 at 56-60. The January 2012 WMMA PPM identified twenty-two individuals in the Senior Management section but not Daspin. DE 3 at 56-61. Even Young, Daspin's typist and assistant, merited a prominent description in the PPMs, DE 1 at 59, DE 3 at 60, but nothing as to Daspin.

And while the PPMs noted that: "MKMA provides human resources, negotiations, M&A and financial advisory services" to the Companies, they failed to disclose any material details of the Consulting and Commission Agreements or that Daspin was primarily responsible for the all-encompassing services MKMA provided the Companies. DE 1 at 69; DE 3 at 61.

G. Daspin's Misrepresentations About the IMC Contract

According to the PPMs, the Companies would use the IMC database to market and sell tickets to sponsored events and market and possibly distribute their digital content and products.

1. The Misleading Description of the IMC Contract

The PPMs stated that: "… IMC has over Eight Hundred and Forty Million (840,000,000) opt-in e-mail addresses …." DE 1 at 32; DE 3 at 28. They further stated that: "IMC is estimated to have about Twenty Five Percent of the worldwide MMA spectator market in its proprietary database," DE 1 at 16; DE 3 at 14, but there was no factual basis for these claims. Aside from

"warranting" that the IMC database had "a worldwide email list with Eight Hundred and Forty Million double opt-in addresses," Wolk refused to provide any specific information as to its contents, *supra* at 10, and the PPMs failed to disclose that the Companies had never independently verified the contents of the database.

Lange, with his background in sports broadcasting, testified that the PPM's description of IMC's marketing potential was material to his investment decision. Tr. 2253:7-19. He further testified: "The fact that I never saw any of them [emails, websites, phone numbers etc. supposedly in the database] would certainly lead me to believe that this is large part fabrication, and I am astonished it would have ever made it into any PPM." Tr. 2256:25-2257:3. If he had known the IMC database to "be just a fabrication," he would never have invested. Tr. 2297:22-2298:3. Heisterkamp, with his background in marketing and sales, Tr. 2377:12-23, testified that the PPMs' representations regarding the IMC database were material to his decision to invest: the "ability to have a contact database of that scale in delivering your marketing message to a very targeted audience" was "important." Tr. 2378:19-23; 2381:3-10.

2. Baseless Valuations of the IMC Contract

The WMMA July 2011 PPM contained a reference in the Related Party Transaction section to MKMA's [Daspin's] valuation of the IMC contract at $5 million. DE 1 at 33, ¶ 6. In late 2011, as Daspin was attempting to raise more money, he pushed for the inclusion of an $82 million valuation of the IMC contract in the PPMs and that the valuation be listed as an asset on WMMA's balance sheet.

The January 2012 PPM listed the IMC "840 million double opt-in customer database (20 year exclusive contract)" as an intangible asset worth $82 million on its "Consolidated Balance

Sheet." DE 3 at 45-46; and fn 1; *see also* 28. Beneath a second footnote was the phrase "Unaudited compiled Non-GAAP." *Id.* at 46.

Daspin admitted that he was responsible for the $82 million valuation and that he signed the written appraisal for that amount provided to the WMMA board. DE 481A at Tr. 64:17-25-66:1-2; 75:4-76:24. Daspin had no reasonable basis for this valuation. He admitted that neither he nor anyone else at the Companies tested the database before signing the contract (*id*. at 100:13-101:4); that he was not aware of any instance where the IMC database was actually used to send 840 million emails (*id.* at 93:6-14); and that Wolk declined to guarantee a response rate (*id.* at 101-102). Indeed, Wolk struck out a proposed contract provision whereby IMC would have guaranteed a minimum response rate of two percent. *Id.* at 101:20-25.

Lux testified that there was no rational basis for the earlier valuation of the IMC contract as worth $5 million, Tr. 268:1-7, and no rational basis for valuing the IMC database at $82 million several months later. Tr. 259:6-10; 375:9-14. Lux objected to Daspin's $82 million valuation but: "Mr. Daspin did not want it to be up for discussion," Tr. 377:1-7, and insisted, in a "very aggressive" voice, Tr. 376:19, "That there was really no choice but to approve of that valuation" and that "Mr. Daspin made it clear that we needed that valuation," Tr. 376:8-9, "To get further investment." Tr. 376:11; 374:12-377:13. Sullivan also objected to Daspin's $82 million valuation but Daspin "doesn't take no for an answer, …whatever he needs to get his opinion adopted." Tr. 1703:23-1704:4; 1705:5-9.

3. Carl Sheeler, a Valuation Expert, Testified That Daspin Failed to Conduct Basic Due Diligence, Used An Invalid Valuation Approach and Grossly Overvalued the Database

Carl Sheeler, the Division's valuation expert, Tr. 1338:4-1379:9; DE 488, Att. 1, submitted an expert report, DE 487, concluding that Daspin failed to take basic due diligence

steps to confirm the content, manner of operation and maintenance of the IMC database before valuing it, *id.* at 3, and that Daspin's methodology behind his $82 million valuation was flawed, *id.* at 17-19.

Sheeler testified that Wolk's refusal to provide the number of U.S. emails was a "huge concern." Tr. 1397:1-12. This, his refusal to guarantee any response rate for the emails, and other uncertainties regarding the content and ownership of the database were significant red flags and "… any responsible valuation professional, should not have relied upon the uncorroborated claim [840 million emails] given the red flags…" DE 487, ¶ 65; Tr. 1442:6-1444:12.

Daspin's valuation methodology also: (1) erroneously assumed that all 840 million emails equally contributed value; (2) failed to account for the fact that an email database decays over time (losing approximately 20 percent of valid emails per year); (3) failed to adjust for the fact that individuals did not "opt-in" specifically as mixed martial arts enthusiasts;[12] (4) increased the value of each email address one hundred fold based on the assumption that transmissions would be sent ten times per year for ten years when no recognized valuation method increases the value of an email based on the number of times it is contacted. DE 487 at 3; Tr. 1402:7-1403:2; 1437:7-1440:14.

Sheeler opined that the most appropriate valuation methodology for WMMA and the IMC email database was to measure how much it would cost to purchase it as an asset. DE 487 at 24-32. Sheeler's research showed that it cost only approximately $420,000 to purchase an 840 million email list in 2010-2011 and that it cost less to lease one. Tr. 1452:20-1455:16; DE 487 at

[12] The PPMs described the emails as "double opt-in," but failed to indicate "double opt-in' for what, which was misleading given that there was no evidence that anyone opted-in as a martial arts enthusiast. Tr. 1423:4-15. As Sheeler explained, "Double opt-in is only of value if it means double opt-in to the particular demographic of an interest that I have." Tr. 1410:11-1411:3.

26, ¶100. Noting that Wolk had offered to lease access to his list to WMMA for $25,000, DE 288, Sheeler opined that: "One could reasonably conclude under the cost method that $25,000 was the best valuation of the database because that was the market rate Wolk was charging at the time to access it. DE 487 at 27, ¶¶ 101-102; Tr. 1466:2-12.[13]

H. Misrepresentations About Cash on Hand

The July 2011 WMMA PPM contained a figure of "Cash" for "Stub Period 2011 (Chartable Event) of $33,085,850, DE 1 at 79. This figure was based on projected revenues for a proposed fight in Ghana of $99,999,996 for a pay-per-view and product sales and $30 million in live gate sales. There was no reasonable basis for this figure. Tr. 327:4-331:24; 333:9-337:17.[14] Lux testified Daspin was responsible for these projections. Tr. 315.

The January 2012 WMMA PPM also contained a two page "Forecasted Consolidated Balance Sheet" for Worldwide that contained an entry of $33,085,850 in both cash and "current assets" for "Stub-Period 2011 (Charitable Event)." DE 3 at 80. The term "stub-period" was not defined. But by January 2012, the projected $33,085,850 in cash from the Ghana event had not materialized as the fight never happened. And at no time did WMMA have $33 million in cash. Tr. 378:5-12; DE 504 at 2 (the collective balance in the WMMA Companies' bank accounts was only $582,919.76 in January 2012).

Before investing, Sullivan was provided a July 2011 PPM that identified $33 million in "cash" on a balance sheet for a "stub-period 2011." DE 300 at 78. Sullivan asked Daspin, "What

[13] Alfred Giuliano, the bankruptcy trustee who oversaw a Chapter 11 filing by Daspin and others related to the WMMA companies, testified that no creditors, debtors or third-parties presented evidence that the IMC contract had any value. Tr. 1752:11-15. He "determined that it had no value." Tr. 1753:13-17.

[14] Daspin insisted on staging WMMA's first fight in Ghana over the strong objections of both Lux and Main, who found the idea strategically ill-advised and ill-planned. The fight never happened. Tr. 321:20-324:11; 1027:24-1028-5.

is the cash position of the company currently?" and Daspin told him it was "adequate." Tr. 1620:11-13. After investing, Sullivan learned that "the cash position had gotten down below $100,000 earlier that summer [2011] and that there was some form of a loan was [sic] provided to the company" of possibly $125,000 from Daspin's wife. Tr. 1627:14-23; *see also* DE 504 at1 (showing only $308,816.17 in July 2011). Sullivan testified that if he had known the Company's true financial condition he would not have invested. Tr. 1634:4-1635:1.[15]

Before Heisterkamp invested, he asked Daspin about the financial condition of the company, and was told, "everything about the financials would be in the PPM document." Tr. 2374:9-15; 2391:1-3 Accordingly, when Heisterkamp read entries for "cash" or "current assets" in his January 2012 PPM, both describing over $33 million—he "believed that the company had $33 million of cash in the bank to fund its operations." Tr. 2394:12-13, DE 154A at 8.

I. Daspin's Profits From the Fraudulent Scheme

Daspin and his wife were the primary beneficiaries of the monies raised from investors. $135,859.85 in payments were made from the WMMA Companies to Daspin's company, CBI, between January 26, 2011 and June 8, 2012 and Daspin was paid or directly withdrew that amount and more from CBI. DE 495, DE 498. $247,629.10 in payments were made from the WMMA companies to MKMA between October 14, 2011 and May 15, 2012, DE 495, Baier Summary Chart, and $235,522.10 of those funds was paid either directly to Daspin (or his wife) or to CBI. DE 497. [16] More than that was owed to MKMA and CBI but the Companies ran out of money. The investors lost $2,281,591.47 of the $2,470,333 they invested. DE 494 at 4.

[15] *See also,* DE 627 (Daspin email falsely claiming WMMA's consolidated balance sheet consisted of over $7,400,000 in cash).

[16] $176,906.50 of the MKMA's funds was paid directly to Daspin or his wife and $58,615.60 was paid to CBI. DE 497.

LEGAL ANALYSIS

I. DASPIN VIOLATED VARIOUS ANTIFRAUD PROVISIONS

A. Daspin Engaged in a Scheme to Defraud Investors in Violation of Sections 17(a)(1) and (a)(3) and Section 10(b) and Rule 10b-5(a) and (c)

Securities Act Section 17(a)(1) makes it unlawful to employ any device, scheme, or artifice to defraud. 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 to establish a violation of Section 17(a)(1); negligence is sufficient under Section 17(a)(3). *Aaron v. SEC,* 446 U.S. 680, 695-97 (1980).

Exchange Act Section 10(b) and Rules 10b-5(a) and (c) thereunder similarly make it unlawful for any person, in connection with the purchase or sale of any securities, "to employ any device, scheme or artifice to defraud" or to "engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person." A person can be held liable for violating Section 17(a)(1) and Section 10b for disseminating false statements, even if he is not the maker of those statements. *Lorenzo v. SEC*, 139 S. Ct. 1094, 1102-03 (Mar. 27, 2019); *See also, In the Matter of Dennis J. Malouf,* Rel. No. 4463, 2016 WL 4035575, *8 (July 27, 2016) (Commission opinion).

There is overwhelming evidence that Daspin engaged in a scheme to defraud investors by hiding his family's controlling interest in the Companies from investors (*supra* at 3-5; 18-19); causing the Companies to enter into "consulting" agreements that granted Daspin extraordinary and sole authority over all typical management functions (*supra* at 5-7; 7-11), then using the consulting agreements as cover to falsely tell investors he was only a "consultant," (*supra* at 15; 19; *infra* at 27); fraudulently luring potential investors to his office by falsely advertising high-paying executive level jobs (*supra* at 11-16); using an alias "Ed" or "Ed Michael;" making

numerous misrepresentations and omissions to potential investors including that everyone at the Company had "skin in the game," falsely suggesting everyone else had invested (*id.*), misleading investors that the Companies had sufficient cash on hand (*supra* at 23-24) and failing to disclose the amount of money the Companies already owed him through the lucrative consulting agreement (*supra* at 14; 18-19). As part of his scheme, Daspin also created and disseminated PPMs and emails to hundreds of potential investors that contained numerous misstatements and omissions of material facts. (*supra* at 11-16).

1. Daspin's Claim That He Was "Only" an Outside Consultant is Contradicted by Overwhelming Testimonial and Documentary Evidence

One of Daspin's primary arguments on appeal is that he had "no authority," no one reported to him and he "wasn't in control" of the Companies. Br. at 8. He also claims that Lux and Main controlled WMMA, that they allegedly admitted in their cross they controlled the Companies through the signed board resolutions, and that they selected the investors and employees "without any other persons advice." Br. at 3; 22; 25. But numerous witnesses testified consistently and in vivid detail describing Daspin's domination over every material facet of the Companies' operations, including board members Lux and Main (*supra* at 8-11; 18; 20); investors Sullivan, Heiserkamp and Lange and potential investor Diamond (*supra* at 11-16); and employee Young (*supra* at 12-13; 17). And their testimony was amply corroborated by both the terms of the Consulting Agreement and emails from Daspin, discussed below, asserting his authority under it.

Daspin points to 37 board resolutions Lux and Main signed and argues: "it was the WMMA board resolutions that controlled WMMA and not me." Br. at 11. However, Lux (*e.g.* Tr. 700:4-25) and Main testified that board resolutions originated with Daspin, who controlled "all the conceptual direction of everything." Tr. 848:11-12; 841, 967:10-969:16. Main testified

Daspin was "directing everything at that point." Tr. 914:24-915:6, and "really everything was just presented through Mr. Agostini, but the driving force was Mr. Daspin." Tr. 924:2-926:25.

Indeed, Daspin chastised board members for performing functions Daspin viewed as within his prerogative. *See, e.g.,* DE 604, (Daspin email chastising Lux: "MKMA is the exclusive deal maker;" "Larry's contract expressly requires that he can only participate in deal making with MacKenzie's consent in writing."). Daspin also lambasted Agostini: "I never read the contract, signed off on it – which was CBI's and is now Mackensie's exclusive terrain. In the future, if it doesn't have my signature and authorization, it means that I was bypassed." In same email, Agostini said "Any large expenditures that I sign off on, Mike [Daspin] is aware of." DE 600 at 1-2.

When Main refused to sign one Daspin proposed board resolution (DE 209A) because it improperly inflated the Company's value, Daspin lashed at him. Tr. 945:5-947:9. Main later saw his signature on the resolution and testified: "I am concerned that it's a cut-and-paste job." Tr. 947:10-949:14. When Main told Daspin he felt the value of the IMC contract was "zero," Daspin responded, in effect, "Don't ever say that again." Tr. 1051:5-1053:4.

When Daspin felt undermined by Sullivan in a meeting, Daspin "responded by calling me a motherfucker and pushed chairs as he attempted to put his hands on me. …..He followed me down the hall, continuing to swear and ask, who do you think you're dealing with, MF-er?" DE 577, Tr. 1823:22-1824:12; 1825:19-23). Sullivan also said Daspin: "was in charge every minute of every day. He would come in the front door; he would be yelling to have people join him in the conference room to talk about this. And it was very disconcerting to me after the first two weeks when I realized that he wasn't just a consultant." Tr. 1674:1-12. Lange also testified that Daspin dominated and controlled the board. Tr. 2271:9-13. "The most obvious deception" to

Lange prior to his investment was "Daspin's effective control of the board so that he could veto any operational decision." Tr. 2352:14-23.

Daspin's claim that Lux and Main "selected the investors and employees "without any other persons advice." Br. at 3; 5; 22; 25, is flatly contradicted by the evidence; the Consulting Agreement gave CBI and MKMA sole authority to "raise equity" (DE 520; 204) and Lux, Main, Young, Sullivan, Heisterkamp, Lange and Diamond all testified that Daspin dominated the hiring and investor solicitation process (*supra* at 11-16).

The Consulting Agreement gave Daspin control over every corporate transaction and contract, limiting the board's role to passively signing off on what Daspin alone chose to present to them. Any dissent by Lux, who was in desperate financial straits, and Main, a part-time participant, was met with forceful resistance by Daspin, who controlled the purse strings through Agostini, Daspin's proxy on the board. At a minimum, Daspin's substantial role should have been fully disclosed to investors. [17] [18]

Thus, there is ample evidence that Daspin knowingly and intentionally engaged in a scheme to defraud investors in violation of Section 17(a)(1) and (3) and Section 10(b) and Rule

[17] Daspin's claim that Main and Sullivan could have become check signatories, Br. at 15, is rebutted by their testimony that they were thwarted from doing so, Tr. at 1115-1116:11; 1671, 1675.

[18] Daspin claims that Lux stated in his investigative testimony that Daspin did not act as de facto CEO or officer, Br. at 22. That is incorrect. In that testimony, Lux did say, presumably out of embarrassment, that he was not a "wallflower" and that he could take or leave Daspin's advice. However, at trial, Lux acknowledged that, in fact, he went along with almost everything Daspin presented to the board, even if he opposed or did not understand its business purpose, because he was in desperate financial straits and "needed the money." Tr. at 701:8-15.

10b-5(a) and (c).[19] [20]

B. Daspin Violated Section 10b and Rule 10b-5(b) By Making Material Misstatements and Omissions of Material Facts

A violation of Exchange Act Section 10b and Rule 10b-5(b) occurs when a person, directly or indirectly, (1) makes a material misstatement or omission of material fact (2) with scienter (3) in connection with the purchase or sale of securities (4) by means of interstate commerce or the mails. In *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011), the Supreme Court held that an individual must be the "maker" of the statement to be held liable under this provision and explained that "the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Id.* at 2302.

Daspin was clearly the maker of oral material misrepresentations and omissions to numerous investors he directly solicited. (*supra* at 11-16). Moreover, there is overwhelming evidence that Daspin was the ultimate authority over the content and distribution of the PPMs, which contained numerous misstatements and omissions of material facts. He was, in his own words, the "architect" of the PPMs; and he was primarily responsible for drafting, finalizing and approving their contents and distributing them to potential investors. *Supra* at 17-24. Courts have

[19] Interstate means were used in connection with the offer or sale of the securities. *See, e.g.*, DE 370 (email solicitation); DE 173 (wire transfer of investment); Tr. 1279:19-22; 2366:1-3 (Young and Heisterkamp testimony regarding use of Skype to interview potential investors); Tr. 2648:22-2656:22 and DE 631 (Diamond testimony and email regarding email and telephone solicitation).

[20] Moreover, even aside from the control issue, Daspin's deceptive transfer of his controlling interest in the Companies to the three board members as "trustees," to shield his family's ownership interests from investors (DB at), and his scheme to solicit investors through deceptive job advertisements, use of an alias, and other false claims, are each alone sufficient to establish Daspin's scheme to defraud, in violation of Section 17(a)(1) and (3) and Section 10(b) and Rule 10b-5.

found individuals liable for misstatements and omissions in company documents in analogous cases. *See, e.g., SEC v. Markusen,* 143 F. Supp. 3d 877, 889 (D. Minn. 2015); *In re Stillwater Capital Partners Inc. Litig.*, 853 F. Supp. 2d 441, 460 (S.D.N.Y. 2012); *SEC v. Greenstone Holdings, Inc.*, 2012 WL 1038570, at *9 (S.D.N.Y. Mar. 28, 2012).

1. Daspin's Claim That He Had Minimal Involvement in the PPMS is Contradicted by Overwhelming Testimonial and Documentary Evidence

Daspin's claim that he had minimal involvement in writing the PPMs and that the PPMs were 85 to 100% Nwogugu's creations, Br. at 3-4, is contradicted by overwhelming evidence.[21] Lux and Main both testified that Daspin was responsible for the creation of the PPMs (*supra* at 18). Main also testified that Nwogugu: "was a guy typing out what you [Daspin] were telling him to type out." Tr. 1082:5-20. Lux also observed Daspin dictating the contents of the PPMs to Nwogugu. Tr. 309:17-311:13. When Daspin asked Main: "Who was in charge of the preparation of the PPM? What was his name?" Main answered: "Edward Michael Daspin." Tr. 1082:2-4.[22] Young testified that he spent much of his day taking dictation from Daspin regarding the PPMs

[21] Daspin failed to call Nwogugu as a witness and the ALJ correctly declined to admit Nwogugu's self-serving hearsay claim to Chartis Insurance Company for fees he claimed the Companies owed him. Also, while Nwogugu, in his Chartis claim, claimed to have "worked on" 85% of agreements, he never claimed, as Daspin suggests, Br. at 14, that the PPMs were "100% his creation" or that he had "final decision making authority over the PPMs. Tellingly, WMMA, with Daspin on board, caused Nwogugu's Chartis claim to be denied. Tr. 3380:10-22.

[22] Daspin's claim that Main admitted he wrote the financial projections in the PPMs, Br. at 3-4, is wrong. Main testified he may have prepared some fight schedules but he never testified he was responsible for any financial numbers. *See, e.g.,* Tr. 1077:16-1079:7; 1080:1-5.

(*supra* at 17).[23] Numerous emails evidence Daspin's control over Nwogugu's work. *See e.g.,* DE 37; DE 93; DE 514; DE 237.[24]

Daspin repeatedly asserted his ultimate authority over the PPMs. Daspin rebuffed Main's initial efforts to merely proofread the PPMs, *supra* at 18. Main testified on cross: "every time I made a submittal, it got kicked back because…you were involved." Tr. 1081:8-10. When Main suggested edits to an Investor Overview, Daspin sent a lengthy response making clear his control of investor documents, including: "CBI does not wish anyone to send out an overview that has not been pre-initialed by CBI and McKenzie. … protocol requires a McKenzie sign off as a precondition." DE 517 at 1; *see also* DE 524 at 1 (Daspin email to subcontractor who worked on a PPM: "…my Consulting firm had the contract to prepare a Private Placement Memorandum. . . .You were reporting to me, with respect to preparing it."); DE 94 at 2 (MKMA invoice charging $237,500 for drafting the PPMs).

Daspin tries to distance himself from responsibility for the $82 million valuation in the 2012 PPM, claiming that "an 8 person committee listened to MKMA and Nwogugu IMC appraisal and decided they went with MKMA $83 million," Br. at 6. However, there is no

[23] Also incorrect is Daspin's claim that, on cross, Young refuted Lux's testimony that Daspin dictated the PPMs to him and corroborated the claim that Nwogugu took 100% responsibility as the author of the PPM's, Br. at 10. When Daspin read Young an excerpt from Nwogugu's Chartis claim, Young merely responded: "It looks like he does take responsibility." Tr. at 1305:3-4. Young did not testify that Nwogugu was responsible for the PPMs and did not retract his testimony regarding Daspin's extensive dictation of portions of the PPMs.

[24] Daspin argues that, in his investigative testimony, Lux stated that "Nwogugu wrote the lionshare of the PPM," Br. at 10. However, Lux clarified that testimony at trial indicating that Nwogugu typed a lot of "filler." Tr. 686:2-16. This is corroborated by Daspin's admission that he was the PPMs "architect" and "came up with the entire overview" and Nwogugu "put in all of the corporate compliance and the boilerplate." DE 481A at Tr. 28:18-30:4. *See also* DE 247 (Daspin email stating Nwogugu has no right to present any modifications to any contract without first talking to MKMA).

evidence Nwogugu supported the valuation and there is ample evidence that Daspin was insistent on its inclusion over strong objections. Lux testified that he disagreed with the valuation but Daspin "did not want it to be up for discussion" by the board and insisted in a "very aggressive" voice on its inclusion in the PPM. Tr. 374:12-377:13. Sullivan testified that Daspin insisted on including the $82 million valuation in the PPM over the finance team's objections and wouldn't take no for an answer. Tr. 1703:13-1705:9. Daspin told them they were wrong, "we didn't know what we were doing, this is what had to happen, this is what the company needed to be successful." Tr. 1709:12-1710:3. The inclusion of Daspin's $82 million valuation in the PPM over these strong objections confirms his dominance.[25]

Finally, assuming Daspin's IMC database valuations are opinions, opinions are actionable where: (1) the person responsible for the opinion does not actually believe the opinion; . . . or (3) the opinion omits material information about the opinion such that the opinion would be misleading to a reasonable investor when considered in context with the omitted material. *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct. 1318, 1326-29 (2015). Daspin omitted from his $82 million valuation the material information that he had not performed reasonable due diligence, did not know what was in the database, applied a nonstandard valuation methodology and had conflicts of interest (ownership interest; fees owed and to be earned), such that his opinion was misleading to a reasonable investor when considered

[25] Also, courts have found individuals liable for statements attributed to them in offering materials even if they did not have ultimate authority over the entire document. *See, e.g., In re Allstate,* 2012 WL 1900560, at *4-5 (D. Ariz. May 24, 2012); *Lopes v. Viera,* 2012 WL 691665, at *6 (E.D. Cal. Mar. 2, 2012); *In re Textron*, 811 F. Supp. 2d 564, 574 (D.R.I. 2011).The valuation is explicitly attributed to "MKMA" in the PPM, DE 3 at 45-46, and Daspin admitted he signed the written appraisal provided by MKMA to the WMMA board. DE 481A at Tr. 64:17-66:2; 75:4-76:14. Thus, aside from being the final authority of the PPMs, Daspin was clearly the maker of the $82 million valuation contained in the PPM.

in context with the omitted material. Evidence shows Daspin did not believe his $82 million valuation, such as his admission that he did not know the contents of the database ("Beryl wouldn't let us count it" Tr. 3023:16-22) and therefore could not reasonably appraise it; and given that he implausibly increased the database's value to $82 million just months after it was valued at $5 million.[26]

C. Daspin Violated Section 17(a)(2)

Securities Act Section 17(a)(2) prohibits "obtain[ing] money or property by means of any untrue statement of a material fact or any material omission." A showing of scienter is not required; negligence will suffice. *Aaron v. SEC,* 446 U.S. 680, 697 (1980). Liability under Section 17(a)(2) is not contingent on whether one has "made" a false statement. Instead, liability turns on whether one has obtained money or property "by means of" an untrue statement. *See, SEC v. Tambone,* 597 F.3d 436, 444 (1st Cir. 2010) (en banc); *SEC v. Farmer,* 2015 WL 5838867, *7 (S.D. Tex. Oct. 7, 2015).

There is ample evidence that Daspin caused the PPMs to be disseminated to potential investors, *e.g.* DE 237 (Daspin email to Nwogugu: "I need the PPMs to sell deals."); DE 154, 154A, 300, 301(PPMs distributed to Heisterkamp and Sullivan); that the PPMs contained numerous untrue statements of material facts and material omissions (*supra* at 18-24); and that Daspin obtained money thereby (*supra* at 24).[27] Daspin also personally made numerous untrue

[26] Also, Daspin need not even be deemed the "ultimate authority" over the PPMs or the "maker" of the $82 million valuation to be liable for using the PPMs and that valuation as part of his larger "smoke and mirrors" scheme to defraud, and to obtain money, in violation of Securities Act Sections 17(a)(1) (2), and (3), and Exchange Act Section 10b and Rule 10b-5(a) and (c).

[27] Daspin obtained commissions and consulting fees funded by the investments he solicited. Daspin's company CBI received over $135,000 in payments from the WMMA Companies, which were funded from investor funds given that the Companies had no other source of income. DE 495. MKMA, through which Daspin later performed his consulting services, was paid $50,065 for soliciting Puccio, Sullivan's and Heisterkamp's investments and paid over $130,000

statements of material fact and material omissions when he directly solicited investors (*supra* at 13-16) and obtained money thereby. Under each scenario, Daspin violated Section 17(a)(2).

Daspin's misrepresentations and omissions were material because a reasonable investor would consider the true facts about Daspin's ownership interests, his substantial influence at the Companies, his true identity and past, the Companies' true financial condition, and the fact that no due diligence was done on the IMC database before valuing it, important in deciding whether to invest and "as having significantly altered the total mix of information made available." *Basic v. Levinson,* 485 U.S. 224, 231-32, 240 (1988). *See also, e.g.,* Lange's testimony re materiality of "skin in the game" (*supra* at 15); Heisterkamp, Sullivan and Lange's testimony re materiality of Daspin's identity and his claim to be only a consultant (*supra* at 16; 27-28); and Sullivan, Lange and Heisterkamp's testimony re materiality of Daspin family's ownership interests in WMMA Companies (*supra* at 18-19).

Further, the $82 million IMC valuation was clearly a material misrepresentation, constituting $82 million out of a total of $91.2 million in claimed assets for WMMA. DE 3 at 45. And the PPMs placed great importance on the IMC email database as a key to the success of the WMMA companies. DE 1 at 31; DE 3 at 28. *See also***,** Lange and Heisterkamp's testimony re materiality of the representations regarding the IMC database, *supra* at 20.

Daspin claims that the MKMA consulting agreement, and his felony conviction, was "fully disclosed upfront" "in the first interview" "long before they invested," Br. at 17, and that the MKMA consulting agreement was disclosed in the PPMs and attached to the investor's employment agreement. *Id.* However, the PPMs contained only a cursory description of the

in consulting fees. *Id.* And most of the monies the Companies paid to MKMA went to the Daspins. DE 497.

extraordinary services MKMA performed, *supra* at 19; failed to disclose that the Consulting and Commission Agreements excluded the Companies' board and executives from participating in most corporate functions absent consent of MKMA, failed to disclose MKMA's crippling fee structure and failed to disclose that Daspin was the person providing these all-encompassing services. Regardless of whether Daspin "controlled" the Companies, his role was material enough to warrant full disclosure in the PPMs of his name, criminal background and history of acrimonious business failures. Also, Sullivan testified he was not made aware of MKMA's fee structure before investing and that it was material. *Supra* at 14; Tr. 2296:19-20; 2561:1-2 and Heisterkamp learned of Daspin's bankruptcy fraud after he invested, s*upra* at 16.

II. DASPIN VIOLATED SECTION 20(b)

To establish a violation of Section 20(b), the Division need only show that Daspin (i) acted through or used another person (in this case, the Companies and their officers, directors and employees) to execute at least some of the actions forming the basis of the substantive violation, and (ii) acted with the state of mind necessary to establish the substantive violation.

The evidence demonstrates that, in violation of Section 20(b), Daspin knowingly or recklessly, acting through the Companies, and their officers, directors and employees, violated Exchange Act Section 10(b) and Rule 10b-5(b), by causing the Companies to disseminate fraudulent PPMs to potential investors.

III. DASPIN VIOLATED SECTION 5

A. The Division Has Made a Prima Facie Showing of a Section 5 Violation

Securities Act Section 5(a) prohibits the sale of securities in interstate commerce unless a registration statement is in effect or an exemption from the registration requirements applies. Section 5(c) makes it unlawful to offer to sell securities, through the use or medium of a prospectus or otherwise, unless a registration statement is on file or an exemption applies. A

prima facie Section 5 violation requires proof of three elements: first, that no registration statement was filed or in effect for the securities; second, that the respondent sold or offered to sell the securities; and third, that there was a use of interstate means in connection with the offer or sale. *See SEC v. Cavanagh*, 1 F. Supp. 2d 337, 361 (S.D.N.Y. 1998), *aff'd*, 155 F.3d 129 (2d Cir. 1998). Once the Division establishes a *prima facie* violation, a respondent bears the burden of proving that an exemption applies. *See SEC v. Ralston Purina*, 346 U.S. 119, 126 (1953). A showing of scienter in not required. *See SEC v. Universal Major Indus.*, 546 F.2d 1044, 1047 (2d Cir. 1976).

It is undisputable that the WMMA and WDI offerings were securities offerings and that they were not registered with the Commission. Daspin Answer ¶¶ 6, 59; *see also* DEs 6-10 (Attestations by the Commission's Office of the Secretary of the non-registration of the Companies). Second, there is ample evidence of the use of interstate means in connection with the offer or sale of the securities. *See, e.g., supra,* at 29. Third, there is ample evidence that Daspin sold Company securities to investors. See *supra* at 11-16; Investor Agreements: DE 25, 26, 27, 28, 67, 67A, 67B, 331, 322, 366, 367 and 386.[28] Thus, the Division established a prima facie case that Daspin violated Section 5.

B. No Exemption Applies

The PPMs claimed that the offerings were exempt from registration pursuant to Rule 506 of Regulation D ("Rule 506") and Section 4(2) of the Securities Act. DEs. 1, 2, 3 and 4. However, Rule 506(b) does not apply because the securities were offered and sold through prohibited general solicitations and Daspin used cold-call job solicitations to make his

[28] Each WHLD and WMMA unit was valued at $250,000; each WDI unit was valued at $100,000. The evidence shows that based on Daspin's recommendation that they diversify their holdings, the investors divided their investment between WMMA and WDI.

investment pitch (*supra* at 11-16). Indeed, Young testified that he sent "well more than a thousand" such emails to prospective investors. Tr. 1271:21-24. And Daspin admitted that Puccio, Bederjikian, Sullivan, Lange, Lockett and Heisterkamp were all "cold-call solicitations. Tr. 3331:1-6; 3331:14-25; 3333:1-25. *See SEC v. Credit First Fund, LP*, 05-cv-8741, 2006 WL 4729240, at *3, * 12 (C.D.Cal. Feb. 13, 2006); *SEC v. Freeman*, 77-cv-2319, 1978 WL 1068 (N.D. Ill. Mar. 3, 1978). [29] Daspin also cannot rely on the Rule 506(c) exemption because he has not proven that all of the investors were accredited. Heisterkamp was not accredited. He did not know what was required to be one; invested before signing investment agreements, DE 367 at 3501; Tr. 2499: 2538: 2623; and Daspin never discussed being an accredited investor with him, Tr. 2623-24. And there is no evidence that the offerings were in fact limited to accredited investors or that reasonable steps were taken to verify investors' accredited status.[30]

IV. DASPIN VIOLATED SECTION 15(a)

As relevant here, Exchange Act Section 15(a)(1) prohibits a broker or dealer from effecting securities transactions for the accounts of others or inducing the purchase or sale of any security through interstate means unless such natural person is associated with a registered broker-dealer or satisfies the conditions of an exemption or safe harbor.

It is undisputed that Daspin was not associated with a registered broker-dealer. Daspin Answer, ¶¶ 10, 62; DE 11(SEC Attestation re non-registration).

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[29] An issuer selling securities under Rule 506(b) must also furnish any unaccredited investors with, at a minimum, an audited balance sheet (Rule 502(b)) and there is no evidence that was done here.

[30] Daspin also cannot rely on Section 4(a)(2), which permits unregistered offerings involving "transactions by an issuer not involving any public offering," given the large number of offerees, the lack of any controls regarding their sophistication, the size and manner of the offering and the fact that the offerees had no prior relationship to the issuer. *See, e.g. SEC v. Murphy*, 626 F.2d 633, 644 (9th Cir. 1980); *Doran v. Petroleum Mgmt. Corp.,* 545 F.2d 893, 900 (5th Cir. 1977).

Factors courts consider in determining whether a person is acting as a broker include whether he: (1) receives commissions as opposed to salary; (2) is involved in negotiations between the issuer and the investor; (3) makes valuations as to the merits of the investment or gives advice; and (4) is an active rather than passive finder of investors. *SEC v. Benger*, 697 F. Supp. 2d 932, 944-45 (N.D. Ill. 2010); Scienter is not required. *SEC v. Nat'l Exec. Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

Daspin was involved in negotiations between the issuer and investors and was an active rather than passive finder of investors, *supra* at 11-16. Daspin also gave advice regarding the merits of the investment. Daspin not only actively pitched individuals to invest in the Companies but counseled them to diversify their investments between the different WMMA Companies and to use their 401k plans to fund the investments. *See, e.g.,* Main (Daspin was "putting together" "two scenarios involving different cash levels" that related to purchasing securities. Tr. 730:17-18.); *see also* DE 34; 329, DE 330 (Daspin emails discussing Main's investment). Sullivan (Tr. 1597-1600:7); Lange (Tr. 2234:4-2235:6) and Heisterkamp (Tr. 2372:8-2373-143) all testified how Daspin counseled them on how to structure their investments in the Companies. DE 631 (Daspin email to potential investor Diamond).

Daspin also received a commission for recruiting investors. He argues that the commission was based on their compensation, not the amount of money raised from them, Br. at 14, and therefore he did not receive a commission for selling securities. However, the Consulting Agreement, DE 204 at ¶ 3, provided for higher commissions for recruiting investors ($37,500) than for hiring sweat equity employees ($25,000); the commissions were based on "salaries" that were set higher for investors than sweat equity employees. *See, e.g.,* DE 32 and 62 at ¶ 7; DE 63,

359, 57, 61, 149 at ¶ 4. *See also,* DE 94, MKMA Invoice, page 2 (listing $25,000 commissions for sweat equity employees; $37,500 commissions for investors.

V. Daspin's Due Process Claims Are Meritless

Daspin argues that ALJs are not impartial and independent because they are appointed by the Commission that issues the OIPs. Br. at 7; 12-13. However, it is well-settled that that does not constitute a due process violation. *See, e.g., Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104-07 (D.C. Cir. 1988). Daspin's claim that the presiding ALJ had "a monetary personal financial interest in my guilt," Br. at 22, presumably because she was employed by the Commission, is baseless as there is no evidence that her salary or tenure were dependent on findings of guilt. Daspin's claim that the Chief ALJ improperly reassigned the case from ALJ Foelak, who had initially stayed the case due to Daspin's alleged medical complaints, to ALJ Grimes, Br. at 9, also fails to establish a due process violation as there is no evidence that the transfer was done for anything other than administrative reasons. The Commission has already rejected Daspin's claims of ALJ bias. *Daspin,* Securities Act Release No. 10468 (March 8, 2018) at 3.

Daspin also argues without any specificity that his health and family issues "made me a candidate for a dismissal on the grounds that it is physically too much stress for me," Br. at 10; 18. However, Daspin fails to establish any legitimate medical reasons why he could not defend himself and his extensive submissions throughout these proceedings and the trial record make clear that Daspin was able to vigorously defend himself.[31] Daspin also claims that he lost "all my witness[es]," Br. at 10, and "7 indispensable material witness[es]," Br. at 18, but he fails to

[31] Daspin suggests that he was hard of hearing, Br. at 19, but he provided no documented evidence of this either before the trial or on appeal and he was able to hear the trial participants and respond appropriately.

identify which seven witnesses he lost. And while the Division is aware that Wolk of IMC and one investor have passed away, Daspin fails to provide any evidence that their testimony, or any other unavailable witness's testimony, would have helped him.

VI. THE COMMISION SHOULD IMPOSE MEANINGFUL REMEDIES

A. The Commission Should Order Daspin to Cease and Desist

The Division seeks a cease-and-desist order under Securities Act Section 8A and Exchange Act Section 21C. The following factors are relevant: (1) the egregiousness of the violator's actions, (2) the isolated or recurrent nature of the violations, (3) the degree of scienter, (4) the sincerity of the violator's assurances against future conduct, (5) the violator's recognition of his wrongful conduct, and (6) the likelihood that the violator's occupation will present opportunities to commit future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

Daspin's multiple fraudulent actions were egregious and caused harm to investors. They were recurrent; involving multiple misstatements and omissions to scores of investors over several years and he induced seven investors to make over twenty-two separate investments. Daspin also acted with a high degree of scienter and created an elaborate scheme to defraud investors. Despite his age, Daspin is a high risk to offend again. He claims to be in financial straits and has shown a contempt for the Commission's authority: including ignoring the ALJ's repeated admonitions not to refer to a whistleblower by name, telling the ALJ: "You don't have a right to bind me." Tr. 2802:12-13; and shouting, on cross-examination: "You're never going to collect a dime from me. No matter what, you won't get a penny." Tr. 3414:1-3. Daspin also admitted that: "If I have enough energy and if I get paid a portion of what I lost, I would restart that company…." Tr. 3103:1-6. Indeed, he views himself, not the investors, as the victim: Tr. 3242:10-14, 3138:24-25; 3240:7 ("I'm the victim"). A cease-and-desist order is warranted.

B. The Commission Should Impose an Industry Bar Against Daspin

For all the foregoing reasons, applying the *Steadman* factors, the evidence establishes that it is in the public interest to impose an industry-wide bar on Daspin that encompasses a bar from association with any investment adviser and all collateral bars from association with a broker, dealer, municipal securities dealer, municipal advisor, transfer agent or NRSRO. 15 U.S.C. § 78o(b)(6).[32]

C. The Commission Should Order Daspin To Disgorge All Ill-Gotten Gains

The Commission should order Daspin to disgorge his ill-gotten gains, plus prejudgment interest, pursuant to Securities Act Section 8A(e) and Exchange Act Sections 21B(e) and 21C(e). Disgorgement "is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *94 (May 2, 2014) (quoting *SEC v. First City Fin. Corp*., 890 F.2d 1215, 1230 (D.C. Cir. 1989)), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

As noted above, Daspin directly raised a total of $2,470,333 from investors for the Companies.The Companies paid a total of $383,488.95 to CBI and MKMA. DE 495. The Companies paid $135,859.85 of that amount directly to Daspin's company, CBI, and $73,284.82 of that amount appear to be payments net expenses. DE 495. The Companies made $247,629.10 in payments to MKMA. $173,552.28 of that amount appears to be payments net expenses. DE 495. MKMA paid Daspin's Company CBI $58,615.60; and $53, 624.60 of that amount appears to be payments net expenses. DE 497. MKMA paid Daspin & Corp. $5,000 and paid Daspin directly $66,006 in payments net expenses. *Id.* Thus, a total of $197,915.42 ($73,284.82+

[32] A collateral bar under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") would not be retroactive. *See* 15 U.S.C. § 78o(b)(6)(A); Pub. L. No. 111- 203, 124 Stat. 1376 (2010). Daspin's fraud continued into 2012, well after the effective date of the relevant Dodd-Frank Act provisions.

$53,624.60 + $5,000 + $66,000) in ill-gotten gains, net of expenses, flowed from the Companies to Daspin and that amount, plus prejudgment interest, should be disgorged and returned to investors.[33] [34]

D. The Commission Should Impose Third-Tier Civil Penalties on Daspin

The Commission should impose third-tier civil penalties on Daspin totaling $1,350,000, pursuant to Securities Act Section 8A and Exchange Act Section 21B, based on the severity of Daspin's fraudulent, willful conduct and the substantial losses he caused investors to incur, as described above. "For violations from December 10, 1996, through November 2, 2015," Securities Act Section 8A(g) and Exchange Act Section 21B(b) authorize third-tier civil penalties of up to $150,000 per violation if the act or omission involved fraud and resulted substantial losses to others or pecuniary gain to the violator. U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3); 17 C.F.R. § 201.1001 and 1004 & Subpt. E, Table I.

The Commission considers six statutory factors in setting a third-tier penalty:

> (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, (2) the resulting harm to other persons, (3) any unjust enrichment and prior restitution, (4) the respondent's prior regulatory record, (5) the need to deter the respondent and other persons, and (6) such other matters as justice may require.

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[33] The ALJ ordered Daspin to disgorge $322,681.50, which included amounts paid to Mrs. Daspin. ID at 51-52. After this case was submitted to the ALJ, the Supreme Court decided *Liu v. SEC*, 140 S. Ct. 1936 (2020), in which the Court stated that disgorgement generally should be measured as "individual liability for wrongful profits." *Id.* at 1949. *Liu* further held that courts have "flexibility" to impose joint and several liability against "individuals or partners" engaged in "concerted wrongdoing." *Id.* Here, however, the Commission did not bring claims against Daspin's wife, and because the record was developed pre-*Liu* it does not contain precise evidence regarding her role in the fraud or the value of any legitimate services she performed. Therefore, a disgorgement award excluding amounts that directly flowed to Daspin's wife is appropriate in light of *Liu* given the facts and circumstances of this case.

[34] Prejudgment interest is computed at the underpayment rate established under Section 6621(a)(2) of the Internal Revenue Code. 17 C.F.R. § 201.600.

Timothy S. Dembski, Securities Act Release No. 10326, 2017 WL 1103685, at *15 (Mar. 24, 2017), *pet. denied*, 726 F. App'x 841 (2d Cir. 2018).

Third-tier penalties are appropriate. Daspin engaged in "egregious" deceit, manipulation and deliberate or reckless wrongdoing. By taking in approximately $2.47 million in investor funds and dissipating virtually all of it, Daspin created a "significant risk of substantial losses." Sullivan, 61, has not recouped the $351,000 of retirement savings that he invested, Tr. 1882:10-23 and his loss has been a "devastating" and "life-changing" event. Tr. 1886:24; 1887:2. Lange invested $250,000 and lost all but approximately $20,000 (DE 494 at 3) and Heisterkamp invested $351,000—$234,000 from his 401(k) savings (practically his entire retirement savings), $100,000 from home equity and borrowings from family and friends. Tr. 2403:7-11; 2404:1-6; 2411:23-2412:14; DEs 58, 59, 60 and 185 (wire transfers). He too has not recovered his losses; lives with his sister and has been unable to repay his family and friends. Tr. 2468:4-8; 2468:21-2469:1; 2469:12-2470:3. Heisterkamp also testified "I was informed that my 401(k) rollover by law was to be protected in a qualified retirement account with the WMMA companies, and that was not true." Tr. 2469.

There were numerous anti-fraud violations (multiple misrepresentations and omissions to scores of potential investors). But the Division conservatively assumes seven violations for purposes of this analysis: one for each of the seven investors. Seven times $150,000 third-tier violations results in a penalty of $1,050,000. The Division also conservatively seeks just one third-tier penalty for each of Daspin's Security Act Section 5 and Exchange Act Section 15 violations. Each of these violations has a $150,000 maximum penalty. *17 C.F.R. § 201.1004*. Thus, the Division requests imposition of a total penalty of $1,350,000.

CONCLUSION

The Division respectfully asks the Commission to find Daspin liable for all of the violations set forth in the OIP and impose the sanctions set forth above.

Dated: October 2, 2020
New York, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE UNDER RULE OF PRACTICE 450(d)

Pursuant to the Commission's Rule of Practice 450(d), I do hereby certify that the foregoing brief complies with Rule of Practice 450(c), in that the text includes 13,921 words as reported by the word processing system on which it was prepared, including footnotes and citations, but excluding the table of contents, table of authorities, the certificate of service and this certificate of compliance.

By: /s/ Kevin P. McGrath

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16509

In the Matter of
EDWARD M. DASPIN,
Respondent.

CERTIFICATE OF SERVICE

I, Kevin P. McGrath, hereby certify that, on October 2, 2020, I caused a copy of the Division of Enforcement's Brief in Opposition to Respondent Edward Daspin's Petition for Review of Initial Decision to be served upon the Office of the Secretary by email at apfilings.gov.

On the same date, I caused a copy of the same document to be sent by Overnight Express Mail to *pro se* Respondent Edward Daspin at his home address of [redacted] Freehold, N.J. [redacted] and caused an electronic copy of the same document to be sent to Mr. Daspin by email at emdaspin2@optonline.net.

Dated: October 2, 2020
New York, New York

/s/ Kevin P. McGrath
Kevin P. McGrath
Securities and Exchange Commission
200 Vesey Street – Suite 400
New York, NY 10281-1022
(212) 336-9089
mcgrathk@sec.gov

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
200 VESEY STREET
NEW YORK, NEW YORK 10281

October 2, 2020

Via Email (apfilings@sec.gov)

Ms. Vanessa Countryman, Esq.
Securities and Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of Edward M. Daspin, a/k/a "Edward (Ed) Michael,"
A.P. File No. 3-16509

Dear Ms. Countryman:

Pursuant to the Commission's Order concerning electronic filings (Exchange Act Release No. 88415, *In re: Pending Administrative Proceedings* (Mar. 18, 2020)), enclosed please find the Division of Enforcement's Brief in Opposition to Edward Daspin's Petition for Review of Initial Decision and a Certificate of Service.

Respectfully submitted,

/s/ Kevin P. McGrath

cc: Edward Daspin (via email and UPS)