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

**In the Matter of**

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

**Respondent.**

# THE DIVISION OF ENFORCEMENT'S POST-HEARING REPLY MEMORANDUM

Kevin P. McGrath
Senior Trial Counsel
Barry O'Connell
Senior Counsel
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281-1022
Ph: (212) 336-0533 (McGrath)
mcgrathk@sec.gov

*Attorneys for the Division of Enforcement*

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

## INTRODUCTION

The Division of Enforcement respectfully submits this rebuttal brief in response to Respondent Edward Daspin's brief dated July 14, 2019 ("Br."), which includes, as an attachment, a June 27, 2019 Daspin email. Daspin appears to make the following primary arguments: (1) he did not control the WMMA Companies; (2) he was not involved in raising money from investors and was not a broker-dealer; (3) he had no control over the private placement memoranda ("PPMs") used to raise money from investors; (4) he did not intentionally overvalue the Internet Marketing Corporation ("IMC") email database; (5) he did not "milk" the WMMA Companies; (6) the investor witnesses are liars and should be the respondents here; (7) several witnesses allegedly said he did nothing wrong; and (8) Daspin was, in fact, a "philanthropist" and the true victim in this case.

As set forth in greater detail in the Division's Post-Hearing Memorandum ("Div. Br."), and as summarized below, the evidence at trial proves each of Daspin's claims to be unfounded and establishes Daspin's liability for each of the charges in the Order Instituting Proceedings ("OIP"). The Division also briefly addresses various threatening statements and verbal attacks contained in Daspin's most recent filings which reinforce the need to impose serious sanctions on him to discourage him from engaging in future fraudulent conduct.

### I. Daspin's Family Ownership Interests In, and His Substantial Control Over the Affairs of, the WMMA Companies Should Have Been Disclosed in the PPMs

Daspin argues that he did not control the WMMA Companies because the board of directors had to formally approve all employment and other contracts. *See* June 27, 2019 email, attachment A to Br, at p. 2 ("I had no power and my contract did not permit me to bind wmma" and arguing that the board made all hiring decisions and approved all investors). However, as Daspin himself admits, his family held a controlling stake in the WMMA Companies: "My wifes

warrants to purchse 92% of the holding company owning 92% of the combined WMMA/WDI .... " Br. at 6.[1] And he admitted at trial that his family stood to gain "a fortune" if the companies succeeded. Tr. 3118:10-19.

Given these financial interests, it is simply implausible that Daspin would cede control of his family companies to anyone. Instead, as the evidence shows, Daspin created the fraudulent fiction that he was only a "consultant" to lull investors who might be concerned about his past, and to limit his liability, while he in fact dominated and controlled virtually every aspect of the WMMA Companies. This domination began with his founding of the companies (Div. Br. at 5-7)[2]; and was evidenced by his appointment of the board members and senior executives and his insistence that Lux, Main and Agostini all sign agreements that gave Daspin's consulting companies, CBI and MKMA, the right to perform all major functions for the Companies, including raising money from investors, drafting the PPMs, recruiting all employees and joint venture partners, and negotiating all contracts for the WMMA companies. Div. Br. at 17-23; and Div. Ex. 204 (CBI agreement) and Div. Ex. 205 (MKMA agreement). Daspin concealed the terms of these contracts from investors. And he vigilantly and adamantly enforced his unilateral right to engage in these activities, angrily admonishing Lux, Agostini and other senior executives when Daspin thought they were trying to negotiate contracts or act independently of him. Div. Br. at 30-32.

Daspin's consulting agreements gave him a stranglehold over essentially every major corporate function of the companies. While the board members did have to formally approve

[1] All quotes from Daspin's filings are cited verbatim, without typographical corrections.
[2] For brevity's sake, the Division will respectfully refer the Court to the sections of its Post-Hearing Brief setting forth in more detail the evidence referenced in this brief, rather than cite to each such exhibit and testimonial reference herein.

hirings and contracts, Daspin controlled what was put in front of the board for approval thus unilaterally setting the agenda for the company. Daspin also induced the three board members to enter into the Trust Agreements pursuant to which they each owed a fiduciary duty to Joan Daspin and the Daspin Family Trusts and their employment agreements dictated that they could not bind the WMMA Companies without CBI's approval. Div. Br. at 8-10; 17-22; Div. Ex. 69 (Conditional Transfer Agreement); Div. Ex. 80 and 80A (Trust Agreement); Div. Ex. 55 (Lux Employment Agreement); Div. Exs.149, 149A and 150 (Main Employment Agreements). Through his wife's warrants, which Daspin subsequently exercised, he had the ability to remove any board member if they went against his wishes. Daspin's substantial control over the board's actions was further illustrated by Lux and Main's forthright admissions that they rubber-stamped numerous contracts and transactions as to which they had no input or understanding, reflecting Daspin's power over the company. Div. Br. at 23-28. Daspin also prevailed on inclusion of his $82 million valuation of the IMC database in the January 2012 PPMs over strong resistance. Div. Br. at 67-68. Daspin set the agenda and insisted that his agenda be carried out and in almost every instance that is exactly what happened.

Moreover, Daspin ensured that his associate Agostini, and his wife, were the only signatories on the WMMA bank accounts. Daspin thereby controlled the purse strings through Agostini, who would not approve any payments without running them by Daspin.[3] Div. Br. at 28-31; Div. Ex. 200 (Board Resolution appointing Agostini sole bank signatory); Div. Ex. 380 (bank account opening form designating Agostini and Mrs. Daspin sole signatories).

[3] Daspin argues that a resolution was passed in 2012 that gave several other employees check writing authority. Br. at 13. But, as Main testified, that was "late in the game," and when they tried to implement the resolution, Agostini "refused to give up the checkbook." Tr. 1115:6-18. Daspin failed to introduce any evidence that anyone other than Agostini and Daspin's wife ever gained actual check signing authority.

Finally, numerous witnesses testified that when anyone dared disagree with Daspin, he overpowered them with verbal abuse and physical threats. *See, e.g.,* Div. Br. at 30-36. The fact that Daspin in a few instances acceded to collective resistance, such as in deferring certain of his consulting fees when there was no money to pay them, does not mean that he did not exercise substantial control over the companies. More to the point, however, even if his control was not complete, it was certainly substantial enough that it should have been disclosed in the PPMs. The failure to make any reference to Daspin's role in the WMMA Companies in the PPMs is indefensible.

II. Daspin's Claim That He Was Not Involved in Raising Money From Investors is Untenable

Daspin claims that Main and Lux admitted that they raised the money for WMMA, not Daspin, Br. at 12. Daspin's claim that he did not raise money from investors is preposterous. Aside from the obvious fact that the CBI and MKMA consulting agreements gave Daspin the sole right to "Financial Advisory services pertaining to raising capital from third party investors," (Div. Ex. 204; CBI agreement, paragraph 2(b)), numerous witnesses testified that Daspin was at the center of the companies' fund raising, that he designed the investor recruitment process, was the primary interviewer, decided who to bring in, and was the sole person who negotiated the terms of each investor's investment agreement and employment contracts. Main and Lux both testified that they had no involvement in soliciting potential investors and that they, and Agostini, had minimal involvement in interviewing the investors Daspin brought in. Div. Br. at 41-51.

Their testimony was corroborated by Andrew Young's testimony that Daspin was in charge of recruiting investors. Young testified that Daspin withheld his true name when he first solicited investors because his name was "poison" on the internet. It is also indisputable that

Daspin misled hundreds of potential investors into believing they were being solicited for high-paying jobs, which in fact were only a ruse designed by Daspin to lure them in for a manipulative and, at times, forceful investment solicitation. [4] *Id. See also,* Michael Diamond testimony regarding Daspin's deceptive, manipulative and forceful sales tactics (Div. Br. at 51-54; Tr. 2648-2717).

And each investor testified that they were solicited by Daspin and negotiated the terms of their investments and employment agreements with Daspin, and not with either Main or Lux or Agostini. Numerous emails also evidence that Daspin understood himself to be in charge of raising money from investors. *See, e.g.,* Div. Ex. 608 (Daspin email telling Main to leave the "smoke and mirrors" to him when expressing his desire to use the IMC contract to lure investors). That Daspin would even consider denying this obvious fact bespeaks the depths of his lack of credibility.[5]

III. Daspin's Claim That He Had No Involvement in the PPMs is Unfounded

Daspin incredibly claims that he had no involvement with the PPMS: "I did not write the ppms .. and therefore if there were any misstatements or errors', I had nothing to do with it, no responsibility, no connection..." June 27 email at 1. Daspin also claims that Nwogugu, a part-time, low level, non-lawyer employee, was solely responsible for the PPMs. Br. at 10. Daspin's

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[4] Daspin argues that he ultimately disclosed his true name to investors (Heisterkamp, though, testified that Daspin did not do so). However, that calculated belated disclosure does not excuse, or cure, Daspin's carefully designed scheme to lure unsuspecting job applicants in without the opportunity to do research on him before he could ply his gifts of charm, persuasion, deception and, if that did not work, pressure on them (*see*, for example, Michael Diamond's testimony how Daspin pressured and manipulated him in person, Div. Br. at 51-54). The very fact that Daspin considered it important to delay disclosure of his name if possible until he had the investor before him is evidence of the benefit to Daspin, and the detriment to investors, of that delayed disclosure and of its materiality, even if disclosure was later made when it suited Daspin.

[5] The Division addresses Daspin's claim that he was not a broker and did not violate Securities Act Section 15(a) below.

claims are easily rebutted. Numerous witnesses testified to Daspin's extensive involvement in drafting the PPMS and control over their contents.

Lux, Main, Young and Sullivan all testified that Daspin frequently dictated portions of the PPMs. In addition, Lux testified that he had no involvement in the PPMs. Main testified that his initial efforts to help edit the poorly written PPMs were eventually rebuffed by Daspin, who essentially told him to "butt out." And Lux and Main testified that neither they nor Agostini played any role in reviewing the final versions of the PPMs. Moreover, this testimony is extensively corroborated by the documentary evidence: the consulting agreements provided that CBI and MKMA were responsible for assisting in drafting the PPMs; and numerous emails evidenced Daspin's extensive involvement in and control over the contents of the PPMs. *See, e.g.*, Div. Br. at 55-60.

Daspin's claim that Nwogugu was the person responsible for the PPMs is unsupported by any evidence whatsoever. Daspin did not call, or even attempt to call, Nwogugu as a witness; he did not introduce any documentary evidence that Nwogugu in fact was responsible for the PPMs; and emails make clear, as does common sense, that, like everyone else, Nwogugu answered to Daspin. *See, e.g.*, Div. Exs. 37, 93, 237, 243, 514 (emails evidencing Daspin's control over Nwogugu's work).

Moreover, although there is overwhelming direct and circumstantial evidence that Daspin was in fact the person at the WMMA Companies who had "ultimate authority" over the PPMs, that question is only relevant as to the Exchange Act Section 10(b) and Rule 10b-5(b) claim. Indeed, the Court need only find that Daspin, knowing that the PPMs contained false and misleading information, used the PPMs to solicit investments, to find him liable under Securities Act Section 17 and under Exchange Act Rule 10b-5(a) and (c). It is indisputable that Daspin

sold WMMA securities by means of the PPMs, which he knew contained numerous material misrepresentations and omissions, including regarding his family ownership interests in the WMMA Companies, his extensive involvement in and control over the WMMA Companies' operations, the true value of the IMC email database, and his prior criminal background and business history with a trail of lawsuits. Daspin was in charge of raising capital for the companies, the PPMs were the means through which he did so, and he had an obligation to insure that the contents of the PPMs were accurate before he shared them with investors. He failed to do so.

## IV. Daspin's Claim That He Did Not Intentionally Overvalue the IMC Email Database Is Baseless

Daspin claims that he did not intentionally overvalue the IMC contract. *See, e.g.,* Br. at 9. Daspin also advanced this argument in his Wells. The actual evidence adduced at trial, which far exceeded what Daspin's lawyers reference in the Wells, rebuts Daspin's argument.[6]

The Wells claims that Daspin was an appraiser of business assets in the $1 million - 100 million range and who has been accepted as an expert before legal tribunals. Wells at 29. However, there was no evidence adduced at trial that Daspin had any training or experience that would qualify him as an expert in appraisals or that he has been so recognized by any court. And the Division's valuation expert, Carl Sheeler, testified at length that Daspin's appraisal of the IMC email database was not founded on any recognized appraisal methodology, that Daspin failed to perform even rudimentary due diligence regarding the contents and functionality of the IMC database before valuing it and that Daspin's $82 million valuation of the IMC database

[6] The Court has stated that the legal arguments in Daspin's Wells submission, when he was represented by counsel, will be considered as part of his initial post-hearing brief. Post-Hearing Order at 1-2. The Division, accordingly, will address the relevant legal arguments set forth in pages 21-41 of the Wells at various points herein.

defied even the simple test of common sense. [7] Div. Br. at 36-40 (re lack of due diligence); 68-74 (Sheeler's testimony).

In addition, the suggestion that the original $5 million valuation of the database contained in the July 2011 PPMs was Nwogugu's valuation, Wells at 29, was flatly contradicted by evidence at trial that Daspin came up with the $5 million valuation, *see, e.g.,* Div. Ex 96 (email exchange with Daspin supporting the valuation and Nwogugu opposing it), and that Daspin, without any material change in circumstances, grossly inflated the valuation to $82 million just several months later.

The Wells argues that if Daspin had intended the $82 million valuation to defraud investors there is no reason why it would not have been included in the July 2011 PPMs, instead of the $5 million valuation. Wells at 31. However, the fact that Daspin did not feel it necessary to perpetrate this particular fraud sooner is no defense to its later commission. Moreover, numerous witnesses at trial testified that Daspin became insistent in the fall of 2011 that the valuation be increased from $5 million to $82 million, to make the companies more attractive to investors.

The Wells argument that if Daspin's $82 million valuation had been intended to defraud it would have supported an increase in the valuation of the WMMA securities, Wells at 31, is frivolous. There was no evidence of any rational basis for how Daspin priced the shares he sold

[7] Alfred Giulano, the independent trustee for the WMMA bankruptcy, also testified that he found the IMC contract to be worthless. Tr. 1753:2-17. Guiliano did respond to a hypothetical question posed by Daspin, as Daspin references albeit misleadingly at Br. at 3, that a contract term voiding a contract if either party is bankrupt "could" be a concern when valuing an asset. Tr. 1770:21-1772:11. However, Giuliano testified that his actual reason for finding the IMC contract to be worthless was "there was a contract and there was allegations that it had some value ... [t]here was no money that was monetized from it ... it was alleged that the valuation was a result of having all these e-mail addresses and, you know, we had no way of even getting those e-mail addresses, so I determined it had no value." Tr. 1753:2-17.

investors. In the fall of 2011, the IMC contract - the major asset on the balance sheet - was valued at $5 million. To convince investors that they were getting more for their money, Daspin intentionally overvalued that asset at $82 million. Increasing the share price to reflect that higher valuation would have been counterproductive to Daspin's scheme of defrauding investors into thinking they were getting more for their money than when the asset was valued at $5 million.

The Wells also claims that no member of the finance team was "questioning, complaining, or suggesting anything whatsoever untoward" in connection with Daspin's $82 million valuation of the IMC database. Wells at 31. However, the evidence at trial established that senior WMMA employees raised concerns to Daspin about the $82 million valuation, Div. Br. at 67-68, and Lux, an experienced internet marketer, testified that the valuation made no sense to him. *Id.*

Given Daspin's failure to perform even rudimentary due diligence, his lack of verified knowledge of what was in the database, the heated opposition to his $82 million valuation, his own prior $5 million valuation with no intervening change in circumstance, and given the undisclosed conflict of interest in Daspin, whose family owned warrants for control of the WMMA Companies, rendering the valuation, Daspin could not have created the $82 million valuation in good faith. Indeed, as the Court in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct. 1318, 1330 (2015) noted: "[i]nvestors do not, and are right not to, expect opinions contained in those statements [referring to formal documents filed with the SEC, as the PPMs were claimed to be] to reflect baseless, off-the-cuff judgments." Yet that is exactly what Daspin's valuation was. [8]

[8] The Wells also incorrectly argued that the mere fact that the related party transactions were disclosed in the PPMs is sufficient evidence that they were not fraudulent. Wells at 33-36. However, disclosing the fact of a transaction is not the same as disclosing the underlying facts

V. Daspin's Claim That He Did Not "Milk" the WMMA Companies is Incorrect as Well as a "Red Herring"

Daspin attempts to set up a red herring by arguing that he did not "milk" the WMMA Companies because he only received approximately $240,000 in fees and further argues that this is evidence that he lacked scienter. However, Daspin set up a fee structure through the CBI and MKMA consulting agreements that entitled him to exorbitant fees. Indeed, Daspin's admission that MKMA had accrued $1,860,000 in contingent and deferred debt as a result of fees for overcharged and unnecessary services it compelled the WMMA Companies to pay for in just the shows how much Daspin intended to "milk" the companies. *See also,* Div. Ex. 94 (11/14/2011 CBI/MKMA Invoice showing over $2 million in fees charged just in the first year). And, as discussed above, Daspin insisted that the three WMMA Companies board members agree to these terms as a condition of their employment agreements. Daspin thereby ensured that he would be the primary recipient of substantial fees for services he insisted the Companies pay him for, even though, as Lux testified, the Companies did not need Daspin to perform them. *See, e.g.,* Div. Br. at 20-23; Tr. 99-103. Thus, the evidence shows that Daspin did indeed intend to "milk" the WMMA Companies for substantial, unwarranted and unnecessary fees. The fact that Daspin did not ultimately receive more money in fees than he did was primarily a result of his inability to induce more victims to invest in the WMMA Companies to fund these payments, not his lack of greed. Further, Daspin's claim that he wanted the companies to succeed and that his family would have profited if it had done so is not inconsistent with the overwhelming evidence that he intended to and did profit from his fraudulent scheme. Moreover, this argument is a red herring

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that make it misleading. As discussed in more detail in the Div. Br. at 23-27, Lux and Main both testified at length that Daspin created numerous intra-company transactions that had no business purpose other than to create the false impression that the companies were worth more than they were, including by placing unwarranted values on non-existent contracts.

in that the Division need not prove that Daspin "milked" the companies to prove that he profited from his fraud and had the requisite scienter.[9]

VI. Daspin's Claim That the Division's Witnesses Were Liars is Baseless

Daspin argues that Lux, Main, Sullivan and Heisterkamp are "all liers or perjurers/or both," Br. at 11. In a July 20, 2019 email, Daspin also referred to ".... Your vermin witnesses, Mr. Main, Mr. Heisterkamp, Mr. Main, Mr. Sullivan and that hateful abortion misnamed Mr. Diamond...." The Wells also attempted to attack the credibility of anticipated Division witnesses. This portion of the Wells is arguably not legal argument of the type that the Court has indicated it will consider. However, in any event, the arguments made therein and by Daspin are meritless. First, and most importantly, there was overwhelming evidence of Daspin's fraud independent of the credibility of any witness. For example, the undisputed documentary evidence established that: (1) Daspin's family owned controlling interests in WMMA Holdings which in turn owned a controlling interest in the WMMA Companies; (2) Daspin played a substantial role in the operation of the Companies as evidenced by the CBI and MKMA Consulting Agreements; (3) Daspin had a prior felony bankruptcy conviction; (4) the $82 million valuation of the IMC email database performed by MKMA was actually the creation of Daspin, who had a blatant undisclosed conflict of interest in valuing that asset given his family ownership interest in the WMMA Companies; and (5 ) none of these material facts were disclosed to potential investors in the PPMs that Daspin used to sell shares in the WMMA companies. These incontrovertible facts alone are sufficient to establish Daspin's securities

[9] There is no support for Daspin's claim, Br. at 4, that he and his wife advanced over $3,500,000 to the companies or that Daspin waived over $1 million in fees. Daspin did defer certain fees after it became clear the company could not afford to pay them, or converted them into equity, which he then sold back to the company to receive payments through the stock repurchase program. See Baier Ex. 495 (referencing "1 of 40"; "2 of 40" etc. stock repayments).

fraud independent of any witness testimony.

Second, the Well's attempt to attack the credibility of anticipated witnesses is largely irrelevant given that it focuses on witnesses who did not testify at trial (such as Puccio, Bederjikian and McFarlane), and alleges facts that were not established by Daspin at trial (such as Nwogugu's alleged role in drafting the PPMs), which numerous actual trial witnesses and documents established was subordinate to Daspin's role. The Wells arguments that remain are meritless. The Wells argues that Daspin could not have mislead Main into thinking that Lux was a cash investor because Main signed Lux's employment agreement which, the Wells claims, made clear Lux was not a cash investor. Wells at 39. This argument fails because there is nothing in the Lux employment agreement, Div. Ex. 55, that speaks to whether or not Lux previously invested in WMMA, and there is no evidence that Main reviewed or signed Lux's agreement before he made his investment. Indeed, to the contrary, Main testified that he did not discuss any of the terms of Lux's employment agreement with him, Tr. 821:19-822:4; and Main made his investment by check dated December 15, 2010, Div. Ex. 166, and the Lux employment agreement, also dated December 15 2010, was presented to Main to sign sometime "after the fact," Tr. 822:5-11.

The Wells also claims that Sullivan lacks credibility because, when he stated in a declaration filed in a bankruptcy proceeding that Daspin had demanded that Sullivan not issue 1099's to Daspin, his wife, his associate Larry May, CBI or MKMA for income they received from the WMMA Company, he failed to tell the court that he had allegedly been told by some unidentified "top CPA guys" that no such issuance was required. However, Sullivan denied being aware of any such advice when he filed his declaration, Tr. 2161:11-13, and Daspin's own transcript of the shareholder's meeting which is the source of this claim attributes receipt of this

"advice" to another investor, not Sullivan. Moreover, a reading of the shareholder meeting transcript provides no information whatsoever as to what hearsay "advice" was given to the other investor, or by whom, or the expertise of that person, based on what unknown facts. Thus, even if Sullivan had recalled this third-hand at best "advice," he had no obligation to pass that hearsay opinion of dubious value from an unknown source along to the bankruptcy court. As this Court observed at trial, this line of questioning had no relevance to Sullivan's credibility. Tr. 2162-2167.

The Division respectfully submits that its witnesses were credible and that their testimony was amply corroborated by documentary evidence.

VII. Daspin's Claim That Various Witnesses Exonerated Him is Baseless

Daspin asserts that Gregg Lange, Andrew Young and Elizabeth Baier exonerated him of fraud charges in their testimonies. The trial record proves the contrary. Daspin writes that: "MAR LANGE, YOU RWITNESS STATEDI WAS MORALAND DID NOT VIOLATE ANY LAWS WHIHE WAS AT WMMA, MR YOUNG STATED THE SAME THNG" at 2; "leavingmrlangewho aittedi wsmaralandhnest" at 3; "Judicialnotice should be takenthat the SECwitnessMrLengeandMr Young stated thati didjotviolateanylws whilemthey worledatWMMAand thatcovered oct 2010 to 8/1/2012" at 4. He also claims that: MS BEIR STATING THAT I DID NOT WITH MKMA EARN NOT A PENNY MORE THAN$240,000.00 IN 15 MONTHS EXACTLY AS THE CONTRCT PERMITS" at 4.

Yes, Lange testified that Daspin was "perfectly respectful to him" and that "to his knowledge," he never saw or heard Daspin "say something that would be illegal or criminal or immoral." (Tr. 2345:4-5 and 6-9). However, Lange also testified that "[t]he most obvious deception to [him] prior to his investment was Daspin's effective control of the board so that he

could veto any operational decision;" (Tr. 2352:14-23); he characterized the description of the IMC contract as a "lie in the PPM" (Tr. 2298:2); testified that he did not know family partnerships owned by Mrs. Daspin held warrants to purchase more than 92 percent of WMMA Holdings and would not have invested if he had known those facts (Tr. 2293:16-24 and 2294:10-14); and characterized the nondisclosure of that ownership structure as a "breach of faith on behalf of the company" (Tr. 2294:22-23) and as "obviously a behind-the-back kind of operation" (Tr. 2297:9-10). Far from exonerating Daspin, Lange's testimony amply established Daspin's fraud.

Likewise, yes, Young testified that to his knowledge no statements in the PPMs were untrue (Tr. 1314:11-14) and that Daspin never asked him to participate in any action that was illegal, or that he thought was illegal or immoral (Tr. 1214:21-24). However, Young was also asked if he had any knowledge of the substantive business matters described in the PPMs and he answered "No." Tr. 1322:25-1323:6. Moreover, Young's testimony made clear that Daspin was at the center of a scheme to defraud potential investors by luring them into the WMMA offices under the false pretense of lucrative job openings. He testified that he sent "well more than a thousand" (Tr. 1271:23-24) emails to unwitting job-seekers, such as Div. Ex. 336 to Mr. Lange, that were authored by Daspin (Tr. 1267:9-1268:8) inviting them to apply for positions at WMMA that would pay between [redacted] in salary. Young testified that Daspin then introduced himself to these job-seekers, on phone or skype interviews, as "Ed Michael" because "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. Young also testified that Daspin, after baiting these job seekers with lucrative promised salaries, would subsequently switch to pressuring them to instead invest $250-$500,000 as a condition of employment. Indeed, the only

"salary" on offer was the small amounts that investors would essentially pay themselves through the share repurchase program, thereby reducing their 401(k) retirement funds. Thus, Young's testimony was among the most powerful and disinterested evidence of Daspin's fraud.

As for Ms. Baier, her testimony and work product demonstrated that Daspin raised $2,470,333 in total investment funds (Div. Ex. 493), as a result of his fraudulent scheme, and that the net funds transferred directly to the Daspins was $246,045.56 (Div. Ex. 496A), far more than any investor received in repayments to themselves. In no way did her testimony exonerate Daspin.

VIII. Daspin's Claim That He Was Not an Unregistered Broker is Baseless

In his Wells, Daspin argued that he did not violate Section 15(a) of the Exchange Act by acting as an unregistered broker-dealer because: (1) he allegedly was not paid for obtaining investments into the entities; and (2) he did not manifest the other indicia of a broker-dealer. Wells at 21-28. The evidence at trial proved otherwise. A broker is defined as "any person engaged in the business of effecting transactions in securities for the accounts of others." 15 U.S.C. S. 78c. As Daspin acknowledged, courts look to an array of factors to determine whether a person qualifies as a broker, including whether a person: (1) works as an employee of the issuer; (2) receives a commission versus a salary; (3) ever sold securities of another issuer; (4) participates in negotiations between the issuer and an investor; (5) provides either advice or a valuation as to the merits of the investment; and (6) actively (rather than passively) finds investors. Wells at 25, citing *SEC v. Hansen,* 1984 WL 2413, at*10 (S.D.N.Y. April 6, 1984).

Daspin, through CBI and MKMA, received transaction-based compensation for selling securities to investors. *See* Div. Ex. 495 referencing payments relating to various investors. Daspin argues that these were merely headhunter fees for recruiting employees, noting that the

fees were tied to the size of salaries, not the size of the investments. However, the consulting agreements themselves, which set forth these fees, made a clear distinction between the structure of fees paid for mere sweat equity employees (which were tied to consistently lower base salaries, were limited in duration and had a $25,000 cap), and the substantially higher fees that were paid for obtaining investor employees (which were tied to the higher base salaries for investors, continued indefinitely and had no cap). The fact that the fee was ostensibly tied to the investor's first year salary (presumably to aid in making the very argument that it was only a headhunting fee), is immaterial, especially where the base salary for investors was always higher ($150,000 per year), than for the typical sweat equity employee ($125,000 ). Further, the fact that the fee was not directly tied to the size of the investment does not erase the fact that Daspin received more compensation for obtaining investments than for hiring sweat equity employees; and the fact that he did not receive additional compensation after the initial investment also does not erase the fact that he received compensation for the first investment. Thus, it is incontrovertible that Daspin received a higher fee for obtaining investors, and actually received payment of those fees, than the fee he was entitled to for signing up sweat equity employees; and this difference constituted transaction-based compensation for selling securities.

Second, contrary to Daspin's conclusory Wells claim that he did not meet the other indicia of being a broker, Daspin Wells at 26-27, there was substantial evidence at trial that Daspin met the indicia of a broker: he was not, by his own admission, an employee of the company; he negotiated the terms of the securities sales between the issuer WMMA Companies and investors; he offered investment advice to the investors, *see* Division Brief at 101-102; Tr. 730:17-18 (Main testimony regarding "putting together "two scenarios involving different cash levels" of investment; Div. Exs. 329 and 330 (emails discussing same) and he actively found

investors (Div. Br. at 103 and generally Andrew Young's testimony, Tr. 1260-1265). Thus, even aside from the fact that he received transaction based compensation, there was ample evidence that Daspin acted as a broker. Finally it is undisputed that he was not a registered broker.

The sole case cited in Daspin's Wells is easily distinguishable. In *SEC v. M&A West, Inc.*, 2005 WL 1514101 (N.D. Cal. June 20, 2005), the court found that a defendant, Medley, was not a broker where his activity was limited to "bringing together the public shell companies and private operating companies" and assisting in the reverse merger of the private companies into the shell companies by drafting agreements, obtaining concurrence to terms and obtaining signatures for a fee. *Id.* at *9-10. There was no evidence that Medley engaged in any interaction with members of the investing public. These facts are vastly different from this case, where Daspin actively solicited hundreds of potential investors over a substantial period of time to invest in the WMMA Companies, sold securities of the WMMA companies to members of the investing public, participated in negotiations between the issuer WMMA companies and the investors, and provided advice and valuation of the merits of the investments to potential investors. Thus, unlike the defendant in *M&A West, Inc.*, Daspin played a substantial role as a broker of sales of WMMA securities to the investment public and met numerous criteria for a broker as set forth in the above-referenced case law.[10]

## IX. Strong Remedies are Warranted Given Daspin's Extensive Fraudulent Conduct, His Refusal to Acknowledge Wrongdoing and His Continuing Misconduct

The Division's Brief set forth extensive factual and legal bases for the Court to impose appropriate sanctions on Daspin. *See* Div. Br. at 105-114. Daspin continues to deny any wrongdoing whatsoever: "No fraud by me, MKMA, My wife and or Mr. Agostini, just McGrath

[10] Daspin does not address the Section 5 violation in either his brief or his Wells. Accordingly, the Division relies upon its Div. Br. at 94-98 regarding Daspin's Section 5 violation.

covering his rat poisoned [redacted]," Br. at 4; calling investor witnesses "all liers or perjurers/or both," Id. at 11; arguing that "the persons' alleged to be victims [Sullivan, Main, Lockett, Heisterkamp, Bederjikian, Puccio ...] which actuality were the real ... defendants" Br. at 1; and going so far as to claim: "I was a Philanthropist characterized as a crook," Br. at 6.

Daspin also continues to show no recognition of the harm he has caused. He congratulates himself on allegedly having the conscience not to solicit more money from investors than they could afford to lose, falsely claiming that he would only solicit investors that had at least $200,000 to lose. He claims: "Who wants that !?on ones' conscience! ??," "I couldn't live whith myself]" Br. at 8. But as Darin Heisterkamp testified, Daspin "suggested that 401(k) money was eligible to satisfy an investment consideration in the company... " Tr. 2373:7-11. And Tom Sullivan testified that Daspin told him that he needed to raise his investment amount from $250,000 to over $350,000 in order to get the title of CFO instead of Treasurer, knowing that the investment was one hundred percent funded from Sullivan's 401(k) savings. Tr. 1598:5-12. Thus, Daspin still shows no compunction for targeting these investor's retirement "reserves" or "backstops" to fund highly speculative investments in Daspin's companies, which has left Sullivan, now 61 (Tr. 1882:22-23), "devastat[ed]" (Tr. Tr. 1886:24) and Heisterkamp "bankrupt and homeless." Tr. 2469:12-2470:3.

Moreover, Daspin's conduct post-hearing re-emphasizes the need for serious sanctions. For example, on July 20, 2019, Daspin sent an email addressed to Division trial attorney McGrath containing the following abusive statements and threats:

- [redacted]

- Daspin referred to the Division's witnesses as "....
- ,
....."
- Daspin referred to " "

In his June 27, 2019 email to the Court, Daspin made the following insults and threats:

" And in his Br. at 2, Daspin made the following threats to Division

Daspin clearly continues to be a threat to investors and others. We respectfully ask this Court to find Daspin liable for all of the charges in the OIP and to impose the requested sanctions to deter Daspin from perpetrating his uniquely virulent schemes to defraud on others in the future.

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Respectfully submitted,

Kevin P. McGrath
Barry O'Connell
Securities and Exchange Commission
New York Regional Office
200 Vesey Street – Suite 400
New York, N.Y. 10281-1022
Ph: (212) 336-0533 (McGrath)
Fax: (703) 813-9544
mcgrathk@sec.gov