UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17550

In the Matter of TOD A. DITOMMASO, ESQ., Respondent.	**RESPONDENT TOD ANTHONY DITOMMASO'S BRIEF**

Tod A. DiTommaso ("DiTommaso") submits his Brief as follows:

I. RESPONDENT RELIED ON FACTUAL INFORMATION AND STATEMENTS, THAT ON THEIR FACE APPEARED TO BE TRUE, SUPPLIED BY THE ISSUER, THE ORIGINAL SECURITIES HOLDERS, AND ISSUER'S CORPORATE ATTORNEY

DiTommaso relied on the truth of the information provided by the client, the client's corporate counsel, and the securities holders. Each transaction was done separately without reviewing past transactions, and there was a significant time period between each transaction. There was no reason to believe that the information provided was inaccurate, the information did not appear to be irregular on its face, and there were no known circumstances that would make reliance unwarranted.

DiTommaso was introduced to Guy Jean-Pierre[1]; a Florida based attorney by

[1]DiTommaso was unaware of any issues that Mr. Jean-Pierre had with his right to practice before the OTC Markets, or concerning any S.E.C. actions against him, until on or about May 28, 2014, when DiTommaso received a Document Preservation Letter from Kim Greer, Esq., of the Division.

DiTommaso's good friend, licensed broker, David C. Adams. This supports that DiTommaso's trust of the Mr. Jean-Pierre's probity was reasonable. Mr. Jean-Pierre explained that he was a corporate lawyer for various entities and that he would like DiTommaso, as outside counsel, to prepare attorney opinion letters concerning those companies. DiTommaso agreed to Mr. Jean-Pierre's request, that any attorney opinion letters he issued, would be at a discounted price, in exchange for Mr. Jean-Pierre ghostwriting the letters.[2]

Sometime in July 2011, Mr. Jean-Pierre contacted DiTommaso about issuing attorney opinion letters in relationship to Fusion Pharm, Inc. ("FSPM"). As part of learning about FSPM, a meeting was arranged with FSPM's president, Scott Dittman. From an e-mail exchange, it appears that a William Sears was helping Mr. Jean-Pierre arrange the meeting. DiTommaso had no direct contact with William Sears. At that time, DiTommaso did not know who William Sears was nor what his relationship was to FSPM. After that meeting had concluded, there was no reason for DiTommaso to ever review the subject e-mails again and he never did until the S.E.C. investigation.

Thereafter, from July 2012 - August 2013, DiTommaso prepared some attorney opinion letters regarding the safe harbor of Rule 144 for non-affiliate shareholders on behalf of FSPM. In issuing such letters, it is common practice for a securities attorney rely on factual representations, in the form of supporting documentation, received from the issuer and the original securities holder, including statements that the original securities holder and other parties to the transaction are not affiliates of the issuer. The supporting documentation would

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[2]It is a common practice in the legal field for one attorney to ghostwrite letters, briefs, motions, etc., for another attorney. This does not mean that due-diligence in investigating the supporting facts and law was not done.

include such items as: Stock Certificates, Corporate Resolutions, Debt purchase agreements, Stock purchase agreements, Conversion agreements, Promissory notes, Conversion notices, and Non-Affiliate letters signed by the Issuer and the transferee/original securities holder.

This was the case for DiTommaso, who did not have personal knowledge of the particular information pertaining to each transaction, and had to rely upon factual statements provided by FSPM, the original securities holders, and FSPM's corporate counsel/corporate secretary. For each attorney opinion letter, Mr. Jean-Pierre would ghostwrite a draft of the letter, which he would forward, along with all required supporting documentation, to DiTommaso. Each separate attorney opinion letter was prepared as a separate transaction separated by significant period of time and was based on the factual representations received at the time of the request. Each separate transaction contained certificates of the officers of FSPM, and the original securities holders that explicitly stated warranties and representations as to the non-affiliate status of the concerned parties.

It was DiTommaso's practice for drafting any attorney opinion letter, upon receipt of supporting documentation, to verify the predicate facts for establishing the Rule 144 safe harbor, by taking various steps, including, but not limited to:

- Looked at the length of time the securities were held;
- Looked at how and under what circumstances the securities were obtained;
- Examined the basic underlying agreements or operative documents for the securities transaction in question;
- Looked at whether the security holder had made any payment to any other person in connection with the proposed sale of the securities;

- Checked to see if OTC filings were current, complete and contained current information available to the public about issuer, including information concerning its shell status; and,
- Checked the affiliate status of the parties (relying on the original securities holder and the issuer's affirmative statements that the parties involved were not affiliates).

With regard to FSPM, at the time DiTommaso prepared each separate attorney opinion letter, he was satisfied that he had reviewed sufficient facts to support each of the legal opinions that were expressed in that attorney opinion letter. DiTommaso did not see anything unusual or remarkable that would have led one to believe that the factual representations were false or that any of the subject shareholders and/or debt holders were affiliates. The following attorney opinion letters are the subject of this matter:

- July 23, 2012 - Todd Abbott (original securities holder). The following documents indicate non-affiliate status:
  - Share Purchase Agreement (Ex.A);
  - Stock Certificate 7385 (Ex.B);
  - Original securities holder Statement re: Non-Affiliate Status of both Todd Abbott (original securities holder) and Microcap (transferee) (Ex.C);
  - FSPM Officer Certificate re: Non-Affiliate Status of both Todd Abbott (original securities holder) and Microcap (transferee) (Ex.D).

Nothing in the documents received for this **separate transaction** (including the transmittal e-mail) indicate any red-flags re: non-affiliate status.

- January 4, 2013 - Bayside Realty Holdings, LLC (original securities holder). The

following documents indicate non-affiliate status:

- FSPM Officer Certificate re: Non-Affiliate Status of Bayside Realty (original securities holder) (Ex.E);
- Original securities holder Statement re: Non-Affiliate Status of Bayside Realty (original securities holder) (Ex.F).

Nothing in the documents received for this **separate transaction** (including the transmittal e-mail) indicate any red-flags re: non-affiliate status.

- March 13, 2013 - (1) Black Arch; (2) SGI Group; (3) Starcity; (4) Vera Group; and (5) Mauriello [Five opinion letters]. The original securities holder was Bayside. The following documents indicate non-affiliate status:
  - Securities Transfer Agreement (Bayside and Black Arch) (Ex.G, pp. 6-7, p. 9);
  - Securities Transfer Agreement (Bayside and SGI Group) (Ex.H, pp. 6-7, p. 9);
  - Securities Transfer Agreement (Bayside and Starcity) (Ex.I, pp. 6-7, p. 9);
  - Securities Transfer Agreement (Bayside and Vera Group) (Ex.J, pp. 6-7, p. 9);
  - Securities Transfer Agreement (Bayside and Mauriello) (Ex.K, pp. 6-7, p. 9);
  - Statement re: Non-Affiliate Status of Vera Group (Ex.L);
  - Statement re: Non-Affiliate Status of Starcity (Ex.M);
  - Statement re: Non-Affiliate Status of Mauriello (Ex.N);
  - Statement re: Non-Affiliate Status of SGI Group (Ex.O);
  - Statement re: Non-Affiliate Status of Black Arch (Ex.P);
  - FSPM Officer Certificate re: Non-Affiliate Status of Bayside Realty (original securities holder) and each of the five transferees (Ex.Q).

securities holder) (Ex.V).

Nothing in the documents received for this **separate transaction** (including the transmittal e-mail) indicate any red-flags re: non-affiliate status.

DiTommaso complied with his obligation to conduct a inquiry into the factual basis supporting an exemption when preparing the attorney opinion letters. DiTommaso believed the factual statements made by FSPM, its corporate counsel, and the other parties to each separate transaction. DiTommaso found no reason not to trust these persons and entities as well as the information contained in the supporting documentation. The information does not appear to be irregular on its face, and there were no known circumstances that would make reliance unwarranted. DiTommaso did not have actual knowledge or actual notice that any documents were not accurate and complete. DiTommaso had no reason to think that any of the information and representations were inaccurate.

DiTommaso's meeting with FSPM's director, Scott Dittman, wherein they discussed his company and its business, as well as his prior working relationship with FSPM's corporate counsel, supports that DiTommaso's trust of the client's probity was reasonable. *See, Schatz v. Rosenberg*, 943 F.2d 485, 495 (4th Cir.1991), in which the court found in the context of a Section 10(b) claim that "[l]awyers do not vouch for the probity of their clients when they draft documents reflecting their clients' promises, statements, or warranties." See also:

- *Escott v. BarChris Const. Corp.*, 283 F.Supp. 643, 683 (SD NY 1968), in the context of a the validity of a registration statement, all persons (other than the issuer) may defend on the ground that they reasonably believed the registration statement to be true and complete. *See also, Monroe v. Hughes* (9th Cir. 1994) 31 F3d 772, 774-776, due

diligence performed by accountants adequate as matter of law;

- *Wafra Leasing Corp. 1999-A-1 v. Prime Capital Corp*, 2004 WL 1977572 (N.D. Ill. Aug. 31, 2004), summary judgment granted to lawyer on plaintiff's assertion of Rule 10b-5 liability for allegedly false statement in opinion letter based on the fact that no information had come to counsel's attention that would have given counsel actual knowledge or actual notice that any documents, including a private placement memorandum, were not accurate and complete;
- *Fortress Credit Corp. v. Dechert LLP*, 934 N.Y.S.2d 119 (N.Y. App. Div. 2011). No liability on part of the law firm because the opinion letter was a typical third-party opinion that made certain assumptions, and relied upon facially proper certificates, etc. The New York appellate court ruled that the law firm had not undertaken an obligation beyond issuing a legal opinion based upon facts supplied by its client. The law firm had no duty to investigate the factual underpinnings of the transactions.
- Provided that there is a sufficient level of trust in the client's probity, a lawyer may properly assume that the facts as related to him by the client are accurate, unless the alleged facts are suspect or incomplete in a material respect, are in any way inherently inconsistent, or are on the basis of other known facts open to question. In rendering an opinion concerning the sale of unregistered securities, a lawyer should inquire into relevant facts, and although counsel "should not accept as true that which he should not reasonably believe to be true, he does not have the responsibility to 'audit' the affairs of [the] client or to assume, without reasonable cause, that [the] client's statement of the facts cannot be relied upon." ABA Comm. on Ethics and Professional Responsibility,

Formal Op. 335 (1974), 60 A.B.A.J. 488, 490 (1974).

II. ADDITIONAL FACTS

- Each of the purported red flags come from documents that were not part of any of the subject transactions and were irrelevant to the subject transactions:
  - FSPM stock certificates signed by "Sandra L. Sears" as President of FSPM. These stock certificates and the attorney opinion letters that DiTommaso issued relating to these shareholders are not at issue here. None of these stock certificates were part of any of the subject transactions. Furthermore, many people have the same last name without there being any actual family relationship.
  - The e-mails containing a cc to/from William Sears or an e-mail chain with an exchange between William Sears and others were not part of or relevant to any of the subject transactions.
- At no time during the period relevant to this hearing, did FPSM or any of its agents, make any mention in any of FPSM's financial statements, notes, or quarterly and annual reports, that William Sears or any of the entities through which he conducted business was an affiliate of, or related party to FSPM.
- FSPM failed to identify its transactions with Meadpoint or Sears as: (a) material transactions with any director or executive officer; (b) transactions by any person beneficially owning shares carrying more than 5% of voting rights; (c) transactions with any member of the immediate family (including in-laws) of any director or executive officer.
- DiTommaso had absolutely no stake whatsoever in the success or failure of FSPM.

- Other than issuing the attorney opinion letters, DiTommaso did not have any role: in drafting the supporting documents; in the business operations of FSPM; in devising the corporate financing scheme; in finding investors and buyers; or in structuring any sales.
- DiTommaso is unaware of any investor harm.
- This was an isolated incident, DiTommaso has never been investigated by any individual or entity for any type of professional negligence or malpractice for any work he performed as an attorney.
- The revenue stream DiTommaso received was very modest ($1,475.00 in fees).
- DiTommaso has cooperated fully with the Division's investigative efforts (He only objected to production of discovery (Attorney-client privilege) when it was his ethical duty to do so).
- The underlying investigation has heightened DiTommaso's sensitivity to the issues that the S.E.C., deems important.
- There is little likelihood of a recurrence. Prior to being informed of the S.E.C. investigation in 2014, DiTommaso has required both the securities holder and the issuer to provide more extensive factual representations to support a Rule 144 exemption.
- This enforcement action has already had a profound and extreme adverse impact on DiTommaso, both professionally and personally. DiTommaso is no longer performing any work in the securities industry.

III. SANCTIONS/INABILITY TO PAY

DiTommaso relied on FSPM, its corporate counsel, Mr. Jean-Pierre, and its director Scott Dittman to provide factually correct representations concerning the affiliate status of the subject

parties. In each of the subject transactions, all of the subject parties explicitly asserted their non-affiliate status. A review of the documents supporting any separate transaction does not give rise to any irregularity on its face, and there were no known circumstances that would make reliance unwarranted. There are no warning signs if each separate transaction is reviewed separately. DiTommaso believed that each separate transaction was covered by the Rule 144 exemption. DiTommaso was unaware of any circumstances foreclosing the exemption.

When all of the transactions, including all of those that are not at issue, are compared together, yes there are "red flags." However, DiTommaso did not review past transactions when working on a new transaction. When all of the transactions are compared together, then it is negligent or careless to have not noticed "red flags." However, it would be unreasonable to require an attorney to review all past transactions when a new request for an opinion letter is received without some circumstance indicating such inquiry should be made. If DiTommaso had noticed any "red flag," he would have inquired further. If DiTommaso had discovered the true affiliation status of the subject parties he would not have issued the subject opinion letters.

DiTommaso's demonstrated current and future financial condition as set forth in Form D-A (17 C.F.R. § 209.1) makes it highly unlikely that he will be able to pay any disgorgement, prejudgment interest, and/or a civil penalty pursuant to 17 C.F.R. § 201.630. Under these circumstances, disgorgement, prejudgment interest, and a civil penalty should not be imposed.

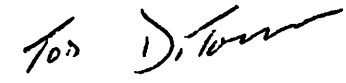
IV. CONCLUSION

There is no doubt that FSPM, its corporate counsel, Mr. Jean-Pierre, Scott Dittman and William Sears knowingly made false representations regarding non-affiliate status to DiTommaso to induce him to issue opinion letters that stated the restrictive legend could be

anything unusual or remarkable that would led one to believe that the statements were false or that any of the subject shareholders and/or debt holders were affiliates. In fact, a current review of each separate transaction by itself, without the benefit of comparing it with the other transactions, still does not raise any "red flags"[3]. If the representations had been true, then each attorney opinion letter would have been valid.

Dated: April 21, 2017

Respectfully submitted,



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[3]Had DiTommaso known, or had a reasonable belief that he had been provided with false information, or that any security holder was in fact an affiliate, he would have not issued the attorney opinion letters.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Brief was served on this 26th day of April 2017, as follows:

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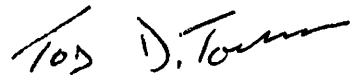
Respectfully submitted,



Tod Anthony DiTommaso