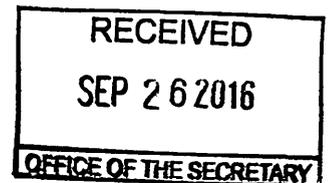


**HARD COPY**

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



**ADMINISTRATIVE PROCEEDING  
File No. 3-15764**

<b>In the Matter of  GARY L. MCDUFF,  Respondent.</b>
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**SUPPLEMENTAL DECLARATION OF JANIE L. FRANK**

I, Janie L. Frank, do hereby declare under penalty of perjury and in accordance with 28 U.S.C. § 1746, that the following is true and correct, that this Declaration is made on my own personal knowledge, and that I am competent to testify as to the matters stated herein.

106. This declaration supplements my August 12, 2016 declaration, submitted in support of the Division's Post-Hearing Brief (hereinafter "Aug. 12<sup>th</sup> Dec.") and is submitted for the limited purpose of responding to specific misstatements made by Respondent Gary L. McDuff ("McDuff") in his Post-Hearing Brief and supporting declaration. The Aug. 12<sup>th</sup> Dec. is incorporated herein by reference, and paragraph numbers herein are consecutive to that declaration.

**Review of the Investigative File**

107. In ¶ 44 of his declaration, McDuff states that the Division "allowed" his mother to examine the investigative file on July 7-8, 2014. At the initial prehearing conference, I suggested that McDuff designate a representative to visit the Division's offices to review the file.

(Mar. 27, 2014 PHC, at 26:8-20; 34:12-20). McDuff preferred that he be released from the Fannin County Detention Facility, where he was in custody at the time, to review the file personally, an option neither the Division nor the Court had any ability to implement. (*Id.*, at 10:16-11:8). Initially, the Court ordered the Division to send McDuff all the documents that the Division intended to rely on in support of its motion for summary disposition, which the Division did. After the parties each filed their motions for summary disposition, McDuff's mother contacted me about reviewing the file.

108. McDuff's mother, as his designated representative, reviewed the file in the Division's offices in July 2014. Referring to GLM Exhibit 2, my July 10, 2014 letter to Mrs. McDuff, McDuff declares in ¶ 46 that I informed his mother that the copies she had made had been redacted. The redactions, however, as is explained in the letter, were solely to remove Personally Identifiable Information, as is customary.

109. In ¶ 52, McDuff refers to his mother's January 9, 2015 email to me, seeking additional documents that she had been unable to locate during her file review in July 2014. McDuff states that I denied her request and stated I had already provided everything I was required to provide. What McDuff omits is that Mrs. McDuff explained to me that McDuff was looking for specific documents that he needed for his criminal appellate brief, and she asked me to find them and send them to her. My Jan. 10, 2015 response to Mrs. McDuff, a true and correct copy of which is attached hereto as Exhibit "J" and incorporated herein by reference, shows that I informed her that the Division was not obligated to provide such records but that we were obligated to make available the file during the administrative proceeding, which we had done. I further told her that we were not obligated to make items available for other proceedings or to search the records to retrieve particular items. Ex. "J."

Coffman spent five hours on the phone with McDuff, in the file investigation room, discussing the file. After the phone call ended, Coffman left, and McDuff's daughter Christa arrived and began scanning documents previously reviewed. On the following Monday, May 23rd, only Christa returned, at 3 p.m., to finish scanning selected documents until she departed at 6:30 p.m.

c. Christa McDuff requested witness contact information while they were in our office, and I informed her that the information could be located in the materials we produced for their review. I do not recall McDuff asking me to provide Coffman or others with witness contact information. McDuff did request the Division to arrange conference calls for him to speak with Division witnesses, but I declined to do so.

#### **McDuff's Receipt of Documents**

113. In ¶ 54(r), McDuff discusses a June 7, 2016 email I sent to Shiloh McDuff concerning the fact that six boxes of documents he sent McDuff in prison had been returned to him because of the failure by Shiloh and/or McDuff to include inside the boxes the BOP's package authorization forms. (GLM Exhibit 3). McDuff's description of that email implies that this was something he was learning for the first time. As I explained previously, in ¶ 84, I know that McDuff was previously aware of the prison's requirements for receiving packages, including use of the package authorization form, because the prison staff told me that all inmates are informed of the package-receipt procedure when they first arrive at the prison, as the procedure is described in the inmate's orientation manual. While I was visiting the prison, I saw a copy of the orientation manual and saw that policy in the manual. In addition, the prison staff informed me that McDuff was well aware of the procedures to receive packages in prison and knew about

the package authorization form because he had previously failed to comply with the procedure and been denied other packages.

114. McDuff offered approximately 40 additional documents after the hearing concluded, which the Division did not receive until Sept. 1, 2016, after the deadline for filing post-hearing briefs. Included in those exhibits were at least six Forms 302, the summaries prepared by federal criminal investigators after conducting witness interviews. I have never before seen the 302s that McDuff now offers as exhibits. The Division has never had copies of any Forms 302 in this case. I prepared the Division's file for review by McDuff's designated representatives twice and have never seen any 302s before September 1.

#### **McDuff's Defense Team**

115. In ¶ 54(w), McDuff claims he asked prison staff for a month how to get people approved to assist him during trial. It is unclear whether McDuff is discussing his request to have inmates assist him during the hearing or the procedure for approving visitors to attend the hearing (or both). While McDuff states he did not learn how to obtain approval to add individuals to his visitor list until my June 9, 2016 email to Shiloh, I know that McDuff was already aware of the procedure because he had previously obtained approval for his son Shiloh to be on his approved visitors list. McDuff further states that BOP unit manager David Sorrels told him that if I had instructed Sorrels or Landry to approve someone, it could have been done in minutes. I have no knowledge regarding statements Sorrels or Landry made, allegedly, to McDuff. When I first investigated what was required to bring visitors into the prison—including the witnesses and the participants in the hearing—Landry informed me that it would take a couple of weeks to go through all the steps, but that I should allow more time than that, in case there were snags. I was never informed that I or anyone within the Division could impact

the BOP's process for approving visitors, and in fact it has always been my understanding that we cannot. Neither I nor anyone else within the Division ever took any action to attempt to impact the BOP's process for approving visitors for McDuff.

**"Public Access"**

116. McDuff states in ¶ 54(x) that members of his family tried to attend and provide him with assistance during the hearing. The family members who arrived on June 15, 2016 were his mother and his brother, not the persons McDuff identified during the June 7, 2016 prehearing conference as people he wanted to have assist him during the hearing.

117. GLM Exhibit 20 is a declaration from Vivian McDuff describing the events of June 15, 2016. She states she went to the front desk of McDuff's prison, found out her name was not on the list, and then protested to me.

118. On June 15, 2016, I recognized Mrs. McDuff arriving at the front of the prison with someone else, who turned out to be McDuff's brother. After they came inside the prison, I approached her and asked her if she was there to attend the hearing. She said she was, and I told her that I was not sure that she was going to be allowed in. She said nothing about being there to assist McDuff during the hearing. Mrs. McDuff did not say anything else to me. She did not tell me that she was on her son's approved visitor list and had previously been vetted, and I have no knowledge concerning the truth or falsity of such a claim.

119. Mrs. McDuff's declaration also states that McDuff's aunt and uncle, who she claims were also allegedly previously approved visitors, were also denied entrance. I did not observe anyone else other than Mrs. McDuff and McDuff's brother arrive at the prison seeking entry to the hearing or being refused entry before the hearing commenced each day.

### Hearing transcripts

120. In Paragraph 54 (aa), McDuff discusses when he received his copies of the hearing transcripts. The Division voluntarily decided to send McDuff the transcripts as soon as we received them. On June 24th, I received an email from Shiloh McDuff, asking where the transcripts were. I responded, informing him that we had not yet received the transcripts and that we had no control over that process.

121. We received the transcript of the first day of the hearing in our office on June 29<sup>th</sup>. We mailed a copy of that transcript to McDuff that day. McDuff acknowledges in ¶ 54(aa) he received the first hearing day transcript on July 8, 2016. We received the June 16<sup>th</sup> transcript the next day, on June 30<sup>th</sup>. We mailed a copy of that transcript to McDuff that same day. We labeled both packages as "Legal Mail." We had no control over when and how those packages were delivered to McDuff.

122. McDuff refers in Paragraph 54 (gg) to transcript corrections he proposed and states that I did not respond to him. His fax containing, approximately ten pages of proposed corrections, was received in our office on the evening of August 9<sup>th</sup>. I did not see his letter and proposed corrections until the afternoon of August 10<sup>th</sup>. I went through all of his proposals and prepared a response, stating which corrections I agreed to and which ones I did not. I emailed that response to McDuff, through his son Shiloh, on August 12<sup>th</sup> at 2:21 p.m.

Further Declarant saith not.

Signed this 23rd day of September, 2016.



Janie L. Frank  
Counsel for the Division of Enforcement  
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Securities and Exchange Commission

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801 Cherry Street, Suite 1900  
Fort Worth, TX 76102-6882  
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**SERVICE LIST**

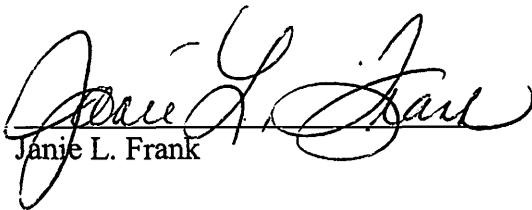
In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing *Supplemental Declaration of Janie L. Frank* was served on the persons listed below on the 23<sup>rd</sup> day of September, 2016, via certified mail, return-receipt requested:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Honorable Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Janie L. Frank, Esq.  
Fort Worth Regional Office  
Securities and Exchange Commission  
801 Cherry Street, Suite 1900  
Fort Worth, TX 76102

Mr. Gary L. McDuff  
Inmate Register Number [REDACTED]  
[REDACTED]  
[REDACTED]  
P.O. Box [REDACTED]  
Beaumont, Texas [REDACTED]

  
Janie L. Frank

**Frank, Janie L.**

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**From:** Frank, Janie L.  
**Sent:** Saturday, January 10, 2015 1:08 PM  
**To:** 'vivian mcduff'  
**Cc:** Reece, David B. (ReeceD@sec.gov)  
**Subject:** RE: Gary McDuff

Vivian,  
Happy New Year to you, too!

With respect to your request below, I'm afraid I'm not going to be able to help you. It sounds like Gary is asking us for documents to support his brief to the Fifth Circuit and to the U.S. District Court, but the Division of Enforcement is not obligated to provide such records. We were obligated to make available the investigative file during the administrative proceeding. We did that. I am sorry, but we are not obligated to make items available for other proceedings, or to search the records to retrieve particular items.

If you have any questions, please give me a call.  
Janie Frank

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**From:** vivian mcduff [REDACTED]  
**Sent:** Friday, January 09, 2015 10:51 AM  
**To:** Frank, Janie L.  
**Subject:** Gary McDuff

Janie , Happy New Year!

For his Appeal Brief, Gary McDuff needs all pages in the Documents mentioned in Lancaster's 3/25/06 Deposition with the SEC.

He also needs SEC Exhibits:

- # 54 "Joint Venture between Lancorp Group and the Megafund
- # 55 "Non-disclosure between Lancorp and Megafund
- #83 "Feb 25, 2005 from Lancaster to AA Insurance, reporting potential claim against Errors & Omissions Insurance
- #84 "Certificate of Insurance (Errors & Omissions insurance)
- # ? "Joint Venture Agreement" between Lancorp Group and Lancorp Financial Fund , dated Feb. or March 2005.

Gary has to identify all these in his Appeal Brief at the 5th Circuit and the District Court, which has to be filed ASAP..

You can send these to me by mail: Vivian McDuff [REDACTED]. Pasadena, TX [REDACTED].

Thank you so much,

Vivian

