UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

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

Respondent.

3-16509

THE DIVISION OF ENFORCEMENT'S POST-HEARING MEMORANDUM

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PRELIMINARY STATEMENT

Daspin orchestrated a scheme to defraud investors in Worldwide Mixed Martial Arts Sports, Inc. ("WMMA") and an affiliate, WMMA Distribution, Inc. ("WMMA Distribution" or "WDI"),[1] start-up companies formed to establish an international league of mixed martial arts tournaments.

From December 2010 through approximately June 2012, Daspin fraudulently raised over $2 million from seven investors in the Companies. Daspin devised a multi-pronged scheme to defraud investors. He was the mastermind behind the creation of the Companies. He then devised a scheme to hide his family's ownership interests in the parent company of WMMA and WMMA Distribution by first transferring those interests to three family partnerships, and then causing those family partnerships to transfer those interests to his three hand-picked board members. The board members secretly held those shares in trust for the Daspin family partnerships in return for warrants that entitled the Daspins to reclaim those shares at any time for $100, which Daspin subsequently did when it suited his interest.

Next, Daspin caused the Companies to enter into consulting agreements that granted him the power to exert substantial influence and control over virtually all of the Companies' important business activities, including hiring, soliciting investments, drafting the Companies' PPMs, and negotiating every contract with investors, employees, vendors and joint venturers, while maintaining the deception that he was only a consultant. This allowed Daspin to deceive investors by downplaying his role in the Companies and to downplay their concerns if, and when, they learned of his prior bankruptcy fraud conviction and history of failed and

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

acrimonious prior business ventures. This deceit was key to Daspin's scheme as he acknowledged to associates that his name was "poison" on the internet.

As part of his scheme, Daspin lured potential investors by canvassing job websites and enticing job seekers to visit his office with the promise of senior executive positions offering salaries ranging from $150,000-500,000. Typically, it was only after prospects arrived for a "job interview" that they learned that they were actually being solicited to make a minimum $250,000 investment in the Companies. In fact, there was no actual salary but only the offer of a return of part of the investors' monies as part of a stock repurchase agreement. Based on Daspin's representations and advice, a number of investors rolled over their 401(k) funds, or other retirement savings, into the Companies. Even those stock repurchase payments were not sustainable, and they stopped in early 2012 as the Companies quickly began to fail.

When approaching investors, Daspin typically used an alias at first, referring to himself as "Ed Michael." It was only when the person was close to or had decided to invest that "Ed Michael" revealed his true identity, if at all. And when he did disclose his bankruptcy conviction, he would falsely assure the potential investor that he was only a "consultant," rather than reveal his domineering involvement in all aspects of the Companies' operations.

Daspin also oversaw the creation and dissemination to potential investors of Private Placement Memoranda ("PPMs") that omitted all mention of Daspin's name, his family's controlling ownership interests, his domination over the Companies operations, his felony bankruptcy fraud conviction or his history of failed ventures and lawsuits.

Daspin also insisted that the PPMs contain material misrepresentations and omissions about a contract WMMA had with a company called International Marketing Corporation ("IMC") to engage in marketing using IMC's alleged database of 840 million emails. Daspin

touted the database as the centerpiece of the Companies' marketing strategy in the PPMs and in his in-person solicitation of investors. The PPMs wildly overstated the usefulness of the IMC database as a marketing asset of the company, given that neither Daspin nor anybody else at the Companies actually knew the contents of the database or how to use it. In the WMMA July 2011 PPM, Daspin baselessly valued the database at $5 million. Just six months later, when fund raising was lagging, Daspin insisted on increasing that valuation to $82 million in WMMA's January 2012 PPM to lure more investors, despite failing to do any due diligence to confirm the contents or efficacy of that database and over the strong objections of senior executives within WMMA.

Further, the PPMs gave prospective investors no insight into the actual meager cash position of the Companies, and instead baselessly and misleadingly referred to $33 million in "cash" or "current assets" in confusing tables. Daspin also caused the Companies to enter into fraudulent intercompany transactions and transfers in an attempt to make the companies look more valuable than they were. The PPMs also contained absurd projections; for instance, the July 2011 WMMA PPM projected over $129 million in gross revenues in 2011; over $629 million in 2012, its first full year; and over $12.6 billion by 2016. Div. Ex. 1 at 15.

Daspin also falsely represented to potential investors that everyone working at the Companies had "skin in the game" to convince them that everyone already there had invested cash, which was not true. Daspin also caused the Companies to appoint his loyal, longtime associate Luigi Agostini, and his wife, Joan Daspin, as the sole signatories of the Companies' bank accounts – to ensure that he had ultimate control over how the Companies' monies were spent. And to ensure that he got paid.

Through his consulting arrangement, Daspin charged the Companies excessive fees, paid out of investor proceeds, for an array of useless contracts and unneeded services, including $25,000 for every contract entered into; over $237,000 for drafting the Companies' PPMs; fees for soliciting investors and hiring employees and $200 to $350 an hour for largely undocumented services. Daspin also charged WMMA $1,000,000 to "negotiate" an essentially worthless contract with IMC. While most officers and directors received only a pittance in actual salaries, which were in fact self-funded from their own investments, Daspin and his wife and Agostini were the largest beneficiaries of the monies raised from investors.

The WMMA enterprise was an abysmal failure. In fact, the one tournament it put on in March 2012 lost hundreds of thousands of dollars and used up most of the Companies' remaining capital. After the tournament, Daspin could not lure in any more investors and the scheme collapsed shortly thereafter.

As a result of his fraudulent conduct, Daspin violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. He also caused violations of Section 10(b) of the Exchange Act and Rule 10b-5 directly or indirectly through or by means of any other person as prohibited by Section 20(b) of the Exchange Act. Daspin also sold WMMA and WMMA Distribution securities that were not registered with the Commission and acted as an unregistered broker of those securities. As a result, he also violated Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act.

Based on Daspin's multiple, egregious violations, the Division asks the Court to impose a Cease and Desist order and an industry bar, order Daspin to disgorge his ill-gotten gains of approximately $383,488.00, plus prejudgment interest, and impose a third-tier penalty of $915,000.00.

STATEMENT OF FACTS[2]

I. DASPIN'S SCHEME TO DEFRAUD INVESTORS

A. Daspin's Family Owned the Companies

Daspin was the mastermind behind the WMMA Companies. In April 2010, Daspin started a new 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, and that he asked Agostini to form the corporate entities that became the WMMA Companies. Div. Ex. 481, Daspin Inv. Tr. at 20. As Daspin explained at trial: "So Luigi Agostini who was my son's best friend. .... So the two of us started to use my basement as an office, and we started building a model, a matrix." Tr. 3021:3-11. "Initially, Mr. Agostini and I, and then other people that had participated with me in other transactions over the years got together, and we collectively created a strategic plan to build a company to be a leader in the mixed-martial arts field throughout the world, by creating a worldwide tournament." Tr. 3050:21-3051:3. Daspin further testified: "As a matter of fact, I negotiated and bought Worldwide Mixed Martial Arts, WMMA. That is trademarked. I paid 3,000 for that trademark. We own WMMA[referring to the name]." Tr. 3102:2-6. The Companies operated out of Daspin's basement, until relocating to commercial office space. Lux Test. Tr. 262:8:14.

Indeed, as Daspin admitted in a November 30, 2010 letter agreement:

> ". . .CBI [Daspin's company] has been working and applying its full-time business efforts on the mixed martial arts project since January 19, 2010, and its fully entitled to be paid the hourly fees expended by CBI and its staff in connection with CBI's architecture of building a business and action plan and are participating in the preparation of a private placement memorandum in connection with Mixed Martial Arts, a to-be initiated reality show, a distribution plan that includes but is not limited to the graphics arts industry."

[2] The Division refers to its exhibits as "Div. Ex. ___."

Div. Ex. 520 at 1.

Consultants for Business and Industry, Inc. ("CBI") was Daspin's company. Div. Ex. 481A, Daspin Inv. Tr. at 11:11-19. He was CBI's CEO from 2010 through at least February 2014. *Id.* at 12:8-12. When the Companies were first formed, CBI owned warrants for shares representing a controlling interest in Worldwide Mixed Martial Arts Holdings, Inc. ("WMMA Holdings" or "WHLD"), which in turn owned a controlling interest in the Companies. Div. Ex. 147, Daspin April 1, 2010 Letter Agreement to Joan Daspin, stating, in part, at ¶ 3:"If CBI and/or its affiliates receive the opportunity to own stock in WW [WMMA] and/or warrants for its services, CBI herewith assigns to your family limited partnerships such assets that it is entitled to …." Daspin further agreed to repurchase any such potential stock and/or warrants back from those family entities at cost and to further pay those entities 50% of the amount he received on resale. *Id.* at ¶ 4. *See also* Div. Ex. 321, Daspin 12.10.10 email to Main explaining that: "WMMA Holdings, Inc. was formed as CBI's assignee, and it owns a majority of WMMA shares." *See also,* Daspin Answer at ¶¶ 13-15, admitting that WMMA was initially a wholly-owned subsidiary of WMMA Holdings; that WMMA Distributions, formerly known as American Graphics Communication and Distribution Services, Inc. ("AGCDS") was a wholly – owned subsidiary of WMMA Holdings and that WMMA Holdings was the parent company of WMMA and WMMA Distribution.

Daspin further admitted at trial: "Now, there was a point in time when I was in control of these to-be-formed entities. As they were getting developed, as people were getting involved in the private-placement memorandums and so on, I would say that I was the leader the group. And as such, I had an arrangement, whereby I would receive a substantial amount of the shares or *sic* [as] my company's assignee. I entered into an agreement with my wife, when she was well and – and the prosecutors have it. It was on May 1, 2010, where she agreed she – I guaranteed

350,000 that I owed her – CBI owed it to her. And we asked her would she put up to another 350 on this WMMA business. And she said she would lend the money at a fixed amount of interest, and that she would do that." Tr. 3054:22-3055:15.

Daspin, through CBI, transferred the rights to warrants for 92.5% of the stock of WMMA Holdings, the parent company of WMMA, to three Daspin family partnerships. Daspin Test. Tr. 3307:2-3308:1-2. The Daspin family partnerships were Nametko Limited Partnership ("Nametko"), Domestic Family Limited Partnership ("DFLP") and Investors Family Limited partnership (IFLP"). *See, e.g.*, Div. Ex. 69, Conditional Transfer Agreement; And Resolutions of the Board of Directors of WHLD at p. 1, first paragraph. Joan Daspin owned the majority of the partnerships' interest in, and owned and controlled, the corporate entity [Return on Equity] that was the general partner of Nametko, DFLP and IFLP. *Id.* at p. 1, second paragraph. At Daspin's direction, his wife transferred the rights to these shares to Luigi Agostini, Douglas Main and Lawrence Lux, the three senior executives and board members of WMMA, all appointed by Daspin, "as trustees," in return for warrants entitling her to reclaim the shares at any time. This allowed Daspin to conceal his family's ownership of the Companies in the July 2011 WMMA and AGCDS PPMs (Div. Exs. 1 and 2, respectively) and the January 2012 WMMA and WMMA Distribution PPMs (Div. Exs. 3 and 4, respectively), while giving him the ability to reclaim the shares when he needed to, which he did in the summer of 2012 after he felt the investors had "conspired" against him.

Daspin and his wife papered this arrangement as follows: in or about January 12, 2011, Joan Daspin entered into a Conditional Transfer Agreement and Resolutions of the Board of Directors of WHLD ("Conditional Transfer Agreement"). Div. Ex. 69. Pursuant to the Conditional Transfer Agreement, Joan Daspin transferred the three family partnerships' rights to

own WHLD shares to Daspin's three hand-selected board members, Agostini, Main and Lux, respectively; and Agostini, Main and Lux thereupon converted those rights into WHLD shares. In return, Joan Daspin or her assignee had the right to repurchase the shares at any time during the next five years. *Id.* The agreement also provided that Joan Daspin would be compensated for human resources consulting services to WHLD.

On or about the same date, Joan Daspin entered into a Declaration of Trust and Supplement to Sales Agreement (the "Trust Agreement"), which stated that the three family partnerships "sold" their right to own WHLD's shares to Agostini, Main and Lux in return for one dollar and a "Five year (sic) Stock Warrant" that entitled each family partnership to repurchase one hundred percent of the shares sold to Agostini, Main and Lux at a strike price of $100. The Trust Agreement further provided that: "Each of Lux, Main and Agostini acknowledge that they are holding the [family partnerships' shares of WHLD] respectively, as trustees for the [family partnerships] respectively, and thus each of Lux, Main and Agostini have a fiduciary duty to [the family partnerships] respectively, and also have a fiduciary duty to JB Daspin." Div. Ex. 80; 80A. *See also* WHLD Board Resolution dated January 12, 2011 re-affirming that Lux, Main and Agostini will have a fiduciary duty to the Daspin family partnerships and to Joan Daspin. Div. Ex. 200.

Thus, although the three directors ostensibly held a majority interest in WHLD during the relevant period, Daspin could immediately cause Joan Daspin's partnerships to exercise the warrants and buy back the controlling interests in the Companies. Moreover, the directors held the stock under an express fiduciary duty to Joan Daspin and the Daspin family partnerships.

Lux and Main were asked to sign these documents at Daspin's request. Lux Test. Tr. 165:23-166-1; Main Test. Tr. 892:1-911:18. Main testified that he did not understand the

purpose of these transactions and signed the documents "reluctantly;" "I was continually presented with documents by Mr. Agostini asking me to sign them. I was, you know, -- he was saying: "Hey this is to help out Daspin." I said "Okay." Main Test. Tr. 897:19-899:18. Lux understood that he held the WMMH shares as fiduciary for Joan Daspin and further that he could not "spin-off, sell, merge, or do any other form of combination with WMMH or any of its subsidiaries without Mrs. Daspin's written consent. Lux Test. Tr. 165:11-17; 173-1-174:14; 175:1-183:9. Lux understood that to mean: "Well, not to engage in any activity or transactions that would harm Mrs. Daspin in any way." Tr. 173:1-5.

Daspin admitted that the transfer of WMMH shares from his wife's partnerships to the three directors was intended to shield his involvement in the Companies from potential investors: "I had made a decision before that time [referencing January 15, 2011] by speaking with Mr. Main and Mr. Lux that it would be better if the Daspin name were really not part of this company. Not to defraud investors but so that people that would read it from law firms or others – it would go in the general market, and then they could take potshots at the company." Tr. 2873:18-25. Of course, the record evidence contradicts Daspin's claim that it was Lux and Main's idea that the Daspins transfer the shares to the three directors to hold in trust, but even if that was true, Daspin admits he agreed to do so to deceive investors.

Daspin also admitted that the Trust Agreements were a way for his wife to maintain ownership rights over WMMH: "This is while my wife, for a couple hundred bucks can own 92 and a half percent of it, of the holding company" (Tr. 2782:11-12); "This way if the company did well, my wife could exercise her warrants." Tr. 2874:19-20. He further stated: "My family would have reaped a fortune if they were successful." Tr. 3118:10-19.

Although Daspin constantly reiterated the mantra that he was only a "consultant," in May 2012, when the prospects of litigation with the Companies' partners and investors increased, Daspin caused himself to be appointed an officer of both WMMA and WMMA USA, with the title "Senior V.P. of Troubleshooting," thereby permitting him to gain access to the Companies' Officer and Director Indemnification Insurance policy. Div. Ex. 21. Main Test. Tr. 1058:5-1060:7.

Shortly thereafter, Daspin reclaimed direct ownership of the Companies. On June 14, 2012, Daspin wrote his wife a letter stating that: "It is becoming apparent to me from emails I have received that a WMMA conspiracy is underway similar to Chamco [one of Daspin's earlier failed ventures]. ... So, these men [Lux and Main] can no longer be trustees of the warrants that the Family Limited Partnerships own in WMMA holdings (WHLD)." Pursuant to this letter agreement, signed by Daspin and his wife, Joan Daspin approved Daspin's request to reclaim the shares in WHLD, which had been held by Lux and Main in trust. Daspin recommended that Agostini (his most trusted associate) retain the warrants he was holding, which still gave Daspin sufficient shares to control WHLD and the Companies. Div. Ex. 469.

On July 16, 2012, Daspin, Joan Daspin and Lux executed an agreement by which Daspin reclaimed all of the Nametko's WMMH Shares that Lux had held in trust for the Nametko Daspin family partnership for $100. The agreement stated in part: "WHEREAS Lux has stated in writing that he will not work from WMMH's offices; and thus, Lux will not be in a position to protect Nametko WMMH Shares, the Parties have agreed to have Lux transfer all his rights, title and interest in the Nametko WMMH shares to Daspin who will likely become an officer of WMMH and or WMMA, and will be in a position to ensure that JB Daspin's interest are

protected." Div. Ex. 506, July 16, 2012 Transfer of Trusteeship and Partial Cancellation of Agreement.

Shortly thereafter, on July 17, 2012, Daspin caused himself to be appointed to the boards of the Companies, over the objection of Main, one of the two remaining board members. Div. Ex. 22. Main Test. Tr. 1060:19-1062:16. Agostini voted yes and, pursuant to company bylaws, Agostini, as Chairman, had the right to cast the deciding vote in cases of a tie.

On July 28, 2012, at Daspin's request, Main also executed a document transferring the shares in WMMH that he had held in trust for Joan Daspin to Daspin. The agreement stated, in part: "WHEREAS, the Parties have agreed to have Main transfer all his rights, title and interest in the IFLP WMMH shares to Daspin who will be in a position to ensure that JB Daspin's interests are protected." Div. Ex. 507, Transfer of Trusteeship and Partial Cancellation of Agreement; Main Test. Tr. 1065:2-1067:16.

Main resigned from the WMMA and WDI boards on September 4, 2012. Div. Ex. 435. Main Resignation.

On October 13, 2012, Daspin and Agostini approved a board resolution naming Joan Daspin "a designated officer and Vice President of Litigation Support of and for WMMA. As such she is indemnified and held harmless by WMMA from any claim(s), cause(s) of action which she directly and/or indirectly incurs as a result of her being associated with WMMA." Div. Ex. 215.

Despite Daspin's numerous prior claims that he was not an officer or director of WMMA, he and his wife promptly sought coverage under the Companies' Officer and Director Indemnification policy in connection with the Division's investigation of Daspin's actions between 2010 and June 2012. *See, e.g.*, Div. Ex. 52, January 14, 2013 letter from counsel for

Chartis insurance noting acceptance of Daspin and Mrs. Daspin's request for legal representation in connection with the SEC investigation.

While Daspin initially placed ownership of the WMMA Holdings stock in family partnerships nominally controlled by his wife, he was calling all the shots. Mrs. Daspin's investigative testimony makes clear that her husband was the decision-maker concerning the WMMA Company transactions. She testified as follows about the dynamic between her and her husband: "We don't negotiate. He just explains something to me, and I try to understand it." Div. Ex. 484, Joan Daspin Investigative Test. Tr. 82:5-6. When asked about the formation of the WMMA entities, and whether the three Daspin family partnerships received shares in any of those entities, Mrs. Daspin testified: "I don't know. This is very confusing. I would have discussed this with my husband. He would have explained it to me. Then I would have understood it. Then I would have signed it." Tr. 57:9-14. Mrs. Daspin signed the trust agreements on behalf of each of her family trusts as the general partner and CEO of Return on Equity Group, Inc. When asked what Return on Equity Group, Inc. was, she testified: "To me it's just a name." Tr. 45:21. When asked about being its CEO she testified "I don't know who gave me that title." Tr. 46:4. Mrs. Daspin was asked about the Declaration of Trust, Div. Exs. 80 and 80A, and whose idea it was for the family partnerships to sell their stock to Lux, Main and Agostini: she testified: "There's [sic] was something about them being trustees for the stock or something. I don't;" (61:24-25); "I think they had a right to buy it or something. I don't know. I don't know." (62:11-12), "I vaguely recall that they were some sort of trustees or something" (62:15-16); "Something to do with the right to warrants and the right to purchase stock. I don't know to tell you the truth" (63:21-22). She admitted that she never talked to Lux, Main or Agostini about the transactions (62:21-23 and 64:2:5). She was asked: "Do you have

any understanding of what their role as trustees entailed, what they were supposed to do as trustees" and she testified "Not really. To protect – I don't know. I'd be guessing" (64:16-20).

Thus, Daspin designed the transactions that kept ownership of the Companies always within his control, to be exercised when he chose, using his wife and the directors to do so. His deceit functioned exactly as intended, first as a misleading legal structure enabling him to lie about his ownership and control of the Companies and then as a mechanism to reclaim the shares when he felt it advantageous for him to do so.

B. Daspin's Dominating Influence in All Important Decisions of the Companies

1. The CBI-McKenzie Consulting Agreements

To maintain control over the Companies, Daspin hand-picked the individuals who would serve as the Companies' 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 Lawrence 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.

Rather than identify himself as a direct participant in the Companies, with corresponding legal responsibilities and disclosure obligations and exposure to lawsuits, Daspin created a fraudulent scheme pursuant to which he would be retained by the Companies as a "consultant." Specifically, on April 10, 2010, Daspin, as CEO of CBI, entered into an agreement with Agostini that provided, in part, that Agostini "will hold One (1) Board seat on WMMA's and/or WHLD's

Board and other certain to be formed corporations/subsidiaries as Executive Chairman or Director." Div. Ex. 603, Agreement dated April 10, 2010, at 1. The Agreement further directed Agostini to "form and validly operate certain companies to be formed (discussed herein) and provided that he would receive a small percentage of "Founder's shares" in WMMA and WHLD. *Id.* As a condition of being hired by Daspin to perform these functions for the Companies, 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, including WHLD, WMMA USA and AGI (predecessor to WMMA]."

On November 30, 2010, Daspin, as CEO of CBI, entered into a follow-on consulting agreement with Agostini and Lux on behalf of WHLD and WMMA (the "Consulting Agreement"). Div. Ex. 13. The Consulting Agreement, addressed from Daspin to Agostini, again provided that CBI would have the "exclusive right" to provide the Companies with services related to "human resources," "deal-making," "raising equity," "developing strategic business, action and operating plans," and structuring "mergers and acquisitions." The Consulting Agreement also "acknowledge[d]" that CBI had been working and "applying its full-time business efforts on the Mixed Martial Arts project since January 19, 2010," and referred to the hours expended by CBI and its staff "in connection with CBI's architecture of building a business and action plan and on participating in the preparation of Private Placement Memorandums in connection with the [Companies]." *Id.*

On December 15, 2010, in connection with Lux's employment agreement, Daspin asked Lux to sign another consulting agreement with CBI in the form of a board resolution between CBI, WMMA Holdings, AGI and WMMA, containing essentially the same terms and fee

schedules as the Commission Agreement. Div. Ex. 204, Services Agreement; Resolutions of Boards of Directors.

As with earlier versions of the Consulting Agreement, the December 15, 2010 Consulting Agreement provided that CBI was to provide a broad range of "management advisory services" to the Companies. These services included: (a) "Executive recruiting;" (b) "Financial Advisory services pertaining to raising capital from third party investors" and (c) "Other management advisory services pertaining to their operations." *See also,* Daspin Inv. Tr. at 14:16-22 (Daspin testified that CBI performed: "Human resources, strategic planning, assistance with raising debt or equity, um, negotiation of all contracts, providing support to the staff in any way they requested" for WMMA).

Lux understood that Daspin came up with the terms of this document; Lux did not negotiate the terms with Daspin nor, to his knowledge did Agostini or Main; and Lux, Main and Agostini did not meet as a board to discuss whether this agreement was a good idea for the companies. Lux Test. Tr. 94:13-99-15. Main also testified that he did not negotiate the terms of the CBI agreement with anyone, nor, to his knowledge, did Agostini or Lux. Main Test. Tr. 874:16-875:8; 877:19-879:9.

The Consulting Agreement provided for substantial remuneration to Daspin for inducing victims to invest, hiring employees and negotiating contracts. For example, the Consulting Agreement provided that CBI would be paid $25,000 for any contract or transaction it negotiated, plus two percent of the value of the transaction or contract as such funds became available, payable on a monthly basis for a period of five years from the contract date. It also provided that CBI would be paid up to $25,000 for every employee it recruited, and at least $37,500 for every investor it recruited. It also provided that CBI employees and consultants

were to be paid hourly fees ranging from $200 to $350 per hour. Daspin signed this Consulting Agreement as Chairman of CBI. Div. Ex. 204.

In January 2011, CBI's Consulting Agreement with the Companies was assigned to MacKenzie Mergers & Acquisitions, Inc. ("MKMA"), a company owned by a close associate of Daspin's, Larry May. Div. Ex. 205 CBI-McKenzie Agreement and Resolutions of the Boards of Directors of WMMA, WHLD, WUSA, AGI and CBI. This was not done at Lux's direction and the board did not discuss this transfer nor the other provisions in this document. Daspin continued to perform the services set forth in the agreement. Lux Test. Tr. 217:19- 224-5; and during the time Lux was CEO of WMMA Daspin was the person who primarily provided services under the CBI and MKMA agreements. Lux Test. Tr. 226:18-23; 228:2-6. *See also,* Main Test. Tr. 952:1- 956:5 (The provisions of this agreement and board resolution did not originate from and was not discussed among the board members; they came from Daspin: "All of these documents were – all concepts of changes between companies and shares and everything else where from him"; no one explained why the CBI contract with WMMA was being reassigned to MKMA and Larry May of MKMA did not provide any services under the contract to Main's knowledge.)

Pursuant to a follow-on agreement dated May 24, 2011, Daspin agreed to become a Senior Vice President of MKMA and continue to act as a consultant to the Companies in return for receiving payments from the Companies through MKMA. Div. Ex. 14. Daspin's daily functions and services to WMMA did not change as a result of the transfer of the consulting agreement to MKMA. Daspin Inv. Tr. at 60:25-61:1-13. This was yet another step in Daspin's efforts to further obscure his involvement in the Companies from potential investors.

Indeed, Daspin admitted as much at trial: "I did mention that Mr. Main and Mr. Lux came to me and they said it would be better if you weren't directly involved for the shareholders of the company. And I agreed that I would sell my consulting agreement to MKMA, and my wife agreed that she would sell her shares. Nwogugu made it a trust agreement. That wasn't what I asked him to do. It was supposed to be an outright sale, and the trust was them living up to their fiduciary to sell back if she wanted to exercise the warrant. And she got a five-year warrant out of it." Tr. 3076:21-3077:9. Of course, the record evidence contradicts Daspin's claim that it was Lux and Main's idea that he transfer the CBI agreement to MKMA, but even if that was true, Daspin admits that he agreed to do so to deceive investors.

By November 2011, MKMA, CBI's successor to the Consulting Agreement, had racked up over $2 million in fees, including $1 million alone for negotiating the IMC contract discussed below; and over $827,000 of which was unpaid as of that date, putting WMMA in a crippling financial position, as discussed below. *See* Div. Ex. 94, MKMA December 15, 2011 Invoice to WMMA; Div. Ex. 206, Daspin 12.8.11 letter addressing the $827,018 in fees owed to MKMA.

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

Daspin exercised wide-ranging influence and control over the WMMA Companies from the start. First, Daspin was the sole person responsible for recruiting WMMA's three senior executives and appointing them to their executive and board positions. Both Lux and Main testified that Daspin was the only person with whom they negotiated their employment agreements, including their titles, responsibilities, salaries and other entitlements, and appointment to the board. Lux Testimony, Tr. 74:1-75:11; 76:8-77:-19; 87:17-21; Main Test. Tr. 819:21-822 (Lux's employment agreement was presented to Main after the fact and he was asked to sign it).

Lux testified that Daspin recruited him to join WMMA in the fall of 2010. At Daspin's request, Lux made several visits to Daspin's house in New Jersey where Daspin described the WMMA concept. Athough a number of other WMMA personnel were present at these meetings, including Agostini, Nwogugu, Main, Tropello, Young, Daspin did virtually all of the talking. Lux Testimony. Tr. 55:15-25-65.

Main was a licensed chiropractor in New Jersey who met Daspin in the fall of 2010, when Daspin visited his office as a patient. Main had a son who was a mixed martial arts fighter; there had been an article about his son in the local paper, which also had an ad for Main's chiropractic practice, and Daspin responded to the ad. Main Test. Tr. 715:1-718:10. Daspin told Main that he had been working on a mixed- martial arts business for about year; that Daspin's wife had invested a million dollars and they were getting ready to launch the business. *Id.* at Tr. 718:11-17; 731:16-21; 734:16-735:1; 748:3-6. Daspin invited Main to his house to learn more about the business. Tr. 718:18-719:22. Main attended several meetings at Daspin's house where Daspin explained the concept of the WMMA companies. *Id.* at Tr. 719:18-721:18. Daspin also explained various investment scenarios to Main. *Id.* at Tr. 721:19-730:20; Div. Ex. 34, Main-Daspin 11.28-30.10 email chain. Main offered to invest $100,000 and Daspin responded that: "that would not fly with the other investors, they would think it was too little." *Id.* at Tr. 730:21-731-6. Main understood Daspin to be referring to other people who had invested cash in the company. *Id.* at Tr. 731:7-14. When Main asked how the company was going to raise money, Daspin said that, among other avenues, he had a rolodex of rich friends who had invested with him in the past and would invest with him in the future. *Id.* Tr. 735:12-736:1.

Main was provided an overview or partial PPM that projected that WMMA could be worth $2 billion in five years and that WUSA could be worth $600 million. Daspin wrote to

Main that he projected the numbers to be much higher: "Our current projection on WUSA, at 15 times, was approx. $1.750 billion when I looked at his draft last week. I project WMMA should be worth approx. 8 times that amount... at the end of five years ...." Div. Ex. 330.

Main 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. Div. Ex. 151; Div. Ex. 166, Main 12.15.10 $250,000 check payable to WMMA Sports, Inc.; Div. Ex. 176, Main 3.31.11 $83,333 check payable to WMMA Holdings, Inc.; Div. Ex. 434, WMMA Sports, Inc. Stock Certificate for one and one-half shares of common stock.

Daspin was the sole person with whom Main negotiated his investments in the WMMA companies and his employment agreements, including his titles and responsibilities. Main Test. Tr. 736:12:766:17; Div. Ex. 330, Daspin-Main 12.5-6.10 email chain; Div. Ex. 321, Daspin 12.10.10 email to Main; Div. Ex. 329 Daspin 12.13.10 email to Main. Daspin "decreed" that Main would serve on the WMMA and WUSA boards. *Id.* at 783:8-18; 830:11-834:22; Div. Ex. 329, Daspin 12.13.10 email to Main.

Daspin also was the person who offered Main the position as President and member of the board of directors of WUSA, WMMA and AGI. Main's title at WMMA was increased from "Senior Executive," in his initial investment/employment letter agreement, to President when he agreed to invest more money. Main Test. Tr. 781:10-782:20; Div. Ex. 149; 149A and 151.

Main did not discuss the terms of his investment, or his title or responsibilities at the WMMA companies or his appointment to the WMMA and WUSA boards, with Lux, Agostini or anyone other than Daspin. Main Test. Tr. 767:8-768:14; 783:13-784:23; 785:21-787:12; 813:5-814:16. Lux did not participate in negotiating Main's employment agreements, did not sign

those agreements and had no say in the terms of those agreements or Main's position or responsibilities. Lux Test. Tr. 118:2-5; 120:11-20.

As a condition of their employment, Daspin required Lux, Main and Agostini to sign agreements that not only required them to agree that Daspin's company CBI would have the exclusive right to perform virtually all important functions for the WMMA companies, but to further agree to limit and subordinate their powers to CBI. Specifically, Lux's employment agreement required him to acknowledge that "WMMA and AGI and their subsidiaries have signed an exclusive Human Resources, financial advisory and negotiation services agreement with CBI..." Div. Ex. 55 Lux Employment Agreement dated December 15, 2010, ¶ 1. Lux Test. Tr. 77:20-25-78: 1-23. *See also,* Div. Ex. 151, Main 12.13.10 WMMA Holdings Letter Agreement, acknowledging that "CBI is WMMA/WUSA's exclusive provider of services – such as merger & acquisition, Senior Executive recruitment, capital/equity raise and/or negotiation for fee(s)..." at ¶ 1. Main had no discussion with Daspin regarding the terms of CBI's agreement with WMMA or fees; Daspin just "decreed it." Main Test. Tr. 792:19-793:4; 804:23-806:16.

In connection with Lux's Employment Agreement, Daspin required Lux to also sign a Commission Agreement with CBI, AGI and WMMA, which drastically limited Lux's ability to act as CEO and subjected him to approval from CBI before entering into any contracts. Pursuant to the Commission Agreement, Lux agreed that:

> Lux and other Client Company personnel may assist CBI and participate in portion(s) of the interview of prospective Investor(s), Advertiser(s), Sponsor(s), Officer(s), Executive(s) and/or Sales Executive(s), etc. for CBI's clients(s), which may include support in functional areas of a) human resources, b) recruitment and employment, c) job evaluation, d) organization development and employee relationship building e) negotiations and f) training, at CBI's sole discretion.
>
> Lux shall lack authority to bind CBI and/or Client Companies to any Agreement(s) and/or Contract(s) until Lux obtains written consent of both CBI and its Client Company in writing.

Div. Ex. 55A, Lux Commission Agreement dated December 15, 2010, ¶ 2. Lux testified that he understood that to mean: "That CBI had 100 percent control over any contracts that the – that any of these companies would enter into." And that "CBI was Mr. Daspin." Lux Test. Tr. 87-22-88:9.

Lux's Commission Agreement further provided that if CBI determined that Lux's participation in any transaction adversely affects the outcome of that transaction, CBI could notify Lux in writing of its objections and if a similar incident occurs again, CBI could terminate the Commission agreement and Lux would no longer be entitled to any compensation except for any deferred compensation WMMA or AGI owed him. Div. Ex. 55A, ¶13(d).

Main was also required, as a condition of his investment and employment, to sign agreements providing that CBI would be the exclusive provider of services to the WMMA companies. Div. Ex. 149 Main 12.13.10 WMMA Letter Agreement, ¶ 1; Div. Ex. 149 A, Main 12.3.10 WMMA Letter Agreement, ¶ 1; Div. Ex. 151, Main 12.13.10 WMMA Holdings letter Agreement, ¶ 1. Main, despite being appointed President of WMMA and a board member, was also required to sign a similar agreement that provided that he could only perform the same wide range of managerial actions "at MKMA's sole discretion" and that "Main shall lack authority to bind MKMA and/or the Client Companies to any Agreement(s) and/or Contract(s) until Main obtains written consent from both MKMA and its Client Company in writing." Div. Ex. 369, Main-MKMA Commission Agreement; ¶ 2. This agreement was not Main's idea and he signed it without any negotiation. Main Test. Tr. 879:13-885:4.

Lux had an MBA in International Business from Xavier University; he was previously the Managing Director for National Geographic Interactive, and a board member, where he started as its first employee and grew the division to 220 employees and revenues of $200

million by taking advantage of the opportunities the new internet presented; and former President of Playboy.com, which handled all of Playboy's internet–related business, including an international online gaming component and all of Playboy's e-commerce business. As President, he supervised over 200 employees and was in charge of overall strategy, operations and management of the company, including raising capital, negotiating contracts and hiring employees. Lux Test. Tr. 44:10-52:10.

Lux testified that, in all his prior business experience, he had never seen a contract where the CEO's ability to: (a) participate in interviewing investors, vendors, advertisers, sponsors, officers, executives and sales executives; or (b) participate in "functional areas of human resources, recruitment, and employment, job evaluation, organization development and employee relationship building and negotiations and training, was at the sole discretion of an outside consulting firm or where he, as the CEO of the company, would have to get written permission from the outside consultant before he could do any of those things. Lux Testimony, Tr. 87:22-89:8.

Lux testified that he agreed to these employment conditions imposed by Daspin without pushing back because his financial situation "was dire at that point. And the only thing I was interested in was the $4,000 a month" in compensation, Tr. 90:6-12, which Daspin had disguised as "expense reimbursement." Tr. 76:8-77:7. Lux testified that he had been through a number of contentious divorces, had fallen behind in child support for two children, had liens placed on his bank accounts and had no access to any money to live on. Tr. 90:13-91:10.

Lux testified that he had no negotiations with Daspin regarding the services CBI would perform for the WMMA Companies or the fees that CBI would be entitled to charge them for the services Daspin had thrust upon them. Tr. 83:3-85:21. Lux, a highly experienced executive, 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. Lux felt he had no choice but to agree to the CBI consulting agreements if he wanted to get paid. Tr. 99:25-100:4.

3. Daspin Devised All WMMA Company Transactions

As Lux and Main testified, they were repeatedly presented with so-called Board Resolutions regarding often complex intra-corporate transactions and other provisions that they did not initiate and which they understood had been originated by Daspin. They typically did not discuss these resolutions, either individually or as a board, and simply rubber-stamped what was presented to them, without understanding the business purpose behind the transactions or provisions referenced therein. These resolutions included: a December 14, 2010 board resolution appointing Agostini sole signatory on all WMMA bank accounts and providing for the formation of WMMA Holdings (Div. Ex. 207; Lux Test. Tr. 127:15-128:3; 130:1-133-1; Main Test. Tr. 827:1- 844:10); a December 14, 2010 WMMA USA board resolution appointing Agostini the sole signatory on WMMA USA bank accounts (Div. Ex. 207A; Lux Test. Tr. 137:15-138:2; Main Test. Tr. 844:11-849:5); a December 14, 2010 WMMA-WUSA Agreement and Resolutions of the Boards of Directors of WMMA and WUSA, an 18-page document authorizing WMMA's investment of $413,000 in cash and $73,000 in "start-up costs" in WUSA in exchange for WUSA shares; setting forth detailed terms of WUSA's authorized business activities and licensing arrangements (Div. Ex. 214; Lux Test. Tr. 139:15-17; 142:6-152:17; Main Test. Tr. 863-869:19); a December 29, 2010 WMMA Board Resolution regarding a $250,000 WMMA investment in WUSA (Div. Ex. 211 and a December 29, 2010 WUSA Board Resolution regarding same (Div. Ex. 211A) (Lux Test. Tr. 152:22-155:24 - Lux viewed the money transfer

he was being asked to approve as "just a shell game"); (Main Test. Tr. 888:18-891:25); a January 12, 2011 WHLD Board Resolution (Div. Ex. 200) appointing Agostini only signatory on WHLD bank accounts (Lux Test. Tr.185:13-16 "I had no input into that decision"; Main assumed it was Daspin's idea: "Because he was directing everything at that point." Main Test. Tr. 914:24-915:6); and providing, among other actions, that "WMMA shall issue seven Million US Dollars of its shares (approximately 44.80 shares) of Common Stock to AGCDS and in exchange AGCDS will issue seventy shares of its Series-A Convertible Preferred Stock to WMMA (the "AGCDS –WMMA Acquisition" and that WMMA will then invest the Five Shares of AGCDS stock (Face value is $500,000) in WUSA" (Div. Ex. 200 at ¶ 7); (Lux Test. Tr. 187:1-189:14, Main Test. Tr. 911:24-917:21); this document also erroneously stated that Main had agreed to invest $500,000; Div. Ex. 200, ¶ 12. When asked how this erroneous number came to be in the board resolution, Main responded: "Mr. Daspin placed it there. He was creating the documents. Nobody else – nobody else would have come up with numbers like that, no. It's just – he was producing this." Main Test. Tr. 917:22-918:23).

See also, a January 18, 2011 WHLD Board Resolution increasing the number of authorized shares of common stock from 1,000 to 10,000 (Div. Ex. 202; Lux Test. Tr. 192:7-194:22 (When Lux was asked by the Court: "Q: Didn't all this strike you as rather odd? A. Oh, yes. Q. But you did it because you needed the money? A. Absolutely." Lux Test. Tr. 194:23-195:3; Main Test. Tr. 919:2-920:12); an unsigned January 20, 2011 WMMH Board Resolution appointing Agostini and Joan Daspin as the only signatories to WMMH's bank accounts and providing that WMMH and AGI would effect a tax free exchange of equity (Lux. Test. Tr. 195:14-197:4); a January 20, 2011 WMMA Board Resolution providing, in part, that WMMA shall convert to a Florida corporation and increase its authorized common shares to fifty million

and effect a tax-free Stock Dividend of shares to existing shareholders (Div. Ex. 209B; Lux Test. Tr. 210:11-214:20; Main Test. Tr. 936:22-937:20; an AGI-WMMA Agreement dated January 20, 2011 in which WMMA granted AGI the right to sell WMMA content and other products (Div. Ex. 209; Lux Test. Tr. 214:22-216:19; Main Test. Tr. 937:21-944:2); a January 20, 2011 Board Resolution- Incorporation; Other Issues; WMMH's and AGI's Acquisition of Each Other's Subsidiaries and Securities (Div. Ex. 224 - Main did not discuss the provisions of ¶ 10 regarding the exchange of equity between WMMA and AGI with the other board members nor did he ask anyone to prepare this unsigned board resolution. Nor did he ever ask anyone to type up board minutes. Main Test. Tr. 920:13-923:22).

Main also testified that he believed that his signature may have been cut and pasted onto certain board resolutions. For example, Div. Ex. 209A, entitled "Board Resolution –WMMA's and AGI's Acquisition of Each Other's Securities, dated January 20, 2011," was a board resolution providing that WMMA shall issue $7 million worth of its shares of common stock to AGI in exchange for 70 shares of AGI Series –A Convertible Preferred Stock, of which WMMA will then invest 5 AGI shares in WUSA in exchange for WUSA common stock. Main testified that he remembered a meeting discussing this proposed transaction and: "I was asked for my signature. And I wouldn't sign it because – or I don't recall signing it because I had a great concern about creating $7 million and shifting it around from company to company. So I asked Daspin what was the purpose of that. He just said it makes us appear larger than we are. So I refused to sign it at that meeting. Mr. Daspin got heated, yelled that I was going to destroy the company and walked out of the meeting." Main Test. Tr. 945:5-947:9.

When shown his signature on the resolution, Main testified: "I am concerned that it's a cut-and-paste job," noting that the signature line peters out compared to the signature lines above

and below it, the word "president" appears to be cut off at the bottom and that word is written well above the signature line: "it just doesn't look right." Main Test. Tr. 947:10-949:14.

Main testified that "Daspin controlled all the conceptual direction of everything." Main Test. Tr. 848:6-12. When asked whether certain ideas in a board resolution (Div Ex. 207, the 12.14.10 board resolution) might have originated from Agostini, Main replied: "No. When asked why, he replied: "Not trying to be cute, 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." Main Test. Tr. 839:10-841:6.

The circumstances behind one board resolution illustrates the depth of Daspin's involvement in and domination of the Board and the WMMA Companies. A January 20, 2011 WMMA Board Resolution (Div. Ex. 20) provided, among other actions, that (a) WMMA shall create fifteen subsidiary "Country Corporations" each of which shall manage WMMA's business in one of fifteen countries; (b) WUSA is the Country Corporation for the US; (c) WMMA will invest in WUSA all of its rights in contracts between WMMA and third parties that pertain to the U.S., including a "proposed strategic alliance between WMMA and IMC" and contracts between WMMA and "cable TV companies, marketing companies, licensees, apparel/products suppliers. etc.; and further (d) declaring that "the value of the WMMA Contracts today is approximately (and not greater than) Five Million U.S. Dollars and should be reflected in WMMA's and WUSA's financial statements (approximately Twenty-Five Percent of the Five Million ($1.25 Million) should be reflected as the WMMA Investment in WUSA's Balance Sheet because the U.S. has much greater population of cable/internet subscribers and more MMA activity than that of the other fifteen countries where WMMA will operate."

Lux testified that none of the transactions set forth in this resolution were his, or to his knowledge, Main's or Agostini's ideas, Lux Test. Tr. 199:5-13, and he did not discuss them with the other board members or have any understanding of the business purpose for these actions. Lux Test. Tr. 208:25-20. When asked by the Court: "Q. Do you agree that the value of the WMMA contracts was approximately $ 5 million on January 20, 2011?" Lux answered: "No." Lux Test. Tr. 200:3-6. Lux later also stated: "There was –there was literally no way to value that contract in that manner." Tr. 268:1-7. Indeed, Lux was not aware of any agreements that WMMA had entered into with either IMC or any cable TV companies, marketing companies, licensees, apparel/products suppliers as of this date. Tr. 203:19-204:23; Tr. 206:7-12. And he was not aware of any basis for this valuation. Tr. 207:2-208:24.

Main also testified that Daspin came up with the $5 million valuation for the contracts; Main Test. Tr. 924:2-926:25; that Main was concerned with this $5 million valuation "as to just creating a number out of the blue", *id.* at Tr. 927:10-928:1, and given that the IMC contract wasn't even "in effect and functional" at that time, *id.* at Tr. 928:2-929:20; 932:7-933:7. It also made no business sense to Main why WMMA would invest the value of these "unproven" contracts in WUSA: "it didn't make sense. Why would we even do this?" *Id.* at 929:17-930:24. Daspin was behind all these concepts. "Because he [Daspin] was the creator of these concepts. Q. And when you say 'these concepts', what are you referring to? A. Well, the relationship between the companies and the IMC contract, really everything was just presented through Mr. Agostini, but the driving force was Mr. Daspin." Tr. 924:2-926:25. At one point, Main told Daspin he felt the value of the IMC contract was "zero" and Daspin responded, in effect, "Don't ever say that again." Tr. 1051:5-1053:4.

The July 2011 WMMA PPM contains a section entitled "Related Party Transactions" that describe numerous complex transactions between various WMMA entities and with third parties. Div. Ex. 1 at 30-34, ¶¶1-20. None of those transactions were Lux's idea, nor, to his knowledge, either Main or Agostini's. Lux Test. Tr. 233:22-235:21. And none of those transactions were Main's idea, nor to his knowledge Lux's or Agostini's, nor did the board discuss these transactions in any substantive manner. Main Test. Tr. 967:7-969:16.

Daspin's extensive role in causing WMMA to enter into an agreement with IMC, over the objections and concerns of Lux and Main, which garnered MKMA a $ 1 million fee for a contract that proved worthless, is discussed below in Section I.B.5.

4. **Daspin Dominated All Aspects of the WMMA Companies**

Daspin was the ultimate authority at WMMA. "...in effect, he could make or overrule any decision that anybody else in the office made." Lux Test. Tr. 346:20-347:4. "If anybody tried to do something on their own initiative, he would remind them that they did not have the right to make those kind of decisions. I mean, the CBI agreement, the MacKenzie agreement proscribed anybody in the organization from doing anything without CBI's approval. *Id.* at 347:8-15.

Daspin was involved in obtaining new offices for WMMA in the spring of 2011, with his wife serving as the broker. Daspin Admission Tr. 264:15-22. Even though he claimed to be an outside consultant, Daspin had his office at the WMMA offices, Lux Test. Tr. 265:14-16.

After Main invested and joined the WMMA companies, he continued in his primary job as a chiropractor and only worked at WMMA two days a week. Main Test. Tr. 969:17-970:5. Apart from managing his chiropractic practice, Main had no prior management experience.

Even though Lux was WMMA's CEO, he had no control over how its money was spent. Agostini was the only one who could write checks; Agostini would check with Daspin before signing any checks; and Daspin was the final arbiter on how the WMMA Companies' monies were spent. Lux Test. Tr. 320:21-321:19.

Indeed, Agostini and Joan Daspin were the sole authorized signatories on the WMMA bank accounts that were opened in December 2010. *See* Div. Ex. 380; *see also* Div. Ex. 200 (appointing Agostini as "only signatory for all of WHLD's bank accounts").

Main also testified that Daspin controlled the money. Tr. 1096:9-14. When Daspin asked Main on cross-examination how he controlled the money, Main replied: "You [Daspin] made very directive – you made every directive within the company for every company direction and instructed Luigi to make payments. That's how." Tr. 1096:16-21. Main had no control over Agostini or anyone else signing checks. *Id.* at 1097:8-13. Daspin was running the company. Main Test. Tr. 1130:18-20.

Not surprisingly, Daspin and his wife and Agostini 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. Div. Ex.495, Div. Ex. 498. And $247, 629.10 in payments were made from the WMMA companies to MKMA between October 14, 2011 and May 15, 2012, Div. Ex. 495, Baier Summary Chart, and $235,522.10 of those funds was paid either directly to Daspin (or his wife) or to CBI. Div. Ex. 497.[3] And $106,290.90 of the funds from the WMMA Entities went to Agostini, either directly or through

[3] $176,906.50 of the MKMA's funds was paid directly to Daspin or his wife and $58,615.60 was paid to CBI. Div. Ex. 497.

CBI. Div. Ex. 496B. The investors received no salaries and the minimal stock buyback payments they received were paid out of their own investments.

Thomas Sullivan joined the company as CFO at the end of September 2011. Tr. 1654:4-6. When asked who his direct supervisor was, he testified "there was no org chart; so I didn't know ... [b]ut as time went on, it was clear that my interactions on a daily basis were with Mr. Daspin." Tr. 1654:5-10. As CFO of both AGCDS and WMMA, he was never given full access to the companies' bank accounts, only "viewer access" (Tr. 1669:13-17) or hard copy historical bank statements (Tr. 1672:6-18)—and had to negotiate with Agostini to get even that level of incomplete access. Tr. 1669:21-25. Sullivan testified that no members of the finance team—not he, as CFO, nor any of the treasurers (Bederjikian or Puccio)—had any ability to sign checks. Agostini was the only person, other than Joan Daspin "at one point," that had signing authority. Tr. 1675:15-23 (no one on the finance team could sign checks); Tr. 1675:24-1676:4 (Joan Daspin "at one point" signing checks). When asked how expenses were reviewed and paid, Sullivan testified "[a]s I found out, all the invoices were routed to Luigi [Agostini]. Those were discussed with Mr. Daspin, and Luigi would cut the checks and make payments based upon those decisions." Tr. 1685:3-7.

Daspin interpreted the CBI and MKMA consulting agreements to mean not just that CBI and MKMA had the exclusive right to perform the wide range of specified services, as opposed to WMMA asking other consultants to do so, but that WMMA did not have the right to perform those services themselves without CBI and MKMA, *i.e.* Daspin's, input and approval.

For example, Daspin chastised WMMA senior executives for performing functions Daspin viewed as within his prerogative. *See, e.g.*, Div. Ex. 604, May 11, 2012 email exchange in which Daspin chastises Lux for scheduling a meeting between Lux and two potential joint

venture gaming partners in England without notifying Daspin first. "Larry and I will go together to negotiate a transaction and bring back a signed one. Larry should have copied me on his email. Larry knows that MKMA is the exclusive deal maker. In the future, I expect Larry to directly send me a notification at the same time, since Larry's contract expressly requires that he can only participate in deal making with MacKenzie's consent in writing."

Lux testified that in fact he did not want Daspin to accompany him to the meeting in England because he was concerned with Daspin's general lack of cultural sensitivity in international business meetings. Nevertheless, Daspin insisted and went to the meeting, which ended abruptly. After the meeting, the Ladbroke's attendee told Lux he did not want to deal with Daspin again and that he had been offended when Daspin used his son's death as a marketing tool. Lux Test. Tr. 355:21-359:8.

Indeed, when Daspin felt he was being left out of the loop, he was quick to lambast anyone at WMMA, including Agostini. On one occasion Daspin claimed not to have known about a contract with an outside vendor to create WMMA's website. Daspin left a voicemail on Agostini's telephone and sent him a strongly worded email criticizing him for apparently not informing Daspin of the contract before it was consummated. Agostini insisted he had told Daspin ahead of time and had obtained Daspin's approval before signing the agreement and added that: "Any large expenditures that I sign off on, Mike [Daspin] is aware of." Daspin responded: "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." Div. Ex. 600, December 11, 2011 email chain.

Indeed, WMMA employees all ultimately answered to Daspin. For example, Daspin was responsible for bringing Nwogugu and Tropello, and Andrew Young, his new protégé, into the

Companies to play key roles. *See, e.g.,* Main Test. Tr. 991:1-992:2. They all answered to Daspin. Lux did not supervise Nwogugu, Lux Test. Tr. 348:23-25, who worked on the PPMs. *Id.* at 349:16. Young spent his time working entirely under Daspin's direction. Young Test. 1233-1294.

Daspin's influence extended to berating even senior executives for taking vacation: "You have not received permission to change your vacation, and if you do so without the consent of a majority of the BoD, you will be responsible for any damages the companies under your command may suffer." Div. Ex.616, Daspin email to Theresa Puccio. And demanding apologies from executives: "... I demand an instant apology in writing. Otherwise, I will not work with you ... I am not interested in hearing any excuses about why you shot off your mouth ... Rest assured, if you decide that you do not want to apologize, any potential investor Partners you worked on that do close, you will receive a proportional share of the fees." Div. Ex. 628, Daspin email to Burnham.

Daspin also verbally insulted senior executives such as Puccio: "Theresa ... Quite frankly, your extracurricular activities have nothing to do with business, but rather your hormones. It's a destructive force that can adversely affect a young lady's perception of right and wrong." Div. Ex. 130 at 3; *See also,* Daspin email accusing Puccio of being "a sick young lady and a liar" and "an upset crazy female." Div. Ex. 165.

Daspin was the person responsible for negotiating the terms of their investments and their employment duties and responsibilities. For example, in the fall of 2011, Daspin convinced three individuals to invest in WMMA, Theresa Puccio, Thomas Sullivan and Ara Bederjikian. Div. Ex. 62, Puccio September 20, 2011 Employment Agreement; Div. Ex. 32 Bederjikian September 12, 2011 Employment Agreement; Div. Ex. 63 Sullivan September 28, 2011 Employment

Agreement. They each had financial backgrounds and were given financial titles and responsibilities but Lux had no role in negotiating the terms of their contracts. Daspin did so. Lux Test. Tr. 337:19-340:12. WMMA had no need to hire three high-level financial executives at this time; it was a pre-revenue company. If it actually was Lux's company, he would have hired a controller. These three individuals were brought into the company because they were investors. There wasn't enough financial work for them to do and there was a lot of resulting tension between them. Lux Test. Tr. 340:17-341:19.

Daspin was the key decision maker on all important company disputes. For example, Sullivan testified about never knowing about the CBI/MKMA fees prior to investing (Tr. 1731:14-17 "I knew nothing about the fees") and then seeing the companies' agreements with CBI/MKMA "within the first 30 to 45 days that [he] was on the job." Tr. 1731:22-24. He testified that the CBI/MKMA fees he learned about seemed "excessive; in other words layers of fees" (Tr. 1733:14), especially at the "critical point in the company's development" (Tr. 1733:16), and that he grew concerned about the company's ability to "survive that type of outflow [of fees]" (Tr. 1733:24-25).

Sullivan approached Agostini, Main, and eventually Daspin with his concerns about those fees. Sullivan testified that when he and Ara Bederjikian raised their concerns about these fees, "we had pretty much a knockdown drag-out argument [with Daspin] 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; *see also* Div. Ex. 36 (showing $859,000 in outstanding fees to CBI/MKMA as of December 2011). One component of these fees was a $280,000 debt based on 800 hours of work performed at a rate of $350 an hour that

was not supported by "records such as time sheets." Tr. 1804:6-13. Sullivan testified that Daspin "estimated his time commitment was at that rate over that time period." Tr. 1804:15-16.

Within days of raising this issue to Daspin, Sullivan was forced to sign an apology. Div. Ex. 139, which reads, in part: "Ladies and gentlemen, I apologize for verbally casting aspersions on the companies" and goes on to "release" and "respectfully request release" from the companies regarding "any actions, claims and/or causes of action ... from events that occurred up to and including 12/8/2011." When asked why he signed the document, Sullivan testified, "I felt like I was pressured by Mr. Daspin to do it." Tr. 1815:3-6. Sullivan testified that he "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. He testified that Daspin told him "about his time in jail, and there was no way he was going back." Tr. 1738:11-12. When asked how he interpreted Daspin's statement about his jail time, Sullivan testified: "[b]asically, that we had – what we had uncovered could be turned into a case against him for some illegal transactions." Tr. 1817:21-23. Main and the other board members did not originate or discuss the releases, they just signed them. *See, e.g.,* Main Test. Tr. 1046:2-1049:12. Div. Ex. 139; Div. Ex. 466.

Sullivan testified that several days after signing the apology: "I came in one morning and was told that I, basically, was demoted, and that I would be reporting to Theresa Puccio effective immediately who would become the CFO of the two entities." Tr. 1821:6-11.

This wasn't the only instance where Daspin intimidated and threatened Sullivan. Sullivan testified that, in a separate incident where Daspin felt undermined during discussions with a law firm, Daspin "responded by calling me a [redacted]r and [redacted] as he [redacted] He continued to [redacted] me. I made my [redacted] of the office. [redacted]

[redacted] Div. Ex. 577, Tr. 1823:22-1824:3. "I felt I [redacted]. I felt [redacted]." Tr. 1824:11-12. "He was [redacted] me and [redacted] me. [redacted] That's why I [redacted]." (Tr. 1825:19-23).

In fact, when asked whether Daspin acted in a similar manner to the way he was acting in court, *i.e.*, using a [redacted] when they had work discussions over important matters, Sullivan testified: "Yes. He 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.

Gregg Lange testified about asking the WMMA board of directors about his ability to get payments through the stock repurchase program. *See generally* Div. Ex. 548. But Daspin was the person who responded: —"they were allowing Ed to respond for them" (Tr. 2272:7-8) and "I wanted an explicit answer to what the board had done; but ... it was my understanding already by this point that the board was essentially forced to do whatever the Daspins required them to do" (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.

Darin Heisterkamp, another investor employee, also expressed concerns about Daspin's control, to among others, Main. He wrote to him, in Div. Ex. 162, about the risk of leaving any "piece of ownership remaining in Ed's control." Heisterkamp testified that he expressed these concerns to Main because: "Based on what I had observed, Ed's control of the company, I

thought it was very risky ... for him to have any decision-making ability left in the organization." Tr. 2432:15-18.

Daspin also insisted that WMMA press ahead with the El Paso fight, in the spring of 2012, and particularly insisted on pursuing an expensive Pay-Per-View transmission of the fight, over Main and Lux's objections. Lux was not in favor of the El Paso fight generally, which was a financial debacle, with the company losing approximately $1 million. The company ran out of money after the fight. Lux Test. Tr. 359:14-361:22. Main was also opposed to the El Paso fight. He knew it would cost a lot of money to stage and if they did not make a profit it could put the company out of business. He was also opposed to trying to sell the fight through Pay-Per-View, given that the event did not have top-of-the-line fighters that would entice people to pay $60-$80 to watch the fight and given that WMMA could stream the fight over the internet at a much lower cost and start getting its name out there. Despite these objections by nominally senior executives, Daspin insisted on going ahead with the fight, which was a debacle. WMMA's financial condition after the El Paso event failed was "dire." Main Test. Tr. 1053:10-1058:4.

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

Daspin also caused CBI to enter into an agreement with WMMA and WHLD pursuant to which CBI would receive $250,000 for each ten percent that CBI allegedly negotiated downward from a 50-50 profit sharing agreement between WMMA and Internet Marketing Corporation ("IMC"). Div. Ex. 520, November 30, 2010 CBI Letter Agreement. WMMA subsequently entered into a contract with IMC pursuant to which it was agreed that IMC would receive 10% of any profits derived from sales made through its email database and CBI ultimately charged WMMA $1 million for this contract. Lux Test. Tr. 110:20-22). Lux testified that he had no knowledge whether IMC was initially asking for a 50% split of the profits and that

it made no business sense to him that CBI should get $250,000 for every 10% it allegedly negotiated the fee split down. Tr. 107:7-108:10; 109:25-110:7. And indeed there is no evidence that CBI actually negotiated the profit-sharing arrangement from 50-50 down to 10%.

The IMC contract was Daspin's idea. Lux Test. Tr. 243:21-23. On February 3, 2011, WMMA entered into a contract with CBI entitled: "Partially Exclusive Strategic Alliance Agreement Between Worldwide Mixed Martial Arts Sports, Inc. and International Marketing Corporation, Inc." (the "IMC contract"), Div. Ex. 12, 12A , pursuant to which IMC agreed, among other terms, to send emails through its email and text message databases on behalf of WMMA 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. IMC Contract ¶¶ 11.1

Lux had doubts about the efficacy of emails as a marketing tool by this time. "...[B]y 2010, email had largely lost its effectiveness as a marketing tool. When email first came out, we were all very excited to get email; by 2010 nobody was excited to get email. So people didn't open their email. .... by that point, most people had numerous email addresses, but only used maybe one or two actively. ... We would call them orphan emails, emails inactive... So the number – you could generate a lot of large numbers around email addresses in terms of saying 'I have so many,' how many were truly useful was a different matter." Lux Test. Tr. 244:24-245:22. The use of email "filters" also limited how many sent emails were actually received and read by the email addresses. *Id.* at 246:11-247:10. "2010 was probably the low point in terms of email effectiveness" and "if someone got a one-half percent return rate they would probably be thrilled." *Id.* at 247:21-248:8.

WMMA asked for supporting information from IMC to verify that it actually had 840 million emails in its database and "didn't receive it, nor was Mr. Wolk interested in providing it to us." *Id.* at 250:21-251:6. WMMA also asked for a breakdown of the demographics of the people associated with the purported 840 million emails and "His [IMC's owner Beryl Wolk] overall response to any request like this was, this is a straight commission deal, you don't need to know that. I'll blast the emails out, and whatever business you get, you pay us for it. I'm not sharing that with you." *Id.* at 251:7-17; 257:8-17 ("...it was very clear that Mr. Wolk's attitude was, look, this is a commission deal, I'm not telling you anything about my database ...").

Daspin himself admitted at trial that he did not know what was in IMC's database: "...Beryl had a leash on 840 million eyes, and maybe if the average person had two E-mails, maybe there was 550. 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. 3023:16-22.

At the time the IMC Contract was signed, WMMA did not know how many emails were actually in the IMC database; how many were duplicates; how many were for people in the U.S. or China, or Timbuktu; how many were in the WMMA target audience or were even sports fans, *id.* at Tr. 251:18-253:7; or how many were "double-opt-in emails" *id.* at 260:5-261:7. Lux particularly wanted to know the number of U.S. emails as it would increase the potential value of the list. *Id.* at 256:15-257:7. Lux had "no idea" what was in the IMC database when the agreement was signed. *Id.* at 258:23-259:1.

Lux did not view the IMC Contract to be worth the $1 million that CBI charged WMMA for negotiating it; he viewed it as nothing more than a "lottery ticket," *id.* at 258:1-2, of "de minimis" value. *Id.* at 262:1. Given that, there was no rational basis for anyone to value the IMC Contract at $82 million, as Daspin subsequently did. *Id.* at Tr. 259:6-10.

Main also had serious reservations about WMMA entering into an agreement with IMC. For example, in a January 10, 2011 email, Main stated, in substance, that Wolk was a "list guy;" that many vendors have 200 million consumers on their lists; that you could buy access to such lists for around $300, probably less, per one million names; that the lists would give age, location, income detail; and that "We can test the concept to see if it works before we enter into a contract that could cost us in many ways." Div. Ex. 608; Main Test. Tr. 970:6-973:12; 979:10-981:12. Main thought that Wolk was "nothing special." *Id.* at 973:23-974:2. Main thought it was better to get an email list that was more targeted geographically and test it to see if it garnered responses for WMMA's product than to just get access to Wolk's more generalized list at the cost of giving up a percentage of WMMA's profits. *Id.* at 974:21-977:20; 979:11-980:17.

Main's research indicated that WMMA could purchase a targeted list focusing on the target WMMA age group and relevant locations for $100-$300 and test the concept. *Id.* at 977:13-978:17. Main viewed general email lists such as Wolk's as the equivalent of "a cold call" but if they were to obtain more targeted lists of people who had already expressed interest in mixed martials arts, such as contracting with Facebook, "and the particular person you are targeting already has MMA interest within their profile, you are much further ahead of the game to attract that person..." Main Test. Tr. 978:12-979:7.

Daspin responded to Main's concerns as follows:

> ... If we have a signed contract with Beryl, by its terms he must find MMA subscribers or he makes nothing. From a marketing perspective, when I tell investors we have a signed contract with an international marketing corporation having approximately 1 billion potential customers of which project 35% are males and females in the 15-49 age bracket, that info will sell 20 times more people to invest in WUSA, including RPs.... 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 and let Mike get his job finished.

Div. Ex. 608 at 1.

Main interpreted Daspin, among other things, to be rejecting Main's suggestion that they do testing of the email concept first and also telling him to "butt out." Main Test. Tr. 983:7-985:8. Main refused to sign the IMC contract (Div. Ex. 20), Main Test. Tr. 985:20-988:23. When Main learned that MKMA had charged WMMA $1 million for its work on the IMC contract, Main was "aghast. I couldn't believe it." Main Test. Tr. 989:12-21. When asked why, Main testified: "Because it was an untested concept. I had no faith in it whatsoever. And to pay a million dollars for that was ludicrous." Main Test Tr. 989:22-25.

Indeed, when WMMA actually tried to use the IMC database to market the El Paso fight in the spring of 2012, it got no responses to its emails. *Id.* at 259:11-260:4. 361:24-362:5. In Div. Ex. 103, a May 18, 2012 email from Joon Lee summarizing abysmal results from attempts to use IMC database, Lee states, in substance, either the emails never went out or the IMC database is "junk."

Daspin used the IMC contract as a major marketing tool to attract investors. The PPMs contained extensive claims touting the alleged value of the IMC contract to generating income for the WMMA Companies. See Div. Ex. 1, July 2011 WMMA PPM at 14; 29-30; Div. Ex. 3, January 2012 WMMA PPM at 14 ("IMC is estimated to have about Twenty Five Percent of the worldwide MMA spectator market in its proprietary customer database"); 28, 52.

In addition, despite having no actual knowledge of the contents or efficacy of the IMC database, but consistent with Daspin's "smoke and mirrors" approach to raising money from investors, as set forth below, Daspin initially baselessly valued WMMA's contract with IMC as an asset worth $5 million in the July 2011 WMMA PPM and increased that valuation to an astronomical $ 82 million, without any intervening justification, just six months later in the January 2012 WMMA PPM.

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

Pursuant to the CBI and MKMA agreements, Daspin was in charge of raising equity from investors. Daspin engaged in extensive deceptive and fraudulent conduct in attempting to raise money from investors.

Seven individuals invested a total of $2,470,333 in the Companies. Div. Ex. 493.

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	

Investor witnesses testified that after being lured to the Companies' offices expecting to be interviewed for highly paying executive positions, Daspin instead solicited them to make substantial investments ($250,000 or more) in the Companies. Daspin called this "selling jobs." Lux testified that after he had not been paid for several months after he began working at WMMA, he told Daspin he needed to get paid. Lux Test. Tr. 284:17-24. Daspin responded:

"You know what the story is. We're selling jobs here, and we have to go out and bring in some investment." Tr. 285:5-11.

Lux understood Daspin be telling him he needed to help raise money from investors to be paid, *id.* at 290:21-291:6. Lux understood Daspin's statement "we're selling jobs here" to mean: "Well, when you brought in an investor, they also were given a position inside the company, and they were given a vehicle by which to access their retirement money without incurring a penalty or taxes. So you had primarily people who were out of work or about to be out of work or in some transition period ... who had some capital one way or another, whether in their retirement account or whatever, so in effect, you're making an investment in the company for which you were going to get future compensation. But you're also getting a job." *Id.* at 285:19-286-23; 288:12-289:18.

In order to sell jobs, Mr. Daspin recruited Andrew Young, a fresh college graduate—at the time working as a waiter at Applebee's (Tr. 1223:15-18)—to work as a "vice president of public relations and human resources" (Tr. 1222:20-21). Young "set up interviews with potential joint venture operating partners, investment operating partners." (Tr. 1226:17-20). He was not paid at all for six months, then briefly made $1,000 a month before negotiating his pay up to $2,000 a month. (Tr. 1229:3-11). In total he was paid approximately $14,000 over eighteen to nineteen months of working for Daspin. (Tr. 1325:24 and 1255:17-1256:8) (Young Test).

Young testified that they put up advertisements on Sixfigurejobs.com and Ladders, two job-seeking websites, "And we would e-mail people who responded to that ad and send them overviews of the company and set up interviews." (Tr. 1264:22-1265:5).

Agostini asked Main to use Main's personal credit card to pay for the advertisement luring investors. Main refused but he learned that they subsequently used a credit card belonging to a man who performed cleaning services at Daspin's house. Main Test. Tr. 1031:23-1034:22; Young Test. Tr. 1266:9-22. This was presumably done to distance WMMA from the deceptive ads they were placing on these websites.

Main had minimal involvement in meeting potential investors. Main Test. Tr. 1036:5-1038:17. And Main, even though he was WMMA's President, played no role in negotiating the investment and employment contracts or responsibilities for Puccio, Sullivan or Bederjikian. Daspin did. Main Test. Tr. 1039:10-1040:17. These individuals all had extensive financial backgrounds and Main did not think WMMA needed to hire all three to perform company functions; they were brought in because they were investors. Main Test. Tr. 1040:18-1041:21. Lux had no role in negotiating the terms of their contracts. Daspin did so. Lux Test. Tr. 337:19-340:12. Lux was also not aware of Agostini meeting with any potential investors. Lux Test. Tr. 308:21-23. Lux did not think that WMMA had a need to hire three high-level financial executives at this time; it was a pre-revenue company. If it actually was Lux's company, he would have hired a controller. These three individuals were brought into the company because they were investors. There wasn't enough financial work for them to do and there was a lot of resulting tension between them. Lux Test. Tr. 340:17-341:19.

The initial outreach emails to prospective investors advertised executive level positions and offered salaries ranging from $125,000 to $250,000 plus incentive compensation reaching $500,000. Tr. 1269:2-16, and *e.g.,* Div. Exs. 46; 157, 336 ("Your name has been recommended," "Starting compensation for those applicants selected ... between $125,000 up to $250,000 a year, plus performance compensation ... an additional $125,000 to $250,000 per

years," "we need to staff 50 VP-GMs to handle the operating business"); 422. Daspin wrote these portions of the outreach emails. Young Test. Tr. 1269:15-16. Young testified that he sent "well more than a thousand" of such emails to prospective investors. Tr. 1271:23-24.

When looking for investors, Daspin targeted job-seeking mid-level finance and technology professionals. Young and Burnham used resumes to identify potential investors. Lux Test. Tr. 293:1-15. Daspin admitted that hundreds of individuals visited WMMA over 27 months. "250 applicants visited WMMA over 27 months. That would be – ten a month would be 270 – well that's – ten a month, that's maybe an understatement." Tr. 3395:1-4.

Daspin also admitted that he did not know the investors before they were solicited by WMMA. He didn't know Puccio before she came in for an interview (Tr. 3331:1-6); or Bederjikian who was solicited through the Six Figure website (Tr. 3331:14-17; 3333:1-24); or Sullivan (Tr. 3331:18-20); or Lang, Lockett or Heisterkamp (Tr. 3331:22-25).

After signing a Non-Disclosure Agreement (*see, e.g.*, Div. Ex. 297), interested prospects were then interviewed by telephone or Skype. Typically, during the telephone or Skype interviews, job applicants were still not yet told that they would be required to make an investment, much less a minimum $250,000 investment, in order to be hired and to be paid a "salary," which in fact was merely a (partial) repayment of their investment. After the exchange of a nondisclosure agreement, *see, e.g.*, Young Test. Tr. 1272:3-5 and Div. Exs. 63A, 297, and a Skype interview, in-person interviews would be set up. Young Test. Tr. 1279:19-22.

During these solicitations, Daspin used an alias, Edward (or Ed) Michael, to conceal and delay disclosure of his criminal record and history of failed ventures. It was only after the prospects signed a required non-disclosure agreement and were close to investing that they were even told Daspin's real name. Lux was asked at trial: "And do you know how, if any way, he

was referred to by name in meetings with potential new investors who did not previously know him?" and answered "He was referred to as Ed Michael." When asked why, Lux testified: "He [Daspin] indicated that he felt that there was a lot of inaccurate information on the internet about him and his past, and he didn't want potential investors to see that information." Tr. 298:4-7; 299:5-8.

In corroborating testimony, Andrew Young testified that Daspin introduced himself as "Ed Michael" because he "had said that due to having a felony in the '70s and due to the ongoing litigation of Chamco, 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. In further corroborating testimony, Gregg Lange and Darin Heisterkamp testified that Daspin negotiated their interview-turned-investment solicitations under the name "Ed Michael," (Lange Test. Tr. 2229:6-12) and "Ed." (Heisterkamp Test. Tr. 2368:20-2369:2).

The evidence also shows Daspin directly instructing others not to use his name and to refer to him as a consultant. As Daspin wrote to Sam Tropello in a February 2012 email, Div. Ex. 634, "Sam, Please stop using my last name. You and I are not WMMA executives. We are MacKenzie executives and you should inform the recipient that with respect to Ed Daspin (which is how Tropello had already referred to Daspin in his prior email) and Sam Tropello, we are MacKenzie M&A executives and MacKenzie is a consultant for WMMA." Indeed, Daspin admitted that, at a minimum, he delayed disclosing his name to investors: "I was using my real name Edward Michael Daspin. The Daspin, I didn't tie in until after the NDA." Tr. 3080:2-4.

Daspin also falsely presented himself to employee-investors as only a consultant to the Companies, Young Test. Tr. 1278:20-21; Lange Test. Tr. 2234:1-3; Heisterkamp Test. Tr. 2368:20-2369:2; Lux Test. Tr. 297:21-299:8, when in reality, as discussed above, he had

substantial influence over most important business decisions of the Companies.

In soliciting investors, Daspin also failed to disclose the substantial amounts of monies already owed him, through CBI and MKMA, based on the fees earned to date, approximately $827,000 as of December 2011.

Three investors, aside from Main, and one potential investor testified in detail as to how Daspin lured them to invest. Young's initial email to Tom Sullivan, Div. Ex. 157, invited him to apply for an officer position and touted $250,000-$500,000 in starting compensation.[4] Sullivan flew from Raleigh, North Carolina for his interview in Little Falls, New Jersey. Tr. 1576:3-6. Before he flew to New Jersey, the topic of investing in WMMA had not come up. Tr. 1580:7-9. Upon arrival in New Jersey, Daspin announced for the first time to Sullivan that "everyone was an investor and everyone had skin in the game." Tr. 1579:11-13. After telling that lie to Sullivan (as two key officers and board members, Agostini and Lux and many sweat equity employees were not investors), Daspin asked Sullivan to invest a quarter of a million dollars. 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. Sullivan told Daspin he didn't have liquid funds to invest $250,000. Tr. 1593:20-23. Daspin replied, "if you don't have the liquid funds, you might want to look at this self-directed IRA option if you have funds available in your 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 in September 2011, one hundred percent funded through his

[4] Sullivan, from Raleigh, North Carolina, was a longtime financial services professional who worked as treasurer and chief risk officer at an energy company before investing in WMMA. He now works for the North Carolina State Chiropractic Licensing Board. Tr. 1547-1548.

retirement 401(k) savings. Tr. 1595:2-5, Div. Exs. 187 and 173 (wire transfers).[5] When the Court asked Sullivan why he had raised his investment amount from $250,000 to S351,000, Sullivan responded: "Because that went along with the job title and the salary ranges that were being offered, and I wanted to have the CFO position, not the treasurer position." Tr. 1595:16-22. Becoming a CFO was "very important" to Sullivan and his "main objective in the job search." Tr. 1591:21-22. Daspin told him he needed to invest over $350,000 to get that title, instead of the title of Treasurer. Tr. 1598:5-12.

Gregg Lange's story was very similar.[6] He received a recruitment email from Andrew Young, after posting his resume on several jobsites, Tr. 2219:3-10, inviting him to apply for several officer-level positions with the WMMA companies and advertising "starting compensation" of $125,000 to $250,000 in salary plus "an additional $125,000 to $250,000" in "performance compensation." Div. Ex. 336. The topic of "investment in the company as distinct from a straight salaried position" came up for the first time only when Lange was meeting with Daspin and others in person for what he thought was a job interview. Tr. 2230:1-3 and 15-18. Daspin conducted this interview-turned-investment solicitation under the name "Ed Michael," concealing his last name Daspin; 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. 2229:6-12 (regarding "Ed Michael"); Tr. 2234:1-3 (regarding omissions around "consultant" phrasing); and 2231:25 (regarding everyone had "skin in the game.")

Daspin's claim that "everyone had skin in the game" was material to Lange. In

[5] The investment overall represented roughly 55 percent of Sullivan's total 401(k). Tr. 1837:4-5
[6] Lange, from Wayne County, Pennsylvania, was a Princeton and Harvard-educated broadcast and media professional who previously worked for CBS radio and ABC television, as well as a consultant in media, before investing in WMMA. Tr. 2215-2216.

particular, Lange viewed Lux's investment in the company as important. He viewed Lux as having "experience in the field," "a strategic idea of where to take the company," and "critical touch points in the industry, and especially with web operations that were crucial." Tr. 2246:13-19. Lange testified—if it turned out Lux hadn't invested (as he did not)—"I wouldn't have been very pleased." Tr. 2246:25-2247:1.

Lange was solicited to invest "half a million dollars, if not more." Tr. 2232:6-7. And he was told that $250,000 was the minimum amount of investment accepted. Tr. 2235:1-6. He invested that amount and lost all but approximately $20,000 paid back to him through the so-called stock repurchase program. *See* Div. Ex. 494 at 4 (showing Lange invested $250,000 and received $20,312.50 back in repurchases).

Heisterkamp, from Ames, Iowa spent most of his career working for small startup companies focusing on business development, marketing and sales, product management and channel development—before investing in WMMA. Tr. 2360-2361. Heisterkamp posted his resume on job search sites around December 2011, shortly before receiving an email from Young. Tr. 2363:5-6, Div. Ex. 422. The email described officer-level positions and "starting compensation" of salary between $125,000 and $250,000 plus "an additional" $250,000 in "performance compensation." Div. Ex. 422. After signing a nondisclosure agreement (Div. Ex. 337) and participating in an initial Skype discussion (Tr. 2366:1-3), Heisterkamp traveled from Chicago to New Jersey for an in-person interview. Tr. 2368:8-10. Here, Heisterkamp met Daspin—who was introduced as a consultant for the company named "Ed"—nothing more. Tr. 2368:20-2369:2.

Daspin presented Heisterkamp with "two levels of investment that were available to consider: One for $250,000 and one for $350,000" with "higher compensation and additional

vacation benefits associated with the $350,000 investment." Tr. 2372:11-21. After presenting these options to Heisterkamp, "Ed" then "suggested that 401(k) money was eligible to be used to satisfy an investment consideration in the company, to roll over a 401(k) into the company and treat that as investment in the company." Tr. 2373:7-11.

Heisterkamp invested $351,000—$234,000 of which was financed from his 401(k) savings (practically his entire 401(k) or retirement savings), $100,000 from equity in Heisterkamp's primary residence, and the remainder borrowed from family and friends. Tr. 2403:7-11 (re investment amounts); 2404:1-6 (re amount funded from 401(k) savings); 2411:23-2412:14 (re value from primary residence); Div. Exs. 58, 59, 60 and 185 (wire transfers). He lost all but $26,325 which was paid back to him in stock repurchases. *See* Div. Ex. 494 at 4.

Heisterkamp testified that he only inadvertently learned "Ed's" last name was Daspin after investing, after someone from the office circulated updated contact information for everyone there which included instructions to refer to Ed as "Ed Michael." Tr. 2424:15-2425:2. He testified, "[o]nce I knew his full name, then I could begin to look for information about him in the public domain, like I did the other officers of the company before I joined." Tr. 2426:11-14. He testified that he did not previously look up Ed's name because "it was not a name that appeared in any information that I received." Tr. 2427:1-3. Once he did look up Daspin, he testified "I 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. 2426:16-21. Furthermore, he testified that the "description of the fraud appeared to be the same formula that was happening in WMMA." Tr. 2427:15-17.

In addition to Daspin's name not appearing in "any of the information" he received,

Heisterkamp believed Daspin to be a consultant. Tr. 2368:20-2369:2. Heisterkamp testified that his typical understanding of a consultant was: "They would have a beginning and an end period, at which time they would deliver their findings and results." Tr. 2387:9-12. Heisterkamp testified that Daspin's true role—as he only learned *after* investing—was inconsistent with his experience of consultants from serving on other executive management teams "[b]ecause a company is run by the executive team. A company is not run by an outside consultant." Tr. 2423:16-23. Putting the two post-investment revelations together—learning "Ed's" real name to be Daspin, his background to involve fraud, and the true nature of his role at the companies to be ubiquitous—Heisterkamp testified "[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.

The investors' testimony regarding Daspin's false claims that "everyone had skin in the game" is corroborated by emails. For example, in Div. Ex. 296, Daspin writes, via dictation through Andrew Young (Young Test. Tr. 1280:21-23, 1281:9-10, and 1283:4-7, to a prospective investor who did not invest: "The leaders of any WMMA company needs to and want to be a shareholder. 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."

Of course, Daspin's offer of salaries and bonuses ranging from $150,000 to $500,000 was also false and misleading. None of the investors were offered or paid any actual salaries. Instead, as described above, Daspin pressured the prospects to invest as much as possible, advising them how to draw on their retirement savings for investment funds and telling them that increasing their investment amount was a way to boost their salary and thus increase their draw against accrued salary during the start-up phase, under the Companies' so-called "Stock

Repurchase Program."[7] In other words, no investment, no "salary." In essence, they were paying themselves.

1. Daspin Used Hard-Sell Tactics on Potential Investors

Daspin engaged in misleading and verbally aggressive, and indeed abusive, tactics to pressure individuals to invest. Michael Diamond has been a high school teacher of business and engineering course in Maryland since 2000. He had previously been involved in managing merchandise and concessions for Ringling Bros. circus for approximately 18 years. In late 2011, early 2012, as his children were approaching college age, he posted his resume on executive job websites and was looking for a position paying between $250,000 and $500,000. He received an email and a telephone call from what turned out to be WMMA indicating they had reviewed his resume and that he was perfect, given his marketing and concession experience, for a position they had. Diamond Test. Tr. 2648:22-2656:22.

The call came from a person who identified himself as Ed and said the salary was between $250,000 and $350,000. That salary got Diamond's interest and he agreed to come up to WMMA's office for an interview. There was no reference to an investment as a condition of a job offer on the call, just a salaried job position. *Id.* at 2656:23-2658:9. Diamond took a personal day off from his teaching job and drove up to New Jersey. He met with "Ed" who he identified in court as Daspin, who introduced him to many people and then brought him into a room with a lot of people and began asking him questions about his resume. Daspin appeared to

[7] Pursuant to their employment and investment agreements, the employee-investors' salaries would accrue, but would not be paid until certain profitability targets were achieved. They could, however, receive a monthly draw before the targets were met pursuant to a "stock repurchase program," under which the Companies would buy back a fixed percentage of the employee-investor's stock each month. However, even those payments stopped when the company ran short on funds in the spring of 2012.

be "very, very excited that I was up there" in terms of Diamond's experience and background *Id.* at 2658:17-2664:16. Of all the people gathered in the room, Daspin did most of the talking to Diamond. *Id.* at 2664:17-20. Diamond sensed that none of the other people in the room seemed engaged, except for Daspin: "The only energy was coming from him, and I felt that in the room." *Id.* at 2664:21-2665:14. Daspin then put Diamond in a room with several executives who seemed to be trying too hard to get him to join the company, which he felt was odd for a job interview. He began to get concerned about what was going on. *Id.* at 2666:11-2667:22.

Daspin eventually took Diamond into a room with just the two of them and disclosed that Diamond would have to invest money to obtain a position, and the more he invested, the greater his title. Diamond testified: "I wasn't comfortable with that. That's not why I was there. In my head, that's not – I wasn't there to invest. I wasn't there to give anybody my money. I thought I was coming to an employment situation." *Id.* at 2667:23-2668:23. Daspin kept asking Diamond how much he could invest and while Diamond became uncomfortable he expressed an interest in investing just to get out of the office. Daspin pressed him to sign a contract right there but Diamond resisted. *Id.* 2669:7-2671:5.

If Diamond had been told before he drove up to WMMA's office that he would be required to invest to obtain a job, he would not have gone up there: "I had two kids already going to college. And I'm not a rich man, but I had college funds saved up for them, and there's no way in the world I would risk that money in stocks or companies." *Id.* at 2681:19-2682:12.

At one point during the meeting, Daspin received a telephone call and began telling the caller: "We've got somebody from Ringling Bros. circus" but Daspin greatly exaggerated Diamond's experience and expertise, which made Diamond more uncomfortable. Daspin described his role as organizing companies like this, disclosed that he had been sued six or seven

times, which further alarmed Diamond, but proudly claimed he had never lost a case. Daspin did not disclose his prior criminal background. *Id.* at2673:13-2674:25.

After Diamond returned home, he did some internet research and discovered negative comments about Daspin, 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. And I – I was like, "oh my God." Diamond sent Daspin an email saying, in substance, "No thank you, and there's no reason to contact me anymore." *Id.* at 2675:6-2676:23. Daspin called Diamond and began speaking with him as if they were longtime friends, trying to convince him to invest. Diamond did not tell Daspin what he had learned about him on the internet: "I didn't say things like, you know, 'You know, you're a monster'" but instead, to keep things "comfortable," he said that he couldn't risk giving up his Maryland teaching license. He also said he was uncomfortable when he learned that certain individuals he had met at the company had positions for which they seemed very unqualified based on their prior experience, referencing the vice-president of marketing who was a former liquor salesman [whom Daspin subsequently identified as Rich Burnham, Tr. 2690:3-9]. Eventually Daspin began to get more aggressive. *Id.* at 2677:3-2679:7. Daspin said: "'Come on. You wasted our time. You came up here.' You know. 'You promised. I told all the partners.' You know, 'What are you doing? You go back on your word. You're not a man of your word.' You know, he got like that with me." Diamond stuck to his guns and eventually hung up. *Id.* 2676:8-18.

Shortly thereafter, Diamond received a call from the former liquor salesman he had mentioned to Daspin, who was "very aggressive" with him, "like he was a tough guy." Diamond explained that he was very uneasy about the visit: "You asked me to come up, and it just didn't

feel like you were trying to get an executive. It felt like you were trying to get money from me." The caller became even more aggressive and Diamond hung up. *Id.* at 2679:19-2681:11.

Daspin then sent Diamond a demeaning email, stating, in part:

> ....Your fear of failure made you create a straw man to deflect the very opportunity to invest that you alleged you wanted to do. Your teaching certificate longevity from the State of Maryland is nothing more than a red herring because it has nothing to do with your becoming an investor Partner while you are a part-time Consultant to WMMA (and if that came to pass, which I regrettably do not believe you have the courage to make happen). All that stands in your way is whether you have the balls to invest.
>
> * *
>
> I am not sending a copy of this e-mail to any of the other Partners, because I don't want to embarrass you, and because all of us have second thoughts when it comes to important decisions having to do with money. But if you can't get over this, then even if you have the greatest skill, you are going to lose at the art of negotiation, because you wimp out when it comes to pulling the trigger. Show me you are a man . . .

Div. Ex. 631, Daspin January 9, 2012 email to Diamond.

Diamond testified: "He [Daspin] was attacking me personally, professionally. I mean, he was going after me every – each way in order to make me feel bad about not investing in his group that he was forming. ... it's a horrible thing for you to have sent that to any human being." Diamond Test. Tr. 2687:2-15.

Daspin initially did not admit to sending the email, suggesting Rich Burnham may have sent it ("that's not my style" Tr. 2689:4-11). When cross-examining Diamond, Daspin explicitly denied sending the email: "And as I say, I didn't prepare this letter because that is not the way I write." Tr. 2712:9-15, while acknowledging it was "filthy" (Tr. 2697:23-25). Only later did Daspin admit that he had in fact sent it. Tr. 3228:16-19 ("I remember it. At first, I didn't know if it was mine. Then, I remembered the following day and I admitted that it was mine").

D. Daspin's Control Over The PPMs

Daspin recruited Michael Nwogugu, a non-lawyer associate of Daspin's from prior failed ventures, to assist him with drafting contracts and other legal documents for the Companies, including the PPMs. But Daspin has admitted that he was the "architect" of the PPMs, Div. Ex. 481, Daspin Investigative Test. at 29, and that he participated in preparing them, *id.* at 15-16.

Numerous witnesses testified that Daspin was in charge of preparing the PPMs, including dictating the contents of the PPMs to others. For example, Andrew Young testified that during his "eight to nine hour" days (Tr. 1233:19)—or "about a hundred percent of the time" (Tr. 135:22-23) for the first five months of his employment (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. 1234:24-1235:3. As Young 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. Young also testified that during the 18 months he worked at WMMA, "about 30 to 40 percent of my time" was spent taking dictation form Daspin on the PPMS. Tr. 1256:3-9. Furthermore, as shown in Div. Ex. 251, Young 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." Young testified that they distributed "somewhere between 100 and 150" PPMs to potential investors. Tr. 1288:16-17.

Lux also testified that Daspin was in charge of drafting the PPMs. Lux observed Daspin dictating the contents of the PPMs to Nwogugu. Tr. 309:17-311:13. Lux did not hire Nwogugu and his interactions with him were minimal. Tr. 312:11-24.

Lux was not involved in drafting the PPMs because he did not think they would be productive for the company in raising money from sophisticated investors such as venture capitalists. Lux had prior experience putting together many PPMs and raising money from well-known venture capitalists and knew what they would be looking for. Lux did not believe that the PPMs would be useful in attracting "mainstream investors" or venture capitalists. The intercompany and related party transactions would be a red flag: "There is no possible reason that a start-up company needs to have 20 different intercompany stock transactions and ownership changes in holding companies;" and venture capitalists would not agree to invest in companies where their investments would be used to pay back start-up costs, accrued salaries and accrued debts. Tr. 313:8-316:8. In addition, the revenue projections in the billions of dollars, which Daspin was responsible for, were "not a reasonable assumption." *Id.* at 315:4-24.

Lux did not recall the board being asked to review and approve the final PPMs. Tr. 317:7-11. Agostini played no role in drafting the PPMs to Lux's knowledge. Tr. 317:12-14. Main also did not recall the board members meeting to discuss and review and sign off on the PPMs before they were sent to the SEC; and no lawyer advised the board members on their responsibilities as board members or as to the legal requirements for PPMS. Main Test. Tr. 1030:4-1031-10.

Instead, Main also testified that Daspin was in charge of the preparation of the PPMs. Tr. 1082:2-4. Main testified that, with respect to the PPMs: Nwogugu "typed out whatever your [Daspin's] thoughts were and made multiple changes, so he was –he worked intricately with you." and "He was a guy typing out what you were telling him to type out." Tr. 1082:5-20. *See also,* Div. Ex. 37 (Daspin email laying out directions to Nwogugu how to prepare legal documents); Div. Ex. 93 (Daspin email directing Nwogugu to "run the numbers" for WUSA

revenue projections); Div. Ex. 514 (Daspin answering Nwogugu's questions about quantity of shares to be issued, form of legal organization that entities will take, features of the warrants, and other technical matters); Div. Ex. 237 (Daspin email to Nwogugu: "Please show me in red line any revisions you want to make in WUSA. I need that PPM to sell deals.")

Daspin's supervisory role over Nwogugu was vividly illustrated by the following Daspin email to Nwogugu: "It's my recommendation that you, as previously requested in writing, talk to me first so we can share thoughts together prior to sending out crap, after the fact forcing me to look for a roll of toilet paper to clean it up." Div. Ex. 243.

Main had no prior familiarity with Rule 506 Reg. D private placement memoranda, had never previously invested through a PPM or had involvement with any company that had prepared or distributed a PPM. Main Test. Tr. 784:24-785:20. Main did not assist in the preparation of the WMMA and WUSA PPMs. Daspin did so. Main's only possible input into the PPMs was the potential scheduling of mixed martial arts events with Sam Tropello and he was not even sure if that got into the PPMs because they did not have participants. Tr. 1076:7-1079:7. Otherwise: "I did nothing relative to the production of the PPM." Tr. 1077:6-12.

Main did initially make efforts to make grammatical edits to earlier drafts of the PPMS but by June 2011, Daspin told him, in essence, to "butt out." Main Test. Tr. 1007:6-1008:15. For example, in a June 7, 2011 email, Main criticized the Overview as confusing, hard to read and wrong in places and offered several organizational edits. Div. Ex. 517, June 7-8, 2011 Main-Daspin email chain, at 2. Daspin responded in a lengthy email, making clear that his companies, CBI and McKenzie, had the final authority for signing off and approving documents sent to prospective investors. He stated, in part:

> Secondly, I disagree with you about where to place paragraph 2. Although your comment is logical that paragraph 5 should 'normally go under paragraph 2, in this case

the overview is designed for investors (*emphasis in original)* and promoters and to gain their credibility I wanted to co-brand IMC with WMMA and WUSA early on. In that regard, we will maintain that paragraph where it is.

If however, you are adamant about it, then we will modify it your way, but you will have to accept the responsibility to raise the financing because this overview is all about gaining equity and promoters ....

.... I don't think it appropriate to try to cast criticisms around regarding your version or 'our version". I'd rather accept CBI & McKenzie's responsibility with respect to Human Resources, equity raise and contract negotiations and try to be responsive to criticism....

.... But if you and/or Chris wish to change the overview solely for promoters then let Chris or you do so, and at the bottom of each page use the initial PR to distinguish them from the investor overview, or use the initial PR and AT for athlete, but I must first initial approval not only for quality control, but to ensure legal and SEC protections.

We will send out the new investor version shortly and since the overviews fall into McKenzie's responsibilities from a quality control point of view, CBI does not wish anyone to send out an overview that has not been pre-initialed by CBI and McKenzie. To be professional, we must have one message. (*emphasis in original)* It's ok to try to improve these messages because they are works in progress but protocol requires a McKenzie sign off as a precondition.

Div. Ex. 517 at 1.

Daspin sent an email to another individual who had been contracted to do some work on a PPM making clear that Daspin was in charge of the PPM process:

"...my Consulting firm had the contract to prepare a Private Placement Memorandum. I structured the deal with you to be a sub-contractor for $50,000, paid at a rate of 10% of the equity raised. MacKenzie M&A is mentioned in your AGCDS agreement. You were reporting to me, with respect to preparing it. You may think you were working with me, and you were, but you also were reporting to me or you would not have gotten the job. I sent you the WMMA PPM format to use for AGCDS, and I monitored your performance and made corrections where appropriate as the e-mails between you and our firm demonstrate."

Div. Ex. 524.

Daspin has admitted that CBI assisted in raising equity by "assisting in the preparation of private placement memorandums." Div. Ex. 481A, Daspin Inv. Tr. at 15:15-19. Daspin further admitted that, with respect to the PPMS:

> "We basically came up with the entire overview from 30,000 feet up which led to a series of historical facts about the industry. . . . So we created a history, we made certain assumptions about the uniqueness of the company and how it should be operated globally. That led to assumptions of number of fights which led to assumptions of number of spectators on pay per view, and by giving this overview, Mike Nwogugu was able to put in all of the corporate compliance and the boilerplate.
>
> So I was kind of like the architect in assisting for him to design a private placement memorandum, and then he would put in all the protections that the Securities and Exchange Commission and any other public entities wanted contained as disclosures...
>
> And so what I – the assistance was in providing that overview and then reviewing additions with groups of people as the company's employees grew, more and more people would collaborate and Nwogugu would end up with the finished product.

Div. Ex. 481A, Daspin Inv. Tr. at 28:18-30:1-4.

Moreover, an agreement (initialed by Daspin) and made Exhibit A to Main's December 13, 2010 WMMA Employment Agreement provided, in part, that CBI:

> "will assist WUSA to raise up to Three Million, Three Hundred and Thirty-Three Thousand U.S. Dollars (US$3.333MM) through a 506 Reg-D Private Placement Memorandum ("PPM") for WUSA. ... CBI will assist WMMA, on best faith efforts, to raise an initial tranche of Seven Million U.S. Dollars (US$&MM) via the sale of Seven (7%) percent of WMMA's Common Stock, pursuant to the terms of a WMMA's PPM to be completed in the first quarter of 2011."

Div. Ex. 149A, Main WUSA Employment Agreement dated December 3, 2010, Ex. A to WMMA Letter Agreement dated December 13, 2010 at ¶ 7.

In the fall of 2011, Daspin became involved in drafting new PPMs. This was not done at the direction of Lux or, to his knowledge, the other board member, Agostini or Main. Lux Test Tr. 373:3-17.

CBI and MKMA billed WMMA $300,000 (discounted to $237,500) for work on the WMMA, WUSA and WDIS PPMs. Div. Ex 94, December 15, 2011 MKMA Invoice. The invoice also noted that Nwogugu would be paid only $12,500 for work done on the WMMA PPM (footnote 8). MKMA also billed $1,000,000 for the IMC contract, which it said it invested as equity in WMMA. *Id.*

Daspin also directly sent PPMs, by email, to prospective investors. *See* Div. Ex. 635 (email from Daspin to "[redacted]@aol.com" "Enclosed are updated PPMs").

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. Div. Ex. 1 at 44. It also stated that: "The investors denoted with an asterisk own shares of WHLD, the 92% owner of the company and a super-majority owner of WMMA." *Id.* Neither Daspin nor his wife is listed as one of the shareholders of WHLD. Similarly, the January 2012 WMMA PPM states that WHLD owns 91.35% of WMMA. Div. Ex. 3 at 44. It further describes the ownership of WHLD as follows: Agostini "as trustee" 22.54%; Main "as trustee" 22.54%; Lux "as trustee" 22.54%; Agostini 12.38%, and others not relevant herein. *Id.* at 43. The PPM failed to disclose who they were trustees for and failed to disclose the Daspin family partnerships' ownership interests in the WHLD shares held by Agostini, Lux and Main "as trustees."

Sullivan testified that if he had known that Daspin family partnerships owned and controlled by Joan Daspin had the right through warrants to own 92 percent of the WMMA entities, he would not have invested $351,000 from his retirement savings into these companies. Tr. 1874:17-22. He testified "it was like a spider web of organizations and ownerships" and that it "would have raised flags to me that people such as Ms. Daspin involved with McKenzie & Associates [sic] were there as a consultant were really much more than that, but actually were the ultimate owners of all of these legal entities." Tr. 1874:25-1875:8.

Lange testified that when he was considering investing in WMMA he did not know that family partnerships owned by Mrs. Daspin held warrants to purchase all of the shares controlled by each of Lux, Main, and Agostini that would entitle her to own more than 92% of WMMA Holdings. Tr. 2293:16-24. Lange testified that if he had known those facts, he would not have

invested with WMMA "because that's not the way it had been presented" and he regards the omission as "a breach of faith on behalf of the company." Tr. 2294:10-23. When Lange learned of the "ownership structure in the background ... of the Daspins controlling the board" he testified that "that was obviously a behind-the-back kind of operation." Tr. 2297:3-12.

Heisterkamp also testified that—prior to investing—he never knew that Daspin family trusts, controlled by Mrs. Daspin, held warrants to purchase a controlling ownership of WMMA's holding company. Tr. 2463:1-6. Heisterkamp, like Sullivan and Lange, also testified that if he had known that the Daspin family trusts owned such warrants, he never would have invested. Tr. 2463:7-12.

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 contains an extensive six page section entitled "WMMA's Senior Executive Management Team and Board of Directors" identifying Agostini, Lux and Main but also listing numerous other individuals having little or no actual connection to WMMA, making Daspin's absence, given his dominant role in the Companies, all the more glaring. Div. Ex. 1 at 54-58. Furthermore, many of these biographies of "Senior Management" were either false or grossly misleading. For example, the Senior Management Team section includes biographies for: (1) a "Mike Smith," Div. Ex. 1, at 55, a pseudonym for an individual who was "a local gym owner and promoter" who was "never utilized with the company. He never really did anything." (Main Test. Tr. 958:14-11); (2) a "Jeff Smith," Div. Ex. 1 at 55, another pseudonym for an individual who Main had no recollection of (Main Test. Tr. at 960:5-960:24); (3) Beryl Wolk, described as "Chairman of WMMA's Cable and marketing Committee," Div. Ex. 1 at 56, Div. Ex. 3 at 58, who was never a member of senior management to Main's knowledge and Main never sat in on any cable and marketing

committee meetings with Wolk (Main Test Tr. at 961:11-22); (4) Craig Eaton, described as WMMA's "General Counsel and Co-Founder," Div. Ex. 1 at 56, Div. Ex. 3 at 58, even though WMMA did not employ him or anyone else as General Counsel (Main Test. Tr. 962:4-963:3); (5) Joseph Przyhocki, described as "CFO, CPA, Controller & Treasurer," Div. Ex. 1 at 56, even though he was not WMMA's accountant (Main Test. Tr. 963:4-17) and there is no evidence he performed any of these roles at WMMA; (6) Frankie Aikens, described as Production Coordinator and Co-Founder (In House)," Div. Ex. 1 at 57; Div. Ex. 3 at 61, even though Main has never met him, heard of him or had any dealings with him (Main Test. Tr. 965:23-966:7; (7) Tommy Popps, described as "Producer (In House)," Div. Ex. 1 at 57; Div. Ex. 3 at 61, even though Main did not know him; and (8) Mehdi Zollo, described as "Film Director (In House)," Div. Ex. 1 at 58; Div. Ex. 3 at 61, even though Main had no idea who he was and WMMA had no in-house film director or producer Main Test. Tr. 966:13-21.

Even Andrew Young, who served as Daspin's typist, and assisted in recruiting investors at Daspin's direction, merited a prominent description in the PPM, Div. Ex. 1 at 57, Div. Ex. 3 at 61. But the PPMs were silent as to Daspin himself.

The PPMs also contain a discussion of MKMA, stating that: "MKMA provides human resources, negotiations, M&A and financial advisory services to WMMA and AGCDS." Larry May, another Daspin loyalist who provided minimal services to the Companies, is, however, identified as the Chairman/CEO of MKMA. Div. Ex. 1 at 58; Div. Ex.3 at 61. The same PPMs contains no reference whatsoever to Daspin's position as Senior V.P. of MKMA or as the primary person responsible for the all-encompassing services MKMA's provided to WMMA.

The January 2012 WMMA PPM identifies twenty-two individuals in the Senior Management section but also fails to identify Daspin as one of them. It also contains the same

discussion of MKMA's role as in the July 2011 PPM and contains no reference to Daspin, let alone to his dominant role in virtually every aspect of WMMA. Div. Ex. 3 at 56-61.

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 related products.

1. The Misleading Description of the IMC Contract

In describing the IMC contract, the July 2011 PPMs stated:

> WMMA has signed a long-term strategic alliance agreement with [IMC]. . . . IMC is one of the foremost multi-level marketing and database marketing companies in the world and, in connection therewith, provides joint ventures with hotels, timeshares and has thousands of dollars of free product and services discounts as part of its marketing programs to provide MMA spectators with value-added benefits that they are not now enjoying by watching other competitor's shows.
>
> . . . .
>
> IMC has over One Hundred and Thirty Million (130,000,000) U.S. mobile phone numbers for text messaging and invitations; as well as access to Four Million (4,000,000) websites of prospective spectators. In addition, IMC has over Eight Hundred and Forty Million (840,000,000) opt-in e-mail addresses and One Hundred Million (100,000,000) press release outlets.

Div. Ex. 1 at 29; *see also*, Div. Ex. 3, WMMA January 2012 PPM at 28.

The PPMs further stated that out of a two-billion person potential market in the sixteen countries where the Companies planned to operate, "IMC is estimated to have about Twenty Five Percent of the worldwide MMA spectator market in its proprietary database." *See* Div. Ex. 1, WMMA July 2011 PPM at 14; Div. Ex. 3, WMMA January 2012 PPM at 14.

However, the PPMs failed to disclose that the Companies had never used the database, never verified or tested the database and had no idea how many email addresses or mobile telephone numbers the database actually had, how many were duplicates, how many were still valid, how many were in the U.S. or in other countries the Companies were targeting, how many

were for people within the target audience for mixed martial arts, and to the extent the contacts had double opted-in, what products or services they had opted in for. There was also no reasonable basis for the claim that IMC database was estimated to have email addresses for 25% of the mixed martial arts spectator market. The PPMs also failed to disclose that the effectiveness of the database depended in significant part on the Companies having a working website for its email marketing, which the Companies did not have at the time they solicited investments.

Gregg Lange, with his background in sports broadcasting, testified about how important this marketing description was to his decision whether to invest. He told the Court that this description of IMC seemed like an "explicit solution to a major marketing hurdle for a company of this sort, that there had to be something like this either that they acquired on a piece-by-piece basis, or – or that they had on a contract basis in terms of – in terms of access for potential web customers and potential video customers on all kinds of platforms." Tr. 2253:13-19. Lange 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. He also testified that if he had known the IMC Contract to "be just a fabrication" he would never have invested—"not so much because it couldn't be replaced by something, although it will be costly to replace that kind of prearrangement, but because it was – because it was a lie in the PPM." Tr. 2297:22-2298:2.

Like Lange, Heisterkamp also has a background in "marketing and sales" and "promoting businesses' advertisements through digital marketing like messaging and E-mails." Tr. 2377:12-23. The PPM he was provided, dated January 5, 2012 (Div Ex. 154 at 28) describes IMC in

similar fashion—having over 130 million US mobile phone numbers, 4 million websites, 840 million opt-in E-mail addresses and 100 million press release outlets. This PPM also asserts that IMC had "about 25 percent of the worldwide [mixed martial arts] spectator market in its proprietary customer database." Div. Ex. 154 at 14. Heisterkamp testified that 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. He testified that he read these descriptions in the PPM to mean "that there was a wide audience already inclined to the content proposed to be produced by the company and to be received for potential subscriptions to the broadcast of the fight tournaments." Tr. 2381:6-10.

2. Baseless Valuations of the IMC Contract

The WMMA July 31, 2011 PPM contained a reference in the Related Party Transactions section to MKMA's valuation of the IMC contract at $5 million. Div. Ex. 1 at 31, ¶ 6. Daspin was responsible for that valuation. Div. Ex. 96 (*see, e.g.,* Daspin 1.21.2011 email describing his valuation methodology). However, in the fall and winter of 2011, as he was attempting to raise more money from investors, Daspin began to push for the inclusion of a significantly higher valuation of the IMC contract in the PPMs and to give it more prominence. An early draft of the January 2012 PPM still contained a reference to only a $5 million valuation of the IMC email database. Div. Ex. 376 at 30.

According to witnesses, Daspin ultimately insisted on the inclusion of an $82 million valuation of the IMC email database in the January 2012 PPM and that the valuation be listed as an asset on WMMA's balance sheet. The narrative portion of the January 2012 PPMs included a representation that MKMA had valued the IMC contract at $82 million. *See* Div. Ex. 3, WMMA January 2012 PPM at 28. That PPM also included a two-page, unaudited "Consolidated Balance

Sheet" which listed the IMC email database as an intangible asset valued at $82 million. A footnote to the $82 million entry on the balance sheet stated: "Appraised value by M&A of 840 million double opt-in customer database (20 year exclusive contract)." Beneath a second footnote was the phrase "Unaudited compiled Non-GAAP." *Id.* at 45-46.

Daspin admitted in testimony that he was responsible for the $82 million valuation for the database that was included in the PPMs and that he signed the written appraisal for that amount provided to the WMMA board. Div. Ex. 481A, Daspin Inv. Tr. at 64:17-25-66:1-2; 75:4-76:1-24. Daspin testified that he: (1) assumed it cost one tenth of a cent to obtain an email address; (2) he then took the cost of one tenth of a cent to acquire an address and attributed a value of one tenth of a cent to each time an email was sent to that address (confusing cost with value and not taking into account that once one acquires an email list one does not typically have to pay an additional fee each time it is used); (3) he then assumed WMMA would send emails to 830 million email addresses ten times a year, which he valued at $8.3 million (830,000,000 times $.001 = $830,000 times 10 times a year = $8,300,000); (4) which he then multiplied by ten years of the contract's 20 year term, to arrive at a valuation of $83 million. *Id.* at 70:21-25-71:1-25.

Daspin had no reasonable basis for this valuation. Daspin said he believed that IMC had 60 servers throughout the world but "I didn't know whether he [IMC's owner Beryl Wolk] owned them directly or through joint ventures, I had no idea." *Id.* at 82:1-17. 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 93:6-19); that Wolk declined to guarantee a response rate (*id.* at 101-102) and that he merely relied upon Wolk's alleged oral representation to him that there were 220 million U.S email addresses in the database (*id.* at 94), even though Wolk specifically

refused to indicate how many U.S. email addresses were in the database in the written IMC contract (Div. Ex 12A). Wolk also struck out a proposed provision in the IMC contract whereby IMC would have guaranteed a minimum response rate of two percent. *Id.* Daspin. Inv. Tr. at 20-25. At a minimum, Wolk's reluctance to be specific about the database should have raised red flags regarding the content and effectiveness of the IMC database.

Indeed, Daspin's due diligence consisted of nothing more than blind faith: "But you now he has a contract and I hope to God that everything in that contract that he warranted and represented is as accurate as he says it is." Daspin. Inv. Tr. at 101:1-4.

Daspin also admitted that Wolk told him "a lot of people have more the one e-mail site" (*id.* at 94) but Daspin never accounted for duplicates in arriving at his $82 million valuation and he admitted that he did not know how many emails in the database belonged to sporting event customers (*id.* at 104-105). In sum, Daspin did nothing to test the database or Wolk's representations.[8]

Lux testified that there was no rational basis for Daspin's earlier valuation of the IMC contract as worth $5 million: "there literally was no way to value that contract in that manner." Tr. 268:6-7. Lux was asked, "Did you have any basis to understand why a database that had been valued at $5 million or less in July 2011 was all of a sudden worth $82 million?" and he answered "I certainly didn't understand how that was possible, no." Tr. 375:9-14. When asked "is there any rational way that somebody could put an 82 million-dollar value on this mystery box database?" Lux answered, "No." Tr. 259:6-10. Lux objected to Daspin's $82 million

[8] Moreover, Daspin knew or was reckless in not knowing that the effectiveness and value of the database was entirely dependent on the Companies' having a functioning website through which individuals who received marketing emails or text messages could purchase tickets to sponsored events and related products, and to download or stream digital content, and he knew that the Companies' staff was still unable to create an operational website when the PPMs were provided to prospective investors.

valuation but: "Mr. Daspin did not want it to be up for discussion," Tr. 377:5-7, and insisted, in a "very aggressive" voice, that: "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). Despite Lux's objections, Daspin's $82 million valuation for the IMC database ended up in the January 2012 WMMA PPM (Div. Ex.3, January 2012 PPM at 45-46 and fn. 1); Lux Test. Tr.374:12-377:13.

Sullivan also testified that he objected to Daspin's insistence that the IMC contract's valuation increase from $5 million to $82 million. When Sullivan expressed his objections to Daspin, "it was basically the same thing you've seen in court here on a daily basis, doesn't take no for an answer, will talk over you, whatever he needs to get his opinion adopted." Tr. 1703:23-1704:4 (re disagreement over valuation); Tr. 1705:5-9 (re Daspin's reaction to disagreement). More specifically, Sullivan testified that Daspin told him and others on the finance team "that we 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. 1709:18-21. Sullivan further testified: "that's what the company published"—*i.e.*, Daspin's $82 million valuation—and "That's not what I agreed to." Tr. 1710:1-2.

3. Carl Sheeler, a Valuation Expert, Testified That Daspin Failed to Conduct Basic Due Diligence, Used an Unrecognized Valuation Approach and that the IMC Database Had a Value of Less Than $1 Million, not $82 Million, Even Assuming It Contained 840 Million Emails

The Division called Carl Sheeler as a valuation expert. Among his extensive qualifications, Sheeler has performed over 1200 asset valuation projects, been certified by several national valuation associations, and served on their boards, taught approximately 150 valuation related courses and seminars, and has been qualified as a valuation expert in

approximately 50 legal proceedings and appointed a neutral court expert on approximately a dozen occasions. Sheeler Test. Tr. 1338:4-1379:9; Div. Ex. 488, Attachment I, Sheeler Curriculum Vitae. Daspin accepted Sheeler as a valuation expert. Tr. 1378:17-1379:8.

Sheeler prepared an expert report. Div. Ex. 487. Sheeler concluded that the methodology behind Daspin's $82 million valuation of the IMC email database was flawed in numerous respects. For example, it assumed, without confirmation, that IMC in fact had 840 million inherently valid email addresses. Second, it erroneously assumed that all 840 million emails equally contributed value, when in fact all geographics and all demographics would not contribute equal value. Daspin's methodology also failed to account for the fact that the database would decay over time. It also failed to adjust for the fact that the "double-opt-in" claim had no value, because individuals did not opt-in as mixed martial arts enthusiasts. Div. Ex. 487 at 3, paragraph 1. As Sheeler explained, "If I am a dog lover and somebody says, 'Well, I can give you an entire email database of double opt-in of cats [lovers],' why would I care? Double opt-in is only of value if it means double opt-in to the particular demographic of an interest that I have." *Id.* at 1410:11-1411:3.

The PPMs described the emails as "double opt-in," but they failed to say "double opt-in' for what, which was misleading at the least. Indeed, the Court asked Sheeler: "Do I understand that the definition that was used in the PPM about being double opted emails was not sufficiently descriptive.? Sheeler: " .... The question is, double opt-in for what?" 1423:4-15.

Daspin also failed to take basic due diligence steps to confirm the content of the IMC database before valuing it. For example, due diligence would normally entail inquiry into "the origin/history of the database; confirmation that the database actually contained 840 million emails; confirmation of the number of emails, if any, IMC had direct ownership of versus how

many were contained in third-party databases to which IMC only had some form of access; an examination of the number of third party databases and the terms and means of IMC's access to their databases; the presence and meaning of the double opt-in claim; validation of the email list to ensure emails are deliverable; relevant geography and demographics and the method for continued upkeep. Div. Ex. 487 at 3, second paragraph.

Sheeler testified that even if Wolk had the most sterling reputation for veracity, it was incumbent upon a valuation professional to verify his representations. Indeed, if Wolk had such a sterling reputation, he would have understood that, as part of the due diligence process, he should provide supporting documentation for his representations to maintain his reputation." Sheeler Test. Tr. 1442:6-1444:12.[9]

Daspin himself recognized the importance of conducting due diligence on the database when Wolk was asking WMMA to pay $25,000 for access to it. Daspin stated:

> Most important is the performance of your database(s) as it relates to our MMA spectator event(s). if the test market works than the ticket for admission of $25K is a no brainer. If however it does not produce the results we anticipate then there is no sense in CBI going forward with a long range program. Don't get me wrong but the proof is on the pudding. In this case, how many tickets we sell to through your database(s) marketing channel(s).

Daspin then asked for the names of the CEO's of five joint venture partners that IMC had entered into contracts that were at least two years old, the product/services IMC marketed for them, the initial test results in revenue dollars and the revenue results for every two year period thereafter, the consumer price point that the product or service sold at and the breakdown of sales for each specific marketing channel (i.e., email, fax, text messaging, etc). See Div. Ex. 288, Daspin July 16, 2010 email to Wolk, at 1-2. Instead of providing any of this information, Wolk simply responded: "Scratch out the 25K, I will advance all funding for our marketing! Let's get

[9] Moreover, while Lux noted in passing that Wolk had been successful as a direct marketer, there was no testimony or evidence regarding his integrity, or the reliability of any of his claims, or even his own knowledge regarding the content of his database network.

started!" Div. Ex. 288, Wolk July 23, 2010 email to Daspin, p. 1. In his responding email, Daspin did not renew his request for any of the requested due diligence information but merely asked Wolk what he needed to telecast MMA events. Div. Ex. 288, Daspin August 4, 2010 email to Wolk, p. 1.

Sheeler testified that the fact that IMC never provided the number of U.S. emails was a "huge concern." Sheeler Test. Tr. 1397:1-12. Not knowing how many emails IMC directly controlled versus how many were accessible only through third-party databases was also a concern: "Not knowing what that number is creates uncertainty. Uncertainty creates risk. High risk creates low value." *Id.* at 1397:13-1398:4. Lack of control over third-parties who might send out spam emails using the IMC database could also corrupt the entire database, blocking emails sent by later users such as WMMA. Sheeler Test. Tr. 1404:7-1408:2.

Sheeler opined that the fact that Wolk refused to provide verification for the contents of his database was a significant red flag that should have heightened concern about Wolk's representations: "In my opinion, Daspin, and indeed, any responsible valuation professional, should not have relied upon the uncorroborated claim given the red flags raised by (1) the uncertainty as to whether IMC had direct ownership of any emails and, to the extent it did not, how many third parties actually owned the emails, what contractual terms governed IMC's access to such emails; how long any such contracts would last; what ability IMC had to ensure the continuing validity of and access to all such emails; (2) IMC's refusal to identify how many of the purported 840 million emails had U.S. addresses; (3) IMC's refusal to guarantee a two percent or any "response rate" for the emails; and (4) Wolk's refusal in 2010 to answer Daspin's questions regarding the composition the email list." Div. Ex. 487, ¶ 65.

Sheeler also testified that it was important to know how IMC first constructed its email database. "...knowing how this information was gathered is relevant because we are all familiar with the term "garbage in, garbage out." So if you don't know from what sources this information was gathered, you don't know whether you have an 88-year old woman from Sweden or a 29 year old guy from Brooklyn that loves mixed martial arts." *Id.* at 1400:20-1401:11. In addition, if WMMA were to cast a wide net to attract new customers, and an email for mixed martial arts fights, an extremely violent sport, were sent to a 90 year old woman in Sweden, or other people opposed to receiving unsolicited emails for such a sport, that could result in numerous spam complaints to regulatory bodies and shut down a large number of emails. *Id.* at 1412:5-1417:22.

Daspin's methodology also failed to account of the fact that an email database typically losses approximately 20 percent of its valid emails per year. *Id.* "In effect, if you had 840 million emails that were not updated by the end of year five, you would have no valid data or limited value valid data." Sheeler Test. Tr. 1402:7-1403:2.

Daspin's methodology was also flawed because it not only assumed that there were 840 million separate valid email addresses, and flawed because it attributed equal value to each email but also flawed because it 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. There is no recognized valuation method that increases the value of an email based on the number of times it is contacted. Div. Ex. 487 at 3, third paragraph; Sheeler Test. Tr. 1437:7-1440:13. As Sheeler explained, by that logic, if you send an email to that address 1 billion times, it is worth one billion times what it cost to acquire it, but you do not necessarily get any additional value for the email by sending it that many times; and if it is a worthless email to start, it has zero value no

matter how many times you contact it. Indeed, Sheeler was not aware of any valuation method that would justify increasing the value of an email to even the best customer in the world based on how many times you contact that email address. Sheeler Test. Tr. 1446:19-1448:18; 1449:23-1451:5.

Sheeler opined that there are three primary recognized asset valuation methodologies: (1) the cost approach, which measures how much it would cost to purchase such an asset; Div. Ex. 487 at 24-27; (2) the market approach, which examines arms-length transactions of same or similar assets and businesses and their risk profiles; Div. Ex. 487 at 27-30; and (3) the income approach, which examines how much income do you reasonably expect the asset to generate, Div. Ex. 487 at 30-32. Sheeler opined that WMMA had insufficient operational history and had generated insufficient data to support the market and income approaches to valuation, *see, e.g.*, Div. Ex. 487 at 27-32. He instead focused on the cost approach.

Sheeler testified that, under the cost approach methodology, even assuming there were 840 million separate valid emails in the database, and even accepting Daspin's assumption that each email cost .001 (one-tenth of a penny), the value of the IMC database would be $840,000 (840 million times .001). *Id.* at 1455:23-1457:20. However, Sheeler contacted two major email lists brokers and determined that, in 2010-2011, the actual cost to obtain a database of 840 million addresses was approximately $420,000. And that was the cost of owning the list outright. WMMA's cost of merely having access to such a list that was shared with others would be lower than $420,000. Sheeler Test. Tr. 1452:20-1455:16; Div. Ex. 487 at 26, ¶100.

Indeed, Sheeler noted that Wolk had offered to lease access to his list to WMMA for $25,000, which Daspin declined to pay for without more substantiation of what he was getting. Under the cost methodology, WMMA's rights to the IMC database would therefore be valued at

$25,000. Sheeler Test. Tr. 1466:2-12. Div. Ex. 487 at 27, ¶¶ 101-102. *See* Div. Ex. 288, Wolk-Daspin email chain.

Sheeler also worked with a list broker to obtain an email list focused on WMMA's target age group, although actually expanded to be more encompassing, 15-49, 3-1 ratio of males to females, and in the markets where WMMA expected to hold events in its second year of operation, the U.S., Canada, Brazil and the U.K. That resulted in a list of approximately 27 million email addresses and cost 4 cents per email, for a total cost of $1.2 million. Sheeler Test. Tr. 1460:21-1466:1. Div. Ex. 487, p. 26, ¶ 99.

4. The WMMA Bankruptcy Trustee Could Not Place Any Value on the IMC Contract

Alfred Giuliano, the bankruptcy trustee who oversaw a Chapter 11 filing by Daspin and others related to the WMMA companies, testified that no one—creditors, debtors, nor third-parties—was able to present any evidence that the IMC contract had any value. Tr. 1752:11-15 (Giuliano Test.). Giuliano also testified, "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 that it had no value." Tr. 1753:13-17.

Thus, Daspin's $82 million valuation of the IMC email database was a knowingly unfounded misrepresentation.

H. Misrepresentations About Cash on Hand

The July 2011 PPM contained unfounded projected revenues for a planned fight in Ghana. Lux stated that there was absolutely no strategic or technical reason why you would pick Ghana as your first fight; the idea of a music festival and mixed martial arts fight made no sense; he did not believe the individuals who were going to stage the festival had the financial

wherewithal to do so; and no fighters were lined up. "None of what was presented to us was real." The fight never happened. Lux Test. Tr. 321:20-324:11.

Main also had objections to the proposed fight in Ghana. "My objection was to the entire project. It was out of direction of the company. It was going to be ridiculously expensive, and we had not – we didn't have a footprint in the business." Main Test. Tr. 1027:24-1028-5. Main also thought that the projected revenues for the fight, which came from Daspin, were "very high." *Id.* at 1027:9-23. Nevertheless, Daspin pursued the fight, which never happened, despite the objections of Lux and Main, the CEO and President, respectively, of WMMA.

The July 2011 WMMA PPM projected revenues from the fight of $99,999,996 for pay-per-view revenues and product sales, advertising/sponsorship and live gate revenues of another $30 million. Div. Ex. 1 at 71. The PPM stated that the $99 million pay-per-view number was based on a projection that 8,333,333 people would buy the fight at $12.50 per ticket and that 1 million people would buy products at $25 per person. But there was no good-faith basis for these projections. WMMA had no third-party contracts or internal infrastructure to broadcast any such fight by pay-per-view and had no product to sell. In sum, there was no reasonable basis for any of these numbers. "There was no show your work behind any of these numbers." Lux Test. Tr. 327:4-331:24; 333:9-334:17.

Based on these projections for income from the Ghana fight, the July 2011 WMMA PPM also contained a figure of "Cash" for "Stub Period 2011 (Chartable Event) of $33,085,850. Div. Ex. 1, p. 77. There was no reasonable basis for this figure. Lux Test. Tr. 334:18-337:18. Lux was asked: "Did you think it was reasonable for somebody to put in a July 2011 WMMA PPM that it would have $33 million in cash on hand in stub period 2011?"; he answered, "I didn't

know where it would possibly have come from, so no" and "I did not think those numbers were reasonable, no." Tr. 335:11-16 and 336:22-23.

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)." Div. Ex. 3 at 78. The term "stub-period" was not defined. As established above, there was no reasonable basis to believe that a charitable event planned for the fall of 2011 would generate $33,085,850 in cash. But, more importantly, at no time, and certainly not as of when the January 2012 WMMA PM was finalized, did WMMA have $33 million in cash. Lux also had no idea how that number came to be in the January 2012 PPM. Lux Test. Tr. 378:5-12. *See also,* Div. Ex. 504 at 2 (showing the balance in the WMMA Companies' bank accounts, collectively, to be $582,919.76 in January 2012).

Despite this, Daspin referred a number of the prospective employee-investors who asked him how much cash was on hand to the PPMs, and employee-investors who invested after both talking to Daspin and reviewing the January 2012 PPM, believed that the company had more than $30 million in cash on hand, or "current assets," and invested based in part on that understanding.

For example, Tom Sullivan was provided a WMMA PPM dated July 31, 2011, which identified $33 million in "cash" on a balance sheet for a "stub-period 2011." Div. Ex. 300 at 78. At the time Sullivan received this PPM, he asked Daspin, "What 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* Div. Ex. 504 at 2 (showing the balance in the WMMA Companies' bank accounts, collectively, to be $308,816.17 in July 2011).

Sullivan testified—if he'd known before investing that the company held below $200,000 in cash in the summer of 2011, followed by somewhere between $200,000 and $700,000 after loans and subsequent investments during the remainder of the 2011 "stub period" described in the PPM—he wouldn't have invested. Tr. 1634:4-1635:1; *see also* Div. Ex. 609 (Financial Reporting Package for Nov. 2011, prepared by Sullivan, indicating a cash balance in the company of $657,912 as of Nov. 2011). Further, prior to Sullivan investing—including when he was reading Div. Ex. 300 (his July 31, 2011 PPM)—Sullivan was not shown WMMA's contracts with Daspin's consulting firms CBI or MacKenzie and did not know of the excessive fees those firms were charging the WMMA companies. Tr. 1788:25-1789:14 (referencing Div. Ex. 36, a document itemizing $859,393.10 of "Outstanding CBI/MacKenzie Fees (As of 11/14/2011).") Sullivan testified that, based on these facts, unknown to him when he invested, there was "no way" to view the $33 million "cash" figure in the PPM as realistic. Tr. 1628:12, 1668:21-22. For the same reasons, Daspin's assurance to Sullivan that the cash on hand was adequate prior to Sullivan's investment was also a material misrepresentation.

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 (I asked about the financial condition of the company, and Ed told me that all that information was in the PPM"). Accordingly, when Heisterkamp read entries for "cash" or "current assets" in his 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, Div. Ex. 154A at 8.

LEGAL ANALYSIS

I. STANDARD OF PROOF

To prove liability, the Division need do so only by a preponderance of the evidence. *See, e.g., Steadman v. SEC*, 450 U.S. 91, 102–03 (1981). The facts set forth above are more than sufficient to meet this standard.

II. DASPIN VIOLATED VARIOUS ANTIFRAUD PROVISIONS

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

Section 17(a)(1) of the Securities Act makes it unlawful to employ any device, scheme, or artifice to defraud. Section 17(a)(3) of the Securities Act 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 Sections 17(a)(3). *Aaron v. SEC*, 446 U.S. 680, 695-97 (1980).[10]

Section 10(b) of the Exchange Act 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." Moreover, as the Supreme Court recently held in *Lorenzo v. SEC*, No. 17-1077, slip op., 2019 WL 1369839 at * 6 (Mar. 27,

[10] Scienter is an "intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976). It may be established through a showing of "extreme recklessness." *Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005). The Courts of Appeals for the D.C. Circuit and the Third Circuit have held that the heightened showing of recklessness is satisfied by proof of an "extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" *Rockies Fund*, 428 F.3d at 1093 (quoting *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992)); *SEC v. Infinity Group Co.*, 212 F.3d 180, 192 (3d Cir. 2000).

2019), a person can be held liable for violating Exchange Act Section 10b and Section 17(a)(1) of the Securities Act for disseminating false statements, even if he is not the maker of those statements.[11]

Daspin's scheme began with the ownership structure he devised and manipulated throughout the life of the Companies. First, Daspin transferred ownership of WMMH, the parent company of WMMA and WMMA Distributions, to his wife's family partnerships and then to his three appointed board members, Agostini, Lux and Main, who held the shares in trust for Joan Daspin and the Daspin family partnerships. The PPMs failed to disclose that the WMMA Companies were in fact owned and controlled by the Daspin family and that the three directors owed a fiduciary duty to Joan Daspin and the Daspin family partnerships. Stock warrants permitted the Daspins to retrieve these shares from the directors at any time, for $100, which Daspin did when he began to feel that his control of the WMMA Companies was threatened. Div. Br., *supra*, at 5-13.

The next step in Daspin's scheme was to cause the Companies to enter into consulting agreements which simultaneously granted him all-encompassing powers over the Companies' affairs, but also gave him the ability to misleadingly refer to himself as only a "consultant" to suggest an arm's length distance from the Companies' affairs. But Daspin ensured that the consulting agreements gave him the power to exert substantial influence and control over

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[11] *See also, In the Matter of Dennis J. Malouf,* Rel. No. 4463, 2016 WL 4035575, *8 (July 27, 2016) (Commission opinion) ("[C]ontrary to the view expressed by some courts that Rule 10b-5(a) and (c) are limited to conduct 'beyond mere misstatements and omissions,' we conclude that subsections (a) and (c) also proscribe making, drafting, or devising a material misstatement. Furthermore, because nondisclosure in violation of a fiduciary duty involves 'feigning fidelity' to the person to whom the duty is owed and is therefore deceptive, we find that failing to correct a material misstatement in violation of a fiduciary duty to do so also falls within the prohibitions of Rule 10b-5(a) and (c).") (footnotes omitted), *petition for rev. filed, Malouf v. SEC*, 16-9546 (10th Cir. Sept. 8, 2016).

virtually all of the Companies' important business activities, including hiring, soliciting investments, drafting the Companies' PPMs, and negotiating every contract with investors, employees, vendors and joint venturers. Despite possessing these extensive powers over the Companies' affairs, Daspin used the cover of the consulting agreements to mislead investors that he was "only" a consultant, in an effort to downplay any fears they might have of his involvement, given his criminal background and history of failed and acrimonious prior business ventures. As part of the scheme, Daspin also transferred his company, CBI's, Consulting Agreement with the Companies to MKMA, which he admitted he did to further hide his involvement in the Companies. *See generally* Div. Br. at 15-17, *supra.*

As part of the scheme, Daspin also concealed from potential investors his true identity when first trying to lure them into the Companies' offices and convincing them to invest, because he knew that his name was "poison" on the internet. *See* Div. Br. at 44-45, *supra.*

Daspin also caused the Companies to appoint his loyal, longtime associate Luigi Agostini, and his wife, Joan Daspin, as the sole signatories of the Companies' bank accounts – to ensure that he had ultimate control over how the Companies' monies were spent. *See* Div. Br. at 29, *supra.*

He also devised the scheme to lure potential investors through false promises of high paying jobs (*see generally* Div. Br. at 41-54, *supra)* and was responsible for not only creating but disseminating the content of the materially false and misleading statements and omissions of material facts in the PPMs and other marketing materials that he used to solicit prospective investors to defraud them (*see generally* Div. Br. at 55-61, *supra).*

In particular, Daspin devised and/or disseminated the following materially false and misleading representations and omissions in the PPMs, among others, as part of his fraudulent

scheme to raise money from investors: (1) failed to make any reference whatsoever to Daspin or his wife in the PPMs, even though Daspin had substantial influence and control over all important decisions and actions of the WMMA Companies through the CBI and MKMA Consulting Agreements, his domineering and at times abusive personality, and the Daspin family's controlling interest in the WMMH holding company; (2) failed to disclose that Daspin's wife, through three family partnerships, held warrants for 92 % of the stock of WMMH, which owned controlling interests in WMMA and WMMA Distribution; (3) failed to disclose that the three Board members of the WMMA Companies held the Daspin family's WMMH shares in trust for them and owed a fiduciary duty to Joan Daspin and the Daspin family partnerships; (4) falsely stated that the IMC email database would enable the Companies to reach 25% of the allegedly two billion person potential worldwide mixed martial arts spectator market, when (i) no due diligence had been done and no testing conducted to assess the current validity and value of the email addresses purportedly in the database, including, for example, rudimentary information such as the location, age, gender, spending preferences and sports interests of the individuals associated with the emails, how many emails were duplicates; or abandoned; and (ii) the database's effectiveness was dependent on the Companies having an operational website, which did not exist; (5) first misrepresented the value of the IMC database as $5 million in the July 2011 WMMA and AGCDS PPMs and then, without any change in circumstances or justification whatsoever, misrepresented that valuation to be $82 million in the January 2012 WMMA PPM, which Daspin knew to be a baseless valuation because he used an entirely unreasonable methodology based on untested assumptions and unconfirmed email addresses; (6) failed to disclose that MKMA had a material conflict of interest in valuing the IMC database given the Daspin family's controlling interest in the WMMA Companies and given the over $800,000 in

accrued fees the WMMA Companies owed MKMA for Daspin's services; and (7) in the January 2012 WMMA PPM, misrepresented that the Companies had over $33 million cash on hand, as "current assets," when in fact they never had anywhere near that amount. *See* Div. Br. at 60-77.

Daspin also made oral misrepresentations and omissions of material fact to investors including that his name was "Ed Michael;" that he served only as a "consultant" to the Companies; that the Companies were well-funded; and that everyone working at the Companies was an investor and had "skin in the game." In addition, Daspin in many instances delayed disclosing his true name, if at all, until after he had lured potential investors into his office where he could work his charms on them and spin his bankruptcy fraud conviction and history of failed business ventures. Daspin also failed to disclose to potential investors the amount of money the Companies already owed him through the lucrative CBI and MKMA consulting agreements. Div. Br. at 41-54.

Daspin also lied about WMMA Holdings' assets. *See,* e.g., Div. Ex. 156 (email from Daspin to "felix.gelman@gmail.com" subject "Balance Sheet." Daspin sent a balance sheet and wrote: "David asked me for the balance sheet of WMMA and the balance sheet of American Graphic 90% of each of those companies is owned by WMMA Holdings, whose consolidated balance sheet is $24,000,000."); Div. Ex. 627, Daspin email to David Klarman where Daspin wrote: "Perhaps, you did not hear me when I informed you and Jerry that WMMA's consolidated balance sheet consisted of over $7,400,000 of cash and investments in addition to the $5M of good will associated with IMC's contract."

These misrepresentations and omissions were material because a reasonable investor would consider the true facts about the Companies' financial condition, the IMC contract that was central to the Companies' business plan, and Daspin's ownership and control and substantial

influence at the Companies and his checkered past "as having significantly altered the total mix of information made available" and important in deciding whether to invest. *Basic v. Levinson,* 485 U.S. 224, 231-32, 240 (1988). *See also, United States v. Reyes*, 577 F.3d 1069, 1076 (9th Cir. 2009) ("information regarding a company's financial condition is material"); *Marini v. Adamo*, 995 F. Supp. 2d 155, 190 (E.D.N.Y. 2014) ("inflated values . . . constitute material misrepresentations"), *aff'd*, No. 14-1205, 2016 WL 1128174 (2d Cir. Mar. 23, 2016); *United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("information impugning management's integrity is material"); *In re Priceline.Com Inc. Sec. Litig.*, 342 F. Supp. 2d 33, 53 (D. Conn. 2004) ("Statements regarding the viability of [a company's] business model and the feasibility of applying [it] to different markets are material information."); *SEC v. Enterprise Sols.*, 142 F. Supp. 2d 561, 573 (S.D.N.Y. 2001) (founder/consultant's criminal past is material); *SEC v. Poirier*, 140 F. Supp. 2d 1033, 1043 (D. Ariz. 2001) (omitting "existence of a control group" is material); *In the Matter of Natural Blue Resources, Inc.*, A.P. File No. 3-15974, S.E.C. Release No. 10598 (December 21, 2018), 2018 WL 6722727 (Respondents violated Sections 17(a)(1) and (a)(3) of the Securities Act by posing as consultants and concealing their true roles as de facto officers of a company). *See also, e.g.,* Lange's testimony re materiality of "skin in the game" (Div. Br. at 48); Heisterkamp's testimony re materiality of Daspin's identity (Div. Br. at 49) and re Daspin's claim to be only a consultant (Div. Br. at 50); and Sullivan, Lange and Heisterkamp's testimony re materiality of Daspin family's ownership interests in WMMA Companies (Div. Br. at 60-61).

The $82 million valuation was clearly a material misrepresentation. It constituted $82 million out of a total of $91.2 million in claimed assets for WMMA Sports, or 89% of its total

assets. *See* Div. Ex. 3 at 45. And the PPMs placed great importance on the IMC email database as a key to the success of the WMMA companies. Div. Ex. 1 at 29; Div. Ex. 3 at 28.

Gregg Lange testified that a marketing database was a prerequisite for a company like WMMA: "... there had to be something like this either that they acquired on a piece-by-piece basis, or – or that they had on a contract basis in terms of – in terms of access for potential web customers and potential video customers on all kinds of platforms." Tr. 2253:13-19. Lange 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. He also testified that if he had known the IMC Contract to "be just a fabrication" he would never have invested—"not so much because it couldn't be replaced by something, although it will be costly to replace that kind of prearrangement, but because it was – because it was a lie in the PPM." Tr. 2297:22-2298:2.

A reasonable investor would know that there had to be *some way* of reaching potential customers, and if this primary method of reaching those potential customers was mischaracterized, exaggerated, uninvestigated and unreliable—then reasonable investors would have had a completely different understanding about the companies as a whole and their ability to market to customers at all.

Heisterkamp testified that the IMC discussions in the PPM were material to his decision to invest. He testified that he never knew—when reading his PPM—that "Ed," the man who negotiated his investment, was the MacKenzie M&A consultant who personally determined the value of the IMC database. Tr. 2384:2-8. Heisterkamp testified that the database "only has value if it can be converted [into revenue generation]" and that his reading of the representations

about IMC would have changed if he had known that neither "Ed" nor WMMA ever tested or successfully confirmed how many of the E-mail addresses were real E-mail addresses actively used by real specific people. Tr. 2384:9-20.

Of course, the investors also did not know that MKMA had a material conflict of interest in valuing the database given that the valuation was done by Daspin whose family held controlling interests in WHLD and the Companies owed MKMA over $800,000 in accrued fees for Daspin's prior work.

And Daspin emphasized the importance of the IMC database as a marketing tool to raise money from investors (*see, e.g.*, Div. Ex. 269, Daspin email to Tommy Cardon, at p.2- 3 ("Part of the initial reason investors will invest is because Beryl has access and communicates with 830M people..."; "If we remove the Beryl database [from revenue projections and marketing materials], we would not only be shortsighted, but downright ignorant and we will not raise the money we need to drive our business model for the investment sector." *See also,* Div. Ex. 608 (Daspin email re importance of IMC database to attracting investors, cited above at p. 39-40).

Indeed, as the Court noted during the trial: "If these folks were touting this as a real plus to investors, when in fact they knew it wasn't a plus, that it was a dubious consequence to the vitality of the success of the company, that would be an issue." Tr. 258:13-18.

There is also ample evidence as summarized above that Daspin acted intentionally in devising this scheme to defraud and creating and disseminating these misrepresentations and omissions of material fact in furtherance of his scheme to defraud.

Finally, there is ample evidence of the use of interstate means in connection with the offer or sale of the securities to satisfy the interstate commerce prongs of Sections 17, Section 10(b) and Rule 10b-5. *See, e.g.*, Div. Ex. 370 (email solicitation); Div. Ex. 173 (wire transfer of

investment); Young Test. Tr. 1279:19-22 and Heisterkamp Test. Tr. 2366:1-3 (regarding use of Skype to interview potential investors); Diamond Test. Tr. 2648:22-2656:22 (regarding email and telephone solicitation); and Div. Ex. 631 (Daspin email solicitation of Diamond). "The jurisdictional requirements of Sections 17(a) and 10(b) and rule 10b-5 are broadly construed so as to be satisfied by . . . intrastate telephone calls and by even the most ancillary mailings." *SEC v. Softpoint, Inc.* 958 F. Supp. 846, 865 (S.D.N.Y. 1997), *aff'd* 159 F.3d 1348 (2d Cir. 1998).

B. Daspin Violated Section 17(a)(2) of the Securities Act

Section 17(a)(2) of the Securities Act 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 under this provision; a showing of negligence will suffice. *Aaron v. SEC,* 446 U.S. 680, 697 (1980). Unlike Rule 10b-5, 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) ("[S]ection 17(a)(2) may be fairly read to cover the 'use' of an untrue statement to obtain money or property....") (citation omitted); *SEC v. Farmer,* 2015 WL 5838867, *7 (S.D. Tex. Oct. 7, 2015)("A defendant 'may be held liable under 17(a)(2), though not under 10b-5, if he obtains money or property *by use* of a false statement, whether prepared by himself or by another.'") (quoting *SEC v. Stoker,* 865 F. Supp. 2d 457, 465 (S.D.N.Y. 2012) (and collecting cases).

From December 2010 through approximately June 2012, Daspin raised a total of $2.47 million from seven investors in WMMA and WMMA Distribution through the use of the false and misleading PPMs and other oral misrepresentations he made directly to investors. Daspin was paid commissions and consulting fees funded by the investments he solicited by means of the materially misleading statements and omissions of material facts he made orally to

prospective investors and by means of materially misleading statements and omissions of material facts in the PPMs and other written materials that he provided, and caused to be provided, to prospective investors. For example, MKMA, through which Daspin performed his consulting services, was paid $9,375 for each of Puccio and Sullivan's investments in WMMA and AGCDS, for a total of $37,500.00; paid $6,282 for each of Heisterkamp's investments in WMMA and WMMA Distributions, for a total of $12,565; and paid over $130,000 in consulting fees which were funded from investor monies, given that the WMMA Companies had no other sources of revenue. *See* Div. Ex. 495, Funds Paid to CBI and MKMA from December 2010 to August 31, 2012. Similarly, Daspin's company CBI received over $135,000 in payments from the WMMA Companies, which were funded from investor funds. *Id.* As discussed above, he did so knowingly or at least recklessly. Accordingly, Daspin violated Section 17(a)(2).

C. Daspin Violated Rule 10b and Section 10b-5(b) of the Exchange Act

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 obviously the maker of the oral misrepresentations and omissions of materials fact he made directly to various investors. Moreover, the evidence demonstrates that Daspin was the maker of false statements and omissions of material fact contained in the PPMs and other marketing materials. Daspin was, in his own words, the "architect" of the PPMs and

had ultimate control over their content and whether and how to communicate them. For example, he was primarily responsible for raising money through the PPMs. He was heavily involved in overseeing and drafting their contents, finalizing them and distributing them. Through his family ownership of the Companies, his dominance over the day-to-day operations of the Companies, the board of directors contractual obligations to act as fiduciaries for Daspin's wife, and their inexperience and inability to oversee and control Daspin's actions, Daspin had the ultimate control over the content and dissemination of the PPMs and other marketing materials and is liable under Section 10b and Rule 10b-5(b) as a result of the material misrepresentations and omissions of material fact he caused to be contained therein. *See generally Div. Br. at 55-68.*

In cases such as this where a small business entity can fairly be said to be the "alter ego" of the individual controlling it, or in cases where (unlike *Janus)* corporate forms are not observed, courts have held that the individual and/or parent corporation is primarily liable. *See, e.g., Indah v. SEC,* 661 F.3d 914 (6th Cir. 2011) ("The alter-ego theory provides for personal jurisdiction 'if the parent company exerts so much control over the subsidiary that the two do not exist as separate entities but are one and the same for purposes of jurisdiction."); *SEC v. Homa,* 514 F.3d 661, 678 (7th Cir. 2008) (where an entity is a sham structure to contain the spoils of fraud, it constitutes an alter ego of the defendant who committed the fraud); *SEC v. Markusen,* 143 F. Supp. 3d 877, 889 (D. Minn. 2015)) (sole owner and CEO of investment advisory firm and advisory firm itself "are each independently liable for the[] misstatements" in funds' offering memoranda and financial statements "under Rule 10b-5(b) 'because each was a 'person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.'" (citation omitted); *In re Stillwater Capital Partners Inc. Litig.*, 853 F. Supp. 2d 441, 460 (S.D.N.Y. 2012) (for purposes of motion to dismiss, officers of special purpose

acquisition company that had no operations and few employees can be makers under *Janus* of statements in document attributed to company); *SEC v. Greenstone Holdings, Inc.*, 2012 WL 1038570, at *9 (S.D.N.Y. Mar. 28, 2012) (defendant who was Chairman, CEO/COO, and at times sole officer of company, and one of its largest shareholders, had ultimate authority over company press releases that he drafted and of which he arranged for publication).

Here, Lux and Main, the CEO and President of the WMMA Companies, and two of the three board members, made clear that they did not create or supervise the creation of the PPMs, they did not review or sign off on them and they did not discuss them with Agostini, the other board member. To the contrary, they both testified, as did Young and Sullivan, that Daspin was responsible for the creation of the PPMs, and that testimony was amply corroborated by numerous emails evidencing Daspin's control over the PPMs creation process, as well as by the CBI and MKMA consulting agreement which specifically gave Daspin's companies responsibility for raising money from investors, as well as from a MKMA bill charging the WMMA Companies $237,500 for drafting the WMMA, WUSA and WDIS PPMs. Div. Ex. 94, at 2.

Moreover, there can be no dispute that Daspin had final authority for the inclusion of the fraudulent $82 million valuation of the IMC email database in the January 2012 WMMA PPM, Div. Ex. 3 at p. 45-46. The valuation is explicitly attributed to "MacKenzie M&A" and there is ample evidence that Daspin was the person responsible for that valuation. Indeed, Daspin admitted in investigative testimony that he was responsible for the $82 million valuation for the database that was included in the PPMs and that he signed the written appraisal for that amount provided to the WMMA board. Div. Ex. 481A, Daspin Inv. Tr. at 64:17-25-66:1-2; 75:4-76:1-24.

In addition, Lux testified that Daspin insisted "in a very aggressive voice" on including the $82 million valuation in the January 2012 WMMA Sports PPM. Lux Test. Tr.374:12-377:13. Sullivan also testified that Daspin insisted on including the $82 million valuation in the January 2012 PPM, over objections; that Daspin wouldn't take no for an answer and that he insisted they needed to include the valuation for the companies to be successful, obviously in raising money from invertors by overstating the value of their assets and marketing capabilities. *See, e.g.,* Sullivan Test. Tr. 1703:23-1704:4 (re disagreement over valuation); Tr. 1705:5-9 (re Daspin's reaction to disagreement); Tr. 1709:18-21 (Daspin told the finance team that 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. 1710:1-2 (Sullivan disagreed with the valuation).

Moreover, courts have found individuals liable for statements attributed to them in offering materials, as the $82 million valuation was attributed to MKMA in the January 2012 WMMA PPM, Div. Ex. 3 at 28. *See, e.g., In re Allstate,* 2012 WL 1900560, at *4-5 (D. Ariz. May 24, 2012)(defendants were makers under *Janus* of statements that were attributed to them in Official Statements for municipal offerings); *Lopes v. Viera,* 2012 WL 691665, at *6 (E.D. Cal. Mar. 2, 2012) (defendant organizer of company was maker under *Janus* of financial information in offering document where document stated the financial information had been provided to the company by him); *In re Textron*, 811 F. Supp. 2d 564, 574 (D.R.I. 2011) (defendant CEO of company was maker under *Janus* of statements that were attributed to him in company press releases). The $82 million IMC valuation was specifically attributed to MKMA, Daspin's *alter ego,* in the January 2012 WMMA PPM. While the Court need not reach this argument to find Daspin liable as the final authority for the statement in the PPMs, it is an alternative basis to hold him liable for the $82 million valuation contained in the PPMs.

The January 2012 WMMA PPM also failed to disclose the conflict of interest behind MKMA's valuation, given that Daspin's wife and her family partnerships had warrants for 92% of WMMH, which owned the WMMA Companies, and further given that MKMA, and Daspin through MKMA, would earn a fee for inducing individuals to invest in the WMMA Companies.

Furthermore, assuming that Daspin's $82 million valuation is considered an opinion, under the antifraud provisions, opinions are actionable where: (1) the person responsible for the opinion does not actually believe the opinion; (2) the opinion includes an untrue embedded statement of fact that is material; 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).

Here, there is ample evidence that Daspin did not actually believe his $82 million valuation, given that he had no idea how many emails were in the database, where the emails were located, what the age, sex and other demographics were associated with the emails, how the database operated, and how the emails' validity were confirmed or updated, etc. Furthermore, Wolk's refusal to give WMMA any specific information regarding the contents of the database, including something as rudimentary as the number of U.S. email addresses, was a major red flag that should have stopped Daspin from placing any weight on Wolk's unsupported claim regarding 840 million emails. Moreover, Daspin had valued the database at only $5 million just five months earlier and he knew there were no changed circumstances supporting the gargantuan increase in the valuation from $5 million to $82 million. In fact, the evidence shows that the only basis for increasing the valuation was that the company was having trouble attracting new investors and needed to show higher assets "for the company to succeed." In addition, numerous

senior executives at WMMA, including Lux, Sullivan and Main, told Daspin that his valuation of the IMC database and his general representations regarding its potential efficacy were overblown. Finally, no reasonable person could have even attempted to place a value on the mystery box that was the unverified IMC database. Thus, Daspin knew his $82 million valuation was wrong. *See generally,* Div. Br. at 63-74.

Furthermore, Daspin essentially admitted at trial that he knew his $82 million valuation was unsupported. He testified: "...Beryl had a leash on 840 million eyes, and maybe if the average person had two E-mails, maybe there was 550. 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. 3023:16-22. Thus, Daspin conceded that he didn't know the contents of the database, *i.e.* how many emails were for the same person, and that his valuation would be substantially impacted by that number.

More importantly, however, the Court need not even make this finding, given that Daspin omitted material information about his valuation such that the valuation was misleading to a reasonable investor (one of the alternative basis for liability for opinions under *Omnicare).* A reasonable investor would have expected MKMA to perform reasonable due diligence regarding the content of the IMC database before placing a value on it. But Daspin failed to disclose that: (1) in fact, no due diligence whatsoever had been performed on the database;and (2) Daspin had no factual basis, and was not using any generally recognized valuation methodology, for his valuation.

A reasonable investor would also have expected Daspin to disclose MKMA's conflict of interest in rendering such a valuation, given the Daspin family's ownership interest in the Companies and MKMA and Daspin's entitlement to fees for raising money from investors and

other services. Of course, no reasonable investor would have placed any weight on Daspin's valuation if he had made these required disclosures.

III. DASPIN VIOLATED SECTION 20(b) OF THE EXCHANGE ACT

Section 20(b) is directed at persons who use another individual or entity – in effect, a surrogate – to violate the law. Unlike the controlling person and aiding and abetting provisions of the Exchange Act, Section 20(b) does not premise liability on the existence of an underlying violation by someone else. Accordingly, to establish a violation of Section 20(b), the Division must 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 plain language of the statute requires nothing more.[12]

Here, the evidence overwhelmingly 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 to potential investors in connection with the purchase or sale of securities PPMs containing material misrepresentations and omissions of material fact, as established above. *See, e.g.,* Div. Br. at 55-75.

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[12] Section 20 is titled "Liability of controlling persons and persons who aid and abet violations." Possibly because of word "controlling" in this title, some courts have interpreted Section 20(b) as having a control element, even though the word "control" is used in subsection (a) of Section 20 but not subsection (b). *See SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1170 (D.C. Cir. 1978); *SEC v. Coffey*, 493 F.2d 1304, 1318 (6th Cir. 1974); *Cohen v. Citibank, N.A.*, 954 F. Supp. 621, 630 (S.D.N.Y. 1996). At least one court disagrees. *SEC v. Strebinger*, 114 F. Supp. 3d 1321, 1335 (N.D. Ga. 2015) ("th[is] [c]ourt does not read Section 20(b) to contain a 'control' limitation on liability"); *cf. Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citation omitted)). Even assuming subsection (b) requires a showing of control, Daspin's conduct falls within its terms because he controlled the WMMA companies.

IV. DASPIN VIOLATED SECTION 5 OF THE SECURITIES ACT

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

Section 5(a) of the Securities Act 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) of the Securities Act 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 Section 5 violation does not require a showing of scienter. *See SEC v. Universal Major Indus.*, 546 F.2d 1044, 1047 (2d Cir. 1976).

There is overwhelming evidence that Daspin offered and sold common stock and convertible preferred stock of WMMA and WDI to residents of the United States when there was no registration statement on file or in effect, and that he did so using the means of interstate commerce.

First, it is undisputed that the WMMA and WDI offerings were securities offerings and that they were not registered with the Commission. Daspin has conceded in his Answer "that the offerings of WMMA and WMMA Distribution securities were not registered with the Commission." Daspin Answer ¶¶ 6, 59; *see also* Div. Exs. 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.*, Div. Br., *supra*, at 85-86.

Third, there is ample evidence that Daspin sold WMMA Company securities to investors. As set forth in Table 1, above, Daspin solicited multiple investments from each investor. He sold Main 1.3 units of WHLD, Div. Ex. 150; and sold the other six investors between .48 and 1.1 units of WMMA, *see* Div. Exs. 26, 27, 67, 67A, 331, 366, and 367, and between 1.2 and 1.755 units of WDI. *See* Div. Exs. 25, 28, 67B, 332, 367, and 386.[13]

Thus, the Division has established a prima facie case that Daspin violated Section 5 and Daspin bears the burden of proving that an exemption to Section 5 applies to the WMMA offerings. He did not meet that burden.

B. No Section 5 Exemption Applies

According to the PPMs, the offerings were allegedly exempt from registration under Section 5 pursuant to Rule 506 of Regulation D ("Rule 506") and Section 4(2) of the Securities Act. *See, e.g.*, Div. Exs. 1 and 3 (WMMA); 2 (AGCDS); 4 (WDI). Rule 506 provides a safe harbor exemption for certain limited offerings of securities. *See* Rule 506(a) (offerings that satisfy the conditions of either Rule 506(b) or (c) "shall be deemed to be transactions not involving any public offering within the meaning of Section 4(a)(2) of the Act."

Daspin cannot invoke Rule 506(b) for either offering because the securities were offered and sold through prohibited general solicitations. *See* Rule 506(b)(1) (limiting Rule 506(b) to offers and sales of securities that comply with Rules 501 and 502, including the Rule 502(c)

[13] 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.

requirement that "neither the issuer, nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation").

As described above, the evidence shows that Daspin used cold-call job solicitations as a ruse to make his investment pitch. Other than the initial investor, Douglas Main, who was Daspin's chiropractor, the remaining investors were cold-contacted, usually by email, and lured into communicating with the Companies under the false guise of an invitation to interview for an employment opportunity. Daspin collected resumes of individuals who had posted their resumes on employment websites such as **www.sixfigurejobs.com**.

Young testified that they put up advertisements on Sixfigurejobs.com and Ladders, two job-seeking websites, "And we would e-mail people who responded to that ad and send them overviews of the company and set up interviews." Tr. 1264:22-1265:5. Gregg Lange testified that he received a recruitment email from Andrew Young, after posting his resume on several jobsites. Tr. 2219:3-10. Darin Heisterkamp posted his resume on job search sites around December 2011, shortly before receiving an email from Young. Tr. 2363:5-6. Young testified that he sent "well more than a thousand" of such emails to prospective investors. Tr. 1271:23-24. He also testified that they distributed "somewhere between 100 and 150" PPMs to potential investors. Tr. 1288:16-17.

Daspin also admitted that did not know the individuals who actually invested before they were solicited by WMMA. He didn't know Puccio before she came in for an interview (Tr. 3331:1-6); or Bederjikian who was solicited through the Six Figure website (Tr. 3331:14-17; 3333:1-24); or Sullivan (Tr. 3331:18-20); or Lange, Lockett or Heisterkamp (Tr. 3331:22-25). *See SEC v. Credit First Fund, LP*, 05-cv-8741, 2006 WL 4729240, at *3, * 12 (C.D.Cal. Feb. 13, 2006) (finding cold calls before an investment to be general solicitations; "investors were

initially cold-called ... [and issuer] obtained general information about the investor in order to establish a relationship."). *See SEC v. Freeman*, 77-cv-2319, 1978 WL 1068 (N.D. Ill. Mar. 3, 1978) (just like Daspin, defendants engaged in general solicitation by contacting investors for employment opportunity, and later requiring investments).[14]

Daspin also cannot rely on the Rule 506(c) exemption because he has not proven that all of the investors were accredited, 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.

C. Section 4(a)(2) of the Securities Act Does Not Apply

Daspin also cannot defend his general solicitation based on the provisions of Section 4(a)(2) of the Securities Act, which permit registered offerings involving "transactions by an issuer *not involving any public offering*" (emphasis added). Courts have cited the following factors to determine whether an offering is public: (1) the number of offerees; (2) the sophistication of the offerees; (3) the size and manner of the offering; and (4) the relationship of the offerees to the issuer. *SEC v. Murphy*, 626 F.2d 633, 644 (9th Cir. 1980); *Doran v. Petroleum Mgmt. Corp.*, 545 F.2d 893, 900 (5th Cir. 1977).

Applying the first factor, the number of offerees, the WMMA offering clearly was public. By Daspin's own admission, he solicited "over 250 Human Resources applicant(s) ... [of which] approximately 40 became Joint Venture Operating Partner(s) ... [and] approximately 8 invested." Div. Ex. 194. Daspin's general solicitation of investors gave him no basis to assess the offerees' sophistication, but even if Daspin chanced upon a pool of the most sophisticated investors, "[s]ophistication is not a substitute for access to the information that registration would disclose." *SEC v. Kenton Capital Ltd.*, 69 F. Supp. 2d 1, 11 (D.D.C. 1998) (quoting *Doran*, 545

[14] 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.

F2d at 902-03). For example, Darin Heisterkamp, who funded his investment with retirement savings, equity from his primary home, and money borrowed from friends and family, had never invested in a private company before (Tr. 2373:12-14 and 2414:7-9). None of Daspin's investors had access to the kind of information that a registration statement would have provided, including audited financial statements. The size of the offerings, which were conducted in a general solicitation, and the fact that all but one of the investors had no relationship to Daspin before investing, further establish that the Section 4(a)(2) exemption to registration is not available. As the evidence showed, this was exactly the kind of offering that registration requirements exist to prevent.

V. DASPIN VIOLATED SECTION 15(a) OF THE EXCHANGE ACT

Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by making use of the mails or any means or instrumentality of interstate commerce, unless such broker-dealer: (1) is registered with the Commission in accordance with Section 15(b) of the Exchange Act; (2) in the case of a natural person, is associated with a registered broker-dealer; or (3) satisfies the conditions of an exemption or safe harbor. Section 3(a)(4)(A) of the Exchange Act defines a broker as any person "engaged in the business of effecting transactions in securities for the account of others."

First, it is undisputed that Daspin was not registered as a broker-dealer. Daspin Answer, ¶ 62 ("Admitted only that Daspin was not associated with a registered broker-dealer during the relevant period as defined in the OIP"); Div. Ex. 11, SEC Attestation that no registration statements as a broker-dealer exist for Daspin.

And there was overwhelming evidence that Daspin acted as a broker in selling the WMMA Company securities to investors. In determining whether a defendant falls within the

Exchange Act definition of a broker, courts consider whether the defendant's conduct "may be characterized by a 'certain regularity of participation in securities transactions at key points in the chain of distribution.'" *SEC v. Benger*, 697 F. Supp. 2d 932, 944-45 (N.D. Ill. 2010) (citing *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003)). Factors indicating a person is acting as a broker include whether that person: (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. *Benger*, 697 F. Supp. 2d at 944-45 (citing *SEC v. Hansen*, 83-cv-3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984)). Scienter is not required to prove a violation of Section 15(a). *SEC v. Nat'l Exec. Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

The evidence shows that Daspin meets the hallmark requirements: Daspin received commissions, negotiated all investments, gave investment advice and actively found the investors. *See SEC v. Gagnon*, No. 10 Civ. 11891, 2012 WL 994892, at *11 (E.D. Mich. Mar. 22, 2012) (defendant who "act[ed] as the link between the issuer and the investor" was a broker); *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (defendant was a broker because he "was regularly involved in communications with and recruitment of investors for the purchase of securities").

The evidence demonstrated that Daspin received transaction-based compensation for selling the Companies' securities to investors. While Daspin is expected to argue that the compensation was merely for recruiting employees, not selling securities, the Consulting Agreements provided, and the evidence shows, that Daspin received much higher fees for recruiting investors than for hiring sweat equity employees and that, in fact, the only commission payments he actually received were for recruiting people to invest. The November 2010 CBI

Agreement (Div. Ex. 13) stated that CBI would receive a fee for "assisting WMMA and its Country Corporation affiliates in *targeting and negotiating with investor(s).*" *Id.* at Exhibit A, Item (e) (emphasis added). A subsequent consulting agreement between CBI, WMMA Holdings, WWMA, and AGCDS, dated December 15, 2010, provided that CBI would give the Companies "[f]inancial advisory services pertaining to raising capital from third party investors" (the "Dec. 2010 CBI Agreement"). Div. Ex. 204.

The December 2010 CBI Agreement, subsequently assigned to MKMA in January 2011 (Div. Ex. 205), entitled MKMA to a commission that worked out to $37,500 for each employee investor it recruited, a minimum of $12,500 more than it earned for recruiting non-investing employees. Div. Ex. 204 at ¶ 3. Specifically, for recruiting a sweat equity employee, *i.e.*, a non-investor, MKMA was entitled to a ten percent override paid monthly on all compensation the employee received until MKMA received a minimum payment of $25,000. Thereafter, it would receive a 5% override on any compensation the executive received in excess of $10,416.66 per month for five years.

In contrast, for recruiting a "Non-Sweat Equity" employee, *i.e.*, an investor, MKMA was entitled to receive a minimum of $25,000 as against 25% of the executive's first year compensation, plus perks and benefits of every kind paid to the executive. In addition, MKMA would receive a 5% override beginning the second year of the executive's agreement on any compensation the executive received in excess of $10,416.66 per month ($125,000.00 per year salary annum). In addition, in contrast to the five year limitation on the 5% override for sweat equity employees, the 5% override for investors extended without limitation and because, as discussed below, the investor's salaries were higher, the override payments for investors would also be higher.

Specifically, all of the investors were assigned an annual salary of $150,000.00. *See, e.g.*, Div Ex. 32, Bederjikian Investment/Employment Agreement at ¶ 7; Div. Ex. 62, Puccio Investment/Employment Agreement at ¶ 7; Div. Ex. 63, Sullivan Investment/Employment Agreement at ¶ 4(a); Div Ex. 359, Lange Investment/Employment Agreement at ¶ 4; Div. Ex. 57, Heisterkamp Investment/Employment Agreement at ¶ 4; Div. Ex. 61, Lockett Investment/Employment Agreement at ¶ 4; Div. Ex. 149, Main Investment/Employment Agreement at ¶ 4. Twenty-five percent of that amount equals $37,500.00, which is what Daspin earned, through MKMA, as a commission for recruiting investors. This was a clearly different fee, for a different service, and well more than the maximum $25,000.00 commission Daspin was entitled to receive for hiring sweat-equity employees, mainly Daspin's former business cronies. *See also,* Div. Ex. 94, MKMA December 15, 2011 Invoice, page 2, listing a $25,000 commission for sweat equity employees but listing a $37,500 commission for each of the investors except Main, for whom a $49,150 commission was listed, given that he apparently received $46,500 in compensation in addition to his scheduled $150,00 annual salary. Moreover, because the Companies had so little money, the commissions for hiring the sweat-equity employees were accrued. The only commissions Daspin actually received were for recruiting the investors.[15] Thus, any argument that Daspin did not receive transaction-based compensation for selling securities to the investors is frivolous.

Second, there is ample evidence that Daspin was involved in negotiations between the company and the investors and in giving investment advice. Each investor testified that he negotiated the terms of his investment with Daspin, including instances when Daspin advised

[15] Additionally, Andrew Young testified that he received a $500 payment Daspin called a "Spiff" when a prospect invested financially and did not receive any such payment if individuals joined WMMA but did not financially invest. (Tr. 1283:14-21 and 1284:11-14).

them to "diversify" their investments, putting half into WDI and half into WMMA (even though the fate of two companies were inextricably linked). Main, for example, testified that Daspin negotiated and was "putting together" "two scenarios involving different cash levels" that related to purchasing securities. Tr. 730:17-18. In Div. Ex. 329, Daspin writes to Main: "shares of WMMA ... are being issued to you ... upon execution of the agreement. This way when you invest $250K that's your basis in your stock." In Div. Ex. 330, at 2, Main writes to Daspin, "Thank you for taking the time yesterday to go over the different contracts. I have a few questions to help get the ball rolling ... Why are units used with a conversion to shares, instead of shares alone?" Main explained that he asked this question during negotiations with Daspin regarding his investment because: "I didn't understand units versus shares. And it seemed simpler to me to be shares. I was asking for clarification from him." Tr. 739:18-21. Main also asked Daspin, in Div. Ex. 330 at 2, "Are the warrant exercise prices for sweat equity and WUSA investment correct?" These back-and-forth questions between Main and Daspin show technical aspects of securities transactions being negotiated between them and that Daspin was structuring Main's investment. Main also testified about negotiating the specific dollar amount of his investment with Daspin, who convinced Main to increase his investment from one hundred thousand dollars to two hundred and fifty thousand dollars. Main testified, "[Daspin] said a hundred thousand dollars would not fly. Other discussions, bigger title, bigger percentage of the shareholdings led me to invest more." Tr. 769:2-5. Main also made it clear that he did not have any discussions negotiating his investment with anybody other than Daspin. Tr. 768:11-14. *See also,* summary of the following investor witnesses' testimony regarding negotiating their investments with Daspin: Sullivan, Div. Br., *supra* at 46-47; Lange, Div. Br. *supra* at 47-48; Heisterkamp, Div. Br., *supra* at 48-50 and Diamond, Div. Br. *supra at* 51-55.

Daspin also advised investors how to draw on their retirement savings to fund their investments and would sometimes encourage the victims to invest larger amounts by tying their "salary" to the amount of money they invested.[16]

Documentary evidence corroborated that testimony. For example, in one email from Daspin to a potential investor, Daspin writes: "Before I put together two scenarios I need to know the maximum amount of money you would invest ... the only way I can give you a comparison is if I know the amount of money you are willing to invest if the deal is structured right." Div. Ex. 34.

There was ample evidence that Daspin was an active rather than a passive finder of investors. Not only was Daspin the person primarily responsible for raising equity for the WMMA Companies as set forth in the CBI and MKMA consulting agreements, but as Andrew Young and others testified at length, Daspin was in charge of the efforts to lure in hundreds of potential investors via the Sixfigures.com and other websites. Thus, Daspin meets all four prongs of the broker test.

Finally, Daspin does not qualify for any exemptions or safe harbors from the broker-dealer registration requirements. The securities sales were not exclusively intrastate or restricted to "exempted securities" as defined in Section 3(a)(12)(A) of the Exchange Act. Also, the safe harbor provided by Rule 3a4-1 of the Exchange Act for associated persons of an issuer is not available, as Daspin was compensated in connection with his participation in the relevant securities transactions "by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities." 17 C.F.R. § 240.3a4-1(a).

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[16]As noted above, the only "salary" the investors earned was through the buy-back of part investment through the "stock repurchase program."

VI. THE COURT SHOULD IMPOSE MEANINGFUL REMEDIES

The Division is seeking relief against Daspin in the form of a cease-and-desist order, collateral and penny stock bars, disgorgement and prejudgment interest and civil penalties. Given the conduct here, significant relief is appropriate and in the public interest. "The securities industry presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants...." *Gary Kornman,* Exchange Act Rel. No. 59403, 2009 SEC LEXIS 367, at *27 (Feb. 13, 2009). Therefore, "conduct that violates the antifraud provisions of the federal securities laws is subject to the severest of sanctions." *Daniel Imperato,* Exchange Act Rel. No. 74596, 2015 SEC LEXIS 1377, at *17 (Mar. 27, 2015) (internal citation omitted).

A. The Court Should Order Daspin to Cease and Desist

Section 8(A) of the Securities Act and Section 21C of the Exchange Act authorize the imposition of a cease-and-desist order on any person who has violated any provision of the Securities Act, Exchange Act, or the rules and regulations thereunder. 15 U.S.C. §§ 77h-1, 78u-3. In determining whether a cease-and-desist order is appropriate in the public interest, the Commission considers the following factors, often called the "*Steadman factors*": (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 actions were egregious and caused harm to investors. Daspin devised a complex scheme to defraud investors of over $2 million by preying on job seekers, including the unemployed, on job websites, lured them to interviews with false promises of high-paying jobs, lied about his name, mislead them about his dominating role and family's controlling ownership

interests in the Companies, failed to disclose that the WMMA companies owed him enough money to possibly bankrupt them, induced them to invest as a condition of employment through lies about everyone having "skin in the game," pressured them to invest as much as possible including convincing them to roll over their 401(k) plans, claimed to be a mere "consultant" to minimize their concerns about his prior bankruptcy fraud conviction and history of failed and acrimonious business ventures and poisonous reputation on the internet, used PPMs riddled with falsehoods, gross exaggerations, and omissions of material facts, including touting a baseless $82 million valuation of the IMC contract, failing to disclose the complete lack of due diligence in investigating the marketing database central to the WMMA, falsely suggesting $33 million in cash on hand, and detailing wildly inflated annual revenue projections in the billions of dollars for a start-up company with no proven track record except for its failure to produce even one profitable fight. Daspin also mistreated the victims he persuaded to invest with every manner of discourtesy, personal offense, threats, and psychological abuse.

Compounding these lies and misconduct, Daspin devised a fraudulent scheme involving a series of deceptive transactions to hide his family's ownership and control of the Companies, and engaged in additional intra-corporate transactions with no purpose other than to falsely inflate the value of the Companies in the eyes of potential investors. Such fraudulent acts are "especially serious and subject to the severest of sanctions." *E.g., Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

Although his violations are not particularly recent, having occurred through May 2012, Daspin's actions were recurrent. Daspin deceived investors using multiple misstatements, omissions, and schemes on a repeated basis. He did so orally in interviews, and

in the PPMs provided to investors. This fraud induced six investors to make over twenty separate investments. He also received numerous illicit broker commissions for bringing in investments through the consulting entities.

Daspin acted with a high degree of scienter. For example, because he controlled the WMMA companies, he knew it was deceptive to tell investors that others were in charge or that he was only a "consultant." He instructed employees not to disclose his true name to potential investors when first soliciting them because his name was "poison." He engineered a series of transactions to temporarily transfer his wife' stock interests in WHLD to the three directors specifically to conceal Mrs. Daspin's stock ownership from investors and failed to disclose that ownership interest in the PPMs. He admitted that he transferred the CBI Consulting Agreement to MKMA to hide his involvement from investors. He directed that the misleading descriptions and inflated valuations of the IMC contract be included in PPMs, over the objections of others, and despite knowing such claims were baseless. His control of the WMMA companies' funds meant he knew the misstatements and omissions relating to finances and amounts owed were deceitful. And by targeting job seekers, Daspin sought to manipulate and exert pressure on investors.

Daspin is a high risk to offend again. He has manifested his disregard for the Commission's enforcement regime through his conduct in this proceeding. He has flagrantly ignored numerous court orders and Commission rules, evidencing his disregard for the SEC enforcement regime. For example, he twice ignored a Court-ordered subpoena for his deposition before the hearing, and failed to produce the documents requested by those subpoenas; he failed to comply with the Court's orders that he provide the Division with witness and exhibit lists before the hearing; he repeatedly made unfounded accusations, and directed personal insults,

against Division staff; he threatened a Division witness, Lux, after Lux left the stand, accosting him at the elevator and [redacted], Larry. [redacted] You are a [redacted]' Tr. 774:6-14. He engaged in disruptive conduct throughout the hearing, repeatedly interrupted witnesses' testimony, called witnesses names, shouting at them and at the Division staff, and ignoring numerous directives from the Court to stop doing so and to stop commenting on the evidence while not under oath. And after being requested repeatedly to stop referencing a [redacted] identity, and being told he was bound by law not to make those references, Daspin insisted "You don't have a right to bind me." Tr. 2802:12-13.

Moreover, when asked about his financial condition at trial, for purposes of establishing his ability to pay a fine and disgorgement, Daspin literally rose out of his seat and shouted: "You're never going to collect a dime from me. No matter what, you won't get a penny ..." Tr. 3414:1-3. And in the months leading up to the hearing, Daspin also repeatedly claimed that he was medically unable to attend the hearing, efforts that persisted until the Division deposed his physician and exposed Daspin's claims of medical incapacity as baseless. *See, e.g., SEC v. Milligan*, 436 F. App'x 1, 3 (2d Cir. 2011) (concluding that defendant's "blatant attempts to deceive the court in seeking to escape the consequences of his actions" were appropriately considered by magistrate judge as a factor in imposing sanction).

Throughout the entire course of this lengthy proceeding, Daspin has never once indicated any acknowledgment that he did anything wrong. To the contrary, he has vehemently denied any wrongdoing and heaped vituperative attacks on numerous Enforcement staff and ALJ's for bringing and participating in a proceeding against him. And he has explicitly stated that he would do the same thing again and hopes to do so in the future. At trial, he said: "If I have

enough energy and if I get paid a portion of what I lost, I would restart that company because I have the original promoters, and now I saw what the mistakes were." Tr. 3103:1-6. He also views himself as the biggest victim: "Q. Your position is you're the victim here, not the investors who lost their money? A: No, the numbers prove I'm the victim." Tr. 3242:10-14, 3138:24-25 ("They have been attacking me when I'm a victim"); 3240:7 ("I'm the victim").

And because of his claimed financial difficulties, he has a need to generate income the only way he knows how, by raising money from unwitting investors.

A cease-and-desist order is therefore necessary, appropriate, and in the public interest to prevent Daspin from future violations of the securities laws.

B. The Court Should Grant an Industry Bar Against Daspin

For all the foregoing reasons, after applying the *Steadman* factors, the record establishs 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).[17]

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

The Court should order Daspin to disgorge his ill-gotten gains, plus reasonable interest, pursuant to Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act. 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*

[17] 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.

Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989)), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). The Division must initially demonstrate "a reasonable approximation of profits causally connected to the violation," *i.e.*, "but-for causation" between the respondent's violations and ill-gotten gains. *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *9 (Aug. 21, 2014) (internal quotation marks omitted). There is no requirement that the Division calculate disgorgement with exactitude; rather, only a "reasonable approximation" of the ill-gotten gains is required. E.g., *SEC v. Sierra Brokerage Servs., Inc.*, 608 F. Supp. 2d 923, 968 (S.D. Ohio 2009), *aff'd*, 712 F.3d 321 (6th Cir. 2013); "The burden then shifts to the respondent to demonstrate that the Division's estimate is not a reasonable approximation." *Id.* at *9-10 (internal quotation marks omitted). "All doubts concerning the amount of disgorgement must be resolved against the violator." *Sierra Brokerage Servs., Inc.*, 608 F. Supp. 2d at 968.

As noted above, Daspin directly raised a total of $2,470,333 from investors for the WMMA companies. Of that amount, $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 $247,629.10 in payments were made from the WMMA companies to MKMA between October 14, 2011 and May 15, 2012. Div. Ex. 495, Baier Summary Chart.

The majority of fees paid by the Companies to CBI and MKMA went directly to the Daspins. The Companies paid CBI at least $135,859.85, and Daspin was paid or directly withdrew that amount and more from CBI. Div. Ex.495, Div. Ex. 498. Out of $253,201.63 paid by the Companies to MKMA, $235,522.10 – 93% of those funds – was paid either directly to Daspin (or his wife) or to CBI.[18] Div. Ex. 497.

[18] $176,906.50 of the MKMA's funds was paid directly to Daspin or his wife and $58,615.60 was paid to CBI. Div. Ex. 497.

While Daspin may argue that MKMA was not his company, the evidence at trial established that he was the person who performed the work in connection with MKMA's consulting agreement with the Companies; thus, he was the person on whose behalf these fees were paid. While certain of the payments to CBI and MKMA were noted vaguely as travel or expense reimbursement, the purpose and legitimacy of the reimbursements is unclear and it is Daspin's burden to establish that those reimbursements were not only legitimate, but should be subtracted from his disgorgement liability.

Accordingly, Daspin should be ordered to disgorge $383,488.95, plus prejudgment interest thereon.[19]

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

The Court should impose third-tier civil penalties on Daspin pursuant to Section 8A of the Securities Act and Section 21B of the Exchange Act, 15 U.S.C.S. § 78u(b), which authorize civil monetary penalties, 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 $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 & Subpt. E, Table I.

The Division seeks a civil penalty of $915,000. The amount of the civil penalty is based on a three-tier system, with the third (and highest) tier representing those violations involving (i) "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and (ii) an "act or omission [that] resulted in substantial losses or created a significant risk of

[19] 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.

substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. § 78u–2(b)(3)(A); accord § 77h–1(g)(2)(C). Because the violations occurred after March 4, 2009, and before March 5, 2013, the maximum third tier civil penalty is $150,000 per violation for a natural person. 17 C.F.R. § 201.1004; Adjustments to Civil Monetary Penalty Amounts, 74 Fed. Reg. 9159, 9160 (Mar. 3, 2009).

Within these maximums, the Commission considers six statutory factors in setting a 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.

In the Matter of Sandru, 2013 SEC LEXIS 2346, at *23 (Initial Decision), Aug. 12, 2013)(citing 15 U.S.C. § 78u–2(c); § 80a–9(d)(3); § 80b–3(i)(3)).

In addition to the statutory factors, courts have considered the following factors:

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

Id. at *24 (quoting *SEC v. Lybrand*, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), *aff'd on other grounds*, 425 F.3d 143 (2d Cir. 2005)). Not all of the factors may be relevant, nor do they necessarily carry equal weight. *See id.* at 23.

As an initial matter, third tier civil-penalties are appropriate. There is overwhelming evidence that Daspin's violations involved deceit, manipulation and deliberate or reckless wrongdoing. And there was a "substantial pecuniary gain" to Daspin as demonstrated by his

receipt of investors' funds. In addition, by taking in large sums of investor money (approximately $2.47 million) and dissipating virtually all of it, except for the small amounts returned to investors as stock buybacks, Daspin certainly created a "significant risk of substantial losses." E.g., 15 U.S.C. § 78u–2(b)(3)(B).

For example, Tom Sullivan has not recouped the $351,000 of retirement savings that he invested into the WMMA companies. Tr. 1882:10-13. He is now 61 years old. Tr. 1882:22-23. His loss has been a "devastating" and "life-changing" event. Tr. 1886:24 and 1887:2. Gregg Lange was solicited to invest "half a million dollars, if not more" Tr. 2232:6-7; told that $250,000 was the minimum amount of investment accepted, Tr. 2235:1-6, he invested that amount and lost all but approximately $20,000 paid back to him through the so-called stock repurchase program. Darin Heisterkamp invested $351,000—$234,000 of which was financed from his 401(k) savings (practically his entire 401(k) or retirement savings), $100,000 from equity in Heisterkamp's primary residence, and the remainder borrowed from family and friends. Tr. 2403:7-11 (re investment amounts); 2404:1-6 (re amount funded from 401(k) savings); 2411:23-2412:14 (re value from primary residence); Div. Exs. 58, 59, 60 and 185 (wire transfers). He too has not recovered his losses. Tr. 2468:4-8. He now has to live with his sister. Tr. 2468:21. He has not been able to repay the friends and family that he borrowed money from to fund a portion of his investment in WMMA. Tr. 2468:23-2469:1.

Darin Heisterkamp testified "A handful of months into my employment [with WMMA], it was clear that the company as presented to me was not real. It did not have the assets in place, it did not have the programming prepared, and it did not have events that were scheduled to occur. 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. That money was spent by

Ed on expenses that he incurred for the company. Having been unable to find employment since 2013 has essentially left me bankrupt and homeless, still living with family as I try to find a way to get back on my feet and support myself." Tr. 2469:12-2470:3.

In terms of the number of violations, there were literally dozens—including multiple misrepresentations and omissions to at least six of the actual investors, plus misleading advertisements and PPMs distributed to an unknown number of potential investors, and misrepresentations and omissions made to potential investors. The conduct at issue was egregious and long-running, and involved a high degree of scienter and significant deceit. Further, there is a need to deter others from preying on gullible investors by luring them in with the type of false promises and deceptive scheme Daspin perpetrated here.

Nevertheless, in an effort to be conservative, the Division has assumed six violations for purposes of this analysis: one for each of the six investors who invested based on either the July 2011 or January 2012 PPMs. Six times $150,000 third-tier violations results in a penalty of $900,000 based on Daspin's fraudulent misconduct.

The Division also seeks a first-tier penalty for Daspin's violation of each of Section 5 of the Securities Act and Section 15 of the Exchange Act. Each of these violations has a $7,500 maximum, for a total of $15,000. 17 C.F.R. § 201.1004. Thus, the Division requests the imposition of a $915,000 penalty (six times $150,000 plus two times $7,500) against Daspin.[20] The civil penalties proposed by the Division are reasonable, fair, less than the amount that

[20] The Division notes that it could seek separate penalties for each misrepresentation or omission made to each investor, *Sandru*, 2013 SEC LEXIS 2346, *25 (Division entitled to seek maximum penalty for each of 113 separate misrepresentations because "the unit of violation is the individual false representation"), and each instance of Daspin failing to register securities and acting as an unregistered broker. See *John A. Carley*, 92 SEC Docket 1693, 1739-40 & n.157 (Jan. 31, 2008) (imposing one maximum $ 110,000 civil penalty based on the totality of the misconduct, but noting that each unregistered sale could be considered a separate violation).

could be imposed if a penalty was assessed for each of the multiple individual violations Daspin committed, and well calculated to serve the public interest and the purposes delineated in the statutes.

CONCLUSION

For all the foregoing reasons, the Division will ask the Court to find Daspin liable for all of the violations set forth in the OIP and impose the sanctions set forth above, as well as such other and further relief as the Court deems appropriate.

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Respectfully submitted,

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