Rec'd 8/26/19 ALJ

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19024

In the Matter of

ASCENSION ASSET MANAGEMENT, LLC AND GRENVILLE M. GOODER, JR.,

Respondents.

RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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Pursuant to Rule 250(f) of the Commission's Rules of Practice, Respondents Ascension Asset Management, LLC ("Ascension") and Grenville M. Gooder, Jr. (collectively, the "Respondents") respectfully submit this Memorandum in Opposition to the Division of Enforcement's Motion for Summary Disposition Against Respondents Ascension Asset Management, LLC and Grenville M. Gooder, Jr. ("Motion").

I. Statement of the Facts

In November 2015, the SEC's Office of Compliance Inspections and Examinations ("OCIE") notified Ascension that it planned to conduct an on-site examination. (OIP[1] ¶ 12; Answer ¶ 12). At the conclusion of the exam, OCIE sent Ascension a letter on June 16, 2016 ("OCIE Deficiency Letter"), outlining deficiencies identified during the exam. (Declaration of Alexandra J. Marinzel, executed on August 5, 2019 ("Marinzel Decl."), Ex. 3 (OCIE Deficiency Letter). The OCIE Deficiency Letter identified deficiencies regarding: custody of a private fund and a trust; Ascension's compliance program, the annual review thereof, and Ascension's Chief Compliance Officer ("CCO"); Ascension's Form ADV; and Ascension's books and records.[2] *Id.* Ascension responded to the OCIE Deficiency Letter on July 14, 2016 ("Ascension Response to Deficiency Letter"), explaining how the deficiencies had been successfully remediated. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter)).

Specifically, in November 2015, Mr. Gooder and Ascension worked with a compliance consultant, Michael Zuckerman, to implement written compliance policies and procedures ("Compliance Manual"). (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004874; Marinzel Decl., Ex. 5 (Ascension Compliance Manual)). The Compliance

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[1] *Ascension Asset Mgmt.*, Investment Advisers Act Release No. 5121, 2019 WL 1082154 (March 7, 2019) (hereinafter "OIP").

[2] The Deficiency Letter also addressed other deficiencies that are not relevant and are not discussed herein.

Manual is tailored to Ascension and contains policies and procedures designed to reasonably prevent violations of the securities laws. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004874; Marinzel Decl., Ex. 5 (Ascension Compliance Manual). Thus, Ascension has been in compliance with Rule 206(4)-7(a) since November 2015.[3]

Ascension began annual reviews of the Compliance Manual in 2015, at the time of its adoption. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004873). From December 2015 through July 2017, Ascension conducted monthly reviews of the Compliance Manual with its then compliance consultant, Mr. Zuckerman. (Marinzel Decl., Ex. 1 (Gooder Tr. 12/12/16) at 52:3-17); Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004874). From July 2017 to the present, Ascension has conducted monthly reviews of its Compliance Manual with its CCO, Evan Rosser of Oyster Consulting, LLC. (Marinzel Decl., Ex. 2 (Gooder Tr. 12/12/17) at 75:19-22). Thus, Ascension has been in compliance with Rule 206(4)-7(b) since November 2015.

Ascension appointed Mr. Gooder as the CCO responsible for administering its Compliance Manual in December 2015. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004873). With the assistance of compliance consultant Mr. Zuckerman, Mr. Gooder served as the CCO until July 2017. (Marinzel Decl., Ex. 1 (Gooder Tr. 12/12/16) at 39:3-18). During that time, Mr. Zuckerman and Mr. Gooder had periodic meetings to ensure that all responsibilities were discharged, deadlines were met, and appropriate documentation was maintained. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004874). In July 2017, Ascension hired Evan Rosser with Oyster

[3] Respondents note that while Ascension did not maintain *written* policies and procedures prior to November 2015, Ascension's business was conducted in a manner that largely conformed to the policies and procedures set forth in the Compliance Manual. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004874); Marinzel Decl., Ex. 5 (Ascension Compliance Manual) at AAM000577-643).

Consulting, LLC, to serve as CCO. (Marinzel Decl., Ex. 6 (Ascension Wells Submission dated 3/13/2018) at SEC-SEC-E-0008851). Among other things, Mr. Rosser reviews and updates compliance-related developments in the law and from regulatory guidance, and assists Ascension and Mr. Gooder with compliance issues as they arise. (*Id.*). Thus, Ascension has been in compliance with Rule 206(4)-7(c) since December 2015.

Ascension hired WeiserMazars LLP ("Mazars"), an accounting firm subject to inspection by the PCAOB, to conduct surprise examinations in compliance with Rule 206(4)-2. (Marinzel Decl., Ex. 8 (Mazars Engagement Letter dated 1/7/2016). Mazars commenced its first audit on March 31, 2016, and has conducted an annual surprise examination every year thereafter. (Marinzel Decl., Ex. 9 (Mazars Letter dated 7/25/2016) at AAM000290-91); Marinzel Decl., Ex, 10 (Mazars Letter dated 10/2/2017) at AAM034509-10). Thus, Ascension has been in compliance with Rule 206(4)-2 since March 2016. Ascension has also used the services of a bookkeeper since 2016. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004883).

After nearly three years of investigation, the Division of Enforcement (the "Division") filed an OIP on March 7, 2019 based upon the same deficiencies identified in the OCIE Deficiency Letter from June 2016. (OIP; Marinzel Decl., Ex. 3 (OCIE Deficiency Letter)). As noted by Ascension's Response to the Deficiency Letter dated July 14, 2016 and Ascension's Wells Submission dated March 13, 2018, the cited deficiencies have all been remediated. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter); Marinzel Decl., Ex. 6 (Ascension Wells Submission dated 3/13/2018). As of the date of this Opposition, remediation has now been complete for over three years. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004872-74). The Division's exhaustive post-remediation

investigation did not result in any post-remediation charges in the OIP, nor did it result in allegation of client harm in the OIP.

II. Standard for Summary Disposition

Rule 250 of the Commission's Rules of Practice provides that a party seeking summary disposition must demonstrate that "the undisputed pleaded facts, declarations, affidavits, deposition transcripts, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(c). The record here must be evaluated in the light most favorable to Respondents. "In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party." *Jaycee James*, Admin. Proc. Rulings Release No. 649, 2010 WL 3246170 at *3 (ALJ April 2, 2010). "At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing." *Id.*

The Commission has stated that a Rule 250 summary disposition motion "is analogous to Federal Rule of Civil Procedure 56." Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50,212, 50,224 nn.112 & 115 (July 29, 2016). Rule 56 similarly provides that a party seeking summary judgment in federal court must demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). For this reason, precedent interpreting Federal Rule 56 "provides helpful guidance on [summary disposition] issues not directly addressed by previous Commission opinions." *Jaycee James*, 2010 WL 3246170 at *2-3.

The Supreme Court has counseled restraint in applying Rule 56. "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case in which there is reason to believe that the better course would be to proceed to a full trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (citation omitted) (rejecting "trial on affidavits").

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth...but to determine whether there is a genuine issue for trial." *Id.* at 249. *See also Feld v. Fireman's Fund Ins. Co.*, 909 F.3d 1186, 1190 (D.C. Cir. 2018) (on a summary judgment motion, the judge must "view[] the evidence in the light most favorable to the non-movant and draw[] all justifiable inferences in its favor"); *Royal Crown Day Care LLC v. Dep't of Health and Mental Hygiene*, 746 F.3d 538, 544 (2d Cir. 2014) ("On a motion for summary judgment, a fact is material if it 'might affect the outcome of the suit under the governing law.'" (quoting *Anderson*, 477 U.S. at 248)).

III. Argument

Respondents submit this Motion in Opposition and respectfully request that the Division's Motion for Summary Disposition be denied for the following reasons:

First, the Division has not provided evidence sufficient to show that imposing sanctions in this proceeding would be in the public interest.

Second, the Division has not provided evidence sufficient to show that Ascensions' books and records were in violation of the Books and Records Rule.

Third, there is a genuine dispute of fact as to whether Ascension and Mr. Gooder willfully made materially false statements in Ascension's Forms ADV.

a. <u>The Division's Motion should be denied as to all claims because sanctions in this matter would not be in the public interest.</u>

The Division is seeking sanctions in this matter. (OIP at 9). However, in order to impose sanctions, the Commission must first find that sanctions are in the public interest. In doing so, the Commission should consider the following factors: 1) the severity of respondent's actions; 2) the isolated or recurring nature of the violation; 3) the amount of scienter involved in the violation; 4) how genuine are the respondent's pledges against future violations; 4) the respondent's acceptance of the wrongful nature of his conduct; and 5) the likelihood that respondent's occupation will present chances for future violations. *F.X.C. Inv'rs Corp.*, Initial Decision Release No. 218, 2002 WL 31741561, at *14 (ALJ Dec. 9, 2002) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981)). The purpose of sanctions is to protect the public from future harm and to act as a deterrent against future conduct. *See Id.* ("[t]he severity of sanctions depends on the facts of each case and the value of the sanctions in preventing a recurrence of the violative conduct." (citing *Berko v. SEC*, 316 F.2d 137, 141 (2d Cir. 1963)).

Furthermore, in an administrative matter pursuant to its authority under the Advisers Act § 203(i)(3), the Commission should evaluate the following factors in addition to the *Steadman* factors: "(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (B) the harm to other persons resulting either directly or indirectly from such act or omission; (C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior; (D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory

organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in subsection (e)(2); (E) the need to deter such person and other persons from committing such acts or omissions; and (F) such other matters as justice may require." Advisers Act § 203(i)(3).

The Division has failed to show that sanctions are warranted in this matter. To the contrary, application of the *Steadman* factors to the facts underlying this proceeding makes it clear that sanctions would not be in the public interest. There is no indication of scienter, nor has the Division alleged it. (*See* OIP) (no allegations of scienter or an intent to deceive). Furthermore, there was nothing "severe" about Respondents' actions, as evidenced by the lack of client complaints or client harm cited by the Division. (*See* OIP) (no evidence put forth showing a client complaint or evidence of client harm). The violations alleged by the Division are exclusively "process" violations, which have been fully remediated for over three years. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter); Marinzel Decl., Ex. 6 (Ascension Wells Submission dated 3/13/2018)).

As described *supra* in the Statement of Facts section, Ascension has made extensive investments in upgrading its compliance processes, including the retention of experienced regulatory counsel, a well-respected compliance consultant, and an experienced CCO. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004872-73; Marinzel Decl., Ex. 6 (Ascension Wells Submission dated 3/13/2018)). Ascension has also adopted and implemented written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, and conducts monthly reviews of the adequacy of those policies and procedures. (Marinzel Decl., Ex. 4 (Ascension Response to

Deficiency Letter) at SEC-SEC-E-0004874). With the assistance of a bookkeeper, Ascension makes and keeps a journal reflecting its cash receipts and disbursements, as well as a general ledger reflecting its assets, liabilities, reserves, capital, income, and expense accounts. (*Id.* at SEC-SEC-E-0004881-82). In addition, Ascension has implemented surprise examinations by an independent public accountant for accounts over which Ascension maintains technical custody of clients' funds or securities. (*Id.* at SEC-SEC-E-0004871; Marinzel Decl., Ex. 6 (Ascension Wells Submission dated 3/13/2018)).

There is no indication that Ascension or Mr. Gooder presents a risk for future violations, and the Division has not alleged otherwise. (*See* OIP). Mr. Gooder has had a long and distinguished career serving his clients; in nearly 50 years, he has had only one complaint, and it was found to be without merit after a federal trial. (Marinzel Decl., Ex. 7 (Ruling and Order, *Pellegrini v. Gooder*, Case No. 11-cv-06908-JCG, C.D. Cal.). Considering these facts and circumstances, sanctions are not warranted under *Steadman*.

Furthermore, financial penalties are not warranted under Section 203(i)(3). Respondents' conduct did not involve fraud, deceit, manipulation or deliberate or reckless disregard of regulatory requirements. Ascension was, and is, a sole-proprietorship and Mr. Gooder continually acted solely in his clients' best interests, again, as evidenced by the lack of complaints and client harm alleged by the Division. Neither Ascension nor Mr. Gooder profited from the alleged violations. Furthermore, neither Ascension nor Mr. Gooder have any history of regulatory violations.

Process violations that caused no substantive client harm and that have been fully remediated for over three years are not sufficient to sustain any penalty, financial or otherwise. There needs to be an evidentiary hearing to fully consider the public interest requirement

necessary before there can be findings of fact and conclusions of law about whether the Division has established conduct requiring sanctions. Accordingly, the Division is not entitled to summary disposition and its Motion should be denied.

b. <u>The Division's Motion should be denied as to the Books and Records Rule claim because the Division has failed to prove a violation.</u>

The Division's OIP alleges that until 2015, Respondents "did not make and keep a true, accurate, and current journal reflecting Ascension's cash receipts and disbursements[,]" as required by Rule 204-2(a)(1), and that Respondents "did not make and keep a true, accurate, and current general ledger reflecting Ascension's assets, liabilities, reserves, capital, income, and expense accounts[,]" as required by 204-2(a)(2) (collectively "Books and Records Rule"). (OIP ¶¶ 31-32). The Division claims that the "undisputed record ***establishes that***" Respondents violated the Books and Records Rule for more than a decade. (Mot. at 17) (emphasis added).

As support for its argument, the Division repeatedly alleges that Ascension violated the Books and Records Rule by failing to keep records in accordance with Rules 204-2(a)(1) and (2); specifically, that Ascension ran its business out of a checkbook. (Mot. at 13, 18). While the Division claims that "merely maintaining a checkbook is no substitute for the journals and ledgers expressly called for by the rules[,]" (*id.* at 18), the only support for this position provided by the Division comes in the form of dictionary definitions for the terms "journal" and "ledger". (*Id.* at 19 n.12). The Books and Records Rule itself does not define either term.

While Ascension may not have kept "journals" or "ledgers" per the dictionary definitions of those terms, Ascension did keep records necessary to its business operation. (Marinzel Decl., Ex. 6 (Ascension Wells Submission dated 3/13/2018) at SEC-SEC-E-0008852). Ascension has always been a sole proprietorship with a simple, straightforward business model. (*Id.*). As Mr. Gooder stated in testimony, before 2015 "all receipts were kept track of," and Ascension sorted

its limited disbursements, such as expenses for an assistant, subscriptions, and rent. (Marinzel Decl., Ex. 1 (Gooder Tr. 12/12/16) at 50:15-18). Ascension's records were sufficient to show its income, expenses, and then-current financial position. (*Id.* at 50:15–51:1-7). Furthermore, the Division has not cited any client harm arising from Ascension's books and records practices. (OIP ¶¶ 29-34).

The Division has not cited to any case law, commentary, or source other than Black's Law Dictionary for its conclusory assertion that Ascension violated the Books and Records Rule. Accordingly, the Division has failed to demonstrate that the books and records maintained by Ascension until 2015 were insufficient pursuant to Rules 204-2(a)(1) and (2) and its Motion should be denied as to the Books and Records Rule claim.

c. The Division's Motion should be denied as to the material misstatement claim because there is a genuine issue with regard to material facts.

The Division's OIP charges Respondents with making materially false statements in Ascension's Forms ADV regarding: (1) designation of Ascension's CCOs, and (2) statements regarding custody of client assets. (OIP ¶¶ 35-48, 52). Whether Respondents acted with the requisite mental state in order for their actions to constitute a violation of the Advisers Act is a question of fact. *Valicenti Advisory Services, Inc. v. SEC*, 198 F.3d 62, 65 (2d Cir.1999). Despite this, the Division claims there is no genuine issue of material fact as to whether Respondents' conduct was "willful"—the standard of conduct required by Section 207. Advisers Act § 207.

The Division cites the recent District of Columbia Court of Appeals decision in *Robare Group, Ltd. v. SEC*, 922 F.3d 468, 479-80 (D.C. Cir. 2019), for the premise that "[p]roving willfulness under Section 207 requires establishing that the respondent acted ***intentionally or recklessly***." (Mot. at 20) (emphasis added). Said another way, the D.C. Circuit held in *Robare* that the Division cannot use evidence of negligence to prove willful conduct. *See Robare*, 922

F.3d at 479 ("Any given act may be intentional or it may be negligent, but it cannot be both." (internal quotation marks omitted)). In *Robare*, the Court affirmed the Commission's finding that even where advisers had persistently failed to disclose a known conflict of interest arising from a payment arrangement with a broker, the conduct was no more than negligent and thus could not serve as the basis for a violation of Section 207. *Id.* at 480. The Court further stated that "[t]he statutory text signals that [in order to find a violation of Section 207] the Commission had to find, based on ***substantial evidence***, that at least one of TRG's principals ***subjectively intended*** to omit material information from TRG's Forms ADV." *Id.* at 479 (emphasis added). Applying *Robare* to the statements made in Ascension's Forms ADV shows at best negligent conduct that does not rise to the willful level necessary for a Section 207 violation.

As described in greater detail below, the Division has failed to show willfulness as to both statements made about the designation of Ascension's CCOs and statements made about custody of client assets. Therefore, a genuine issue of material fact remains for trial and the Division's Motion should be denied as to its material misstatements claim.

1. Alleged Misstatements Regarding the Compliance Rule

The Division argues that Respondents "willfully violated Section 207 by falsely naming Platt and Smith as Ascension's CCO on [the] firm's Forms ADV when, in fact, neither of these individuals performed or was responsible for performing any duties at Ascension." (Mot. at 22). The Division claims that Respondents' conduct was "intentional and willful" because Mr. Gooder knew that neither Mr. Platt nor Mr. Smith had any responsibilities as CCO. (*Id.*).

First, this proceeding was instituted by the Division on March 7, 2019 and thus, any conduct falling outside of the five-year statutory limitations period—before March 7, 2014—is time-barred. *See SEC v. Jones,* 476 F. Supp. 2d 374, 380-81 (S.D.N.Y. 2007); *see also Larry C.*

Grossman, Investment Advisers Act Release No. 4543, 2016 WL 5571616, at *10-13 (Sept. 30, 2016), *vacated and remanded on other grounds, Grossman v. SEC*, No. 16-16907 (11th Cir. Aug. 11, 2017) (concluding that respondent's violations of the Advisers Act fell outside of the five-year statute of limitations period contained in § 2462). Mr. Smith was listed as CCO on Ascension's Form ADV dated February 10, 2011, and therefore, the Division's claim that Respondents violated Section 207 in listing Mr. Smith on Ascension's Form ADV is time-barred, as it falls well outside of the five-year statutory period.

Second, as Mr. Gooder testified, Mr. Platt was available as a "backup person" if a compliance issue had arisen. (Marinzel Decl., Ex. 1 (Gooder Tr. 12/12/16) at 29:20); *see also* (Marinzel Decl., Ex. 2 (Gooder Tr. 12/12/17) at 74:12-15 (Q: Did you ever ask Mr. Platt to take any actions as the Chief Compliance Officer? A: No, because no issues came up that we identified that needed to be taken.") and 73:10-22). Additionally, Mr. Platt verbally agreed to serve as Ascension's CCO. (Marinzel Decl, Ex. 1 (Gooder Tr. 12/12/16) at 49:19-21). These facts demonstrate the Mr. Gooder held a genuine belief that Mr. Platt was in fact Ascension's CCO. Although Mr. Platt may not have been responsible for administering written policies and procedures as contemplated by Rules 206(4)-7(a) and (c), he was nonetheless Ascension's CCO and it was therefore not a material misstatement for Ascension and Mr. Gooder to name him as Ascension's CCO on Form ADV. Respondents were at most negligent in listing Mr. Platt as Ascension's CCO.

The Division has failed to prove that Respondents' conduct was willful, and thus there is a genuine issue of material fact that remains for trial. Therefore, the Division's Motion should be denied as to its material misstatement claim based upon Ascension's CCO.

2. Alleged Misstatements Regarding the Custody Rule

The Division argues that there is "no genuine issue of material fact concerning whether [Respondents] acted willfully by falsely stating on its Forms ADV that it did not maintain custody of client assets[.]" (Mot. at 21). Applying *Robare* to the instant proceeding, there is at the very least a genuine issue of material fact as to whether Mr. Gooder acted ***willfully*** in stating that he did not have custody of client assets.

i. The Private Fund

The Division claims that Ascension and Mr. Gooder acted willfully in stating that Ascension did not have custody of client assets when Mr. Gooder knew he was the joint manager of a private fund known as Westway. (Mot. at 21). However, as Ascension and Mr. Gooder have repeatedly explained to the Division, the fund was set up was solely to hold specific GDRs and to essentially act as an administrative vehicle to facilitate trade settlement. (Marinzel Decl., Ex. 4 (Ascension Response to Deficiency Letter) at SEC-SEC-E-0004870; Marinzel Decl, Ex. 1(Gooder Tr. 12/12/16) at 82:4-16, 86:12-19, 94:14–95:2, 98:23-25). While Mr. Gooder did have investment authority on behalf of the fund, the GDRs held by the fund were in the possession of Fiduciary Trust, a qualified custodian. (*Id.* at 99:11-13). Due to those circumstances, Mr. Gooder was under the mistaken belief that neither he nor Ascension had custody over the assets. Neither Ascension nor Mr. Gooder intended to mislead clients by stating that it did not have custody over client funds in Ascension's ADV. Indeed, there would have been no benefit to Ascension or Mr. Gooder in doing so. Respondents' unintentional misstatements about custody of the fund's assets were no more than negligent.

Therefore, the Division has failed to show that Respondents acted willfully, a genuine issue of material fact remains for trial, and the Division's Motion should be denied as to its claim of material misstatements based upon the private fund.

ii. The Trust

The Division claims that Ascension and Mr. Gooder acted willfully in stating that Ascension did not have custody of client assets when Mr. Gooder knew he was the sole trustee of the Moll Trust. (Mot. at 21). However, Ascension and Mr. Gooder were unaware that Ascension had technical custody of the Moll Trust assets by virtue of Mr. Gooder's role as sole trustee until the OCIE examination. (Marinzel Decl., Ex. 1 (Gooder Tr. 12/12/16) at 42:20–43:7). Therefore, Ascension and Mr. Gooder could not have acted willfully in misstating information about custody of the trust in Ascension's Form ADV and the misstatements were at most negligent.

Accordingly, the Division has failed to show that Respondents acted willfully, a genuine issue of material fact remains for trial, and the Division's Motion should be denied as to its claim of material misstatements based upon the Moll Trust.

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that the Division's Motion for Summary Disposition be denied.

Dated: August 5, 2019

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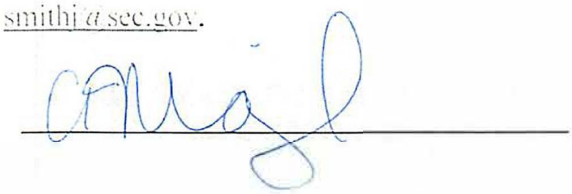
Counsel for Respondents

CERTIFICATE OF SERVICE AND FILING

Pursuant to Rule 150(c)(2), I certify that on August 5, 2019, I caused the foregoing to be sent (1) by email and FedEx to the Honorable Carol Fox Foelak, Administrative Law Judge, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549-1090; and (2) by email to Nicholas Pilgrim, Adam Aderton, Luke Pazicky, and Janene Smith at pilgrimn@sec.gov, adertona@sec.gov, pazickyl@sec.gov, and smithj@sec.gov.



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19024

In the Matter of

ASCENSION ASSET MANAGEMENT, LLC AND GRENVILLE M. GOODER, JR.,

Respondents.

DECLARATION OF ALEXANDRA J. MARINZEL IN SUPPORT OF RESPONDENTS ASCENSION ASSET MANAGEMENT, LLC AND GRENVILLE M. GOODER, JR.'S MOTION IN OPPOSITION TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION

ALEXANDRA J. MARINZEL, pursuant to 28 U.S.C. § 1746, declare:

1. I am a member in good standing of the bar of the state of Maryland, and the bar of the District of Columbia. I am employed by the law firm Murphy and McGonigle, P.C. (the "Firm") as an attorney in the Firm's Washington, D.C. office. I represent Ascension Asset Management, LLC ("Ascension") and Grenville M. Gooder, Jr. (collectively "Respondents"), in the above-captioned matter.

2. Except as otherwise stated, I have personal knowledge of the matters set forth in this Declaration, and, if called as a witness, I could and would competently testify under oath to the facts stated herein.

3. I make this Declaration in support of Respondent's Motion in Opposition to the Division of Enforcement's (the "Division") Motion for Summary Disposition against Respondents Ascension Asset Management, LLC and Grenville M. Gooder, Jr.

4. This Declaration and its accompanying exhibits provide documentary support for facts more fully set out in Respondents' Motion in Opposition to the Division's Motion for Summary Disposition.

5. Attached hereto as **Exhibit 1** is a true and correct copy of a transcript of Mr. Gooder's investigative testimony given on December 12, 2016 in In the Matter of Ascension Asset Management, File No. HO-13084-A.

6. Attached hereto as **Exhibit 2** is a true and correct copy of a transcript of Mr. Gooder's investigative testimony given on December 12, 2017 in In the Matter of Ascension Asset Management, File No. HO-13084-A.

7. Attached hereto as **Exhibit 3** is a true and correct copy of a letter dated June 16, 2016 sent from the SEC Office of Compliance Inspections & Examinations ("OCIE") to Gooder (hereinafter the "OCIE Deficiency Letter").

8. Attached hereto as **Exhibit 4** is a true and correct copy of a letter dated July 14, 2016 sent from Mr. Gooder to an Assistant Director at OCIE in response to the OCIE Deficiency Letter (hereinafter "Ascension Deficiency Letter Response").

9. Attached hereto as **Exhibit 5** is a true and correct copy of Ascension's Compliance Manual dated November 25, 2015 ("Compliance Manual").

10. Attached hereto as **Exhibit 6** is a true and correct copy of Ascension's Wells Submission dated March 13, 2018 ("Wells Submission").

11. Attached hereto as **Exhibit 7** is a true and correct copy of *Edward C. Pellegrini v. Grenville M. Gooder, Jr. et al*, Case No. 11-cv-06908-JCG in the United States District Court for the Central District of California.

12. Attached hereto as **Exhibit 8** is a true and correct copy of WeiserMazars LLP's Letter dated January 7, 2016.

13. Attached hereto as **Exhibit 9** is a true and correct copy of WeiserMazars LLP's Letter dated July 25, 2016.

14. Attached hereto as **Exhibit 10** is a true and correct copy of WeiserMazars LLP's Letter dated October 2, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 5, 2019

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Counsel for Respondents

CERTIFICATE OF SERVICE AND FILING

Pursuant to Rule 150(c)(2), I certify that on August 5, 2019, I caused the foregoing to be sent (1) by email and FedEx to the Honorable Carol Fox Foelak, Administrative Law Judge, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549-1090; and (2) by email to Nicholas Pilgrim, Adam Aderton, Luke Pazicky, and Janene Smith at pilgrimn *a* sec.gov, adertona *a* sec.gov, pazickyl *a* sec.gov, and smithj *a* sec.gov.