MEMORANDUM TO THE UNITED STATES DEPARTMENT OF JUSTICE IN WASHINGTON AND THE U.S. ATTORNEY'S OFFICE FOR THE NORTHERN DISTRICT OF ALABAMA REBUTTING ALLEGATIONS OF WIRE AND MAIL FRAUD, CRIMINAL CONSPIRACY, MONEY LAUNDERING, SECURITIES LAW VIOLATIONS, BANK FRAUD, AND RACKETEERING AGAINST DONALD V. WATKINS AND THE MASADA RESOURCE GROUP-RELATED FAMILY OF COMPANIES OWNED AND/OR MANAGED BY HIM THAT MAY ARISE FROM A GRAND JURY INVESTIGATION FOR THE NORTHERN DISTRICT OF ALABAMA

March 14, 2018

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RULES 408 AND 410 DISCLAMER

THIS MEMORANDUM IS SUBMITTED TO THE UNITED STATES DEPARTMENT OF JUSTICE ("DOJ") AND U.S. ATTORNEY'S OFFICE FOR THE NORTHERN DISTRICT OF ALABAMA ("USA-NDAL") PURSUANT TO RULES 408 AND 410 OF THE FEDERAL RULES OF EVIDENCE.

DONALD V. WATKINS AND THE MASADA-RELATED COMPANIES IDENTIFIED IN THE MEMORANDUM THAT ARE MANAGED BY MR. WATKINS RESERVE ALL RIGHTS, PRIVILEGES, AND PROTECTIONS AFFORDED TO THEM BY THOSE RULES AS WELL AS ALL OTHER APPLICABLE PRIVILEGES AND PROTECTIONS, INCLUDING, BUT NOT LIMITED, TO THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, MIRANDA, THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT DOCTRINE.

THIS MEMORANDUM REPRESENTS THE VIEWS OF COUNSEL FOR DONALD V. WATKINS AND ALL WATKINS-OWNED AND MANAGED ENTITIES THAT ARE THE SUBJECTS OF A GRAND JURY INVESTION FOR THE NORTHERN DISTRICT OF ALABAMA AS TO WHAT THEY EXPECT THE EVIDENCE TO SHOW IN THIS INVESTIGATION. THE MEMORANDUM REFLECTS ONLY SUCH EVIDENCE THAT THE LIMITED POWERS OF DISCOVERY AVAILABLE TO COUNSEL HAVE UNCOVERED. NO STATEMENT OR REPRESENTATION CONTAINED IN THIS MEMORANDUM SHOULD BE CONSIDERED, OR IS INTENDED TO BE, AN ADMISSION, STIPULATION, OR CONCESSION BY MR. WATKINS OR THE ENTITIES OWNED AND MANAGED BY HIM, OR A WAIVER OF THEIR ATTORNEY-CLIENT PRIVILEGE.

THIS MEMORANDUM IS SUPPLIED SOLELY TO ASSIST THE DOJ AND THE USA-NDA FOR CRIMINAL LAW ENFORCEMENT PURPOSES. THE SUBJECT MATTER OF THIS MEMORANDUM IS ALSO THE SUBJECT MATTER OF: (A) AN AMERICAN ARBITRATION ASSOCIATION COMPLAINT DONALD V. WATKINS FILED AGAINST THE THOMAS GLOBAL GROUP, LLC ("TGG"), ON JUNE 17, 2013; (B) A CIVIL COMPLAINT FILED BY THE U. S. SECURITIES AND EXCHANGE COMMISSION IN ATLANTA FEDERAL COURT ON SEPTEMBER 1, 2016 AND (C) THE FEDERAL DEPOSIT INSURANCE CORPORATION IN AN ADMINISTRATIVE ENFORCEMENT PROCEEDING FILED AGAINST MR. WATKINS ON DECEMBER 15, 2017. DISTRIBUTION OF THIS MEMORANDUM OUTSIDE OF THE DOJ AND THE USA-NDAL SHOULD NOT BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF MR. WATKINS AND HIS UNDERSIGNED COUNSEL.

MR. WATKINS' LEGAL COUNSEL REQUESTS AN OPPORTUNITY TO APPEAR ON BEHALF OF HIS CLIENT BEFORE THE USA-NDAL AND THE DOJ IN WASHINGTON BEFORE A FINAL DETERMINATION IS MADE ON CRIMINAL ACTION REGARDING THE MATTERS CONTAINED IN THIS MEMORANDUM.

BECAUSE THE EVIDENCE PRESENTED IN THIS MEMORANDUM IS SUBSTANTIAL AND IT DIRECTLY NEGATES THE GUILT OF MR. WATKINS AND OTHER 'SUBJECTS' AND "TARGETS" OF THE GRAND JURY'S INVESTIGATION, AND BECAUSE THE PROSECUTORS CONDUCTING THE GRAND JURY INVESTIGATION ARE NOW PERSONALLY AWARE OF THIS EVIDENCE, MR. WATKINS REQUESTS THAT THESE PROSECUTORS, PURSUANT TO SECTION 9-11.233 OF THE U.S. ATTORNEY'S MANUAL, PRESENT OR OTHERWISE DISCLOSE THE EVIDENTIAL MATTERS DETAILED IN THIS MEMORANDUM TO THE GRAND JURY BEFORE SEEKING AN INDICTMENT AGAINST MR. WATKINS OR ANY OTHER PERSON WHO IS THE 'SUBJECT' OR 'TARGET' OF THE INVESTIGATION INTO MR. WATKINS' BUSINESS AND PERSONAL AFFAIRS.

INTRODUCTION

Between January 18, 2001 and September 1, 2010, a total of 30 individuals/entities voluntarily joined Mr. Donald V. Watkins ("Mr. Watkins") in the waste-to-energy business. The legal structure for their inclusion in this business was an irrevocable assignment and conveyance by Mr. Watkins of a defined portion of his economic interests in Watkins Pencor, LLC ("WP"), which held his equity interests in the Masada Resource Group, LLC ("Masada"), family of businesses, as they existed at all times material to this Grand Jury investigation. Most economic participants purchased their interests. A handful were rolled into WP from other Watkins business ventures, while some others were awarded their economic participations based upon their contributed professional services to Mr. Watkins as he pursued the growth and diversification of Masada and its assets.

At the outset of the business relationship, the economic participants warranted and represented to Mr. Watkins, orally and in writing, that:

1. The "***purchased economic interest involves a high degree of risk and is suitable only for persons who have no need for liquidity in this investment and can bear the loss of their entire investment.***" The risk factors were identified in a March 1996 MO-USI Confidential Memorandum that was made available to all purchasers;[1]
2. As assignees of a Masada member, they were bound by all of the terms and conditions in various Masada-related Operating Agreements, including the

[1] One of the risk factors specifically mentioned in the Memorandum and addressed with economic participants in person was the Manager's right to abandon a particular target market and substitute another one in its place. See, Paragraph 16(c), "Risks Inherent in the Projects", on page 8 of the Memorandum.

Masada Resource Group, LLC, Amended and Restated Operating Agreement, dated December 31, 1998;

3. As assignees of a Masada member, they acknowledged Mr. Watkins' powers and authority as the "Manager" of the Masada entities, as set forth in the applicable Operating Agreements;
4. As assignees of a Masada member, they had no rights in the management of the Masada companies;
5. As assignees of a Masada member, they had no right to "audit, examine and make copies of or extract from the books of the Company";
6. As assignees of WP, they had no right to participate in legal fees payable to Donald V. Watkins, P.C. ("DVWPC"), project management and development fees payable to Pencor (i.e., Watkins' designated company to manage the Masada businesses), or expense reimbursements due to Pencor;
7. As assignees of a Masada member, they agreed to waive in Section 6.4 of the Masada Operating Agreement any conflict of interest that might arise because Mr. Watkins engaged in transactions that furthered his own economic interest, such as the ones listed above (among others);
8. As assignees of a Masada member, they would arbitrate any and all disputes of any kind arising out of their participation of a WP economic interest or loan to or for the benefit of Masada.

Mr. Watkins relied of these warranties and representations to build Masada into a global leader in the waste-to-energy industry. No email exchange between the economic participants and Mr. Watkins altered, amended, modified, or

renounced these warranties and representations. They formed the cornerstone for building the business.

The economic participants, who were friends, co-workers, and family members of Watkins, were sophisticated investors. Several of them were represented in their WP investment decision by capable and qualified financial advisory firms of their choosing.

While serving as Manager, Mr. Watkins frequently briefed economic participants on: (a) Masada's domestic and international business plans, (b) Masada's indicative project development schedule, (c) Masada's formation of strategic business alliances and partnerships, (d) domestic and international market challenges and conditions, (e) the impact of the Great Recession of 2008 on business development, (f) risk mitigation strategies and plans, (g) significant legal matters, (h) Masada's project progression plans, (i) acquisition opportunities, and (j) major financial initiatives.

Additionally, some of the economic participants (and Masada executives) were also lenders to DVWPC for the benefit of Masada. Under the applicable Operating Agreements, these loans were deemed "insider" transactions. Two of the lenders – Mr. Charles Barkley and Masada executive Allen Rossum – increased their economic participation interests in Watkins' portion of Masada by making their loans.

Some of the loans were evidenced by promissory notes, while others were oral agreements between the loan parties, who were friends, relatives and/or Masada executives. The loans that were evidenced by promissory notes held by

economic participants did not contain any covenants or language that altered, amended, restricted, or otherwise modified the power and authority the economic participant/lender had previously conferred upon Mr. Watkins as Masada Manager.

Mr. Barkley was represented in his loan transactions by longtime financial advisor Glenn Guthrie at Raymond James. Mr. Guthrie approved the promissory notes used for the Barkley Loans, as to form and content.

Mr. Watkins, through his Pencor entity, became the designated Manager of the Masada family of businesses on December 29, 2005, following the death of the company's founder, Daryl Harms. Using a combination of personal funds, contributed professional services, deferred manager's compensation, deferral of expense reimbursements from Masada, deferral of loan repayments from Masada, deferred office rental payments, and third-party loans to DVWPC for the benefit of Masada, Mr. Watkins was able to grow Masada from one waste-to-energy project in New York state to 19 international partnerships covering market and project development activities in 47 countries. What is more, this growth occurred in the span of ten years and in the midst of the Great Recession of 2008 that tanked most of Masada's waste-to-energy competitors.

Masada's value as a technology provider/business enterprise has been acknowledged by the following entities: (a) the FDIC in 1999 and again in 2015, (b) Hartford Steam Boiler Inspection and Insurance Company Specialty Risks Insurance Energy Division ("HSB") in 2000, (c) JP Morgan (representing the purchaser) and Goldman Sachs (representing the seller) in connection with Mr. Watkins' bid in 2009 and 2010 to acquire the St. Louis Rams NFL team; and (d) London-based PTF

PlusOne Ltd., a capable and qualified buyer, in its attempt to acquire Masada in 2017.

Even with the weight of an SEC lawsuit and Grand Jury investigation on the company, Masada continues to implement its business plans on a daily basis.

History of WP/Masada-Related Investigations

The Northern District Grand Jury investigation represents the second federal grand jury review of certain financial transactions between Mr. Watkins, d/b/a WP and/or Donald V. Watkins, P.C. ("DVWPC), and various economic participants of WP. The first grand jury investigation was conducted in 2015 and early 2016 by the U.S. Attorney for the District of New Jersey. Mr. Watkins was the "subject" of that grand jury investigation. The investigation resulted in no criminal charges being filed against Watkins or any other person/entity affiliated with Mr. Watkins.

A February 12, 2018, letter from the USA-NDAL designated Mr. Watkins as the "target" of an ongoing investigation by the Grand Jury in the Northern District of Alabama. The letter was issued after legal counsel for Mr. Watkins contacted the U.S. Attorney and offered to submit this Rule 408 and 410 Memorandum for the Grand Jury's consideration. The offer was formally accepted on February 26, 2018.

The Northern District Grand Jury investigation resulted from a referral by the U.S. Securities and Exchange Commission ("SEC"), which filed a civil lawsuit against Mr. Watkins, WP, DVWPC, and Masada alleging securities fraud in connection with the sale of WP economic participations and three loans by Charles Barkley to DVWPC (the "Barkley Loans"). Based upon the Grand Jury subpoenas received by Mr. Watkins on February 23, 2018, it is clear that the Grand Jury investigation is

focused on some, if not all, of the same financial transactions reviewed by the New Jersey Grand Jury, as well as the allegations encompassed in the SEC litigation and an administrative enforcement proceeding filed by the Federal Deposit Insurance Corporation ("FDIC") against Mr. Watkins on December 15, 2018.

The Northern District Grand Jury investigation represents the fifth investigation of the WP/Masada-related transactions at issue and the second time these corporate governance issues and matters of contract interpretation have found their way into a criminal venue.

It should be noted that Mr. Watkins was the first party to raise these legal issues in an adjudication forum. In July 2013, Mr. Watkins initiated an arbitration proceeding with the American Arbitration Association against Bryan Thomas, d/b/a Thomas Global Group, LLC ("TGG"), regarding unfounded allegations of securities fraud that were lodged against Mr. Watkins in a May 15, 2013 letter from TGG's legal counsel. The Masada corporate documents governing the business relationship and defining the rights and obligations between Mr. Watkins and TGG mandated arbitration as the dispute resolution forum. All WP economic participants were timely advised of the WP-TGG dispute and pending arbitration proceeding. None of them sought to intervene in the dispute.

In August 2013, TGG filed suit in New Jersey federal court against Mr. Watkins, WP, DVWPC, Masada and related parties raising the same fraud issues that were the subject of the arbitration. The court stayed the arbitration proceedings until it could determine whether it had jurisdiction in the case. The Court permitted discovery in the case to assist in this determination.

In April 2017, TGG dismissed all of its claims against Mr. Watkins and the other defendants, with prejudice. The defendants paid no money, or anything else of value, in exchange for this dismissal. TGG notified the SEC writing that it had dismissed its case against the defendants. What is more telling, TGG elected to remain in the global waste-to-energy business with Mr. Watkins and WP after dismissing its securities fraud case.

The SEC litigation, which started as a non-public inquiry in 2014, is still pending. There has been no determination of liability on the part of any defendant in the case. The SEC lawsuit was commenced even though the Commission failed to retrieve and review the corporate documents it had subpoenaed regarding the Masada-Waste Management transaction and other WP/Masada matters during its non-public inquiry. All WP economic participants were timely advised of the 2014 SEC inquiry, as well as the September 1, 2016 lawsuit. No WP economic participant has sought to intervene in the SEC case.

The Substantive Issues Addressed in this Memorandum

Fortunately for the Grand Jury, the evolution of the business relationships, key project development events, and financial transactions that are the focus of the investigation in this case have been chronicled in the business documents that are subject to the Grand Jury subpoenas issued on February 23, 2018. These documents constitute the best evidence of what occurred on the matters of concern to the Grand Jury.

Among other subjects, This Rule 408 and 410 Memorandum will address, but not be limited to the following topics:

1. Mr. Watkins' representations to economic participants, before, during, and after their purchase of economic participations in WP;
2. Mr. Watkins' right under the applicable Masada Operating Agreements to sale WP economic participations;
3. Mr. Watkins' disclosure of the risk factors involved in the purchase of WP economic interests;
4. The restrictions WP placed on the transfer of economic participations;
5. The limited number of total WP economic participation transactions since 2000;
6. The ownership of proceeds from the sale of WP economic participations;
7. The pertinent facts and circumstances surrounding the three Barkley Loans, which were deemed "insider" transactions because of Barkley's status as a WP economic participant.
8. Mr. Watkins' authority under the applicable Masada Operating Agreements, promissory notes, and other Loan-related documents for the expenditures made from the Barkley Loan proceeds;
9. The rights and authority each WP economic participant and Masada-related lender conferred upon Mr. Watkins, as the designated Manager of the Masada family of companies;
10. The agreement of each WP economic participant to become bound by all of the terms and conditions of the Masada Operating Agreements listed in the purchase agreement;

11. The agreement by each WP economic participant that he/she/it had no right to participate in the management of Masada;
12. The impact that Masada's January 7, 2007 Sponsored Research Agreement with Auburn University had on the decision of Auburn-affiliated individuals (e.g., Takeo Spikes, Charles Barkley, etc.) who purchased WP economic participations after that date;
13. Mr. Watkins' interaction with financial advisors for the WP economic participants who were professional athletes;
14. Mr. Watkins' disclosures to WP economic participants who were professional athletes regarding his plans to leverage his Masada assets to acquire a National Football League ("NFL") team;
15. Mr. Watkins' bid to acquire the St. Louis Rams in 2009 and 2010;
16. The role Goldman Sachs played in vetting Mr. Watkins as a qualified bidder for the St. Louis Rams based upon his Masada assets;
17. The role JPMorgan, Seymour Pierce, Citibank, and Black Emerald played in securing financing for Watkins' purchase of the St. Louis Rams;
18. The role Atlanta Attorney Daniel Meachum played in the St. Louis Rams acquisition transaction from June 2009 until August 2010, when the sale of the Rams to limited partner Stan Kroenke was approved by the NFL;
19. Mr. Watkins' method for compensating Attorney Meachum for his advisory role in the St. Louis Rams transaction versus Mr. Watkins' method for compensating the other attorneys and professions who worked on the Rams transaction;

20. How Attorney Meachum's strategic advice to Mr. Watkins on April 17, 2010 to "[a]ssure Chip [Rosenbloom] a play with the team and with Masada moving forward" significantly impacted Mr. Watkins' subsequent efforts to "[l]everage Chip's ownership of the Rams for a stake in Masada's international ventures…";
21. How the Barkley Loans facilitated the growth and expansion of Masada's international footprint beyond the five markets contemplated in the May 14, 2010 Loan documents and related emails;
22. The capital contributions made by Mr. Watkins (i.e., cash, property, and professional services) to grow Masada's market presence from one project in 2006 to 19 international partnerships covering 47 countries;
23. The role of former Georgia Attorney General Thurbert Baker in the St. Louis Rams transaction, as well as his role in the contemplated Masada-Waste Management, Inc., acquisition transaction during 2011 and 2012;
24. The lead role played by former Lt. Governor Ben Barnes in facilitating the contemplated Masada-Waste Management acquisition transaction during 2011 and 2012;
25. The fee structure proposed by the Ben Barnes Group for what Ben Barnes believed would be a 10-plant, multi-billion-dollar Masada-Waste Management acquisition transaction that was international in scope;
26. Financial models prepared by New York-based financial analyst Kelly Wachovicz in 2011 for the contemplated Masada-Waste Management transaction;

27. The role of San Francisco-based Black Emerald in the contemplated Masada-Waste Management transaction, as well as Black Emerald's work with Kelly Wachovicz on the financial models;
28. The role of Waste Corporation of America, Inc., in the contemplated Masada-Waste Management transaction;
29. Masada's application to the U.S. Department of Homeland Security for an EB-5 Regional Center, as referenced in the contemplated Masada-Waste Management transaction;
30. Masada's interaction with the U.S. Department of Energy, the U.S. Treasury Department, the U.S. State Department, the U.S. Department of Homeland Security, and the Tennessee Valley Authority during Mr. Watkins' tenure as Masada's Manager;
31. Charles Barkley's 20% economic interest in Mr. Watkins' 21.5% equity stake in Nabirm Energy Services (Pty) Ltd., as well as Nabirm's confirmed discovery of a recoverable resource of 522 million barrels of unrisked oil and 583 billion cubic feet of unrisked methane gas in an offshore oil block licensed to Nabirm by the national government of Nambia;
32. The role of each preferred services vendor and/or independent consultant who contributed to Masada's international growth; and
33. Recent allegations by the Federal Deposit Insurance Corporation that Mr. Watkins engaged in a violation of Regulation O.

We believe the Rule 408 and 410 Memorandum will be a helpful guide to prosecutors and the Grand Jury in developing, understanding, harvesting, and

independently verifying the pertinent facts that are embedded in the massive volume of information and documents that is encompassed in the Grand Jury's subpoenas to Mr. Watkins and the Masada-related entities.

Watkins Pencor Economic Participations

Based upon the Grand Jury subpoenas issued to Mr. Watkins, it appears that the Grand Jury investigation focuses on certain economic participation purchase agreements executed between WP, an entity wholly owned by Mr. Watkins, and the purchasers.

Since 2001, there have been a total of 30 WP economic participation transactions. All of the WP economic participants are highly intelligent individuals. They include Mr. Watkins' brother, several life-long friends, two professional athletes with degrees from Georgia Tech and Notre Dame who are now senior management executives in Masada's waste-to-energy companies, a former judge, three trial lawyers, CEOs of national and international businesses, a top executive of a public energy utility, two doctors, experienced businessmen/women, and other highly intelligent individuals who believe in Mr. Watkins' business acumen, work ethic, and integrity.

Only fifteen WP economic participation conveyances have occurred between January 1, 2005 and the present. No such purchase transactions occurred after September 10, 2010.

These fifteen economic participants include: (a) Mr. Bryan Thomas, a friend Mr. Watkins met and mentored as a college student in Birmingham at the request of his college football coach; (b) Mr. Gibril Wilson, Masada's business partner in Sierra

Leone, who is a former NFL player; (c) Mr. Ralph Malone, who is (i) a former NFL player, (ii) a Georgia Tech alumnus, (iii) a member of Georgia Tech's School of Engineering Hall of Fame, and (iv) Masada's Vice President for Program Management; (d) Mr. Charles Barkley, a former professional basketball Hall of Famer and sports commentator, (e) Mr. Allen Rossum, a Notre Dame graduate and former NFL who serves as a Masada executive for market development in South America, and (f) Mr. Jerome Bettis, a TV sports announcer who was interested in pursuing a career opportunity in the waste-to-energy business once he completed his degree from Notre Dame.

Mr. Watkins' Representations to Economic Participants, Before, During, and After Their Purchases of Economic Participations in WP;

The material representations made by Mr. Watkins to economic participants prior to, during, and after the WP economic participation transactions at issue, are reflected in emails, stakeholder reports, purchase agreements, promissory notes, Operating Agreements, and other business records that will be produced to the government pursuant to its subpoenas. These documents are massive in nature and speak for themselves. They chronicle the evolution and maturation of Mr. Watkins' business relationship with each WP participant since January 1, 2005. No document alters, amends, or renounces the power and authority each WP economic participant conferred upon Mr. Watkins to run the Masada business.

Material representations made by Mr. Watkins to WP economic participants (including lenders) from 2005 to the present included, but were not limited the following:

1. Mr. Watkins owned WP and was the Manager of the Masada family of businesses.
2. On December 29, 2005, Mr. Watkins and the Harms Family Interests entered into an equity sharing agreement in which the Harms Parties agreed to share their Class A interests in the Masada family of companies in exchange for equal capital contributions and Watkins' assumption of the CEO/Manager's role going forward;[2]
3. A listing of the known and potential risk factors associated with waste-to-energy businesses and specific Masada projects;
4. The nature and scope of restrictions placed upon a transfer of the purchased WP economic participation;
5. Mr. Watkins had the power and authority to dilute his economic interests in WP/Masada in order to sell economic participations to assignees of his choosing on an irrevocable basis, which he did;
6. The Masada Operating Agreement, to which each economic participant agreed, conferred upon Mr. Watkins the power "to do all things necessary or convenient to carry out the business and affairs of the Company…", including the power to: (a) sue and defend lawsuits in the name of the company and its affiliates [Section 8.3(a)]; (b) lease real and personal property, wherever situated [Section 8.3 (b)]; (c) sell, convey, or transfer Masada assets [Section 8.3(c)]; (d) lend money to or otherwise assist Members [Section 8.3(d)]; (e)

[2] This agreement was superseded by a December 31, 2013 agreement between Mr. Watkins and the Harms Family Interests wherein Mr. Watkins agreed to purchase all of the Harms Family Interests in the Masada family of companies in exchange for a repayment of investment loans made by the Harms family to the Masada entities.

acquire interests in foreign limited liability companies [Section 8.3(e)]; (f) make contracts, incur liabilities, and borrow money [Section 8.3(f)]; (g) conduct Masada's business and carry on its operations [Section 8.3 (g)] ; (h) hire and appoint Masada's employees and agents, and define their duties and fix their compensation [Section 8.3(h)]; (i) participate in partnership agreements and joint ventures [Section 8.3 (i)]; and (j) indemnify any Masada Member, Manager, or employee, or former Member, Manager, or employee of the company as provided in the Operating Agreement [Section 8.3(j)];

7. Comparable managerial powers are contained in Section 7.3 of the Masada OxyNol US-I, LLC, Operating Agreement, in Section 6.4 of the Pencor Masada OxyNol, LLC, Operating Agreement, and Section 6.4 of the Masada OxyNol, LLC, Operating Agreement;
8. Section 8.7 of the Masada Operating Agreement provided that the Manager "shall be reimbursed for all reasonable expenses incurred in managing the Company and shall be entitled to compensation for the fulfillment of his or her duties ….";
9. Section 7.7 of the Masada OxyNol US-I Operating Agreement fixes the Manager's compensation at a range of $7,500 per month in § 7.7(b)(i) to $200,000 per month in §7.7(b)(iii)(3), depending upon the stage of the company's waste-to-energy project. This compensation model is repeated in Section 6.8 of the Pencor Masada OxyNol, LLC, Operating Agreement;

10. From the time Mr. Watkins became Manager and CEO of the Masada companies in 2005, he deferred all of his authorized Manager's compensation in order to grow the company. His deferred compensation became Masada debt obligation to him;
11. To the extent practicable, Mr. Watkins also deferred the expense reimbursements to which he was entitled in order to grow Masada;
12. Masada executed a Sponsored Research Agreement with Auburn University on January 8, 2007. Mr. Watkins signed the Agreement for Masada and Dr. Ed Richardson signed as President of Auburn University.[3]
13. Masada's sponsored research was published in an article titled, "Reductive Modification of Alkaline Pulping of Southern Pine, Integrated with Hydrothermal Pre-extraction of Hemicelluloses", by Sung-Hoon Yoon, Harry T. Cullinan, and Gopal A. Krishnagopalan, Ind. Eng. Chem. Res. 2010, 49, 5969–5976.
14. During the period of the 2010, 2011, and 2013 Barkley Loans, DVWPC and Mr. Watkins were the principal funders of all Masada business operations worldwide. They funded all of the operational overhead and administrative expenses that were attributed to the Masada family of companies;
15. From January 2007 to the present, Mr. Watkins controlled 100% of the Class A voting interests in Masada and apprised both Charles Barkley and Glen Guthrie of this fact on several occasions;

[3] The Masada-Auburn University Sponsored Research Agreement was a deciding factor in Takeo Spikes and Charles Barkley joining WP in 2007.

16. Mr. Watkins would grow Masada from one project in New York State to a market presence and pipeline of waste-to-energy partnerships and project development activities in 40-plus international markets. The international markets would be determined by him based upon: (a) the quality of the partnership arrangements involved, (b) the potential for value creation, (c) political stability within the target market, (d) and the overall economic conditions within each country selected.
17. Every economic participant was told that Mr. Watkins reserved the right to substitute target markets, with or without notice to Masada stakeholders, based on changing circumstances (e., Ebola outbreak in Sierra Leone, overthrow of the President in Egypt, attempted overthrow of the President in Turkey, loss of relationship partner for a designated target market, etc.);
18. Masada secured a "highly confident" credit arrangement letter for debt financing in the amount of $229 million from JP Morgan on December 28, 2006;
19. HSB valued Masada's technology at $225 million in 2000 and issued a Systems Performance insurance binder in this amount;
20. Masada executed a sponsored research agreement with Auburn University on January 8, 2007, to develop mill sludge-to-ethanol technology, which Auburn undertook and completed;
21. Masada formed a strategic business alliance with Georgia Attorney General Thurbert Baker to develop certain international markets and to facilitate a contemplated acquisition transaction of Masada by Waste Management, Inc.;

22. Mr. Watkins would attempt to diversify Masada's offering of fuel solutions to include waste-to-jet fuels by: (a) teaming with Virgin Atlantic in London and Evergreen Aviation in Oregon, (b) forming Green Horizons Aviation, LLC, and (c) acquiring TradeWinds Airlines in North Carolina;
23. Masada secured €100,000,000 in financing from Global Emerging Markets (New York City) on February 10, 2009 for a waste-to-energy facility in the Dominican Republic;
24. Mr. Watkins engaged in the process of acquiring the St. Louis Rams NFL team in 2009 and 2010. He was qualified by Goldman Sachs (the seller's investment bank) in 2009 to compete for the opportunity to acquire the Rosenbloom family's 60% interest in the team. After qualifying as a potential purchaser, Mr. Watkins successfully passed through all three phases of the competition, including the phase where his legal team edited the proposed purchase contract drafted by the Rams. After an extensive vetting process conducted by the NFL and third party companies, Mr. Watkins was invited to make a binding offer to become an owner in the St. Louis Rams. In the end, the Rams did not sale to an outside purchaser. The team sold to the longtime Limited Partner in the organization, Mr. Stan Kroenke. Every professional athlete who was an WP economic participant supported this Masada asset diversity initiative;
25. Masada engaged Ben Barnes, former Lt. Governor of Texas, and Thurbert Baker, to work on a proposed acquisition transaction of Masada by Waste Management, Inc.;

26. Masada engaged New Oak Capital on or about August 31, 2010 for a $100 million capital raise;

27. On March 1, 2017, PTF announced its intent to acquired Masada for £400,000,000;

28. The SEC's 2014 inquiry, alone, caused WP and Masada to lose a lucrative waste management contract with their South Korean partners. The contract had an estimated free cash flow to Masada and WP in excess of $500 million USD.

29. William Hicks, the SEC Atlanta Regional Associate Director who led the investigation of Mr. Watkins, Masada, WP, and DVWPC, and Graham Loomis, the SEC Regional Trial attorney who is leading the litigation team in the SEC case, both had a prior adverse relationship with Mr. Watkins from 2003 to 2005 in the high-profile national Sarbanes Oxley case of *SEC v. HealthSouth Corp*. and Richard Scrushy, 261 F.Supp.2d 1298 (2003). Mr. Watkins was the lead attorney for Defendant Richard Scrushy in this case. In 2003, the SEC sought to freeze approximately seven hundred and eighty-six million dollars in Scrushy's assets. The SEC's asset freeze hearing was vigorously contested by Scrushy for two weeks. During the hearing, Mr. Watkins' legal team exposed a litany of misconduct committed by Hicks and Graham. In its published opinion, which led to the unfreezing all of Mr. Scrushy's assets, the Court was highly critical of the conduct of Hicks, Loomis, and the FBI agents who collaborated with them to violate Mr. Scrushy's constitutional rights. As a result, Mr. Scrushy was acquitted on all related criminal charges.

Ownership of Proceeds from the sale of WP Economic Participations

All funds from the sale of a portion of Mr. Watkins' personal economic interest in his block of equity in WP/Masada were paid to DVWPC, not Masada. Mr. Watkins was the "seller" of the WP economic interests in question, not Masada or any other equity member in the company.

The transactional structure and material terms and conditions of the Watkins Pencor assignments were specifically discussed with each economic participant and/or his/her financial advisor prior to the closing of his/her transaction.

The amount of the WP economic purchase price increased over time as the value of WP/Masada increased. As the owner of WP, Mr. Watkins set the purchase price for diluting his economic interests on an irrevocable basis.

The applicable Masada-related Operating Agreements, which pre-date all 30 WP purchase agreements, authorized Mr. Watkins to dilute his economic position in the Masada family of companies through the sale of a portion of his economic interests to third parties on an irrevocable basis. The purchasers of Mr. Watkins' economic interests became assignees of this Masada member.

The WP purchase agreements did not contain a "use of proceeds" provision. The purchase agreements and applicable Masada-related Operating Agreements make it clear that the proceeds from these sales belong to the Masada member who irrevocably dilutes his/her equity interest by selling a portion of his/her personal economic interests in the Masada family of companies. Furthermore, the money from these sales was reported on Mr. Watkins' personal income tax returns, not the Masada income tax returns.

Masada has never sold a security to any WP economic participant or lender. Furthermore, no WP economic participant has experienced a loss in the economic value of this/her/its WP economic interest.

Loans to DVWPC "for the benefit of Masada"

Masada did not borrow money for working capital in its own name. For the most part, Masada maintained its assets free and clear of encumbrances in order to qualify for major credit facilities necessary for the financing, development and construction of a $300 million waste-to-energy facility.

With respect to the Charles Barkley and/or Allen Rossum Loans to DVWPC "for the benefit of Masada", the expenditures from these loans were consistent with the oral and written communications between the named borrower (DVWPC) and the WP economic participants/lenders -- before, during, and after the loan transactions. All loan proceeds were spent in accordance with the power and authority these lenders vested in Mr. Watkins as the "Manager" of WP and the Masada entities.

The financial records of the expenditures from Masada-related loan proceeds have been maintained in the QuickBooks records of DVWPC and have been available to the lenders for their inspection and review since the loans were made. These records have been produced to the government, as well.

The lenders in question have not initiated any adverse action against DVWPC regarding these loans. The only party litigating any aspect of these loans and/or the use of proceeds from these loans is the SEC. Even then, the SEC divorced its

allegations of securities fraud from the corporate documents and contracts that govern the business relationship between the parties.

Masada Resource Group, LLC

Masada has been in four business segments since the 1970s. Masada started in the cable TV business. It then moved into the cellar communications business, followed by a move into the electronic home security business. In the late 1990s and early 2000s, Masada worked with the National Renewable Energy Laboratories and the Tennessee Valley Authority ("TVA") to develop its fourth and current business cycle – the commercial deployment of waste-to-energy technologies worldwide.

During Mr. Watkins' tenure as CEO, Masada bought TVA's Biomass Ethanol Pilot Plant and Equipment and donated them to Auburn University to further research and development in this area. The company also interacted with the U.S. Department of Energy, U.S. Treasury Department on two specific waste-to-energy proposals, and U.S. Department of Homeland Security.

Masada develops projects to convert municipal solid waste ("MSW") into ethanol, diesel fuel, and other commercial products (i.e., gypsum, lignin, industrial carbon dioxide, ash residue, and carbon char). Masada, via its technology affiliate, owns the MSW-to-ethanol technology that is licensed to each proposed project.

Masada secured nine core patents in the United States. The domestic patents numbers for Masada's waste-to-energy technology are: 5,407,817, 5,571,703, 5,506,123, 5,779,164, 5,968,362, 5,975,439, 6,267,309, 6,391,204, and 6,419,828.

Masada also pursued and acquired broad international coverage relating to its U.S. patents. During the past two decades, Controlled Environmental Systems

Corp. ("CESC"), Masada's technology affiliate, has filed patent applications to secure international patent protection with the Patent Cooperation Treaty and African Organization of Intellectual Property countries, nominating the U.S. Patent Office/U.S. Receiving office as the designated searching authority. Patent protection was also filed in other Paris and Non-Paris Convention Member countries. These applications resulted in CESC acquiring international patents filings for the following countries:

Patent Cooperation Treaty and African Organization of Intellectual Property

Argentina, Australia, Barbados, Brazil, Canada, Chile, China, Czech Republic, Denmark, Finland, Hong Kong, Hungary, India, Israel, Italy, Japan, Korea, Mexico, New Zealand, Norway, Poland, Romania, Russia, South Africa, Ukraine, Venezuela, and Vietnam

African Regional Industrial Property Organization (AP 1129)

Ghana, Gambia, Kenya, Lesotho, Malawi, Sudan, Swaziland, Uganda, and Zimbabwe

Eurasian Patent Convention (002308)

Armenia, Azerbaijan, Belarus, Kyrgyzstan, Moldova, Kazakhstan, Russian Federation, Tajikistan, and Turkmenistan

European Patent Office (0 795 022B1)

Austria, Belgium, Switzerland, Liechtenstein, Germany, Denmark, Spain, France, Greece, Ireland, Italy, Netherlands, Portugal, Sweden, and United Kingdom

On May 19, 2010, Masada executed an exclusive worldwide license agreement with Auburn University (Auburn, AL) for intellectual property related to co-fermentation of prehydrolyzates, mill sludge to ethanol, and chemical treatment of pulp mill sludge for cellulase enzyme production. On August 20, 2010, Masada filed a Patent Cooperation Treaty application (PCT/US2010/029765) for international patent protection for "Fermentation and Chemical Treatment of Pulp and Paper Mill Sludge" developed by Auburn University. Masada filed its U.S. provisional patent applications (Nos. 61/165,995, 61/296,334, 61/235,894 and 61/235,877) for this technology on August 21, 2009.

Masada reviews its domestic and international patents annually and renews the ones necessary to protect its sustained competitive advantage in the global marketplace.

Since 2007, Masada's executive team has focused its efforts on deploying this technology in locations outside the United States where market conditions, permitting requirements, and product pricing are more favorable. Masada has a market footprint in 47 countries.

Under Mr. Watkins's tenure as CEO, Masada executed 19 Operating and/or Strategic Alliance Agreements with qualified and capable local partners that cover market development activities in 47 countries. Included among these agreements is a November 8, 2012 agreement between Masada and its Saudi Arabian business partner that was registered with the Saudi Embassy and the U.S. State Department on February 13, 2013, Reg. No.: 13017963-1. The Authentication Certificate of the

Masada-HRH Strategic Alliance Agreement bears Secretary of State John Kerry's signature.

All of the Masada companies are pre-revenue project-development companies. All affiliate companies are special purpose entities formed to hold title to individual waste-to-energy projects.

Masada is an ongoing business enterprise that is fully implementing its business plan in the domestic and international marketplace. Masada's extraction of economic value will occur in a planned liquidation event involving the sale or licensing its global assets.

In recent years, Masada has received third-party recognition of its position as a leader in the waste-to-energy industry. In 2015, Masada was one of the recipients of the Governor's Trade Excellence Award, which recognizes Alabama companies for excellence in exporting goods or services. In 2012, Masada's Polyfuels licensing and distribution deal with Sustainable Technologies & Environmental Projects Pvt. Ltd. ("STEPS") in Mumbai, India, resulted in Masada winning the Alabama International Business Award's 2012 International Deal of the Year (Large Deal Category).

Masada has participated in the World Bio Markets conferences in Rotterdam and Amsterdam as both a presenter and attendee. Based on Masada's participation in this conference, two Masada executives were asked to join the inaugural World Bio Markets Advisory Board, which was formed in 2013.

Until the SEC filed its lawsuit, Masada enjoyed a stellar reputation in the international waste-to-energy industry. This reputation is evidenced by a feature article on Masada and its waste-to-energy work in Sub-Saharan Africa in the July

2014 edition of the London-based *International Finance and Legal Review*, a prestigious subscription publication for European and African business leaders, and a February 9, 2012, featured guest appearance on CNBC for Africa.

Masada uses a full team of qualified and capable executives, professional service providers, and well-known strategic partners to implement its global business plan on a daily basis. Masada's world-class team of executives and consultants includes, but is not limited to, former Georgia Attorney General Thurbert Baker; David N. Minkin, who is consistently ranked among Georgia's "Super Lawyers"; Ralph Malone, a member of the Georgia Tech School of Engineering Hall of Fame; Malcolm Pirnie/Arcadis USA, a leading global environmental engineering firm; the Harris Group, LLC, America's leading process engineering firm; several leading risk mitigation firms; international investment banks; and a host of qualified and capable strategic partners around the world. (See, www.masada.com). Other independent contractors and key external vendors are consulted and/or used on an "as needed basis." The use of independent contractors has greatly reduced Masada's corporate overhead and has spread the cost of project development among a cadre of committed stakeholders.

Masada's Tangible Assets

Masada's assets include, among other things: (a) market development agreements, (b) waste management services contracts, (c) the innovative and patented CES OxyNol waste-to-ethanol technology, (d) other waste conversion process patents, (e) $4.8 million in commercial-scale engineering plans and specifications for the CES OxyNol Process design basis, including equipment data

sheets and commercial proposals for all major systems, (f) Masada's WinGEMS process flow software, which provides an integrated material and energy picture of the entire CES OxyNol process adaptable to any site in the world, (g) a risk mitigation and performance assurance package, (h) strategic partnerships and related agreements in each of its project locations, (i) Foreign Corrupt Practices Act Compliance Assurance Program, (j) an international network of well-known financing partners, (k) carbon credit eligibility and financing, which is an area where Mr. Watkins has specialized knowledge and expertise, and (l) detailed financial models.

Business Valuation Opinions and Potential

From the time of the first WP economic purchase transaction in 2001, the value of Watkins' equity stake in the Masada family of companies has increased from $5.9 million in 1999, as recognized by the FDIC, to over $1 billion in 2009. In 2015, the FDIC internally estimated the Masada assets to be worth over $1 billion.

In 2008, Mr. Watkins' constellation of Masada-related assets qualified him as a potential purchaser for a football franchise with the NFL, as evidenced by: (1) his completion and submission of an Owner Background Form furnished to him by the NFL; (2) Goldman Sachs' July 28, 2009 invitation to Mr. Watkins to make a non-binding offer to purchase the Rams; and (3) Goldman Sachs' October 12, 2009 invitation to Mr. Watkins to make a final, written binding offer to purchase the Rams.

Because Masada is a pre-revenue company, the projected dollar value of the company's business activities has been estimated based on the potential revenue

Masada anticipates it can generate from its constellation of waste-to-energy assets upon a defined liquidation event. These valuation estimates are always subject to market and economic conditions and other salient factors, which may change, with or without notice to the company. Finally, they are in line with generally accepted valuation models for pre-revenue companies.

The Masada-Waste Management, Inc. Transaction

The SEC claimed in its lawsuit that Mr. Watkins misrepresented the nature and scope of Masada's contemplated transaction with Waste Management, Inc. ("WMI") to two of the private lenders referenced above – Charles Barkley and Allen Rossum. This is not true.

All material statements and representations made by Mr. Watkins to WP stakeholders regarding the WMI transaction were true and correct to the best of his knowledge and belief at the time they were made. Mr. Watkins also relied on forward-looking statements and representations made to him by the Ben Barnes Group, Thurbert Baker, David Minkin, Tom Fatjo (CEO of Waste Corporation of America) and others involved in the contemplated transaction as a basis for providing stakeholder updates, management analysis and discussion, and forward looking statements to WP stakeholders.

Mr. Fatjo gave Masada's deal team access to his company's landfill operations data in order to get realistic OpEx numbers for the financial model Masada built for the contemplated Waste Management transaction. Ben Barnes was the point-person for Masada in the transaction. David Minkin and Attorney General Baker worked with Barnes to keep the deal moving forward.

The disbursements from the loan proceeds, together with other capital injected by Mr. Watkins, were used to drive Masada's business operations, as authorized in the Operating Agreement and determined by Mr. Watkins' prudent business judgment. Throughout all five investigations of the WP and/or DVWPC financial transactions, no government entity or private party has identified any expenditure from loan proceeds that the lenders did not authorize Mr. Watkins to make in the corporate documents that governed their contractual relationship. Furthermore, the lenders received and retained the increase in their WP/Masada economic interest that they bargained for. No lender has renounced his increased economic interest.

The May 14, 2010, Barkley Loan Transaction

The SEC claimed that Mr. Watkins and the other Defendants in its lawsuit committed "securities fraud" in connection with the May 2010 Barkley Loan for $1 million. To reach this conclusion, the SEC completely ignored the management powers and authority Mr. Barkley conferred upon Mr. Watkins under (a) the Barkley Economic Participation Agreement, (b) the Masada Operating Agreements, and (c) the terms of the May 14, 2010 promissory note itself. Instead, the SEC bootstrapped its "fraud" claim to a May 8, 2010 email Mr. Watkins wrote to Barkley and Glenn Guthrie in which he stated that the loan would cover "development costs for project development opportunities in five markets: (a) Morocco (with Chip Rosenbloom and Lupe Rodriquez); (b) Mexico (with Chip Rosenbloom and Lupe Rodriquez); (c) Senegal (with then-Georgia Attorney General Thurbert Baker (by

presidential invitation); (d) South Africa (with Bishop Harold Dawson); and (e) South Korea (with businessman Wesley Snipes)."

The May 8th email did not restrict, limit, or repudiate Mr. Watkins' authority as Manager to determine (a) what expenditures constituted "development costs" and (b) where and under what circumstance Masada would develop international markets. Furthermore, Barkley Enterprises knew from the Barkley Agreement and a review of the pro forma budget that DVWPC and Mr. Watkins would be entitled to economic benefits in the form of legal fees, project development fees, and expenses reimbursements from his work to develop these markets.

On May 10, 2010, Mr. Watkins advised Mr. Barkley and Mr. Guthrie in an email that he reserved the right to adjust the allocation of loan proceeds from potential lenders as money came in and as needed.

On or about May 11, 2011, Mr. Watkins reviewed the pro forma budget for each of the five projects referenced in the May 14, 2010 promissory note with Mr. Guthrie. The budget allocated approximately $332,500 of the $1 million to Masada for internal administrative overhead expenses, including: (a) $125,000 for "Masada development team", (b) $75,000 for "legal", (c) $75,000 for "travel", (d) $50,000 for "carbon certification", (e) $50,000 for "O&M planning", and (f) $25,000 for "miscellaneous/contingencies". The development budget was the same for each target market.

Prior to any disbursements, DVWPC and Mr. Watkins were entitled to more than $250,000 of the $332,500 amount earmarked for Masada in each of the five $1 million budgets for the work that was actually performed on the five target markets

referenced in the May 8th email. Mr. Watkins elected to receive his economic benefits in the form of Masada loan repayments to him, as he was Masada's single largest creditor.

The May 14, 2010 promissory note stated the "debt evidenced by this Note was made and transacted solely for business purposes related to Masada Resource Group, LLC."

The SEC states that the Barkley Loan funds were not used for Morocco and Mexico. However, the SEC failed to mention that Masada's joint venture partners for these two target markets – Chip Rosenbloom and Lupe Rodriguez – unexpectedly reversed course and decided against participating in the joint ventures for Mexico and Morocco while Rosenbloom and his sister (who is Rodriguez's wife) owned the St. Louis Rams and while Mr. Watkins was an active bidder for the team. Rosenbloom and Rodriquez's sudden change of heart was communicated to Watkins after DVWPC's receipt of the May 2010 Barkley Loan proceeds. The SEC also failed to mention that Mr. Barkley (and other WP economic participants) warranted and represented to Mr. Watkins in 2007 and repeatedly after that time that he acknowledged Mr. Watkins' right to substitute target markets, with or without notice.

Mr. Watkins used his Masada managerial authority to develop and consummate two substitute international project opportunities for the target markets in Mexico and Morocco. Masada teamed with Dake Group (Pty) LTD to develop a ***second*** waste-to-energy project in South Africa. Masada also teamed with Dake and Ramky Enviro Engineers Limited to develop a waste-to-energy project in

Hyderabad, India. These substitute international joint ventures were of equal or greater economic value to Barkley (and other Masada stakeholders).

Section 3 of the May 10, 2010 promissory note referenced project development in five international target markets. Mr. Watkins delivered project development partnerships in five international markets, as promised. Section 8.3 of the Masada Operating Agreement gave Mr. Watkins the authority to substitute one target market for another without the participation of Mr. Barkley or other WP economic participants or lenders.

Barkley Enterprises and other Masada stakeholders were specifically advised in writing of the Masada-Dake project in South Africa and the Masada-Ramky project in Hyderabad, India. Furthermore, the Dake and Ramky joint ventures were developed and consummated without any additional financial contribution from Mr. Barkley for the development of these partnerships.

The Dake and Ramky joint ventures contributed to the international market growth of Masada, which was Charles Barkley's personal focus.

The SEC cites four financial transactions involving the May 14, 2010 Barkley Loan that it claims Mr. Watkins was not authorized to make. They include: (a) a $750,015 wire transfer to Dan Meachum, who is a Watkins Pencor economic participant who worked as a lawyer on the Rams purchase transaction for nearing two years without pay; (b) a $10,015 wire to a "House Account" belonging to Ms. Marion Snell; (c) a $10,000 wire transfer to Ms. DeAndra Watkins "for alimony"; and (d) a $41,491.14 wire to Cessna Finance for a jet owned by one of Mr. Watkins' companies.

The $750,000 refund to Attorney Meachum fell within Mr. Watkins' power in Section 8.3 (h) to hire consultants and fix their compensation. Mr. Meachum worked with Mr. Watkins on the Rams transaction. His work is well documented in emails regarding this transaction.

On April 17, 2010, Mr. Meachum advised Watkins to "[a]ssure Chip [Rosenbloom] a play with the team and with Masada moving forward." Mr. Watkins used this advice in his subsequent efforts to "[l]everage Chip's ownership in the Rams for a stake in Masada's international ventures…". Mr. Meachum also introduced Mr. Watkins to a former NFL executive who advised Watkins and Meachum on the inner workings of the Rams and NFL.

Rather than paying Mr. Meachum legal fees on an ongoing basis, as was done with other law firms that worked on the Rams transaction, Mr. Watkins chose to: (a) refund a portion of the purchase price Meachum paid for his economic participation[4] and (b) award Mr. Meachum an additional one percent economic participation in Watkins Pencor for his Rams-related work, which he received and holds today. Section 8.3(h) of the Masada Operating Agreement empowered Mr. Watkins to compensate Mr. Meachum as Watkins determined in his capacity as Masada's Manager. Just to be clear, Mr. Barkley and the other WP economic participants who were athletes supported the Rams transaction, without reservation.

[4] The amount of Mr. Meachum's economic participation is subject to further review, as explained in an email from Masada General Counsel David Minkin to Mr. Meachum, dated January 18, 2013.

With respect to the $10,015 wire to the "House Account", this expenditure related to Mr. Watkins' housing and office arrangements when he conducted Masada's business from Atlanta. Ms. Marion Snell owned this real property, free and clear. Mr. Watkins and a host of Masada-related parties, including the company's former president (i.e., New York-based David Friedson), key external vendors, strategic business partners, and other stakeholders stayed at and worked extensively from Ms. Snell's property when they performed Masada-related work in Atlanta. This housing/satellite office arrangement was the most flexible and least expensive way to house these Masada work-related activities. The company's main headquarters was located in Watkins' Birmingham office building at the time. Section 8.3(b) authorized Mr. Watkins to make the Atlanta property lease expenditures, which was logistically important to Masada's international growth.

Regarding the $10,000 payment to Ms. DeAndra Watkins, she was a Masada creditor within the meaning of Section 8.3(f) of the Masada Operating Agreement. Ms. DeAndra Watkins deferred payments due her in Sections 3 and 12(B) of her Divorce Agreement. She allowed Mr. Watkins to use her money to grow Masada for the benefit of Barkley Enterprises and other Masada stakeholders. Her loans to Masada were treated as "on-demand" loans.

Section 8.3(f) of the Masada Operating Agreement authorized Mr. Watkins to borrow this money from Ms. DeAndra Watkins and repay some, or all, of her loans on demand. Section 8.3(d) authorized Mr. Watkins to assist Masada Members, including himself. Sections 8.3(j), 8.7, and 9.4 authorized Mr. Watkins to repay loans he made to the business from monies provided by his ex-wife.

DVWPC maintains the financial records necessary to determine when Ms. DeAndra Watkins's loans have been paid in full. Her loans to Masada exceeded $1 million.

With respect to the $41,491.14 Mr. Watkins wired to Cessna, this payment was for an aircraft that was used for Masada's business operations. The plane traveled on Masada business throughout the United States, the Caribbean, South America, Portugal, and Africa. Mr. Watkins was authorized to: (a) borrow money for an aircraft in Section 8.3(f) of the Masada Operating Agreement; (b) contract for aviation service in Section 8.3(h) of the Masada Operating Agreement; and (c) reimburse himself for the money he spent on the aircraft in Sections 8.3(j), 8.7, and 9.4 of the Masada Operating Agreement.

In addition to the May 14, 2010 Barkley Loan, DVWPC brought in more than $300,000 in May 2010 from the law firm itself and another Masada executive to support Masada's business operations.

Barkley Enterprises has never taken legal action to demand repayment of the May 14, 2010, promissory note. The lender understood then (and now) that repayment of the loan was tied to a planned Masada liquidation transaction.

The May 18, 2011, Barkley Loan Transaction

On or about May 18, 2011, Barkley made a second $1 million loan to DVWPC for the benefit of Masada. The loan was made to prepare Masada for a contemplated investment/acquisition transaction with Waste Management, Inc., including the usual and customary due diligence Waste Management was expected to perform on

Masada, its affiliated entities, key external vendors, and its top executive management team.

The Ben Barnes Group in Washington and former Georgia Attorney General Thurbert Baker were part of the Masada deal team that worked on a contemplated Waste Management transaction in 2011 and 2012. Ark Resources provided engineering services. Atlanta Attorney David Minkin and Mr. Watkins provided legal services for the deal. New York financial analyst Kelly Wachowicz performed financial modeling for the deal. Jessica Findley prepared Masada's due diligence documents and application for an EB-5 regional center. San Francisco-based investment banker Eric Urbani provided financial advisory services for the transaction. DVWPC spent over $1 million on lawyers, engineers, consultants, and other essential professional service providers on the Waste Management transaction.

The promissory note evidencing this debt stated that the "Note evidencing the debt was made and transacted solely for the business purposes related to Masada Resource Group, LLC and ***affiliated entities and persons***." Barkley Enterprises agreed to the expanded "business purposes" language.

The SEC challenges six expenditures from the May 18, 2011 Barkley Loan funds, they include: (a) a $7,000 check to Mr. Watkins' son Drew, with the memo line "Gift"; (b) a $150,000 check to the Varnum law firm; (c) a $41,816 wire to the "House Account" in Atlanta; (d) a $50,000 check to Ms. DeAndra Watkins, with the memo line "Partial Alimony"; (e) a $10,008.63 wire and an $11,904.80 to Midland for repayment of loans for Mr. Watkins' Alamerica bank stock loan; and (f) a

$255,703 check to the IRS for Mr. Watkins' personal tax liability. Each of these transactions was an authorized transaction under the Masada Operating Agreement and permitted under the "use of proceeds" section of the promissory note.

With respect to the $7,000 payment to Mr. Drew Watkins, this expenditure was the result of an authorized Section 9.4 loan repayment to Mr. Watkins, who in turn, forwarded the money to Drew as a gift for his tangible support to Masada during its financially challenging times. In addition to being one of Watkins' sons, Drew is a friend and co-worker of Mr. Barkley.

With respect to the $150,000 payment to Varnum, this expenditure was authorized in Sections 8.3(a), 8.3(h) &(j), and 8.7 of the Masada Operating Agreement. The Varnum law firm was successful in securing the release of $30 million in Pencor Orange Corp. ("Pencor") stock that was pledged as collateral on an "unconditional" loan guaranty that was executed as part of a business venture to expand Masada's footprint into the aviation fuels sector. Watkins Pencor owns Pencor. The Pencor stock was at risk because Mr. Watkins refused to participate in an unlawful pay-for-play scheme involving several members of the Detroit city government and Detroit Pension Funds. The release of the Pencor stock was a direct and tangible economic benefit to Mr. Barkley, Watkins Pencor, and other Masada stakeholders.

With respect to the $41,816 wire to the "House Account", this expenditure was authorized in Section 8.3(b) of the Masada Operating Agreement, as discussed above.

With respect to the $50,000 payment to Ms. DeAndra Watkins for "Partial Alimony", this payment was authorized in Sections 8.3(f)&(j), 8.7, and 9.4 of the Masada Operating Agreement, as discussed above.

With respect to the $10,008.63 wire and $11,904 wire to Midland, these payments are authorized under Sections 8.3(d)&(j), 8.7, and 9.4 of the Masada Operating Agreement. These payments constituted loan repayments to Mr. Watkins that were used to secure and protect an important Masada-related business development driver – Alamerica Bank. Mr. Watkins was chairman and majority owner of the Bank at the time. The Bank's credentials boosted Masada's credibility during the market development and due diligence phases of the company's international ramp up. The loan payments at issue facilitated a positive assessment of Masada and its CEO during this period and demonstrated their ability to produce economic value in a start-up business enterprise.

With respect to the $255,703 payment to the IRS, this expenditure was authorized under Sections 8.3(d)&(j), 8.7, and 9.4 of the Masada Operating Agreement. This payment constituted an "on demand" partial loan repayment from Masada to Mr. Watkins to ensure that he had no tax issues during the anticipated Waste Management due diligence review. Because Mr. Watkins deferred his receipt of more than $10 million in expense reimbursements, loan repayments, and Manager's compensation for the benefit of Barkley Enterprises and other Masada stakeholders, this partial loan repayment provided an authorized means for him to pay this IRS obligation.

Mr. Watkins has worked full-time for Masada every day for twelve consecutive years without receiving any of his authorized Manager's compensation. Mr. Barkley and Mr. Guthrie have always understood that Mr. Watkins was entitled to Manager's compensation, reimbursement of unpaid expenses, and repayment of his loans.

As was the case with the May 14, 2010, Barkley Loan, Mr. Watkins discussed the nature and scope of the Waste Management business opportunity with Glenn Guthrie prior to the wiring of Barkley funds to DVWPC. Again, Mr. Watkins reserved his right to (a) adjust the allocation of funds from Barkley and (b) use them as authorized in the Masada Operating Agreement. Mr. Guthrie agreed.

The May 28, 2013 Barkley Loan Transaction

The SEC cites a May 28, 2013, Barkley Loan to DVWPC in the amount of $150,000 in support of its "fraud" claims. Mr. Barkley and Mr. Watkins discussed this loan while Watkins was traveling on a seven-week road trip to Namibia, South Africa, the United Kingdom, Seoul, Korea, and Turkey for Masada and Nabirm business purposes. This loan was a "personal request" to cover Mr. Watkins' "financial exposure between [May 24, 2013] and June 17." Mr. Barkley agreed to this loan without placing any restrictions on the use of proceeds.

The promissory note was prepared for Mr. Watkins while he was traveling on Masada and Nabirm business. The note erroneously stated it was signed by DVWPC "for the benefit of Masada". It should have referenced Nabirm as the beneficiary, instead of Masada.

In a May 24, 2013 email to Watkins, Jr., Mr. Watkins directed him to pay the following: (a) Watkins, Jr.'s American Express ($79,000), (b) Jessica Findley's American Express ($40,750.23), (c) Mr. Watkins' American Express ($10,000), (d) Mr. Watkins' Visa card ($2,000), and (e) one-month's retainer for Jessica Findley ($2,500). The credit cards payments referenced above total $134,250.23 and were used to support the overhead and general administrative expenses of Masada and Nabirm. Mr. Watkins was directed to leave the $15,749.77 balance in the office account.

In addition to her status as a Masada/Nabirm creditor, Ms. Findley is a Masada executive who holds an equity award agreement in the company.

In 2013, Mr. Watkins' powers and authority as Manager of the Nabirm were comparable to those he held as Manager of Masada. Section 7.3 of the Nabirm Global, LLC, Operating Agreement sets forth these powers and authority. Furthermore, Mr. Barkley's agreement to purchase a portion of Mr. Watkins's economic interests in Nabirm was subject to the terms and conditions of the applicable Nabirm Operating Agreements.

At the time of the May 28, 2013 Barkley Loan, both Masada and Nabirm owed Mr. Watkins more than $150,000 in unreimbursed expenses and professional service fees at the time of this Barkley Loan. An itemization of professional services rendered to Nabirm by Mr. Watkins from 2011 through 2018 has been provided by Nabirm to Mr. Watkins and will be produced pursuant to the government's subpoena to Nabirm Global, LLC. This listing of professional services is not reflective of disbursements, travel expenses, billable hours spent on email

communiques and letters both drafted and reviewed on behalf of Nabirm, and countless teleconferences.

A portion of the professional fees reflected in the itemization relate to Mr. Watkins' work with Nabirm and London-based Daniel Stewart and Company in connection with Daniel Stewart's Broker Note to raise additional capital for Nabirm. The itemization also reflects Mr. Watkins' professional services on the CENORED-Nabirm-Masada waste-to-energy project for the City of Windhoek, Namibia's Kuperberg Landfill. Masada submitted a proposal to design, develop, and manage the contemplated Kupferberg waste-to-energy project in Windhoek. The proposal, dated February 4, 2013, was pursued by Masada/Nabirm throughout 2013. Unlike its other projects, Masada would not own the Kupferberg project. Instead, Nabirm would have been an equity member in the contemplated special purpose entity that would hold ownership in the project. Mr. Watkins advanced the costs associated with these projects, among others.

On February 4, 2014, Mr. Watkins notified Mr. Barkley and Mr. Guthrie in writing that the $150,000 was a Nabirm Loan, not a Masada loan. On February 10, 2014, Mr. Watkins briefed Guthrie in person about this error in the May 28, 2013 promissory note. Later that day, Mr. Watkins emailed Guthrie the original promissory note because he had misplaced his copy. In his email, Mr. Watkins stated that the promissory note "was coded in our records as a loan to Nabirm."

Assuming ***arguendo*** that the Grand Jury deems the May 28, 2013, Barkley Loan to constitute a "Masada" loan, as the SEC has argued in its civil case, Mr.

Watkins presents the following additional facts regarding the business purpose of this loan.

The SEC claims Mr. Watkins used the $150,000 Barkley Loan to pay "multiple personal expenses," including (a) $79,000 on Donald, Jr.'s American Express account; (b) $40,750.23 on Jessica Findley's American Express account; (c) $2,000 or more on Mr. Watkins' Visa card; and (d) a payment for Jessica Findley's monthly retainer. All of the expenditures in question fell squarely within Mr. Watkins' authority under the Masada Operating Agreement.

As stated earlier, the American Express and Visa cards of Watkins, Jr., and Jessica Findley supported the business overhead and operations of Masada and Nabirm. To the extent these cards contained "personal" items, these transactions are treated internally as reimbursements of expenses and partial loan repayments to Mr. Watkins. They are authorized under Sections 8.3(j), 8.7, and 9.4 of the Masada Operating Agreement. The amounts involved will be reconciled under Mr. Watkins' "Membership Account" when Masada experiences a liquidation event. DVWPC maintains the financial records necessary to facilitate the required reconciliation of member accounts.

The credit card transactions identified by the SEC with regard to the May 28, 2013, Barkley Loan also relate to a Masada and/or Nabirm business purpose.

The May 24, 2013, email states that Watkins had to "cover" April and May expenses related to the identified Masada and Nabirm projects, including "some substantial legal fees for Nabirm relating to the $10 million investment transaction currently being handled by Daniel Stewart & Company in London." The SEC claims

that Mr. Watkins did not, in fact, "pay" $600,000 in business expenses relating to Masada and Nabirm.

The email reference to "covering" $600,000 included the cash overhead and operational payments by DVWPC, as well as the "deemed value" of Watkins' contributed legal services in April and May 2013 (and beyond) on the Kupferberg project and other Masada business development activities. Additionally, Mr. Watkins' extended international travel precluded him from performing legal work for an unrelated corporate client that would have generated substantial legal fees for DVWPC.

Mr. Barkley has testified under oath in the SEC case that he did not rely on any emails in making his three loans to Mr. Watkins. He made these loans as a personal friend.

Again, Mr. Charles Barkley gave Mr. Watkins verbal permission to use the loan proceeds as he saw fit. Furthermore, he treated this loan as a personal one to Mr. Watkins.

Yet, the SEC identified the following expenses as examples of "fraud": (a) clothing or accessories at Hermes of Paris for $915; (b) a $2,800 payment to Lamar Advertising for Mr. Donald Watkins, Jr.'s State Farm insurance business; (c) a $3,000 contribution to the University of Alabama at Birmingham; (d) a $5,000 alimony payment to DeAndra Watkins; (e) a $757.74 charge for a mattress; and (f) various personal expenses, including gym membership dues ($21.98), a home warranty on Mr. Donald Watkins, Jr.'s personal residence ($458.25) and various meals at restaurants. The alleged "unauthorized" expenditures total $12,952.07.

The DVWPC alimony payments to DeAndra Watkins have been discussed above in connection with the first two Barkley Loans. Section 8.3(f) (loan repayment to a Masada creditor), Section 8.7 (reimbursement of expenses), and Section 9.4 (loan repayments) of the Masada Operating Agreement, individually and collectively, authorize this $5,000 payment to DeAndra Watkins.

The $3,000 charge at UAB was in relation to UAB's Minority Health Center, and was requested by Barkley, who served as the Center's partner, event co-chair and sponsor. This expense was authorized under Sections 8.3, 8.3(d)&(h), 8.7, and 9.4 of the Masada Operating Agreement.

The $4,952.97 in remaining expenses that the SEC has classified as "personal" is authorized in Section 9.4 of the Masada Operating Agreement as loan repayments to Mr. Watkins. Furthermore, Section 8.3(d), (f)&(h) of the Operating Agreement authorized Mr. Watkins to compensate Donald Watkins, Jr., for the use of his personal creditworthiness to support Masada's operations.

As was the case with the other Barkley Loans, Mr. Charles Barkley authorized all of Mr. Watkins' managerial actions when Glenn Guthrie executed the Barkley Agreement on his behalf. Additionally, Mr. Barkley gave Mr. Watkins verbal authority to use the money as he saw fit. Mr. Watkins used the loan proceeds to grow Masada's international business footprint. Furthermore, all of these expenses challenged by the SEC were directly related to a Masada "business purpose", as set forth in the applicable Masada Operating Agreements.

Donald V. Watkins, Jr.'s Role With the Masada-Related Entities

Donald V. Watkins, Jr. ("Mr. Watkins, Jr.") moved to Birmingham, Alabama in 2004, where he began working for Alamerica BancCorp, holding various roles in business development, mortgage loan origination and information technology. In 2007, following the departure of Mr. Watkins' long-time office manager and administrative assistant, Mr. Watkins, Jr. began assisting Mr. Watkins with the administrative affairs of the Masada-related entities discussed above while trying to identify replacements for the roles of Mr. Watkins' office manager and administrative assistant.

As a salaried employee of DVWPC and under the direction of Mr. Watkins, Mr. Watkins Jr. assisted Mr. Watkins with office and building management and the monitoring and payment of the financial obligations of Masada, DVWPC, and Mr. Watkins. In this role, Mr. Watkins, Jr., alerted Mr. Watkins whenever his deferment of compensation, unreimbursed expenses, and loan repayments to which he was entitled adversely affected the business and personal relationships that financially supported Masada's international growth.

In 2011, Mr. Watkins, Jr. was recruited by State Farm Insurance Company to become a full-time independent contract agent. Despite becoming a full-time State Farm agent, Mr. Watkins, Jr. continued to offer limited administrative assistance to Mr. Watkins on a non-salaried basis.

Every Masada stakeholder was familiar with the critical administrative role of Mr. Watkins, Jr., and they supported it. No stakeholder expected Mr. Watkins or Mr. Watkins, Jr., to work for free. No stakeholder expected Masada to operate from a first class office headquarters, rent-free. No stakeholder expected Mr. Watkins to

travel the world for 10 years to build the business into a global leader without being reimbursed for his expenses.

Finally, Mr. Watkins, Jr., loaned his creditworthiness to support the financial operations of Masada whenever he was called upon to do so. This support contributed to Masada's international growth.

The FDIC's Specious Allegations of a Regulation O violation.

The FDIC has made baseless Regulation O allegations against Mr. Watkins since 2013. Like the SEC, the FDIC has departed from the permitted exceptions to Regulation O in order to advance these claims.

It should be noted that Alamerica Bank has not lost a dime from the loans in question. The Arrington loans were repaid in full and were profitable for the Bank.

Mr. Watkins was in bona fide business relationships with Dr. Richard Arrington, Jr. ("Arrington")[5] and his son, Watkins, Jr., that preceded the issuance of the loans in question by many years. In both the Arrington and Watkins, Jr. loan transactions, there was real and "adequate consideration" for the financial transactions between the loan borrowers and Mr. Watkins. The proceeds of the loans were used in bona fide transactions where Mr. Watkins had advanced monies on their behalf to acquire property, goods, and services in connection with these pre-existing business relationships.

[5] Dr. Arrington is a 10% economic participant in WP. Unlike the other economic participant, Dr. Arrington had a capital call obligation to WP that was equal to the percentage of his economic participation.

Since 2013, Mr. Watkins has consistently asserted his entitlement to the safe harbors provided in § 215.3 (f)(2)(1)(i) & (ii). He has claimed this entitlement on the following five separate occasions:

(a) During a July 25, 2013, meeting with FDIC and Alabama State Banking regulators who first inquired about the loans in question and provided Mr. Watkins with a doctored and altered copy of Regulation O that completely deleted the permitted exceptions codified in § 215.3 (f)(2)(1)(i) & (ii);

(b) In an August 5, 2013, letter to FDIC and Alabama State Banking regulators;

(c) In a September 6, 2013, email to FDIC Case Manager Chris Hoffman;

(d) In a written "Response to State Banking Department/FDIC Questions and Information Request", dated September 13, 2013; and

(e) In a June 9, 2017, letter from the undersigned counsel to the FDIC.

The FDIC has repeatedly refused to recognize these exceptions in Mr. Watkins's case. In fact, the FDIC's theory of Regulation O liability in Watkins's case has mutated all over the map since it first accused him of a Regulation O violation in 2013.[6]

Mr. Watkins Did Not Participate in the Lending Decisions at Issue.

To Mr. Watkins' knowledge, Dr. Arrington and Watkins, Jr., had multiple banking relationships during the relevant period of time. In addition to commercial banking relationships, Dr. Arrington had investment banking relationships.

[6] Counsel's June 9, 2017, letter to the FDIC describes in detail these mutations and the FDIC's Draconian efforts to deny Mr. Watkins the Regulation O exceptions to which he is entitled under the facts and circumstances of his case.

There is no evidence that Mr. Watkins participated in the acceptance of the loan applications by Alamerica Bank. Mr. Watkins was not involved in the initial loan application intake or review process. He did not act as the loan officer for either borrower. Mr. Watkins did not perform any aspect of the (a) loan underwriting process, (b) the loan officer's due diligence activities; (c) the loan grading and classification process; (d) the loan approval process; or (e) the loan administration process regarding the loans in question.

The underwriting and approval process for the loans did not require any collateral pledge, business-related documents, information, or verification from Mr. Watkins. Likewise, the loan approval process required no Bank officer interaction with Mr. Watkins.

Mr. Watkins did not direct the Bank's loan officer or CEO to make these loans and did not set the terms and conditions for the loans, as approved by the Bank. Three of the four loans were made within the lending authority of the loan officer with no board level action required.

The borrowers in question received and retained substantial portions of their loans proceeds. According to a June 1, 2017, letter from the FDIC, Watkins, Jr., retained 75% of his loan proceeds.

Furthermore, the underlying debt obligations between the borrowers and Mr. Watkins were not inflated or understated.

The borrowers were aware of the loan transactions when made. They signed their loan documents and acknowledged their liability to repay the loans.

Mr. Watkins did not cosign or guarantee any of the loans in question. He was never liable for the repayment of the loans in question.

Mr. Watkins recused himself from the Bank's loan decision-making process for the loans in question. In fact, he was out of the country when the Bank made its $750,000 loan to Arrington.

The loans in question were made by Bank officials using their independent business judgment and were based upon (a) Alamerica Bank's applicable lending standards and (b) the borrowers' creditworthiness at the time of the loans. As far as Watkins knows, the loans satisfied the requirements in 12 C.F.R. § 215.4 (a).

Finally, Mr. Watkins made every disclosure as a bank officer that was required by state and federal bank regulators.

Conclusion

Based upon the forgoing, it is clear that Mr. Watkins acted within the line and scope of his agreed upon authority in expending proceeds from WP economic participations and loans for the benefit of Masada/Nabirm. No witness for the government has any document that relieves these participants or lenders from the warranties and representations they made to Mr. Watkins at the birth of their business relationship.

Interestingly, government agents misrepresented to some economic participants that they have lost their money in Masada and Nabirm even though the documented evidence is to the contrary. They have also engaged in impermissible "twisting" misconduct in which they deliberately misrepresented pertinent facts to select economic participants.

A classic case of "twisting" involves the SEC's "fraud" claims about the 2010 Barkley Loan. The SEC told Mr. Barkley that Mr. Watkins never developed an international partnership for waste-to-energy projects in Mexico and Morocco, as originally contemplated when Mr. Watkins sought the loan. They told Mr. Barkley that this occurrence was an act of "fraud" on Mr. Watkins' part even though the SEC attorneys knew Paragraph 16(c), "Risks Inherent in the Projects", in the 1996 Memorandum that was explicitly referenced in Barkley Purchase Agreement disclosed Mr. Watkins' right to abandon designated target markets based upon a change in circumstances and substitute new ones in their place, which was done in this case.

The chief complaint among a few disgruntled investors is that it has taken them too long to get a return on the investment. In making this complaint, each one of these investors has taken a mental fight from the warranty and representation they made to Mr. Watkins that the "***purchased economic interest involves a high degree of risk and is suitable only for persons who have no need for liquidity in this investment and can bear the loss of their entire investment.***" Mr. Watkins relied on this representation as he built Masada into a global company.

Each WP economic participant had actual and/or constructive knowledge of the power and authority Mr. Watkins exercised as Manager of Masada and Nabirm. Each one agreed to the Mr. Watkins' exercise of this power and authority. Beyond that, no WP/Masada stakeholder has lost money with his/her/its investment.

The FDIC-Watkins Dispute

With respect to the FDIC-Watkins dispute over Regulation O, this matter involves the interpretation of the regulation at issue and its permitted exceptions. In developing its theory of liability in the pending administrative proceeding on this matter, the FDIC has also taken a mental flight from its advisory opinions on this subject and the uncontested facts in this case.

Alamerica Bank has suffered no loss from the loans at issue. In fact, the Bank earned a nice profit on Dr. Arrington's loans and is making money on Watkins, Jr.'s loan. Furthermore, Mr. Watkins made every disclosure required of him under the applicable banking regulations.

Based upon the documented facts cited above, Mr. Watkins declines to execute a tolling agreement with the government that extends or revives any statute of limitations. Mr. Watkins also requests that this Memorandum be presented in its entirety to the Grand Jury. Finally, Mr. Watkins reserves the right to make an appearance below the Grand Jury to answer questions about this matter.

Respectfully submitted,

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