UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16795

In the Matter of
JOSEPH J. FOX,
Respondent.

Respondent Fox's Brief in Support of the Petition for Review of the Initial Decision

Pursuant to 17 C.F.R. § 201.450(a), Respondent Fox files this Brief in Support of the Petition for Review of ALJ Elliott's Initial Decision *pro se*.

I would like to first thank the Commission for granting my Petition for Review of the ALJ's Initial Decision. In addition to incorporating the facts from my Petition for Review received by the Commission on June 10, 2016, I would like to provide the following additional information. Information that will hopefully prove helpful to the Commission in determining that the ALJ was **correct** when he initially DENIED the Divisions Motion for Summary Disposition (for lack of scienter) on March 16, 2016, before his April 25, 2016 reversal to GRANT the Divisions Motion for Summary Disposition (without any new evidence of scienter).

As a *pro se* Respondent with limited resources, I have to compensate for my lack of legal counsel, by utilizing an abundance of common sense, an ability to thoroughly research both the SEC.gov website and Google.com, as well as my relentless desire to clear my good name.

It appears from all of the research that I have done over the past 3 months, including reviewing hundreds of SEC matters (both open and closed) that the reversal of the ORIGINAL decision by ALJ Elliott to DENY the Division's Motion for Summary Disposition was extremely rare, if not unprecedented.

Yes, ALJ Elliott's ORIGINAL decision was without prejudice. However, to me (and I am sure to most laypeople) that means that only new evidence should change the ruling. As I clearly evidenced in my Petition for Review, ALJ Elliott changed his ruling WITHOUT any new evidence.

In my Motion to Correct a Manifest Error, I questioned ALJ Elliott about this reversal. In his May 19, 2016 denying my motion, he stated the following:

> ***"One of Fox's points – that I "rever[s]ed [my] prior ruling on scienter with no evidentiary basis" – merits discussion...I previously ruled that the record was "insufficient to support summary disposition," and that "[m]ore is required to show that Respondent acted with scienter."***

As clearly evidenced by the transcripts of the preconference hearing on March 21, 2016 (attached to Petition for Review as Exhibits 3 & 5), ALJ Elliott never received anything that could be construed as an "*evidentiary basis*" to change his ruling on scienter. Nor did ALJ Elliott find anything new that contradicted his original statement that "*the record was 'insufficient to support summary disposition' and that '[m]ore is required to show that Respondent acted with scienter.'*"

However, ALJ Elliott went on to offer the following as an explanation for his reversal without any new evidence of scienter:

> ***"In the ID, which issued approximately six weeks later, I ruled that the Division had shown that Fox acted at least recklessly, citing Abraham and Sons Capital, Inc., 55 S.E.C. 252, 268 (2001). Abraham and Sons Capital, Inc., holds that it is reckless for a securities professional to fail to be knowledgeable about, and to comply with, regulatory requirements to which he is subject. See 55 S.E.C. at 268. Abraham and Sons Capital, Inc., first came to my attention during the six weeks preceding issuance of the ID. That is, I changed my mind in light of newly discovered case law."***

ALJ Elliott also included a footnote that included the following:

> ***"More precisely, a securities professional with sufficient experience and training; I do not read Abraham and Sons Capital, Inc., as requiring a finding of scienter in every case where a securities professional violates a regulatory requirement."***

I have to admit that I am perplexed by the statement that "*Abraham and Sons Capital, Inc., first came to my attention during the six weeks preceding issuance of the ID.*" The Division never once cited the Abraham and Sons Capital case in any of their pleadings leading up to the Initial Decision[1]. Therefore, I never had an opportunity to argue prior to the Initial Decision that the case was not relevant.

Forgetting for a moment the timing of the introduction of Abraham and Sons Capital, one cannot ignore the direct reference in footnote 29 that refers to "In the Matter of Jacob Wonsover, Exchange Act Rel. No. 41123 (March 1, 1999)". It states that "*Members of the securities industry agree to be subject to the statutes, rules, and regulations administered by the Commission and self-regulatory organizations, and, before entering the business, generally must apply for registration and pass examinations demonstrating their knowledge of the securities laws.*"

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[1] In their June 30, 2016 Motion for Summary Affirmance, the Division did arrogantly state that "*Fox argues that Abraham and Sons Capital is not relevant because the facts of this case are different. To the contrary, Abraham and Sons Capital sets forth a standard requiring securities professionals to be familiar with and to follow regulatory requirements*". One has to wonder what type of "*standard*" this case "*set forth*" when the Division never once cited the Abraham and Sons Capital case in any of their prior pleadings in this matter. I digress.

As clearly stated in my Petition for Review, I DID NOT possess a Series 79 (Investment Banking Representative) license. Nor did I ever register to take the necessary examination. Nor had FINRA "*administer*" me in any investment banking capacity.

In other words, Abraham and Sons Capital does not apply to my matter and therefore calls for a DENIAL of the Division's Motion for Summary Disposition.

Original Petition for Review of the Initial Decision – Submitted June 9, 2016

On April 25, 2016, ALJ Elliott ruled that, "***In this initial decision, I grant the Division of Enforcement's motion for summary disposition and find that it is in the public interest that Fox be barred for five years from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.***"

On May 6, 2016, I filed a motion to correct what I believed to be manifest errors of fact pursuant to Rule of Practice 111(h), 17 C.F.R. § 201.111(h).

On May 19, 2016, ALJ Elliott ruled that, "***although some of Fox's contentions merit discussion, I find no manifest errors of fact in the ID.***"

ALJ Elliot went on to state that, "***Fox raises multiple points regarding the public interest factors...Even construed liberally, however, none of his points identify specific facts that might be manifestly erroneous, and all of his points instead take issue with the substantive merits of the public interest analysis.***"

It is these points regarding the "*Public Interest Factors*" that I respectfully ask this Honorable Court to reconsider. I request that this Honorable Court permit any evidence that has only come into the process in my last Motion or in this one. It has been very challenging as a *pro se* Respondent with very limited funds and no experience in these matters. When all is said and done, the public would be best served by the fairest process possible.

The Division stated in its Motion for Summary Disposition filed November 6, 2015, that to determine whether a sanction is in the public interest, one has to look at the factors identified in *Steadman v. SEC.* Of the six factors listed, it is "*the degree of scienter involved*" and "*the likelihood that the respondent's occupation will present opportunities for future violations*" that need to be better understood in this case for justice to prevail.

I firmly believe that if I can finally articulate the facts properly, this Honorable Court will find that it is NOT in the public's interest for me to receive ANY collateral bar.

SCIENTER

Cornell University Law School defines "scienter" as "*Intent or knowledge of*

wrongdoing. When a person has knowledge of the wrongness of an act or event prior to committing it."

There is no dispute regarding the unintentional nature of the violations alleged by the Division. As ALJ Elliott stated in his Initial Decision, "*There is no evidence that Fox intentionally violated Section 5, and Fox vigorously disputes that he did so.*"

On January 15, 2016, ALJ Elliott Ordered the following:

> "*The Division's motion and its reply brief appear to lack any discussion of Respondent's scienter, one of the factors I must consider when determining whether the sanctions sought by the Division are in the public interest.*
>
> * * *
>
> *Respondent disputes that he acted with scienter, and my evaluation of this factor would be aided by additional information.*"

The Division filed a Supplemental Brief in Support of Its Motion for Summary Disposition on February 4, 2016. In this Brief, the Division stated the following:

> "*Scienter is 'a mental state embracing intent to deceive, manipulate, or defraud.' Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193-94 n. 12 (1976). Recklessness can satisfy the scienter requirement. SEC v. Jakubowski, 150 F.3d 675, 681 (7th Cir. 1998).*"

For the first time in three pleadings, the Division, after failing to convince this Honorable Court that I acted with true scienter, introduced the concept that "*Recklessness can satisfy the scienter requirement*"

However, I believe that the Division's citation to *SEC v. Jakubowski* is inaccurate. Here is a direct quote from *SEC v. Jakubowski, 150 F.3d 675, 681 (7th Cir. 1998):*

> *"Last comes the question of scienter. Under Ernst & Ernst v. Hochfelder, 425 U.S. 185, 96 S.Ct. 1375, 47 L.Ed.2d 668 (1976), and Aaron v. SEC, 446 U.S. 680, 100 S.Ct. 1945, 64 L.Ed.2d 611 (1980), only persons who act with an intent to deceive or manipulate violate Rule 10b-5. Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1044-45 (7th Cir.1977),* ***holds that reckless disregard of the truth counts as intent for this purpose.*** "

First, the ruling in the 7th Circuit stating that "***reckless disregard of the truth counts as intent for this purpose***", is significantly different than the general statement of "***recklessness can satisfy the scienter requirement***".

Second, neither the Division nor anyone else has ever claimed that I ever had, or even exhibited, a "***reckless disregard of the truth.***"

Lastly, *SEC v. Jakubowski* has significantly different facts than that of this matter.

For the sake of argument, let's assume that a generic "***recklessness can satisfy the scienter requirement.***" I believe that this Petition for Review will show beyond a shadow of a doubt that I did not, in fact, act with any sort of recklessness. Generic or otherwise.

Background

In my Motion to Correct Manifest Errors, I pointed out the following:

On March 16, 2016, after considering all of the briefings by the Division on their motion for Summary Disposition, as well as the supplemental briefing ordered on the issue of Respondent's scienter, ALJ Elliot entered an order DENYING the Motion for Summary Disposition (albeit without prejudice).

In this Order, ALJ Elliot ruled that in regards to "***the degree of scienter involved***" he "***must view these facts in the light most favorable to Respondent***".

This was followed by a preconference hearing on March 21, 2016, where Assistant Director Ms. McKinley made the following admission: "***As far as other documents, there really aren't any other documents that we think would assist you with any finding on scienter.***"

Judge Elliot concluded: "***As for scienter, Mr. Fox has convinced me that I've given the Division two bites at the apple, and I think that's enough. I don't really think that I need any more evidence on this. It sounds like Ms. McKinley's characterization of Mr. Fox's investigative testimony, that even if I were to look at the investigator's testimony, it would not be particularly enlightening.***"

However, on April 25, 2016, ALJ Elliott granted the Division's Motion for Summary Disposition and determined that it is in the public interest to impose a five-year collateral bar on me. In my Motion to Correct a Manifest Error of Fact, I questioned the reversal. In his May 19, 2016 Order, ALJ Elliott provided the following explanation:

> *"One of Fox's points – that I "rever[s]ed [my] prior ruling on scienter with no evidentiary basis" – merits discussion. Motion at 2. I previously ruled that the record was "insufficient to support summary disposition," and that "[m]ore is required to show that Respondent acted with scienter." Joseph J. Fox, Admin. Proc. Rulings Release No. 3711, 2016 SEC LEXIS 998, at *3 (ALJ Mar. 16, 2016). In the ID, which issued approximately six weeks later, I ruled that the Division had shown that Fox acted at least recklessly, citing Abraham and Sons Capital, Inc., 55 S.E.C. 252, 268 (2001). See ID at 6. Abraham and Sons Capital, Inc., holds that it is reckless for a securities professional to fail to be knowledgeable about, and to comply with, regulatory requirements to which he is subject. See 55 S.E.C. at 268. Abraham and Sons Capital, Inc., first came to my attention during the six weeks preceding issuance of the ID. That is, I changed my*

mind in light of newly discovered case law."

I will now address the following:

1) Abraham and Sons Capital is not relevant case law.

2) Even if it were relevant case law, I did not fail to be knowledgeable about, and to comply with, regulatory requirements to which I was subject.

    a. FINRA, the regulatory body that governs all licensed stock brokers and brokerage firms, never questioned any of Ditto Holdings private placements

    b. I did not possess a Series 79 - Investment Banking Representative

ABRAHAM AND SONS IS NOT RELEVANT CASE LAW

In Abraham and Sons Capital, Inc., the Administrative Law Judge found scienter with respect to factual representations made about the fund that Respondents themselves controlled. The Judge found that the misstatements were knowingly false or at a minimum made with reckless disregard for whether they were false. The specific subjects of misrepresentations included stock positions held by the fund, the number of shares held in each position, the price of the positions held, whether the position was long or short, and whether the stock had been split. All of the statements found to be false pertained to matters that only the Respondents (and their clearing firm) could have known. These were not matters of interpretation, and, as managers of the fund, it was their responsibility to maintain familiarity with those investment parameters.

The "regulatory requirements" as referred to in the April 25, 2016 Initial Decision, are of a completely different nature in my matter versus the Abraham and Sons case. The circumstances also differ drastically from those involved in my matter. The issue before this Honorable Court was my understanding of federal securities law and regulation, not my disclosure of factual matters over which I had primary responsibility. I had had previous experience with the SEC[2] that made it reasonable and understandable for me to believe that I was not violating any securities laws[3]. As stated in the Abraham case, the essence of scienter is that the party knew or should have known. The assertions against me clearly do not rise to that level as they pertain to matters of law. The Division did not raise the Abraham case in any of its briefs, and for good reason. The case is inapt to this proceeding.

I DID NOT FAIL TO BE KNOWLEDGEABLE ABOUT, AND TO COMPLY WITH,

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[2] See "Respondent Fox's Response Brief to Division's Motion for Summary Disposition" - Reliance on prior dealings with the SEC

[3] I want to be clear that I never stated that I "*construe[d] the Commission's silence or inaction as approval,*" and that was not the purpose of my inclusion of the relevant factors from previous dealings with the SEC. However, it is very reasonable to believe that these facts would go to the lack of scienter and recklessness, as well as "*the assumption that Rules 504 and 506 contained similar disclosure requirements.*"

REGULATORY REQUIREMENTS TO WHICH I WAS SUBJECT

FINRA Oversight

In the clearest evidence that I did not act with scienter or recklessness, one only has to look at the regulatory body that governs all licensed stock brokers and brokerage firms.[4]

For the past 20 years, I had been the CEO of several self-directed discount stock brokerage firms. During that time, I had maintained an absolute spotless compliance record. This included not having a single customer complaint, even though I facilitated millions of trades for tens of thousands of investors.

More importantly, FINRA had reviewed **every one** of Ditto Holdings (parent Company of Ditto Trade) private placements going back to before it became a licensed brokerage firm in July 2010. This also includes during its 2011, 2013 and 2014 cycle exams. It also includes the review of offering in 2012.

The review included any and all private placement memorandums, completed investor subscription agreements and Form D filings. Every private placement memorandum that FINRA reviewed was missing audited financials as required in Rule 505 and Rule 506.

In other words, FINRA was well aware beginning in 2010 and through 2014 that Ditto Holdings was relying on either Rule 505 or Rule 506.

FINRA was also well aware during 2010 through 2014 that Ditto Holdings had accepted non-accredited investors. This was through the review of both the investors Subscription Agreements (with the non-accredited option initialed), as well as FORM D filings showing the number of non-accredited investors.

So to be clear, FINRA, the agency that is statutorily required to supervise the proper compliance of the securities laws by stock brokers and brokerage firms, was well aware of the facts that became the alleged violations as determined by the SEC. Yet, FINRA never once questioned the missing disclosures. In fact, I had a proven record of immediately complying with FINRA (and its examiners) when they brought up any issues of concern.

At all times relevant, the SEC had all of the FINRA information above in hand.

So, if this Honorable Court finds that I need to be sanctioned for failing to comply with "*regulatory requirements*", then FINRA themselves would need to be sanctioned for failure to supervise. Crucially, in any event, I acted in good faith taking into account the results of our FINRA examinations, and the non-compliance was not knowing or in reckless disregard of the rules.

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[4] I would like to apologize to this Honorable Court for not presenting these crucial facts at the beginning of these proceedings. As a *pro se* Respondent who has lost his Company due to a group of phony whistle-blowers I am doing the best I can.

Series 79 - Investment Banking Representative

In the Division's Supplemental Brief in Support of its Motion for Summary Disposition, the Division stated the following:

> *"[Fox] held various FINRA licenses between 1993 and 2003, including licenses required to exercise supervisory responsibility. (OIP 1.) From 2010 to 2014, he held the following FINRA licenses: Series 7 (General Securities Representative), Series 24 (General Securities Principal), Series 28 (Introducing Broker /Dealer Financial and Operations Principal) and Series 63 (Uniform Securities Agent State Law Examination)."*
>
> *"In light of his credentials and experience[5], Fox must have known the basic requirements for complying with the securities registration provisions and foreseen the risk of violating those provisions by selling securities to non-accredited investors."*

For the Division to argue that "*In light of his credentials and experience,*" I acted at least recklessly is incredibly flawed. First, it seems to be lost on the Division that I DID NOT violate any securities laws in my capacity as CEO of Ditto Holdings, a non-licensed entity. I never sold a single share of my stock, or that of Ditto Holdings, in my capacity as broker or principal of FINRA member Ditto Trade, Inc.

In 20 years, I had never acted in any investment banking capacity that would have had me conduct a Rule 504 OR Rule 506 private offering utilizing my broker's or principal's license.

The facts of the matter, is that I did not have the "*credentials*" that would have led me to believe that I was violating any securities laws.

Those "*credentials*" would have been the Series 79 (Investment Banking Representative) license that I NEVER possessed.

FINRA developed the Series 79 (Investment Banking Representative) license "*to provide a more targeted assessment of the job functions performed by the individuals that fall within the registration category.*"[6]

In May 2009, Financial Regulatory Authority (FINRA) made the Series 79 (Investment Banking Representative), mandatory for all Investment Bankers that participated in the following:

- Debt and equity offerings (***private placement*** or public offering)
- Mergers and acquisitions

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[5] And as previously stated, my "*experience*" with the SEC and FINRA clearly led me to believe (wrongly) that I was not violating any securities laws.

[6] http://vabizlawyers.com/2009/09/15/sec-approves-rule-change-for-new-investment-banker-registration-category-and-new-series-79/

- Tender offers
- Financial restructurings
- Asset sales
- Divestitures or other corporate reorganizations
- Business combination transactions

FINRA allowed individuals that already had their Series 7 license to "opt in" during a six-month window and receive the qualification for the new investment banking representative license without having to take the exam, provided that, as of the date they opt in, such individuals are engaged in investment banking activities covered by Rule 1032(i).

For the record I never engaged in investment banking activities covered by Rule 1032(i); therefore, I would not have been able to "opt in."

After November 2, 2009, any person who wished to engage in the specified investment banking activities are required to pass the Series 79 Exam or obtain a waiver.

For the record, I never registered or sat for the Series 79 exam, nor did FINRA ever suggest that I do so.

For the record, the Abraham and Sons Capital case was from 2001. FINRA created the Series 79 in 2009, a year before I became relicensed[7].

In a footnote regarding *Abraham and Sons Capital, Inc.*, ALJ Elliot stated the following:

> *"More precisely, a securities professional with sufficient experience and training; I do not read Abraham and Sons Capital, Inc., as requiring a finding of scienter in every case where a securities professional violates a regulatory requirement. As noted in the ID, Fox worked for several years as a registered representative, served as CEO of a registered broker-dealer, held several securities licenses at various points in his career, and conducted private offerings and sales and an initial public offering in the 1990s. See ID at 2, 7. Under Abraham and Sons Capital, Inc., and in view of the undisputed facts of this proceeding, Fox acted recklessly."*

As clearly stated above, I was never "trained" as an investment banker. Also, I never claimed, nor have I ever worked *"several years as a registered representative"*. In fact, I originally took and passed my Series 24 (General Securities Principal) license only 2 ½ months after passing the Series 7 exam. While I have *"served as CEO of a registered broker-dealer"*, the broker-dealers in question were self-directed discount brokerage firms. In other words, I was never the CEO of a broker-dealer that facilitated investment banking, or that provided advice of any kind to its clients.

[7] I was originally licensed with FINRA from 1993 until 2001. I became relicensed in July 2010 when we created Ditto Trade, Inc.

As also clearly stated above, I never "*conducted private offerings and sales and an initial public offering in the 1990s*" in my capacity as a registered individual.

LIKELIHOOD THAT HIS OCCUPATION WILL PRESENT OPPORTUNITIES FOR FUTURE VIOLATIONS

In the Initial Decision, ALJ Elliot states the following:

> "*Accordingly, although his occupation presents opportunities for future violations, it is uncertain whether he will continue in that occupation, and this factor does not weigh heavily in favor of a severe sanction.*"

This I find a bit perplexing. As one of the six Steadman factors that ALJ Elliot originally ruled in my favor, there is nothing in the Initial Decision that contradicts the original ruling.

Background

In his March 16, 2016 Order, pertaining to the "likelihood that his occupation will present opportunities for future violations", Judge Elliot ruled that "*the present record, viewed in the light most favorable to Respondent*"

During the preconference hearing on March 21, 2016, Judge Elliot did not receive any additional information that would have changed his view on this Steadman factor:

Judge Elliot: "***I'm inclined to accept Mr. Fox's representations about his plans, the current status of his licenses, the current status of his company, and his asserted lack of interest in participating in the securities industry. So I'm going to take that as true and offer that public interest factors. Is there an objection to that from the Division?***"

Assistant Director Ms. McKinley responded with: "***No, Your Honor.***"

Judge Elliot concluded: "***So I'm going to accept as true what I will call the occupational evidence that Mr. Fox has given me today. And on that understanding, the question then is, do I need any more briefing on that? I think the answer is no.***"

ADDITIONAL BACKGROUND AND CLARIFICATION

Advice of Counsel

All decisions related to the sale of my personal shares, was done so with advice of counsel.

In February 2013, I spoke to Stuart Cohn, the Company's General Counsel, about the possibility of selling some of my shares in Ditto Holdings. Mr. Cohn contacted outside counsel Jeffrey Patt at Katten Muchin Rosenman to inquire about what exemption, if any, was available for me. Mr. Cohn was told that an exemption from registration under Section 4(a)(2) of the Securities Act of 1933, as amended, known as "Section 4(1-½)"[8], would be available to me.

Mr. Cohn supplied me with the Stock Purchase Agreement. (See February 26, 2013 email, attached hereto as Exhibit 1.) Mr. Cohn failed to inform me the need for all purchasers to be accredited, and omitted in the Purchaser Representation section of the Stock Purchase Agreement that the purchaser was in fact accredited.

However, the Stock Purchase Agreements did contain significant Purchaser Representations as stated in my Motion to Correct Manifest Errors.

Based on in-house General Counsel and Jeffrey Patt of Katten Muchin Rosenman, I believed these resale transactions were effected in a manner consistent with the so-called "Section 4(1-1/2)" resale procedures that are commonly relied upon in negotiated resales of restricted securities by affiliates of privately-held companies. I believed these resale transactions were not the result of a general solicitation by me, the Company or any representative or affiliate of either of them. Each was a negotiated transaction with a purchaser.

Furthermore, in each case, I obtained representations from the purchaser that it: (i) acquired the shares for investment purposes and not for distribution, (ii) can bear the economic risk of losing the entire investment, (iii) understood the securities were restricted securities, and (iv) had the means to hold the investment for an indefinite period of time, and by ensuring that the secondary sale was not the result of a general solicitation by the seller.

The advice of counsel was further evidenced by a September 4, 2013 email sent by purported [redacted]" Jeremy Mann to purported [redacted] Paul Simons. In the email, Mann sent Simons 14 confidential executed Stock Purchase Agreements (for the purchase of my personal shares). These 14 agreements included that of the only two non-accredited investors. Mann commented that: "*I asked [General Counsel Stu Cohn] about these agreement. He said that they are solid and the buyer has enough knowledge.*"

(See September 4, 2013 email, attached hereto as Exhibit 3.)

Egregiousness

In the May 19, 2016 Order, ALJ Elliot stated the following:

[8] On August 23, 2013, in an effort to confirm the exact exemption provided six months earlier, Mr. Cohn contacted outside counsel Jeffrey Patt. Mr. Patt emailed back the details with the note: "*Stu, you might have thought I was being facetious, but in fact, this is from a book I published about 2 years ago on Stockholders Agreements,*" (See August 23, 2013 email, attached hereto as Exhibit 7.)

> *"And though Fox contends that the egregiousness of his misconduct is mitigated because Ditto Trade's financial statements were audited, that contention is actually a challenge to the substantive merits of the ID. See Motion at 11-12."*

The mitigation of the "*egregiousness of [my] actions*" is not in a vacuum. One has to include the following facts:

1) "*There is no evidence that Fox intentionally violated Section 5*" (as stated below by Judge Elliot);

2) The sole operating subsidiary and only source of revenue was audited annually;

3) the majority of the violations occurred during a short 10-month period; and

4) I did not actively "solicit" non-accredited investors should speak to the lack of egregiousness of the violation.

All of these examples should speak to the lack of egregiousness.

Use of the Word Technical

In the Initial Decision, ALJ Elliot stated the following:

> *"Finally, Section 5 violations are not merely "technical" in nature, as Fox contends. Div. Mot. Ex. A at 2; Resp. Opp. at 5; mPhase Techs., Inc., Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *24 n.41 (Feb. 2, 2015) ("The importance of [Section 5's registration] provisions undermines [Respondent]'s attempt to characterize [its] violations as merely 'technical' in nature." (citing Owen v. Kane, 48 S.E.C. 617, 623 (1986))).*"

The facts in the mPhase Techs., Inc. case cited above are considerably different than that of my facts (or Ditto Holdings' for that matter).

mPhase Technologies, Inc., was a "penny stock" that was formerly quoted on the OTC Bulletin Board ("OTCBB"). They were appealing FINRA's denial of their request that FINRA process and announce mPhase's reverse stock split on the OTCBB.

Ditto Holdings was never a "penny stock" traded on the OTCBB or anywhere else. mPhase, in what would be a publicly available document, used the word "technical" in their description of the 2007 Order that was concerning to FINRA. However, as you will see below, mPhase qualified the word "technical", and thereby minimized the importance of the violations:

> *"mPhase described the 2007 Settlement Order as involving only "technical violations" of the securities laws, not antifraud violations..."*

It is also important to understand that mPhase's violations, as stated in the "2007

Settlement Order", were significantly greater than those alleged in my OIP[9]:

> *"The 2007 Settlement Order found that, in the course of this acquisition, (1) Durando, Dotoli, PacketPort.com, and Microphase offered or sold [its "Penny Stock"] shares of PacketPort.com stock without a registration statement in effect in violation of Sections 5(a) and (c) of the Securities Act of 1933; (2) Durando and Dotoli violated Exchange Act Section 16(a) and Rule 16a-3 by failing to timely file Forms 3 to reflect their beneficial ownership of more than ten percent of PacketPort.com's stock; and (3) Durando violated Exchange Act Section 13(d) and Rule 13d-1 by failing to timely file a Schedule 13D after acquiring more than five percent of PacketPort.com's stock."*

With all of that said, the OIP was factually inaccurate when it stated that Ditto Holdings and I issued a public press release stating that "*their settlements with the Commission involved only 'inadvertent technical rules violations'*."

The public press release dated September 11, 2015, that was included as an exhibit in the Divisions Motion for Summary Disposition, DID NOT use the term "*technical*". Here is what it stated:

> *"Two years ago, our young Company came under attack by a former employee on the verge of termination," exclaimed Joseph Fox, CEO of SoVesTech, Inc. "This individual tried to use the federal government to damage the Company and to impugn my reputation. The Company's settlement, as well as my own, involved inadvertent rules issues that had nothing to do with any of the former employee's false claims."*
>
> *The Company, without admitting or denying any allegations, agreed to a settlement in which the SEC states that the Company did not provide sufficient financial disclosure in a private offering that was extended primarily to accredited investors, but which included some non-accredited investors whose participation triggered a heightened disclosure standard. The Company agreed that it would no longer accept investments from non-accredited investors without providing all required disclosures, and it agrees to pay a fine of three payments of $16,666 each."*

The only use of the word "technical", was in a confidential non-public email to existing shareholders. In an effort to NOT minimize the seriousness of the alleged violations, the email went on to explain what caused the alleged violations, the remedial actions being taken and the size of the monetary sanctions. Here is what it stated:

> *"After a very thorough investigation of Simons' disingenuous claims of fraud and dishonesty against me and the Company, the SEC chose to not pursue any of Simons' claims...*

[9] The mention of the significant distinction between my alleged violations, and that of mPhase, is in no way an effort by me to minimize the importance of the Securities laws that the SEC alleged that I violated.

After 18 months of investigation, the SEC backed into what we consider inadvertent technical rules violations that were NEVER raised by Simons at any time.

The settlement states that the Company and I did not provide sufficient financial disclosures in certain private offerings that were extended primarily to accredited investors, but which ultimately included some non-accredited investors. Participation by non-accredited investors triggered a heightened disclosure standard."

"The Company and I both agreed that we would no longer accept investments from non-accredited investors without providing all required disclosures. The Company agreed to pay a fine of $50,000 consisting of three payments of $16,666 each over the next 4 months. I personally agreed to pay a fine of $205,000."

Penny Stock

In the Initial Decision, ALJ Elliot stated the following:

"Nonetheless, a stock priced at less than five dollars per share can be a penny stock, even if it is not traded publicly. See 17 C.F.R. § 240.3a51-1. If anything, Fox's suggestion to the contrary further supports the finding that he is not knowledgeable regarding applicable regulatory requirements. See Motion at 12 & n.3; ID at 7."

I have to take umbrage with ALJ Elliot here. First, it was the Division who misled this Honorable Court that Ditto Holdings was a "traded" penny stock. During the preconference hearing on March 21, 2016, it became apparent that the Division was trying to put me and Ditto Holdings in a negative light when I had to clarify for a surprised Judge Elliot that Ditto Holdings was in fact NOT a penny stock trading on an exchange such as the OTCBB.

Judge Elliot: Okay. What was -- did it ever trade at below $5 a trade?

Mr. FOX: Your Honor, it was never public. It was only a private company.

Judge Elliot: I confess; I'm now completely mystified. Let me turn to the Division. Can you shed some light on this? Is it your position that Ditto Holdings was a penny stock?

Second, I made it clear that I was in fact "*knowledgeable regarding applicable regulatory requirements*", when I stated the following in the same pre-conference hearing:

MR. Fox: There is one line of a reference to a penny stock, and sometimes listed on the SEC website that I was able to find, one line. It said a penny stock is sometimes a private company, but the reality is this is not a penny stock [in the commonly understood sense].

(See page 25 (ln. 6) of the transcript from the March 21, 2016 pre-conference hearing, attached hereto as Exhibit 3.)

It is quite clear by ALJ Elliot's confusion (created by the Division) that he, like me, believed that Ditto Holdings did not fall into the category of "penny stock" in the commonly understood sense. Besides, the one line on the SEC website that references that "*a stock priced at less than five dollars per share can be a penny stock, even if it is not traded publicly*", does little to explain what circumstances need to be met, as it says "*can*" and not "is".

Recurrence

In the Initial Decision, ALJ Elliott stated the following:

> "*Fox's violations were recurrent, involving at least three different offerings and the sale of Fox's own stock, over the course of almost four and a half years. OIP at 2-4. They concluded fewer than three years ago; although not especially recent, they also were not especially remote.*"

It is important to note that 90% of the total non-accredited investors (representing more than 95% of the money invested by non-accredited investors), made their purchases during a 10-month period from December 2012 through September 2013. **A period that we had both in-house counsel and outside counsel.**

The other 4 non-accredited investors (who purchased a total of $69,500 out of $1,327,995 of stock), made their purchases during a 12-month period from March 2010 through March 2011.

Sincerity of Assurances Against Future Violations

In the Initial Decision, ALJ Elliot stated the following:

> "*The evidence is mixed regarding the sincerity of Fox's assurances against future violations and his recognition of the wrongful nature of his conduct.*"

In fact, once I became aware of the issues, I quickly assumed responsibility and made assurances that I would never violate any securities laws.

In addition to the numerous phone calls and in-person off the record conversations with the Division of Enforcement, where I continually accepted responsibility for any of the violations alleged by the Division, I made the following on the record statements:

In his December 10, 2014 deposition, Mr. Fox stated the following:

SEC Attorney: Okay. Did you determine whether each of those purchasers was accredited or non-accredited?

Mr. Fox: I believe they all were accredited and I was wrong. There were two non-accredited's.

SEC Attorney: What was your belief based on?

Mr. Fox: A lot of them were existing shareholders so I knew from their status. But, there was a couple of new ones that I was not as familiar with, unfortunately, and I, I thought I had it on here where we, where it specifically said that I am an accredited investor and whatever, and I, unfortunately, I missed that. That was my, my [only] mistake only.

(See pages 189 (lines 13-24) of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 4.)

SEC Attorney: Did each of the investors, did they inform you in connection with their purchases of your personal sales whether they were accredited or non-accredited?

Mr. Fox: No. I believe that they, because there is, most of them of are existing shareholders I believe that they were already, I knew them, them to be non-accredited. I mean, sorry, to be accredited, excuse me. But, I missed it. There was two that weren't accredited. I do take responsibility for that.

(See pages 189 (ln. 25) 190 1-8 of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 4.)

SEC Attorney: How did you comply with that exemption?

Mr. Fox: ...I believe they were all accredited and I, I made a mistake on that. And I think the other reps and warranties or all the different disclosures are there. I believe, absolutely, I, I believe a 100 percent that I complied based on what I believe the four one and-a-half to stand for.

(See page 191, lines 5-12 of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 4.)

Mr. Fox: I'm not saying we're perfect and I take responsibility of everything going on here. I did it, I did it, it's fine. Nothing purposely. I take responsibility.

(See page 208, lines 22-25 of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 4.)

Mr. Fox: I have a well-documented career of always putting my customers and shareholders first...it's absolutely non-public assessment to suspend me for any period of time...any violations were 100 percent inadvertent and not done so recklessly...most importantly, I [did not] do anything with scienter.

(See pages 7 (lns. 21-25) 8 (lns. 1-2) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 5.)

Mr. Fox: And they've never once ever acknowledged the fact that I have been a conscientious person in this industry for 20 years, not just as a broker, but the CEO of brokerage firms that have been innovative that could have easily had all kinds of [redacted] against them, and I have a spotless compliance record. I took the Company public, Your Honor. I went through the SEC process. I never had an issue. I never had concerns, and I never for one second did anything with intent or scienter. I took responsibility. Ms. McKinley and Mr. Forkner made it clear or believe that I did not, even though from day one, as testimony will show, I did make it clear that I took responsibility, if I was using the wrong exemption or the wrong definition within the exemption 504 and 506. As I showed, Your Honor, there is no information within the study material or the test that breaks down the actual disclosure requirement. So, Your Honor, clearly there is no additional information of any substance, if at all. You already made it clear, Your Honor, regarding the Steadman case, that scienter is a big factor, and there is no scienter, Your Honor.

(See pages 12 (lns. 5-25) 13 (lns. 1-5) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 5.)

Mr. Fox: There was never a[ny] scienter. There was never an intent. I've been nothing but conscientious for 20 plus years. I have been labeled falsely on several different fronts. I've taken so much abuse from this whole process. Your Honor has been unbelievably fair in its assessment [as detailed in the March 16, 2016 decision], and I truly believe that, look, I'm not looking to be in the brokerage business, Your Honor. [However] I will not allow, without a fight, to lose or to be considered someone who should have been barred or banned. And the fact that they were looking for one year, when I asked for the bifurcation, they were looking for one year that I could not accept, and then to go to five years and whatnot, to find various excuses which weren't true to try to be a penny stock guy, even to get that one year. I mean, this has been an unbelievable circumstance, Your Honor. I've done -- look, I take responsibility for what occurred. I had the SEC review my documents, the same documents, and the same exact circumstances in 1999, and nothing

told me otherwise that I was working off the wrong exemption. I have always looked out for my shareholders. It's well documented. It's on the SEC's website. I can point to three or four different circumstances..."

(See pages 18 (lns. 1-25) 19 (lns. 1-3) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 5.)

During the March 21, 2016 preconference hearing, in regard to the two non-accredited investors who purchased my shares, I once again made it clear that he took responsibility. Here is my testimony:

Mr. Fox: I [still] took responsibility for that, Your Honor. I offered to pay back the two people for 42 or $47,000. I offered [the Division to repurchase these shares from] these individuals. They [the Division] said, "No, it was not going to be part of the settlement." I was willing to repurchase when I had the money, and that was not part of it.

(See pages 25 (ln. 25) 26 (lns. 1-5) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 5.)

Vindication, Backing Into & Not Dragging Out Negotiations

I was not saying that I was vindicated from the SEC's investigation, or that the SEC itself vindicated me. My reference to vindication is unambiguous, when I stated the following, "*After a very thorough investigation[10] of Simons' disingenuous claims of fraud and dishonesty against me and the Company, the SEC chose to not pursue any of Simons' claims.*"

There is no getting around the fact that I was in fact vindicated of the lies told by Paul Simons'. Paul Simons found out he was being fired from the Company and decided to make knowingly false claims to two separate governmental agencies. (See "Joe is firing you Tuesday." Email, attached hereto as exhibit 6.)

After the three thorough and overlapping investigations (conducted by the SEC, FINRA and independent lawyers) could not confirm a single one of Paul Simons' criminal allegations, I earned the right to call myself vindicated.

There is no getting around the fact that Simons' list of my purported wrongs DID NOT include any reference to the Section 5 violations alleged by the Division. The Division, during the course of investigating Paul Simons lies, discovered what they believed to be an

[10] I did not disparage the SEC's investigation, or the outcome of its investigation. Nor did I claim that the SEC was at all responsible for Paul Simons' "*disingenuous claims of fraud and dishonesty.*"

unintentional[11] violation of Section 5(a) and 5(c). Since this was not one of the false claims made by Paul Simons, most laypersons would consider this to be "***backed into.***"

The fact that I informed the Ditto Holdings shareholders that I chose "***to not drag out [my] negotiations for the betterment of [Ditto Holdings]***", is in no way an "***attempt to downplay and excuse [my] misconduct.***" The facts are unambiguous. The Division made it clear that they would not process with the Company's agreed-upon settlement, until I agreed to my own settlement.

On February 3, 2015, Jedediah B. Forkner, Senior Attorney for the Division of Enforcement, sent the following email to Ditto Holdings General Counsel Stuart Cohn:

> "***Mr. Cohn:***
> ***We received your latest suggested edits and have made changes to the attached drafts of the Offer and Order. We trust that with these edits we now have reached an agreement that Ditto is willing to sign so that we can submit it to the Commission for approval.***
> ***We will send you a draft of any release before it is made public, but no release will be drafted unless and until a signed agreement is approved by the Commission. The release would be based on the facts recited in the Order. If you would like to review sample releases, you can find them on our public website (sec.gov).***
> ***Thanks,***
> ***Jed***"

Mr. Cohn responded on February 9, 2015 with the following email:

> "***Mr. Forkner-- As indicated, at my request, by [Ditto Holdings outside counsel], the company is prepared to submit the signed Offer. Because the Offer requires notarization, I will take care of that and send you the signed, notarized Offer Tuesday. We appreciate the SEC's concluding a company settlement independent of Mr. Fox's matter, and, also of importance to the company, your facilitating a global settlement of the outstanding matters affecting both Mr. Fox and the [FINRA investigation with the] company.***
> ***Sincerely,***
> ***Stu Cohn***"

Mr. Forkner responded on February 10, 2015 with the following email:

> "***Thank you.***
> ***Jedediah B. Forkner***"

---

[11] Judge Elliot was quite clear in his April 25, 2016 Initial Decision when he stated, "*There is no evidence that Fox intentionally violated Section 5, and Fox vigorously disputes that he did so. See Resp. Opp. at 1, 12-13.*"

On February 10, 2015, Mr. Cohn sent Mr. Forkner its signed and notarized settlement offer. Mr. Cohn was made to believe that the Company's settlement was going through the Commission's review process.

On March 18, 2015, more than 5 weeks after submitting the signed settlement agreement, outside counsel for Ditto Holdings spoke with Mr. Forkner and Assistant Director Anne McKinley, and inquired as to the status of the Commissions' review. He reported back the following in an email:

> ***"They will not send any offer from Mandel, Ditto, and Fox to DC until they are all in one package. Will send it without your offer only if you take the position you are going to litigate with the Commission."***

I responded four minutes later:

"Why did they mislead us on timing???"

To which Ditto Holdings outside counsel replied:

"BTW, Anne apologized, using that word."

While it should be quite clear that I was indeed forced to expedite his settlement for the benefit of the Ditto Holdings shareholders, I always took responsibility for, and acknowledged, the alleged violations.

As stated above, the use of the word ***"technical"*** was in no way meant to minimize the importance of the securities laws. Since all of the alleged violations are believed by all to be an unintentional act, the use of the word ***"technical"*** is meant to clearly differentiate it from the intentional criminal acts falsely alleged by Paul Simons.

Acknowledging Misconduct

In the Initial Decision, ALJ Elliot states the Following:

> *"...Fox even asks the recipients to consider additional investments in Ditto Holdings now that "the SEC issue [is] behind us." Div. Mot. Ex. A at 2 - 3. This calls into question the degree to which he acknowledges his misconduct and the sincerity of his assurances against future wrongdoing."*

It is difficult to think that the Company, who had been near death for two years thanks to a false and malicious "whistle-blower"[12], wouldn't begin to raise money to try and keep the

[12] On April 22, 2016, I filed a lawsuit in the Circuit Court of Cook County for malicious prosecution (among other counts) against several bogus whistle-blowers and their counsel. What is now extremely clear, Paul M. Simons et al, lied to the SEC, FINRA and others in a malicious effort to harm me and destroy the Company. These lies include clear evidence of perjury. While I have attached the lawsuit as an exhibit, because the exhibits to the lawsuit are 347 pages long, I have not attached them to this pleading. If this Honorable Court would like, I can supplement the

Company alive now that the crushing SEC investigation was over. It is hard to imagine how "***this calls into question***" anything.

It is important to understand that prior to sending out the email in question, I received the approval of both Ditto Holdings inside counsel and outside counsel.

Willfulness

In the May 19, 2016 Order, ALJ Elliot stated the following:

> *"Fox does not dispute that he consented to the entry of the OIP and to the finding that he willfully violated Section 5(a) and (c) of the Securities Act. See ID at 1; Motion at 1. Fox 2 contends that he only gave such consent because the OIP included a footnote defining willfulness, and, construed liberally, he argues that the ID should have cited that footnote as evidence that he did not act intentionally. See Motion at 1. But the finding of willfulness is supported by the record, and the ID noted that Fox "vigorously dispute[d]" that he intentionally violated Section 5. ID at 6."*

As a layperson, it would seem fair that if you are going to quote the word "willful" from the OIP, that you would always include the following footnote that was agreed upon in the OIP:

> *"A willful violation of the securities laws means merely "'**that the person charged with the duty knows what he is doing.**'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). **There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.**'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965))."*

It is disingenuous for the Division to state in their Motion for Summary Disposition, that "*The OIP establishes that Fox willfully violated the securities registration provisions of Section 5(a) and 5(c) of the Securities Act, therefore the only issue to be decided is what additional sanctions are in the public interest.*" without including the agreed upon footnote.

For the record, the only reason I agreed to the inclusion of the word "willful" in the OIP was the agreed upon footnote. If I would have known that the Division's intention was to use the term without the footnote in an effort to harm me, that would have been the final straw that would have forced me to not sign the OIP.

It should be quite obvious by all of the facts that I have now presented, that the term "*willful*" (with or without a footnote) should never have been included in the OIP.

---

record with those exhibits. (See April 22, 2016 lawsuit, attached hereto as Exhibit 8.)

False and Malicious "Whistle-Blowers"

In the May 19, 2016 Order, ALJ Elliot stated the following:

> *"The ID stated: "It also appears that Ditto Holdings' investors suffered financial losses." ID at 5. Fox contends that such losses were caused by "the malicious efforts of several false 'whistle blowers.'" Motion at 10-11. Even if proven, this contention could not reasonably affect the outcome of the proceeding, and the finding of investor losses is therefore not manifestly erroneous."*

I concur with the ALJ's ruling that the fact that the Company was destroyed and investors lost money due to *"the malicious efforts of several false 'whistle blowers.'"* would not affect the outcome.

However, the efforts by these false and malicious whistle-blowers are critical in understanding the ***"vindication"*** email and press release. It is also helps to understand how I was forced to ultimately agree to an OIP that had inaccurate facts (which were made clear to the Division before signing the OIP under duress), in order to give the Company and its shareholders a fighting chance.

I believe it also explains some of the misplaced animus towards me by the Division.

Conclusion

As a reminder, *"the proceedings before the ALJ were confined to determining the single issue of whether it would be in the public interest to suspend or bar Fox from the securities industry and from participating in an offering of penny stock."*

It is not in the public's best interest to initiate a collateral bar of any length[13]. I, along with my family and other shareholders, have already paid a heavy price from the efforts of a false and malicious [redacted]. As clearly stated in the recently filed lawsuit (provided as an exhibit in my Petition for Review), in an effort to get the SEC to investigate me and my Company (in retaliation for his termination), Paul Simons lied to the SEC through his attorneys, and through a direct email to Robert Burson, Associate Regional Director for the Chicago Regional Office. Paul Simons went as far as perjuring himself by lying and including fabricated evidence within his Form TCR (Tips, [redacted] Referral). Not a single one of Paul Simons nefarious claims of fraud and misappropriation have ever proven to be true.

[13] On the contrary, a collateral bar of any length would be detrimental to the public's best interest. As previously stated, I have walked away from the Company I founded, and whose technology I invented. While the Company is no longer operational and no longer owns and operates a broker/dealer, there has been several serious discussions about partnering with a third party company that would leverage all of the proprietary technology that led investment bank FBR in 2013 to provide a $40-$60 million preliminary written valuation (previously provided to the ALJ). While I am no longer involved in the Company, I have been made aware that it has become apparent that a collateral bar of any length will put a stain on the company and the technology. Therefore, a collateral bar will actually negatively affect the public and its best interest (as it pertains to the 230 shareholders of SoVesTech, as well as the thousands that would potentially benefit from the technology).

While the investigation that led to the OIP was initiated with what is now proven falsehoods, that does lessen my level of contrition for any securities law issues that might have been "backed into". I have had a 20+ year record of always doing right by my customers, shareholders and regulators[14]. Once I became aware of the potential securities law issues, I immediately took full responsibility and made it clear that going forward **I would never violate any securities law**[15]. To be clear, no one, not the Division nor the ALJ, ever claimed that I knowingly, intentionally, purposely or consciously violated any securities laws.

I believe that there are many solid facts that successfully argue against any type of collateral bar. More specifically, if a 5-year collateral bar actually hinges on Abraham and Sons Capital, I respectfully submit that it should now be overwhelmingly clear that a collateral bar of any length is not in the public's best interest, and that the Commission should reverse the ALJ's Initial Decision and DENY the Division's Motion for Summary Disposition with prejudice.

Dated: August 1, 2016

Respectfully submitted,

Joseph J. Fox

[14] This is a fact that the Division was fully aware of, yet completely ignored in every pleading.

[15] This is in stark contrast to the Division repeated falsehoods that I "*fail to appreciate or even acknowledge that [I] had a responsibility to ensure that [my] and Ditto Holdings' sales complied with the registration requirements.*"

DITTO TRADE

Joe Fox <jfox@sovestech.com>

Stock Purchase Agreement

1 message

Stu Cohn <stu.cohn@comcast.net> Tue, Feb 26, 2013 at 1:51 PM
To: jfox@dittoholdings.com

Please see attached.

Stock Purchase Agreement for Ditto Holdings Shares FINAL.doc
70K

From: Jeremy Mann [redacted]
Sent: Wednesday, September 4, 2013 2:45 PM
To: psi65@me.com
Subject: FW: Sub Agreements
Attach: [redacted] Zurkan.pdf; [redacted] Fox.pdf; [redacted] Chan.pdf; [redacted] and [redacted] Wiebe.pdf; [redacted] and [redacted] Shah.pdf; [redacted] Ward.pdf; [redacted] and [redacted] Lloyd.pdf; [redacted] Zalk.pdf; [redacted] Bosward.pdf; [redacted] Sayer.pdf; [redacted] Bessette.pdf; [redacted] Frain.pdf; [redacted] Kay.pdf; [redacted] Israel.pdf

---

I asked Stu about these agreement. He said that they are solid and the buyer has enough knowledge.

From: Gene Romero [mailto:gromero@dittoholdings.com]
Sent: Wednesday, September 04, 2013 9:42 AM
To: 'Jeremy Mann'
Subject: Sub Agreements

Regards,

Gene Romero
Finance Associate

DITTO

200 W. Monroe St.
Suite #1430
Chicago, IL 60606
(312)263-5400 phone
(312)263-8333 fax

www.DittoTrade.com

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. 3-16795
JOSEPH J. FOX)

ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE
PAGES: 1 through 38
PLACE: Securities and Exchange Commission
175 West Jackson Blvd., Room 900
Chicago, Illinois 60604
DATE: Monday, March 21, 2016

The above-entitled matter came on for hearing, pursuant to notice, at 1:00 p.m.

BEFORE (via telephone):
CAMERON ELLIOT, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JEDEDIAH B. FORKNER, Senior Attorney
ANNE C. McKINLEY, Assistant Director
JOHN E. BIRKENHEIER, Supervisory Trial Attorney
Division of Enforcement
Securities and Exchange Commission
175 West Jackson Boulevard
Suite 900
Chicago, Illinois 60604

On behalf of the Respondent (via telephone):
JOSEPH J. FOX, PRO SE

PROCEEDINGS

JUDGE ELLIOT: We're here in the matter of Joseph J. Fox, Securities and Exchange Commission Administrative proceeding ruling. I'm sorry, Administrative Proceeding No. 3-16795.

My name is Cameron Elliot, Presiding Administrative Law Judge. Can we have appearances from counsel, please?

MS. McKINLEY: On behalf of the Division of Enforcement, you have Anne McKinley, Jed Forkner, and John Birkenheier.

MR. FOX: Your Honor, I'm the respondent, Joseph J. Fox, and I'm here pro se.

JUDGE ELLIOT: All right, very good. Okay. So I sent out my order in which I described where I think the case stands, and I want to be clear from the beginning that when I said at the end of the order that we may need a hearing in this case, I mean that very, very -- I was very deliberate about that.

I was quite serious. We may need a hearing or we may not. It just depends. And the area where I think that I really need some more help is in the two Steadman factors that we discussed in the order, scienter and then essentially Mr. Fox's

professional status, if you will, whether his occupation presents an opportunity for future violations.

One of these issues is uniquely in the control of Mr. Fox; that is, by his occupation, and I understand the parties dispute scienter, but all I really have to go on for scienter is simply what's in the OIP, and then -- I guess it was the uploaded e-mails that Mr. Fox sent out after the OIP issued, and that's it.

So let me first turn to Ms. McKinley. Is there anything more that you can send me, in the way of transcripts or other documentary evidence, or anything else that might shed some light on Mr. Fox's state of mind?

MS. McKINLEY: Your Honor, we believe we do have testimony transcripts from Mr. Fox's testimony during our investigation that does shed light on that issue. To be frank, it doesn't shed a tremendous amount of light, but it may be helpful for you to see. So we're certainly happy to provide that to you.

As far as other documents, there really aren't any other documents that we think would assist you with any finding on scienter. Though,

ever plan to be.
I purposely did not even allow many penny stocks to be quoted or purchased on our website as the story in Barron's Magazine showed, and so we're a private company.
There is one line of a reference to a penny stock, and sometimes listed on the SEC website that I was able to find, one line. It said a penny stock is sometimes a private company, but the reality is this is not a penny stock. It was a private company.
I sold some of my founder shares under advice of counsel, under what's known as I believe 401-and-a-half, and the only mistake that was made there, Your Honor, is that my attorney unfortunately -- my in-house attorney provided me with the documentation. It did not have a section for being a credit investor.
And I believe the people that bought, because some of them were disingenuous, they already showed they were accredited. I believe they were accredited. I'm sorry that that was missing. I should have known that, but my attorney needs to put that in there.
I stool took responsibility for that, Your

Honor. I offered to pay back the two people for 42 or $47,000. I offered these individuals. They said, "No, it was not going to be part of the settlement." I was willing to repurchase when I had the money, and that was not part of it.
I took responsibility, but I was never a penny stock. My stock was not sold as a penny stock. It was a private company. Nobody, nobody considers us, a private company like ours, to be a penny stock. Your Honor --
JUDGE ELLIOT: Okay. Let me ask one more question. Suppose that someone were to offer you employment as an investment advisor, okay, I mean not individually, but you would be associated with a registered investment advisor, is that the kind of employment that you would be willing to take?
MR. FOX: Absolutely not, Your Honor. I've never acted as an investment advisor. I don't have the proper licensing to be an investment advisor.
I have no plan, nor will I ever, refile anything with FINRA ever, because they also put us through a two-year process just to walk away when it was all done and say, "We'll just defer to the SEC." Even after, even after a global disposition, all of a sudden, "Okay, there obviously is no real need for

this investigation."
I mean, we were coming -- people were coming at as from all sides. I have no desire to be in an industry that has no respect for somebody who has been so conscientious, and nobody can say otherwise of how I treated my firm, my customers, my shareholders and my employees.
So, Your Honor, I have no desire, nor will I be, an investment advisor. I'm going to work for an investment advisory firm. I'm not going to work for a municipal bonds company, a credit rating company, and absolutely not a penny stock company, but that does not mean that I can accept a documented suspension for something I don't deserve, Your Honor.
JUDGE ELLIOT: All right. Thank you, Mr. Fox. Ms. McKinley, do you have anything to say about what Mr. Fox has just explained?
MS. McKINLEY: Yes, Your Honor. I guess the one point that we would like to bring to your attention is that Mr. Fox has raised funds and owned four companies over the last approximately 20 years those four companies, two of them have been broker dealers, and directly connected to the brokerage business.

JUDGE ELLIOT: Okay.
MR. FOX: Excuse me, if I may, Your Honor.
JUDGE ELLIOT: Hold on, Mr. Fox. Hold on. Hold on, Mr. Fox. Let me ask a few more things of Ms. McKinley.
So as I understand, I don't mean to put words into Mr. Fox's mouth, but my understanding based on what he just explained is he doesn't know what he's going to do in the future, but he doesn't wish to work in the securities industry anymore.
Do you dispute that, Ms. McKinley?
MS. McKINLEY: This is, frankly, the first time we've heard in detail what his future plans are. We have no way or reason to dispute that.
JUDGE ELLIOT: Okay.
MS. McKINLEY: But I will say, Your Honor, that in December of 2014, Mr. Fox told us at that time, through his attorney, that he never had any intention of being licensed again, that he had withdrawn all of his licenses and wasn't going to do anything with respect to the securities industry again.
But then in August of 2015, this application for the FINOP was filed, and we were not notified of that fact at the time. So I guess we

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. C-08037-A

DITTO HOLDINGS, INCORPORATED)

WITNESS: Yosef Y. Fox

PAGES: 1 through 219

PLACE: Securities and Exchange Commission

175 West Jackson Boulevard

Room 9154

Chicago, Illinois 60604

DATE: Wednesday, December 10, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 9:57 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JEDEDIAH FORKNER, Senior Attorney
ALYSSA A. QUALLS, Senior Trial Counsel
ANNE McKINLEY, Assistant Regional Director
Securities and Exchange Commission
Division of Enforcement
175 West Jackson Boulevard
Suite 900
Chicago, Illinois 60604

On behalf of the Witness:
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Chuhak & Tecson
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606
(312) 855-5445

CONTENTS

CONTENTS (CONT.)

PROCEEDINGS

MR. FORKNER: We are on the record at 9:57 a.m. on December 10, 2014. Mr. Fox, would you please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

MR. FORKNER: Please state and spell your full name for the record, including your middle name.

THE WITNESS: Yosef Yehuda Fox, Y-o-s-e-f, Y-e-h-u-d-a, F-o-x.

Whereupon,

YOSEF Y. FOX

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FORKNER:

Q Do you also go by Joseph?

A Joseph Fox, Joe Fox.

Q My name is Jedediah Forkner. I'm a senior attorney with the Division of Enforcement. With me is Anne McKinley, as Assistant Regional Director with the Division of Enforcement. The two of us are Officers of Commission for the purposes of this proceeding. Also with us is Alyssa Qualls, a trial counsel with the Division of Enforcement. Ms. Qualls is not listed in the

Q And what paperwork, if any, did you use in connection with your sales?

A I had a stock purchase agreement similar to, I believe, what the, what I've used, well maybe not, well maybe it is. I have to see it. Give me your copy of it. Yes, very consistent with this.

Q Mr. Fox, I'm handing you what's been marked as Exhibit No. 45.

(SEC Exhibit No. 45 was marked for identification.)

A Thank you.

Q Please take a minute to review it. For the record, Exhibit No. 45 begins on JJFOX040822. It ends on JJFOX040828.

A Okay.

Q Mr. Fox, are you familiar with Exhibit No. 45?

A Yes, I am.

Q Can you tell us what it is?

A A stock purchase agreement.

Q Is this one of the stock purchase agreements that you used in connection with your personal sales of Ditto Holdings stock?

A I do believe so.

Q Did you create this stock purchase agreement?

A This is a template, I believe that Stu used, Stu Cohn, the company's counsel. He provided it to me consistent with what my brother's used or we used for my brothers.

Q Did each of the individuals who purchased stock from you complete or fill out one of these stock purchase agreements?

A Yes, they did.

Q Was there any other paperwork that was provided to them or that they completed?

A No, there wasn't.

Q And who set the terms of each of these agreements?

A I did. They're all individually negotiated.

Q Does that mean that you'd negotiate them between, negotiations between yourself and the buyer?

A Yes, that sometimes they were 90 cents, sometimes a dollar, sometimes a $1.10. Depends how much they were buying, depends in they were an existing shareholder, hence, you know, depends on my mood. It was negotiations between the two of us.

Q Did you provide the buyers with any information about Ditto Holdings, the company?

A No. This was, I, I do believe this was the only document.

BY MS. McKINLEY:

Q Did you provide any information to the investors in addition to the documentation orally?

A Anything they asked me I would deliver to them, yeah. I mean, if they, I, I had many conversations so I would have explained the business model, what our strategy was, our objectives, and, and then there's conversation I remember having in one specific e-mail that, where he said, well, I'm, I'm curious. You're selling stock at $1.00, or maybe it was $1.10 and yet the company was selling stock for a $1.25, what's the difference. I said, well, the $1.25 goes to the company. The company's going to use that money to grow the company. Money you're buying my stock, the money's not going to go to the company. So, that's the benefit. That's why the dollar would be more expensive when the money was, was higher to go to the company because that was growth capital. This is not growth capital so you're, you're going to get a better deal knowing you're not, this is not growth capital. And I've explained that in the e-mail.

BY MR. FORKNER:

Q I think you answered this before, but how many buyers purchased from you? Was it 25 to 30?

A Yeah, 30, 35, yeah, something like that.

Q And how much money did you raise from the sales of your stock?

A A million, two hundred thousand and change.

Q And where was that money deposited?

A Most of it was Wells Fargo. Some of it was my money market account at Apex Clearing.

Q Did any of the funds go anywhere other than those two accounts?

A I don't believe so. Well, just to be clear, that, at Wells Fargo there's a couple of accounts. There's a savings and a checking and stuff like that. It's connected.

Q Okay. Did you determine whether each of those purchasers was accredited or non-accredited?

A I believe they all were accredited and I was wrong. There were two non-accredited's.

Q What was your belief based on?

A A lot of them were existing shareholders so I knew from their status. But, there was a couple of new ones that I was not as familiar with, unfortunately, and I, I thought I had it on here where we, where it specifically said that I am an accredited investor and whatever, and I, unfortunately, I missed that. That was my, my mistake only.

Q Did each of the investors, did they inform you

in connection with their purchases of your personal sales whether they were accredited or non-accredited?

A No. I believe that they, because there is, most of them of are existing shareholders I believe that they were already, I knew them, them to be non-accredited. I mean, sorry, to be accredited, excuse me. But, I missed it. There was two that weren't accredited. I do take responsibility for that.

Q Separate from any past sales, just in connection with your personal sales, did you have them identify themselves as accredited or non-accredited?

A No. I knew them.

Q Did you file a registration statement with the Securities and Exchange Commission in connection with your sales?

A No, I did not.

Q Did you file any other paperwork with the SEC?

A I don't believe I was required to.

Q Did you rely on any exemption for the registration requirements for your sales?

A Yes, I did.

Q What exception did you rely on?

A What's commonly known as four one and-a-half which my attorney wrote a book on it. But that's neither here nor there.

MR. STANG: Have you read it?

THE WITNESS: Part of it.

MR. STANG: All right.

BY MR. FORKNER:

Q How did you comply with that exemption?

A Well, I believe they're all non-accredited, I'm sorry. I believe they were all accredited and I, I made a mistake on that. And I think the other reps and warranties or all the different disclosures are there. I believe, absolutely, I, I believe a 100 percent that I complied based on what I believe the four one and-a-half to stand for.

Q Was your initial reliance on this exemption based on your understanding that they were all accredited?

A Yes.

Q Now that you're aware that there were non-accredited investors who purchased from you do you believe that that exemption still applies?

MR. STANG: Well, I'm going to object to the form of the question. I don't know if he said that they were non-accredited or if he said there were?

THE WITNESS: There were two non-accredited.

MR. STANG: Just a moment, Mr. Fox, I'm talking right now, okay.

THE WITNESS: Sorry.

MR. STANG: I'd ask you a question and ask you to rephrase and make it clearer --

MR. FORKNER: I can rephrase.

MR. STANG: Either refer to the two or say some, some were, but I thought that your question was now that you now they were all non-accredited, that they were unaccredited, wasn't clear what we were --

MR. FORKNER: I'll rephrase.

MR. STANG: Okay, thank you.

BY MR. FORKNER:

Q Now that you know there were two non-accredited investors or at least two non-accredited investors who purchased from you do you believe that the exemption, that you still meet the requirements of the exemption?

MR. STANG: Objection, calls for legal conclusion.

MS. McKINLEY: You can answer.

MR. STANG: If you're able to render a legal opinion.

THE WITNESS: I was once called a jailhouse lawyer. Stu called me that in 1995 when he first met him. I thought it was an insult in talking for six months anyways. Then I said, wait, maybe it was more of a compliment so I hired him.

MR. STANG: So we digress.

THE WITNESS: So we digress. I, I get one of those. I, I, yeah, absolutely, I believe I'm still, I have the proper exemption for every one but those two.

BY MR. FORKNER:

Q Did you ask Mr. Mandel to help find potential buyers for your shares?

A I really --

MR. STANG: Objection, asked and answered twice.

MS. McKINLEY: This is for his personal --

MR. STANG: You can answer it again.

MS. McKINLEY: This is for his personal shares. We're not talking about the Ditto Holdings shares anymore.

MR. STANG: You might be right. Then I withdraw the objection. Sorry, I misunderstood.

THE WITNESS: I really don't remember the exact conversation that we had about that.

BY MR. FORKNER:

Q Do you recall having a conversation?

A I remember we talked about it and I think he, he thought that there were investors that would like to buy stock at the time when we were in-between, I believe we, we were in-between rounds and, and wanted to know if

absurd. I really think we should consider selling it. It might be a great opportunity and if our shareholders have already made money, why, privately.

He said no, let's not. We're building ourselves a clearing firm. Let's wait until the self clearing firm is done then we should sell. We went back and forth for a couple days. He talked me out of it. We waited.

By the time our lot had expired in March of 2000, March of 2000 our stock was at $3.75. By the time we sold stock, sorry, we never sold shares, until we sold the whole company we never sold shares, our stock was at 45 cents. So, we sold the company to E*Trade for their stock at a $1.87.

I've had a hard time over the years with that issue because I knew it, I felt it, and there had been buyers, 15 bucks, 18 bucks a share. 70, $80 million my brother and I.

By the time we sold the company in May of '01, we got a million shares of E*Trade a piece. The stock was $9.10. The stock went up to $10.10 that day. People loved it. They did this huge convertible debt deal that night without letting us know, the stock tanks. A few months later 9/11 happens.

By the time my brother and I sold stock it was,

we got five and-a-half bucks, $5.50 a share or $5.5 million, less taxes and everything else. It's not $100 million by any stretch of the imagination. And we owed money to J.P. Morgan and whatever. We could have got a hell of a lot more. My kid's kid's kids could have been taken care of but because of a decision that was made that I have to live with.

So, when I have an opportunity with Marc, who I trusted and still trust even though I have learned things about him I did not know that was brought up during this whole process thanks to Paul Simons, I, I needed somebody who could be a second set of eyes for me. So, as we grew this thing and I wanted to take it public, I doubt that'll ever happen, though, I'm not saying it's impossible but right now I'm just trying to figure out how to still create value in this company for our 200 and some odd shareholders, I wanted to have someone with a second set of eyes so that it wasn't just me trying to make the right, making a decision.

Because my brother now, of course, he's sick. He's got cancer. He's got a broken back. Not that I would ever turn him for those kind of, sort of macro, sort of where the markets heading, after that move. So, having somebody that I could trust to be my guide was really important to me. And that's why I engaged him.

I mean, yes, he had some people. He had people that, to come and buy some of my stock and, and he was excited, I was excited about it. It was my first bit of liquidity in a very long time. It was good for the company because I didn't have to take so much money from the company which wasn't taking that much to begin with for quite a, a long period of time. But, it was a way to, to really kind of take things to the next level for the company, for myself, and build something special.

People, even Simons, thought this was a $2 to $4 million company. That's why I brought Marc Mandel on. So, I expected Marc to be my guy, to be the guy that I can, that I can trust. Not just an advisor, you know, a money manager. Just some guy who I like, who I trust, who, we have the same, same objectives. That's why I hired him. And that's why I gave him the bonus I gave him because he earned it. Because he was my guy and I trusted him.

And he's been f'd by this whole process. It's not fair. He's not a bad guy. I know it's not for me to say but it's just been unbelievable what's going on here. I'm not saying we're perfect and I take responsibility of everything going on here. I did it, I did it, it's fine. Nothing purposely. I take responsibility. Some of this stuff is, sorry, I'm done.

MR. STANG: Without the comment.

THE WITNESS: I'm done, next question.

BY MR. FORKNER:

Q Did Mr. Mandel provide you with any sort of tangible work product?

A Are you talking, referring to written documentation?

Q Right.

A No. I never asked him for any.

Q I'm handing you what's marked as Exhibit No. 47. Please take a minute to review it. For the record, Exhibit No. 47 begins on JJFOX67. It goes through JJFOX79. It appears to be an account statement from Apex Clearing Corporation?

(SEC Exhibit No. 47 was marked for identification.)

A Okay.

Q Mr. Fox, are you familiar with Exhibit No. 47?

A Yes.

Q Can you tell us what it is?

A It is a monthly statement for my Apex Clearing account through my brokerage from Ditto trade.

Q I'd like to draw your attention to the page that's marked JJFOX73. Towards the top of that page there appears to be a check that was written to Mr.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. 3-16795
JOSEPH J. FOX)

ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE
PAGES: 1 through 38
PLACE: Securities and Exchange Commission
175 West Jackson Blvd., Room 900
Chicago, Illinois 60604
DATE: Monday, March 21, 2016

The above-entitled matter came on for hearing, pursuant to notice, at 1:00 p.m.

BEFORE (via telephone):
CAMERON ELLIOT, ADMINISTRATIVE LAW JUDGE

Diversified Reporting Services, Inc.
(202) 467-9200

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JEDEDIAH B. FORKNER, Senior Attorney
ANNE C. McKINLEY, Assistant Director
JOHN E. BIRKENHEIER, Supervisory Trial Attorney
Division of Enforcement
Securities and Exchange Commission
175 West Jackson Boulevard
Suite 900
Chicago, Illinois 60604

On behalf of the Respondent (via telephone):
JOSEPH J. FOX, PRO SE

PROCEEDINGS

JUDGE ELLIOT: We're here in the matter of Joseph J. Fox, Securities and Exchange Commission Administrative proceeding ruling. I'm sorry, Administrative Proceeding No. 3-16795.

My name is Cameron Elliot, Presiding Administrative Law Judge. Can we have appearances from counsel, please?

MS. McKINLEY: On behalf of the Division of Enforcement, you have Anne McKinley, Jed Forkner, and John Birkenheier.

MR. FOX: Your Honor, I'm the respondent, Joseph J. Fox, and I'm here pro se.

JUDGE ELLIOT: All right, very good. Okay. So I sent out my order in which I described where I think the case stands, and I want to be clear from the beginning that when I said at the end of the order that we may need a hearing in this case, I mean that very, very -- I was very deliberate about that.

I was quite serious. We may need a hearing or we may not. It just depends. And the area where I think that I really need some more help is in the two Steadman factors that we discussed in the order, scienter and then essentially Mr. Fox's

professional status, if you will, whether his occupation presents an opportunity for future violations.

One of these issues is uniquely in the control of Mr. Fox; that is, by his occupation, and I understand the parties dispute scienter, but all I really have to go on for scienter is simply what's in the OIP, and then -- I guess it was the uploaded e-mails that Mr. Fox sent out after the OIP issued, and that's it.

So let me first turn to Ms. McKinley. Is there anything more that you can send me, in the way of transcripts or other documentary evidence, or anything else that might shed some light on Mr. Fox's state of mind?

MS. McKINLEY: Your Honor, we believe we do have testimony transcripts from Mr. Fox's testimony during our investigation that does shed light on that issue. To be frank, it doesn't shed a tremendous amount of light, but it may be helpful for you to see. So we're certainly happy to provide that to you.

As far as other documents, there really aren't any other documents that we think would assist you with any finding on scienter. Though,

there is another FINRA filing regarding Mr. Fox's licensure from August of 2015, in which he sought to reinstate his licensing. That also may be of help.

JUDGE ELLIOT: Okay. Well, I'll get to that in a moment, but why don't we do this, I've still got some time left before I have to issue the initial decision. So I think I can consider yet another round of briefing on this issue. I would like to start with that.

If it turns out that I really feel like we have a live animal, I'm at the point now we're probably going to have to ask for an extension of time on the initial decision.

MR. FOX: Your Honor, if I may, this is Joe Fox.

JUDGE ELLIOT: Yes. Hold on just a second, Mr. Fox. Hold on just a second.

MR. FOX: Sorry.

JUDGE ELLIOT: As I was saying, I think I'm probably going to have to ask for an extension if we do end up having a live in-person hearing. So I think on the issue of scienter, I'm probably going to ask the parties to send me some more documents, whatever it may be.

Now, Mr. Fox, you, of course, will get a

chance to submit more evidence, too, but if that doesn't answer your question, or answer the concern you were about to raise, go ahead and tell me what you were about to say.

MR. FOX: Your Honor. Okay, well, thank you very much for this opportunity. And, for the record, I asked for a hearing, in-person hearing, with the Division while we were talking about settlement from the get-go.

I want to be able to get everything out there in the open. Like, many times I volunteered with the Division through the investigation, I volunteered to meet with them. I volunteered information. I've been 100 percent forthcoming.

I asked to have a hearing. They did not want to guarantee a hearing. And I would like to make a statement, if I may, that I think really goes to where we're at in this proceeding, if I may, Your Honor.

JUDGE ELLIOT: Go ahead. Yes, go ahead.

MR. FOX: Thank you, sir. And obviously I've never done this before, and I've never done pro se or not pro se or with an attorney. Excuse me if I'm a little nervous.

On September 8th, an order was finalizing

my settlement discussions with the Division of Enforcement. During the settlement discussions, I pushed for bifurcated settlement with non-monetary sanctions to be determined by Your Honor through the ALJ process.

I'm happy to accept the monetary sanction of $35,000. I asked for the bifurcation, and the Division told us in no uncertain terms, they would not process the agreed-upon settlement for the company until I finalized my own settlements.

Your Honor, since my company was collapsing under the weight of the former employee, who proved to be a false, malicious whistle blower, I needed to give my company and shareholders a fighting chance.

And almost as importantly, I should not have to accept any industry suspension for the following reasons: A, I've been an extremely conscientious broker or executive, as I've laid out in detail in my court papers.

B, I have a well-documented career of always putting my customers and shareholders first. C, it's absolutely non-public assessment to suspend me for any period of time.

D, any violations were 100 percent

inadvertent and not done so recklessly. And E, most importantly, I do not do anything with scienter.

So the proceedings can fully determine if there was a heap of a non-monetary assessment, again with the Court setting a briefings schedule.

The Division filed a lengthy motion for summary disposition where they tried to paint me as an unrepentant recidivist and asked for a collateral bar offered by you. I then filed a detailed reply.

The Division then filed its reply where they chose to label me falsely as someone who spent the majority of his career in a, quote, a penny stockbroker.

Although the motion was fully briefed for ruling, this Court, on January 15, 2016, in its effort to leave no stone unturned, entered a new order inviting the SEC to submit a supplemental briefing addressing solely the alleged sinter, a necessary elements of the Division's own claim against me, an element the Division did not revise, let alone prove in its motion.

The Division promptly filed a supplemental brief in support of its motion for summary disposition, which I replied to in detail, as it were, after being fully briefed with the Division's

motion for summary disposition and the supplemental brief in support, and of course my responses.

This Court thoughtfully held that there was no scienter, and the SEC's motion was denied, albeit without prejudice. I respectfully ask the Court to consider entering the final order that denies the motion with prejudice.

The third thing that is on the Division is to prove scienter. The Court ruled against them. You made it quite clear that the scienter is a necessary element, and I quote, you must consider when determining whether the sanctions sought by the Division on the public venture, end quote.

That is in your January 15 order, and you cited two case for the same requirements, the Gary M. Korman case, and the Steadman versus SEC case.

Respectfully, I do not believe it's in the public's best interest to have the matter fully briefed, and then after accepting and finding that an element of the claim had not been proven, have the same claim continue to hearing.

I just don't see how this matter can proceed on these facts, and the failure of the Division to prove scienter not once but twice, to allow a third bite at the apple seems unjustified on

this record.

Most importantly, Your Honor, there is absolutely and unequivocally, as Ms. McKinley just stated, no official documentation, testimony, or fact for that matter, that the Division would be able to provide that would change the fact that there was never any scienter.

If they haven't, Your Honor, which would be impossible because it doesn't exist, they would have certainly already made it available to you, to the Court. I'll end here.

I'm praying with the Court to enter a final order denying the SEC's motion for summary disposition with prejudice. Thank you, Your Honor.

JUDGE ELLIOT: All right, very good. Well, I hear what you're saying, Mr. Fox. Let me hear if the Division has anything to say in response to that. Ms. McKinley?

MS. McKINLEY: Your Honor, first of all, we would respectfully disagree with Mr. Fox's characterization of the Steadman factors and how they are waived to determine whether a bar is in the public interest.

It is a true weighing under the case law, and these aren't elements of a particular claim. So

the factors -- while one factor may weigh in favor of the respondent, other factors may weigh in favor of the Division's request for a sanction. So we do disagree with that characterization and feel that really another round of briefing may actually get the information that may assist in making a determination on this issue.

JUDGE ELLIOT: All right.

MR. FOX: Your Honor, if I may.

JUDGE ELLIOT: Go ahead, Mr. Fox.

MR. FOX: Okay, thank you. Your Honor, you made it clear in your initial findings that there was not any evidence, or they did not prove anything. You gave them the opportunity to provide more, if it was necessary, and they did their reply.

They included nothing new, because there was nothing additional; and now, Your Honor, even Ms. McKinley stated, except for what they're saying on August of '15, where I reapplied for the SEC, of which by the way was only done because we would no longer have these Series 27 financial operations principal, and I was dealing with the SEC because no one else was in the company. We were going out of business, and the FINRA knew that.

So it is a mischaracterization of what was

going on, and it never processed through that, nor did I go through this whole MC200 process. I was trying to do what was right for the company, which, Your Honor, I've done for 22 years.

And they've never once ever acknowledged the fact that I have been a conscientious person in this industry for 20 years, not just as a broker, but the CEO of brokerage firms that have been innovative that could have easily had all kinds of [redacted] against them, and I have a spotless [redacted] record.

I took the company public, Your Honor. I went through the SEC process. I never had an issue. I never had concerns, and I never for one second did anything with intent or scienter. I took responsibility.

Ms. McKinley and Mr. Forkner made it clear or believe that I did not, even though from day one, as testimony will show, I did make it clear that I took responsibility, if I was using the wrong exemption or the wrong definition within the exemption 504 and 506.

As I showed, Your Honor, there is no information within the study material or the test that breaks down the actual disclosure requirement.

So, Your Honor, clearly there is no additional information of any substance, if at all. You already made it clear, Your Honor, regarding the Steadman case, that scienter is a big factor, and there is no scienter, Your Honor.

JUDGE ELLIOT: Okay. Let me move to the second issue, which is the question of Mr. Fox's occupation.

The evidence that I've seen so far, and I'm looking at the OIP, which of course I can take generally as true, the submissions by Mr. Fox, which I've looked through carefully, just the recent comment by Ms. McKinley just a few moments ago, Mr. Fox's attempt to get another license in August of last year, I have to say that you take all that together, I find myself, frankly, very confused about what is going on with Mr. Fox and his professional status.

So let me just ask you, Mr. Fox, to --

MR. FOX: Okay.

JUDGE ELLIOT: -- tell me about yourself. How do you make a living right now? What is the status of your company? What is the status of whatever licenses you have now or used to have or trying to get? Just tell me about yourself.

MR. FOX: Thank you, Your Honor. Well, as I mentioned, in regards to my license, I withdrew voluntarily in December of 2014. I also made it clear at that time to the SEC that I have no intention of staying in the brokerage business, being in the brokerage business, running a brokerage firm, even though my parent company is an up bearing company at the time, I did own a brokerage firm, but I was not going to be involved in it.

I didn't want to be. I actually hired this guy Paul Simon to become CEO of the brokerage firm, but he failed to get licensing. So the only reason I went back in August because I told FINRA, and they need needed me to do it, we ordered a FINOP.

We had the money to hire an outside FINOP. The company was on verge of collapsing. Somebody had to be the one to communicate with FINRA, during for focus filing and things of that nature. It was a brutal time.

MS. McKINLEY: Mr. Fox, I'm sorry, the court reporter can't take down what you are saying.

JUDGE ELLIOT: Hold on, Mr. Fox.

MS. McKINLEY: I'm so sorry, but the court reporter cannot transcribe. He's moving a little

too quickly, Your Honor. Mr. Fox, could you speak a little more slowly?

MR. FOX: Okay. I'm sorry about that. In December of --

JUDGE ELLIOT: Hold on a second, Mr. Fox. Hold on a second. Let me turn to the court reporter.

Can you read back your transcript, the last part of your transcript that you were able to get down clearly?

(The reporter read back the record.)

JUDGE ELLIOT: Go ahead, Mr. Fox.

MR. FOX: Sorry about that, ma'am. I really apologize. The name is FINRA, F-I-N-R-A, and they regulate the brokerage industry, along with the SEC, of course.

So at the time, we were out of money. The company was on the verge of collapse. I was the only person to be able to speak to FINRA, as we were going through this process. It wasn't like I was trying to be a broker or even the CEO. That was not my objection. FINRA absolutely knew that.

Unfortunately, because I used the word or allowed the word "willful" to be included in my order, only because, of course, the definition in

the footnote, which isn't consistent with the actual definition of wilful, but I understand that, that it would take a process called MC200 to override that, which I did not go down that path; and openly, I let FINRA know I would be communicating with them as a representative, but not as a licensed individual. So that is that.

On December 18th, 2015, we were forced to file a broker-dealer withdrawal, a BDW, with the SEC and FINRA, because we were out of capital. We knew that we were no longer -- we no longer had enough or would no longer have enough proper capital, net capital, to maintain a brokerage firm.

So I talked to FINRA. I let them know. I even let the SEC know, and we had to withdraw. Since then, we tried to figure out if the company could survive as a technology company because as Your Honor hopefully as you read, we did build some incredible technology that did receive some significant media attention.

I did get some attraction with customers, generating millions of dollars in revenue; but, unfortunately, because of the efforts of other people, as well as the weight of the investigations and so on, that I have to say that was brought on by

information by an individual that none of which, as I mentioned in my document, is a part of this process now. It doesn't change the fact we had to deal with that.

My entire company has collapsed. We have four or five judgments from vendors against us. We are trying to figure out if we can figure out where to get the money to file a proper bankruptcy for the company. There is no operations. There is no office. There is no phone.

We are -- our shareholders, and myself, my family, and my mother, we lost our entire investment. I, Your Honor, I am broke. I have nothing. I've been left with nothing.

And I, right now, am living in a house that's owned by my in-laws, thank God. I am living by the grace of my in-laws. I have no job. I can't even apply for unemployment because my last paycheck from the company, even though we were around for these two years, was more than two years ago.

So the State of California said, "Sorry, we cannot give you unemployment." So I have to borrow money even to fill my tank, Your Honor. I have been destroyed by this. My company has been destroyed.

There was never a scienter. There was never an intent. I've been nothing but conscientious for 20 plus years. I have been labeled falsely on several different fronts. I've taken so much abuse from this whole process. Your Honor has been unbelievably fair in its assessment, and I truly believe that, look, I'm not looking to be in the brokerage business, Your Honor.

I will not allow, without a fight, to lose or to be considered someone who should have been barred or banned. And the fact that they were looking for one year, when I asked for the bifurcation, they were looking for one year that I could not accept, and then to go to five years and whatnot, to find various excuses which weren't true to try to be a penny stock guy, even to get that one year.

I mean, this has been an unbelievable circumstance, Your Honor. I've done -- look, I take responsibility for what occurred. I had the SEC review my documents, the same documents, and the same exact circumstances in 1999, and nothing told me otherwise that I was working off the wrong exemption.

I have always looked out for my

shareholders. It's well documented. It's on the SEC's website. I can point to three or four different circumstances, and I've taken as a big fine, which I have not been able to pay. I don't know how I can pay it.

The told the SEC from the Division, excuse, from day one that I don't have the money to pay it. I lost everything. The stock that I sold is gone. I put every last dollar to try to keep the company live, and other people get a waiver after they're fined.

I asked the Division, "Would you consider that?" They said, "No, we won't." So everyone else gets a waiver -- not everyone, but people do, but not Joe. I don't know why, but not Joe.

And so I have taken more for something that was not done with scienter, that was not done advertently, the one that I took responsibility for the, one that I've assured Your Honor and the Division that I would never violate again.

To pile on with a summary disposition for a collateral bar is too much, but Your Honor has ruled now twice, and I've been here, Your Honor. I'm not looking to get back into brokerage. I don't know how I'll do past this moment.

I don't know. I really do not know. I know I don't have money. I know I have to borrow money for anything that I have for needs. I think I'm negative in my one bank account right now, but I will figure it out. And, thank God, I have family that's helpful. Thank God.

Right now I do not know what my plan is, but I can promise you, Your Honor, that it's not going to be in the brokerage business. I've been so abused by a membership organization which, by the way, Your Honor, for 20 plus years I never had one issue, one customer complaint on my FINRA, or on the brokerage side.

Not an issue with arbitration, not a customer complaint, not a single issue after millions of trades with customers. I was so conscientious. I gave away so much money back to customers, whenever there was a technical issue, a trade issue. E*TRADE, Ameritrade, nobody does that, but I did that.

I stood by my customers. I stood by my shareholders, always. So, Your Honor, I don't know what my future is going to be in terms of what I'm going to do. I don't plan on being in the business.

I cannot accept a bar, and if you say to

ever plan to be.
I purposely did not even allow many penny stocks to be quoted or purchased on our website as the story in Barron's Magazine showed, and so we're a private company.
There is one line of a reference to a penny stock, and sometimes listed on the SEC website that I was able to find, one line. It said a penny stock is sometimes a private company, but the reality is this is not a penny stock. It was a private company.
I sold some of my founder shares under advice of counsel, under what's known as I believe 401-and-a-half, and the only mistake that was made there, Your Honor, is that my attorney unfortunately -- my in-house attorney provided me with the documentation. It did not have a section for being a credit investor.
And I believe the people that bought, because some of them were disingenuous, they already showed they were accredited. I believe they were accredited. I'm sorry that that was missing. I should have known that, but my attorney needs to put that in there.
I stool took responsibility for that, Your

Honor. I offered to pay back the two people for 42 or $47,000. I offered these individuals. They said, "No, it was not going to be part of the settlement." I was willing to repurchase when I had the money, and that was not part of it.
I took responsibility, but I was never a penny stock. My stock was not sold as a penny stock. It was a private company. Nobody, nobody considers us, a private company like ours, to be a penny stock. Your Honor --
JUDGE ELLIOT: Okay. Let me ask one more question. Suppose that someone were to offer you employment as an investment advisor, okay, I mean not individually, but you would be associated with a registered investment advisor, is that the kind of employment that you would be willing to take?
MR. FOX: Absolutely not, Your Honor. I've never acted as an investment advisor. I don't have the proper licensing to be an investment advisor.
I have no plan, nor will I ever, refile anything with FINRA ever, because they also put us through a two-year process just to walk away when it was all done and say, "We'll just defer to the SEC." Even after, even after a global disposition, all of a sudden, "Okay, there obviously is no real need for

this investigation."
I mean, we were coming -- people were coming at as from all sides. I have no desire to be in an industry that has no respect for somebody who has been so conscientious, and nobody can say otherwise of how I treated my firm, my customers, my shareholders and my employees.
So, Your Honor, I have no desire, nor will I be, an investment advisor. I'm going to work for an investment advisory firm. I'm not going to work for a municipal bonds company, a credit rating company, and absolutely not a penny stock company, but that does not mean that I can accept a documented suspension for something I don't deserve, Your Honor.
JUDGE ELLIOT: All right. Thank you, Mr. Fox. Ms. McKinley, do you have anything to say about what Mr. Fox has just explained?
MS. McKINLEY: Yes, Your Honor. I guess the one point that we would like to bring to your attention is that Mr. Fox has raised funds and owned four companies over the last approximately 20 years those four companies, two of them have been broker dealers, and directly connected to the brokerage business.

JUDGE ELLIOT: Okay.
MR. FOX: Excuse me, if I may, Your Honor.
JUDGE ELLIOT: Hold on, Mr. Fox. Hold on. Hold on, Mr. Fox. Let me ask a few more things of Ms. McKinley.
So as I understand, I don't mean to put words into Mr. Fox's mouth, but my understanding based on what he just explained is he doesn't know what he's going to do in the future, but he doesn't wish to work in the securities industry anymore.
Do you dispute that, Ms. McKinley?
MS. McKINLEY: This is, frankly, the first time we've heard in detail what his future plans are. We have no way or reason to dispute that.
JUDGE ELLIOT: Okay.
MS. McKINLEY: But I will say, Your Honor, that in December of 2014, Mr. Fox told us at that time, through his attorney, that he never had any intention of being licensed again, that he had withdrawn all of his licenses and wasn't going to do anything with respect to the securities industry again.
But then in August of 2015, this application for the FINOP was filed, and we were not notified of that fact at the time. So I guess we

Jeremy Mann
To: Paul M. Simons
RE: RE: RE:

September 8, 2013 at 6:51 PM

He called me, I didn't answer. He called Adam, he didn't answer. Then he called Brian, told hlm he was firing you. Brian called Adam, then Adam told me.

from: Paul M. Simons [mailto:psi65@me.com)
Sent: Sunday, September 08, 2013 5:49 PM
To; Jeremy Mann
Subject: Re: RE: RE:

Cool- what did he say and to whom did he say it - any reasons. etc - and does he know i am in chicag - can only email rght niw

Paul M. Simons

psi65@me.com

On Sep 8, 2013, at 6:47 PM, Jeremy Mann [redacted] wrote:

Ok. Joe is firing you Tuesday.

from: Paul M.Simons[mailto:psi65@me.com
Sent: Sunday, September 08, 2013 5:46 PM
To: Jeremy Mann
Subject: Re: RE;

Do not mention t am coming to Chicago pls - on plane now

Paul M. Simons

psi65@me.com
Work (312) 263-5400
[redacted]

On Sep 8, 2013, at 6:44 PM, Jeremy Mann <jeremy.m.mann@gmail.com> wrote;

Paul,

Call me or Adam ASAP.

EXHIBIT
Simons
6

From: **Patt, Jeffrey R.** <jeffrey.patt@kattenlaw.com>
Date: Fri, Aug 23, 2013 at 2:30 PM
Subject: 4(1-1/2)
To: "Stu Cohn (scohn@dittoholdings.com)" <scohn@dittoholdings.com>

Stu, you might have thought I was being facetious, but in fact, this is from a book I published about 2 years ago on Stockholders Agreements:

Generally, if a stockholder might be deemed to be an "affiliate" of a privately held issuer,[1] such stockholder will not be able to satisfy the requirements for public information and market-based transactions under SEC Rule 144. In other words, given their proximity to non-public information of the issuer and the inability to rely on the passive manner of sale requirements in Rule 144(f), an affiliate of a privately held issuer will, in effect, always be presumed to be an "underwriter" for purposes of Rule 144. However, if a stockholder is not an affiliate and the issuer is not a reporting company under the Exchange Act, and such stockholder has held its stock for at least one year,[2] such stockholder should be able to satisfy the requirements of the first paragraph of this legend in connection with a transfer of its stock in the Company.

This, of course, leaves the question as to how a stockholder who wishes to sell shares of the Company's stock in a private transfer permitted under the stockholders' agreement, but who is an affiliate or has held such shares for less than one year, would satisfy itself, and the issuer, that it is not engaged in a distribution of securities and not an underwriter? The answer might be the somewhat imperfect, but accepted, notion of a "4(1½)" transaction. To begin with, there is no Section 4(1½) of the Securities Act. Rather, this phrase refers to a "hybrid exemption not specifically provided for in the 1933 Act but clearly within its intended purpose"[3] that is available for secondary sales by stockholders under Section 4(1) that are effected in a manner similar to private placements by issuers under Section 4(2).

Beyond this statement of principle, the SEC staff has offered little guidance.[4] While practices vary, a legal opinion from the transferee's counsel as to the availability of the "Section 4(1½)" exemption should suffice in most cases. However, an issuer should consider requiring representations as to some or all of the following facts from the seller and purchaser, as applicable, to the extent they might be relevant to a proposed "Section 4(1½)" transaction: (i) a seller representation that it acquired the shares for investment purposes and not for distribution, (ii) particularly if the sale

occurs within twelve months of the issuance, seller and purchaser representations as to the circumstances giving rise to the proposed transaction (and, possibly, that any such discussions did not commence until after the issuance of the securities), (iii) representations from both parties that the proposed secondary sale was not the result of any general solicitation by the seller, and (iv) standard private placement representations from the purchaser, **including that it is an accredited investor,** it is acquiring the shares for investment purposes and not for distribution, it understands the securities are restricted securities, subject to additional contractual restrictions in the stockholders' agreement, and that it has the means to hold the investment for an indefinite period of time.

A selling stockholder also might be able to rely on the exemption from registration afforded by SEC Rule 144A to the extent the proposed purchaser meets the definition of a "qualified institutional buyer," or QIB, under Rule 144A[5]. Essentially, a QIB means an institutional investor with at least $100 million in investment securities of entities not affiliated with such investor—*e.g.*, insurance companies, pension plans, investment companies, and so on—that are viewed as having enough investment experience to be able to fend for themselves in the private resale market for restricted securities[6]. However, where the issuer is not a reporting company, Rule 144A requires that both the selling stockholder and its purchaser must have the right to obtain from the issuer, upon request, reasonably current information regarding the nature of the issuer's business and the products and services it offers, the issuer's most recent balance sheet, income statement and statement of retained earnings and similar financial information for each of the two preceding fiscal years, in each case, audited to the extent reasonably available[7]. The granting of this access right requires the involvement of the issuer. Thus, in some cases, the parties to a stockholders' agreement who contemplate that stockholders might rely on Rule 144A for permitted transfers will include an information right such as the one set forth in Section 8.3 of the sample stockholders' agreement, discussed later in this section.

In many private placements, an equity investor will intend to, or in some cases, might be required to, sell down a portion of its investment shortly after closing. For example, if a private equity sponsor is investing through a fund and the proposed investment is at or above its fund's limit on investment size, the sponsor might seek a waiver from its investment committee, or possibly its limited partners, to waive the limitation so long as the sponsor undertakes to sell down below the investment limitation as soon as practicable following closing. In effect, the fund would be acting as a bridge investor with respect to this portion of the investment, and from a federal securities law perspective, could be viewed as having some of the attributes of an ""underwriter" of these securities. This does not mean, necessarily, that Rule 144 and the principles stated above regarding "Section 4(1½)" would not be available to the fund, or that a sponsor and its counsel could not get comfortable with this issue otherwise. It is not uncommon for sponsors, with their counsel, to assess the facts and circumstances surrounding an immediate sell down of a portion of an investment and conclude that they are not engaged in an underwriting.

JEFFREY R. PATT
Partner
Katten Muchin Rosenman LLP
[redacted] / Chicago, IL [redacted]
p / (312) 902-5604 f / (312) 577-8864
jeffrey.patt@kattenlaw.com / www.kattenlaw.com

[1] Directors, officers, and 10 percent of stockholders generally are presumed to have the requisite degree of control or influence over the issuer to be regarded as affiliates for this purpose as defined in Rule 144(a)(1).

[2] The minimum holding period under Rule 144 is six months if the issuer is, and has been for a period of at least ninety days, a reporting company under the Exchange Act. 17 C.F.R. § 230.144(a)(1)(i) (West 2009).

[3] Employee Benefit Plans, Securities Act Release No. 6188 (Feb. 1, 1980).

[4] Pursuant to a policy described in Securities Act Release No. 6253, the SEC staff does not express any view on the availability of an exemption from registration under Section 4(1) or Section 4(2) "or by implication the Section 4(1½) exemption." *See* Procedures Utilized By the Division of Corporation Finance For Rendering Informal Advice, Securities Act Release No. 6188 (Oct. 28, 1980).

[5] 17 C.F.R. § 230.144(a)(1) (West 2009).

[6] *See* Resale of Restricted Securities, Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, Securities Act Release No. 6806 (Nov. 1, 1988).

[7] 17 C.F.R. § 230.144(d)(4)(i) (West 2009).

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOSEPH J. FOX,	)
	)
Plaintiff,	)
	)
v.	)
	)
	)
PAUL M. SIMONS, JEREMY M. MANN, ADAM J. STILLMAN, PAUL HUEY-BURNS, and SHULMAN, ROGERS, GANDAL, PORDY & ECKER P.A.,	)
	)
Defendants.	)

VERIFIED COMPLAINT AT LAW

NOW COMES Plaintiff JOSEPH J. FOX, by and through his counsel, John C. Ricci and the Ricci Law Firm, and for his Verified Complaint at Law against Defendants PAUL M. SIMONS, JEREMY M. MANN, ADAM J. STILLMAN, PAUL HUEY-BURNS, and SHULMAN, ROGERS, GANDAL, PORDY & ECKER P.A., alleges as follows:

2016 APR 22 PM 12:19

PRELIMINARY STATEMENT

1. At-will Defendant Paul M. Simons ("Defendant Simons") knew that he was in the line of fire to be terminated from his job. What he didn't know was when he would be terminated. On Friday, September 6, 2013, after Defendant Simons insulted the Chairman of the Company (and the Chairman's children) for the last time, the Chairman (Plaintiff Joseph J. Fox ("Joseph")) discussed the termination of Defendant Simons with his General Counsel, Chief Operating Officer (who is also a fellow Board Member), and others, and confirmed the termination for Tuesday, September 10, 2013. Unbeknownst to Joseph, one of his young executives, interim CFO Jeremy M. Mann ("Defendant Mann"), had become extremely close

with Defendant Simons. Defendant Mann had been secretly informing Defendant Simons for weeks about the confidential termination discussions being had by Joseph and other members of his senior management. True to form, Defendant Mann sent an unambiguous email: "***Ok. Joe is firing you Tuesday.***" Defendant Simons' response: "***Cool- [....]***" Defendant Simons knew that it was coming; he just didn't know when it was coming. Now he knew.

2. On Saturday, Defendant Simons (and his cohort co-defendants) hired Defendants Paul Huey-Burns ("Defendant Huey-Burns") and Shulman, Rogers, Gandal, Pordy & Ecker P.A. ("Defendant Shulman Rogers") as legal counsel. On Sunday, the Defendants drafted a knowingly false Demand Letter to the Board of Directors that accused Joseph of criminal and other serious misconduct, including fraud, theft, and misappropriation of funds. On Monday, the Demand Letter was served upon the Board of Directors demanding a number of concessions including the hiring of Defendants Huey-Burns and Shulman Rogers as *independent* counsel to investigate Joseph based on the false allegations (*as well as the demand that Defendant Simons not be terminated*). Later on Monday, Defendants Huey-Burns and Shulman Rogers began contacting pals at the Securities Exchange Commission ("SEC") to launch an investigation of Joseph based on the false Demand Letter and a myriad of other malicious lies. On Tuesday, as planned, Defendant Simons was fired ... at which time Defendant Simons claimed to be a [redacted] and cried "retaliatory discharge."

3. Over the next 24+ months, the Defendants, in part or in whole and in furtherance of their unconscionable and malicious conspiratorial scheme, lied to the Courts. including the Honorable Judge Patrick J. Sherlock of the Circuit Court of Cook County. and the First District Appellate Court of Illinois; fabricated evidence; falsified documents: filed knowingly false

claims; hid exculpatory evidence; and otherwise built a fictitious case with the SEC and FINRA against Joseph with the intent to destroy Joseph with both civil and criminal actions.

4. In the end, after an exhaustive 2+ year investigation involving a review of hundreds of thousands of pages of documents, subpoenaed bank records (going back to 2009), emails, stock transactions, as well as depositions and other interviews, etc., the SEC investigation concluded without ever finding that Joseph had committed any of the Defendants' alleged claims of fraud (of any type), misappropriation, embezzlement, theft, etc. Nor did the SEC ever determine that Joseph's conduct as CEO of the Ditto Companies was done so in a reckless manner, as alleged. Whereas, FINRA walked away and deferred solely to the SEC. And even independent counsel (Goldberg Kohn), hired by the underlying Company, found no culpability for Joseph for the crimes alleged by the Defendants.

5. As a further exercise of good faith, on March 23, 2015, the highly reputable CPA firm Frost, Ruttenberg & Rothblatt ("FRR") was hired to conduct a thorough, independent audit of Ditto Holdings' financial statements on a consolidated basis for the years 2012 through 2014. On August 3, 2015, FRR delivered the audit with a clean opinion.

6. Vindication came too late for Joseph and the Ditto Companies. By reason of the Defendants' acts, which caused the SEC and FINRA investigations, the Ditto Companies, once valued between $40-$60 million[1], were forced to cease operations on December 18, 2015, and Joseph was utterly ruined - financially, emotionally, and physically - from the trauma of the malicious events set forth herein. Joy does not always follow victory. Certainly not in this case.

[1] FBR & Co., an investment banking firm that was engaged by Ditto Holdings to raise capital, provided a written preliminary valuation at the onset of its engagement. See FBR Preliminary Valuation, attached hereto at Exhibit 1.

Defendant Simons Perjured Himself in the United States District Court for the Northern District of Illinois (Leinenweber, J.)

7. Defendant Simons is, like his cohort co-defendants, a liar of unusual depths. In his deposition, taken on December 16, 2015, Defendant Simons made the following statement sworn under oath and subject to penalty of perjury[2] in a United States District Court for the Northern District of Illinois action:

ATTORNEY: Did the Goldberg Kohn report conclude that Joe Fox had misappropriated funds from Ditto?

DEFENDANT SIMONS: The Goldberg Kohn report did not conclude that, **nor did I ever allege that.**

See December 16, 2015 Deposition Testimony of Defendant Simons taken in Simons v. Ditto Trade Inc., *et al.*, (N.D. Ill. 2014)(*14 C 309*), p. 275 (lines 6-9), attached hereto as Exhibit 2. **(Emphasis added).**

* * *

ATTORNEY: And you got your answer from the SEC where they never made any findings that Joe Fox had engaged in fraud or misappropriation of funds, didn't you?

* * *

DEFENDANT SIMONS: Every question you asked me --[interrupted by attorney] -- relates to fraud and misappropriation of funds. **I never made allegations of fraud and misappropriation of funds, and I did not make reports to the SEC about fraud and misappropriation of funds.**

Id. at pp. 281 (ln. 10) - 282 (ln. 11)**(Emphasis added).**

8. Defendant Simons did, in fact, make the knowingly false claims of "fraud *and* misappropriation of funds." Not just once, but several times:

---

[2] See Exhibit 2, *infra*, p. 5 (lines 6-8) ("... PAUL MICHAEL SIMONS, called as a witness herein, having been first duly sworn, was examined and testified as follows...").

i. In his sworn Form [redacted] ("Tip, Complaint, or Referral") filed on December 9, 2013 with the Enforcement Branch of the SEC, for example, under the section entitled "Nature of Complaint," Defendant Simons, in fact, alleged falsely that Joseph engaged in the following 12 different illicit activities, including, specifically, "fraud *and* misappropriation of funds":

- **Theft/Misappropriation.**
- Misrepresentation/Omission.
- **Offering fraud.**
- Corporate disclosure.
- False and misleading statements.
- **Financial fraud.**
- Selective Disclosure.
- Illegal security sales.
- Improper payments of finders fees.
- **Fraudulent inducement.**
- False Form D filings.
- Violation of Dodd Frank and Retaliation.

See Defendant Simons' Sworn Form [redacted], attached hereto as Exhibit 3, p. 2. (**Emphasis added**).

ii. In his sworn Form [redacted] to the SEC, under the section entitled "Describe how and from whom the complainant obtained the information that supports this claim," Defendant Simons, in fact, alleged falsely that Joseph engaged in "misappropriation of funds":

> The information came to light over 2 to 3 week period in August during which myself, the CFO [Defendant Mann], and the President [Defendant Stillman] of the company discovered and examined evidence of potential securities law violations and misappropriation of company funds that appeared to benefit Yosef Fox and members of his family.

Id. at p. 4. (Emphasis added).

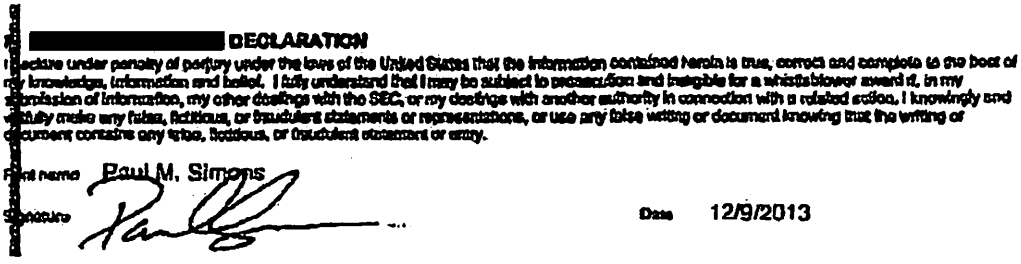
iii. In his sworn Form [redacted] to the SEC, under the section entitled "Has the complainant reported this violation to his or her supervisor, compliance officer, [redacted] hotline, ombudsman, or any other available mechanism at the entity for reporting violations[,]" Defendant Simons once again alleged falsely that Joseph engaged in "fraud *and* misappropriation of funds":

> As CEO of Ditto Trade, and an Officer & Director of parent Ditto Holdings, I, together with the President [Defendant Stillman] of

> parent Ditto Holdings and the CFO [Defendant Mann] of Ditto Holdings, both co-founders, submitted a letter to the Ditto Holdings Board of Directors detailing concerns relating to and citing evidence indicating the appearance of extensive misappropriation of company funds, potentially illegal private and personal share transactions, undisclosed and improper payments to a facilitator of unregistered share transactions, false and misleading disclosures in various regulatory filings, and material lapses of financial governance generally, all of which appear to indicate past, present and ongoing defrauding f [sic] shareholders by Joseph Fox and others associated with him. Joseph Fox and I were 2 of 3 members of the 3-person Board.

Id. at p. 3. (Emphasis added).

9. Defendant Simons' Sworn Form [redacted] was signed "under penalty of perjury":



[redacted] DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

First name Paul M. Simons

Signature

Date 12/9/2013

Id. at p. 6.

Defendants Mann and Stillman, CFO & President, Respectively

10. Defendant Simons twice refers to the CFO (Defendant Mann) and President (Defendant Stillman) of the Ditto Companies (Ditto Trade and Ditto Holdings) as his confidantes in his false Form [redacted] report to the SEC. Id., p. 3. Defendant Simons also refers to Defendants Mann and Stillman as his counterparts in the Demand Letter. See Exhibit 34, p. 3, *infra.* Here is a snapshot of the referenced CFO (Defendant Mann) and President (Defendant Stillman):

i. In response to an email from a prospective strategic partner that chose not to pursue the proposed deal. President-Defendant Stillman wrote to CFO-Defendant Mann:

[redacted]

See December 9, 2011 email Correspondence between Defendants Mann and Stillman, attached hereto as Exhibit 4. **(Emphasis added).**

ii. In response to an email from President-Defendant Stillman welcoming a new employee or contractor to Ditto Companies ("Welcome aboard Erik. If I can be of any assistance in any way, do not hesitate to ask."), CFO-Defendant Mann wrote to President-Defendant Stillman:

Does that mean ur gonna [redacted] him?

See April 12, 2012 Email Correspondence between Defendants Mann and Stillman, attached hereto as Exhibit 5.

iii. President-Defendant Stillman wrote to CFO-Defendant Mann and others concerning new protocol or procedures at Ditto Trade and concluded his email with: **"If you have any questions, please feel free to contact me."** CFO-Defendant Mann responded:

I have a question... Why do you [redacted] dudes?

See November 12, 2012 Email Correspondence between Defendants Mann and Stillman, attached hereto as Exhibit 6. **(Emphasis added).**

iv. President-Defendant Stillman wrote to CFO-Defendant Mann:

My bed is full of germs so I'm sleeping in yours tonight.
Regards, Boddy
Sent from [redacted]

CFO-Defendant Mann responded:

Leave some [redacted] in it for me

See December 9, 2012 Email Correspondence between Defendants Mann and Stillman, attached hereto as Exhibit 7.

11. CEO-Defendant Simons also joined in on the improper correspondence, e.g.:

On Jun 17, 2013, after Defendant Simons had to explain what Company General Counsel Stuart Cohn meant in a January 8, 2013 email by the word "contemporary" in regards to some of the young employees in the Company being *contemporaries*, CFO-Defendant Mann wrote:

Lovely. Just for the record, I don't ever want to be lumped in with any of the names he said. Except for Adam or Kevin.

Actually, [redacted] **him** [redacted]

On Jun 17, 2013, President-Defendant Stillman responded:

[redacted]

On Jun 17, 2013, CEO-Defendant Simons wrote:

[redacted]

Regards,
Paul M. Simons
Chief Executive Officer Ditto Trade, Inc.
Executive Vice President Ditto Holdings, Inc.

See June 17, 2013 Email Correspondence between Defendants Simons, Stillman, and Mann, attached hereto as Exhibit 8. **(Emphasis added).**[4]

Defendant Simons Lied to the Circuit Court of Cook County (Sherlock, J.)

12. In his Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9) [anti-SLAPP Motion] filed on November 3, 2013 in that matter captioned Ditto Holdings v. Paul Simons and Jeremy Mann, 2013 L 010424, before the Honorable Patrick J. Sherlock, Defendant Simons made the following false statement subject to Illinois Supreme Court Rule 137:

> **[Defendant] Simons ... *had no prior knowledge* and did not learn of his termination *[until] September 10, 2013*, when he received his termination letter.**

[3] [redacted]

[4] Joseph had no idea that such improper correspondence was occurring during business hours on business computer servers by and between corporate officers of the business(es). This and other misconduct was not discovered until after Defendants Simons, Mann, and Stillman were terminated.

See Motion to Dismiss Pursuant to 735 ILCS 5/2-619(a)(9), pp. 25-26, attached hereto as Exhibit 9. (***Emphasis added***).

13. Defendant Simons, in fact, had "prior knowledge" of his impending termination no later than the evening of September 8, 2013 as is shown in the following texts between Defendants Simons and Mann:

DEFENDANT MANN: Paul, Call me or [Defendant Stillman] ASAP.

DEFENDANT SIMONS: Do not mention t [sic] am coming to Chicago pls - on plane now

DEFENDANT MANN: **Ok. Joe is firing you Tuesday.**

DEFENDANT SIMONS: Cool- [....]

See September 8, 2013 Email Correspondence, attached hereto as Exhibit 10. (**Emphasis Added**).

Defendant Simons Lied to the Illinois Appellate Court (1st Dist.)

14. In the Brief and Argument of Defendant-Appellant Paul Simons filed on May 19, 2014 in Defendant Simons' appeal of Judge Sherlock's Denial of his Motion to Dismiss in that matter captioned Ditto Holdings v. Paul Simons and Jeremy Mann, 2013 L 010424, Defendant Simons made the following statement to the Illinois Appellate Court (1st Dist):

> **The suggestion that Simons knew he was going to be fired is unsupported by any facts.**
>
> * * *

See Brief and Argument of Defendant-Appellant Paul Simons, p. 30, attached hereto as Exhibit 11.

15. Again, on September 8, 2013, Defendants Simons and Mann exchanged the following texts:

DEFENDANT MANN: Paul. Call me or [Defendant Stillman] ASAP.

DEFENDANT SIMONS: Do not mention t [sic] am coming to Chicago pls - on plane now

DEFENDANT MANN: Ok. Joe is firing you Tuesday.

DEFENDANT SIMONS: Cool- [....]

See Exhibit 10. (**Emphasis Added**). See also August 27, 2013 email, attached hereto as Exhibit 12 (Defendant Simons was readying himself for his expected termination: "Fyi - i m keeping the laptop. It is my New Ditto laptop").[5]

16. For the record, the Illinois Appellate Court for the First District affirmed Judge Sherlock's denial of Defendant Simons' "anti-SLAPP" Motion to Dismiss. See Illinois Appellate Court Order dated December 9, 2015, attached hereto as Exhibit 13.

17. Indeed, Defendant Simons lied to the SEC, the United States District Court, the Illinois Circuit Court, the Illinois Appellate Court, and, as is discussed at length below, to FINRA, the Board of Directors, and the shareholders of Joseph's former companies Ditto Trade and Ditto Holdings (together, "the Ditto Companies") with the malicious intent to harm Joseph beyond recognition and to take control of the Ditto Companies.

THE PARTIES

18. Plaintiff Joseph Fox is 49 years old, a citizen of the United States, and a resident of Long Beach, California.

19. On information and belief, Defendant Paul M. Simons is 50 years old, a citizen of the United States, and a resident of the state of New York.

20. On information and belief, Defendant Jeremy M. Mann is now 29 years old, a citizen of the United States, and a resident of Cook County, state of Illinois.

---

[5] Even after his termination a few weeks later, Defendant Simons never returned the Ditto Trade-owned laptop computer. In addition, Defendant Simons refused to return the Company's confidential list of shareholders.

21. On information and belief, Defendant Adam J. Stillman ("Defendant Stillman") is now 29 years old, a citizen of the United States, and a resident of Cook County, state of Illinois.

22. On information and belief, Defendant Paul Huey-Burns is a citizen of the United States, a resident of the state of Maryland, and a licensed attorney in the District of Columbia.

23. On information and belief, Defendant Shulman, Rogers, Gandal, Pordy & Ecker P.A. is a Maryland corporation operating as a law firm.

THE PARTY RELATIONSHIPS

24. Joseph is the co-founder of SoVesTech, Inc. (f/k/a Ditto Holdings, Inc.), as well as its subsidiary and broker-dealer, Ditto Trade. Joseph was the CEO of Ditto Holdings from inception through December 2015 when, in the aftermath of the Defendants' malicious misconduct, it was forced to close.

25. Defendant Simons is a former CEO-*Designee* of Ditto Trade, and a former Director and Executive Vice President of Ditto Holdings.

26. Defendant Mann is a former interim CFO of Ditto Holdings.

27. Defendant Stillman is a former President of Ditto Holdings.

28. Defendant Huey-Burns is an attorney hired by Defendants Simons, Mann, and Stillman.

29. Defendant Shulman Rogers is a law firm hired by Defendants Simons, Mann, and Stillman.

VENUE AND JURISDICTION

30. Venue is proper in the Circuit Court of Cook County, Illinois - the judicial circuit in which a substantial part of the events giving rise to this lawsuit occurred.

31. Further, the amounts in controversy satisfy the jurisdictional limits of this Law

Division forum.

JURY DEMAND

32. Joseph requests a jury trial on all issues and claims set forth in this Verified Complaint at Law.

THE FACTS

Joseph Was A Well-Respected Financial Services Pioneer

33. Joseph was first licensed as a securities broker (Series 7 license) and securities principal (Series 24 license) in 1993. He obtained his Financial Operations Principals license, or "FINOP" (Series 27 license) in 1995.[6]

Web Street

34. In June 1996, Joseph co-founded Web Street, Inc. ("Web Street") and its online stock brokerage subsidiary Web Street Securities, Inc.

35. Joseph was the CEO of both Web Street companies, and the brokerage firm's FINOP.

36. Web Street pioneered many innovations that are commonplace today such as streaming real-time quotes on a browser, real-time balances and positions, commission-free trading, one-click trading, and more.

37. On July 28, 1997, Web Street launched its innovative services to the public.

38. The financial press treated Joseph as a Wall Street powerhouse: Web Street was ranked as the #1 online stock brokerage firm by SmartMoney Magazine (2/98); Joseph and his brother (and co-founder) Avi Fox ("Avi") were featured in Fortune Magazine (2/98); Web Street

[6] The FINOP is responsible for the preparation and submission of a brokerage firm's monthly/quarterly/annual financial reports that must be filed with the SEC and FINRA.

was ranked 4 stars by Barron's Magazine (its highest ranking at the time)(3/98); Joseph and Avi were featured in Forbes Magazine (5/98); Joseph was invited to testify as an expert witness at a United States Congressional hearing covering the rapid consumer adoption of online stock trading (6/98); Joseph was a guest several times on both Lou Dobb's Moneyline (CNN) and Your Word with Neil Cavuto (Fox News Channel)('98-'00); Joseph and Avi were featured as two of Crain's Chicago Business Magazine's "40 under 40" (11/00); Web Street was recognized in Crain's Chicago Business Magazine's as *Chicago's Fastest Growing Public Company* for the year 2000; Web Street received SmartMoney Magazine's top rating for its compliance record (2001); etc.

39. By October 1999, Joseph raised over $23 million (from approximately 150 individual investors) for Web Street.

40. In November 1999, after meeting stringent SEC rules, and upon completion of an extensive due diligence process, Joseph took Web Street public in an "Initial Public Offering" ("IPO") under the NASDAQ Symbol: WEBS.

41. On the day of Web Street's IPO, its shares traded as high as $19.25, creating hundreds of millions of dollars in stockholder value for the roughly 150 outside investors (whose average purchase price per share was about $2.25). This high WEBS price placed a value of Joseph's ownership in Web Street at roughly $100,000,000.00.

42. On May 21, 2001, Joseph successfully merged Web Street with E-Trade Financial Group ("E-Trade") in a deal that created hundreds of millions of dollars for E-Trade during a severe economic and stock market downturn.

The Next Generation: Ditto Holdings

43. Joseph co-founded Ditto Holdings in January 2009.

44. Ditto Trade was incorporated as a wholly owned subsidiary of Ditto Holdings in September 2009.

45. Ditto Trade was, among other things, a stock market platform for customers to enter stock or option transactions - buy or sell orders - through an on-line trading forum.

46. Ditto Trade offered real-time quotes and trading tools to purchase or sell stocks & options virtually instantly through stock exchanges such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board Options Exchange. While on-line stock trading platforms had been in existence since the mid-nineties with similar tools, resources, and trading capacities, Ditto Trade was on the cutting edge of new technology and features.

47. The "Ditto" technology, invented by Joseph, was centered on the unique ability to allow customers (known as "Followers") to attach themselves to the actual trade of a professional trader (known as a "Lead Trader"). In other words, a Ditto Trade customer could "ditto" that which the professional trader traded in real time. This gave a Follower the ability to get the same price at the same time as their Lead Trader thereby leveraging the expertise of that individual Lead Trader. At the same time, a Follower could instantly detach from their Lead Trader and take control of the trade at any time with a click of a button.

48. The Ditto concept was wholly unique to the industry.

49. On July 9, 2010, Ditto Trade, with its innovative business model, was approved as a broker-dealer by FINRA.

50. In October 2010, Ditto Trade began live beta-testing its technology.

51. Ditto Holdings spent over $3 million on the patent-pending technology and millions more on regulatory compliance and operational capabilities.

52. Between 2010 and 2013, Ditto Trade and Joseph were featured in various

publications such as Forbes Magazine, Fortune Magazine, Barron's Magazine, and USA Today.

53. In June 2012, Joseph was an in-studio guest on CNBC where they called Ditto Trade the "Facebook for traders." In addition, CNBC would call upon Joseph for his industry insights.[7]

54. In December 2012, Ditto's staff of approximately 17 was in place; $4.8 million in investor funds were raised; a marketing plan was being developed; the technology was finally *ready for prime-time*; and a target launch date was approximately 3 months away.

Jump Cut

55. By September 2013, Ditto Holdings raised over $11 million (with the last ~$3 million at a $45 million implied valuation) and had roughly 30 total employees.

56. By September 2013, Ditto Trade was competing well in the fast growing "robo-advising" segment of the online stock brokerage industry.

57. By September 2013, Ditto Trade had entered into several important strategic partnerships for the benefit of Ditto Trade.

58. By September 2013, Ditto Trade had produced and tested three high quality[8] television commercials that were to be aired in the fall/winter of 2013.[9]

59. By September 2013, Ditto Trade was preparing to expand into other asset classes (Commodities, Currencies, Bonds, etc.), as well as into foreign markets.

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[7] This included a live interview on an August 2, 2012 segment entitled "Knight Trading's 'Knight-Mare.'"

[8] The three television spots were produced for approximately $133,000 each, or $400,000 for the three.

[9] Ditto Trade was forced to permanently shelve all marketing campaigns once the SEC/FINRA investigations began.

60. By September 2013, Joseph had built Ditto Trade into a company with nearly $70 Million in total client assets and monthly revenue reaching as high as $150.000.[10]

Defendant Simons Surfaces

61. In December 2011, Defendant Simons was researching Ditto Trade from afar. See Registration Confirmation Email, attached hereto as Exhibit 14.

62. In November 2012, Defendant Simons solicited Ditto Trade via the internet with a proposal to partner with Ditto Trade. At that point, Defendant Simons was interested in his own business concept and he saw Ditto Trade as an excellent fit to complement his intended business model (involving wealth management).

63. Following his correspondence with Ditto Trade, Defendant Simons was introduced to Joseph. They had several telephone conversations where the idea of Defendant Simons coming to work for Ditto Trade was discussed.

64. On December 13, 2012, Defendant Simons flew to Los Angeles, California to meet with Joseph for a job interview.

65. Defendant Simons was, according to Defendant Simons, a "Wall Street" executive with extensive experience in high level banking with a particular emphasis on wealth management - in line, he claimed, with Ditto Trade's on-line stock platform services, clients, and financial hurdles, including fund raising and, most importantly, its plans to expand into asset management.

66. In particular, Defendant Simons assured Joseph about his wealth management and

[10] Ditto Trade would ultimately generate nearly $3 Million in cumulative earned commission revenue before it was forced to close its doors in December 2015 as a result of Defendants' misconduct as set forth throughout this Verified Complaint at Law.

fund raising contacts and capabilities with expectations to raise $2-$4 Million in a short period of time. See Defendant Simons' notes (where he indicated $4 million in possible investments), attached hereto as Exhibit 15.

67. On December 17, 2012, Joseph offered, and Defendant Simons accepted, the position of Executive Vice President of Ditto Holdings[11] and "CEO" of Ditto Trade pending, *inter alia*, some final negotiations on compensation (which were completed by December 19, 2012).[12]

68. Defendant Simons' at-will employment began on January 2, 2013.

69. Defendant Simons' CEO title with Ditto Trade was subject to his securing the requisite Series 23 or 24 license because, under FINRA Rule 1021, Registration Requirements (of Principals), any CEO of a broker-dealer company (such as Ditto Trade) is required to be properly licensed under the securities laws within 90 calendar days of hiring ... and Defendant Simons, despite all of his purported Wall Street experience, was not properly licensed under the law. See *http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=3579*.

70. Put another way, while Defendant Simons carried the CEO title, he was, for all

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[11] Defendant Simons became a Director of Ditto Holdings in July 2013 after suggesting to Joseph that he should be the one to temporarily fill a vacant Board seat until a more suitable member was found.

[12] During the hiring process, Defendant Simons negotiated for and received a base salary of $120.000.00 per annum with, *inter alia*, certain options on 1,500.000 shares of Ditto Holdings common stock at an exercise price of $.70 per share subject to a vesting schedule at 375,000 per year for four (4) years. Id. Defendant Simons also negotiated for a warrant to purchase an additional 150,000 shares at $0.05 per share if Defendant Simons raised a minimum of $1 million, and the ability to purchase up to another 150.000 shares at $0.05 per share if Defendant Simons raised another $1 million. See Consulting Agreement, attached hereto as Exhibit 16.

intents and purposes, a mere CEO-*Designee* unless and until he secured the requisite licenses. See Letter Agreement for Employment ("Letter Agreement"), attached hereto as Exhibit 17. ("Other terms. You will maintain your current brokerage industry licenses and **will obtain any additional licenses necessary to your duties as CEO** as mutually agreed..."). See also Mutually Agreed Email, attached hereto as Exhibit 17.

71. On February 12, 2013, in compliance with FINRA rules, Joseph insisted that Defendant Simons sign an Attestation for FINRA as follows:

Attestation

> **In connection with my role as Chief Executive Officer of Ditto Trade, Inc. (a registered broker-dealer and Illinois corporation), I attest and agree to the following representations:**
>
> **1) I joined Ditto Trade, Inc. as its Chief Executive Officer January 2, 2013.**
> **2) Since joining Ditto Trade, I have devoted my time and efforts on behalf of the company to familiarizing myself with the company and its personnel, as well as the online brokerage domain. I have not been involved in controlling firm policy or with brokerage operations, and I will remain not involved in controlling firm policy or with brokerage operations until I obtain my Series 24 license.**
>
> **[Ink Signature of Defendant Simons]**
> **2-12-13**

See Defendant Simons' FINRA Attestation, attached hereto as Exhibit 18. (**Emphasis added**).

72. In context, a CEO that cannot, as a matter of law, be involved in firm policy or the brokerage operations of a brokerage firm is tantamount to a stock broker that is not allowed to sell stocks.

Defendant Simons is Not As Advertised

73. Although Defendant Simons introduced and "sold" himself as an experienced

"Wall Street" financial services executive, it became apparent quite early in his tenure at Ditto Trade that Defendant Simons lacked sound judgment[13] and knew very little about the stock market - stock transactions; stock trading; or otherwise. Defendant Simons' ignorance in these key areas were revealed time and again throughout his brief tenure - a tenure that, for an at-will employee, lasted too long to the detriment of the Ditto Companies.

74. In fact, Joseph contacted General Counsel Stuart Cohn and Chief Operating Officer and Chief Compliance Officer of Ditto Trade David J. Rosenberg to discuss the termination of Defendant Simons due to his incompetence,[14] disrespect toward shareholders, failure to attain proper licensure[15], etc. on numerous occasions.[16] For example:

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[13] Defendant Simons fomented needless disagreements with other senior Ditto Holdings management about business strategy and tactics. For example, on May 31, 2013, Defendant Simons and Joseph had a terse email exchange surrounding the strategy for communicating with the media about the size of the budget of Ditto Trade's marketing campaign, including TV commercials to be aired on CNBC. After Joseph disagreed with Defendant Simons' thoughts not to disclose the size of the budget, Defendant Simons responded arrogantly: "*than [sic] by all meuns let 'em know how much you plan to spend!*" See May 31, 2013 Email, attached hereto as Exhibit 19. See also April 14, 2013 Email from Defendant Simons to Joseph, attached hereto as Exhibit 20 (Defendant Simons: "*I do not expect an immediate response or rebuttal from you on thi [sic] particularly as I imagine it will anger and insult you at first glance*"); April 20, 2013 Email from Defendant Simons to Joseph, attached hereto as Exhibit 21 (Defendant Simons: "pLEASE [sic] treat this as confidential but an example of how bizarre and frustrating i find dealing with Brian [Lund, Executive Vice President and Co-Founder of Ditto Trade]").

[14] Defendant Simons also merged his ignorance with corporate sabotage by directing the tech group (without Joseph's knowledge) to remove certain features from the Ditto Trade website - features that were critical to the operations of the business. See CTO Correspondence, attached hereto as Exhibit 21. For example, Defendant Simons directed the removal of the "Order Status" feature on the Ditto Trade website. The "Order Status" feature provides, literally, a status of the customer's trading orders; whether an order has been filled; status of orders; etc. Were Defendant Simons' sabotage unchecked on the Ditto Trade website, the result would have been tantamount to an on-line banking (or ATM) screen that provided no information about the available balance or even whether, for example, a deposited check cleared. If a bank were to hide available balances, pending balances, pending check clearances, etc. from their on-line features, the customer would probably go to another bank. Defendant Simons' removal of the

A. Defendant Simons Insults the Chief Marketing Officer Within Days of Being Hired

75. Within days of his hiring, Defendant Simons openly insulted the work of Ditto Trade's Chief Marketing Officer (Jeffrey Abbott) during an advertising meeting in the presence of several Ditto executives. In the meeting, Mr. Abbott was presenting story boards for the Company's first television campaign. Joseph ended the meeting and admonished Defendant Simons privately.[17]

B. Defendant Simons Insults Joseph

76. By August 22, 2013, the relationship between Defendant Simons and Joseph had

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"Order Status" feature was born from his utter ignorance on most things related to stock transactions. Not good for a CEO of a stock trading firm.

[15] Ultimately, Defendant Simons never sat for, took, or passed any requisite license examination concomitantly putting Ditto Trade in jeopardy of violating FINRA rules. That getting his proper license fell squarely on Defendant Simons - and that, in nine months, Defendant Simons refused to timely apply let alone sit for the examination says much about Defendant Simons' commitment to his job and the shareholders he pretends to protect. Cf. Exhibit 18, *supra*.

[16] In his sworn Affidavit of December 9, 2013, Defendant Stillman acknowledged the "friction" between Defendant Simons and Joseph, employees, and shareholders dating back to Defendant Simons' first days on the job:

> ***I was aware that there was friction between Mr. Fox and Mr. Simons regarding certain business initiatives and also regarding relations with employees and shareholders that dated to the beginning of Mr. Simons' employment.***

See Affidavit of Adam Stillman, attached hereto as Exhibit 22.

[17] Defendant Simons went on to fight with Joseph about the television commercials over the next 7 months. However, in mid-August 2013, Defendant Simons called Joseph to say "*you were right and I was wrong...would you like to record me saying that*?" When Joseph inquired as to what he was right about, Defendant Simons said that one of his potential investors from Martha's Vineyard just saw one of Ditto Trade's TV commercials that was being tested in Boston on CNBC ... and they loved it.

deteriorated significantly. That deterioration stemmed from Defendant Simons' inability to do his job as a CEO because he lacked supervisory capacity as a matter of law and contract; lacked sufficient knowledge to contribute in any meaningful way to the corporate development of the stock trading platform at Ditto Trade[18]; failed to raise the funds he promised to raise, e.g., $2-$4 Million; and he otherwise rubbed the executives the wrong way with his delusional self-important demeanor - not a good trait for a small company executive.

77. Notwithstanding the deterioration of the business relationship between Defendant Simons and Joseph, Joseph agreed to a call on August 22, 2013 at 11:00 am for Defendant Simons to introduce Joseph to some potential Ditto Holdings investors. The potential investors were friends and associates of Defendant Simons from Martha's Vineyard, Massachusetts.[19]

78. Joseph, providing due notice, had to reschedule the 11:00 am call with the prospective investors due to Joseph's [redacted], Avi, [redacted] Defendant Simons was well aware of [redacted]

79. At 11:20 am, Defendant Simons, in response to hearing that Joseph's call with the prospective investors had been rescheduled, sent the following email to Joseph:

> **Joe – haven't been able to get with you and am getting on a plane now heading home. Also heard the call with Ward was rescheduled for a**

[18] In light of Defendant Simons' inability to comprehend the stock trading tools on the Ditto Trade website, Joseph dismissed Defendant Simons from several tech discussions. See July 18, 2013 Email exchange between Joseph and Defendant Stillman, attached hereto as Exhibit 23 (Joseph: "Because of [Defendant Simons'] stubbornness (also known as pigheaded), I wanted to gather facts first. We will speak to [him] this afternoon. ...").

[19] As it turned out, Defendant Simons was planning a hostile take-over of Ditto Holdings by and through the funds of the Martha's Vineyard investors. The ultimate objective was to buy Joseph and his family out of a controlling share position at the Ditto Companies. This scheme will be addressed further, *infra*.

week from now, which is unfortunate. Hopefully it was him and not us.

I need to bring you up to speed so I will email you a briefing from the plane in lieu of by phone - the short version is this has been evolving over a number of weeks and we now have an opportunity to do something transformational for the company with Jay et al that not only solves for funding, but is hugely strategic in accelerating our execution and seeding meaningful monetization options.

Getting everybody aligned will be a process, obviously you most importantly, and that process begins with you spending some time getting to know them in advance of our meeting on the 12rh [sic]. I will fill in the [sic] all blanks (ie the long version) from the plane.

Regards,

Paul M. Simons

See August 22, 2013 Email, attached hereto as Exhibit 24.

80. Soon after receiving the email, Joseph called Defendant Simons. Joseph told Defendant Simons that it was, in fact, he who had to reschedule the call due to the personal matters. The following telephonic exchange occurred:

DEFENDANT SIMONS: You are the one who blew off the call? Do you know how hard I worked to put this meeting (scheduled for September 12th on Martha's Vineyard) together?

JOSEPH: Paul, you do understand the difference between blowing off a call and rescheduling one right?

* * *

Look. it would be a good idea to know what these 'transformational' ideas are so that I could be up to speed for the call.

DEFENDANT SIMONS: Joe. if you think I am going to ask Bob's permission to share with you his ideas before you speak with him. you are mistaken.

JOSEPH: Are you talking to me, or are you talking to someone else?

81. With Joseph as Chairman of Ditto Trade and Defendant Simons being his CEO-*Designee*, the chain of command was quite plain (see Letter Agreement, Exhibit 25 ("**You will report to Joseph Fox, CEO of Ditto Holdings, Inc.**")) ... and having sufficient information, e.g., the "transformational" ideas, to prepare for an important meeting with potential investors would be in the best interests of the Company.

The telephonic exchange continued:

DEFENDANT SIMONS: All I was saying is that I do not know what these transformational ideas are and if you are telling me that I have to get them from Bob prior to your call, I won't do that.

JOSEPH: Paul, I am not sure what just happened here. You told me in your email that you were aware of 'transformational ideas.' It was a pretty basic question to ask.

However, these are your guys. So, if you don't want to tell me what their ideas are in advance of my call with them, so be it.

82. Defendant Simons never provided any further version - long or short - to help Joseph prepare for the teleconference with the Martha's Vineyard investors.

83. Shortly after the call, Joseph spoke with Stuart Cohn (General Counsel), David J. Rosenberg (Chief Operating Officer and Chief Compliance Officer of Ditto Trade) and Defendant Mann. Joseph informed them of the conversation he had with Defendant Simons and informed them that he was once again considering firing Defendant Simons.

84. Upon information and belief, Defendant Mann immediately informed Defendant Simons that his termination was seriously being discussed (again).

85. Later on August 22, 2013, at 6:30 pm, Defendant Simons emailed Joseph the

following:

> **Fyi - i will try to drip information[20] on various people and entities involved with Jay/Bob so you can get a sense of who they are. I dont know who exactly Jay has involved in his discussions so these are just known associates, and a handful of his companies that I am aware of (there are many more). This should at least help you get some bearings on who you are speaking to**

See August 22, 2013 Email Exchange, attached hereto as Exhibit 26.

August 26, 2013

86. The teleconference that had Defendant Simons in such a bunch was rescheduled by agreement by and between the Martha's Vineyard investors, e.g. Jay Morton, and Joseph from August 22, 2013 to August 26, 2013 at 1:00 pm.

87. The rescheduled August 26, 2013 teleconference took place at or about 1:00 pm with the Martha's Vineyard investors; it went off without a hitch - Joseph had a very productive 90-minute conversation with the potential investors.

88. During that call, Joseph and the potential investors discussed and agreed to have a meeting at Martha's Vineyard on September 12, 2013 to continue their discussions.

89. During that call, Joseph asked if the potential investors had any objection to Joseph bringing his two adult sons (ages 21 and 26) to the September 12, 2013 meeting.

90. Joseph explained that both sons were involved in the Ditto Companies at different levels and that if there were going to be a significant deal between them (including talk of a Board Seat for the potential investors), Joseph would want his sons involved in those discussions.

91. The Martha's Vineyard investors responded: "Of course. We would love to have

[20] "Drip information" to the Chairman of the Company?

your sons join us."

92. On August 26, 2013 at or about 2:59 pm, Defendant Simons sent the following email to Joseph, "Joe - anxious to debrief now that you have connected - can you speak at 2 pm PT?" Joseph responded: "Going to have to push back till 4pm pacific," as he was once again [redacted]

93. On August 26, 2013, at or about 6:00 pm, Defendant Simons and Joseph spoke about the conversation with the Martha's Vineyard investors. Joseph briefed Defendant Simons on the discussions; the mutual interests; and the planned September 12, 2013 meeting.

94. At the end of the conversation, Defendant Simons and Joseph had their most significant argument to date:

DEFENDANT SIMONS:	You seem to be a little standoffish since our last call [on the 22nd].
JOSEPH:	That's because I wasn't very happy with our last call.
DEFENDANT SIMONS:	Well you shouldn't have blown off the call last week.
JOSEPH:	I always talk to you with respect; I would appreciate you doing the same.
DEFENDANT SIMONS:	Do you have any idea how hard I have worked on these guys for you just to have blown them off.
JOSEPH:	Paul, I sometimes think you forget [redacted]
DEFENDANT SIMONS:	I don't care much for titles.

95. Joseph ended the call shortly thereafter.

96. While Joseph seriously considered terminating Defendant Simons on that phone

call, he decided first to confer with other senior executives, including, among others, Defendant Mann (whose personal relationship with Defendant Simons was then unknown to Joseph), before making a final decision.

97. COO David J. Rosenberg and General Counsel Stuart Cohn suggested trying one more time to rehabilitate Defendant Simons' attitude before a decision on his termination was final.

98. Defendant Mann completely opposed terminating Defendant Simons.

99. Joseph ultimately decided to postpone the decision to terminate Defendant Simons.

100. Upon information and belief, Defendant Mann immediately informed Defendant Simons that his termination was seriously being discussed (again).[21] See Deposition of Defendant Mann, April 27, 2015, pp. 217 (ln. 12)—218 (ln. 10), attached hereto as Exhibit 27.

C. Defendant Simons Insults a Shareholder

101. On or about September 3, 2013, a shareholder discussed with Joseph a potential

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[21] Defendant Simons knew well that he was in line to be fired. He knew this from his discussions with Joseph, and he knew this from the inside information he was receiving from Defendant Mann. It was also at or about this time where Defendant Simons was re-negotiating his benefits package with General Counsel Stuart Cohn so as to have immediately vesting stock interests (rather than vested interests over a three-year period as originally negotiated). Defendant Simons openly admitted to Defendant Mann that he had manipulated Mr. Cohn in the benefits restructuring so that Defendant Mann would be the one to take delivery of the signed agreement (with the new compensation package terms). In other words, Defendant Mann would have the opportunity to review the new perks negotiated by Defendant Simons and position himself for like terms and benefits.

On August 29, 2013, Defendant Simons wrote to Defendant Mann: "**You gotta love me for this.**" Defendant Mann responded: "**Everything we wanted in this. Now we need [Defendant Stillman's] and mine.**" See August 29, 2013 Email Exchange, attached hereto as Exhibit 28.

partnership involving Ditto Trade as a vehicle for 401(k) retirement plans. The potential was extraordinary. Joseph asked Defendant Simons to speak with the shareholder to gauge the opportunity and report to Joseph.

102. On September 4, 2013, Defendant Simons spoke with the shareholder; shut down his interests; told him that his ideas would never work; etc. The shareholder contacted Joseph in dismay and described his upsetting experience with Defendant Simons. Joseph immediately called Defendant Simons to discuss his behavior with the shareholder. Defendant Simons did not return Joseph's calls on September 4, 2013 or September 5, 2013. It wasn't until September 6, 2013 that Defendant Simons responded to Joseph ... on an altogether different subject.

Defendant Simons, Mann, and Stillman Were Preparing a Hostile Takeover

103. The Martha's Vineyard relationship ran very deep for Defendant Simons and that depth was discovered some time after Defendant Simons was terminated. Beneath the surface of the Martha's Vineyard deal and their preliminary research into the Ditto Companies' assets: Defendants Simons, Mann, and Stillman were secretly planning a detailed take over or buyout strategy to knock Joseph and his family out of the Ditto Companies' control box. The strategy was plain: Raise $10 million in new funds and utilize $7,650,000.00 to complete a buyout of roughly 75% of the 12 million shares owned by Joseph and his family. See "Cap Table for Paul," attached hereto as Exhibit 29. Leaving Joseph and his family a roughly 25% interest in the Ditto Companies was seen by these Defendants as a reasonable compromise. As Defendant Mann, under oath, testified:

ATTORNEY:	... When did you and Paul Simons first discuss a buyout of the company as a potential outcome?
DEFENDANT MANN:	I don't remember when it was first talked about it. I don't know.

ATTORNEY: You did discuss that with Mr. Simons, though, correct?

DEFENDANT MANN: And Mr. Stillman, yeah. That was one of the potentials.

See Exhibit 27 at pp. 169 (ln. 9)-170 (ln. 3).

ATTORNEY: [D]id you understand at any point from Mr. Simons that the planned role of Jay Morton [--a Martha's Vineyard investor--] this very wealthy businessman, as you've described him, was to help provide the moneys for a buyout of the Fox family from Ditto?

DEFENDANT MANN: That's a possibility. I don't know....

ATTORNEY: ... [W]hy were you ... putting numbers down on a spreadsheet that you're going to provide to Mr. Simons for buyout amounts for the Foxes and others?

DEFENDANT MANN: **We had been going over shareholder buyout for a long time,** so I don't remember specifically, but I'm sure he just asked to single out the Fox family and asked me to create that. ....

Id. at p. 172 (ln. 3) - 173 (ln. 6)**(Emphasis added).**

ATTORNEY: The 'he' who asked you to single out the Fox family was Paul Simons, right?

DEFENDANT MANN: Yes.[22]

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[22] On September 2, 2013 at 1:58 pm. Defendant Simons emailed both Defendants Mann and Stillman about a 90-minute telephone call with his Martha's Vineyard investor Jay Morton:

> Just spent an hour and a half on the phone with Jay. Very good conversation and nothing he hasnt seen before we will debrief later. Bottom line we are absolutely doing the right thing **regardless of outcome** but with the the [sic] right people involved and full transparency all around, hopefully we can construct **an outcome that is infinitely more positive for all.** Let's speak later tonight.

See September 2, 2013, attached hereto as Exhibit 30. **(Emphasis added).**

Defendant Mann testified on April 27, 2015 that he believed that Defendant Simons considered

Id. at p. 174 (ln. 1-3).

104. On August 27, 2013 at 6:53 pm, Defendant Mann sent Defendant Simons an updated shareholder list to support the discussed buyout strategy. See Exhibit 29, *supra*.

105. As it turned out, Defendant Simons appears to be currently employed as the Chief Executive Officer of Fusion IQ - a company that shares an office address with none other than Martha's Vineyard investor Jay Morton. See Exhibit 2, p. 26 (lines 13-21).

THE FINAL STRAW

106. The final straw broke in favor of termination on September 6, 2013 with the following email exchange between Joseph and Defendant Simons concerning the Martha's Vineyard investor meeting planned for September 12, 2013:

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him and Defendant Stillman to be two of the "*right people*" to help "*construct an outcome that is infinitely more positive for all*" (if they successfully took over the Company from Joseph):

ATTORNEY:	Well, the e-mail was sent to you by Paul, so I'm just trying to get your understanding of what he was writing. Then he says, with the right people involved. Did you understand who he thought the right people were?
DEFENDANT MANN:	No.
ATTORNEY:	Didn't you think he meant you, you're one of the right people?
DEFENDANT MANN:	Well, for that, yeah.
ATTORNEY:	And Adam Stillman's one of the right people?
DEFENDANT MANN:	Yeah.

See Exhibit 27 at p. 152 (lines 5-17).

DEFENDANT SIMONS:	Joe - getting Harry setled [sic] at barding [sic] school and forgot there is no cell coverage - call you tonight or over the weekend[23]
JOSEPH:	Sure. I hope Harry likes his new school. Two things. First, are we still a go for next Thursday on MV? Second, assuming we are, both my sons will be joining me. So, to make goings easier I will look to stay at a hotel for the two nights.
DEFENDANT SIMONS:	Do you mean for the trip or the actual meeting?
JOSEPH:	For the trip. Maybe they will join us for dinner/drinks Thursday night depending on how things are going.[24]
DEFENDANT SIMONS:	Ok - yes we are on. I just want to be clear that it is not your intention to have them present for business meeting, and that the company is not paying their freight, neither of which I believe is appropriate. Please confirm - I will call you later or tomorrow am to catch up

See September 6, 2013 Email Exchange, attached hereto as Exhibit 31.

107. Joseph never responded to Defendant Simons' disrespectful email. Joseph immediately called the Company's General Counsel Stu Cohn and began discussing termination of Defendant Simons. It was ultimately decided that Defendant Simons would be terminated on the following Tuesday (September 10, 2013) when Joseph would next be in Chicago.

108. The running theme with Defendant Simons was not whether he would be fired,

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[23] This was Defendant Simons' first correspondence after refusing to return Joseph's calls on September 4-5, 2013 (to address the disrespect shown to the shareholder). See Defendant Simons' email sent to Defendants Mann and Stillman at 12:50 pm, one minute after emailing Joseph, attached hereto as Exhibit 32. And while he may have been taking his son to boarding school, there was hardly a lack of cell coverage.

[24] Joseph did in fact intend to have his two adult sons attend the meeting. In a conciliatory move (recognizing that these were Defendant Simons' contacts), Joseph chose a diplomatic approach.

but *when* he would be fired.[25] Even Defendant Mann confirms the fact that Joseph discussed with him the inevitable termination of Defendant Simons on different occasions in his April 27, 2015 deposition testimony:

ATTORNEY:	And, by the way, didn't Joe Fox tell you directly at some point that he was considering firing Paul Simons?
DEFENDANT MANN:	A couple times he had mentioned that he may want to but nothing ever decisive.
ATTORNEY:	Is that what he said, I may want to?
DEFENDANT MANN:	Yes.
ATTORNEY:	Those were his words?
DEFENDANT MANN:	I don't know if those are the exact. Jer, I may want to, but along those lines, yeah.
ATTORNEY:	Did he tell you why he may want to fire Paul Simons?
DEFENDANT MANN:	Depends. I don't know. I don't remember which instance it was. I don't know.
ATTORNEY:	Well, let's talk about those instances. What was involved in the first instance that you recall?

[25] Even on August 23, 2013 at 9:22 pm, Defendant Simons was preparing his exit strategy as seen in this email to Joseph:

> **Joe - what is the status of the 250,000 shs of your restricted stock that you generously granted me 6 weeks ago, but for which I have no documentation. When we last discussed on Sunday you were going to have it processed this week. Thanks Paul M. Simons**

See August 23, 2013 Email, attached hereto as Exhibit 33.

DEFENDANT MANN: I know he didn't like the way that Paul had talked about [Joseph's sons] going to that meeting. I think that was the one that was within a week of that where Joe said, you know -- I know these words -- I may [redacted] fire him. He definitely said that.

See Exhibit 27, p. 152 (lines 12-17).

ENTER DEFENDANTS HUEY-BURNS & SHULMAN ROGERS

109. On Friday, September 6, 2013, Defendants Simons, Mann, and Stillman knew that Defendant Simons was going to be terminated by Joseph, likely within days.[26]

110. Defendant Huey-Burns was introduced to Defendants Simons, Mann, and Stillman on or about September 6, 2013 through Defendant Stillman's uncle, a lawyer.

111. On Saturday, September 7, 2013, Defendants Simons, Mann, and Stillman hired Defendant Huey-Burns of Defendant Shulman Rogers law firm. See Exhibit 2, pp. 238 (ln. 22) - 239 (ln. 4).

112. On Sunday, September 8, 2013, all of the Defendants knew that Defendant Simons was to be terminated by Joseph on Tuesday, September 10, 2013:

DEFENDANT MANN: Paul. Call me or [Defendant Stillman] ASAP.

DEFENDANT SIMONS: Do not mention t [sic] am coming to Chicago pls - on plane now

DEFENDANT MANN: **Ok. Joe is firing you Tuesday.**

DEFENDANT SIMONS: **Cool**- [....]

See Exhibit 10. (**Emphasis Added**).

113. On Monday, September 9, 2013, at about 11:30 am. the Defendants sent a

[26] Defendants Simons and Mann knew as early as August 22, 2013 that Joseph was going to terminate Defendant Simons. However, they did not know the date of the impending termination.

knowingly false Demand Letter to the Ditto Holdings Board of Directors accusing Joseph of horrible wrongs, including fraud, theft, misrepresentation, etc. See Demand Letter, attached hereto as Exhibit 34.

114. The Demand Letter, authored by the Defendants demanded, *inter alia*, as follows:

> 1. **Authorize an internal investigation and independent audit of the financial histories and transactions of both the Company and the Subsidiary, as well as the share register and associated transactions of the stock of the Company, at the cost of the Company, to be led by a Special Committee consisting of the members of the Board not implicated in the conduct described above (i.e., Paul M. Simons and David J. Rosenberg), including authorization to engage legal, financial and any other necessary advisors to conduct the investigation, present their findings to the Special Committee and to the Board, and provide any and all recommendations for remediation if required or appropriate.**
>
> 2. **As to the engagement of legal advisors, authorize the Company to engage the law firm of Shulman, Rogers, Gandal, Pordy & Ecker, P.A. (the "Firm") in the Washington, DC Metropolitan Area, which has a practice group with substantial experience regarding internal corporate investigations, which has indicated its willingness and availability to represent the Company in this matter, and already has a foundation of knowledge in advising me in proceeding with this request.**
>
> * * *

Id. at p. 3. (**Emphasis added**).

115. In other words, the Defendants positioned Defendant Simons to retain his position (i.e., not be terminated as expected the following day); head a "Special Committee" to investigate Joseph for the fabricated wrongs alleged in the Demand Letter; and position his lawyers, Defendants Huey-Burns and Shulman Rogers, to be special or *independent* "counsel" to

conduct an internal investigation of Joseph for wrongs they and their cohort co-defendants fabricated.[27]

116. When Defendant Simons emailed a copy of the Demand Letter to Joseph and other executives, he wrote: "I am available to discuss." See September 9, 2013 Email, attached hereto as Exhibit 35. Within 90 minutes, General Counsel Stuart Cohn and COO and fellow Board Member David J. Rosenberg confirmed Defendant Simons' request for a Wednesday, September 11, 2013 Board Meeting to address the matters set forth in the Demand Letter.[28]

117. It was clear that this effort by the Defendants was twofold: (1) to fend off Defendant Simons' termination planned for the next day; and (2) to wrap Defendant Simons up in a [redacted] flag armed with a fabricated "retaliatory discharge" defense if he were unsuccessful in stopping his termination. In furtherance of that agenda, and notwithstanding the fact that the Wednesday Board Meeting was confirmed, Defendants ramped up their scheme to harm Joseph by contacting the SEC a few hours later.[29]

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[27] The very fact that Defendants Huey-Burns and Shulman Rogers - lawyers of the accusers Defendants Simons, Mann, and Stillman - were positioned to be independent counsel hired by the Board of Directors of Ditto Holdings to investigate Joseph is telling. The conflicts of interest are manifest. The efforts that Defendants Huey-Burns and Shulman Rogers made to falsify documents to the Board of Directors (with a clear motive to win a job) and the SEC (to create a job) are shocking. The fact that Defendants Huey-Burns and Shulman Rogers gave legal advice and prepared the Demand Letter to the Board of Directors in Illinois, on information and belief, without an Illinois law license, demonstrates the lengths these Defendants were willing to go to harm Joseph.

[28] Joseph subsequently confirmed the Wednesday Board Meeting and correspondence ensued to set a time for the Board Meeting.

[29] Defendant Simons ended his false Demand Letter with the following: "...I urge the Board to approve these resolutions. Given the seriousness of the information that has been brought to my attention, it may be necessary and appropriate to alert government authorities, although I have not done so at this time." The "resolutions" were to be addressed on Wednesday, September 11, 2013, as requested by the Defendants, and confirmed by General Counsel Stuart Cohn and COO

118. On Monday, September 9, 2013, at 4:20 pm, Defendant Huey-Burns wrote an email to "Eric M. Phillips," "Tim Warren" and "Bob Burson" of the Enforcement Division of the SEC to encourage swift, legal action against Joseph.[30] See September 9, 2013 Letter to SEC, pp. "SR 000001-7," attached hereto as Exhibit 36. We will take that email in parts:

> **Eric,**
>
> **I realize that you are busy preparing for trial in the True North matter, but I'm hoping that you could review the attached letter or refer it to someone in a position to consider the allegations that it contains.**

119. Defendant Huey-Burns evidently knows the SEC's Eric Phillips quite well. He refers to him by his first name. He knows Eric's work load, e.g., "preparing for trial." He knows Eric's current trial call, e.g., "*the True North matter.*" He invites Eric to "*review the attached [Board Demand] letter*" or to forward the same to someone "*in a position to consider the allegations that it contains.*" In other words, someone in a position of power to prosecute.

> **(I've copied Bob and Tim as well.)**

120. Defendant Huey-Burns evidently knows "*Bob and Tim*" well, as well. In context, Defendant Huey-Burns is on a first name basis with "Bob" Burson - the Senior Associate Regional Director of the SEC's Midwest Regional Office. In fact, as discussed below, "Bob" is,

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and fellow Board Member David J. Rosenberg. However, rather than wait until that Wednesday Board Meeting, Defendants Huey-Burns and Shulman Rogers contacted their pals at the SEC to launch an investigation on Monday, September 9, 2013. Had the Defendants not been so fixated on harming Joseph (to the detriment of the Ditto Companies and their shareholders), the allegations in the Demand Letter could very well have been debunked at the Wednesday Board Meeting and the matters would have been resolved without a 24+ month investigation that drove the Companies into the ground by a spiteful, malicious group of Defendants.

[30] According to Defendant Shulman Rogers' website, Defendant Huey-Burns once worked for the SEC for more than a decade "with seven years as Assistant Director of Enforcement." See http://www.shulmanrogers.com/attorneys-Huey-Burns-Paul-Investigation-PCAOB-Criminal.html.

on information and belief, supervising counsel for the SEC on all of the matters concerning Joseph in the Chicago region. Tim Warren is or was the Acting Regional Director of the Chicago Office of the SEC.

> **The letter describes allegations of significant financial misfeasance by Joseph Fox, the Chairman of Ditto Holdings, Inc., the holding company for Ditto Trade, Inc. (a registered BD). Both Ditto Holdings and Ditto Trade have substantial operations in the Chicago area.**

121. The "letter" that Defendant Huey-Burns is referencing is a letter that he and Defendants Simons, Mann, Stillman, and Shulman Rogers drafted - the Demand Letter to the Board of Directors of Ditto Holdings alleging various crimes by Joseph. At the same time, Defendant Huey-Burns is highlighting that Joseph and the Ditto Companies "have substantial operations in the Chicago area" ... meaning that it falls within the jurisdiction of "Bob's" SEC regional enforcement territory.

> **These allegations were brought to our attention by Paul Simons, the signer of the attached letter, who is a Director and EVP of Ditto Holdings and CEO of Ditto Trade. (Mr. Simons, among many other things, is a former Managing Director of Credit Suisse Securities, where he served as co-head of the US Private Banking Division.)**

122. Here, Defendant Huey-Burns is attempting to build up Defendant Simons, whom he had never met and was introduced to only a day prior to the engagement, as an insider executive and former executive at a reputable world bank.

> **The allegations are substantive and well-documented and, I believe, raise serious questions as to whether [Joseph] and certain others involved in senior management have perpetrated or are in the process of perpetrating a fraud on Ditto Holdings' shareholders, and perhaps others.**

123. Just like the other Defendants in this case, Defendant Huey-Burns lies with malicious intent to harm Joseph. Defendant Huey-Burns did not have a single document in his possession to make the false statement that any of the allegations - "substantive" or not - were

"**well-documented.**" Defendants Huey-Burns and Shulman Rogers were provided no evidence, no documents at all from Defendants Simons, Mann, or Stillman to support or deny the allegations, but nonetheless sent the email to Eric, Bob, and Tim as if there were overwhelming documentary evidence against Joseph to support the claims against Joseph. All nonsense. All lies.

124. Further, with no documentation in hand, Defendant Huey-Burns still made a plea to his friends Eric, Bob and Tim that, in his view, Joseph ("senior management") and unnamed "certain others ... have perpetrated or are in the process of perpetrating a fraud on Ditto Holdings' shareholders, and perhaps others." Here, Defendant Huey-Burns is accusing Joseph of committing "**well-documented**" "fraud" on shareholders and "perhaps others" with not a single document to support his claims.[31]

(Ditto Holdings currently is raising capital through a Reg D offering.)

125. Defendant Huey-Burns, here, is unequivocally implying that Joseph's "fraud" is being perpetrated through a "capital [raise] through a Reg D offering" to unsuspecting victims.... All lies.

> **Mr. Simons and I would be happy to discuss these allegations with you or any of your colleagues.**
>
> **Mr. Simons delivered the attached letter to Mr. Fox (and also to Jonathan Rosenberg, the other member of Ditto Holdings' Board of Directors, and to Stuart Cohn, Ditto Holdings' General Counsel) this morning. Mr. Simons requested that the Board initiate an investigation into the matters described in detail in the letter. Mr. Simons has received no direct response and is concerned that Mr. Fox and others involved in senior management have**

[31] This is no distinction without difference. Defendants Huey-Burns and Shulman Rogers were provided NO inculpatory evidence - no emails, documents, texts, or other written correspondence - before drafting and serving the false Board Demand Letter upon which this email to their pals at the SEC relies entirely. This email to their SEC pals is, in of itself, false, as is the document upon which it relies. In both cases, this is part and parcel of the scheme at hand.

decided not to respond and may be preparing to take retaliatory action against Mr. Simons and two other more junior executive, Jeremy Mann and Adam Stillman, who agree with Mr. Simons that there is significant evidence of Mr. Fox's misfeasance and who support Mr. Simons' actions.

126. More lies by Defendants Huey-Burns and Shulman Rogers. First of all, it is a lie that "Mr. Simons [ ] received no direct response" to the Demand Letter. Defendant Simons was told by General Counsel Stuart Cohn and COO David J. Rosenberg that the Wednesday Board Meeting (invited by the Demand Letter) was confirmed ... and that confirmation occurred prior to this email to their pals at the SEC.

127. Secondly, Defendants Huey-Burns and Shulman Rogers falsely suggest that Joseph is "preparing to take retaliatory action against Mr. Simons ... [and Defendants] Mann and Adam Stillman, [ ] agree with Mr. Simons that there is significant evidence of Mr. Fox's misfeasance and who support Mr. Simons' actions."

128. Defendants Huey-Burns and Shulman Rogers falsely state that there is "significant evidence of Mr. Fox's misfeasance" ...; again, they had not seen a single document to support any of the purported claims that Joseph committed crimes, misfeasance, *et al.*

129. Insofar as Defendant "Adam Stillman," who is claimed to "agree ... that there is significant evidence of Mr. Fox's misfeasance," we turn to Defendant Stillman's Affidavit signed on December 9, 2013:

Para. 2. **... I have never had need or occasion to review or understand company or individual employee bank statements, the financial records, the financial aspects of investor relations, company cash or financial account management or any aspect of the inflow or outflow of corporate, investor or employee funds or payments.**

Para. 3. **...Mr. Mann and Mr. Simons explained to me in the meeting that they believed that there had been improper financial transactions by Joseph....**

Para. 4. **Because of what I believed to be Mr. Mann's and Mr. Simons' greater familiarity with financial matters, I relied upon the statements they made to me that such transactions had taken place. I brought no independent knowledge or expertise to these conversations. Mr. Mann told me that he possessed financial company information, including bank statements, which I viewed only briefly.**

I believe I was included in this discussion due to my title as President of Ditto Holdings.

Para. 6. **I did not independently investigate verify or seek information regarding the assertions of the September 9 letter.**

Para. 9. **... Any assurance made [that a review of the financial records of Ditto for 2009 through 2011 would reveal information similar to the information which Mr. Simons and Mr. Mann claimed to be using to support the allegations of the September 9 letter] would have been reliant on Mr. Mann's familiarity of financial matters.**

Para. 10. **With regard to paragraph 12 of Mr. Simon's affidavit, Mr. Simons says that 'we made a detailed review' of the information that he claims supports the September 9 letter, and that 'we conducted a first-hand examination of bank statements and public SEC filings'. My personal examination of the bank statements was the aforementioned brief viewing of the bank statements and looking over the spreadsheet of compiled transactions I was sent. To the best of my recollection, I did not personally review any public SEC filings.**

Para. 12. **Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.**

See Exhibit 22, *supra*. **(Emphasis added).**

130. By Defendant Stillman's own Affidavit, it is clear that *if* he reviewed any documents, those documents were only bank statements and he did so only "briefly" and he relied entirely on Defendants Simons and Mann for any opinion on the content of any documents. As such. it is clear that Defendant Huey-Burns lied to the SEC when he claimed that "Adam Stillman, [agrees] with Mr. Simons that there is significant evidence of Mr. Fox's misfeasance and [supports] Mr. Simons' actions." Just as Defendant Huey-Burns did not see

any evidence, let alone "significant evidence," to support the email to the SEC that Joseph was committing crimes, etc., Defendant Stillman only "briefly" looked at bank statements presented by Defendants Simons and Mann ...; did not independently investigate, verify, or seek information; did not likely look at any "public SEC filings"; and relied entirely on the purported experience of Defendants Simons and Mann to consent to any allegations against Joseph. Indeed, Defendant Stillman's Affidavit suggests quite plainly that Defendant Simons lied in his Affidavit to the Circuit Court of Cook County.

131. Defendants Huey-Burns and Shulman Rogers continue with their email to the SEC:

> **Messrs. Simons, Mann and Stillman also are concerned that Mr. Fox and others may attempt to create post-hoc documents or other materials to justify the apparently illegal transactions.**

Id.

132. This is just self-serving nonsense with no evidence whatsoever to support this purported concern that Joseph and unnamed "others may attempt to create post-hoc documents or other materials to justify the apparently illegal transactions."

133. And what of Defendants Huey-Burns and Shulman Rogers' claim that Joseph committed "apparently illegal transactions"? More lies by the lawyer Defendants ... who had no documents, no evidence, nothing to support the claims in the Demand Letter, let alone the email to their pals at the SEC, that Joseph or anyone else committed any "**illegal transactions**" whatsoever. The fact that not one of the allegations made against Joseph was ever confirmed by the SEC is profound.

134. As is also clear from the correspondence, Defendants Huey-Burns and Shulman

Rogers pushed to get this information in the "right" hands at the SEC. Id. at p. 2 (Defendants Huey-Burns and Shulman Rogers pushed for phone calls, e.g., twice in three paragraphs: "Mr. Simons and I would be happy to discuss these allegations with you or any of your colleagues" and "As I said, Mr. Simons and I are available to discuss those issues at your earliest convenience").

135. Another example of Defendants Huey-Burns and Shulman Rogers pushing this "case" onto their pals at the SEC is shown in the correspondence to Eric, Bob, and Tim sent on September 9, 2013 at 4:31 pm:

> **Eric, the following text corrects a typographical error in the email that I just sent to you.**
>
> **Thanks**
>
> **PHB**

See September 9, 2013 Email, attached hereto as Exhibit 37 at pp. "SR 000009-10."

136. There was no "**typographical error**" corrected in the second email. Indeed, the second email did not differ one iota from the first. Rather, it was another lie to push this matter onto their pals at the SEC.

137. "Bob" responded as follows:

> **Paul [Defendant Huey-Burns],**
> **Thanks for the information. I'll follow up with you shortly.**
> **Bob Burson**

Id. at p. "SR 000009."

138. In turn, Defendant Huey-Burns wrote to his pal:

> **Thanks, Bob. Good to hear from you (note my new firm and contact information, below). As I said, we would be happy to set up a call involving Mr. Simons, if you think it appropriate.**

Id. at p. "SR 000008."

139. Defendant Huey-Burns' reference to his "new firm" is a reference to Defendant Shulman Rogers. It is no stretch to expect that Defendant Huey-Burns wanted to bring in new business for his "new firm."

140. On September 10, 2013 at 12:11 pm, Defendants Huey-Burns and Shulman Rogers wrote again to "Bob" at the SEC, in part, as follows:

> **Bob,**
> **As I said in my email yesterday, we represent Mr. Paul Simons, the EVP of Ditto Holdings and the CEO of Ditto trade.**

See September 10, 2013 Email, attached hereto as Exhibit 38.

141. Defendants Huey-Burns and Shulman Rogers never said anywhere in any of the emails "yesterday" (September 9, 2013) that they represented Defendant Simons. Nowhere do Defendants Huey-Burns and Shulman Rogers tell Eric, Bob, or Tim that they are writing on behalf of Defendant Simons, Defendant Mann, Defendant Stillman, or anyone else. Nowhere do Defendants Huey-Burns and Shulman Rogers tell Eric, Bob, or Tim that they are writing on behalf of clients. Rather, Defendants Huey-Burns and Shulman Rogers drafted the emails with the apparent intent to mislead their pals at the SEC that Defendant Huey-Burns was, perhaps, a shareholder or potential shareholder who received notice from Defendant Simons of alleged misfeasance (and much worse) by Joseph. More lies with the intent to harm Joseph.

> **Although we have no direct evidence at this point, we are concerned that bank statements and other documents may be subject to destruction or alteration.**

142. Defendants Huey-Burns and Shulman Rogers prove here that they are capable of declaring that they have "no direct evidence at this point" about ... anything. Regardless, Defendants Huey-Burns and Shulman Rogers should have given the same caveat the day prior rather than send false emails to the SEC claiming that they had "**well-documented**" proof that

Joseph and others "**have perpetrated or are in the process of perpetrating a fraud on Ditto Holdings' shareholders, and perhaps others.**" See Exhibits 36, 38. It is clear, too, that Defendants Huey-Burns and Shulman Rogers were attempting to incite immediate action against Joseph with the admittedly unsubstantiated claim that Joseph *may* be destroying or altering bank statements and other documents. What an absurd statement. Is Defendant Huey-Burns telling the SEC that if they don't hurry, these documents will be lost forever? Did Defendant Huey-Burns forget from his 10+ years working at the SEC that the SEC has subpoena power over every U.S. financial institution?[32] Of course, after 24+ months of investigation by the SEC, no one else ever accused let alone found that Joseph destroyed or altered any bank statements or other documents. None. More lies with the intent to harm Joseph.

> **As I said yesterday, I think that it would be very helpful for someone in your office to speak promptly with Mr. Simons, who is available today at your convenience.**

143. Again, Defendant Huey-Burns lies. Though he did invite a call with himself and Defendant Simons, in none of the recorded correspondence with Eric, Bob, or Tim "*yesterday*" did Defendant Huey-Burns say that "it would be very helpful for someone [at the SEC] to speak promptly with [Defendant] Simons...." This is not a matter of linguistics; this is a matter of a lying Defendant Huey-Burns saying anything to advance a knowingly false agenda to harm Joseph ... knowing that there is no "direct evidence" whatsoever of any wrongdoing by Joseph, yet, nonetheless, proceeding....

144. In fact, Defendants Huey-Burns and Shulman Rogers received no evidence whatsoever - not one single email, sheet of paper, or otherwise - that Joseph did anything wrong.

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[32] In fact, during their investigation, the SEC subpoenaed Joseph's (and the Ditto Companies') bank (and other company) records going back to early 2009.

145. In fact, Defendant Simons sent Defendants Huey-Burns and Shulman Rogers a grand total of two (2) emails regarding Joseph before the Demand Letter was drafted (let alone served) on the morning of September 9, 2013 ... and before Defendants Huey-Burns and Shulman Rogers emailed their pals at the SEC at 3:20 pm on September 9, 2013.

146. One of the mere two (2) emails in the possession of Defendants Huey-Burns and Shulman Rogers before drafting the Demand Letter and sending the SEC email is critical to the scheme at hand. On September 8, 2013 at 10:43 pm, Defendant Simons forwarded to Defendants Huey-Burns and Shulman Rogers an email that he received from Defendant Stillman. The email included a forwarded email from Brian Lund, then-Executive Vice President of Ditto Holdings, who, among other things, wrote: "***I don't see, barring a miracle, how Paul [Simons] stays with the company.***" Along with the Lund email, Defendant Stillman included the following message to Defendant Simons: "***Brian has spent time tonight trying to talk Joe out of firing you.***" See September 8, 2013 Email Notices of Impending Termination, attached hereto as Exhibit 39.

147. And then there is the staple notification to Defendant Simons at 5:47 pm on September 8, 2013:

> **DEFENDANT MANN:** **Ok. Joe is firing you Tuesday.**
>
> **DEFENDANT SIMONS:** Cool- [...]"

See Exhibit 10.

148. In context, on the night of September 8, 2013, the Defendants knew, by and through correspondence with Lund, Defendant Simons, Defendant Mann, and Defendant Stillman, that Joseph was going to terminate Defendant Simons on Tuesday, September 10.

2013, for reasons completely unrelated to the Demand Letter - which was altogether unknown to Joseph ... and not even served until September 9, 2013.

149. Yet, Defendants Huey-Burns and Shulman Rogers never mention this critical fact to their pals at the SEC. Not in their two (2) emails on September 9, 2013. Not in their email to on September 10, 2013. And not in their September 20, 2013 email where they informed the SEC of their withdrawal from the matter. Instead, the Defendants were all content to lead everyone to believe that Defendant Simons was terminated in "retaliation" for the September 9, 2013 Demand Letter and subsequent correspondence with the SEC.

150. To be clear, Defendant Huey-Burns and Shulman Rogers went out of their way to make the SEC believe that Joseph had terminated Defendant Simons in retaliation for submitting the Demand Letter (and, subsequently, for contacting the SEC). The fact that Defendant Huey-Burns and Shulman Rogers never cleared up this purposeful omission allowed Defendant Simons to perpetuate the lie for more than two years that he was a '[redacted] who was terminated in retaliation for reporting Joseph to the Board of Directors and the SEC.

151. The Defendants strategically set up this case as though the Demand Letter was the catalyst to Defendant Simons' termination. It is a vicious lie that the Defendants played over and over again in and between every word in every false filing with the SEC, FINRA, Circuit Court of Cook County, Illinois Appellate Court, United States District Court for the Northern District of Illinois, and to whomever else would listen.

152. A lawyer (Defendant Huey-Burns) and a law firm (Defendant Shulman Rogers) went to extraordinary lengths with their clients (Defendants Simons, Mann, and Stillman) to misrepresent facts to the SEC; draft a knowingly false Demand Letter to the Board of Directors;

and otherwise help conceive and concoct a false story (without any evidence of wrongdoing) implicating Joseph in unconscionable crimes with the intent to harm Joseph.

153. Something is very wrong when a lawyer and a law firm are so fixated on winning a client that they create a crime or criminal.[33]

The Anatomy of Injustice

154. Defendant Mann was the interim CFO of Ditto Holdings. As the CFO, he was in charge of preparing and maintaining the corporate books and records, including a General Ledger, for the Ditto Companies.

155. In or about February 2013, Defendant Mann was directed by Joseph to work with outside tax advisor Joshua B. Smith, CPA and JBS Life Chartered, certified public accounting firm, to prepare and manage the General Ledger and the books and records of Ditto Holdings.

156. Defendant Mann was supposed to spend time with CPA Smith to learn as much as possible and to develop his skills to further assist the Ditto Companies in his capacity as Interim CFO.

157. For several months, Defendant Mann assured Joseph [and Defendant Simons] that he was regularly meeting with the outside accounting firm; learning as much as he could from CPA Smith; and otherwise working diligently on the General Ledger and books and records for Ditto Holdings, as required.

158. Like his co-defendants, Defendant Mann is a liar. For example, on April 27,

[33] The Goldberg Kohn legal bill of $335.000.00 or so stemmed from its appointment as *independent* counsel for the Board of Directors - the very position that the Demand Letter specifically assigned to Defendant Shulman Rogers. There should be no question what the lawyer Defendants were motivated to secure.

2015. Defendant Mann testified under oath in a deposition in a Circuit Court of Cook County, Law Division action (Sherlock, J.) concerning his some 11 emails to Ditto Holdings stating that he was meeting with the outside accounting firm and/or CPA Smith to prepare and maintain the General Ledger and books and records of Ditto Holdings:

ATTORNEY: ...Did you meet with the accountant that morning of March 1 as set forth in your e-mail with Jon Rosenberg?

DEFENDANT MANN: Probably not.

See Exhibit 27, p. 233 (lines 5-8).

* * *

ATTORNEY: So it was a lie.

DEFENDANT MANN: Sure, yeah.

See Exhibit 27, p. 233 (lines 13-14).

* * *

ATTORNEY: Now, did you, in fact, run into the accountant's office on March 7?

DEFENDANT MANN: Probably not.

ATTORNEY: And why did you lie about it?

DEFENDANT MANN: I don't know.

See Exhibit 27. p. 235 (lines 16-20).

* * *

ATTORNEY: Turning to April 4, were you, in fact, going into a meeting with the accountant on that date?

DEFENDANT MANN: Probably not.

ATTORNEY: Why did you lie about it?

DEFENDANT MANN: I don't know.

See Exhibit 27, p. 236 (lines 7-12).

* * *

ATTORNEY: Were you walking into the accountant's office on April 11?

DEFENDANT MANN: Probably not.

ATTORNEY: Why did you lie about it?

DEFENDANT MANN: I don't know.

See Exhibit 27, pp. 236 (ln. 24) – 237 (ln. 4).

* * *

ATTORNEY: Now, on May 15 you wrote to Paul Simons, among others, guys, I have a meeting with our accountant at 9:30. That was a lie, wasn't it?

DEFENDANT MANN: Probably.

ATTORNEY: And, of course, then saying you'll be there for a couple hours is also a lie, right?

DEFENDANT MANN: Probably.

See Exhibit 27, p. 237 (lines 8-15).

* * *

ATTORNEY: May 29 you said, I am walking into the accountant's office now. And that was a lie, wasn't it?

DEFENDANT MANN: Probably.

ATTORNEY: What were you doing instead that morning?

DEFENDANT MANN: I don't know.

ATTORNEY: On June 18 you wrote, I am just getting into – I'm just getting to our Accountant's office. That was a lie, wasn't it?

DEFENDANT MANN: Probably.

ATTORNEY: July 16 you said, I am walking into our accountant's office now. That was a lie, wasn't it?

DEFENDANT MANN: Probably.

ATTORNEY: July 29 you wrote[] I have a meeting within [sic] our accountant this morning. That was a lie, wasn't it?

DEFENDANT MANN: Probably.

ATTORNEY: Now, earlier -- let me see. I'm sorry. One more. Monday, August 5, I am walking into our accountant's office now for a meeting. That was a lie, right?

DEFENDANT MANN: Probably.

See Exhibit 27, pp. 238 (ln. 7) – 239 (ln. 6).

* * *

ATTORNEY: Did it bother you that you lied over and over and over again in e-mails about walking into an accountant's office when, in fact, you weren't doing that at all?

DEFENDANT MANN: I have no idea. · · ·

See Exhibit 27, pp. 239 (ln. 22) – 240 (ln. 2).

* * *

ATTORNEY: Can you explain any reason why you wrote those e-mails?

DEFENDANT MANN: No.

See Exhibit 27, p. 240 (lines 8-10). See also Affidavit of Joshua B. Smith, CPA and eleven (11) false email messages from Defendant Mann, attached hereto as Exhibit 40.

159. In the end, Defendant Mann never completed his project to prepare and manage the General Ledger and books and records of Ditto Holdings. Defendant Mann altogether failed to the detriment of Ditto Holdings and all of its shareholders.[34]

160. These facts are important because the Defendants make much of the fact that Ditto Holdings did not have a solid General Ledger. Even Defendant Simons was shocked to learn that his protégé Defendant Mann, as CFO, did not properly prepare or maintain the General Ledger for Ditto Holdings:

DEFENDANT SIMONS:	Are you telling me that there is no general ledger anywhere containing itemized transactions for either DT or DH? In other words if we wanted to or were required to provide fully audited financials, somebody would have to construct a ledger from bank statements
DEFENDANT MANN:	YES!

See September 2, 2013 Email Exchange between Defendants Simons and Mann, attached hereto as Exhibit 41.

161. Despite this cascade of lies, Ditto Trade, Ditto Holdings' sole operating subsidiary, did in fact have a General Ledger. More than that, Ditto Trade's General Ledger was *audited* by an independent CPA firm annually since 2010. As Ditto Trade was a licensed

[34] When pressed by Joseph about the state of the parent Company's General Ledger, Defendant Mann stated that while he had not finished updating the General Ledger, he was actively working on it with outside CPA Smith. Defendant Mann stated that he was putting all of the transactions that he did not have an answer for in a miscellaneous expense account in the Company's QuickBooks software, and that when he completed all other entries, he would sit down with Joseph to discuss the same. All lies.

broker-dealer, annual audits are the industry requirement.[35] On top of that. FINRA Regulators, who would spend weeks at the Ditto Trade offices annually, would thoroughly review the Ditto Trade General Ledger and all other financial reports.

162. In addition to the thorough examination of Ditto Trade's operations, the annual FINRA examinations included the review of Ditto Holdings' bank statements and ALL documentation related to any new investments made since the previous year's examination. The whole charade that Ditto Trade had no General Ledger is another lie told by these Defendants in furtherance of their scheme.

163. The fact that Defendant Mann was responsible for the General Ledger but feigns surprise is award-winning nonsense. Defendant Simons easily recognized that it was the CFO's job to account for the books and records, and General Ledger, but overlooked that fact to press on with the agenda to harm Joseph. Sadly, knowing these facts, the Defendants still pursued and blamed Joseph (and, to that end, protected Defendant Mann):

ATTORNEY:	So did that give you any pause about making Jeremy Mann part of what you were trying to do for the company when he revealed to you that there was no general ledger at the company, it's something that was in his area of responsibility?
DEFENDANT SIMONS:	I didn't see this as being about Jeremy Mann. I saw this about being -- I saw this as being about the company not having a general ledger.

See Exhibit 2 at pp. 242 (ln. 18) - 243 (ln. 2)

[35] Surely a 25-year veteran of the financial world and CEO of a broker-dealer would know that broker-dealers are required to be audited annually by independent accounting firms. See fn 48, *infra*. Evidently not this CEO - Defendant Simons. More proof of his ignorance on all matters related to the core business.

164. Protection was one gift that Defendant Mann craved from Defendant Simons - the protection to give Defendant Mann the freedom to avoid his professional responsibilities without judgment or consequence ... something that Joseph would not allow. Here are a few of the other gifts provided to Defendant Mann by Defendant Simons:

A. Defendant Simons allowed Defendant Mann the use of his Park City, Utah home for vacation;

See Exhibit 42 at pp. 18 (ln. 15) – 19 (ln. 24)

B. Defendant Simons manipulated Joseph to release Defendant Mann from a trip to Los Angeles for work - a trip that Defendant Mann pleaded with Defendant Simons to help him avoid; and

See Texts between Defendants Simons and Mann, attached hereto as Exhibit 43.

C. Defendant Simons willfully looked past all of Defendant Mann's lies, failures, missed deadlines, late work arrivals and early work departures, etc. and groomed Defendant Mann to be his confidant, co-conspirator, and closest friend while in Chicago [redacted]

165. For whatever their reasons, Defendants Simons and Mann had a [redacted] However, since Defendant Simons makes it his mantra that he was *always* acting in the best interest of the Company and its shareholders, that mantra is exposed as utterly fallacious where he allowed his protégé Defendant Mann to steal from the Company and its shareholders, and never reported him to anyone – not internally, to the SEC, to FINRA, to the Courts, to the police, or otherwise.

166. As it were, Defendant Mann failed too many times and was later terminated. Post-termination, the Ditto Companies discovered the following:

A. Defendant Mann, without authority, modified his and Defendant Stillman's 2011 and 2012 W-2s and illegally converted those Company loans (made to both Defendants) into salary.

B. Defendant Mann improperly used Company funds to retain accountants to

file amended personal tax returns for himself, his father. and Defendant Stillman. He also had the outside accountants amend the Company's payroll tax return to reflect the bogus W-2 changes. Because Defendant Mann improperly changed loans to salary, Ditto Holdings became responsible for additional payroll taxes.

C. Since January 2013, Defendant Mann made over $29,000.00 in unauthorized transactions for his and/or his family's benefit. This included the following:

- An $1,100 check written to his father from the Company's bank account.

- More than $1,000 spent in Las Vegas casinos and restaurants while he was "grieving" for his dog during the week of August 12, 2013.

- Thousands of dollars on tickets for various sporting events and concerts.

- Thousands of dollars for his various hockey leagues.

This also includes Defendant Mann's effort to squeeze out the last few dollars from the Company before his own termination, when Defendant Mann illegally wrote two personal rent checks for $3,692 each. One was for the current month of September 2013, and the other was to prepay the October 2013 rent. While these checks were written by Defendant Mann on September 13, 2013 (as well as deposited by his building manager on that day), Defendant Mann dated them September 3, 2013 in an effort to disguise his theft.

D. Since January 2012, Defendant Mann improperly used Company funds to make payments to his personal credit cards in excess of $24,000.00.

E. Defendant Mann charged over $15,000.00 for personal expenses on the Company credit/debit cards, including for groceries and dinners, which were misidentified or not identified in the books Mann was required to maintain.

167. Defendant Mann understood the essential role he played in the conspiracy and

was motivated to participate and provide assistance in order to continue to conceal his own misappropriation of funds.[36]

"100% Undisputable Fox Transactions"

168. On August 29, 2013 at 9:21 am, in furtherance of the scheme at hand, after nearly two days of working on Defendant Simons' requested list of illicit "Fox expenses," Defendant Mann provided Defendant Simons a spreadsheet entitled "spending by category." See Spending by Category spreadsheet, attached hereto as Exhibit 44.

169. Defendant Simons must have been incredibly disappointed with what he received from Defendant Mann - the "spending by category" spreadsheet had a grand total of 11 entries, none of which implicated Joseph in any wrongdoing. Defendant Simons reviewed the entries and wrote to Defendant Mann: "***Is this it?***" See August 29, 2013 Email Exchange, attached hereto as Exhibit 45.

170. Defendant Mann responded, in part: "**[H]onestly, the last 90 days have been a lot less spending than the previous 4-year average.**" Id.

171. Defendant Mann's declaration that the spending was less than the "***previous 4-***

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[36] It is worth noting that Defendant Mann's work ethic was not lost on other employees (not named Defendant Simons). As Defendant Stillman explained (about Defendant Mann) in his sworn Affidavit dated December 9, 2013:

> **Mr. Fox had told me that he had been dissatisfied with Mr. Mann for some time regarding his work habits and excessive tardiness and that Mr. Fox had expressed that dissatisfaction to Mr. Mann. I shared Mr. Fox's thoughts regarding Mr. Mann's tardiness.**

See Exhibit 22 at p.2, ¶ 8. **(emphasis added).**

year average" is remarkable. On one hand, the Ditto Companies had 80% fewer funds between 2009 and 2011 than they had in 2012 and 2013 (which, comparatively, shows that there was very, very little spending in the prior 90 days in 2013 despite having millions of dollars in the bank). On the other hand, Defendant Mann admitted time and again to failing to maintain a General Ledger for the Holding Company ("**Something I have zero time to do,**" Defendant Mann claimed); thus, he would have had no idea whatsoever what the "**previous 4-year average**" actually was or could be.

172. Defendant Mann also instructed Defendant Simons to "**call my cell.**" On that or another call, he likely promised Defendant Simons that he would prepare a new ledger/spreadsheet identifying every transaction dating back to January 2012 that could be attributed to Joseph and/or his family members in any imaginable way.

173. Remarkably, it took Defendant Mann two days to put together the 11-entry "spending by category" spreadsheet (see Exhibit 44), but less than 9 hours to create a spreadsheet with nearly 470 entries deriving from 40 monthly bank statements covering the respective bank accounts of both Ditto Trade and Ditto Holdings between January 2012 and August 2013. These bank statements contained somewhere in the vicinity of 5,000 financial transactions.[37]

174. On August 29, 2013 at 6:46 pm, Defendant Mann emailed the "Ditto Holdings

[37] In stark contrast to Defendant Mann's 9-hour effort, it took professional outside accountants more than **480 hours** over nearly three weeks in late September/early October 2013, post-Defendant Simons' termination, to properly account for the 20 months in question. This, along with another **500+ hour** effort by Company executives and employees, meant that Defendant Mann, who considered this list to be "***100% Undisputable***," spent less than **1%** (one percent) of the time actually needed to analyze the period in question. This is more proof that the Defendants' motivation to harm Joseph overstepped all logic and evidence.

Ledger – Paul.xlsx" spreadsheet to Defendant Simons, which has since become known as the "**100% Undisputable Fox Transactions**" spreadsheet, i.e., expenses that Defendant Mann (and ultimately Defendant Simons) claimed were *indisputable* evidence of misappropriation of Company funds through expenditures made for the benefit of the Fox family. Id.; see also "Ditto Holdings Ledger – Paul.xlsx," attached hereto as Exhibit 46 (Defendant Mann: "Has all of the 100% undisputable 'Fox' transactions for 2012 and 2013").

175. Defendant Simons, who professed to be an experienced Wall Street executive, knew full well that without a General Ledger to properly assign a transaction to its proper category (based on contract, agreement, invoice, etc.), a bank statement alone does not and could not tell the entire story of any transaction, and, in fact, is quite often misleading.

176. It was said by Defendant Simons that, in bringing claims against Joseph, he relied exclusively on a document entitled "**100% Undisputable Fox Transactions**" - a spreadsheet prepared by Defendants Simons and Mann with the intent to harm Joseph. See Id.

177. On May 14, 2015, Defendant Mann testified to the following:

ATTORNEY:	You testified in response to Mr. Woolley's questions about Simons Exhibit No. 3, the spreadsheet of the so-called 100 percent undisputable Fox transactions, that it had to be done rather quickly. Do you remember giving that testimony?
DEFENDANT MANN:	Yes.
ATTORNEY:	Why did it have to be done rather quickly?
DEFENDANT MANN:	That's what Paul [Simons] had asked for me. He wanted it quick and -- in order to determine like what we need to do. It's not like we could, you know, take our sweet time with it.
ATTORNEY:	Why not? What was the deadline?

DEFENDANT MANN:	There wasn't really a deadline.
ATTORNEY:	Didn't Paul tell you by August 29, 2013, that he and Joe Fox had had some unpleasant conversations?
DEFENDANT MANN:	I don't remember. I am sure, yeah. It sounds familiar.

See May 14, 2015 Deposition Testimony of Defendant Mann, p. 450 (lines 5-24), attached hereto as Exhibit 47.

178. On August 29, 2013 at 11:14 pm, Defendant Simons made it clear in an email that he wanted to accuse Joseph of misappropriating every dollar possible when he wrote to Defendant Mann:

> **...id like to have a total for the balance of cash withdrawals and cashiers checks for which we have no recorded payee or use (not that it is attributable to him,just that it is payee and/or purpose unknown).**

See August 30, 2013 email, attached hereto as Exhibit 48. (**emphasis added**).

179. On August 30, 2013 at 12:08 am, Defendant Mann leaves no doubt that the intention of his "**100% Undisputable**" spreadsheet was to provide a list of illicit transactions made by Joseph on behalf of himself or a family member when he wrote:

> **Also, the one thing I want to point out, is anything that we "don't know for sure" are probably arguments that could be made from his side. Meaning, I only want to focus on things that I know he can absolutely not defend.**

See Exhibit 48. (**emphasis added**).

180. In nearly every Court pleading or filing, as well as in his Affidavit dated November 8, 2013, Defendant Simons made it clear that he was relying on the "***100% Undisputable***" document:

> **The source for identification and confirmation of these and other expenditures was a document described as "100% indisputable 'Fox' transactions" provided by Mann to me.**

See November 8, 2013 Affidavit of Paul M. Simons, attached hereto as Exhibit 50.

181. As it turned out, the only thing 100% about the purported "**100% Undisputable**" spreadsheet was its inaccuracy. Not a single dollar that Defendants Simons and Mann claimed in their "**100% Undisputable**" list was improper or inappropriate, let alone misappropriated, as Defendant Simons falsely claimed over and over again to the SEC, FINRA, the Board of Directors, the Shareholders, this Honorable Court, and the First District Appellate Court. Here are some examples of the incredible depths that these Defendants went to harm Joseph using the false "100% Undisputable" list:

Example 1:

Defendants Simons and Mann assert that transactions listed as "Citibank Collections" were improper (misappropriated) payments made to Joseph's brother, Avi Fox. This is absolutely false. The "Citibank Collections" charges were nothing more than routine and periodic SIPC (Securities Investor Protection Corporation) insurance premium payments. On information and belief, every single licensed broker-dealer such as Ditto Trade must make these routine and periodic SIPC insurance premium payments. Rather than enter these SIPC charges properly as the requisite business expenses they were, Defendants Simons and Mann falsified the entries, described the charges falsely, and falsely attributed them to Avi Fox with the intent to harm Joseph and his family before the SEC, FINRA, the Board of Directors, Shareholders, this Honorable Court, and the First District Appellate Court.

If that misconduct were not egregious enough, as the FINOP (Financial Operations Principal) of Ditto Holdings, Defendant Mann had assisted in processing those very same SIPC insurance premium payments in the past. In addition, since Defendant Mann testified that he was pulling information solely from Company bank statements, he would have seen the entire description of the transaction as listed on the Bank of America account statement:

> **Bnf: Citibank Collections Accou ID:30801482 Bnf Bk: Citibank, N.A. ID:0008 Pmt Det:95788922 Assesment [sic] For Ditto Trade Registration 8 068410**

To describe the transaction of "*Assesment for Ditto Trade Registration 8 068410*" (Ditto Trade's SEC file number) as a personal transaction for the benefit to Avi Fox is tantamount to perjury. Defendant Mann knew full well what the SIPC insurance premium charges were ... and *still* proceeded to present these false charges against Joseph and his family.

Example 2:

To further harm Joseph, Defendant Mann listed various bank transactions including airline tickets as being of a personal nature and related to trips(s) taken by Joseph to Las Vegas, Nevada. See Exhibit 46. This is another intentional misrepresentation of the transactions. The flight records refer to Virgin America airplane tickets purchased on June 27, 2012 for a total of $2,544.60. These tickets were for Joseph, his son Levi, and another employee to travel to New York City (not Las Vegas, NV) to meet with a billionaire foreign investor. Following the meeting, Joseph and his son Levi secured a written $10,000,000 offer for investment into Ditto Holdings from the billionaire foreign investor. See $10,000,000 Term Sheet, attached hereto as Exhibit 49.

The sickest part of this effort is that Defendant Mann booked the hotel and the car service in New York City for Joseph. See June 26, 2012 Email, attached hereto as Exhibit 51 (Defendant Mann to Joseph: "***I've been calling and texting you. I'm good. I got the four seasons at a better rate. Regards, Jeremy Mann, Chief Financial Officer...***"). This is another example of these Defendants lying to the SEC, FINRA, the Board of Directors, the Shareholders, this Honorable Court, and the First District Appellate Court with the specific intent to harm Joseph.

See June 26, 2012 email regarding trip to New York to meet an investor, attached hereto as Exhibit 51.

182. Every one of the 469 items in the "100% Undisputable Fox Transactions" list was fabricated or twisted maliciously to invite criminal suspicion, and done so with the intent to cause irreparable damage to Joseph.

The "In lieu of Income" Scheme

183. In the late night of August 29, 2013, Defendants Simons and Mann were reviewing the purported "100% Undisputable Fox Transactions" spreadsheet. That spreadsheet, of course, purports to be a spreadsheet of incontrovertible evidence that Joseph and his family received improper funds from the Ditto Companies.

184. In context, in his Sworn Form [redacted] report to the SEC, Defendant Simons accused Joseph, under penalty of perjury, of "***misappropriation of company funds that appeared to benefit Yosef Fox and members of his family. The information was contained in and/or***

corroborated by company bank records, company ledgers, ..."[38] See Exhibit 3 at p. 3, ¶ 4.

185. As Defendants Simons and Mann were reviewing various payments (with an eye toward finding any suspect transactions to level Joseph), Defendant Simons asked Defendant Mann the following questions in an email:

> **...What i need to understand is whether or not the expenses you sent earlier can be construed as being in lieu of income in 2012 or if they are in addition to income, even though it was not paid thru a payroll processor. For example it looks like when you, brian, [Defendant Stillman] got wires, so did [Joseph's [redacted]]. Or if the many 20,000 , 12000, 90000 etc 'online transfer debt' or 'withdrawal' were income to [Joseph], or did he take ZERO income and all the expenses catalogued constitute income. This I doubt but it is critical to know**
>
> **Paul M. Simons**

See August 30, 2013 Email Correspondence between Defendants Simons and Mann, attached hereto as Exhibit 53.

186. **"This I doubt but it is critical to know."** Id. Indeed, it would be "critical" for any proper accountant to know whether Joseph received a salary/income or whether the itemized expenses were made for Joseph's benefit (or otherwise at his direction) **"in lieu of income...."** It seems quite plain that Defendant Simons was expecting to find the former (income PLUS expense payments) as the latter (expense payments "in lieu of income") would be the death knell to this McCarthy-esque accounting and investigation.

187. As it turns out, Defendant Mann responded: **"He took ZERO income according to payroll taxes."** Id.

188. Well then there now. Joseph took "ZERO income." If Joseph took "**ZERO income.**" then the critical question becomes: Was Joseph receiving expenses paid to himself, his

[38] Defendant Mann likewise submitted a false [redacted] to the SEC relying on the false Demand Letter. See Defendant Mann's completed Form [redacted], attached hereto as Exhibit 52, p. 2.

wife, etc. "**in lieu of income**"? Or "did he take ZERO income and all the expenses catalogued constitute income" as Defendant Simons doubted or feared? Sadly, no one ever asked Joseph ... or Stuart Cohn, General Counsel ... or David J. Rosenberg, Chief Operating Officer and Member of the Board. The Defendants did not want to ask the questions of others because the answers would foil their scheme. After all, if Joseph was not drawing a salary but instead directing sums due and owing to him to others ("in lieu of income"), then Joseph committed no wrongdoing. Defendant Simons was smart enough to ask the question of Defendant Mann, but motivated enough to disregard the answer ... and therein hides the maliciousness of these Defendants.

189. Another question never asked of anyone - a question a third grade accountant would ask: On what ground did Joseph (or even Avi) have to draw expenses or other sums "in lieu of income"?

190. On January 23, 2009, Ditto Holding's predecessor company, Chicago Commodities Exchange, Inc., wrote, in relevant part, the following to Joseph:

> **To: Joseph Fox:**
>
> **This Letter of Agreement states the agreement of Chicago Commodities Exchange, Inc. (the Company) with you regarding your duties and responsibilities for the Company, and the compensation and benefits you will receive in return.**
>
> * * *
>
> **2) <u>Salary and Benefits</u> – In exchange for the services you will provide to the Company, you will be paid as salary and as advances by the Company as funds are available. The Company may advance funds to you as salary or, upon your request, as advances to be repaid; however, if the Company has not attained $5 million in contributed capital before the lapse of five years from the date of this Agreement, all funds advanced by the Company shall be considered loans, may not be converted to salary, and must be repaid with interest at the prevailing IRS rate. If $5 million in contributed capital has been attained before the lapse of five years from the date of this Agreement, advances may be converted to salary at your option. Your compensation may also be paid in kind or by the payment obligations you may have. In**

addition to other payments the Company might make for you, the Company will provide the following salary and benefits:

a. Health insurance coverage for your family;
b. The out of pocket portion of your healthcare costs;
c. Your cost of relocating your personal residence from the Chicago area to Los Angeles, these include your moving expense and also your residential leasing expenses until you have been able to sell your home in Long Grove, Illinois;
d. The Company will pay or reimburse you for other reasonable and necessary expenses that you incur in fulfilling your duties for the Company, including travel (transportation, meals and lodging) and communications expenses.

All payments of cash to you or on your behalf shall not exceed $250,000 annually.[39]

See Joseph Fox Employment Agreement, attached hereto as Exhibit 54.

191. Based on the Employment Agreement, a fourth grade accountant would ask: "Did payments of cash made to Joseph or on his behalf 'exceed $250,000 annually'"?

Answer: NO.

192. In 2009, Joseph received advances through Company paid expenses ("in lieu of income") in the amount of **$72,750**; in 2010, Joseph received advances through Company paid expenses ("in lieu of income") in the amount of **$77,350**; in 2011, Joseph received advances through Company paid expenses ("in lieu of income") in the amount of **$116,848**; in 2012, Joseph received advances through Company paid expenses ("in lieu of income") in the amount of **$184,427**; in 2013, Joseph received $100,546 in salary (processed through ADP Payroll), and $115,050 in advances through Company paid expenses ("in lieu of income") for a total of

[39] Pursuant to the Employment and other agreements, Joseph personally guaranteed Company loans so that the Company could secure funding or financing, as needed. In fact, as Defendant Mann was well aware, Joseph personally guaranteed some $1,500,000.00 + in loans, promissory notes, or otherwise, including without exception put options/share buybacks for the best interests of the Company and its shareholders.

$215,596; in 2014, Joseph received advances through Company paid expenses "in lieu of income" in the amount of $68,455; and in 2015, Joseph received advances through Company paid expenses "in lieu of income" of less than $37,370.[40] See Payment Schedule, attached hereto as Exhibit 55.

193. It seems quite plain that Defendant Simons knew that Joseph's expense payments were made "in lieu of income" or salary ... and he knew that fact was "critical to understand." Defendant Simons even asked the very question and was told in no uncertain terms by Defendant Mann that Joseph "took ZERO income according to payroll taxes." That the Defendants knew that Joseph committed no wrong in expensing certain payments "in lieu of income," yet still proceeded to bring false and malicious claims against Joseph for misappropriation of company funds purportedly benefiting Joseph and his family, etc. with the SEC and FINRA and the Board of Directors and Shareholders is another example of the criminal scheme and malicious acts of the Defendants. They knew that Joseph had done no wrong yet still prosecuted him; it is incomprehensible evil of which the Defendants must be held accountable.

FABRICATION OF EVIDENCE

"Ditto Golf"

194. The PGA scheme that Defendant Simons executed is probably one of the greatest examples of the devious, malicious, and criminal mind of Defendant Simons.

195. On July 24, 2013, Ditto Holdings held its annual stockholder meeting in Chicago.

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[40] On March 10, 2011, Defendant Mann prepared a spreadsheet entitled "FB Expenses" that included a monthly salary budget of $20,000 for both Joseph and his brother Avi. See FB Expenses Spreadsheet, attached hereto as Exhibit 54. Defendant Mann clearly knew that Joseph was entitled to the draws, and he knew the cap on those draws, to wit: $20,000.00 per month (or, as per the Employment Agreement, *up to* $250,000 per annum). Defendant Mann like his cohorts always looked away from exculpatory evidence to further their malicious agenda to harm Joseph.

Only existing stockholders were invited, i.e., this was not a presentation to promote new investments to potential investors.

196. Defendant Simons and Joseph were *co-presenters* at that meeting.

197. One subject discussed was a charity concept known as "Ditto Golf."

198. The Ditto Golf concept was conceived after Joseph helped raise $35,000 for professional golfer Ernie Els' charity "Els for Autism"[41] in late 2011. Joseph and Els for Autism Executive Director Susan Hollo discussed the concept of having viewers of televised golf tournaments select and follow a particular golfer and his corresponding charity, and make a donation. If the golfer won a certain tournament, the viewer/follower could win a prize.

199. Ms. Hollo believed that the idea was big enough that it should be presented to the PGA to benefit all of the PGA related charities. Ms. Hollo proceeded to connect Joseph to the PGA and discussed introducing Ditto to the top 50 golfers in the world and their related charities. See Ernie Els Correspondence, attached hereto as Exhibit 56.

200. Joseph had several conversations with the PGA about a potential partnership and there was mutual interest in continuing discussions. See Ditto Golf outline, attached hereto as Exhibit 57. One of the key barriers to entry into any agreement with the PGA, however, was the significant cost of implementing the Ditto Golf concept. After careful consideration (with the best interests of the Ditto Companies in mind), Joseph made the decision to focus on completing the Ditto Trade technology (then in development) before corporate resources would be targeted

[41] Ernie Els created the *Els for Autism* charity in 2009 [redacted]
http://www.elsforautism.com/site/PageServer?pagename=About_Us_ernies_story

for the Ditto Golf concept. However, the fact remained that the Ditto Golf concept was alive albeit delayed; a strong relationship was developing with Els for Autism and the PGA with mutual interests in mind; and, once Ditto Golf could be funded properly, partnership discussions would continue with an eye toward a Ditto Golf launch in late 2013 or 2014.

201. These discussions with the PGA and the potential relationship with the PGA were discussed with the existing shareholders of Ditto Holdings at the 2013 annual stockholder meeting during a slide show - shown as "forward looking statements" with "safe harbor" caveats, etc.[42]

202. Defendant Simons knew well the scope of the *potential* relationship with the PGA and Joseph's directive to delay the Ditto Golf concept until the technology at Ditto Trade was completed. Defendant Simons also knew well the care taken in describing the *potential* relationship with the PGA; the *potential* Ditto Golf concept; and the measures taken by Joseph not to mislead any existing shareholders of Ditto Holdings. In fact, the materials that Joseph emailed to all 200+ existing shareholders make no mention whatsoever of any relationship with the PGA. None.[43]

Defendant Simons Cons the PGA

203. On September 24, 2013, some two weeks after Defendant Simons was terminated as CEO of Ditto Trade and just days after Defendants Huey-Burns and Shulman Rogers withdrew from representing Defendants Simons, Mann, and Stillman, Defendant Simons called the General Counsel of the PGA, Ms. Christine Garrity. On information and belief, Defendant

[42] The only people that had the confidential Ditto Golf slide were the executives, including Defendants Simons and Mann.

[43] The Ditto Golf slide was not included in any documents provided at any time to existing or prospective shareholders.

Simons misrepresented himself as a *potential* investor in Ditto Golf or Ditto Trade who had received offering materials from the Company; that the offering materials referenced a partnership with the PGA; and he wanted written confirmation of the partnership relationship by and between Ditto Golf or Ditto Trade and the PGA before he invested in Ditto Golf or Ditto Trade.

204. Following their conversation, General Counsel Garrity wrote to Defendant Simons:

> **The PGA of America does not have a business relationship with Ditto Golf. If you could send me a .pdf of the document that you referenced, I'd greatly appreciate it so that I can follow-up with them to remove our name and registered trademark from their materials.**

See PGA correspondence, attached hereto as Exhibit 58.

205. In the next three days, Defendant Simons sent several confidential slides to General Counsel Garrity that were on the Ditto Trade laptop that Defendant Simons had stolen; however, he did not send ALL of the slides, only some of the slides, with the clear intent to mislead the PGA. For example, there were 30 slides in total. Defendant Simons sent 26 slides to the PGA. Defendant Simons failed to disclose the following slides:

Slide 1: **OPENING AGENDA**

Call to Order	Joseph J. Fox, Chairman and CEO
Introductions, Quorum Report, Affidavit of Mailing	Joseph J. Fox
Board Nominations	Joseph J. Fox
Open the Voting for Election of Directors	Joseph J. Fox
Management Presentation	Joseph J. Fox, Paul M. Simons, Exec. V.P. and CEO of

Ditto Trade, Inc.

Ditto Holdings, Inc. Proprietary and Confidential

Slide 3:	**Instructions for Voting Online** **Shareholders who are attending remotely must cast their ballot for Directors by sending an e-mail message to Secretary @DittoHoldings.com and listing the names of up to three Director nominees.** **Ballots cast via e-mail must be received no later the 6:30 PM Central Time.** **Please make sure to type your full name in the body of the message indicating that you are the sender.**	
Slide 14:	**Hedgeye**[44]	
Slide 30:	**Closing Agenda** **Close the Voting**	Joseph J. Fox
	Report of the Inspector of Election	Joseph J. Fox and Stuart Cohn, Secretary
	Adjournment	Joseph J. Fox
	Question and Answer Period	Joseph J. Fox

See Slides 1-30 of confidential PowerPoint presentation used at annual meeting of stockholders (for internal use only), attached hereto as Exhibit 59.

206. Defendant Simons likely failed to disclose the Opening Agenda slide because it identifies him as the Executive Vice-President of Ditto Holdings and the CEO of Ditto Trade, Inc. Defendant Simons was likely masquerading to the PGA as a *prospective* investor in the Ditto Companies looking to verify the alleged partnership between Ditto Golf or Ditto Trade and the PGA.... He did not want to disclose his true relationship with the Ditto Companies. i.e., the

[44] This slide was used to demonstrate Ditto Trade's technical capabilities with a company called Hedgeye.

former CEO/EVP....

207. Defendant Simons also failed to disclose the Opening Agenda likely because it gives context to the event: an annual stockholder meeting with quorum requirements, board nominations, voting matters, etc. ... not a pitch meeting to prospective investors as Defendant Simons falsely claimed.

208. Defendant Simons also failed to disclose the Instructions for Voting Online slide likely because it, too, gives any reasonable reader the clear understanding that this is an annual stockholder meeting (with Director nominees, voting, etc.), not a prospective investor meeting peppered with Offering Materials as Defendant Simons falsely claimed.

209. For the same reasons, Defendant Simons did not likely include the Closing Agenda slide which, again, refers to voting measures and elections.

210. It should be noted that not one non-shareholder was invited to the annual stockholder meeting. Defendant Simons' effort to misrepresent the annual stockholder meeting as a pitch meeting to potential investors was a complete con job on the PGA.

211. In connection with producing the slides, Defendant Simons wrote to General Counsel "Christine" Garrity: **"Christine I would appreciate remaining confidential in bringing this to your attention."** See September 27, 2013 PGA Correspondence from Christine Garrity, attached hereto as Exhibit 60. **(Emphasis added).**

212. On the same morning, Defendant Simons received the following email from the PGA's Director and Legal Counsel Andrew Blasband:

> **Mr. Simons -**
>
> **Christine Garrity forwarded the information you provided to me. I noted a public relations link on the Ditto trade website (see below) that indicates you are the CEO of Ditto Trade.**

Are you still acting in that capacity? If so, I would like to request Ditto Trade cease and desist from all uses of The PGA of America's registered trademark. The PGA of America has no involvement with this offering and, as such, we demand that every person that received the attached materials receive updated materials eliminating any use of The PGA of America name, logo or inference that the PGA of America has any involvement whatsoever with this offering.

[link to public relations section of Ditto Trade website]

Please let me know that you received this correspondence and how Ditto Trade plans to resolve the issue.

Thank you-

Drew

Andrew Blasband
Director and Legal Counsel
The PGA of America
[ ]

See September 27, 2013 PGA Correspondence from Andrew Blasband, attached hereto as Exhibit 61. **(Emphasis added).**

213. In response, the same day, Defendant Simons wrote to "Drew":

Andrew-no I do not have any affiliation with the company.

I also brought this to your attention in good faith and requested that it be treated as confidential, both the document and the source, to which Ms. Gerrity [sic] agreed.

I respectfully request that in whatever communication you desire to make with the company that you please not forward my email or the document or reference the source.

I would hope it would be adequate to protect your interests to state that you have been made aware of this and request whatever action is appropriate.

The information was presented – I do not know if and/or to whom it was sent. I merely informed Ms. Gerrety [sic] in order to confirm whether or not such a partnership as represented actually exists.

I thank you for honoring my request

See September 27, 2013 PGA Correspondence from Defendant Simons, attached hereto as Exhibit 62. **(Emphasis added)**.

214. Once Mr. Blasband exposed Defendant Simons as the "**CEO of Ditto Trade**" and sent *him* a cease and desist letter, Defendant Simons could do nothing but backtrack out of his lies. After all, it makes no sense for a CEO (or even former CEO) to impersonate a prospective shareholder ... or, after being exposed, to claim he has "no ... affiliation" with the Ditto Companies. It makes no sense for a CEO (or even former CEO) to ask for a written confirmation that there is or is not a partnership with his own company. The very fact that Mr. Blasband outted Defendant Simons means that Defendant Simons hid his true identity. It seems plain that Defendant Simons was so absolutely shady that the PGA never sent a cease and desist letter to the Ditto Companies.

215. At the end of the day, Defendant Simons did not need to call the PGA to verify that there was no partnership between Ditto Trade (Ditto Golf) and the PGA; he knew perfectly well that there was no such partnership in place. And the idea that Defendant Simons needed something in writing to confirm or deny the partnership was a ruse on the PGA (and the SEC, FINRA, etc.).[45]

216. As is clear from his own sworn testimony, Defendant Simons already knew, before he called the PGA, that there was no partnership; no partnership was ever described by the Ditto Companies; and no partnership was ever represented by Joseph:

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[45] On September 24, 2013 at 2 pm, Defendant Simons had his first phone conversation with Jed Forkner and Anne McKinley, lawyers at the SEC. It is all but certain that either Mr. Forkner or Ms. McKinley asked Defendant Simons if he knew if Joseph had ever lied to investors to get them to invest. Two hours and two minutes later, after a phone call with General Counsel Garrity, Defendant Simons received the email from the PGA denying any relationship by or between the PGA and "Ditto Golf."

ATTORNEY:	Have you ever seen anything generated by Ditto that said -- used the word partnership at any time to describe the relationship between Ditto and any PGA entity?
DEFENDANT SIMONS:	In writing?
ATTORNEY:	Yeah, in writing.
DEFENDANT SIMONS:	No.
ATTORNEY:	Now, did Joe Fox ever tell you that Ditto had a, quote, partnership with a PGA entity?
DEFENDANT SIMONS:	I think Joe -- did he ever specifically tell me there is a partnership? No. I think Joe Fox represented that there was something with the PGA. It presented as an idea.

See Exhibit 2 at p. 329 (ln.23) – 330 (ln. 11) (Emphasis added)

217. Even his cohort Defendant Mann knew that there was no partnership with the PGA:

ATTORNEY:	Did Joe Fox ever tell you that Ditto had a partnership with the PGA?
DEFENDANT MANN:	Had? No. Trying to, yes.

See Exhibit 63 at p. 301 (lines 17-19).

218. Defendant Simons is clearly hell bent on fabricating evidence against Joseph with a vicious and malicious intent to harm Joseph. As it turns out, he lied to the PGA to get something in writing that no partnership existed between the PGA and the Ditto Companies and then he used that writing (the email from General Counsel Garrity of the PGA denying the existence of a relationship) as evidence of unlawful misconduct through fraudulent inducement by Joseph to the SEC. See Exhibit 3, *supra*. In other words, Defendant Simons manufactured evidence to manufacture a crime ... and accused Joseph of that manufactured crime.

219. On December 9, 2013, Defendant Simons made the following knowingly false statement - under penalty of perjury - on the SEC's "Form [redacted] under the section entitled "State in detail all facts pertinent to the alleged violation. Explain why the [redacted] believes the acts described constitute a violation of the federal securities laws":

> **request from the PGA counsel to cease-and-desist misrepresentation of relationship between Ditto Trade and the PGA in support of allegations of false and misleading representation to prospective investors**

Id.

220. In other words, Defendant Simons stated, in a sworn filing with the SEC, that a "**request**" was made by "**PGA counsel to cease-and-desist misrepresentation of [a] relationship between Ditto Trade[46] and the PGA....**" Defendant Simons is the one that contacted the PGA, not the other way around. Defendant Simons (not the Ditto Companies) received the PGA's request to "**cease-and-desist**" any [redacted] to a PGA - Ditto partnership or use of their logo. Defendant Simons falsely described an annual stockholder meeting (at which he was a co-presenter) as an "Offering" event to support his false "allegations of false and misleading representation to **prospective investors**." Defendant Simons fabricated the entire scheme. This is all a sham by Defendant Simons - a sham on the PGA, the SEC, FINRA, the Board of Directors, the Shareholders, and this Honorable Court. Further, it was an unlawful sham to destroy Joseph.[47]

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[46] The PGA actually denounced any relationship with "Ditto *Golf*" not "Ditto Trade." See Exhibit 60. Another misrepresentation intended to harm Joseph.

[47] The different means and methods of the Defendants' schemes are disgusting. Another example: On Tuesday September 10, 2013 at 7:31 am, the day of Defendant Simons planned termination, *someone* hacked into Ditto Holding's General Counsel's email account. Shortly thereafter, Defendant Mann copied a letter written by General Counsel to Office Building

Corporate Sabotage

221. On August 22, 2013 at 5:36 pm, Defendants Simons and Mann exchanged correspondence following an email from Ditto Trade's clearing firm (Apex) regarding their new billing statement format:

DEFENDANT SIMONS:	Who receives this [billing statement] for us? If it is not you then we should change that
DEFENDANT MANN:	That's not our billing settlement.
DEFENDANT SIMONS:	[redacted] - its a sample. but I mean who receives ours?
DEFENDANT MANN:	Have no idea. Never seen that before. I'm assuming just Joe.
DEFENDANT SIMONS:	Ok - I will have it sent to you. All the other correspondents get it sep 3 for aug month end. We can be normal too. I thought maybe you would handle it since you are the CFO!
DEFENDANT MANN:	**I just want to make sure that you aren't sharing the things I have sent you with Joe. He gets weird if I send stuff like that to anyone without running it by him first, *regardless* if it's you. Let's also have the settlement sent to me without informing him that we are doing it. It only helps us.**[48]

Security (from the General Counsel's email account) directing a lock change and advising to shut off access to an unnamed executive expected to be terminated. Defendant Mann sent that hacked email to Defendant Simons, who then forwarded it to Defendants Huey-Burns and Shulman Rogers. See Exhibit 69.

[48] Defendant Simons explains: "***It only helps us***":

DITTO ATTORNEY:	Did you understand what Jeremy Mann meant by. it only helps us?
DEFENDANT SIMONS:	I think he meant it only helps us in what he was working on. which is answering the

See August 22, 2013 Email Exchange, attached hereto as Exhibit 60. (**Emphasis added**).

222. On one hand, Defendant Simons is circumventing Joseph by (directing and) redirecting corporate clearing firm billing statements away from Joseph and to Defendant Mann: "I will have it sent to you."

223. On the other hand, Defendant Mann is consenting to corporate sabotage: "**[l]et's also have the settlement sent to me without informing him [Joseph] that we are doing it.**" Of course, Defendant Mann cowers in the corner wanting to "make sure" that Defendant Simons is not "sharing the things I have sent you with Joe" with the same cowardice that Defendant Simons exhibited when he asked the PGA not to share his false [redacted] with Joseph and the Ditto Companies: "Christine - I would appreciate remaining confidential in bringing this to your attention" and "I also brought this to your attention in good faith and request that it be treated as confidential, both the document and the source, to which Ms. Gerrity [sic] agreed" and "I respectfully request that in whatever communication you desire to make with the company that you please not forward my email or the document or reference the source." See Exhibit 62, *supra.*

224. Not surprisingly, this example of corporate sabotage is also another example of Defendant Simons supervising the Interim CFO [Defendant Mann] on financial matters – a clear and unambiguous violation of the FINRA rules, as well as a clear and unambiguous breach of his February 12, 2013 FINRA Attestation swearing not to perform in any supervisory capacity or concerning "brokerage operations".... See Exhibit 18, *supra.* What could be more relevant to "brokerage operations" than the details contained in brokerage billing statements?

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question how much business did we do yesterday or last week or the day before.

See Exhibit 2 at p. 242 (ln. 18) – 243 (ln. 2)

225. In all respects, Defendants Simons and Mann placed the Ditto Companies (and concomitantly its shareholders and executives) in violation or potential violation of FINRA rules and regulations.

226. If nothing more, this is another exemplar of Defendant Mann's willingness to cooperate with Defendant Simons to reach their common end ... even if their collective efforts are in violation of law or in breach of fiduciary duties.

Defendant Simons Writes to "Bob" at 11:50 pm

227. At 11:50 PM on the night of September 18, 2013, Defendant Simons wrote a rambling email to "Bob" Burson, Defendant Huey-Burns' pal at the SEC. See Defendant Simons' Email to Bob, attached hereto as Exhibit 64. The email apologizes for the lack of protocol (perhaps in contacting the Senior Associate Regional Director of the SEC's Midwest Regional Office directly via email near midnight) and quotes Defendant Huey-Burns and his **"well-documented"** phrase to falsely suggest that there is a mountain of evidence against Joseph. etc. It is a calculated plea, replete with a false show of emotion, to get "Bob" to launch an investigation against Joseph as soon as possible. To further the agenda, Defendant Simons forwarded Defendant Huey-Burns' September 9, 2013 email and attached the Demand Letter - a tactic to adopt all of Defendant Huey-Burns' prior work and to carry the torch for the agenda to harm Joseph.

228. Defendant Simons does introduce a few new tricks to his audience in this email. He expresses his dire fear of being sued by the Ditto Companies without telling Bob that he was already served with a lawsuit by the Ditto Companies *earlier that evening*. Id. ("I am now concerned by threats from the company and counsel of legal action against me for allegedly

attempting to cause the company harm by my actions"). Perhaps he feared that Bob would request a copy of a truthful version of the story.[49]

229. Defendant Simons also uses such key words as "well documented," "ongoing fraud," "illegal act," and "irrational and extreme retaliation." Id. These and other phrases are just words to manipulate Bob. Defendant Simons knows that he does not have a single document to support any of his false claims.

230. Where Defendant Simons crosses another line is in his salacious reference to Mr. Clayton Cohn, the son of Ditto Holdings' General Counsel, Stuart Cohn.

> **It should also be noted that one of the financial transactions in question and cited in our letter concerned payment (s) to Clayton Cohn (aka Market Action), currently I believe under SEC investigation. Clayton Cohn is the son of Ditto Holdings General Counsel Stu Cohn, and I believe that the irrational and extreme retaliation against me in this situation may have been in part been motivated by fear of any linkage discovered (evidence of which I have not seen nor do I suggest other than the unexplained payment(s) to Mr. Cohn on a Ditto bank statement with no evidence of disclosure as a potential related party transaction).**

(Emphasis added)

231. Defendant Simons maliciously pieces together two lies to create an even greater criminal allegation against Joseph. First, Defendant Simons lies when he states that his termination was an "**extreme retaliation against me.**" Once again, Defendant Simons knew of the termination decision before the false Demand Letter and the false correspondence with the SEC. See Exhibit 10 ("*Joe is firing you on Tuesday*" "*Cool-* [...]"). Second, Defendant Simons knew full well that the "**unexplained payment(s)**" to Mr. Clayton Cohn derived from a fully-explained written loan agreement that was commercially viable. In fact, Defendant Mann was in

[49] The case captioned as Ditto Holdings v. Simons, et al. was recently dismissed for want of prosecution because the Company had no funds to advance the case.

possession of that written loan agreement. Further, it was Defendant Mann who processed the $15,000 wire transfer to Mr. Clayton Cohn subject to that written loan agreement. See May 6, 2013 Email to Defendant Mann with Loan Agreement and wiring instructions, attached hereto as Exhibit 65.

232. For the record, Mr. Clayton Cohn was a shareholder (150,000 shares purchased for $0.33 a share) in Ditto Holdings. Between 2011 and 2012, Mr. Clayton Cohn also referred several high quality investors to Ditto Holdings that ultimately invested approximately $1,250,000 into Ditto Holdings for the benefit of the Ditto Companies and other shareholders. That is certainly more than Defendant Simons ever brought to the Ditto Companies.

233. A corporate loan of $15,000 was made to Mr. Clayton Cohn with the condition that, in the event of a default, Ditto Holdings could purchase up to 150,000 shares at his original purchase price of $0.33 per share (while the Company was, at that time, selling shares at $1.25-$1.50 per share). Mr. Clayton Cohn ultimately defaulted on the $15,000 loan and the Company redeemed 45,000 of Mr. Clayton Cohn's shares. Soon thereafter, the Company sold shares at $1.50 per share, effectively netting the Company $1.16 per share, or $52,650.

VINDICATION FOR JOSEPH

SEC Does Not Confirm A SINGLE Allegation Against Joseph

234. After an intrusive and traumatic 24+ month investigation into the allegations and charges brought by the Defendants, including countless on the record and off the record interviews, review of over 350,000 pages of documentation, subpoena-forced bank records and emails dating back to 2009, etc., requiring the devotion of thousands of hours of Joseph's and other Company management's time, the SEC completed its investigation without confirming a

single allegation or charge made against Joseph by the Defendants in the September 9, 2013 Board Demand Letter.

FINRA Abandoned Any and All Claims Against Joseph

235. Just as Defendant Huey-Burns contacted his pals Eric, Bob, and Tim at the SEC, Defendant Simons, on September 16, 2013, emailed his pal Philip Shaikun, FINRA's Associate General Counsel, for direction to open a file against Joseph. To make sure that he got his attention, Defendant Simons lied to his pal when he stated:

> **As the individual raising some concerns internally (none of which involve my own conduct) as I believed was my duty as an officer and Board Member of the parent and CEO of the b/d subsidiary, I was swiftly dismissed in an egregious retaliatory action.**

See September 16, 2013 email to Philip Shaikun, attached hereto as Exhibit 66. **(emphasis added).**

236. On September 17, 2013, Mr. Shaikun responded to Defendant Simons with the following email:

> **Hi Paul,**
>
> **Good to hear from you, although I'm sorry about the circumstances. There are two contacts I would consider. The head of our Chicago office is Carla Romano. I know her pretty well, and she can be reached at 312-899-4324. Ultimately, [redacted] such as these typically end up in our Office of the [redacted] I'm in the Office of General Counsel. To the extent you would share anything with me, I would be obligated to forward to the [redacted] office. Here's the general contact information for that office: http://www.finra.org/Industry/[redacted]**
>
> **If you want to reach out to someone directly, Tony Cavallaro runs that office and can be reached at 646-315-7319. I haven't had a lot of personal interaction with him, but he regularly works with our pretty small office and would know my name.**
>
> **Let me know if I can doing (sic) anything more to help and feel free to call me if you want to discuss. I'm at 202-728-8451.**

Best,
Phil

See September 17, 2013 email from Philip Shaikun, attached hereto as Exhibit 67. (**emphasis added**).

237. Defendant Simons took only 22 minutes to follow Mr. Shaikun's notes and sent Chicago Regional Director Carla Romano and the Office of the [redacted] a copy of the knowingly false September 9, 2013 Demand Letter, the January through July 2013 Ditto Trade bank statements, and several false documents.

238. Two days later, on September 19, 2013, FINRA began a relentless investigation of Joseph based on the Defendants' knowingly false information presented to FINRA.

239. After a 20+ month investigation into the allegations and charges brought by the Defendants, including the review of tens of thousands of pages of documents, numerous On The Record ("OTR") interviews, and several meetings at Joseph's request, FINRA made the reasoned decision not to pursue any claims against Joseph on or about May 1, 2015.

An Independent Investigation by a Chicago Law Firm Concluded That There Was No Evidence to Support the Claims Against Joseph

240. One of the remarkable facts of this scheme is that Defendants Huey-Burns and Shulman Rogers were named in the Demand Letter to act as independent counsel to perform an "independent" investigation into the allegations of their own clients, Defendants Simons, Mann, and Stillman, on behalf of the Ditto Companies. For whatever reasons, Defendants Huey-Burns and Shulman Rogers did not get the job ... and withdrew from representing Defendants Simons, Mann, and Stillman only one day after the Ditto Holdings Board of Directors engaged, instead, Goldberg Kohn, a Chicago law firm, to investigate the Defendants' allegations in the Demand Letter. See September 20, 2103 Shulman Rogers email, attached hereto as Exhibit 68.

241. On or about September 19, 2013, the Goldberg Kohn law firm began its

investigation into the (false) allegations and charges brought by the Defendants.

242. On January 29, 2014, after a 4+ month investigation, Goldberg Kohn released its 68-page report, accompanied by 41 exhibits, comprising 300 pages of documents ("the Independent Investigation Report").

243. The investigation included a dozen interviews and a review of more than 100,000 pages of documents. Goldberg Kohn concluded that there was no evidence to support the claims against Joseph (and the Ditto Companies). The Independent Investigation Report concluded, *inter alia*, that:

> **Based on the information provided and based on the scope of this Investigation, the purported justifications for the expenditure transactions in question [reported by the Defendants in the Board Demand Letter] do not appear to involve acts of embezzlement or fraud by Joseph Fox.**
>
> * * *
>
> **...our Investigation did not reveal that Joseph Fox was intentionally violating any laws or duties in the manner in which he was behaving.**

CAUSES OF ACTION

COUNT I

ABUSE OF PROCESS

244. Joseph hereby realleges and incorporates by reference all of the foregoing paragraphs and further alleges as follows:

245. The Defendants' bringing of the SEC and FINRA actions against Joseph was a willful and malicious act in the use of the judicial and administrative process for an ulterior purpose not proper in the regular conduct of the proceedings in that the Defendants (a) intentionally falsified documents and correspondence and otherwise brought the claims

(including allegations of felony misconduct) against Joseph (b) knowing that Joseph was not involved in any such fraud, theft, embezzlement, misappropriation, *et al.* and such actions were brought (c) primarily for the improper purposes of causing Joseph financial hardship and emotional distress by forcing him to defend the unjustified civil and felony actions.[50]

246. Joseph has suffered damages as a direct and proximate result of the Defendants' willful and malicious acts done in unusual and unordinary ways in that he has (a) incurred more than $100,000 in attorney fees and costs to defend the unjustified SEC/FINRA actions; (b) suffered humiliation as well as severe anxiety and emotional distress due to the necessity of defending against the Defendants' unjustified SEC/FINRA actions; (c) experienced a complete destruction of what was once a stellar reputation (built over a 20-year career) within the financial community, as well as with the regulatory agencies needed to operate a stockbrokerage firm, and to take a company public; and (d) suffered the loss of property interests (e.g., stock interests and rights, *et al.*) and diminution of those property interests.

247. Defendants knew or should have known that their willful and malicious acts would materially and substantially harm Joseph in that such acts would cause harm to a reasonable person.

WHEREFORE, Joseph requests judgment against Defendants Simons, Mann, Stillman, Huey-Burns, and Shulman Rogers, jointly and severally, for:

A. Compensatory damages in the amount of no less than $50,000,000 for the great mental anguish, emotional distress, severe anxiety, humiliation, physical discomfort, and damage to his reputation in the community as set forth herein;

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[50] Additional motives, without exception: Defendants intended to gain control of the Ditto Companies as a further means to harm Joseph, and the Defendants intended to position Defendants Huey-Burns and Shulman Rogers to be named special or independent counsel to investigate Joseph on the false claims set forth in the Demand Letter and elsewhere.

B. Punitive damages in the amount of no less than $100,000,000 for the Defendants' willful and malicious actions in misusing and perverting the process;

C. Reasonable attorney fees and costs exceeding $100,000 incurred to defend the unjustified claims, actions, and charges;

D. Costs of suit to be taxed to the Defendants;

E. Interest on the damages awarded at the highest legal rate; and

F. Such other and further relief as the Honorable Court deems just and proper.

COUNT II

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

248. Joseph hereby realleges and incorporates by reference all of the foregoing paragraphs and further alleges as follows:

249. The Defendants' conduct in causing the investigations and/or prosecution of Joseph without probable cause, and in reckless disregard for Joseph's innocence, was extreme and outrageous conduct.

250. The Defendants intended to inflict severe emotional distress upon Joseph or, in the alternative, knew that there was a high probability that their conduct would cause Joseph severe emotional distress.

251. The Defendants' malicious, wanton, and willful conduct proximately caused Joseph to suffer severe emotional distress.

252. The Defendants' conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of human decency.

253. As a direct and proximate result of the Defendants' malicious, wanton, and willful conduct, Joseph was seriously and irreparably harmed, and has sustained severe physical, emotional, and mental damages including, but not limited to, lost compensation, mental and

emotional distress, pain and suffering, loss of enjoyment of life, and other damages to be proven at trial.

WHEREFORE, Joseph requests judgment against Defendants Simons, Mann, Stillman, Huey-Burns, and Shulman Rogers, jointly and severally, for:

A. Compensatory damages in the amount of no less than $50,000,000 for the great mental anguish, emotional distress, severe anxiety, humiliation, physical discomfort, and damage to his reputation in the community as set forth herein;

B. Punitive damages in the amount of no less than $100,000,000 for the Defendants' willful and malicious actions in misusing and perverting process;

C. Reasonable attorney fees and costs exceeding $100,000 incurred to defend the unjustified claims, actions, and charges;

D. Costs of suit to be taxed to the Defendants;

E. Interest on the damages awarded at the highest legal rate; and

F. Such other and further relief as the Honorable Court deems just and proper.

COUNT III

CIVIL CONSPIRACY

254. Joseph hereby realleges and incorporates by reference all of the foregoing paragraphs and further alleges as follows:

255. The Defendants, and each of them, knowingly and voluntarily entered into agreements to commit the aforesaid tortious acts of abuse of process, intentional infliction of emotional distress, and malicious prosecution against Joseph.

256. In furtherance of the foregoing agreements, the Defendants, in concert with one another, each with roles including without exception serving, planning, assisting, or encouraging the conspiracy, committed the tortious acts of abuse of process, intentional infliction of emotional distress, and malicious prosecution against Joseph.

257. The Defendants' conduct in entering such agreements to commit tortious acts against Joseph, and in committing tortious acts against Joseph, acted with malice, and with willful and wanton disregard of the rights of and the falsity of the allegations against Joseph.

258. As a direct and proximate result of the Defendants' malicious, wanton and willful conduct, Joseph was and continues to be seriously and irreparably harmed, and has sustained severe physical, mental, and emotional damages including, but not limited to, lost compensation, mental and emotional distress, pain and suffering, loss of enjoyment of life, and other damages to be proven at trial.

WHEREFORE, Joseph requests judgment against Defendants Simons, Mann, Stillman, Huey-Burns, and Shulman Rogers, jointly and severally, for:

A. Compensatory damages in the amount of no less than $50,000,000 for the great mental anguish, emotional distress, severe anxiety, humiliation, physical discomfort, and damage to his reputation in the community as set forth herein;

B. Punitive damages in the amount of no less than $100,000,000 for the Defendants' willful and malicious actions in misusing and perverting process;

C. Reasonable attorney fees and costs exceeding $100,000 incurred to defend the unjustified claims, actions, and charges;

D. Costs of suit to be taxed to the Defendants;

E. Interest on the damages awarded at the highest legal rate; and

F. Such other and further relief as the Honorable Court deems just and proper.

COUNT IV

MALICIOUS PROSECUTION

259. Joseph hereby realleges and incorporates by reference all of the foregoing paragraphs and further alleges as follows:

260. On or about September 9, 2013, Defendants falsely, maliciously, and with no probable cause filed [redacted] against Joseph with the Securities Exchange Commission accusing Joseph of felony theft, fraud, misappropriation of funds, self-dealing, *et al.*

261. On or about September 17, 2013, Defendants falsely, maliciously, and with no probable cause filed [redacted] against Joseph with FINRA accusing Joseph of felony theft, fraud, misappropriation of funds, self-dealing, *et al.*

262. Defendants, through their false correspondence, false [redacted] false claims, false testimony, false documents, and other improper tactics, including without exception fabricating evidence, maliciously and without probable cause causing SEC and FINRA investigations to issue whereby Joseph was investigated for various crimes and other misconduct for a period of more than 20 months (FINRA) and more than 24 months (SEC).

263. In consequence of the false and malicious correspondence, [redacted], claims, testimony, documents, and other improper tactics given or made by the Defendants, Joseph was forced to defend false charges leveled against him by the Defendants for a period of more than 24 months and otherwise suffer personally and emotionally.

264. On or about May 1, 2015, following the roughly 20-month FINRA investigation of Joseph, it was determined that FINRA would not proceed to charge Joseph with any wrongdoing. FINRA chose instead to defer entirely to the SEC. Accordingly, FINRA abandoned the claims alleged by the Defendants against Joseph in their entirety.

265. Throughout the SEC/FINRA investigations, the Defendants relentlessly continued to falsely, maliciously, and without probable cause feed the SEC/FINRA with charges against Joseph with the commission of felony crimes, e.g., fraud, theft, etc. and other misconduct.

266. Following the more than 24-month SEC investigation of Joseph, the SEC likewise abandoned the claims alleged by the Defendants in their entirety.[51] Put another way, not one allegation made by the Defendants was proven to be true; not one:

A. Defendants alleged that Joseph committed theft/misappropriation. The SEC did not find any such alleged theft or misappropriation by Joseph.

B. Defendants alleged that Joseph committed misrepresentation/omission. The SEC did not find any such alleged misrepresentation or omission by Joseph.

C. Defendants alleged that Joseph committed offering fraud. The SEC did not find any such alleged offering fraud by Joseph.

D. Defendants alleged that Joseph committed violations of corporate disclosure. The SEC did not find any such alleged violations of corporate disclosure by Joseph.

E. Defendants alleged that Joseph committed financial fraud. The SEC did not find any such alleged financial fraud by Joseph.

F. Defendants alleged that Joseph committed selective disclosure violations. The SEC did not find any such alleged selective disclosure violations by Joseph.

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[51] None of the charges had merit. For example, in the September 9, 2013 Demand Letter (upon which the sworn [redacted] relied), the Defendants falsely alleged the following to support the "illegal security sales" claim: "The apparent undisclosed sale by Joe Fox of a substantial number of his shares of stock in 2013 during the same times, but at different prices, as the offering of stock by the Company and proposed redemptions by the Company of stock of certain early investors." See Exhibit 34, *infra*. This is a good example of a vexatious tactic used by these Defendants: citing lawful conduct but calling it unlawful misconduct. Selling personal shares at "the same times, but at different prices as the offering of stock by the Company" etc. is not unlawful. This pleading tactic was also used by Defendant Simons in his Sworn [redacted] where he claims that "Joe Fox ... falsely states that Ditto Trade has annually audited financial statements." See Exhibit 3, p. 3. In fact, Ditto Trade had annually audited financial statements. See ¶ 161, *infra*.

G. Defendants alleged that Joseph committed illegal securities sales by selling his shares concurrent with the Company selling its shares and redeeming other shares. The SEC did not find any such alleged illegal securities sales by Joseph.

H. Defendants alleged that Joseph committed improper payments of finders fees. The SEC did not find any such alleged improper payments of finders fees by Joseph.

I. Defendants alleged that Joseph committed fraudulent inducement. The SEC did not find any such alleged fraudulent inducement by Joseph.

J. Defendants alleged that Joseph committed false form D filings violations. The SEC did not find any such alleged false form D filings violations by Joseph.

K. Defendants alleged that Joseph committed Violations of Dodd Frank and Retaliation. The SEC did not find any such alleged violations of Dodd Frank and Retaliation by Joseph.

267. Defendants acted with malice and without probable cause in issuing or causing to issue the SEC and FINRA [redacted] against, and in instigating the prosecution of, Joseph in that there was no basis whatsoever to bring any such actions, [redacted] or otherwise against Joseph.

268. Defendants knowingly made false accusations, including submitting knowingly false evidence, documents, spreadsheets, and other correspondence to the SEC and FINRA, their agents and officers, in furtherance of prosecuting Joseph for the crimes and other wrongs.

269. By reason of the Defendants' acts, which caused the FINRA investigation of Joseph for a roughly 20-month period and the SEC investigation of Joseph for more than 24-month period, Joseph was deprived of the opportunity to operate and grow SoVesTech/Ditto Companies effectively where ultimately Joseph was forced to shut down the SoVesTech/Ditto Companies' business; impeded its ability to solicit needed funds; impeded its efforts to sell the

Ditto Companies; destroyed corporate credibility by or through negative (and false) publicity; completely destroyed the value of Joseph's ownership in the Ditto Companies (a minimum of a $12,750,000 loss); suffered great mental anguish, emotional distress, severe anxiety, humiliation, physical discomfort, etc.; a complete destruction of what was once a stellar reputation (built over a 20-year career) within the financial community, as well as with the regulatory agencies needed to operate a stock brokerage firm, and to take a company public, and significantly more suffering to be proven at trial all of which damage is in a sum of no less than $50,000,000.

270. In successfully defending the actions brought by Defendants with the SEC and FINRA, Joseph was compelled to incur great expenses for reasonable and necessary attorney fees and costs to Joseph's damage in a sum exceeding $100,000.00.

271. Since the Defendants acted maliciously and with the purpose and intent to injure Joseph, Joseph is entitled to exemplary damages in the sum of no less than $100,000,000.

WHEREFORE, Joseph requests judgment against Defendants Simons, Mann, Stillman, Huey-Burns, and Shulman Rogers, jointly and severally, for:

A. Compensatory damages in the amount of no less than $50,000,000 for the great mental anguish, emotional distress, severe anxiety, humiliation, physical discomfort, and damage to his reputation in the community as set forth herein;

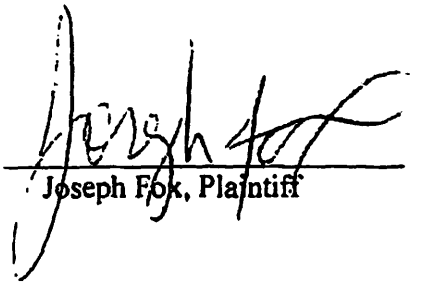
B. Punitive damages in the amount of no less than $100,000,000 for the Defendants' willful and malicious actions in misusing and perverting process;

C. Reasonable attorney fees and costs exceeding $100,000 incurred to defend the unjustified claims, actions, and charges;

D. Costs of suit to be taxed to the Defendants;

E. Interest on the damages awarded at the highest legal rate; and

F. Such other and further relief as the Honorable Court deems just and proper.

By: 
Joseph Fox, Plaintiff

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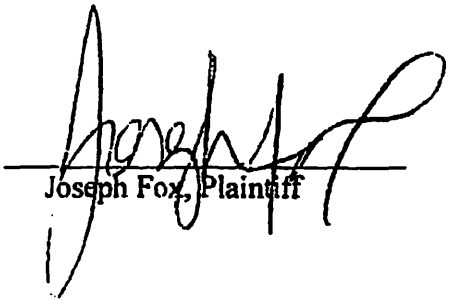
Counsel for Plaintiff

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By: 
Joseph Fox, Plaintiff