SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 72

THE PEOPLE OF THE STATE OF NEW YORK,	:	
-against-	:	Indictment Number 773/2014
STEVEN DAVIS, STEPHEN DICARMINE, JOEL SANDERS, and ZACHARY WARREN,	:	
Defendants.	:	

MOTION TO DISMISS
ON BEHALF OF STEVEN DAVIS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 72

THE PEOPLE OF THE STATE OF NEW YORK,	**NOTICE OF MOTION**
-against-	Indictment Number 773/2014
STEVEN DAVIS, STEPHEN DICARMINE, JOEL SANDERS, and ZACHARY WARREN,	
Defendants.	

PLEASE TAKE NOTICE, that upon the annexed affirmation of Elkan Abramowitz, Esq., an attorney duly admitted before the Courts of the State of New York, the accompanying Memorandum of Law, any annexed exhibits, and all of the proceedings had herein, defendant Steven Davis will make a motion at the Courthouse located at 100 Centre Street, New York, New York, on the 15th day of September, 2014, at 9:30 a.m. or as soon thereafter as counsel may be heard for the following relief:

1. Pursuant to CPL §§ 210.20 (1)(b) and 210.30, inspection of the grand jury minutes and upon that inspection dismissal of the indictment based on legal insufficiency, specifically, but not limited to:

a. the insufficiency of the evidence showing that Mr. Davis entered into an illicit agreement or had the requisite criminal intent to sustain the charge of Conspiracy in the Fifth Degree (Count 106);

b. the insufficiency of the evidence showing that Mr. Davis had the requisite criminal intent to sustain the charge of Scheme to Defraud in the First Degree (Count One);

c. the insufficiency of the evidence that Mr. Davis made, or caused to be made, false business entries or had the requisite criminal intent to sustain the charges of Falsifying Business Records in the First Degree (Counts 17-50, 62-74);

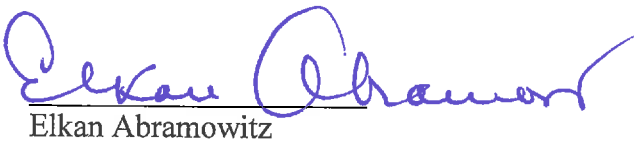
d. the insufficiency of evidence showing that Mr. Davis intended to deprive the alleged victims of property or appropriate property permanently or for so long a period as to be virtually permanent to sustain the charges of Grand Larceny in the First Degree (Counts 2-16); and

e. the insufficiency of evidence showing that Mr. Davis had the requisite intent or wrongful acts to sustain the charge of violating the Martin Act (Count 105).

WHEREFORE, Mr. Davis requests that the foregoing motions be granted and requests such other and further relief as this Court may deem just and proper.

Dated: July 10, 2014
New York, New York

Respectfully submitted,



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To:
Clerk of the Supreme Court
New York County

Cyrus Vance
New York County District Attorney

Attention: ADA Peirce Moser

Hughes Hubbard & Reed, LLP
Attorneys for Defendant Joel Sanders

Bryan Cave, LLP
Attorneys for Defendant Stephen DiCarmine

Zuckerman Spaeder, LLP
Attorneys for Defendant Zachary Warren

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK- PART 72

THE PEOPLE OF THE STATE OF NEW YORK,	
-against-	**AFFIRMATION IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF STEVEN DAVIS**
STEVEN DAVIS, STEPHEN DICARMINE, JOEL SANDERS, and ZACHARY WARREN,	Indictment Number 773/2014
Defendants.	

ELKAN ABRAMOWITZ, an attorney admitted to practice before the courts of the State of New York, affirms the following under the penalties of perjury.

1. I am a principal at Morvillo Abramowitz Grand Iason & Anello P.C., which represents defendant Steven Davis, and I am fully familiar with the facts of this matter. I submit this affirmation and the accompanying memorandum of law (which is incorporated herein by reference) in support of a motion to dismiss on behalf of Steven Davis.

2. This motion seeks the relief outlined in the accompanying notice of motion, including:

(a) Dismissing the indictment, after inspection of the grand jury minutes, pursuant to Criminal Procedure Law §§ 210.20(1)(b) and 210.30; and

(b) Releasing to defense counsel, pursuant to Criminal Procedure Law § 210.30(3), such portions of the grand jury minutes which the Court determines are necessary to assist defense counsel in addressing the issues presented.

3. Attached to this affirmation are the following exhibits, which have been redacted in accordance with the Protective Order agreed to by the parties and submitted to your Honor on April 21, 2014:

(a) Exhibit A is an email from Steven Davis sent on December 30, 2008, to Joel Sanders.

(b) Exhibit B is an email from Steven Davis sent on January 3, 2009, to a client at the Abu Dhabi Water & Electricity Authority.

(c) Exhibit C is an email from Joel Sanders sent on October 6, 2009, to Steven Davis and Stephen DiCarmine.

(d) Exhibit D is an email sent from Joel Sanders on November 10, 2009, to Stephen DiCarmine, Steven Davis, Employee B, and Francis Canellas.

(e) Exhibit E is an email sent from Joel Sanders on December 9, 2009, to Stephen DiCarmine and Steven Davis.

(f) Exhibit F is emails between Steven Davis, Stephen DiCarmine, Joel Sanders, Francis Canellas, and a Dewey and LeBoeuf ("Dewey") Client Relations Manager on December 31, 2009, and January 1, 2010.

(g) Exhibit G is emails between Steven Davis, Stephen DiCarmine, Joel Sanders, Francis Canellas, and a Dewey Client Relations Manager from December 31, 2009 to January 2, 2010.

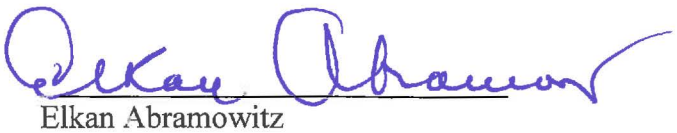
(h) Exhibit H is an email sent from Joel Sanders on December 22, 2011, to Francis Canellas and Steven Davis.

(i) Exhibit I the Plea and Cooperation Agreement of Francis J. Canellas.

(j) Exhibit J is a check from ATI Systems International, Inc. to Dewey dated December 31, 2009.

WHEREFORE, Mr. Davis requests that the foregoing motions be granted and requests such other and further relief as this Court may deem just and proper.

Dated: July 10, 2014
New York, New York



Elkan Abramowitz

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 72

THE PEOPLE OF THE STATE OF NEW YORK,	:	
-against-	:	Indictment Number 773/2014
STEVEN DAVIS, STEPHEN DICARMINE, JOEL SANDERS, and ZACHARY WARREN,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF STEVEN DAVIS

INTRODUCTION

In the People's telling, Dewey & LeBoeuf LLP was beset by fraud, its books cooked at every level, and its investors and lenders cheated and lied to. Steven Davis, the People assert, sat at the top of that fraud. But even taking it as gospel truth that there was fraud at Dewey, the evidence that *Steven Davis* had anything to do with it is nonexistent: the evidence that the People have proffered to the contrary amounts to little more than hearsay rumors and spurious inference piled on spurious inference. The People allege Mr. Davis once said "ugh" when he was informed the firm might fall short of its covenants. The People allege Mr. Davis was nervous and sarcastic regarding a meeting with the firm's outside auditors. The People allege Mr. Davis was once informed by his Chief Financial Officer that the Chief Financial Officer had made accounting adjustments to the firm's books. It is on this paltry evidence—and, we believe, little else—that the People rested its case against Mr. Davis in the grand jury. The only evidence even remotely connecting Mr. Davis to this supposed fraud is, as demonstrated below, incompetent and inadmissible.

Mr. Davis submits that the evidence before the grand jury was legally insufficient to establish his commission of the offenses charged in the indictment or of any lesser-included offense. *See People v. Pelchat*, 62 N.Y.2d 97 (1984). Accordingly, Mr. Davis requests that this Court inspect the grand jury minutes and determine whether dismissal of the indictment pursuant to Criminal Procedure Law § 210.20(1)(b) and § 210.30 is warranted. If the Court so finds, Mr. Davis requests dismissal of the indictment or a reduction of the charges in the indictment pursuant to Criminal Procedure Law § 210.30.

In addition to the arguments below, we believe we could make further legal arguments upon the Court's release of the necessary portions of the grand jury minutes pursuant to Criminal

Procedure Law § 210.30(3). Consequently, we request the release of such portions of the grand jury minutes the Court determines are necessary to assist Mr. Davis and his counsel in addressing the issues presented.

I. THE EVIDENCE IS INSUFFICIENT TO SUPPORT ANY OF THE CRIMES CHARGED.

"On a motion to dismiss an indictment, the sufficiency of the People's presentation is properly determined by inquiring whether the evidence viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury." *People v. Jensen*, 86 N.Y.2d 248, 251 (1995) (internal quotation marks omitted). "The Grand Jury must have before it evidence legally sufficient to establish a prima facie case, including all the elements of the crime, and reasonable cause to believe that the accused committed the offense to be charged." *Id.* at 251-52. The Criminal Procedure Law further provides that "legally sufficient" evidence is "competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof." CPL § 70.10(1).

While Mr. Davis by necessity makes this motion without knowing the precise evidence advanced before the grand jury, the detailed plea colloquies and the lengthy indictment give a broad picture of the evidence against Mr. Davis. That evidence—presumably the worst that the People could muster—is plainly insufficient to warrant a true bill on any of the crimes charged. This is so even assuming, as Mr. Davis does solely for purposes of this motion, that there were, in fact, crimes vis-à-vis Dewey's financial statements and that the seven people who have pleaded guilty in related cases were participants in those crimes. But even taking these two assumptions to be true, there is no evidence that Mr. Davis committed any wrongdoing whatsoever.

The evidence before the grand jury against Mr. Davis as alleged in the indictment was limited to the following:

- Upon being informed by Mr. Sanders on December 30, 2008, that the firm needed $50 million to meet its year-end covenants, Mr. Davis responded "Ugh." Indictment ¶¶ 5-6; Exhibit A.
- On January 3, 2009, Mr. Davis wrote an email to a firm client that stated in part: "[Partner F] and I have been discussing the payment situation and wanted to solicit your continued help. I understand tomorrow will see people back to work and your assistance in connections [sic] with this matter is greatly appreciated." Indictment ¶ 10; Exhibit B.
- On October 6, 2009, Mr. Davis received an email from Mr. Sanders that stated, in part: "When you're back in NY we should discuss the ramifications of our revenue coming in at $810 M. . . . I'm not saying that will definitely happen . . . . [W]e should plan for the shortfall now so we're not scrambling at year end. The two most obvious ramifications will be the bank covenants and missing target." Indictment ¶ 25; Exhibit C.
- On November 10, 2009, Mr. Davis received an email from Mr. Sanders that stated, in part: "I said at the Exec Committee meeting that if we can really collect (with no adjustments) between $850k and $875k then we will do between $14k and $15k per point. If we bring $850M in the door (real collections – no accounting adjustments including constructive receipt or reclassing disbursements) we can get really aggressive and push the envelope to $14k per point . . . . Keep in mind though that at these levels we will not have the cash to pay the partners by Jan 31 since $25M is fake income." Indictment ¶ 26; Exhibit D.
- On December 9, 2009, Mr. Davis received an email from Mr. Sanders that stated: "I'm really sorry to be the bearer of bad news but I had a collections meeting today and we can't make our target. The reality is we will miss our net income covenant by $100M and come in at about $7k per point. . . . I can probably come through with enough 'adjustments' to get us to miss the covenant by $50M-$60M and get the points to $10k but that pretty much wipes out any possible cushion we may have had for next year which was slim at best. The banks are going to require a plan which is not going to be pretty . . . ." Indictment ¶ 27; Exhibit E.
- On January 1, 2010, Mr. Sanders proposed to Mr. Davis that partners be sent an email telling them to "ask [clients] to send us a check dated 12/31 for the amount listed above." Indictment ¶¶ 32-33; Exhibit F. On January 2, 2010, Mr. Davis replied: "I would change the wording of the last sentence slightly to say 'It is imperative that you contact each of these clients on Monday morning. All payments through checks dated December 31 will be included in revenues for 2009.'" Indictment ¶ 36; Exhibit G.
- On March 2, 2010, Mr. Davis approved the offering memorandum for the private placement. Indictment ¶ 43.[1]

[1] *Cf.* Complaint, *SEC v. Davis*, 14-cv-1528, ¶ 87 ("On or about March 1, 2010, Davis approved *the form* of the [private placement memoranda]." (emphasis added)). Of course, approving the form of a document is very different from approving the document itself as alleged by the District Attorney's Office.

- On December 22, 2011, Mr. Sanders copied Mr. Davis on an email to another employee which read: "Can you also bring the list of 'accounting adjustments' you've come up with so far for the 2:30." Indictment ¶ 47; Exhibit H.

In addition to the indictment, further allegations before the grand jury appear in the seven lengthy plea allocutions. But of these, only one contains anything that might even arguably be construed as evidence of any wrongdoing or knowledge of wrongdoing by Mr. Davis. Lourdes Rodriguez, Victoria Harrington,[2] Dianne Cascino, David Rodriguez, Ilya Alter, and Thomas Mulliken gave no evidence of Mr. Davis's involvement in any wrongdoing at Dewey in their allocutions. Only Frank Canellas, Dewey's Director of Finance, spoke to any possible bad intent on the part of Mr. Davis in connection with the accounting at issue in this case, but, as detailed below, his evidence was largely inadmissible before the grand jury.

His allocution contained the following allegations:

- Canellas "recall[ed] that Steve Davis was very nervous before the meeting [with Dewey's auditor], and [Canellas] understood he was nervous because of the inappropriate accounting adjustments that had been made. During the meeting, [Dewey's auditor] told Davis, in substance, that the firm's accounting records were in good shape. After the meeting, Davis, in a very sarcastic tone, told Sanders, in substance, that he was doing a great job and the firm's books were in great shape." Exhibit I at p. 3.
- Canellas "understood from conversations with Sanders that both DiCarmine and Davis were aware of inappropriate adjustments that were being made at year-end 2009." Exhibit I at p. 4.
- Mr. Davis approved a letter of credit for Canellas. Exhibit I at p. 4.
- Mr. Davis became "more comfortable" with Canellas over time. Exhibit I at p. 5.
- In late 2011, Messrs. Davis, Sanders, Canellas, and David Rodriguez met to discuss partner distributions. "At the end of the meeting, Rodriguez was asked to leave so that Davis, Sanders and [Canellas] could discuss year-end adjustments. During this follow-on meeting, we discussed inappropriate adjustments." Exhibit I at p. 5.

[2] Ms. Harrington's allocution provided that Mr. Davis signed management representation letters, an irrelevant and unremarkable fact not in dispute.

As the analysis below will demonstrate, this evidence—which we believe constitutes the majority of what was presented to the grand jury as evidence of Mr. Davis's guilt—falls wildly short of what is necessary to sustain the indictment. The charges against Mr. Davis must be dismissed.

1. THE EVIDENCE IS INSUFFICIENT TO SUSTAIN THE CHARGE OF CONSPIRACY IN THE FIFTH DEGREE.

Mr. Davis was charged, along with Messrs. DiCarmine, Sanders, and Warren with the crime of Conspiracy in the Fifth Degree, in violation of Penal Law § 105.05(1). *See* Indictment Count 106. The conspiracy count charges that Mr. Davis and his co-defendants conspired to commit the crime of Scheme to Defraud in the First Degree. As relevant here,

> [a] person is guilty of a scheme to defraud in the first degree when he or she . . . engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons.

Penal Law § 190.65(1)(b). Thus, to sustain an indictment for conspiracy, the People must have presented "competent evidence which, if accepted as true, would establish," CPL § 70.10(1), that Mr. Davis "with intent that conduct constituting . . . [a scheme to defraud] be performed . . . agree[d] with one or more persons to engage in or cause the performance of such conduct[.]" Penal Law § 105.05(1); *see also People v. Ackies*, 79 A.D.3d 1050, 1056 (2d Dep't 2010). This the People have utterly failed to do.

A. There is insufficient evidence of an illicit agreement.

As an initial matter, "[t]he core of conspiracy is an illicit agreement." *People v. Austin*, 9 A.D.3d 369, 371 (2d Dep't 2004); *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999) ("The essence of the offense is an agreement to cause a specific crime to be committed together

with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." (internal citations omitted)). Without a demonstration by competent evidence that Mr. Davis entered into an illicit agreement intending that a scheme to defraud be undertaken, the conspiracy conviction cannot be sustained. But here, the only evidence that might remotely support the idea that Mr. Davis had agreed with others to intentionally embark on a scheme to defraud is the statement of Canellas that Canellas "*understood* from conversations with Sanders that both DiCarmine and Davis were aware of inappropriate adjustments that were being made at year-end 2009." Exhibit I at p. 4 (emphasis added).[3] But this double-hearsay is not competent evidence that could have been properly presented to the grand jury.[4] "Although a declaration by a coconspirator during the course and in furtherance of the conspiracy is admissible against another coconspirator, this evidence may be admitted only upon a showing that a prima facie case of conspiracy has been established without recourse to the declarations sought to be introduced." *People v. O'Neill (Maidana)*, 285 A.D.2d 669, 670 (3d Dep't 2001).

[3] Canellas's allocution is unclear about the basis for his understanding that prior to a meeting with the auditor, Mr. Davis "was nervous because of the inappropriate accounting adjustments that had been made." Exhibit I at p. 3. We respectfully request the Court scrutinize this carefully. Since Canellas does not aver a direct basis for his knowledge of the reason for Mr. Davis's nervousness, we presume it is tainted with the same hearsay problems as his so-called "understanding" from Mr. Sanders that Mr. Davis was in on the alleged fraud. Moreover, evidence should have been presented to the grand jury to show that the outside auditors had in fact already approved the firm's financial statements prior to that meeting.

[4] If the Court determines that this statement could have been admitted, Mr. Davis requests that the Court carefully examine the grand jury minutes to determine whether Canellas told the grand jury Mr. Davis was aware that the adjustments made were inappropriate or merely whether Mr. Davis was aware of adjustments that Canellas believed were inappropriate. The difference between these two statements is key in determining whether this statement, even if admissible, could sustain a finding that Mr. Davis had the requisite intent for conspiracy.

Similarly Canellas avers that he and Mr. Davis were in a meeting in which "inappropriate adjustments" were discussed. Exhibit I at p. 5. Because his allocution also avers *only* that he understood Mr. Davis knew inappropriate adjustments were being made because of conversations with Mr. Sanders, we presume that Canellas told the grand jury that adjustments he believed were inappropriate were discussed in Mr. Davis's presence, but not the fact of those adjustments' appropriateness.

But taking the other evidence advanced before the grand jury and examining it without recourse to Canellas's statement, it is clear that the prosecution failed to demonstrate a prima facie conspiracy.[5]

Indeed, outside of Canellas's inadmissible statements, the evidence before the grand jury failed to demonstrate *any* evidence—circumstantial or otherwise—of an illicit agreement on the part of Mr. Davis to defraud anyone. At most, the emails dated October 6, 2009, December 9, 2009, and December 22, 2011, from Mr. Sanders to Mr. Davis demonstrated that Mr. Davis was aware that some accounting adjustments might have been made to Dewey's books. But nothing about his awareness of these adjustments—which were not inappropriate on their face, *see* Joint Omnibus Motion at Point II.A—can substitute for evidence that he entered into an illicit agreement to defraud. *See United States v. Jones*, 30 F.3d 276, 282 (2d Cir. 1994) ("[A] defendant who is simply present at the scene of a crime . . . is not thereby guilty of being a conspirator; the People must prove more than that."); Charges to Jury & Requests to Charge in Crim. Case in N.Y. § 22:2 ("[M]ere association with one or more of the conspirators does not make one a member of the conspiracy nor is knowledge without participation sufficient.").

Nor are the two emails sent by Mr. Davis any more availing to the People, either in terms of demonstrating that Mr. Davis had entered into an illicit agreement or that he did so with the requisite intent to commit a scheme to defraud. The first, Exhibit B, despite the People's construction, is not a request for a backdated check, but rather a request for a client's assistance in receiving payment for work already performed. But even if this email could be construed as a request for a check bearing an earlier date, that is not itself evidence that Mr. Davis entered into an illicit agreement to commit a scheme to defraud. Indeed, as discussed *infra*, no such

[5] It bears noting that for the evidence to be admissible against Mr. Davis, not only would the prosecution have had to demonstrate a prima facie case of conspiracy between Mr. Davis and Mr. Canellas, but also a prima facie case of conspiracy between Mr. Sanders and Mr. Canellas, thus allowing the statement through the first hearsay hoop.

backdated check was ever received from this client as a result of Mr. Davis's email, and the People do not charge the receipt of such as a substantive crime. *See infra* Part 3; *see also* People's Voluntary Disclosure Form ("VDF") at p. 2 (noting Count 30 as the only backdated check charged as a substantive offense); Exhibit J (copy produced by the People of the allegedly backdated check from ATI Systems International Inc.). In the second email, dated January 2, 2010, Mr. Davis corrects an email that might be read as eliciting backdated checks in favor of one simply stating the firm's financial accounting policies. Exhibit G. The fact that the Chairman of the firm amended an ambiguous email that was going to be broadcast to a number of the firm's partners, in order to accurately state the firm's accounting policies, is hardly evidence of a crime.

Any evidence that Mr. Davis may have been nervous or sarcastic around the audit takes the People no further in demonstrating Mr. Davis's agreement to enter into a scheme to defraud; nor does a solo "Ugh" in response to being informed that the firm might fall short of its covenants serve as proof, direct or circumstantial, of an illicit agreement. *See People v. Evangelista*, 88 A.D.2d 804, 806 (1st Dep't 1982) ("[M]ere vagueness and suspicion do not rise to the level of evidence, and these conversations do not rise to the level of the proof required to permit the submission of these questions to a jury." (internal quotation marks omitted, alteration in original)). These "facts," even if true, simply do not serve as evidence that Mr. Davis conspired to defraud. Finally, that Mr. Davis— the Chairman of the Firm— approved a letter of credit for Mr. Canellas and became "more comfortable" with Mr. Canellas over time merits almost no discussion, as in no sense can either be considered evidence of involvement in wrongdoing whatsoever, much less as evidence of an illicit agreement. *See People v. Cilento*, 2 N.Y.2d 55, 63 (1956) (holding that the "mere association of [the defendant] with perpetrators of

the crime" is insufficient to sustain a conspiracy conviction); *see also People v. Broady*, 5 N.Y.2d 500, 514 (1959) (finding proper a jury instruction that "evidence tending to show only that a crime was committed, as well as evidence of mere association of the accomplices with defendant was insufficient").

Nothing about this evidence—taken as a whole, taken in the light most favorable to the People, and taken without explanation—is sufficient to establish a prima facie case of conspiracy. Thus, Canellas's skimpy observations of Mr. Davis's demeanor and the hearsay statements regarding Mr. Davis's knowledge of the supposed inappropriateness of the accounting method should not have been admitted before the grand jury. Without these statements, there can be no evidence of illicit agreement, and the conspiracy charge cannot be sustained.

B. There is insufficient evidence of Mr. Davis's intent.

Just as the conspiracy charge fails for lack of proof of an illicit agreement, so too is there insufficient proof of Mr. Davis's criminal intent. The grand jury must be presented with competent evidence that Mr. Davis himself intended that acts constituting a scheme to defraud occur. The Court must "scrutinize the record for evidence of such intent with special care in a conspiracy case for . . . 'charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning . . . a dragnet to draw in all substantive crimes.'" *People v. Ozarowski*, 38 N.Y.2d 481, 489 (1976) (quoting *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943)). The People's proof against Mr. Davis cannot withstand such scrutiny because simple awareness of the use of "accounting adjustments," appearing "nervous," or being "sarcastic" do not a conspiracy to defraud make. This evidence before the grand jury could not have been sufficient to demonstrate Mr. Davis's intent.

Moreover, in looking at whether the grand jury had sufficient evidence before it of Mr. Davis's intent, this Court should not infer (or permit the grand jury to have inferred) Mr. Davis's intent from the criminal acts of any of his alleged coconspirators. In *People v. Ozarowski*, the Court of Appeals examined whether coconspirators had formed the specific intent required to sustain their assault convictions. 38 N.Y.2d at 490-91. In so doing, the Court held that

> while the ultimate act of violence may be used by the trier of facts in making the inference of intent as to the defendant who actually struck the blow, that act is not determinative of the intent of the other conspirators . . . . While the nature of the blow is useful in imputing intent to do serious injury to [the person who struck the blow], it may not be used to infer such intent on the part of the others.

Id. That is to say, even if the grand jury could have properly concluded that any victims were ultimately defrauded as a result of any of the accounting methods at issue, and even if the grand jury could have inferred wrongful intent on the part of Mr. Davis's alleged coconspirators who actually undertook to use those methods as a result, no such intent can be inferred on the part of Mr. Davis based solely on those acts. Thus here, Mr. Davis's intent cannot be inferred simply from the acts of his coconspirators, even if their criminal intent could be inferred from the ultimate acts they committed.

Mr. Davis requests that the Court scrutinize the grand jury minutes with particular care for any evidence of an illicit agreement or intent that a scheme to defraud be undertaken. Mr. Davis submits the Court will find none.

2. THE EVIDENCE IS INSUFFICIENT TO DEMONSTRATE MR. DAVIS HAD CRIMINAL INTENT TO DEFRAUD TO SUSTAIN THE CHARGE OF SCHEME TO DEFRAUD IN THE FIRST DEGREE.

The indictment alleges that Mr. Davis, along with Messrs. DiCarmine, Sanders, and Warren, engaged in a Scheme to Defraud in the First Degree based on fraudulent accounting methods, covenant misstatements, and misstatements in the firm's private placement. "A person

is guilty of a scheme to defraud in the first degree when he or she . . . engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons." Penal Law § 190.65(1)(b).

The evidence purportedly supporting this charge is plainly insufficient. Even assuming—without conceding—that the grand jury was presented with sufficient evidence that Mr. Davis had acted to sustain criminal liability on the conspiracy count,[6] there is no evidence that would sustain a finding that he had intent either to defraud or "to obtain property by false or fraudulent pretenses, representations or promises." *People v. Wolf*, 284 A.D.2d 102, 103 (1st Dep't 2001), *modified on other grounds* 98 N.Y.2d 105 (2002); Penal Law § 190.65(1)(b). No admissible evidence before the grand jury could have demonstrated that Mr. Davis knew the accounting methods at issue were inappropriate as a matter of accounting (*see* Joint Omnibus Motion at Point II.A), much less that he intended that these methods be used to defraud anyone. Put differently, there is no evidence that anything Mr. Davis knew or did vis-à-vis the firm's lenders and investors was "reasonably calculated [by him] to deceive persons of ordinary prudence and comprehension." *People v. White*, 101 A.D.2d 1037, 1038 (2d Dep't 1984) (internal quotation mark omitted). Similarly, there could be no evidence before the grand jury that Mr. Davis intended that the financial statements or the private placement defraud anyone, because there was

[6] It bears noting here that even if this Court determined that the conspiracy count against Mr. Davis should be sustained, the acts of his coconspirators cannot serve to support the substantive offenses—all of which he was charged with as a principal rather than an accessory. *See People v. McGee*, 49 N.Y.2d 48, 58 (1979) (rejecting the *Pinkerton* rule and holding "it is repugnant to our system of jurisprudence, where guilt is generally personal to the defendant, to impose punishment, not for the socially harmful agreement to which the defendant is a party, but for substantive offenses in which he did not participate" (internal citation omitted)); *People v. Berkowitz*, 50 N.Y.2d 333, 341 (1980) ("[T]he mere fact that one is a coconspirator does not in and of itself support the imputation of criminal liability for the object crime[.]").

no competent evidence before the grand jury that demonstrated he believed the firm's financial statements were anything but appropriate. Thus he cannot be said to have demonstrated an intent to "defraud." Nor can it be said that Mr. Davis intended to obtain property by "false or fraudulent pretenses, representations or promises," because the evidence demonstrates Mr. Davis did not believe that he or anyone else was making any false or fraudulent pretense, representation, or promise.

Mr. Davis respectfully urges the Court to scrutinize the grand jury minutes with care for proof of intent to defraud. We are confident that the Court will find such proof to be lacking.

3. THE EVIDENCE IS INSUFFICIENT TO SUSTAIN THE CHARGES OF FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE.

Mr. Davis is also charged with Falsifying Business Records. A person is guilty of falsifying business records when, with intent to defraud, he "[m]akes or causes a false entry in the business records of an enterprise . . . ." Penal Law § 175.05. To constitute this offense in the First Degree, the "intent to defraud [must] include[] an intent to commit another crime or to aid or conceal the commission thereof." Penal Law § 175.10. Counts 17 through 50 and 62 through 71 charge Messrs. Davis, DiCarmine, and Sanders with "mak[ing] and caus[ing]" false entries in Dewey's books. Counts 72 and 73 additionally charge Messrs. Davis and Sanders with mak[ing] and caus[ing]" false entries in the books of Ernst & Young, LLP, the firm's auditors.

Setting aside momentarily the complete lack of evidence of Mr. Davis's intent to defraud, it is apparent that all of the Counts charging Mr. Davis with making and causing false entries in Dewey's books (Counts 17-50 and 62-71) fail for the simple fact that there is no evidence Mr. Davis *did* anything to make or cause false entries to be made in those books. Thus, even assuming the entries at issue were in fact "false," the evidence before the grand jury could not demonstrate that Mr. Davis either made or caused the entries to be made. At most, the grand

jury could have concluded that Mr. Davis was aware that some accounting adjustments might be made to Dewey's financial records. But no evidence supports the notion that he himself made the entries, directed someone else to do so, or undertook activities which caused the firm to book false entries.

To support this misguided notion, the People appear to have relied only on a January 3, 2009, email from Mr. Davis to a client, the Abu Dhabi Water and Electric Authority ("ADWEA"), asking for assistance in payment of invoices. Indictment ¶ 10; Exhibit B ("[Partner F] and I have been discussing the payment situation and wanted to solicit your continued help. I understand tomorrow will see people back to work and your assistance in connections [sic] with this matter is greatly appreciated."). But Mr. Davis's email cannot, under any interpretation, be construed as a request for a backdated check. Moreover, the only backdated check entry alleged in the indictment, as confirmed in the People's Voluntary Disclosure Form, is referenced in Count 30, which is a check from ATI Systems International Inc. (a security firm based in Boston) not ADWEA, the client to whom Mr. Davis sent an email on January 3, 2009. *See* VDF at 2; Exhibit J.

Without evidence that Mr. Davis made or caused false entries to be made at Dewey, Counts 17 through 50 and 62 through 71 must fail. *See People v. Parks*, 53 A.D.3d 688, 691 (3d Dep't 2008) (reversing conviction for falsifying business records based on false check notation where "no proof was elicited establishing that defendant made out, endorsed or cashed that bail account check"); *see also People v. Kisina*, 14 N.Y.3d 153, 158 (2010) (to prove falsification of business records in the first degree "[t]he 'person' *must act* with an 'intent to defraud,' which includes 'an intent to commit another crime or to aid or conceal the commission thereof'" (emphasis added)); *People v. Taveras*, 12 N.Y.3d 21, 26 (2009) ("[T]he relevant actus reus is the

creation of a false entry in a business record."); Penal Law § 15.10 ("The minimal requirement for criminal liability is the performance by a person of conduct . . . .").

Moreover, even if these and the three other falsification of business records counts had a sufficient *actus reus* predicate, all fail for reasons of lack of proof of criminal intent. As demonstrated in these papers and in the Joint Omnibus Motion, there is no evidence that Mr. Davis committed or conspired to commit any other crime. It cannot, then, be said that he falsified business records with any intent to conceal a crime he had not committed. Without evidence of such intent, the falsifying business records counts against Mr. Davis must be dismissed.[7]

4. THE EVIDENCE IS INSUFFICIENT TO SUSTAIN THE CHARGE OF GRAND LARCENY IN THE FIRST DEGREE.

Mr. Davis is also charged with grand larceny in the First Degree, in violation of Penal Law § 155.42. The reasons why the evidence before the grand jury is insufficient to sustain the grand larceny charges are set out at length in the Joint Omnibus Motion at Point I and will not be repeated here. The Court should take particular note of the complete lack of evidence demonstrating that Mr. Davis had any intent whatsoever to "bring about a permanent, or virtually permanent, change in the control of or benefit from the property" allegedly obtained in this case. 6 N.Y. Prac. Criminal Law § 12:5 (3d ed.). Even if it could be said that Mr. Davis knew inappropriate accounting measures were being used—which the evidence does not at all support—nothing supports the argument that Mr. Davis, by use of those methods, intended to

[7] Mr. Davis also lacks the generalized intent to defraud that would warrant this Court reducing the falsifying business records counts to the second degree. *People v. Reyes*, 69 A.D.3d 537, 538-39 (1st Dep't 2010) (finding only a first degree falsifying business records charge should have been submitted to the jury because "either defendant's intent was to conceal . . . [another crime], or he had no fraudulent intent at all"). There is simply no evidence whatsoever that Mr. Davis intended to cheat anyone, either by means of the accounting adjustments and entries charged by the indictment or by means of his management representation letters. Dismissal of the falsification of business records counts is thus warranted.

obtain money from lenders and investors and never pay it back. The grand larceny charges simply cannot be sustained.

5. THE EVIDENCE IS INSUFFICIENT TO SUSTAIN THE MARTIN ACT COUNT.

Messrs. Davis, DiCarmine, and Sanders are also charged with violating the Martin Act, in violation of General Business Law § 352-c(5). That charge also fails. As charged here, the Martin Act makes it unlawful to

> *intentionally engage*[] in any scheme constituting a systematic ongoing course of conduct with *intent to defraud* ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtain[] property from one or more of such persons while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase of any securities or commodities . . .

Gen. Bus. Law § 352-c(5) (emphasis added). As an initial matter, while some courts have interpreted other provisions of the Martin Act not to require scienter, *see People v. Sala*, 258 A.D.2d 182, 193 (3d Dep't 1999) *aff'd*, 95 N.Y.2d 254 (2000), the First Department has required proof of scienter to establish liability under the felony provisions, including Subsection c(5). *See People v. Schwartz*, 21 A.D.3d 304, 306 (1st Dep't 2005) (reversing Subsection c(5) conviction as against the weight of the evidence and noting that a particular fact "[did] not, by itself, evidence intent to defraud"); *People v. Laws*, 271 A.D.2d 380, 380 (1st Dep't 2000) ("There was ample evidence from which the jury could have reasonably inferred defendant's *intent to defraud* the customers of the 'boiler-room' operation he directed . . . ." (emphasis added)).

More importantly, Subsection c(5) expressly provides that acts be not merely "intentionally engage[d]" in, but done with "intent to defraud." Subsection c(5) thus cannot be read to allow for liability without proof of scienter without reading the plain meaning of "intent to defraud" out of the statute. *Izzo v. Manhattan Med. Grp., P.C.*, 164 A.D.2d 13, 16 (1st Dep't

1990) ("[E]very word in the statute is to be given meaning and effect[.]"); Stat. Law § 231 ("In the construction of a statute, meaning and effect should be given to all its language, if possible, and words are not to be rejected as superfluous when it is practicable to give to each a distinct and separate meaning."). Moreover, "[a] statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime of mental culpability." Penal Law § 15.15(2) ("This [provision] applies to offenses defined both in and outside" the Penal Law). Thus, where the legislature has plainly provided for a culpable mental state, as in Subsection c(5), it cannot be construed as providing for a strict liability offense.[8] And, as made apparent by the lack of intent to defraud in other charges, the People could not have demonstrated that Mr. Davis had the necessary intent to defraud under the Martin Act.[9]

Even if scienter was not required by Subsection c(5), at a minimum, to indict, the grand jury must have had sufficient evidence that Mr. Davis "committed an intentional act constituting fraud, which under the Martin Act includes all deceitful practices contrary to the plain rules of common honesty and all acts tending to deceive or mislead the public." *Sala*, 258 A.D.2d at 193 (internal quotation marks omitted). There is no evidence Mr. Davis intentionally committed an act constituting fraud. All of the acts alleged by the People to be undertaken by Mr. Davis are, like the signing of the management representation letters, lawful on their face. Without bad intent, it cannot be said, for example, that Mr. Davis acted "contrary to the plain rules of common honesty" in simply authorizing the firm's private placement when there is no evidence he understood the firm's financials to be anything but accurate. However broad the Martin Act

[8] Subsection c(5) is in contrast to the misdemeanor provisions of the Martin Act, which do not expressly require scienter. *See* Gen. Bus. Law § 352-c(1)-(4); *People v. Barysh*, 95 Misc. 2d 616, 621 (Sup. Ct. New York County 1978) (finding misdemeanor provisions of the Martin Act do not require scienter).

[9] Even if scienter is not required, the indictment plainly charges scienter, *see* Indictment Count 105, and so the grand jury must have been asked to find it. *See People v. Florentino*, 116 Misc. 2d 692, 700 (Crim. Ct. New York County 1982) (declining to address whether scienter was required because "the information at bar may be read as charging *scienter* nonetheless").

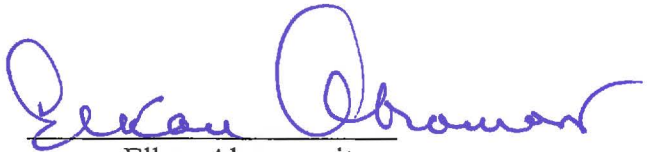
may be, it cannot proscribe the undertaking of a facially lawful act, done by a person without any criminal intent whatsoever. If it were interpreted otherwise, it would fail "to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute." *United States v. Harriss*, 347 U.S. 612, 617 (1954) ("The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed[.]"). Without bad intent, Mr. Davis could not have reasonably understood his minimal actions—signing the management representation letters, speaking to the firm's partners about the December check policies, approving the firm's private placement—to be proscribed by the statute.

CONCLUSION

The case against Mr. Davis is plainly unsustainable. The grand jury should not have concluded, at least based on the evidence known to have been before it, that Mr. Davis committed any crime—not least because there is no competent evidence whatsoever that Mr. Davis had the wrongful intent required to sustain any of the counts of this indictment.

Mr. Davis respectfully requests that this Court inspect the grand jury minutes and determine whether dismissal of the indictment pursuant to CPL § 210.20(1)(b) and § 210.30 is warranted in light of his arguments. Should the Court find it useful, upon the Court's release of the necessary portions of the grand jury minutes pursuant to CPL § 210.30(3), Mr. Davis could make further legal arguments regarding the sufficiency of the grand jury minutes.

Dated: July 10, 2014
New York, New York

By: 

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(212) 856-9600

EXHIBIT A

From: Davis, Steven H. </O=FIRM/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SDAVIS>

Sent: Tuesday, December 30, 2008 11:42 PM

To: Sanders, Joel <JSanders@deweyleboeuf.com>

Subject: Re: We need $50M tomorrow

Ugh

----- Original Message -----
From: Sanders, Joel
To: Davis, Steven H.; DiCarmine, Stephen
Sent: Tue Dec 30 21:18:02 2008
Subject: We need $50M tomorrow

to meet our covenant.

Joel Sanders
Chief Financial Officer
Dewey & LeBoeuf LLP
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Fax: +1 212 649 0955
jsanders@dl.com
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EXHIBIT B

Cc: [redacted][/O=FIRM/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=61fe1f45-5d73de2d-c12564ea-3845a4]
To: [redacted]@adwea.gov.ae[redacted]@adwea.gov.ae]
From: Davis, Steven H.
Sent: Sat 1/3/2009 4:35:14 PM
Subject: Your help
MAIL_RECEIVED: Sat 1/3/2009 4:35:14 PM

Dear [redacted],

My very warm wishes to you and your family for the New Year. We certainly hope that 2009 will offer more stability in the global markets. The Dow's results yesterday give me some cause for hope!

[redacted] and I have been discussing the payment situation and wanted to solicit your continued help. I understand tomorrow will see people back to work and your assistance in connections with this matter is greatly appreciated.

I look forward to meeting you in person. Many thanks and best regards.

Steve

EXHIBIT C

From: Sanders, Joel </O=FIRM/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JSANDERS>

Sent: Tuesday, October 6, 2009 7:19 AM

To: Davis, Steven H. <SDavis@deweyleboeuf.com>; DiCarmine, Stephen <SDiCarmine@deweyleboeuf.com>

Subject: Confidential

When you're back in NY we should discuss the ramifications of our revenue coming in at $810M. I've reviewed the Sept close and I'm not saying that it will definitely happen but we're down 15% through Sept and we've been down 15% pretty consistently all year and I don't see much change in anything that would indicate we can pick up the pace. It's possible we do pick up the pace but I think as painful as it will be we should plan for the shortfall now so we're not scrambling at year end. The two most obvious ramifications will be the bank covenants and missing target.

Joel Sanders

Chief Financial Officer

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EXHIBIT D

To: DiCarmine, Stephen[SDiCarmine@deweyleboeuf.com]; Davis, Steven H.[SDavis@deweyleboeuf.com]; [redacted]
Cc: Canellas, Francis J.[FCanellas@deweyleboeuf.com]
From: Sanders, Joel
Sent: Tue 11/10/2009 4:51:06 PM
Subject: 2009 Income
MAIL_RECEIVED: Tue 11/10/2009 4:51:06 PM

I'm speaking with Frank and apparently last night when you reviewed comp there was some confusion about where the budget is for this year.

I said at the Exec Committee meeting that if we can really collect (with no adjustments) between $850k and $875k then we will do between $14k and $15k per point.

If we bring $850M in the door (real collections - no accounting adjustments including constructive receipt or reclassing disbursements) we can get really aggressive and push the envelope to $14k per point.

If we really bring in $875M then we can push to get to $15k per point.

Keep in mind though that at these levels we will not have the cash to pay the partners by Jan 31 since $25M is fake income.

Also I'm assuming that total points remain at 13.5k and my understanding is we are now over that point total.

If you want me to send a clarifying email to the Executive Committee please let me know.

Thanks

Joel

EXHIBIT E

To: DiCarmine, Stephen[SDiCarmine@deweyleboeuf.com]; Davis, Steven H.[SDavis@deweyleboeuf.com]
From: Sanders, Joel
Sent: Wed 12/9/2009 9:50:24 AM
Subject: Reality Check
MAIL_RECEIVED: Wed 12/9/2009 9:50:24 AM

Steve and Steve,

I'm really sorry to be the bearer of bad news but I had a collections meeting today and we can't make our target. The reality is we will miss our net income covenant by $100M and come in at about $7k per point. At this point I can't tell whether the inventory just isn't really there or our partners just can't convert it but either way I just cannot make it happen. I can probably come through with enough "adjustments" to get us to miss the covenant by $50M-$60M and get the points to $10k but that pretty much wipes out any possible cushion we may have had for next year which was slim at best. The banks are going to require a plan which is not going to be pretty. I can't even begin to tell you how badly I feel right now. I feel like I let everybody down, especially you guys and that's the last thing in the world I ever wanted to do.. I tried so hard to "rally the troops" and make a run for the target that I let my optimism cloud my judgment. In the past I've always been able to pull something out of my hat but I just can't motivate this partnership to make this happen. It's just not the same firm it used to be. Please don't think I'm giving up on you. That's not it. I'll keep pushing as hard as I can but I know I won't get close to getting there. I should have sent this email out after my meeting but I wanted to sleep on it to see if there was anything I'm missing. Unfortunately I ended up not sleeping much at all and I didn't miss anything. It's just really bad and I can't fix it I'm really sorry.

Joel

Joel Sanders

Chief Financial Officer

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EXHIBIT F

From:	Davis, Steven H. </O=FIRM/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SDAVIS>
Sent:	Friday, January 1, 2010 4:25 PM
To:	Sanders, Joel <JSanders@deweyleboeuf.com>; DiCarmine, Stephen <SDiCarmine@deweyleboeuf.com>
Subject:	Re: 2009 Collection Request

Good idea but let me come back with a change in wording.

From: Sanders, Joel
To: Davis, Steven H.; DiCarmine, Stephen
Sent: Fri Jan 01 11:07:44 2010
Subject: FW: 2009 Collection Request

Any comments? I'd like to send this to each partner that has a balance that we think we might be able to get. I'd like to get these out tomorrow.

Joel Sanders

Chief Financial Officer

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From: [redacted]
Sent: Thursday, December 31, 2009 5:50 PM
To: Sanders, Joel
Cc: Canellas, Francis J.
Subject: 2009 Collection Request

Dear PARTNER,

Thursday's collections were disappointing. We left $40M of confirmed receipts on the table. We did not receive payments on 12/31 from the following clients:

CLIENT AMOUNT CONFIRMED
CLIENT2 AMOUNT CONFIRMED

It is imperative that you contact every one of these clients first thing Monday morning and ask them to send us a check dated 12/31 for the amount listed above.

Sincerely,
Joel

[redacted]
Client Relations Manager
Dewey & LeBoeuf LLP
[redacted]

EXHIBIT G

To: DiCarmine, Stephen[SDiCarmine@deweyleboeuf.com]; Sanders, Joel[JSanders@deweyleboeuf.com]
From: Davis, Steven H.
Sent: Sat 1/2/2010 9:15:36 AM
Subject: RE: 2009 Collection Request
MAIL_RECEIVED: Sat 1/2/2010 9:15:36 AM

I would change the wording of the last sentence slightly to say "It is imperative that you contact each of these clients on Monday morning. All payments through checks dated December 31 will be included in revenues for 2009. "

Steven H. Davis
Chairman
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From: DiCarmine, Stephen
Sent: Friday, January 01, 2010 11:22 AM
To: Sanders, Joel; Davis, Steven H.
Subject: Re: 2009 Collection Request

No reason not to send it. It doesn't disclose the final #, just what was left on the table. I'd go with it.

From: Sanders, Joel
To: Davis, Steven H.; DiCarmine, Stephen
Sent: Fri Jan 01 11:07:44 2010
Subject: FW: 2009 Collection Request

Any comments? I'd like to send this to each partner that has a balance that we think we might be able to get. I'd like to get these out tomorrow.

Joel Sanders

Chief Financial Officer

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General: +1 212 424 8000

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From: [redacted]
Sent: Thursday, December 31, 2009 5:50 PM
To: Sanders, Joel
Cc: Canellas, Francis J.
Subject: 2009 Collection Request

Dear PARTNER,

Thursday's collections were disappointing. We left $40M of confirmed receipts on the table. We did not receive payments on 12/31 from the following clients:

CLIENT AMOUNT CONFIRMED
CLIENT2 AMOUNT CONFIRMED

It is imperative that you contact every one of these clients first thing Monday morning and ask them to send us a check dated 12/31 for the amount listed above.

Sincerely,
Joel

[redacted]
Client Relations Manager
Dewey & LeBoeuf LLP
[redacted]

EXHIBIT H

From:	Sanders, Joel </O=FIRM/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JSANDERS>
Sent:	Thursday, December 22, 2011 11:08 AM
To:	Canellas, Francis J. <FCanellas@deweyleboeuf.com>
Cc:	Davis, Steven H. <SDavis@deweyleboeuf.com>
Subject:	Can you also bring the list of "accounting adjustments" you've come up with so far for the 2:30

Joel Sanders, Esq.

CFO

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EXHIBIT I

DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

PLEA AND COOPERATION AGREEMENT

1. This is the plea and cooperation agreement (this "Agreement") between the District Attorney of the County of New York (the "District Attorney") and Francis J. Canellas (the "Defendant"). This Agreement constitutes the entire agreement between the Defendant and the District Attorney. There are no promises, agreements, or conditions, express or implied, other than those set forth in this document. The District Attorney and the Defendant, with the advice of his attorney, agree as follows:

2. The Defendant's cooperation shall be as set forth in this paragraph. Failure to comply with this paragraph in any respect shall be a violation of this Agreement.

a. The Defendant shall fully, fairly and truthfully disclose all information concerning any criminal conduct whatsoever about which he has any knowledge or information and shall upon request of the District Attorney and subject only to legal and ethical prohibitions produce all records and other evidence in his actual or constructive possession.

b. [redacted]

c. The Defendant shall commit no crimes or violations, with the sole exception of criminal activity and the planning of criminal activity, if any, directly related and necessary to further the ongoing investigations in 2(f) below pursuant to this Agreement. Any such criminal activity shall be engaged in only with specific advance notice to and approval by the District Attorney's Office (this "Office").

d. The Defendant shall not jeopardize the safety of any investigator or the confidentiality of any investigation.

e. Whenever required by law, or whenever requested to do so by the District Attorney, the Defendant shall meet or communicate with representatives of the District Attorney and shall appear in court, before any Grand Jury, or at any other proceeding.

f. The Defendant shall actively participate in ongoing investigations by the District Attorney. Active participation shall be as the District Attorney directs and only as the District Attorney directs. Active participation may include, but is not limited to, researching or engaging in transactions, attending meetings, making telephone calls, and recording, or consenting to the recording of transactions, meetings, and telephone calls.

g. Upon request by the District Attorney at any time, the Defendant shall provide accurate and complete written disclosure of his financial condition, including disclosure of all assets, liabilities, sources of income, and expenses. The District Attorney may direct that such disclosure be sworn to and made on a form required by the District Attorney. Any knowingly false statements made in this disclosure shall constitute a material breach of this Agreement and may expose the Defendant to additional criminal prosecution.

h. As a specific condition of this Agreement, the Defendant agrees never to seek licensure as a public accountant.

i. As a specific condition of this Agreement, the Defendant agrees to resign his employment, or permanently terminate any consulting relationship he has, with the Dewey & LeBoeuf Liquidation Trust the next business day following his plea of guilty pursuant to this Agreement.

3. [redacted]

4. Upon the Court's approval of this Agreement, the Defendant will plead guilty as set forth in paragraph 5 below. At the time of the plea, the Defendant will withdraw all pending motions, and will waive all defenses and all rights of appeal. The Defendant acknowledges that such a waiver of the right to appeal does not occur automatically upon acceptance of his plea of guilty, but that this Agreement requires such a waiver. He will also waive any claims or protections concerning speedy trial, speedy sentence or venue.

5. The Defendant agrees to plead guilty under the Indictment to: Grand Larceny in the Second Degree, a Class "C" felony, in violation of Penal Law §155.40(1). This plea covers the conduct described in Appendix A, and no other charges will be brought relating to the conduct described therein. It is understood by the Defendant that in addition to any monetary penalties the Court could impose, the potential maximum sentence he could receive upon this plea of guilty is an indeterminate period of

incarceration of five to fifteen years and the potential minimum sentence he could receive is an unconditional discharge.

a. The Defendant will allocute under oath to the facts that are set forth in Appendix A.

6. If the Defendant fully complies with this Agreement, as determined solely by the District Attorney, the District Attorney will inform the Court of the nature, extent, and value of the Defendant's cooperation and will make a sentencing recommendation to the Court. The recommendation will be an indeterminate period of incarceration of two to six years. The Defendant understands that the Court has the authority to impose any lawful sentence, including a sentence of incarceration within the legal limits set forth above, pursuant to his guilty plea.

7. If the Defendant violates this Agreement in any respect, as determined solely by the District Attorney, the Defendant will not be permitted to have his guilty plea withdrawn or vacated and:

a. The District Attorney shall make the facts known to the sentencing court and may request that the Court impose any lawful sentence, which may include the maximum sentence permitted of five to fifteen years imprisonment.

b. Should the Defendant not appear in court as directed, or should the Defendant voluntarily absent himself from court, the District Attorney may request sentence be imposed in the Defendant's absence. The Defendant understands that in such circumstance he waives his right to be present and the Court has the authority to impose any lawful sentence.

c. The District Attorney may prosecute the Defendant for any additional crimes that he has committed, as authorized by law, that are not covered by the guilty plea contemplated in paragraph 5 of this Agreement.

d. As to any prosecution brought by the District Attorney pursuant to this paragraph, the Defendant waives any claim that any statement he has made, or any testimony he has given, in the course of his cooperation with the District Attorney is inadmissible against him, or that any property that the District Attorney has obtained from the Defendant, including that secured by execution of search warrant, is inadmissible against him.

e. As to any prosecution brought by the District Attorney pursuant to this paragraph for any offense committed within five (5) years prior to the date of this Agreement, or for any offense committed on or after the date of this Agreement, the Defendant waives any claim that such prosecution is time-barred either on grounds of speedy trial, speedy arraignment, or statute of limitations protections.

f. The Defendant understands that all information and testimony provided by him must be complete, accurate and truthful. The Defendant understands and acknowledges that examples of conduct that would constitute violations of this Agreement include (but are not limited to): lying about or withholding his knowledge of any matter, whether criminal or otherwise; misrepresenting the source of such knowledge; minimizing, omitting, or exaggerating the involvement of himself or any third party in any criminal or unlawful activities; failing to provide any documents requested by this Office; failing to testify truthfully at any proceeding as required by this Office; committing any new crimes; and failing to fulfill any other of the requirements of this Agreement.

8. The Defendant consents to any and all adjournments of his sentencing and any other proceedings under the Indictment as may be requested by the District Attorney for the purpose of continuing the Defendant's cooperation pursuant to this Agreement. If necessary to facilitate the Defendant's cooperation, the plea described in paragraph 5 above may be postponed or the entry of the plea may be postponed, and the Defendant consents to all adjournments for the purposes of such postponements.

9. This Office agrees to make all reasonable and necessary efforts to ensure the safety of the Defendant during the pendency of this Agreement. The determination as to what is reasonable and necessary to ensure his safety shall be solely in the discretion of this Office.

10. Notwithstanding any other provision contained in this Agreement, nothing shall bar this Office from prosecuting the Defendant for perjury and contempt if he fails to testify truthfully in any Grand Jury proceeding, pretrial hearing, trial, or other proceeding.

11. The District Attorney shall not be deemed, by any act, statement, or omission, to have waived any violation of this Agreement unless such waiver is put into writing and signed by both parties.

12. The Defendant asserts that he is a United States citizen. The Defendant acknowledges that were he not a citizen of the United States, his plea of guilty would subject him to a risk that adverse consequences might be imposed upon him by the United States immigration authorities, including but not limited to removal from the United States, exclusion from admission to the United States, and/or denial of naturalization.

13. This Agreement is limited to the New York County District Attorney and cannot bind other government agencies. However, the District Attorney will bring the cooperation of the Defendant to the attention of other government agencies or regulatory bodies if so requested by the Defendant.

14. This Agreement is subject to the approval of the Court and goes into effect at the time of Defendant's plea of guilty. This Agreement embodies the entire agreement between the parties and cannot be modified except in a writing signed by all parties to this Agreement.

Dated: New York, New York
February 13, 2014

Francis J. Canellas
The Defendant

Brian E. Maas, Esq.
Attorney for the Defendant

Peirce R. Moser
Assistant District Attorney

Steve Pilnyak
Assistant District Attorney

Appendix A
To the Plea and Cooperation Agreement Between the District Attorney of the County of New York and Francis J. Canellas

I received a bachelor's degree in accounting from Pace University in 2001. I passed all four sections of the CPA exam, but I have not completed the public accounting requirement to be licensed as a CPA. I began working for LeBoeuf Lamb Greene and MacRae LLP as an intern in the accounting department in or around 2000 and was hired permanently after finishing college. I received several promotions over time and eventually became the Accounting Manager at LeBoeuf Lamb. I worked on the merger between LeBoeuf Lamb and Dewey Ballantine LLP, and I was promoted to Director of Finance of Dewey & LeBoeuf following the merger and remained in that position throughout the existence of Dewey & LeBoeuf. While I was Director of Finance, I reported to Joel Sanders, the firm's Chief Financial Officer, until he left the firm in 2012. After Dewey & LeBoeuf declared bankruptcy, I worked for the wind down committee and now do work for the bankruptcy trustee of the Dewey & LeBoeuf Liquidation Trust. As Director of Finance, several individuals reported directly to me at various times including, among others, Tom Mullikin, the firm's Controller, Victoria Harrington, the firm's Accounting Manager, and David Rodriguez, the firm's Partner Relations Specialist.

I typically interacted with Sanders on a daily basis. I interacted with Steve DiCarmine, the firm's Executive Director, frequently during the merger process. After the merger, I initially did not routinely interact with DiCarmine or Steve Davis, the firm's Chairman. Over time, they seemed to become more comfortable with me, and I interacted with them more frequently.

Dewey & LeBoeuf's first full year was 2008. Firm management had set unrealistic income expectations, and the results during the year made clear the firm would not achieve its internal projections. After the financial crisis hit, the outlook became even more bleak. In the Fall of 2008, it became clear that the firm might not comply with the cash flow covenant contained in its various credit agreements. By the last week in December, it became clear that we would not meet the covenant, and Sanders told me, in substance and among other things, that DiCarmine and Davis said we had to meet the covenants. Sanders and I began discussing accounting adjustments that could be made to help us meet the covenant. Based on the recommendations Sanders was making, it became clear to me the decision had been made to make inappropriate adjustments in order to meet the covenant. We considered and decided which appropriate and inappropriate accounting adjustments to make. During these discussions, Sanders and I considered how likely the various

adjustments were to be caught by auditors and others. Sanders told me, in substance, that I had to be prepared with excuses to give the auditors if the adjustments were questioned, so that the firm could get through the audit. For example, I recall that with disbursement write off reversals, Sanders instructed me, in substance, that if the reversals were questioned, I was to tell the auditors that we were attempting to collect those amounts. Both Sanders and I knew that was untrue. We also discussed plausible rationales for the adjustments, where plausible rationales were available, and what we'd say if partners and others questioned the adjustments. I remember that at least one of these conversations took place in Zach Warren's office, in Warren's presence. We had a flipchart in the office, and Sanders and I wrote down the adjustments we thought of. I later transferred these adjustments to an Excel spreadsheet that I reviewed with Sanders.

After the list of adjustments was complete, it was my job to implement them. The adjustments were primarily made by Mullikin or others in the accounting department and Dianne Cascino, who was in charge of, among other things, diaries and cash application. Ilya Alter, the firm's Director of Budgeting and Planning, was also involved because several of the adjustments impacted the firm's 2009 budget. As time went on, Alter and Mullikin also helped come up with potential inappropriate adjustments. In early 2009, Sanders would contact me frequently, sometimes several times a day, to inquire about the status of the adjustments and how much closer the firm was to meeting the net income required for covenant compliance. I also recall on one occasion that Sanders and DiCarmine were leaving the firm for dinner and stopped by my office to check on the status of the adjustments. I believe this occurred in early 2009. We all knew that adjustments were being made to deceive our lenders and others into believing that the firm had met all of its covenants, when in fact it had not.

Several different types of false adjustments were made for year-end 2008. A number of the adjustments involved reversing amounts that had appropriately been expensed and booking them to the balance sheet. Additionally, amounts were inappropriately taken into revenue. Certain expenses were reclassified as partner compensation, which was inconsistent with how the amounts had been treated the prior year, which was the first year Dewey & LeBoeuf reported its financial statements on an income tax basis. All of these adjustments were made in an effort to increase net income, without regard to the appropriate treatment. Sanders, Mullikin, Alter and I also agreed not to expense certain amounts that we knew appropriately should have been expensed. I helped prepare and signed the firm's 2008 year end covenant compliance certificate or authorized it to be stamped with my signature. I knew at the time that the certificate and the financial statements included with it were intentionally false. I knew that the firm's unaudited, and eventually audited, financial statements were false and were being provided to the firm's lenders, to leasing companies with whom the firm did business, and to others.

I participated with others in efforts to keep the firm's auditors, Ernst & Young, from discovering the adjustments that had been made to the firm's accounting records, by making false or misleading statements, providing false or misleading information, or by failing to disclose information that I knew should be disclosed to the auditors. For example, I suggested booking an amount that should have been expensed to a client receivable account, to make it less likely to be discovered by the auditors. I also intentionally failed to disclose that the firm had adopted several different accounting treatments in order to increase its net income, even though I believed such disclosures should have been made. I engaged in similar conduct for the firm's 2009 and 2010 audits. I signed the firm's management representations letters for the 2008 through 2010 audits, even though I knew they contained representations I knew to be false. I knew that Ernst & Young would rely on these letters in issuing its audit opinions for the Dewey & LeBoeuf audits.

The Ernst & Young audit partner on the 2009 and 2010 audits, Denise Pelli, met with Steve Davis at the end of the 2010 audit cycle. I attended this meeting with Sanders. I recall that Steve Davis was very nervous before the meeting, and I understood he was nervous because of the inappropriate accounting adjustments that had been made. During the meeting, Pelli told Davis, in substance, that the firm's accounting records were in good shape. After the meeting, Davis, in a very sarcastic tone, told Sanders, in substance, that he was doing a great job and the firm's books were in great shape.

Dewey & LeBoeuf failed to meet its financial targets again in 2009. For 2009, it was clear that even by making adjustments to its books, the firm would fail to meet its cash flow covenant. Sanders, others, and I were also concerned that the firm would fail to meet its distribution covenant. Sanders sought an amendment, with my assistance, to the cash flow covenant, but we had to make adjustments similar to those made in 2008 even to meet the reduced covenant. Sanders told me, in substance, that it was not an option to miss the covenants, especially because one had already been amended, and we had to make enough adjustments to meet the covenants. At various times throughout the life of the scheme, I would show Sanders adjustments that were planned, and he would tell me I needed to find more to meet the covenants. I do not recall the dates that this happened, but it happened on multiple occasions. Sanders and I decided to reclassify certain partner compensation as a return of capital, in order to satisfy the distribution covenant. I directed David Rodriguez to make these adjustments. In order to increase net income, I instructed Mullikin and Cascino to make many of the same sorts of adjustments that had been made for year-end 2008. Sanders and I planned and implemented additional adjustments to increase net income. For example, Sanders received a partner capital check in late December 2009 and instructed me to have it booked to revenue. I instructed Cascino to apply the funds to a client invoice. Additionally, Sanders and DiCarmine instructed me to book revenue to a client, even though we did not have authority to move money from the client's escrow account,

and I decided to treat it as a wire in transit on the firm's bank reconciliation. I understood from conversations with Sanders that both DiCarmine and Davis were aware of inappropriate adjustments that were being made at year-end 2009. I again signed the firm's covenant compliance certificate for year-end 2009, or authorized it to be stamped with my signature, knowing that it contained intentionally false information.

In late 2009, I knew that the firm would miss at least its cash flow covenant, and I was concerned that the banks might call the firm's debt. I knew that the firm would again miss its internal compensation targets, and I knew that improper adjustments were being made to the firm's accounting records. I believed that the firm was very unstable. I told Sanders, in substance, that I was worried about my job security, the firm's finances, and its ultimate survival. Sanders, in substance, told me that it would be worthless to get a compensation agreement with the firm because the agreement would only have value if the firm would honor it. Sanders told me, in substance, that he was going to try to get letters of credit for DiCarmine, himself and me from the firm. Davis approved my agreement with the firm, and I obtained a letter of credit with the firm in January of 2010.

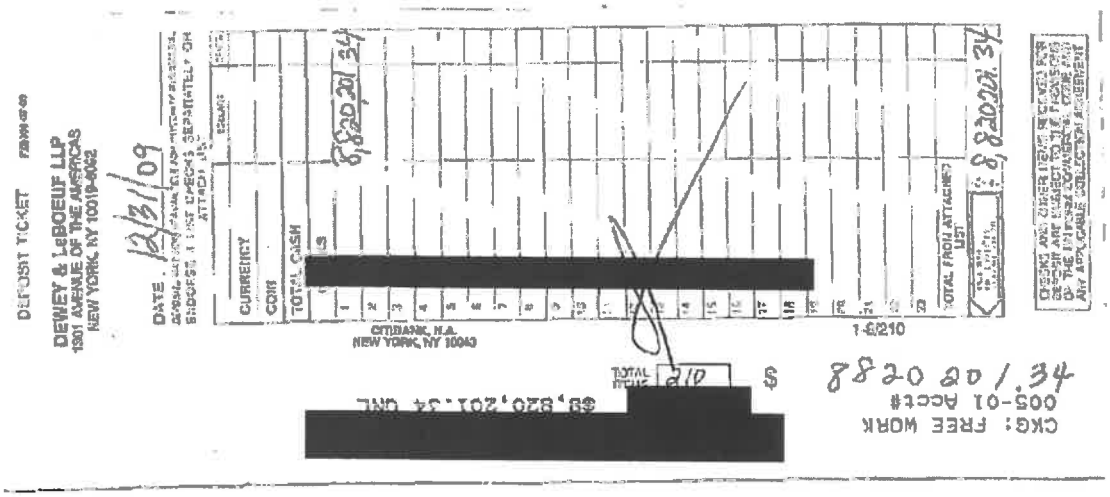
In April 2010, Dewey & LeBoeuf refinanced its debt by entering into a $100 million line of credit with three banks and by securing $150 million in a private placement with multiple insurance companies. Sanders, Mullikin and I were the main contacts with individuals at JPMorgan, the placement agent on the private placement. Sanders, Mullikin, and I, along with others, provided financial statements and other information to the banks and private placement investors that we knew to be false and intentionally failed to provide information that we knew would be of interest to the banks and investors. Sanders oversaw Mullikin's and my interactions with the banks and investors, including among other things, what information we did and did not provide. I recall a meeting from that time period that Sanders, DiCarmine and I had, in which Sanders questioned whether we should disclose the firm's "overhang" -- millions of dollars that the firm promised to pay partners from future years' income to compensate them for prior years' work. The three of us were concerned that this disclosure would be detrimental to the firm's chances of securing the line of credit and private placement investments. Sanders and DiCarmine decided, and I agreed, that this information should not be disclosed even though we knew information about partner compensation was being disclosed.

The firm again failed to meet its income targets for year-ends 2010 and 2011, and the firm's accounting records were again falsified using many of the same sorts of adjustments that had been made in prior years, along with some additional inappropriate adjustments. I recall that for year-end 2010, the main concern was breaching the firm's distribution covenant, so we sought to increase net income and decrease distributions. Each year-end, I would review potential adjustments with Sanders, who would approve them. Over the years, I instructed Cascino, Mullikin,

Rodriguez, Harrington, and others to make the adjustments. As time passed, Sanders included me in more meetings with DiCarmine and Davis. As a result, DiCarmine and Davis became more comfortable with me. I recall one meeting, I believe it was in late 2011, during which Davis, Sanders, Rodriguez, and I discussed partner distributions. At the end of the meeting, Rodriguez was asked to leave so that Davis, Sanders and I could discuss year-end adjustments. During this follow-on meeting, we discussed inappropriate adjustments.

During 2011, the firm also missed its asset coverage ratio covenant. When this occurred, after discussions with Sanders, in order to make it appear like the firm was in compliance with the covenant, I instructed Cascino and Lourdes Rodriguez, the Director of Billing, to make adjustments I knew were false.

EXHIBIT J


DEPOSIT TICKET
DEWEY & LeBOEUF LLP
1301 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6022
DATE 12/31/09
CURRENCY
COIN
TOTAL CASH
8,820,201.34
TOTAL FROM ATTACHED LIST
8,820,201.34
CITIBANK, N.A.
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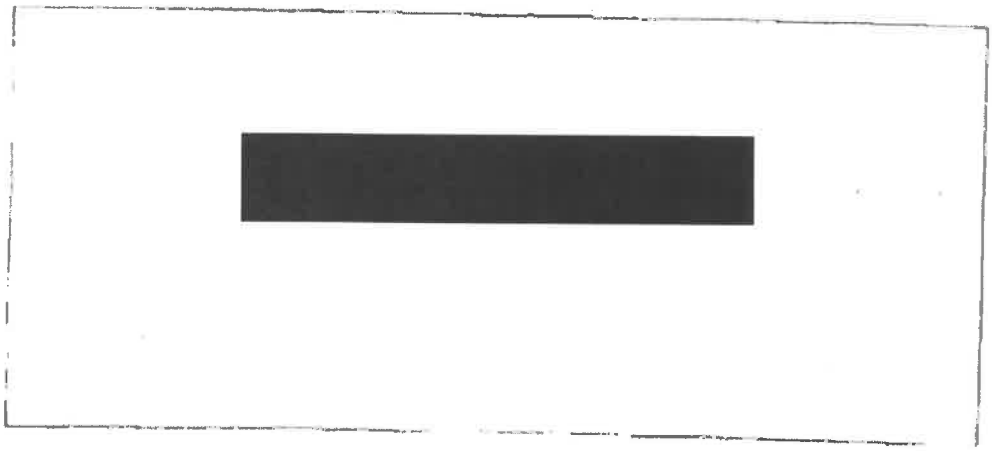

ATI Systems International Inc
as agent for:

ATI SYSTEMS INTERNATIONAL, INC

[redacted]

WELLS FARGO BANK N.A.
119 Hospital Drive, Van Wert, OH 45891

No. 02276243 [redacted]

DATE	VENDOR NO.	AMOUNT
12/31/2009	191177	$***133,673.13

PAY

ONE HUNDRED THIRTY THREE THOUSAND SIX HUNDRED SEVENTY THREE AND 13/100 ********

TO THE ORDER OF:

[redacted]

DEWEY & LEBOEUF LLP
1301 AVENUE OF THE AMERICAS
NEW YORK NY 10019-6092

By:

[redacted]