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CHARLOTTE NC

OCT 01 2018

United States District Court for the Western
District of North Carolina
Charlotte Division
File Number 3:17 CR 290 (MOC)

U.S. District Court
Western District of NC

UNITED STATES OF
AMERICA., Plaintiff

v.

ROBERT M. BOSTON,
Defendant

Notice of Appeal

Notice is hereby given that Robert M. Boston, Defendant in the above named criminal case, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final judgment entered by the Trial Court in this action on the 1st day of October, 2018.

By: _____

Robert M. Boston
Defendant

CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of this Notice of Appeal by depositing in the United States mail copies of the same in properly addressed envelope with adequate postage thereon, in the manner prescribed by Rule 5 of the Rules of civil Procedure, on the following:

Taylor Phillips, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
Western District of North Carolina—Charlotte, NC
227 W Trade St
Suite 1650
Charlotte, NC 28202-1675

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, NC 28202

This the 2nd day of October, 2018.



Robert M Boston
4141 Rhyndland Drive
Sherrills Ford, NC 28673

OCT 01 2018

**FOR THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

US District Court
Western District of NC

UNITED STATES OF AMERICA,

Plaintiff,

Docket No: 3:17 CR 290 (MOC)

AFFIDAVIT OF ROBERT M. BOSTON

Vs.

ROBERT M. BOSTON

Defendant

NOW COMES, ROBERT M. BOSTON, who, after being duly sworn, by way of Affidavit, says and alleges as follows:

1. My name is Robert Michael Boston, I am a citizen and resident of Catawba County, North Carolina, over the age of twenty-one (21), the Defendant in the above captioned action, of sound mind and have personal knowledge of each of the statements made herein, save and except for those made upon information and belief, and as to each of those, I believe them to be true.
2. Prior to my indictment in the above captioned action, when I became aware of the investigation regarding my involvement in Zloop, Inc, I contacted Anthony G. "Tony" Scheer, a partner in the firm of Rawls, Scheer, Clary & Mingo in Charlotte, N.C., who had been highly recommended due to his experience in the trial of serious felonies in Federal Court. I was extremely pleased with his work during the initial phase of the investigation and felt very comfortable with his representation and obvious interest in doing the very best job possible for me in the evolving case. Unfortunately, once I was indicted, it became painfully obvious that I would not be able to pay the retainer necessary to engage he and his firm in my representation for trial. He was very courteous and professional in his handling of the situation and was allowed to withdraw from further representation. Due to my financial situation as a result of the collapse of Zloop, Inc., I applied for and was appointed Kevin A. Tate, Senior Litigation Counsel, from Federal Defenders of Western North Carolina, Inc. as my attorney.

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3. Through my involvement as a founder, stockholder and officer in Zloop, Inc., I had been involved as a client with many of the top lawyers and top law firms in the Charlotte area who had provided assistance in the formation and legal work required as Zloop, Inc. moved forward. It was my intention to hire the very best attorneys to insure that all aspects of the formation and operation of Zloop, Inc. were proper. The firms retained to provide various legal services included Parker Poe and, McGuire Woods, two of the most respected firms in Charlotte. In addition, Eric Newman, an expert in franchising matters, was retained to assist in the preparation of all documents required in the franchising of Zloop, Inc. During the preparation of the paperwork and other necessary work required, Zloop, Inc. expended approximately One Million (\$1,000,000.00) Dollars in legal fees which resulted in a huge volume of paper work. In each instance, the attorneys involved were involved, concerned and readily available to discuss any question I had and provide information in a timely fashion. Each of the firms and designated attorneys from the firms were busy, yet always took the time to keep both myself, and the other principals fully advised as to what was being done and the effect of such actions. The way in which the various attorneys handled the tasks assigned to them was consistent with the way in which previous attorneys with which I had been involved in various corporate or civil matters had conducted themselves. In all of my prior experiences, I had been treated with respect, my questions or concerns answered in a timely fashion and real concern over the tasks assigned shown by the respective attorneys and firms. While I realize that in each prior instance, the attorneys and firms were retained, not appointed, I was not aware that any difference existed in the "standard of care", or "code of professional responsibility" regarding the representation provided. I truly thought the United States Constitution guaranteed that I would have "Substantial Assistance" in my defense from my attorney regardless of whether he was appointed or retained.
4. Unfortunately, the plans for Zloop, Inc. and its expansion became embroiled in litigation with three of the minority stockholders, namely Mr. Mosing and the Janes who became involved in Zloop, Inc. through their association with Mosing. Zloop, Inc. as well as myself and Bob LaBarge, a Co-Defendant in this matter, were named as Defendants in the various actions filed by Mosing. In each instance, Zloop as well as Labarge and I hired counsel in each respective jurisdiction to represent us in the respective matters. A tremendous amount of money was spent defending the various actions with top notch attorneys and firms who had a great deal of knowledge regarding the various aspects of the claims of misconduct made by Mosing and Janes which, coupled with the knowledge of the attorneys in Charlotte, provided, or should have provided a very valuable source of information in the preparation of a defense or defense strategy to effectively deal with the charges levied against me. The various firms and attorneys offered a wealth of information about what had occurred, why various steps were taken, what defenses, if any, existed regarding the allegations

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from some of the top experts in the field yet, to the best of my knowledge, none of the attorneys were contacted by my attorney or his staff to determine what, if any, information they had that could be used in my defense. I provided my attorney with the draft complaint that Stuart Brown, a managing partner in the prestigious firm of DLA Piper, in their Delaware office had prepared for our review as we began our efforts against Mosing, a copy of which is attached, marked as "**Exhibit 1**". I personally, asked my attorney on several of the few times I was able to actually speak with him, to contact the various attorneys that had been involved to help him understand the complex issues presented and the various defenses to the allegations. I was assured this would be done during the preparation for trial. I advised him that our attorneys in Hickory, each had a lot of experience in complex civil litigation and had extensively reviewed the documents involved; however, based upon my discussions with Matt Rodgers and Gary F. Young, neither Mr. Tate, nor any member of his staff ever contacted either of them to determine what they knew, or to seek their assistance in putting together a defense based upon the information they had reviewed extensively during their representation. With over 800,000 pages of documents to review, I felt it was imperative that the input of the prior attorneys be sought since they offered an excellent opportunity to study, in depth, the documents presented through the eyes of the attorneys who had extensively reviewed or in some cases actually prepared the documents; however, my suggestions and request were ignored.

5. In the first meeting I had with Mr. Tate and his staff, I was assured that they had the staff and knowhow to meet the Government on even terms. At that meeting I inquired about how they planned to review all of the information and was told that they had both the experience and ability to properly review and prepare for what Mr. Tate referred to as a "Complex Business Case." I was assured that, given the nature of the case, the Court would allow additional time for them to prepare for trial. When I asked about our obtaining a forensic accountant, I was advised that they had an "in house" expert that they could use. I was assured that the prior attorneys would be contacted and that a "team approach" would be employed to prepare my defense. Frankly, I left the initial meeting, feeling that I had a winning team, that had the ability, staff, experience and resources to mount the type of defense needed to meet the Government's virtually unlimited resources. What, in fact, occurred was quite different.
6. After the initial meeting, I had very little contact from Mr. Tate or his staff. Since this was the first criminal case I had ever been involved in, I really didn't know what to expect. As time passed with little or no contact from my attorney, I called and was assured by his staff, that everything was "moving smoothly" and that the necessary work was being done.

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7. As the trial date approached, I was concerned that we had not had sufficient time to properly prepare and was advised that a Motion to Continue had been filed and Kevin was satisfied, due to the complex nature of the case, that the Court would allow the requested extension. During this discussion, Mr. Tate, in the presence of his staff, acknowledged that they were not prepared for trial. Despite the assurance that the continuance would "not be a problem," the Court denied the Motion and I was faced with going to trial before my attorney had been given an opportunity to properly prepare. I honestly felt that Mr. Tate and his staff were caught by surprise by the Court's ruling and were faced with doing the best they could in a bad situation. We did not have a forensic accountant to challenge or offset the testimony of the Government's accountant, we had no expert to counter or offset the testimony of the Chairman of the SEC, which, upon information and belief, was due to the sincere belief on the part of Mr. Tate that the case would be continued, and his staff given six (6) months to properly prepare for trial. With the trial rapidly approaching, I felt it necessary to put my concerns in writing which I delivered to Mr. Tate. A copy of my letter dated December 1, 2017 is attached, marked as "**Exhibit 2**". I received no reply to my letter in writing, by phone or email. After the trial and verdict, as we left Court, I attempted to discuss what had happened and what we could do about it with Mr. Tate and was advised that "I need to decompress! I will discuss everything with you later."
8. At trial, my worst fears were confirmed. Although we were not properly prepared, Mr. Tate and his staff did an excellent job with what they had. I am satisfied that had the continuance been granted allowing Mr. Tate and his staff the time needed to prepare, the result may very well have been different or at least we would have had a fair opportunity to defend against the Government's case. After the trial, I sent the letter dated December 13th, 2017 to Mr. Tate, a copy of which is enclosed, marked as "**Exhibit 3**", setting forth my impressions and asking for information regarding what we should do next. I received no response by phone, fax or letter to my letter of December 13th, 2017.
9. I received an information packet from Mr. Tate's office which I returned with my letter dated January 2nd, 2018 by Certified Mail, a copy of which is attached, marked as "**Exhibit 4**"; however, I heard nothing until I received an email from Mr. Tate dated January 8th, 2018, a copy of which is attached, marked "**Exhibit 5**".
10. My next contact with Mr. Tate came in a series of emails from January 10, 2018 through January 13, 2018 which are attached marked "**Exhibit 6**", "**Exhibit 7**", "**Exhibit 8**" and "**Exhibit 9**", all of which were about the packet I had returned with my certified letter of January 2nd, 2018.

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11. After hearing nothing after the email of January 13th that did not answer any of my prior questions, I sent another certified letter to Mr. Tate dated February 14, 2018, a copy of which is attached, marked as **"Exhibit 10"**. I received no response from Mr. Tate or any member of his staff to my questions by phone fax or letter.
12. Having received no response to my various letter, after receiving the Pre-Sentence Report, I sent, via certified mail, a letter dated April 1, 2018, a copy of which is attached, marked as **"Exhibit 11"**. Rather than simply answer my questions, Mr. Tate elected to call me at 5:32 p.m. on April 5th, 2018 and told me "You are getting all the attention you are going to get. If you don't like it, get another attorney!" and then hung up. The call lasted one (1) minute.
13. My next involvement with Mr. Tate came as a result of my review of the Reply to the Pre-Sentence Report prepared by Mr. Tate and his staff which was excellent. I asked to meet with Mr. Tate after receiving my copy of the Reply. I met with Mr. Tate and several of his staff at his office in Charlotte where Mr. Tate advised me he intended to call Mosing and the president of Patriot Bank as witnesses at the sentencing hearing. While I was in his office, he called Jim, one of his investigators who participated in the discussions.
14. On September 1, 2018, I sent another letter via certified mail, a copy of which is attached, marked as **"Exhibit 12"**. When I had no response to my letter, I sent an email on September 10, 2018, a copy of which is attached marked as **"Exhibit 13"**.
15. On September 11, 2018, I received an email from Mr. Tate advising that Mosing had not been served. A copy of the email is attached marked as **"Exhibit 14"**. After receiving the email, I called Jim, the investigator at 3:11 p.m. at 704 770 5899 and was advised that he had not been contacted about serving a subpoena on Mosing or the Bank after our phone call from Mr. Tate's office in May. A copy of my record of the call is attached marked as **"Exhibit 15"**.
16. The week before the original sentencing date, I met with Mr. Tate in his office at which time he gave me the Motion for Variance he had filed. When I questioned the months he had listed as the range of punishment, he acknowledged it was incorrect and marked through it on my copy. When I asked if he intended to file a corrected copy, he said "No, you are going to get 5 years, so it doesn't matter." A copy of the Motion as marked by Mr. Tate is enclosed, marked as **"Exhibit 16"**.
17. This Affidavit is filed not as an indictment of Mr. Tate, but rather to accurately preserve for the record what occurred during my representation by Mr. Tate. The facts and correspondence speak for themselves.

This the 26th day of September, 2018

By: [Signature]
Robert M. Boston
Affiant

VERIFICATION

This is to certify that I have read the foregoing Affidavit and assert that the allegations contained therein are true to the best of my knowledge are true except for those matters alleged upon information and belief and as to those matters I believe those matters to be true.

This the 26th day of September, 2018

By: [Signature]
Robert M. Boston

NORTH CAROLINA

COUNTY OF CATAWBA

NOTARY ACKNOWLEDGMENT

This is to certify that Robert M. Boston, personally appeared before Patricia Louise Greer, a Notary Public and after presenting a valid picture identification, acknowledged the due execution of the foregoing verification.

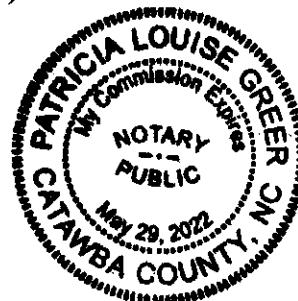
This the 26th day of September, 2018

By: Patricia Louise Greer
Notary Public

(SEAL)

Name of Notary Public: Patricia Louise Greer

My Commission Expires: May 29, 2022



CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of this affidavit by depositing in the United States mail copies of the same in properly addressed envelope with adequate postage thereon, in the manner prescribed by Rule 5 of the Rules of civil Procedure, on the following:

Taylor Phillips, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
Western District of North Carolina—Charlotte, NC
227 W Trade St
Suite 1650
Charlotte, NC 28202-1675

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, NC 28202

This the 1st day of October, 2018.



Robert M Boston
4141 Rhynland Drive
Sherrills Ford, NC 28673

AS SENT TO MOSING et.al. August 19, 2015 to Mosing's Counsel via eMail

**VERIFIED COMPLAINT TO RECOVER DAMAGES FOR
BREACH OF CONTRACT, TORTIOUS INTERFERENCE WITH BUSINESS
RELATIONS, AND LIBEL PER SE, AND TO AVOID AND RECOVER
FRAUDULENT TRANSFERS AND OBJECTION TO CLAIM**

Plaintiff ZLOOP, Inc. ("ZLOOP" or the "Company"),¹ by and through its counsel, [_____], files this Verified Complaint (the "Complaint") to recover damages for breach of contract, tortious interference with business relations, and defamation, to avoid and recover fraudulent transfers and to object to claims, and avers in support thereof, the following:

NATURE OF THE CASE

1. This action concerns an erudite individual investor, who through his own impetuosity and selfishness has set out to destroy a recycling business that has not yet even breached the start-up phase of its life cycle.

2. Defendant, Kendall G. Mosing, is the third largest stockholder of ZLOOP, holding 1% of the Company's equity. Between October 2012 and January 2014, Mosing invested millions of dollars in ZLOOP in the form of franchise and equity investments, direct loans, and securing a line of credit to the Company.

3. Through the intense involvement of his surrogates, Mosing, the Company's most substantial benefactor (other than the Company's founders) maintained de facto control over ZLOOP's accounting and its capital expenses and investments. Mosing also exploited his tight

¹ The Debtors in these Chapter 11 Cases and the last four digits of each Debtors' federal tax identification numbers are: ZLOOP, Inc. (2960); ZLOOP Nevada, LLC (7516); and ZLOOP Knitting Mill, LLC (7098). The location of the Debtors' headquarters and the service address for each of the Debtors is 816 13th Street NE, Hickory, NC 28601.

grip on ZLOOP's financing to provide liquidity for his own surreptitious personal interests and to ensure that ZLOOP focused on geographies that suited his conveniences, namely his home, Louisiana.

4. In the Spring and Summer of 2014, the founders (and sole directors) of ZLOOP, Robert M. Boston and Robert S. LaBarge (collectively, the "ZLOOP Founders," and together with ZLOOP, the "ZLOOP Parties"), decided to focus ZLOOP's resources in the large, untapped Western United States market. Mosing, however, desired development in Louisiana.

5. On August 28, 2014, Mosing and ZLOOP LA, LLC ("ZLOOP LA") sued the ZLOOP Parties in federal district court in Louisiana, alleging myriad violations of federal and state securities laws and related state tort and contract laws (the "Louisiana Action"). In the Louisiana Action Mosing conveniently, has blossomed into an unsophisticated, innocent and unadvised caregiver, who was duped by fanciful -- but apparently hollow -- promises of fortune. His cause is a charade, however, as he was represented by lawyers, accountants, bankers and others at each turn. As set out more fully below, Mosing, experienced in the recycling market, knowingly breached clear and express contracts, which he negotiated at arm's length, and has engaged in repeated bad faith tactics designed to scare off ZLOOP's business partners, customers and other investors.

PERSONAL JURISDICTION

6. This Court has personal jurisdiction over Mosing, Charmaine Ann Mosing-Miller, ZLOOP LA, Janes Industrial Products, LLC ("Janes Products"), Innovative Cleaning Solutions, LLC ("ICS"), James V. Janes, III ("JJanes"), and Marian Janes ("MJanes" and collectively with Mosing, Mosing-Miller, ZLOOP LA, Janes Products, ICS and JJanes, the "Defendants") under Delaware's long-arm statute, 3 *Del. C.* § 3104.

SUBJECT MATTER JURISDICTION AND VENUE

7. This is an adversary proceeding brought by Plaintiff to recover damages for breach of contract, tortious interference with business relations and defamation. This adversary proceeding also seeks to avoid and recover transfers and avoid obligations under 11 U.S.C. §§544 and 548 and applicable non-bankruptcy law. This adversary proceeding finally is an objection to the claims asserted by the Defendants. The proceeds of this adversary proceeding will fund ZLOOP's plan of reorganization that ZLOOP intends to file early during the administration of the within above-captioned chapter 11 cases.

8. This Court has subject matter jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157(c) and 1334(b).

9. The claims asserted in this adversary proceeding are core under 28 U.S.C. §157(b).

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332, because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

11. ZLOOP consents to this Court hearing and determining this adversary proceeding as contemplated by Federal Rule of Bankruptcy Procedure 7012.

12. Venue is proper in the United States Bankruptcy Court for the District of Delaware under 28 U.S.C. § 1409.

PARTIES

13. ZLOOP is a Delaware corporation, with its principal place of business in Hickory, North

Carolina. ZLOOP is in the business of providing eWaste² recycling and data destruction services.

14. Mosing is a resident of the state of Louisiana, residing at 812 E. Bayou Parkway, Lafayette, Louisiana 70508. Mosing is a wealthy individual. Mosing owns 100 shares of ZLOOP's common stock ("Common Stock") and two warrants to purchase, in total, another 620 shares of Common Stock. Mosing was a franchisee of ZLOOP. Personally, he owned eight ZLOOP franchises assigned to territories in the state of Texas, and through ZLOOP LA, owned three franchises in Louisiana. At certain times relevant hereto, Mosing was an advisor to the ZLOOP board of managers and directors, respectively.

15. Miller-Mosing is a resident of the state of Louisiana, residing at 812 E. Bayou Parkway, Lafayette, Louisiana 70508. Mosing and Miller-Mosing are husband and wife. Upon information and belief, at the direction of Mosing, ZLOOP transferred corporate funds to Miller-Mosing for her own personal shopping fund.

16. ZLOOP LA is a Louisiana limited liability company, with its principal place of business in Lafayette, Louisiana. ZLOOP LA was formed on November 2, 2012 (Ex-1) for the purpose of holding Mosing's ZLOOP franchises located in Louisiana. Upon information and belief, Mosing is ZLOOP LA's sole member.

17. Upon information and belief, Janes Products is a Louisiana limited liability company, with its principal place of business in Lafayette, Louisiana. Upon further information and belief, Janes Products was formed on June 2, 2002. Upon further information and belief, Janes is a

² eWaste is an ubiquitous term used to cover almost all types of electrical and electronic equipment (EEE) that has or could enter the waste stream. Examples include TVs, computers, mobile phones, iDevices, stereo systems, toys, small and large appliances (white goods) -- almost any household or business item with circuitry or electrical components with power cords or battery supply.

member and officer of Janes Products.

18. Upon information and belief, ICS is a Louisiana limited liability company, with its principal place of business in Scott, Louisiana. Upon further information and belief, JJanes is a member and officer of Janes Products.

19. JJanes resides at 214 Timberland Ridge Boulevard, Lafayette, LA 70507. Upon information and belief, at all times relevant hereto, JJanes was a trusted business advisor and close personal friend of Mosing. At certain times relevant hereto JJanes was an advisor to the ZLOOP board of managers and directors, respectively.

20. MJanes resides at 214 Timberland Ridge Boulevard, Lafayette, LA 70507. JJanes and MJanes are husband and wife. Upon information and belief, at all times relevant hereto, MJanes was a trusted business advisor and close personal friend of Mosing. At certain times relevant hereto MJanes was ZLOOP's Treasurer, accountant, tax advisor, and finance director, an advisor to the ZLOOP board of managers and directors, respectively, and simultaneously served as Mosing's accountant and financial advisor.

FACTUAL ALLEGATIONS

Boston And LaBarge Meet JJanes

21. In or around May 2011, Boston was introduced to JJanes by Greg Christos, owner of Cambridge Global Consultancy. On or around August 3, 2011, Boston and LaBarge met with JJanes in Scott, Louisiana. At that meeting, JJanes introduced Boston and LaBarge to JJanes's business partners, Mosing and Bryan Lipari. Over the following nine months, Boston and LaBarge worked closely with JJanes, Mosing, and Lipari on business opportunities in South America, and, specifically, Brazil and Argentina. In or around April 2012, United Branding Group, LLC -- an entity

owned by Boston and LaBarge -- was granted a minority equity interest in Petroleum Automated Tank Cleaning Services, LLC, along with JJanes, Mosing, and Lipari, who holds his interests through AML Holdings, LLC. (Ex. 2)

Mosing Becomes A ZLOOP Franchisee

22. In May 2012, Boston and LaBarge began developing what would become ZLOOP's first "Super Center,"³ the Hickory Super Center, and immediately began exploring equipment purchasing opportunities with suppliers such as Recycling Equipment, Inc., E Recycling Systems, LLC ("E Recycling"), and E Recycling's European manufacturer-suppliers.

23. ZLOOP initially planned to raise capital for its startup of operations through the sale of franchises. In September 2012, ZLOOP began installing sample recycling processing equipment obtained from E Recycling to be used in investor demonstrations. On September 20, 2012, with the assistance and on advice of counsel, Boston sent to JJanes a sample pro forma ZLOOP franchisee prospectus (the "*Pro Forma Franchisee Prospectus*"), and several days later, LaBarge provided a requested list of items included in the franchise fee (together with the *Pro Forma Franchisee Prospectus*, the "Sample Franchisee Information").⁴ (Ex. 3)

24. Acknowledging Mosing's complimentary backgrounds in start-ups and recycling, on October 2, 2012, LaBarge sent to JJanes a ZLOOP franchisee prospectus for the Louisiana market. (Ex. 4) Then, on October 4 and 5, respectively, ZLOOP sent to JJanes a Franchise Disclosure Document and copies of (1) ZLOOP's investor overview, (2) its five-year forward looking projections, and (3) its equipment calendar. (Ex. 5)

³ A Super Center is a central recycling center where franchisees were to drop off recyclables to be processed. Only the Hickory Super Center became operational and it is operated by ZLOOP, not its franchisees.

⁴ (Exs. 3, 4, and 5) To this day, Mosing has worked with Boston and LaBarge almost exclusively through JJanes -- or agents of JJanes (i.e. Roger Davidson, Ben Davis).

25. On October 15, 2012, Mosing met with Boston and LaBarge in the Hickory, NC plant and ZLOOP headquarters. Mosing was accompanied by JJanes, Lawrence G. Schafran, several Austin, Texas investors and lawyers. The purpose of the meeting was for Mosing and his team to perform due diligence on the potential purchase of a Louisiana franchise. Before the meeting ended, Mosing, with the advice of his team, determined to purchase all three offered Louisiana franchises. Before the meeting ended Mosing executed three agreements purchasing ZLOOP franchises in Louisiana (each a "Louisiana Franchise Agreement," and collectively, the "Louisiana Franchise Agreements"). (Ex. 6)

26. Mosing executed each Louisiana Franchise Agreement purportedly on behalf of ZLOOP LA-T1, LLC, ZLOOP LA-T2, LLC, and ZLOOP LA-T3, LLC (together, the "Mosing Louisiana LLCs"), respectively, with LaBarge countersigning all on behalf of ZLOOP, LLC⁵. In short, each Louisiana Franchise Agreement conferred on Mosing the right to operate a ZLOOP recycling franchise for a renewable, ten-year term. (See Ex. 6) Thereafter, on October 29, Mosing paid to ZLOOP \$1,989,179 in accordance with the Louisiana Franchise Agreements (the "October 2012 Payment"). (Ex. 7)

27. On November 2, 2012, Mosing formed ZLOOP LA. (See Ex. 1) Upon information and belief, the Mosing Louisiana LLCs were never formed.

⁵ (Ex. 6) All of the Louisiana Franchise Agreements contain a choice of law clause and a choice of forum clause. (Ex. 6, pg.) art. XXIV §§ A-B (stating that "[t]his Agreement takes effect upon its acceptance and execution by Franchisor in the State of North Carolina, and shall be interpreted and construed under the laws of that State . . . [and] [t]he parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the State of North Carolina..."); (Ex. 6, pg.) art. XXIV §§ A-B (same); (Ex. 6, pg.) art. XXIV §§ A-B (same).)

**Immediately, Mosing Begins Making Non-Franchise
Equity Investments And Makes A Loan To The Company**

28. On October 20, 2012 -- five days after becoming a ZLOOP franchisee -- Mosing executed a subscription agreement, committing \$1 million for a 1% equity interest in ZLOOP ("October 2012 Subscription Agreement"). (Ex. 8). December proved a fruitful month as well. By an agreement dated December 15, Mosing pledged to raise an additional \$4,000,000 in capital investments for ZLOOP. (Ex. 9). Then, on December 17, Mosing made a six-month, \$4 million, interest free loan to the Company (the "December 2012 Note"). (Ex. 10). Mosing wired \$3.5 million to ZLOOP on December 18, 2012⁶.

30. ZLOOP used the proceeds derived from the sale of franchises to Mosing, loan proceeds borrowed from Mosing, and capital contributed to ZLOOP by Mosing to purchase the land and improvements in Hickory, NC, and to purchase and install the equipment to assemble ZLOOP's first Super Center. For example, on November 12, 2012, ZLOOP entered into a purchase agreement with recycling processing equipment E Recycling for the purchase and delivery of two Guidetti, S.A. wire processing systems (the "Wire Systems"). (Ex. 11).

**In 2013, Mosing Continues Making Non-Franchise Equity
Investments In ZLOOP, Makes Another Loan To The Company,
And Commits to Purchasing More Franchises**

31. On January 5, 2013, Mosing signed another subscription agreement, raising his equity stake in ZLOOP to 2% in return for another \$1 million ("January 2013 Subscription Agreement").

(Ex. 12.)

⁶ (Ex. 10). Mosing insisted on a \$4 million note instead of \$3.5 million -- the amount that he actually loaned to the Company -- because the remaining \$500,000 was to be remitted ultimately by Mosing to his wife as a holiday shopping fund.

32. Then, on June 11, Mosing -- interested in expanding his franchise territory holdings -
- purchased an option on all the available franchises in Texas (the "Texas Franchises" and, as to
the option, the "Texas Franchise Option") for \$1,000,000 (the "June 2013 Option Payment"). (Ex

13)

33. Also in June, ZLOOP began taking delivery of the Wire Systems at the Hickory Super
Center.

34. Barely two months later, Mosing extended another loan to ZLOOP, this time for \$2
million at an interest rate of 10%, with a maturity date of October 31, 2013 (the "August 2013
Note"). (Ex 14) In accordance with contemporaneous conversations between Mosing and
ZLOOP, Boston informed JJanes, on September 25, that "[p]er our conversation when you and
Kendell [sic] were in Hickory[...] [u]pon receipt of all information on recycling equipment we will
File a UCC1 lien on the equipment in the amount of 2Million dollars. In NC/Catawba county."

(Ex 15) LaBarge later delivered to JJanes a UCC-1 financing statement that formed a template
of what the ZLOOP Founders were willing to file in favor of Mosing (the "Sample UCC-1 Financing
Statement") on December 5. (Ex 16) The Sample UCC-1 Financing Statement listed the debtor
as ZLOOP, LLC, the secured party as Mosing, and the collateral as "[a]ll goods, tools, machinery,
furnishings, furniture and other equipment and fixtures of every kind now existing." ZLOOP never
granted to Mosing a security interest in any of ZLOOP's assets⁷. None of ZLOOP, Boston or
LaBarge represented to Mosing that such UCC-1 Financing Statement had been filed in Catawba
County, North Carolina, or otherwise was to grant or perfect a security interest in any of ZLOOP's

⁷

See *infra* paragraphs 37 through 39. In January 2014, Mosing exercised his option to purchase the Texas franchises. Mosing paid for these franchises in part by converting his loans to ZLOOP to purchase price. As Mosing no longer held any loans to the Company, ZLOOP never granted to Mosing a security interest and never filed a UCC-1 financing statement related thereto.

assets.

35. In September 2013, Boston, LaBarge, Mosing, and JJanes reached a global agreement, whereby Mosing would exercise the Texas Franchise Option and invest an additional \$9 million in exchange for interests in eight franchises in Texas (the "Texas Franchise Funding") and the Janeses would receive certain benefits from ZLOOP. (Ex.17) Specifically, in a letter from Boston to JJanes, Boston represented that after Mosing completes the Texas Franchise Funding, "ZLOOP, LLC will: a) [e]xecute an additional 1% of Common B Shares to Marian B. Janes[; and] b) [w]ire payoff amount of the primary residence jointly owned by [JJanes and MJanes]" (the "Janes Mortgage Payoff").⁸ (Ex.18) In a separate letter to Mosing, Boston outlined the following terms of the Texas Franchise Funding:

- 1) As of September 23, 2013 ZLOOP, LLC has received US\$1,000,000.00 (One Million U.S. Dollars) for the option to buy the 8 Franchise Territories in the State of Texas for a total investment of US\$10,000,000.00 (Ten Million U.S. Dollars).
- 2) Mr. Mossing [sic] will be purchasing the territories at a discounted rate.
- 3) Mr. Mossing [sic] has the right to:
 - a) Resell any or all territories at date-of-sale value
 - b) Donate any or all territories to any 501c3 Charity at the date-of-donation value
 - c) Retain any or all territories
- 4) Any territories retained and operated by Mosing shall be exempt from paying Franchisor any and all marketing fees.
- 5) Mosing will be required to spend a minimum of those values in marketing at his discretion.

(Ex.19)

⁸

Upon information and belief, and unbeknownst to the ZLOOP Founders, JJanes never informed Mosing about the Janes Mortgage Payoff until sometime shortly before Mosing commenced the Louisiana Action. Ultimately, approximately \$96,000 in advances under the Patriot Bank Letter of Credit were diverted and used to satisfy the mortgage on the Janes personal residence.

36. The parties' negotiations on the Texas Franchises continued. On September 30, Boston issued to JJanes a Term Sheet, which outlined the terms of yet another Mosing loan to ZLOOP, this time for \$3 million (the "September 2013 Term Sheet"). (Ex. 20) The September 2013 Term Sheet set out specific terms as to (1) "Use of proceeds, (2) "Provisions," (3) "Repayment," (4) "Credit," and (5) "Sweetener" respectively:

- [(1)] [the \$3 million will be used to] completely settle with the Austin Investors, including signing of mutual general releases[,] and [] to satisfy other current liabilities[;]
- [(2)] [u]pon completion of the WIRE transfer of \$3M, ZLOOP will immediately issue 5% of ZLOOP B Shares bringing Mr. Mosing's ownership to 7%[, and] Jim Janes will commit to be present in Hickory on a regular basis to assist with operations[;]
- [(3)] [f]rom revenues generated by operations[, and] from proceeds derived by new franchisees[;]
- [(4)] [t]he \$3M may be applied to Mr. Mosing's purchase of the Texas Franchise territories bringing his total down payment to \$4M (\$6M outstanding)[; and]
- [(5)] [u]pon completion of the WIRE transfer of \$3M, ZLOOP will immediately issue 1% of ZLOOP B Shares to Marian Janes bringing her total ownership to 2%.

Mosing would later wire to ZLOOP the \$3 million on October 7 (the "September 2013 Term Sheet Payment"). (Ex. 21)

37. By October 2013, Mosing and his surrogates clearly had contributed significantly to ZLOOP's viability as a going concern. On October 1, Boston and LaBarge, as ZLOOP's sole Managers, passed a resolution authorizing ZLOOP to grant to Mosing, MJanes, and Sean LeBlanc⁹

⁹ LeBlanc is a cousin to Miller-Mosing. Additionally, upon information and belief, he serves as an officer or other employee at Mosing's companies, including ZLOOP LA. LeBlanc attended ZLOOP meetings along with Mosing and JJanes.

warrants to purchase varying levels of "Class B Interests" "in order to compensate them for past services and incentivize them to continue to provide services to the Company" (the "October 2013 Written Consent"). (Ex. 22) Specifically, the October 2013 Written Consent authorized ZLOOP to grant to Mosing, MJanes, and LeBlanc warrants to purchase, respectively, up to 5%, 1.5%, and 0.5% of the outstanding Class B Interests. (Ex. 23) The grant agreements and warrants were issued that same day, and on October 2, LaBarge delivered draft copies of membership certificates. (Ex. 24)

38. By the end of 2013, ZLOOP had placed contracts with all the necessary recycling equipment manufacturers to operate the Hickory Super Center.

**In 2014, Mosing Purchases Even More ZLOOP Franchises,
Makes Yet Another Loan To The Company, And Takes Care Of His Friends**

39. On January 2, 2014, Mosing exercised his Texas Franchise Option. (Ex. 25) In a letter, Mosing proposed the following terms to reach the \$10 million total purchase threshold: (1) credit his \$1 million June 2013 Payment; and (2) credit the \$7.5 million in outstanding loans made by Mosing to ZLOOP and the \$700,000 in accrued interest owing on those loans (thus converting this debt to equity, but providing ZLOOP no additional liquidity). As to the remaining \$800,000, Mosing proposed to execute a note in favor of ZLOOP in that amount. The ZLOOP Founders agreed to Mosing's terms, and that same day Mosing executed eight franchise agreements covering each of the available ZLOOP territories in the state of Texas (each a "Texas Franchise Agreement" and collectively, the "Texas Franchise Agreements"). (Ex. 26) Mosing executed each agreement personally.¹⁰ In short, the Texas Franchise Agreements obligated Mosing to

¹⁰ (Ex. 26) As with the Louisiana Franchise Agreements, each of the Texas Franchise Agreements contain a choice of law clause and a choice of forum clause. (Ex. 26, pg. 33, art. XXIV §§ A-B (stating that "[t]his Agreement takes effect upon its

operate a "ZLOOP recycling business" for a renewable, ten-year term. (See Exs. 16, 26.) In executing the Texas Franchise Agreements, Mosing became the only holder of ZLOOP franchises in Texas.¹¹

40. Then, later in January, Mosing assigned a 1% interest in ZLOOP to his cousin-in-law, LeBlanc, which assignment had been consented to by the ZLOOP Founders. (Exs. 27, 28) The same day, Mosing and LeBlanc executed a promissory note, whereby Mosing lent to LeBlanc \$1 million interest free, secured by LeBlanc's now 1.5%¹² interest in ZLOOP. (Ex. 29)

41. Around the same time, ZLOOP became embroiled in a dispute with E Recycling based on the failure of the Wire Systems to function properly, causing ZLOOP's clients to become concerned.

Mosing's Unfettered Access To ZLOOP's Business And In-Depth Involvement In Company's Day-To-Day Operations And Control Over Financial Aspects of Business

42. Throughout late 2012 and through August 2014, Mosing exercised *de facto* control over ZLOOP's business, despite never actually holding more than a 2% equity stake in the Company.

43. For example, MJanes served as ZLOOP's Treasurer, maintaining responsibility over the Company's accounting books and other business records and audited ZLOOP's inventory.¹³

acceptance and execution by Franchisor in the State of North Carolina, and shall be interpreted and construed under the laws of that State ... [and] [t]he parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the State of North Carolina..."; Ex. 26, pg. 70, art. XXIV §§ A-B (same); Ex. 26, pg. 106, art. XXIV §§ A-B (same); Ex. 26, pg. 143, art. XXIV §§ A-B (same); Ex. 26, pg. 178, art. XXIV §§ A-B (same); Ex. 26, pg. 216, art. XXIV §§ A-B (same); Ex. 26, pg. 251, art. XXIV §§ A-B (same); Ex. 26, pg. 288, art. XXIV §§ A-B (same)

¹¹ Mosing never executed a note in the principal amount of \$800,000 in favor of ZLOOP, despite having executed the Texas Franchise Agreements and later claiming to own all of the rights to the Texas Franchises.

¹² Mosing's 1.5% comprised 1% in Class B non-voting shares and .5% in warrants.

¹³ MJanes, at one point, also manipulated the Company's QuickBooks bookkeeping entries to recharacterize loans made by Janes Products to ZLOOP. Specifically, in May and July 2013, Janes Products loaned ZLOOP \$300,000 and \$100,000, respectively. MJanes then recharacterized these loans to capital contributions. ZLOOP repaid the amounts in or around December 2013. Upon information and belief, ZLOOP understands that MJanes made these adjustments to conceal from Mosing

JJanes and his wife also were given carte blanche access to the Company's electronic records, which included all the business records and streaming video links to the Hickory Super Center's security cameras, thus providing the Janeses access to all the records remotely and at any time. Moreover, Burton Kolder, of Kolder, Champagne, Slaven & Co., LLC, Mosing's accounting firm, prepared and filed ZLOOP, LLC's 2012 and 2013 Form 1120 federal corporate income tax returns, with JJanes signing as the Company's representative. **Ex-31** Mosing and JJanes retained sets of keys to ZLOOP's Hickory Super Center and, generally without much notice, visited the site to inspect the Company's growth and operations. Finally, Mosing and the Janeses maintained e-mail addresses hosted by ZLOOP.

44. The ZLOOP Founders routinely sought Mosing's and JJanes's preapproval of capital expenditures and other business decisions, large and small. For example, when considering nearly every potential real estate investment or equipment purchase, Boston or LaBarge took pictures and video and sent them to Mosing and JJanes, soliciting comments and advice. In addition, after nearly every equipment delivery, Boston and LaBarge undertook much the same process to keep Mosing involved and up-to-date. In addition, Boston and LaBarge sought comments and approval of draft organizational documents and included Mosing and JJanes in the decision-making process concerning investments.¹⁴

the origin of the funds and the true recipient of the repayments. Documents reflecting these transactions are attached to this Complaint as **Exhibit 30**

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For example, by e-mail dated July 26, 2013, Boston sent to JJanes a draft operating agreement, stating "Please review and advise. I am not signing anything unless you and Kendell [sic] are good with it. Just want to make sure you are represented properly." **Ex-32** On repeated occasions, Boston and LaBarge engaged JJanes for comments on outstanding investor issues. **Ex-33** (e-mail from Boston to JJanes, dated August 29, 2013, forwarding e-mail from Douglas R. Harmon of Parker Poe Adams & Bernstein LLP ("Parker Poe") to Boston and LaBarge inquiring as to the status of "funding the return of investments" of other ZLOOP [investors]) (the "August 29, 2013 E-mail"); **Ex-34** (e-mail from LaBarge to JJanes dated September 13, 2013, noting that Boston wished to speak to JJanes regarding another e-mail from Harmon to Boston and LaBarge addressing largely the same issue as in the August 29, 2013 E-mail, and discussing risk of potential federal and state litigations with investors (the "September 13, 2013 E-mail"), which e-mail was forwarded to JJanes by LaBarge as part of the September 13, 2013 E-mail); **Ex-35** (e-mail from

Change In Business Model to Eliminate Franchises

45. On February 5, 2014, after being introduced by Schafran and JJanes, ZLOOP entered into an agreement with Loeb Partners Corporation ("Loeb Partners") to raise [\$_____] in capital to expand the business and fund the Company's operations and to meet ZLOOP's obligations under the Mosing Termination Agreement (the "Loeb Partners Capital Raise Agreement"). As a result of their meetings, Loeb Partners recommended converting ZLOOP to a corporation and repurchasing ZLOOP's franchises, making the Company more attractive to high net worth investors and enabling the Company to pay back Mosing. JJanes and Schafran, on Mosing's and ZLOOP's behalf, worked closely with Boston and LaBarge in negotiating the Loeb Partners Capital Raise Agreement and then in formulating the plan to repurchase franchise interests (the "Franchise Repurchase Plan").¹⁵

46. On the advice and with participation of counsel, including Alba-Justina Secrist of Parker Poe, in preparation for the business entity conversion ZLOOP undertook a complete audit of the Company's accounting, financial, and other business records (including meeting minutes

Boston to JJanes dated October 3, 2013, forwarding e-mail from Harmon concerning ongoing investor issues and noting "we need to resolve this to [sic] Tomorrow our legal fees are going to be staggering if we cannot[.]"); **Ex 36** (e-mail from LaBarge to JJanes forwarding another desperate message between LaBarge and counsel concerning ZLOOP's inability to satisfy other investor obligations because of a delayed transfer from Mosing, and stating: "I'm trying my best to fend off litigation but I fear that will be for naught starting on Monday. What can I tell investors today? Is there a problem that Bob B and I don't know about? I know you are working your ass off to get this done. Any guidance would be most helpful when I talk to our lawyers at 4PM."); **Ex 37** (e-mail from Boston to JJanes dated December 4, 2013, forwarding an e-mail from Boston to JJanes outlining a number of finance and operational issues (including Mosing's completion of the Texas Franchise Funding transaction) and seeking advice from JJanes on "what [JJanes] [thought] can be an immediate solution and not another [expletive] bandage").)

¹⁵ See, e.g., **Ex 37** (e-mail dated April 15, 2014, from Said Armutcuoglu, of Loeb Partners, to LaBarge, noting "We are in Louisiana for another meeting and stopped by to see Kendall and Jim. Will get an update from Bruce."); **Ex 38** (e-mail dated April 16, 2014, from Armutcuoglu to JJanes, LaBarge, Boston, and Bruce Lev, of Loeb Partners, setting up a conference call to discuss issues related to the Loeb Partners capital raise); **Ex 39** (e-mail chain containing e-mails dated February 25-28, 2014, between Schafran, Boston, LaBarge, JJanes, and Nicole Pollack, of Loeb Partners, regarding meetings between Schafran and members of Loeb Partners); **Ex 40** (e-mail chain between primarily Schafran, Boston, LaBarge, and JJanes, discussing the Loeb Partners engagement letter).

Ultimately, because Loeb Partners neither had identified an investor for ZLOOP nor had delivered a promised marketing package, ZLOOP would terminate its relationship with Loeb Partners on July 2, 2014.

and employment and insurance agreements). MJanes was responsible for the audit, providing progress reports to and otherwise communicating with Kohler.

47. On February 7, Boston formally notified Mosing of the Franchise Repurchase Plan. **(Ex. 41)** Specifically, Boston stated that if ZLOOP became unable to cover all the balances owing to Mosing (which, ostensibly, had been applied to Mosing's purchase of the Texas Franchises), any remainder "will revert back to loans to the company." **(Ex. 41)** And, in any event, Boston noted that if the Franchise Repurchase Plan was not implemented, "all loans will be reinstated in their current status." **(Ex. 41)** Boston provided the following uncontroverted loan schedule:

December 2012 Note	\$4 million
June 2013 Payment:	\$1 million
August 2013 Note:	\$2.2 million
September 2013 Term Sheet Payment:	\$3 million
(payment to Mosing on December 10, 2013, applied to December 2012 Note)	(\$1 million)
BALANCE DUE TO MOSING	\$9.2 million

(Ex. 41)

48. On March 26, Boston and LaBarge acted by written consent to convert ZLOOP, LLC to ZLOOP, Inc. (the "March 2014 Written Consent"). **(Ex. 42)** The March 2014 Written Consent also included a plan of conversion (the "Conversion Plan"), which, among other things, stated that "[t]he members of the LLC immediately prior to the Effective Time shall be the stockholders of the Corporation." **(Ex. 42 § 1.4.)** Below is a table reflecting the conversions of each of the members' interests in accordance with the Conversion Plan:

Member	LLC Member Interest	Shares of Common Stock
Boston	48.95%	4,895
LaBarge	48.95%	4,895
Mosing	1.0%	100
LeBlanc	1.0%	100
Majory S. Diamond, as Trustee of the Majory S. Diamond Trust	0.05%	5
Roland Fox, as Trustee for the benefit of the Roland Fox Living Trust	0.05%	5

(Ex. 42, Article II, Conversion of Interests.) The Conversion Plan also included the ZLOOP, Inc. Certificate of Incorporation (Ex. 42, Exhibit A), Bylaws (Ex. 42, Exhibit B), and Certificate of Conversion. (Ex. 42, Exhibit C).

49. Also, on March 26, ZLOOP's Incorporator, Secrist, filed the Certificate of Conversion and the Certificate of Incorporation with the Secretary of State of the State of Delaware, and elected Boston and LaBarge as the initial Directors of the Board (the "Initial Board"). (Ex. 43.) The Initial Board then adopted a series of resolutions (the "Initial Board Resolutions"), including: (1) adopting bylaws and a form of stock certificate; (2) appointing (a) Boston as Chairman of the Board and as CEO, (b) LaBarge as President and Secretary, and (c) MJanes as Treasurer; and (3) determining that shares of stock shall issue consistent with the Conversion Plan. (Ex. 44, Resolutions 2, 4, 5, 11.) Finally, all the stockholders listed in the Conversion Plan acted by written consent in ratifying both the acts of the Incorporator and the Initial Board Resolutions. (Ex. 45.)

50. In accordance with the Conversion Plan, the capitalization of ZLOOP as of March 26, 2014 is set forth below:

Authorized	100,000
Issued and Outstanding	10,000
Unissued and reserved for issuance under warrants to purchase common stock	700
Total outstanding on a fully-diluted basis	10,700

51. Diamond, Fox, Mosing, and LeBlanc were provided formal written notice on March 31 of all the aforementioned actions taken in converting ZLOOP, LLC into ZLOOP, Inc. (Ex. 46)

**ZLOOP Rescinds ZLOOP LA's And Mosing's Franchises;
Mosing Releases The ZLOOP Parties Of All Claims, Known And Unknown**

52. On March 27, 2014, consistent with Franchise Repurchase Plan, ZLOOP issued to Mosing an offer for the Company to repurchase all of Mosing's franchise interests (the "Repurchase Offer Letter"). (See Ex. 25.)

53. In the Repurchase Offer Letter, ZLOOP offered two options for Mosing to liquidate his interests: (1) the "Rescission Option"; and (2) the "Equity Option" (collectively, the "Termination Options"). (Ex. 47.) Under the Rescission Option, ZLOOP would remit to Mosing the "aggregate amount of payments that [he] ha[d] made to date directly to [ZLOOP] for his [f]ranchise[s]" (the "Total Franchise Payment Amount"), "upon the earlier to occur of [(a)] the completion of a single financing by [ZLOOP] that raises gross proceeds of not less than \$20,000,000 [] and [(b)] December 31, 2014" (Ex. 47 ¶ 1.) On the other hand, under the Equity Option, ZLOOP would issue "the number of shares of Common Stock that are equivalent in value to your Total Franchise Payment Amount[] and a warrant to purchase the same amount of Common Stock in connection with a [c]hange of [c]ontrol..." (Ex. 47 ¶ 1.) The shares in ZLOOP offered under the

Equity Option represented a ZLOOP valuation of \$100,000,000 (Repurchase Offer Letter 4). In either instance, the Repurchase Offer Letter required Mosing franchisee to execute an "Offeree Information Sheet" and a "Termination Agreement." (Ex. 47, ¶ 1)

54. On April 1, Mosing elected the Rescission Option and, accordingly, chose to liquidate his franchise interests for a payment of \$10,989,179 (Mosing's Total Franchise Payment Amount taking into account the Louisiana Franchises and the Texas Franchises) (Ex. 48), upon the earlier of (1) ZLOOP completing a \$20 million capital raise or (2) December 31, 2014. (Ex. 48, ¶ 1) Mosing executed the two applicable Termination Agreements, one each relating to Louisiana and Texas franchises. (Ex. 48, ¶ 1)

55. Importantly, both Termination Agreements contained the same broadly drafted release clause:

Release. In connection with the offer of rescission and the parties' agreement to terminate the franchises, and for consideration as set forth in the [Repurchase Offer Letter], notwithstanding any other provisions to the contrary, Franchisee for itself and on behalf of each of its members, shareholders, officers, managers, affiliates and investors hereby unconditionally and immediately upon signing of this Termination Agreement, release [ZLOOP, Inc.], its affiliates and each of their officers, directors, members, managers and employees from any and all claims, demands, obligations and liabilities of any nature whatsoever, known or unknown, whenever arising.¹⁶

56. Upon information and belief, at all times relevant, Mosing was represented by counsel.

¹⁶ (Ex. 48, Pg. 2, (2)); (Ex. 48, Pg. 5, (2)). The entire agreement entered into by Mosing and ZLOOP is hereinafter referred to as the "Rescission Agreement."

57. Following the execution of the Termination Agreements, ZLOOP continued to benefit from the assistance of Loeb Partners and continued to solicit investment in ZLOOP in order to meet its obligations to Mosing and ZLOOP LA.

58. As the facts of the Louisiana Action and this case elicit, unfortunately, ZLOOP was stymied from performing its duties under the Liquidation Options.

Mosing Provides Security For ZLOOP To Increase A Line Of Credit In Texas

59. When in mid-2014 ZLOOP's operations/development of Super Centers required additional liquidity, ZLOOP sought an increase in a line of credit it held with Patriot Bank in Houston, Texas ("Patriot Bank" or the "Bank").¹⁷

60. On April 29, 2014, following Mosing's execution and delivery to ZLOOP of the Termination Agreements and following conversion of ZLOOP to a corporation under Delaware law, Patriot Bank agreed to increase ZLOOP's line and credit, which was evidenced by ZLOOP's execution of a promissory note for \$14 million, structured as a nondisclosable revolving line of credit and with a maturity date of April 29, 2016 (the "April Patriot Bank Note," or as to the transaction the "April 2014 Patriot Bank Transaction").¹⁸ [Ex. 49] The April 2014 Patriot Bank Transaction rolled up ZLOOP's prior existing obligations to Patriot Bank into the April Patriot Bank Note.

61. To secure the April 2014 Patriot Bank Transaction, upon information and belief Patriot

¹⁷ ZLOOP's Hickory Super Center began processing eWaste commodities in January 2014, although that Super Center became commercially operational in April 2014 and began receiving revenues in May 2014.

¹⁸ Originally, on December 17, 2013, ZLOOP, LLC had obtained a \$5 million line of credit from the Bank. [Ex.] Of that amount, ZLOOP received \$4 million and Mosing \$1 million as a return of capital that Mosing previously contributed to the Company. [Ex.] To secure the December 2013 obligations to Patriot Bank, Mosing assigned as collateral to Patriot Bank a deposit account held in his name with a balance exceeding \$15 million, against which, upon information and belief, Patriot Bank placed a hold. [Ex.] The April Patriot Bank Note reflects that ZLOOP, LLC was the borrower, despite the Company's conversion in March 2014 to ZLOOP, Inc. [Ex.]

Bank increased the hold against Mosing's account in the amount of \$14 million. (Ex 49)

62. The documents comprising the entire April 2014 Patriot Bank Transaction are attached to this Complaint as (Ex 49). All the agreements, including the Patriot Bank Note reflected that ZLOOP, LLC was the Borrower, despite that ZLOOP, LLC was converted to ZLOOP, Inc. in March 2014. In addition, relevant to this action, the April 2014 Patriot Bank Note included a provision stating that:

Upon default, [Patriot Bank] may declare the entire indebtedness, including unpaid principal balance under this Note, all accrued unpaid interest, and all other amounts, costs and expenses for which [ZLOOP] is responsible under this Note or any other agreement with [Patriot Bank] pertaining to this loan, immediately due, without notice, and then [ZLOOP] will pay that amount.

(Ex 49) Lender's Rights

63. Upon information and belief, at all times relevant Mosing was an officer or director or significant shareholder of Patriot Bank.

**Mosing Disagrees With ZLOOP Founders
Regarding Business Expansion, Becomes Adversarial**

64. In or around May 2014, Mosing and the ZLOOP Founders began to disagree over the direction of the Company's expansion efforts. Since approximately December 2012, Boston and LaBarge had investigated thoroughly the cost to develop an additional Super Center, particularly in Louisiana (at Mosing's request), as well as at locations in the Western United States. Generally speaking, ZLOOP's development model involved locating distressed real estate upon which to develop its Super Centers.

65. 65. Attempting to satisfy Mosing's needs, the ZLOOP Founders engaged real estate agent Tom Miller to locate potential locations along the I-10 and I-49 corridor of Acadia Parish,

Vermillion Parish, Lafayette Parish, and St. Landry Parish in Louisiana. Simultaneously with the ZLOOP Founders' efforts, JJanes, acting apparently on behalf of ZLOOP, engaged Bill Rodier, Executive Director of the Acadiana Economic Development Council and St. Landry Parish Economic Development, to locate a suitable building site and to assist in providing ZLOOP with tax credits and incentive programs. Boston visited potential locations and met with Rodier three times. JJanes, on behalf of ZLOOP, met and attended meetings with Rodier and members of the St. Landry Parish Board no less than ten times.

66. After one and a half years -- and seemingly innumerable property visits later -- Boston and LaBarge were unable to identify a property in Louisiana that fit within ZLOOP's Super Center development and financial model. The properties available in Louisiana were too expensive for the Company. On the other hand, the ZLOOP Founders identified a significant opportunity for the Company in the Western United States market. Specifically, Boston and LaBarge had identified a potential partnership with the Nevada company, PRC Industries, Inc. ("PRC Industries"), which was ready and willing to deliver to ZLOOP bulk quantities of recyclables. Considering the potential revenue stream stemming from that partnership and that real estate prices in Nevada were much more affordable, Boston and LaBarge decided to focus ZLOOP's resources on developing a Nevada Super Center. Despite that the ZLOOP Founders' exhaustive efforts revealed that a Western United States market expansion would improve the Company's prospects (and that focusing on the Louisiana market would jeopardize ZLOOP as a going concern), Mosing relented not on his desire for ZLOOP to focus on Louisiana, where, of course, he could maintain his office.

67. Then, on or about May 29, JJanes and Mosing contacted Holmes, a loan officer at

Patriot Bank, requesting that Patriot Bank grant Mosing the exclusive authority to pre-approve any further draws on the line of credit. (Ex 50) Initially, Holmes approved Mosing's request and placed a hold on the line of credit. As a result, ZLOOP was prevented from drawing from the account the funds necessary to issue a down payment on property. Boston immediately contacted Holmes disputing the hold. After some apparent deliberation, that same day, Patriot Bank lifted the hold and informed Mosing that he had no authority under the Patriot Bank Note to assert control over disbursements. (Ex 51)

68. That same day, Boston sent to JJanes (with copies to Harmon and Holmes) the following notice:

[a]ny further interference of any kind including but not limited to false or damaging comments made to [Mosing], Loeb Partners, Patriot Bank, Bill Holmes or any other party directly attached to ZLOOP, Inc. will be considered an intent to damage ZLOOP, Inc. and will be litigated to the fullest extent of the law.

(Ex 52)

69. Mosing then directed MJanes to inquire as to the status of the Sample UCC-1 Financing Statement, which inquiry revealed that no financing statement was on file in North Carolina. In response and notwithstanding the broad release Mosing granted in favor of ZLOOP and the ZLOOP Founders, Mosing -- again acting through JJanes -- immediately threatened legal action against the ZLOOP Founders. (Ex 53) ZLOOP declined to grant a security interest like that set forth in the Sample UCC-1 Financing Statement on the basis that Mosing already possessed a sufficient security interest in the form of the Texas Franchises. Dissatisfied -- and, by virtue of his and the Janes' access to and influence over ZLOOP, aware of ZLOOP's ongoing and languishing funding efforts -- Mosing directed the unilateral filing of a new UCC-1 Financing Statement on

August 15 (the "Unsupported UCC-1 Financing Statement"). (Ex. 54) Mosing nor his surrogates ever informed Boston or LaBarge as to the filing.

70. The Unsupported UCC-1 Financing Statement indicates that it was filed by Donna Thibodeaux, of the law firm Allen & Gooch, and lists essentially all of ZLOOP's assets as collateral.

(Ex. 54) The Unsupported UCC-1 Financing Statement was recorded with the Secretary of State of Delaware and the Secretary of State of North Carolina. (Ex. 54 (Results of UCC filing searches

dated July 23, 2015))

71. ZLOOP made numerous efforts to obtain financing from private equity lenders, asset lenders, and regional and national banking institutions. As members of ZLOOP's team, Mosing, JJanes, and MJanes all were aware of these funding efforts. During the relevant due diligence periods, however, the potential lenders queried as to the status of the Unsupported UCC-1 Financing Statement and why ZLOOP had not disclosed its existence in its loan applications. As a result of the lenders' discovery of the Unsupported UCC-1 Financing Statement, ZLOOP was refused any further capital funding. The entities that declined any funding were banks Community One Bank, N.A., Branch Banking and Trust Company, PNC Bank, and private equity firm Gryffin Partners, Inc. (collectively, the "Potential Lenders").

**Mosing And ZLOOP LA Violate The Release,
Commence Civil Action Against The ZLOOP Parties**

72. Notwithstanding that ZLOOP's obligation under the Rescission Agreement did not mature, at the latest, until December 31, 2014, that ZLOOP was in the middle of a capital raise with Loeb Partners, and that Mosing had granted the ZLOOP Parties broad unconditional releases in April 2014, on August 28, 2014, Mosing and ZLOOP LA commenced the Louisiana Action in

federal district court in the Western District of Louisiana. (Ex. 55) Naming the ZLOOP Parties as the only defendants, Mosing and ZLOOP LA asserted in the complaint twelve individual counts of violations federal and state securities laws and related state tort and contract laws, all of which centered on Mosing's theory of the case that he was innocently duped into sinking millions of dollars into a scam by the ZLOOP Founders (the "Louisiana Complaint"). (Ex. 55)

73. The Louisiana Complaint is rife with knowingly false statements of fact concerning the history of events surrounding Mosing's involvement with, investments in, and loans to ZLOOP. For example, Mosing and ZLOOP LA alleged that "[n]either Kendall Mosing individually nor [ZLOOP LA] executed the [Louisiana Franchise Agreements]." (Ex. 55 ¶ 24) Yet, Mosing did, in fact, execute each of the Louisiana Franchise Agreements, and indeed he initialed every page of each agreement. (See Ex. 6) Moreover, Mosing and ZLOOP LA alleged that in a private placement memorandum produced to him in March 2013 (the "March 2013 PPM"), the ZLOOP Parties represented falsely that JJanes currently served on a board of seven directors of ZLOOP, that the "board" actually consisted of only Boston and LaBarge, and that the ZLOOP Parties "simply called [JJanes] a director to make Kendall Mosing feel like he had some degree of control over his investments." (Ex. 55 ¶ 45) Not only do these statements unreasonably characterize, without any factual basis, the ZLOOP Parties' motives as fraudulent, but they also knowingly ignore that the March 2013 PPM was *prospective*, such that the seven board members -- to include JJanes and Mosing -- would obtain such positions only upon the later "effective date." Mosing and ZLOOP LA also claimed that Mosing "and the [ZLOOP Parties] never had any intention for Kendall Mosing to actually operate the [Texas Franchises]." (Ex. 55 ¶ 26, see also *id.* § Heading M (describing the Texas Franchises as "theoretical"))

74. In addition, Mosing and ZLOOP LA made numerous knowingly false and unsupported claims that defame and call into question Boston's and LaBarge's ethics and business practices, namely that they used the veil of their business to hustle an investor into financing their "lavish" personal lifestyles. (See e.g., Ex. 55, ¶ 43 ("As was typical of [Boston's] efforts to secure funding from Kendall Mosing, the window of opportunity to act was tiny and constituted high pressure sales tactics that are unfair and deceptive."); *id.* ¶ 50m ("Both PPM's omitted the material fact that BOSTON and LABARGE were using ZLOOP money for their personal benefit, including lavish shopping trips to Chicago and hiring a private jet."); *id.* ¶ 77 ("All of these misrepresentations were designed to sell additional securities in ZLOOP using high-pressure sales tactics created by stated emergency needs for funding."); see also *id.* Heading Q ("Defendants email more misrepresentations into Lafayette, Louisiana to trick Kendall Mosing into giving [ZLOOP] an additional \$5 million.").) The Louisiana Complaint conveniently makes no mention, however, that Mosing consistently was provided with time and opportunity to adequately review all pertinent documents and indeed was represented at all times by lawyers and other reputable advisors of his choosing. The Louisiana Complaint also omits any mention of Mosing's or his surrogates' intimate involvement in ZLOOP's strategic planning and day-to-day operations, including its bookkeeping by MJanes and MJanes's intimate involvement in the preparation for and implementation of the conversion of ZLOOP LLC to ZLOOP, Inc.

75. The Louisiana Complaint seeks damages, including those arising from Mosing's guaranty of the April Patriot Bank Note.

76. On November 19, ZLOOP filed a Motion to Transfer to the Western District of North Carolina pursuant to 28 U.S.C. § 1404(a), on the basis of the forum selection clauses in the

franchise agreements. For the reasons stated in a decision issued by the court on June 25, 2015, the Louisiana District Court granted the Motion to Transfer. *See Mosing v. Boston*, Civil Action No. 14-cv-2608, 2015 WL 3911798 (W.D. La. June 25, 2015).

77. As a direct result of the allegations made in the Louisiana Complaint, at least one ZLOOP supplier, Rapid Granulator AB, terminated its relationship with ZLOOP. (Ex. 56)

**Mosing Purchases The Patriot Bank Note Without Telling
Boston And LaBarge, Then Sues ZLOOP For \$14 Million**

78. In December, 2014, Mosing and Patriot Bank entered into an agreement, whereby Mosing purchased the April 2014 Patriot Bank Note. The Assignment and Assumption of Loan Documents (the "Assignment") was back-dated effective October 3, 2014. Following the Assignment, Mosing allegedly sent a letter to ZLOOP on December 12, 2014, informing ZLOOP of the Assignment and declaring the entire indebtedness immediately due and owing; however, neither ZLOOP nor the ZLOOP Founders received this letter. To date, neither ZLOOP nor the ZLOOP Founders have received any notice of default, notice of intent to accelerate, or notice of acceleration.

79. On December 15, 2014, Mosing filed a second action against ZLOOP in the District Court of Harris County, Texas to recover the same \$14 million under the Patriot Bank Note (the "Texas Action").¹⁹ The jurisdictional basis for that action is a forum selection clause in the Note. (Ex. 57) ZLOOP removed the case to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity jurisdiction.²⁰ Mosing sought remand on the

¹⁹ District Court of Harris County, Texas, Case No. 2014-72492.

²⁰ United States District Court for the Southern District of Texas, Houston Division, Case No. 15-cv-136-GHM.

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grounds that ZLOOP had contractually waived its right of removal. [Ex 58] On April 22, 2015, the Texas District Court granted the motion to remand. [Ex 59] Mosing subsequently filed a motion for summary judgment, which ZLOOP opposed, and which remains pending. ZLOOP has also filed a Motion to Stay pending further discovery, which also remains pending.

CLAIMS FOR RELIEF
COUNT I: Breach of Contract
(against Mosing only)

80. The allegations of paragraphs 1–86 are re-alleged and incorporated by reference as if more fully set forth herein.

81. On March 27, 2014, ZLOOP made a written offer to Mosing for ZLOOP to repurchase the Texas Franchises, which offer clearly and expressly required Mosing to execute contemporaneously a Termination Agreement (the “March 27 Repurchase Offer”). The Termination Agreement contained a clear and express term through which Mosing “unconditionally and immediately upon signing of this Termination Agreement, release[d] [ZLOOP, Inc.], its affiliates and each of their officers, directors, members, managers and employees from any and all claims, demands, obligations and liabilities of any nature whatsoever, known or unknown, whenever arising.” Such release was offered “[i]n connection with the offer of rescission and the parties’ agreement to terminate the franchises, and for consideration as set forth in the [Repurchase Offer Letter]...”

82. On April 1, Mosing accepted the March 27 Repurchase Offer by, *inter alia*, signing the Termination Agreement. The parties, therefore, formed a valid and enforceable agreement on April 1.

83. In the Louisiana Action, Mosing has pursued claims against the ZLOOP Parties arising under the Texas Franchise Agreements and other related contracts entered into between the parties.

84. By reason of the facts and circumstances stated above, Mosing has breached the express terms of the Termination Agreement.

85. Because of Mosing's breach, ZLOOP has suffered damages in excess of \$75,000.

**COUNT II: Breach of Contract
(against Mosing only)**

86. The allegations of paragraphs 1–79 are re-alleged and incorporated by reference as if more fully set forth herein.

87. On March 27, 2014, ZLOOP made a written offer to Mosing for ZLOOP to repurchase the Texas Franchises (the "March 27 Repurchase Offer"). In the March 27 Repurchase Offer Letter, ZLOOP offered two liquidation options to franchisees: (1) the "Rescission Option"; and (2) the "Equity Option." [REDACTED] Under the Rescission Option, ZLOOP would remit to Mosing the "aggregate amount of payments that [he] ha[d] made to date directly to [ZLOOP] for his [f]ranchise" (the "Total Franchise Payment Amount"), "upon the earlier to occur of [(a)] the completion of a single financing by [ZLOOP] that raises gross proceeds of not less than \$20,000,000 [] and [(b)] December 31, 2014" [REDACTED] On the other hand, under the Equity Option, ZLOOP would issue "the number of shares of Common Stock that are equivalent in value to your Total Franchise Payment Amount[] and a warrant to purchase the same amount of Common Stock in connection with a [c]hange of [c]ontrol..." [REDACTED] To make a selection, Mosing was required to complete the "Offeree Information Sheet." [REDACTED]

88. On April 1, Mosing accepted the March 27 Repurchase Offer by, *inter alia*, completing and signing the Offeree Information Sheet. The parties, therefore, formed a valid and enforceable agreement on April 1.

89. In completing the Offeree Information Sheet, Mosing elected the Rescission Option and, accordingly, would receive a payment of \$10,989,179 (Mosing's Total Franchise Payment

Amount taking into account the Louisiana Franchises and the Texas Franchises), upon the earlier of a \$20 million capital raise or December 31, 2014. (Exs. 1-3)

90. Notwithstanding that ZLOOP's obligation under the Rescission Agreement did not mature, at the latest, until December 31, 2014, and that ZLOOP was in the middle of a capital raise with Loeb Partners, Mosing commenced the Louisiana Action on August 28, 2014.

91. As a result of Mosing commencing the Louisiana Action, ZLOOP's capital raise efforts have failed.

92. By reason of the facts and circumstances stated above, Mosing has breached the express terms of the agreement forming the basis of the Offeree Information Sheet.

93. Because of Mosing's breach, ZLOOP has suffered damages in excess of \$75,000.

**COUNT III: Breach of Contract
(against Mosing and ZLOOP LA)**

94. The allegations of paragraphs 1-93 are re-alleged and incorporated by reference as if more fully set forth herein.

95. On March 27, 2014, ZLOOP made a written offer to Mosing for ZLOOP to repurchase the Louisiana Franchises, which offer clearly and expressly required Mosing to execute contemporaneously a Termination Agreement (the "March 27 Repurchase Offer"). The Termination Agreement contained a clear and express term through which Mosing "unconditionally and immediately upon signing of this Termination Agreement, release[d] [ZLOOP, Inc.], its affiliates and each of their officers, directors, members, managers and employees from any and all claims, demands, obligations and liabilities of any nature whatsoever, known or unknown, whenever arising." Such release was offered "[i]n connection with the offer

of rescission and the parties' agreement to terminate the franchises, and for consideration as set forth in the [Repurchase Offer Letter]..."

96. On April 1, Mosing accepted the March 27 Repurchase Offer by, *inter alia*, signing the Termination Agreement. Mosing signed the Termination Agreement on behalf of ZLOOP LA. The parties, therefore, formed a valid and enforceable agreement on April 1.

97. In the Louisiana Action, Mosing and ZLOOP LA have pursued claims against the ZLOOP Parties arising under the Louisiana Franchise Agreements and other related contracts entered into between the parties.

98. By reason of the facts and circumstances stated above, Mosing and ZLOOP LA have breached the express terms of the Termination Agreement.

99. Because of Mosing's and ZLOOP LA's breach, ZLOOP has suffered damages in excess of \$75,000.

**COUNT IV: Breach of Contract
(against Mosing and ZLOOP LA)**

100. The allegations of paragraphs 1-99 are re-alleged and incorporated by reference as if more fully set forth herein.

101. On March 27, 2014, ZLOOP made a written offer to Mosing for ZLOOP to repurchase the Louisiana Franchises (the "March 27 Repurchase Offer"). In the March 27 Repurchase Offer Letter, ZLOOP offered two liquidation options to franchisees: (1) the "Rescission Option"; and (2) the "Equity Option." (Ex. 1) Under the Rescission Option, ZLOOP would remit to Mosing the "aggregate amount of payments that [he] ha[d] made to date directly to [ZLOOP] for his [f]ranchise" (the "Total Franchise Payment Amount"), "upon the earlier to occur of [(a)] the

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completion of a single financing by [ZLOOP] that raises gross proceeds of not less than \$20,000,000 [] and [(b)] December 31, 2014" (Ex.) On the other hand, under the Equity Option, ZLOOP would issue "the number of shares of Common Stock that are equivalent in value to your Total Franchise Payment Amount[] and a warrant to purchase the same amount of Common Stock in connection with a [c]hange of [c]ontrol..." (Ex.) To make a selection, Mosing was required to complete the "Offeree Information Sheet." (Ex.)

102. On April 1, Mosing accepted the March 27 Repurchase Offer by, *inter alia*, completing and signing the Offeree Information Sheet. Mosing completed the Offeree Information Sheet on behalf of ZLOOP LA. The parties, therefore, formed a valid and enforceable agreement on April 1.

103. In completing the Offeree Information Sheet, Mosing and ZLOOP LA elected the Rescission Option and, accordingly, would receive a payment of \$10,989,179 (Mosing's Total Franchise Payment Amount taking into account the Louisiana Franchises and the Texas Franchises), upon the earlier of a \$20 million capital raise or December 31, 2014. (Exs.)

104. Notwithstanding that ZLOOP's obligation under the Rescission Agreement did not mature, at the latest, until December 31, 2014, and that ZLOOP was in the middle of a capital raise with Loeb Partners, Mosing and ZLOOP LA commenced the Louisiana Action on August 28, 2014.

105. As a result of Mosing and ZLOOP LA commencing the Louisiana Action, ZLOOP's capital raise efforts have failed.

106. By reason of the facts and circumstances stated above, Mosing and ZLOOP LA have breached the express terms of the agreement forming the basis of the Offeree Information Sheet.

107. Because of Mosing's and ZLOOP LA's breach, ZLOOP has suffered damages in excess of \$75,000.

**COUNT V: Tortious Interference with Business Relations
(against Mosing only)**

108. The allegations of paragraphs 1–107 are re-alleged and incorporated by reference as if more fully set forth herein.

109. In August 2014, Mosing directed the filing of the Unsupported UCC-1 Financing Statement, which broadly encompassed, essentially, every asset of ZLOOP.

110. Aware of ZLOOP's ongoing and languishing funding efforts, Mosing directed the filing of the Unsupported UCC-1 Financing Statement for the purpose of surreptitiously placing himself in a better position than other existing or potential creditors to collect on the debts allegedly owed by ZLOOP to him.

111. A sophisticated business person, Mosing understood that his act would cause ZLOOP difficulty in -- if not outright prevent ZLOOP from -- obtaining funding from other sources.

112. As a direct result of the filing of the Unsupported UCC-1 Financing Statement, the Potential Lenders declined to offer any funding to ZLOOP.

113. By reason of the facts and circumstances stated above, Mosing tortuously interfered with ZLOOP's prospective business relations with each of the Potential Lenders.

114. Because of Mosing's interference, ZLOOP has suffered damages in excess of \$75,000.

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**COUNT VI: Breach of Contract
(against Mosing only)**

115. The allegations of paragraphs 1–114 are re-alleged and incorporated by reference as if more fully set forth herein.

116. On April 29, 2014, ZLOOP obtained funding through the April 2014 Patriot Bank Note, which funding was secured by Mosing's assets held in account at Patriot Bank.

117. The April 2014 Patriot Bank Note contained a clear and unambiguous provision permitting Patriot Bank to accelerate the loan upon ZLOOP's default.

118. In December 2014, Mosing purchased the April 2014 Patriot Bank Note and thereafter allegedly sent a letter to ZLOOP on December 12, informing ZLOOP of the Assignment and declaring the entire indebtedness immediately due and owing, however, neither ZLOOP nor the ZLOOP Founders received this letter.

119. To date, neither ZLOOP nor the ZLOOP Founders have received any notice of default, notice of intent to accelerate, or notice of acceleration.

120. On December 15, without having issued a notice of default, Mosing filed the Texas Action, seeking to recover the face value of the April 2014 Patriot Bank Note.

121. By reason of the facts and circumstances stated above, Mosing and ZLOOP LA breached the April 2014 Patriot Bank Note.

122. Because of Mosing's conduct, ZLOOP has suffered damages in excess of \$75,000.

**Count VII: Breach of the Implied Covenant of Good Faith and Fair Dealing
(against Mosing only)**

123. The allegations of paragraphs 1–122 are re-alleged and incorporated by reference as

if more fully set forth herein.

124. As noted, in April 2014, Mosing and ZLOOP formed an agreement whereby ZLOOP agreed to pay to Mosing \$10,989,179 in exchange for Mosing tendering all of his franchise interests. Under that agreement, ZLOOP was to make such payment upon the earlier of the Company securing a \$20 million capital raise or December 31, 2014.

125. In interfering with ZLOOP's existing and prospective business relations, including filing the Unsupported UCC-1 Financing Statement, and then his purchase and legal enforcement of the April 2014 Patriot Bank Note, Mosing knowingly and unreasonably impeded ZLOOP's ability to complete its capital raise and other funding such that the Company was unable, as a result of Mosing's conduct, to secure \$20 million to be able to meet its obligations under the March 27 Repurchase Offer and Liquidation Options.

126. By reason of the facts and circumstances stated above, Mosing breached the implied covenant of good faith and fair dealing inhering to the March 27 Repurchase Offer and Liquidations Options.

127. Because of Mosing's conduct, ZLOOP has suffered damages in excess of \$75,000.

**Count VIII: Unjust Enrichment
(against Mosing only)**

128. The allegations of paragraphs 1–151 are re-alleged and incorporated by reference as if more fully set forth herein.

129. On January 2, 2014, Mosing made a written offer to exercise his Texas Franchise Option. In that offer, as part payment toward the Texas Franchises, Mosing agreed to execute a \$800,000 note in favor of ZLOOP, which amount was intended to cover the remainder owed on

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the Texas Franchises after crediting several of Mosing's loans and other payments to ZLOOP. In part relying on Mosing's promise to execute an \$800,000 note, the ZLOOP Founders accepted Mosing's offer.

130. Mosing executed the Texas Franchise Agreements on January 2.

131. Mosing never executed a note valued at \$800,000 in favor of ZLOOP, despite having executed the Texas Franchise Agreements and later claiming to own the rights to all of the Texas Franchises.

132. By reason of the facts and circumstances stated above, Mosing has been unjustly enriched in possessing and benefitting from his interests in the Texas Franchise Agreements without having fully compensated ZLOOP for such interests, and in violation of his express written promise to execute an \$800,000 note in favor of ZLOOP to cover the full amount he owed to ZLOOP after exercising his Texas Franchise Option.

133. Because of Mosing's conduct, ZLOOP has suffered damages in excess of \$75,000.

**Count XI: Fraudulent Transfer
(against Mosing only)**

134. The allegations of paragraphs 1-133 are re-alleged and incorporated by reference as if more fully set forth herein.

135. Pursuant to section 548, ZLOOP seeks to avoid the \$1 million advanced to Mosing as a return of capital under the April 2014 Patriot Bank Note.

136. The \$1 million advance was made within two years prior of the Petition Date and was made to, or for the benefit of, Mosing.

137. ZLOOP did not receive reasonable equivalent value in exchange for the \$1 million

advance.

138. ZLOOP was insolvent on the date of the \$1 million advance or became insolvent as a result thereof.

139. Mosing did not receive the \$1 million advance in good faith and did not provide ZLOOP with reasonable equivalent value in exchange for the \$1 million advance.

**Count XII: Fraudulent Transfer
(against Mosing and Miller-Mosing)**

140. The allegations of paragraphs 1–139 are re-alleged and incorporated by reference as if more fully set forth herein.

141. Pursuant to section 548, ZLOOP seeks to avoid the transfer of \$500,000 which was diverted to Mosing and Miller-Mosing for personal interests.

142. The \$500,000 transfer was made within two years prior of the Petition Date and was made to, or for the benefit of, Mosing and Miller-Mosing.

143. ZLOOP did not receive reasonable equivalent value in exchange for the \$500,000 transfer.

144. ZLOOP was insolvent on the date of the \$500,000 transfer or became insolvent as a result thereof.

145. Mosing and Miller-Mosing did not receive the \$500,000 transfer in good faith and did not provide ZLOOP with reasonable equivalent value in exchange for the \$500,000 transfer.

**Count XIII: Fraudulent Transfer
(against MJanes and JJanes)**

146. The allegations of paragraphs 1–145 are re-alleged and incorporated by reference as if more fully set forth herein.

147. Pursuant to section 548, ZLOOP seeks to avoid approximately \$96,000 in advances under the Patriot Bank Letter of Credit, which were diverted and used to satisfy the mortgage loan on the Janeses' personal residence.

148. The \$96,000 transfer was made within two years prior of the Petition Date and was made to, or for the benefit of, the Janeses.

149. ZLOOP did not receive reasonable equivalent value in exchange for the \$96,000 transfer.

150. ZLOOP was insolvent on the date of the \$96,000 transfer or became insolvent as a result thereof.

151. The Janeses did not receive the \$96,000 transfer in good faith and did not provide ZLOOP with reasonable equivalent value in exchange for the \$96,000 transfer.

**Count IVX: Fraudulent Transfer
(against Mosing only)**

152. The allegations of paragraphs 1–151 are re-alleged and incorporated by reference as if more fully set forth herein.

153. Pursuant to section 548, ZLOOP seeks to avoid the lien, if any, resulting from the filing of the Unsupported UCC-1 Financing Statements filed in August 2014 (the "UCC Filing").

154. The UCC Filing was made within two years prior of the Petition Date and was made

to, or for the benefit of, Mosing.

155. ZLOOP did not receive reasonable equivalent value in exchange for the UCC Filing.

156. ZLOOP was insolvent on the date of the UCC Filing or became insolvent as a result thereof.

157. Mosing did not cause the UCC Filing in good faith and did not provide ZLOOP with reasonable equivalent value in exchange for the UCC Filing.

**Count X: Fraudulent Transfer
(against Janes Products and ICS)**

158. The allegations of paragraphs 1–157 are re-alleged and incorporated by reference as if more fully set forth herein.

159. Pursuant to section 548, ZLOOP seeks to avoid approximately \$400,000 plus interest in loan payments made to Janes Products and ICS, which represented a return of Mosing's capital.

160. The disbursements of \$300,000 to ICS and \$100,000 to Janes Products were made in May and July 2013, respectively.

161. The return of capital was repaid in or around December 2013, within two years prior of the Petition Date and was made to, or for the benefit of, Janes Products and ICS.

162. ZLOOP did not receive reasonable equivalent value in exchange for the Janes Products and ICS payments.

163. Janes Products and ICS did not receive the payments in good faith, and ZLOOP was insolvent on the date of the repayment or became insolvent as a result thereof.

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Count XI: Recovery of Avoided Transfers

164. The allegations of paragraphs 1–164 are re-alleged and incorporated by reference as if more fully set forth herein.

165. The transfers described above constitute fraudulent transfers which should be avoided pursuant to section 548.

166. Defendants are entities from which property is recoverable under section 550 and are transferees of transfers avoidable under section 548. Therefore, the Debtors may recover from the Defendants the value of the avoided transfers pursuant to section 550.

Count XVII: Disallowance of Claims

167. The allegations of paragraphs 1–166 are re-alleged and incorporated by reference as if more fully set forth herein.

168. Defendants are entities from which property is recoverable under section 550 and are transferees of transfers avoidable under section 548 as set forth above.

169. Defendants have not paid the amount, or turned over the property, for which Defendants are liable under section 550.

170. Pursuant to section 502(d), the Defendants' claims, if any, should be disallowed until the transfers described in the preceding causes of action are repaid in full to the Debtors.

Count XVIII: Claim Objection

171. The allegations of paragraphs 1–170 are re-alleged and incorporated by reference as if more fully set forth herein.

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172. With respect to all foregoing counts against Mosing, the Debtors assert the right of setoff and recoupment.

173. With respect to all avoidance actions, the Debtors submit that the company is not obligated.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court enter an order pursuant to

[x]:

- A. Granting Plaintiff general and special damages, to be calculated;
- B. Avoiding the fraudulent transfer of \$1 million advanced to Mosing as a return of capital under the April 2014 Patriot Bank Note;
- C. Avoiding the fraudulent transfer of \$500,000 made to Mosing-Miller;
- D. Avoiding the fraudulent transfer of \$96,000 in advances under the Patriot Bank Letter of Credit;
- E. Avoiding any lien so existing as a result of the UCC Filing occurring in August 2014;
- F. Avoiding the fraudulent transfer of \$400,000 plus interest to Janes Products;
- G. Compelling the Defendants to pay to Plaintiff the value of the avoided fraudulent transfers;
- H. Disallowing Defendants claims in the Texas Action and in the Louisiana Action until the fraudulent transfers are repaid in full to Plaintiff; and
- I. Granting Plaintiff such other and further relief as the Court deems just and proper.

"Exhibit 2"

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December 1, 2017

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
HAND DELIVERED**

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, N.C. 28202

Re: United States of America v. Robert M. Boston
Docket No: 3:17-cr-114-RJC

Dear Kevin;

I wanted to take this opportunity to thank you and the entire team for the understanding and professionalism each of you has shown as we prepare for the trial of my matters. I realize that, at times, I have been difficult; however, none of my frustration relates to you or the work you have done, rather it is with the situation that led us to this point. I have come to understand that being innocent has little to do with the process. Initially, I thought that simply being able to look the jury in the eye and tell them what happened would demonstrate that I did nothing wrong; however, I now understand that, for a multitude of reasons, it isn't nearly that simple or straight forward. I have had a hard time coming to grips with the fact that despite having hired the best available attorneys at each step to advise us on what needed to be done and the proper way to do it, we are faced with the present situation. At no time was there any intention on my part to circumvent any of the requirements or defraud anyone on any aspect of our business or business plan. I have gone over with you the various disclosures and am satisfied that with the quality of representation we had, no stone was left unturned. The problem was and is that our minority investor is a billionaire who through his political power and essentially

unlimited resources, has decide to cause the problems we have faced. I strongly suspect that initially his plan was to orchestrate a hostile takeover and failing in that to simply destroy both the business and the owners. It may well be that he is engaging in an overt plan to protect the Janes who were the persons who handled the financial aspects of the business after he became involved. If that is the case, he most certainly feels the best defense is a good offense. If he can shift the blame for what occurred to me and LaBarge, he would succeed in elevating the status of the Janes from perpetrators to victims and at the same time insulate his own misconduct. I am satisfied the documentation available demonstrates more clearly than my explanation exactly what they did. If any problems exist, they were created and orchestrated by the Janes at the direction of and with the full knowledge of Mosing. The facts don't lie, those seeking to distort them for their own purposes do! Unfortunately, for whatever reason, Mosing has the ear of the Government and has sold them a bill of goods that is not even close to what actually transpired. As a result, my business is gone, my reputation destroyed, and I am now facing trial for acts I never committed. The only glimmer of hope in this entire situation, has been the realization that you believe in me and my innocence. I say that, not to curry favor, I say it because the effort you and your team have shown demonstrates it to me daily. I realize that at times I have been difficult; however, just for a second try to imagine yourself being in my situation. It is at best, difficult to deal with. This nightmare has affected every aspect of my life and that of my family. If at any time I have said or done anything that offended any member of your team, please understand that was never my intention and want to apologize if it was misconstrued.

As we approach the Trial date there are various issues I want to be sure are understood and properly addressed. I certainly realize that with your experience you have likely already thought of any aspect I might raise; however, I felt it would help if you knew the issues I see as important

1. Failure to Grant Continuance: I feel very strongly that the failure of the Court to grant our Motion to Continue was not only unfair but potentially prejudicial to our case. I felt the carefully worded Motion you filed presented compelling reasons for the granting of the Motion. The sheer volume of the information alone should have created a sufficient basis for granting our Motion. As we have discussed, it is difficult if not impossible to process such a volume of information in such a short time. I appreciate your efforts and those of your team; however, no one could be expected to properly evaluate such a volume of information in the time allowed. The Government had over a year to review the same information you were sent and expected to review in a very limited time frame. I want to make sure that we have placed on the record our concerns and objections so, in the event I am convicted, we have at least preserved for appeal this issue. I understand that the Motion is in the Court's discretion; however, when it affects my Constitutional Right to effective representation, that discretion is not unlimited. I just want to make sure every argument we are entitled to on appeal is preserved.

2. Notification that Trial will end by Friday: I was shocked when you advised me about the Courts position regarding the trial. As discussed, we have no control over what witnesses are called by the Government, the documents presented or the time their case takes. I do not want to be rushed to Trial and prevented from having adequate time to present our defense. I am not sure what you can do to preserve this as a potential issue but want you to know it concerns me. Our witnesses all thought they would be called on Monday which may create a problem for several of them. The last thing I want is to anger or inconvenience the people who are helping us. I certainly realize that the limitation imposed may adversely affect the Government; however, since they go first, unless the Court allots time, they could use virtually all of the available time leaving us to incur the anger of the Court when we move toward the expiration of the week. I want to be sure we make the record clear about the potential negative effect this could have on our presenting our defense.

3. Issues Raised in Government's Trial Brief: Obviously, time and my lack of the proper legal jargon prevents me from giving you an in-depth analysis of the issues raised; However, there are certain issues from a layman's perspective that I feel should be pointed out. They include the following:

a. Statement of Facts: The Statement of Facts is factually inaccurate. It simply tracts the Civil Action previously filed by Mosing which was predicated upon false and misleading statements or in many cases outright lies. I am providing for your review the counterclaim we prepared for future use in the civil case which may help you understand the time lines, the false claims and the actual acts of Mosing and the Janes. A copy is attached marked "Exhibit 1". You may have already reviewed this document; however, if not, it may be of help in understanding the complicated nature of the various claims. It is important to understand that all of the investors, other than Mosing and Janes, are solidly behind us and willing to testify on my behalf. Before the Criminal Indictment, all of the investors other than Mosing and Janes signed authorizations to proceed against Mosing. The Government mentions the expenditures with NASCAR and alludes to those expenditures being improper. Both the decision to advertise through NASCAR involvement and the expenditures related thereto were fully disclosed. The documents related to this issue will demonstrate the disclosure.

a(1) Under "A", it is alleged, that I directed Labarge to delete various information, that is simply not true. Anything related to my Bankruptcy or Court Matters were readily available as matters of public record. There was no scheme or plan to conceal this information. The documents as well as your cross-examination of LaBarge if he testifies would clarify this area.

a(2) Under "B", it is alleged that I engaged in "Private Placement Fraud" which is absolutely false. We hired McGuire Woods, LLP who assisted us in preparing a "PPM". The information we provided was reviewed and vetted by the attorneys. We provided the information they requested and followed their instructions. The alleged omission of the \$1.5M represented fully disclosed loans from the company to myself and LaBarge as officers and shareholders. The recordation of the loans was done by the Janes who were working for Mosing. I am satisfied you have reviewed the documents regarding this portion of the allegations. The "broken escrow" was an accident that was immediately corrected to the best of my knowledge. The determination to retain substitute counsel was made by the controller we had hired to reduce costs and included interviewing various firms to determine replacement counsel. If LaBarge is called as a witness, he can clarify this or if he choses to lie the documents will nail him. We hire Parker-Poe , again a top rated firm and fully disclosed what had transpired. Any assertion to the contrary is simply inaccurate.

a(3) Under "C" The purported "Victim 1" is Mosing and JJ are the Janes. You have the documents to show Mosing was sued by the Bank for Fraud. These documents were originally sealed but it is my understanding you obtained them. If Mosing elects to testify, which I doubt, you can nail him on many issues including the fraud against the bank, Janes changing of emails and other clear violations. They will be fun to cross-examine and will not make good witnesses for the Government when pushed under cross-examination. The allegation of how money was used will demonstrate that funds were diverted by Mosing for his wife and other "personal" matters which the documents show but the Government failed to mention.

a(4) Under "D", the lawsuits and the Bankruptcy are discussed. "Exhibit 1" will help you understand our position regarding the lawsuit as well as our counter-claims. The Bankruptcy was filed to allow Zloop to continue to operate as a result of the acts and omissions of Mosing. The documents and our prior discussions have dealt with this aspect at length. I will be happy to further discuss any aspect of this area or would suggest you call Gary Young in Hickory who was hired to defend the lawsuit and prosecute the counterclaim. Gary is very knowledgeable regarding lawsuit. La Barge was a friend of the Bankruptcy Attorney in Delaware and can give information regarding his communications if he testifies truthfully.

3. GENERAL ISSUES

While I am not an attorney, I realize that the entire case of the Government is predicated upon a fraud being committed. To have a Fraud, there must be not only a

concealment of relevant or necessary facts, the withholding of which was intended to defraud a potential investor, it must be followed by overt acts to perpetrate the fraud. That did not occur. As we have discussed, Mosing is a savvy businessman with a long record of business involvement. Prior to his becoming involved, he was given full access to the company records for his review. He and the Janes fully reviewed every aspect of our company prior to their involvement. Any assertion to the contrary would be easily refuted in cross-examination. After becoming involved, the actual records and decisions were made by Mosing and the Janes. To claim they did not know what had occurred or what was being done on a day to day basis is clearly false and will be countered by the documents showing their involvement.

To commit a Fraud, as I understand it, there must be an "Agreement" by two or more persons to commit a "criminal act" If no such agreement existed and no fraud intended or perpetrated, then as I read the brief, no crime was committed. Full disclosure and lack of criminal intent appear to be the main issues. The documents we have including the emails, reports etc. clearly show there was no failure to disclose. If the Government calls Mosing or either of the Janes they will not do well when confronted with the facts under cross-examination. Thus far, despite all they have alleged and stated in the various pleading, they have not been deposed or subjected to cross-examination where their obvious inconsistencies can be pointed out or their out-right lies exposed. You can make up any story you want when no one is questioning it. Once they take the stand the fact, rather than their assertions have a chance to be pointed out. If questioned aggressively, they will not do well under pressure. In order to prevent their going to school on each other testimony, you might consider asking the Court to sequester the witnesses. Mosing in particular will rely upon the Janes to cover his tracks. If he does not know what they have said, he will likely have a very difficult time explain many of the obvious inconsistencies. Likewise, if the Janes don't hear the testimony of Mosing they will likely Not be prepared to answer questions about documents they prepared.

Clearly, the Government will try to make its case by using LaBarge's testimony. As we have discussed, there are many areas cross-examination that will kill his effectiveness. He will try to become a victim to gain sympathy; however, he was the bookkeeping, computer guru and I was the more hands on plant/equipment supervisor. He is very smart but scared to death. I am satisfied that this entire situation greatly affected his mental stability and for that reason I was concerned, as a friend, that he might hurt himself. He agreeing to plead guilt clearly demonstrates to me he has lost his mind and is acting purely out of fear of going to jail. He will not do well when pressed on cross-examination particularly about the documents and inconsistencies we have discovered. He was the one who initially questioned how the loans we obtained were classified by the Janes both to them directly, to me and to the attorneys assisting us. He knows a lot about the various disclosures because he is the person who prepared them. On numerous occasions prior to the indictments he acknowledged that full disclosure had taken place and assisted our

Page 6

attorneys in reviewing and preparing our responses in the civil lawsuit as well as the documents necessary for the counterclaims we intended to pursue.

Clearly, I have not addressed every issue or every claim in this letter; however, we have, to my knowledge, discussed all of the portions you deem necessary to properly prepare. I do not feel that we have had sufficient time to properly prepare despite all of our best efforts. This matter affects every aspect of my life and I want to be sure we have had adequate time to properly prepare. You and your team have done and continue to do a thorough and professional job in preparing with me for trial; however, I am concerned that despite our best efforts, the time limitations will prevent us from being truly ready for trial. I am putting my trust and my life, so to speak, in your hands. I am satisfied you understand the complexities of this case and will protect my interest at each juncture. I want to make sure we preserve the record in the unlikely event an appeal becomes necessary. You are the professionals and I have to rely upon your opinions and determinations as we move forward. I will do all I can to assist you; however, in the final analysis it is really in your hands to keep the Government in check and present my defense. I appreciate everything you and the entire team has done and will do between now and the conclusion of the trial on my behalf. I am confident that everything that can be done given the limitations we have been handed is being done. I am satisfied my faith and trust in you is well placed. I am satisfied that Justice can prevail even in a situation like this. I look forward to working with you and the members of the team toward a successful conclusion of this nightmare.

Yours very truly,

A handwritten signature in black ink, appearing to read 'R. M. Boston', with a stylized flourish at the end.

Robert M. Boston

Enclosure:

"Exhibit 3"

ROBERT M. BOSTON
4141 Rhyndland Drive
Sherrills Ford, N.C. 28673

Phone: (828) 455-1716

Email: rboston@rboston.com

December 14, 2017

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
HAND DELIVERED**

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, N.C. 28202

Re: United States of America v. Robert M. Boston
Docket No: 3:17-cr-114-RJC

Dear Kevin;

I want to take this opportunity to thank you and the entire team for the for all the work you did in trying to prepare for the trial of my matter. As I stated in my letter of December 1, there was no reasonable way for you or any attorney to be expected to try such a complex matter without being given a reasonable opportunity to properly prepare. I appreciate your candor in our conversations regarding what you were and were not able to do under the time constraints forced upon you by the failure of the Court to grant the Motion to declare the case a complex business case or in the alternative continue the matter. What we got was the worst of both worlds and the result, under the circumstances, was not totally unexpected. I have learned the hard way that being innocent is no deterrent to being convicted.

I appreciate the time you and the team devoted to my case, but realize that this was not your only case and as a result the time you could spend, under the best of circumstances, was limited. Add to that situation, the requirement to go through approximately 800,000 plus pages of documents, review complex accounting systems, interview witnesses,

Page 2

Confidential Legal Correspondence

prepare an index for proper cross examination of crucial witnesses and some aspects simply were not able, within the time constraints, to be properly or adequately addressed in the fashion I am satisfied you would like to have been able to address them. I likewise appreciate your candor when we discussed my concerns about this very point and you stated you did the very best you could in the time that you were given. I honestly believe that to be a true statement; however, it is of little solstice when I stand convicted of crimes I did not commit primarily due to our not being able to review the evidence in a proper fashion or prepare and call witness that could have presented a different picture for the jury. I realize that we started out at a huge disadvantage when the case reads "United States of America vs Robert Boston." Although the jurors would never admit it, I am satisfied that many had to think in the back of their mind, "He has to be guilty of something or he wouldn't be charged!" The limited nature of jury selection in Federal Court certainly didn't allow you the opportunity to explore, in any depth, the through process of the prospective jurors. The rush to trial effectively prevented us from any meaningful opportunity to present a picture radically different from that presented by the Government. How could you or any attorney or team of attorneys with other commitments be expected to simply read all the information in the time afforded, let alone go over the crucial portions with me, organize the documents into exhibits to combat or impeach testimony offered by the Government and then prepare the necessary Defense witnesses to combat their evidence. The excellent cross examination of the Government's witnesses you and the other members of the team performed was outstanding given the limited time you had to prepare. Just imagine if we had had the actual time needed to fully prepare what you could have been done. I had slightly more than 6 hours of direct time with you which was woefully inadequate; however, that was all that could be allotted given the mountain of work you and the team had to do once we knew the trial was not going to be continued as we had anticipated. Please do not confuse what I am saying with any notion that I am complaining about the quality of you or any other member of the team as lawyers. Rather, what I am complaining about is that lawyers of your quality and caliber were placed in the untenable position of being forced to trial without the opportunity to properly prepare given the volume and complexity of the information available.

The Government had all the time they wanted and had they sought an extension, I am satisfied it would have been granted. They had virtually unlimited time, resources and personnel to prepare. The Government correctly argued that the criminal case essentially tracked the civil cases; however, you weren't even given sufficient time to meet with or discuss the civil cases with Stuart Brown in Delaware, who had a huge amount of information regarding the particulars of the case given his position as the Bankruptcy Attorney and was willing to do all he could to assist. You had no time to meet with or discuss the information regarding Mosing and the various issues raised in the civil case in

Page 3

Confidential Legal Communication

Louisiana with Paul Simon or Sam Masur who had a great deal of helpful information. The limited amount of time you were given, did not even allow you to meet with my local civil attorney, Gary Young, who I know had reviewed every page of the information placed in the drop box by Bob Labarge and who had put together the 65+ page draft civil complaint. I am not even sure whether or not you even had time to look at the copy of the complaint I brought you. You did not have time to interview or properly prepare the stockholders, all of whom, other than Mosing and the Janes, were solidly behind me. As you know, since they were potential witness, I was not able to communicate with the stockholders leaving potentially game changing testimony. The stockholders who expressed their strong support of me were; Jenifer Gates, Jeff Houston, Will Houston, Gary Gant, Mitch Keton, Dewitt Bud Watts and Margery Diamond. Every one of them supported my innocence; however, I couldn't talk with them and you didn't have time to talk with them. The information from the attorneys as well as from the stockholders could have potentially made a huge difference in how we proceeded; however, give the limited time you had, they were not used. Likewise, the lawyers we paid huge sums of money to do the work correctly, with some of the largest firms in Charlotte, who are presently being sued by Mosing, had tremendous amounts of information, that to my knowledge was never requested or provided to assist you. I think it is amazing that you and the team did as well as you did given the hand you were dealt; however, that does not change the fact that it absolutely prevented you from being able to provide the substantial assistance to me that you had the ability, if allowed adequate time to prepare, to give and that the Constitution of the United States guarantees I will have. Through no fault of yours, my fundamental right to effective assistance of counsel was denied when the Court denied your motion to continue and forced us into a trial for which we were not properly prepared. I am now faced with the likelihood of going to jail for a substantial period of time for crimes I did not commit, being labeled a "convicted felon", my son's house and my former wife's house seized and my life ruined. My only hope is that this injustice will be overturned on Appeal if the Court denies your Motion to Set Aside the Verdict.

I am not trying to be a Monday morning quarterback. Please do not take this letter as an indictment of you, the team, or your ability. It is an indictment of the system that allowed this to happen by effectively preventing you from doing your job. What I am saying here is exactly what I have said all along. We all thought, given the enormity of the task, that the Court would declare this a Complex Business Case which would have given us the additional time we needed or, failing in that, would have, out of fundamental fairness, continued the matter to allow us to properly prepare. All of my friends and stockholders, as well as anyone who truly knew the situation was shocked to learn that I was convicted. What can I say? So was I!

Page 4

Confidential Legal Correspondence

I am satisfied that you preserved, for appeal, the issues we have discussed as well as issues you felt crucial both pre-trial and during the trial. What I need to know is what can we do to right this wrong? If affidavits from the various stockholders or other potential witnesses we were unable to be interviewed or called to testify due to the time constraints would help, I can work on providing them. If my affidavit regarding any of the issues regarding witnesses or the time constraints and their effect would help, I am certainly will to prepare and submit it based on your advice. I can certainly articulate, for the record, my feelings regarding our preparation and lack of time if you feel that would help build the record for Appeal. I am not a lawyer and therefore need your advice about where we are, what our game plan is and what I can expect as we move forward with the Motion hearing, sentencing and Appeal. I truly believe that you share my feelings about the preparation and would hope that you would articulate that to the Court in your arguments. Had the Court allowed you and the team to properly prepare, I certainly feel the verdict would have been different and all the attendant fallout avoided. Unfortunately, that is not the case and I must try to wrap my head around what has happened and what can be done to correct it.

When we last spoke, you indicated that you felt we had far stronger arguments on Appeal than the lack of adequate time to prepare as it relates to "Substantial Assistance". I would appreciate your sending me a letter with your thoughts on what those areas of Appeal are. I need some good news or reason to hope for a better result. If you can outline for me your thoughts on how to best prepare for the motions and a potential appeal and what, if any, fertile ground for potentially reversing the jury's verdict and obtaining a new trial, I would greatly appreciate it. I respect your opinions and feel that knowing what we can do will help me deal with this situation much better. I don't see this as the end; rather I see it as the beginning of the next phase in my quest for justice

I want to again thank you and each member of the team for your support and hard work. These verdicts are a slap not only in my face and yours; they are a slap in the face of Justice that should not be allowed to stand. I appreciate your continued efforts and pledge to you my support as we move forward. I look forward to your response.

Yours very truly,

A handwritten signature in black ink, appearing to read "Robert Boston", with a stylized flourish at the end.

Robert Boston

"Exhibit 4"

ROBERT M. BOSTON
4141 Rhyndland Drive
Sherrills Ford, N.C. 28673

Phone: (828) 455-1716

Email: rboston@rboston.com

January 2, 2018

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

SENT VIA EMAIL W/ATTACHMENT
COPY SENT VIA USPA

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, N.C. 28202

Re: United States of America v. Robert M. Boston
Docket No: 3:17-cr-114-RJC

Dear Kevin;

Enclosed please find my Draft of the Information Packet given to me by your staff for completion and submission to the Probation Office. It would have been very helpful to have had the opportunity to review the requested information with you or one of your staff prior to submission to insure that my answers fully comply with rules regarding this submission. There are many aspects of the form that I simply do not understand and, absent any help from you or your staff, have had to complete in the best way I knew how. I certainly want to be full and complete in my responses; however, certain portions are confusing to say the least. I have never been in a situation like this and simply need some guidance on how to proceed which, at least thus far, has been non-existent. I certainly realize that you are very busy and that we have just gone through the holidays; however, the preparation for my sentencing is very important to me. I want to insure that everything that can be done is done correctly and in a timely fashion. I saw, first hand, the effects of limited preparation during the trial and want to insure that is not the case as we move forward. As I have previously stated in my prior correspondence, I realize that the time constraints you were given, coupled with the enormity of the text to review,

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presented a situation in which no attorney or group of attorneys could have been ready for trial in a meaningful fashion. This situation is different. There is absolutely no reason that we cannot properly prepare for every aspect of the sentencing phase of my case. I need your help and understanding as we move forward. While this is a routine matter for you; it is new and uncharted territory for me. I need your help at every phase as we move forward and will expect to have access to you and your staff to insure we properly prepare. I want to know your game plan, what motions you intend to file, what information you need and most importantly what I can do to help. I feel very helpless, having had no response to either of my prior letters, nor any communication from your office since the conclusion of the trial.

I am very concerned that you have not taken the time to either answer, in writing, my concerns as stated in my letter to you on December 1, and on December 14th or simply give me a call. I asked you to provide me very specific information and what I have gotten thus far is not even the courtesy of a response or even a call. We have discussed several times that this is a team effort. All I am asking is that I be allowed to be part of the team since it is my life, my reputation and my liberty that is at stake. I want to know what, if any Motions, you have filed or intend to file to set aside the verdict of the jury? I want to know your plans to deal with the hearing of any such motions and what I can do to assist? I want to know what witnesses or information you feel will be helpful at sentencing, so I can assist in putting the information and proposed witnesses together sufficiently in advance, that you have an opportunity to meet with them and review their testimony or at least any letters or affidavits they submit. I don't want to just sit here, doing nothing, waiting for judgment day. Please make me and this case a priority, that is all I ask.

There are a number of questions I have regarding preparation for the sentencing hearing which I need to discuss with you as soon as possible. Can we arrange a time to meet, or would it be more helpful if I submitted them in writing for your review? I note that, as a part of the Probation Information Packet, I received the sheet entitled "Acceptance of Responsibility" and need to discuss with you our position regarding such acceptance. I have, from the beginning, contended that I never knowingly did anything that violated the applicable statutes. The evidence adduced at trial, I felt, confirmed my position; however, the jury still convicted me. How should we deal with this? I don't want to miss an opportunity to receive a downward departure; however, I do not want to admit to something I did not do. You know the law and are now familiar with the facts of the case. What do you suggest? This is just one of the many issues we should be discussing as we move forward. I don't want to wait to the last minute to make critical decisions. I need to know your game plan, so I can be prepared as we move forward. In my last letter, I asked for you to send me an outline of the issues you see as fertile ground

Page 3

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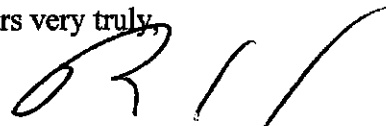
for my appeal; however, I have had no response. I want to be sure that everything we need to insure is in the record is actually in the record for future appeal. I want to know what you see as important and discuss with you what I feel is important, to insure that we don't miss anything.

As we prepare for the sentencing hearing, my civil attorneys have offered to help get letters and/or affidavits if you feel they will help. I know that the following stockholders are ready and willing to do anything they can to help. The persons I can get affidavits of support from are; Jennifer Gates, Jeff Houston, Will Houston. Gary Grant, Mitch Keton, Dewitt Bud Watts, Gill Knupp and Gary Sieck. I can arrange for them to see Gary Young in Hickory to prepare affidavits if you feel that will help. In addition, I can get numerous other letter from various friends, family and community leaders if you desire. Let me know as soon as possible your thoughts on the obtaining of the letters or affidavits as well as what you feel they should say, in general, to be effective. This is something I can do to help; however, if it is not want you want to do, I do not want to interfere. This is yet another example of why we need to communicate.

It is my understanding that the potential range under the guidelines is based, in part, on the monetary loss. I want to discuss this aspect with you in order to attempt to mitigate any amount claimed by the government. We have the sums paid by LaBarge; the settlement with Zloop through Bankruptcy with Kyle Busch Racing; the fraud of Mosing with the bank and other issues that could dramatically reduce the proposed amount presented by the Government. I will be happy to go over these area with you or your staff as we prepare if you deem it advisable.

I apologize for the length of this letter; however, I have so much I want to discuss with you, I felt it necessary to set out some of my thoughts for your review. Please give me a call so we can arrange a time to meet as soon as possible and begin the work necessary in this phase. Please review my Draft responses enclosed and let me know if you feel I should modify any of the responses prior to submission. I am flying blind and need your help. Thank you in advance for your assistance.

Yours very truly,

A handwritten signature in black ink, appearing to be 'R11' or similar, written over the typed name Robert Boston.

Robert Boston

Enclosure:

[Print](#) | [Close Window](#)

Subject: Re: letter/authorization to release to Probation
From: Kevin Tate <Kevin_Tate@fd.org>
Date: Mon, Jan 08, 2018 10:17 am
To: <rboston@rboston.com>
Cc: "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>
Attach: 30096412.jpg
graycol.gif

Bob,
I have no problem with the length your letter and will answer all of your questions when time permits. There is nothing that you have raised or asked that is time of the essence. Rest assured I have read each of your letters(which are largely complaints about the process and jury verdict) and will address each of your concerns. As for the probation 21 day documents...if you have specific questions please advise. The 21 day documents are routine and self explanatory questions that most clients complete without assistance,

Kevin A. Tate
Senior Litigation Counsel
Federal Defenders Office-Western District of North Carolina
(704) 374-0720
Fax (704) 374-0722



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☞ ---01/08/2018 09:29:37 AM---ATTACHED

From: <rboston@rboston.com>
To: "Kevin Tate" <Kevin_Tate@fd.org>, "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>
Date: 01/08/2018 09:29 AM
Subject: letter/authorization to release to Probation

ATTACHED[attachment "DOC010818-01082018100632.pdf" deleted by Kevin Tate/NCWF/04/FDO]

<graycol.gif>---01/10/2018 08:32:44 AM---Thank you for the quick response Privileged and Confidential

From: <rboston@rboston.com>
To: "Kevin Tate" <Kevin_Tate@fd.org>
Cc: "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>
Date: 01/10/2018 08:32 AM
Subject: RE: Letter to Judge Conrad

Thank you for the quick response

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----- Original Message -----

Subject: Re: Letter to Judge Conrad
From: Kevin Tate <Kevin_Tate@fd.org>
Date: Wed, January 10, 2018 8:29 am
To: rboston@rboston.com
Cc: Ivette Arroyo-Becker <Ivette_Arroyo-Becker@fd.org>

Bob,

I have received and will read and comment when I have a moment. I am currently preparing for two other trials that are just as important to those clients as your case is to you. Your case is no where near sentencing and you haven't even had a PSR interview with probation yet. We will address all of your concerns when the time is ripe. In the meantime, keep doing well on release.

Kevin A. Tate
Attorney at Law

On Jan 10, 2018, at 8:19 AM, rboston@rboston.com wrote:

Good Morning Mr Tate,

I spent much of the last week writing the attached personal narrative. I wanted the judge to know more about my background and career.

What are your thoughts on my narrative? Can you share your thoughts with me.

Again, I invested a lot of time in this document. I am anxiously awaiting your thoughts.

[Print](#) | [Close Window](#)

Subject: RE: Letter to Judge Conrad
From: Kevin Tate <Kevin_Tate@fd.org>
Date: Fri, Jan 12, 2018 11:43 am
To: <rboston@rboston.com>
Cc: "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>
Attach: 25634269.jpg
graycol.gif

Mr. Boston,

You have sent me letters but we still don't have the 21 day documents sent to you. That document is overdue and probation is asking for it. Please provide ASAP !

Kevin A. Tate
Senior Litigation Counsel
Federal Defenders Office-Western District of North Carolina
(704) 374-0720
Fax (704) 374-0722



CONFIDENTIALITY NOTE

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---01/10/2018 08:32:44 AM---Thank you for the quick response Privileged and Confidential

From: <rboston@rboston.com>
To: "Kevin Tate" <Kevin_Tate@fd.org>
Cc: "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>
Date: 01/10/2018 08:32 AM
Subject: RE: Letter to Judge Conrad

Thank you for the quick response

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Subject: Re: Letter to Judge Conrad
From: Kevin Tate <Kevin_Tate@fd.org>
Date: Sat, Jan 13, 2018 1:12 pm
To: rboston@rboston.com
Cc: Ivette Arroyo-Becker <Ivette_Arroyo-Becker@fd.org>

Please resend I did not see an attachment

Kevin A. Tate
Attorney at Law

On Jan 13, 2018, at 1:09 PM, rboston@rboston.com wrote:

I sent it to you with my letter i will resend

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The information contained in this message may be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to this message and deleting it from your computer. Thank you.

----- Original Message -----

Subject: RE: Letter to Judge Conrad
From: Kevin Tate <Kevin_Tate@fd.org>
Date: Fri, January 12, 2018 11:43 am
To: <rboston@rboston.com>
Cc: "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>

Mr. Boston,
You have sent me letters but we still don't have the 21 day documents sent to you. That document is overdue and probation is asking for it. Please provide ASAP !

Kevin A. Tate
Senior Litigation Counsel
Federal Defenders Office-Western District of North Carolina
(704) 374-0720
Fax (704) 374-0722
<25634269.jpg>

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Subject: Re: [FWD: letter/authorization to release to Probation]
From: Kevin Tate <Kevin_Tate@fd.org>
Date: Sat, Jan 13, 2018 1:38 pm
To: rboston@rboston.com
Cc: Ivette Arroyo-Becker <Ivette_Arroyo-Becker@fd.org>

Okay got it. Thanks

Kevin A. Tate
Attorney at Law

On Jan 13, 2018, at 1:15 PM, rboston@rboston.com wrote:

Probation docs attached as sent on jan 8th IT IS AFTER THE LETTER

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----- Original Message -----

Subject: letter/authorization to release to Probation
From: <rboston@rboston.com>
Date: Mon, January 08, 2018 9:28 am
To: "Kevin Tate" <Kevin_Tate@fd.org>, "Ivette Arroyo-Becker" <Ivette_Arroyo-Becker@fd.org>

ATTACHED

<DOC010818-01082018100632.pdf>

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"Exhibit 10"

**ROBERT M. BOSTON
4141 Rhyndland Drive
Sherrills Ford, N.C. 28673**

Phone: (828) 455-1716

Email: rboston@rboston.com

February 14, 2018

**CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
SENT VIA CERTIFIED MAIL**

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, N.C. 28202

Re: United States of America v. Robert M. Boston
Docket No: 3:17-cr-114-RJC

Dear Kevin;

Over a month ago I reached out to you as my attorney seeking your advice and assistance in preparing for the upcoming sentencing in my matter. I fully expected to receive a call from you setting a time for us to meet and go over what needed to be done to prepare; however, to date, I have not even had the courtesy of a response. The packet containing the probation information sheet had questions I needed to discuss with you; however, for whatever reason, my request for a meeting was ignored. It would have been very helpful to have had the opportunity to review the requested information with you or one of your staff prior to submission to insure that my answers fully complied with rules regarding that submission. Rather than simply taking the time to go over it with me, you chose to ignore my request. There were many aspects of the form that I simply did not understand and needed the help of my lawyer or his staff to make sure it was completed correctly; however, my attorney and his entire staff were apparently too busy to even respond. As I pointed out to you in my request for assistance, I have never been in a situation like this before and simply needed some guidance on how to proceed. That should not be too much to ask or expect from the person charged with providing me

valuable assistance. I certainly realize that you are very busy; however, that is no excuse. If you are too busy to properly deal with the needs of your client, you need to reassess your scheduling to allow you the time needed to deal, in an appropriate fashion, with the needs of your client. Ignoring my requests for information, ignoring my cries for help and not even having the courtesy to simply pick up the phone or have a staff person do so to provide much needed assistance is neither acceptable, nor appropriate conduct. You are better than that Kevin. I am placed in the terrible situation of having to demand that you devote proper time to the handling of my case or simply stand by and let nothing continue to be done. Thank God you have never individually faced a situation like I am facing. Had you been in this position, you would better understand how frightened, how dependent and how helpless you feel, when your entire future depends on the help of someone who cannot or will not even take the time to communicate with you about your concerns.

Kevin, I should not have to remind you of your professional and ethical responsibility to properly deal with my matter. To have to send letter after letter to simply get answers to simple, yet important questions, is not how this is supposed to be handled. I am a captive audience with very few options. To say what needs to be said to get your attention, places me at risk of alienating my own attorney which is certainly not my goal. To do nothing, places me in the position of seeing time pass and the work needed to properly prepare for my sentencing go undone. The questions I asked about what I can do to help mitigate my situation go unanswered, the examination of the records to reduce the amount of damages claimed goes undone, preparation of affidavits from the supportive stockholders or even a discussion with them goes undone and most importantly discussion with me to allow me to assist go undone. I cannot and will not simply set on the sidelines and let any chance I might have to properly prepare for sentencing go. . by the wayside. I need your help and I need it now, not later. I had hoped that by addressing my concerns in my previous letters, I would get the answers to my questions and more importantly your help in preparing for my sentencing. Thus far I haven't even received a response. What do I need to do to get your help? If I have said or done anything that has upset you, that certainly was not my intention. I simply want and need your assistance as my attorney. If you cannot or will not provide that assistance, simply tell me so I can seek assistance from the Court in obtaining substitute counsel. The last thing in the world I want to do is alienate my counsel; however, having said that, I need to know that my interest are being protected and that everything that can be done, is being done. I need your help at every phase as we move forward and will expect to have access to you and your staff to insure we properly prepare. I want to know your game plan, what motions you intend to file, what information you need and most importantly what I can do to help. I feel very helpless, having had no response to either of my prior letters, nor any communication from your office since the conclusion of the trial. To simply send me an email saying, "I will read the letter", is not sufficient.

Page 3

All I am asking is that I be allowed to be part of the team since it is my life, my reputation and my liberty that is at stake. I want to know what, if any Motions, you have filed or intend to file to set aside the verdict of the jury? I want to know your plans to deal with the hearing of any such motions and what I can do to assist? I want to know what witnesses or information you feel will be helpful at sentencing, so I can assist in putting the information and proposed witnesses together sufficiently in advance, that you have an opportunity to meet with them and review their testimony or at least any letters or affidavits they submit. I don't want to just sit here, doing nothing, waiting for judgment day. Please make me and this case a priority, that is all I ask.

There are a number of questions I have regarding preparation for the sentencing hearing which I need to discuss with you as soon as possible. I don't want to wait to the last minute to make critical decisions. I need to know your game plan, so I can be prepared as we move forward. In my last letter, I asked for you to send me an outline of the issues you see as fertile ground for appeal; however, as of this date, I have had no response. I want to be sure that everything we need to insure is in the record is actually in the record for future appeal. I want to know what you see as important and discuss with you what I feel is important, to insure that we don't miss anything. To have this occur we have to have good communications. To date we essentially have no communication other than my sending letters that go unanswered.

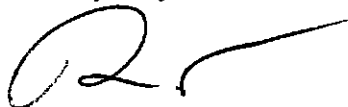
I previously pointed out that as we prepare for the sentencing hearing, my civil attorneys have offered to help get letters and/or affidavits if you feel they will help. I know that the following stockholders are ready and willing to do anything they can to help. The persons I can get affidavits of support from are; Jennifer Gates, Jeff Houston, Will Houston. Gary Grant, Mitch Keton, Dewitt Bud Watts, Gill Knupp and Gary Sieck. I can arrange for them to see Gary Young in Hickory to prepare affidavits if you feel that will help. In addition, I can get numerous other letter from various friends, family and community leaders if you desire. To date, I have had no response from you about the appropriateness or necessity of this information. Do we need it or not? This is something I can do to help; however, if it is not want you want to do, I do not want to interfere. This is yet another example of why we need to communicate.

It is my understanding that the potential range under the guidelines is based, in part, on the monetary loss. I want to discuss this aspect with you in order to attempt to mitigate any amount claimed by the government. We have the sums paid by LaBarge; the settlement with Zloop through Bankruptcy with Kyle Busch Racing; the fraud of Mosing with the bank and other issues that could dramatically reduce the proposed amount presented by the Government. I will be happy to go over these area with you or your staff as we prepare if you deem it advisable.

Page 4

I apologize for the length of this letter; however, the time for simple pleasantries has passed. This is serious business and needs to be taken seriously by all involved. I will not allow you or anyone associated with my defense to continue to ignore my request for information and help. I am your client and I need your help. Please take the time to prepare this case in the fashion I know you are capable of doing. I can't expect any more and you should not be satisfied with any less. I trust this letter expresses my position regarding what is expected moving forward.

Yours very truly,

A handwritten signature in black ink, appearing to be 'R. Boston', with a long horizontal stroke extending to the right.

Robert Boston

"Exhibit 11"

ROBERT M. BOSTON
4141 Rhyndland Drive
Sherrills Ford, N.C. 28673

Phone: (828) 455-1716

Email: rboston@rboston.com

April 1, 2018

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
SENT VIA CERTIFIED MAIL
COPY HAND DELIVERED

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, N.C. 28202

Re: United States of America v. Robert M. Boston
Docket No: 3:17-cr-114-RJC

Dear Kevin;

This will confirm receipt of the Pre-Sentence Report from your office which you apparently received several days before a copy was provided to me. I am concerned that the exact same situation I sought to avoid is happening. In all the letters I have sent to you since the trial, I have repeatedly asked for better communication, so we could prepare for the report, work on mitigating the amount of loss claimed by the Government and establishing a game plan for how all matters going forward are to be dealt with sufficiently in advance of receipt of the Report to allow us to respond properly. To date I have had none of my questions answered, no response to my letters other than your promise to read the last one, and no communication other than your recent call concerning the report. We are now faced with the tough job of seeking to reduce the monetary additions as well as several other additions with very little time to do so. I understand that you are seeking an extension; however, thus far our record on extensions from the Court has not been good. The amount of loss claimed as well as the 2-point addition for more than 10 victims seem to be the most critical point of attack, yet no one from your office has even contacted me to discuss these issues. Perhaps you, or your staff, have already been working on this aspect of the report; however, without knowing what you or your staff is doing, I am left to worry that it is not being addressed. If we do

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not get an extension, we will be in the same predicament we faced when the Court refused to grant your Motion to Continue, be forced to proceed when we are not properly prepared. I cannot stand by and let that happen again. Regardless of how great your skills as an attorney are or how accomplished you are in trial, if the proper preparation does not occur, your chances of success are virtually zero. We saw, at trial, what insufficient time to prepare did much to my chagrin. By being forced to trial before you were ready, resulted in none of my civil attorneys, who had a great deal of knowledge about the facts, even being contacted, many of my witnesses not being interviewed, let alone called as defense witnesses, or a proper command of the facts in mitigation established to overcome the evidence offered by the Government. I say this not to belittle your efforts, since given the volume of documents, no one could have properly prepared in the time given. You did an outstanding job considering the lack of time for preparation; however, I am satisfied the results would have been different had you and your staff been given the time you needed and asked for. I now stand facing over 10 years in prison for crimes I damn well didn't commit. If I seem upset, I have damn good reason to be. Under the circumstances how would you feel? As if it wasn't bad enough to be convicted, I can't even get my attorney or his staff to simply take the time to talk with me or answer very relevant questions I asked in my several letters. If you have too many clients assigned to you or your team to allow you to adequately deal with each clients' issues or requests for information, you need to reduce the number of cases you handle, not ignore the plea for help from someone depending on you for help. I have hesitated to even bring this up for fear of alienating you; however, unless something is done now, I am totally screwed absent relief on appeal. We need to be working together to determine the best course of action. While I am certainly not an attorney, nor knowledgeable in the law, I am familiar with the facts, especially as they relate to the damages, or lack thereof. To wait literally to the last day before our response or objections are due, is frankly unbelievable. If you have some plan of action, I am not aware of, I would certainly appreciate your letting me in on it since I am the one facing more than 10 years of my life behind bars. I need to know what is being done and I need to know now!.

Having reviewed the Pre-Sentence Report, I note the following:

1. **Factual Allegations:** It appears to me that very little of the excellent information you gleaned in cross-examination is included while a lengthy recitation of the Government's evidence is included. I don't know if this is an issue you plan to address; however, I felt I should at least point out how it appears from my reading.
2. **Monetary Enhancement:** Clearly this is the primary reason that my case goes from a base level 7 to a 33 or 34. For that reason, if we are going to any success at reducing the level for sentencing this is the most fertile ground. I have several issues or questions for you to consider as it relates to determination of the losses claimed. I will list them in no

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particular order of importance, but fully expect you to consider not only the ones I mentioned, but also any that you feel are applicable to potentially reduce the amount of loss. The particular areas I see as potentially assisting us in reducing the amount are:

A) It is my understanding that the total loss associated with the plea of Bob was \$10 million not the \$27M+ assigned to me. It is my understanding that a fictitious amount is not acceptable. If his was in fact determined to be 10M then mine should be 10, not 27+. This could and would make a tremendous difference in my sentencing level as you know.

B) A substantial portion of the claimed loss is related to Mosing's loan from Patriot Bank which he obtained by fraud as demonstrated in the suit they filed. It was my understanding that he cannot claim losses he incurred due to fraud on his part. You have copies of the lawsuit by Patriot Bank against Zloop, LLC and Kendal G. Mosing designated as 2014-58271/Court: 157 in the District Court of Harris County, Texas which does not name me as a Defendant. This case was settled, and dismissals taken. I am attaching copies of the suit and the dismissal for your review. Can we argue that this sum should be deducted? Additionally, since he bought Zloop out of bankruptcy does that offer any basis for reducing this amount from the damages since Zloop, which he owns, has the claims for the debt and/or any claimed damages?

C) Mosing and Janes both received money out of the proceeds obtained by Zloop which they used personally just as they assert Bob and I used funds, are those amounts proper for exclusion?

D) Bob apparently paid a portion of the proceeds from the sale of his home to Mosing as partial restitution. Am I entitled to a credit for any sums he paid against the total?

E) Zloop and Mosing sued Kyle Busch Motorsports, Inc as well as my son and his LLC for all of the money paid to KBM. Mosing settled for \$450,000 +- and gave a release to them. Am I entitled to reduce the total by not only the amount received but also by the sums set aside or released from the total in that settlement?

F) Knowing Mosing, I am satisfied that he has claimed as loss on his taxes any claimed losses. Are we entitled to claim the tax saving he obtained against any losses he claimed since if he got a break on his taxes, he did not actually loose the entire sum only the difference between the amount lost and the resultant reduction in the taxes he would have paid?.

G) Apparently, if I read the report correctly, all sums paid by investors were included as losses by victims which is certainly not the case. As you know most of our shareholders

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made no claim against Bob or me and in fact blamed Mosing and Janes for their loss. If these amounts were included, are we entitled to subtract them from the total?

H) Since Mosing purchase Zloop from the Bankruptcy Court and now owns the Company, its assets and claims against various parties, are we entitled to a credit against the total losses claimed for the value of the company. As you know he has sued the prior law firms claiming fraud against each of them. The suits are matters of public record so are we entitled to relief in the amounts claimed? Can we use this to help reduce the total claimed?

I) A substantial sum of the money claimed as damages was in fact paid for the racing as outlined in the statement of facts. These expenditures were known by all involved, clearly reported and approved as marketing expenditures. Can we have these sums removed from the claimed losses?

The foregoing are simply what I see as potential reductions. You are experienced in these matters and can advise how or if any of this will help. If we are able to claim a significant number of the reductions of the amounts claimed by Mosing, it would have a dramatic effect on the sentencing level for me and Bob. Let me know your thoughts on this.

In addition, I received a 2-point enhancement for their allegedly being 10 or more victims; however, only 7 are listed. While I contend the only victims are Bob and me, if the number is 7 it would reduce the offense level by 2-points. What are your thoughts?

Last, but certainly not least, I want to know the strategy at sentencing and immediately thereafter. Once I am sentenced, will we immediately give notice of appeal? If we do, will I be allowed to remain free pending appeal on the same terms and conditions as are presently in place? If, not, will I be allowed to self-report to the designated facility? I also want to make sure we ask for inclusion of Substance Abuse Treatment given the recent disclosures regarding my drinking. This would result in reducing my actual incarceration and is very important. I would also hope you could assist in eliminating the liens pendens filed by the Government on my wife's home and the home of my son. This concerns me greatly and any help you can give will be greatly appreciated. I really want to know your thoughts on appeal and the issues, if any, you feel would provide relief. Please let me know as soon as possible your thoughts on the issues and questions I have raised. I really need your help in coping with this. I don't have anyone else other than the Good Lord to turn to. Please don't ignore my pleas for help. I apologize for the length of this letter; however, the time for simple pleasantries has passed. This is serious business and needs

Page 5

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

to be taken seriously by all involved. I will not allow you or anyone associated with my defense to continue to ignore my request for information and help. I am your client and I need your help. Please take the time to prepare this case in the fashion I know you are capable of doing. I can't expect any more and you should not be satisfied with any less. I trust this letter, together with my prior correspondence, expresses my position regarding what is expected moving forward. Please understand that it troubles me greatly to have to send this letter, however, given the circumstances I feel it is necessary.

Yours very truly,

A handwritten signature in black ink, appearing to read 'R. Boston', with a stylized flourish at the end.

Robert Boston

Enclosures:

"Exhibit 12"

ROBERT M. BOSTON
4141 Rhyndland Drive
Sherrills Ford, N.C. 28673

Phone: (828) 455-1716

Email: rboston@rboston.com

September 1, 2018

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
SENT VIA EMAIL
COPY VIA CERTIFIED MAIL

Kevin Tate, Esq.
Assistant Federal Defender
Federal Defenders Office
129 West Trade Street
Suite 300
Charlotte, N.C. 28202

Re: United States of America v. Robert M. Boston
Docket No: 3:17-cr-114-RJC

Dear Kevin;

This will confirm your recent notification regarding my new sentencing date. While I appreciate the notice, I cannot understand the lack of contact from your office at this critical phase of my case. At our last meeting, I expressed to you how satisfied I was with the work of your staff on the response to the pre-sentence report. I was very encouraged by your advising me that you intended to subpoena Mosing and the officials from the bank; however, since that time, until receipt of the notice, I have heard nothing from you or your office. I need to know if you have, in fact, issued the subpoenas discussed as well as your strategy for the up-coming hearing. I also need to know if you want me to get letters of endorsement from friends, former clients or stockholders who have indicated a willingness to help me.. I do not want to go into this hearing unprepared and am reaching out to you as my attorney for guidance at this critical time.

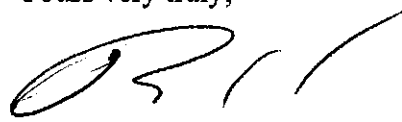
In addition to the foregoing, I want to know your thoughts on the "Order of Forfeiture" recently entered by the Court. Obviously, the Court reduced the loss figure offered by the Government to a much lower number; however, I do not understand the potential effect, if any, this reduction will have on the actual number used for determination of my sentencing level. I would also like to make sure I get credit for the amount paid by LaBarge. It is my understanding that the sum paid by LaBarge went to Mosing; however, that would have to be proven.

Page 2

I have previously asked in several letters and emails what we need to do to prepare for the appeal and/or what grounds you feel are best explored. My purpose for asking for this information is not to anger or bother you, rather it is to ensure that anything I can do to help is being done. Since we are getting very close to the hearing date, I really need to know what has been done, what our plans are and what I can do to help. I also want to insure that the record on appeal is in proper form and that all potential issues on appeal are protected. Since this is the first time I have been in this situation, I am reaching out to you, as my attorney, to get answers to these questions so I understand where we are and more importantly, what to expect. Please take the time to call me or email me with answers to my questions so I will not have to sit on the sideline and worry about where we are and what is being done.

I would like to know if the subpoenas discussed have been issued, as well as what witnesses or strategy you intend to employ at sentencing? Will you ask for me to "self-report" and if so what facility is best to ask for? Will you ask the Court to allow my enrollment in the substance abuse program? What effect, if any, will the reduction in the amount of loss attributed to me as a result of the recent Order have? With only several weeks to go before sentencing, I really need to know where I stand, what is being done and what you want me to do to help. I really need to meet with you as soon as possible to address these issues. Please contact me upon receipt of this email and arrange a time this week for us to meet. I trust you understand my position and, just as importantly, the reasons for that position.

Yours very truly,

A handwritten signature in black ink, appearing to be 'R. Boston', with a long horizontal stroke extending to the right.

Robert Boston

"Exhibit 13"

Sharon's Email

From: rboston@rboston.com
Sent: Monday, September 10, 2018 8:24 AM
To: Kevin Tate
Subject: Questions

Hi Kevin,

I have a couple questions

- 1- I need to confirm the the subpoena for Mosing has been prepared and served. You had indicated this was a priority.
- 2- You told me at our meeting last Thursday we did not need the president of Patriot bank is that correct?
- 3- Do you think I will be remanded on the 17th.or will they let me self report??
- 4-Do you need any more witnesses or letters of recommendation other then the ones that have already been provided?

PLEASE ADVISE

Stay dry
Bob

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Subject: RE: Questions

From: Kevin Tate <Kevin_Tate@fd.org>

Date: Tue, Sep 11, 2018 2:06 pm

To: "rboston@rboston.com" <rboston@rboston.com>

Cc: Ivette Arroyo-Becker <Ivette_Arroyo-Becker@fd.org>

Attach: image001.jpg

Bob,
Mosing has been difficult to serve. I have both the US Marshal and Federal Defender investigators in Louisiana and now Houston attempting to serve him. I learned that his Lafayette address is now vacant and we have a new business address in Houston that we are attempting to have him served at. I also left a message for his last known attorney but he has not yet returned my call. We have testimony and exhibits that support our position whether he can be successfully served or not.

No, we do not need the Patriot Bank President

I anticipate that Judge Conrad will let you self-report.

We have enough letters and I can think of no other witnesses that will be helpful to our sentencing arguments

I'm in the office most of this afternoon if you would like to call.

Kevin A. Tate
Senior Litigation Counsel
Federal Defenders Office-Western District of North Carolina
(704) 374-0720
Fax (704) 374-0722



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From: rboston@rboston.com [mailto:rboston@rboston.com]

Sent: Monday, September 10, 2018 8:24 AM

To: Kevin Tate <Kevin_Tate@fd.org>

Subject: Questions

Hi Kevin,

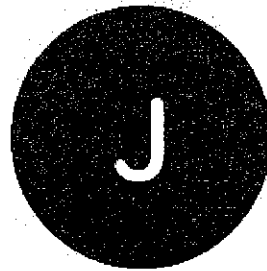
I have a couple questions

1- I need to confirm the the subpoena for Mosing has been prepared and served. You had indicated this was a priority

< Recents

"Exhibit 15"

Edit



Jim

Investagater



messa...



call



video



mail

Today

3:11 PM

Outgoing Call

3 minutes

phone

(704) 770-5899

phone

+1 (828) 246-8845



FOR THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT M. BOSTON
Defendant.

Docket NO: 3:17 CR 290 (MOC)

MOTION FOR VARIANCE

ROBERT BOSTON ("Mr. Boston") by and through his undersigned counsel of record, KEVIN A. TATE, and W. KELLY JOHNSON hereby submits his *Motion for Variance* from the advisory sentencing guideline range of 151-188 **months** found in the PSR.¹ Mr. Boston has filed Objections to the PSR. If the Court sustains Mr. Boston's objections, his correct advisory sentencing guideline range would be ~~51-63 months~~ **41-51**. If the Court does not sustain Mr. Boston's Objections to the PSR, Mr. Boston request a *Variance* to a ~~51-63 month~~ **41-51** sentencing rang. In support of this motion, Mr. Boston states as follows:

1. This Court should downwardly vary based on a combination of factors, including, Mr. Boston's status as a non-violent offender. And,
2. Mr. Boston's needs to be in the community to continue his gainful employment to allow him to make reasonable efforts and fulfilling his restitution obligations.

¹ Mr. Boston has filed Objections to the PSR in regards to the 22 level Loss Amount adjustment; the two level enhancement alleging that there were more than 10 victims; and the two level Role Adjustment enhancement alleging Mr. Boston to be an Organizer and/or Supervisor of in relation to Mr. Boston's offense conduct.

I. MOTION FOR DOWNWARD VARIANCE

Important to the facts and circumstances of Mr. Boston's conviction, stands the well rooted principle that "*the punishment should fit the offender, and not merely the crime.*" *Williams v. New York*, 337 U.S. 241, 247 (1949). Here, relying on this sound precedent, Mr. Boston urges the Court to consider his personal characteristics and circumstances that present the following combination of circumstances and factors which warrant a permissive downward variance. Mr. Boston's status as a non-violent offender; and his need to return to the community as soon as possible to fulfil his restitution obligations.

The Advisory Sentencing Guidelines are only a "starting point" and an "initial benchmark" in the determination of a just and appropriate sentence. *See Gall v. United States*, 552 U.S. 38, 49-51 (2007). As directed by the Supreme Court, "after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district court judge should then consider all of the 3553(a) factors." *Id.* at 49-50. Furthermore, the Supreme Court has held that courts "may not presume that the guidelines range is reasonable," but should rather "make an individualized assessment based on the facts presented." *Id.*

The statutory factors set forth in 18 U.S.C. § 3553(a) are intended to assist the Court in arriving at a just sentence, "sufficient but not greater than necessary" to achieve the purposes of sentencing. 18 U.S.C. § 3553(a). In this case, a thorough consideration of the § 3553(a) factors yields the conclusion that a downward departure and/or variance would be the just result.

Mr. Boston's history and characteristics" present a powerful argument for the exercise of leniency in sentencing. Other factors set forth in 18 U.S.C. § 3553(a), such as concerns of specific and general deterrence, should also prompt a departure or variance from

the applicable sentencing guideline range.

A. The Court Should Vary Based on Mr. Boston's Status as a Non-Violent Offender.

In *United States v. Gall*, 128 S.Ct. 586 (2007), the Supreme Court made clear that district courts are free to sentence defendants outside of the advisory guidelines range.

Despite his present conviction, there is no evidence that Mr. Boston committed any act of violence or would have a propensity to commit violent acts in the future; or any other offense that would warrant a sentence of imprisonment. Since being charged in this case, Mr. Boston has taken a number of important and tangible steps to ensure that he is on track to living a law-abiding and productive remainder of his life. This Court has the authority and should depart downward on this basis as well.

II. CONSIDERING THE FACTORS OUTLINED IN 18 U.S.C. § 3553(A), THE COURT SHOULD VARY FROM THE APPLICABLE GUIDELINE RANGE

18 U.S.C. § 3553(a) (1) requires the sentencing court to consider “the nature and circumstances of the offense and the history and characteristics of the defendant” in every case, and the statute trumps any guideline or policy statement to the contrary. *See Stinson v. United States*, 508 U.S. 36, 38, 44, 45 (1993); *United States v. LaBonte*, 520 U.S. 751, 757 (1997). It is no longer permissible, in imposing or reviewing a non-guideline sentence, to use percentages or proportional mathematical calculations based on the distance “from” the guideline range, or to require “extraordinary” circumstances. *Gall*, 128 S. Ct. 594, 595.

Sentencing Court’s “must make an individualized assessment based on the facts presented,” and “must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall*, 128 S. Ct. at 597.

18 U.S.C. § 3553(a) requires courts to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2.” Section 3553(a) (2) states that such purposes are:

- (A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) To afford adequate deterrence to criminal conduct;
- (C) To protect the public from further crimes of the defendant; and
- (D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Section 3553(a) further directs *inter alia* that sentencing courts consider the nature and circumstances of the offense and the history and characteristics of the defendant; the kinds of sentences available; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a) (1)-(7).

A. History and Characteristics of the Defendant: 18 U.S.C. § 3553(a)(1)

**1. Mr. Boston’s need to return to gainful employment to provide
In order to fulfill his restitution obligations.**

The stress of this case has taken a tangible toll on Mr. Boston’s life. He is deeply remorseful and wants to make amends. Given Mr. Boston’s demonstrated commitment to hard work, as well as, his personal strength and fortitude in the face of his embarrassing criminal conviction, the Court can be confident that, if given the opportunity, he will continue to his hard work with a low likelihood of committing future offenses.

2. Nature and Circumstances of the Offense: 18 U.S.C. § 3553(a)(1)

While Mr. Boston maintains he never sought to defraud anyone or lose any money on the ZLOOP business venture, he does accept responsibility for the offenses the jury convicted him of committing. In the final analysis, his offense centered around the failing of an ambitious business venture that did not fulfill the financial forecast he and other investors had hoped for. This is not a *Ponzi Scheme* or *Embezzlement* case where an intent to defraud is at the core. Mr. Boston was simply found guilty of regulatory violations surround disclosure failures in Financial Disclosure Documents and Private Placement Memos provided to wealthy and sophisticated business investors. There was no evidence that ZLOOP itself was a fraudulent shell, put together to dupe investors.

3. Specific and General Deterrence: 18 U.S.C. § 3553(a)(2)(B) &(C)

The goal of specific deterrence has already been met in this case. Mr. Boston has come to terms with and is deeply remorseful about his conduct that gave rise to this conviction.

For Mr. Boston, the most painful effects of this case are those it has wrought on his wife and son. For the past many months, Mr. Boston has been living with the fact of the profound pain and suffering this case has caused to his marriage and now ex-wife, and the discomfort he feels knowing that his incarceration, however long, will continue to have a lasting effect on his family. .

Mr. Boston now appreciates the law more than ever, and consequences of being indicted and now awaiting sentencing for a federal criminal offense. He has endured the emotional and embarrassing ramifications of this case now for nearly 3 years.

4. The need to avoid Unwarranted Sentencing Disparities

Pursuant to Title 18, United States Code, Section 3553(a)(6), this Court shall consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Mr. Boston's equally culpable co-defendant—Robert LaBarge—has pleaded guilty. Under the terms of his plea agreement, LaBarge's Guidelines range is significantly less than that which is reflected in Mr. Boston's PSR. Specifically, LaBarge's Guidelines range is driven by the loss amount reflected in his plea agreement (less than \$9,500,000), as well as the number of victims involved (at least ten). LaBarge will also likely receive a substantial reduction based upon his cooperation with the government and testimony against Mr. Boston at trial.

Mr. Boston's Guidelines range will be driven by the same factors, as reflected in his PSR. However, this Court should consider whatever sentence imposed in LaBarge's matter in determining the appropriate sentence and downward variance for Mr. Boston to avoid unwarranted sentencing disparities among Mr. Boston and LaBarge.

Moreover, Mr. Boston should not be punished more harshly than his equally culpable co-defendant for simply electing to exercise his constitutional right to trial by jury. LaBarge's applicable Guidelines range will include his acceptance of responsibility reduction, but this Court should consider LaBarge's final sentence in determining the appropriate sentence for Mr. Boston.

Pursuant to Title 18, United States Code, Section 3553(a)(1), this Court shall consider the history and characteristics of Mr. Boston. Mr. Boston's criminal history is devoid of any criminal convictions, scoring at a Criminal History Category I. This Court should find that to be a

significant factor, as many 55-year-olds appearing before this Court have extensive criminal records, including controlled substance offenses and violent crimes. Mr. Boston, however, has none of those types of crimes on his record. Even in this case, Mr. Boston acted in a non-violent way, with his actions never rising even to the level of threatening to inflict bodily harm.

CONCLUSION

Accordingly, this Court should find that Mr. Boston's history and characteristics support a downward variance from the otherwise advisory sentencing guidelines range of ~~51-63 months~~.

41-51 mos

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Dated: September 12, 2018

CERTIFICATE OF SERVICE

I, Kevin A. Tate, Assistant Federal Public Defender, hereby certify that on September 12, 2018, the foregoing was duly served upon the following counsel by forwarding an electronic copy to the electronic email address on file with the Court.

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