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Our File No.
t/b/d

August 29, 2016

VIA EMAIL AND FEDERAL EXPRESS PRIORITY OVERNIGHT COURIER

Janet Ammerman, Esq.
Federal Trade Commission
Bureau of Consumer Protection
Division of Marketing Practices
600 Pennsylvania Avenue, N.W.
CC-8528
Washington, D.C. 20580

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Federal Trade Commission
Bureau of Consumer Protection
Division of Enforcement
600 Pennsylvania Avenue, N.W.
CC-9528
Washington, D.C. 20530

Email Address: ICA-application@ftc.gov

Re: *FTC v. Herbalife International of America, Inc., et al.*;
Case No. LA CV16-05217 BRO(GJXx):
Independent Compliance Auditor Request for Application (the "RFA")

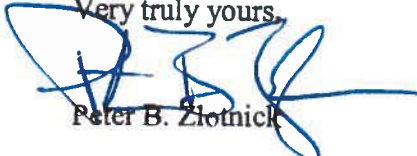
Dear Ms. Ammerman and Mr. Winter:

Thank you for inviting us to submit the enclosed application (the "Herbalife ICA Application") for me to serve as the proposed Independent Compliance Auditor (the "ICA") of Herbalife International of America, Inc.; Herbalife International, Inc., and Herbalife, Ltd. (collectively, "Herbalife") in response to the RFA issued by the Federal Trade Commission (the "FTC") in connection with the above captioned action.

Janet Ammerman, Esq.
Brad Winter, Esq.
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Please do not hesitate to contact us if you have any questions or comments concerning our Herbalife ICA Application or any of the subject matter contained therein.

We look forward to hearing from you shortly.

Very truly yours,

Peter B. Zlotnick

Enclosure



Response to
The Federal Trade Commission's
Request for Applications
to Serve as
Independent Compliance Auditor
for Herbalife



August 29, 2016

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Exhibit 1:

- About Farrell Fritz
- About BRG
- About D4

Exhibit 2:

- Team Organization Charts

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- Team Biographies

Exhibit 4:

- Projected Activities Timeline

Exhibit 5:

- ICA Signed Disclosure Statement

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- Exstimated Costs

A. Executive Summary

To effectively shepherd the Company past the Federal Trade Commission's (the "FTC") concerns and mandated remediation set forth in the Stipulated Order, the Independent Compliance Auditor (the "ICA") must establish him or herself as an independent and unbiased trusted leader and advisor to Herbalife International of America, Inc., Herbalife International, Inc. and Herbalife, Ltd. (collectively, the "Company"), working hand-in-hand with management to create a viable and profitable model that will successfully attract and retain consumers. This position requires a collaborative approach through which the ICA can assure the FTC that the Company is complying with its obligations under the Stipulated Order for Permanent Injunction and Monetary Judgment, entered on or about July 25, 2016 by the Honorable Beverly Reid O'Connell, United States District Judge for the Central District of California, in the action styled, *Federal Trade Commission v. Herbalife International of America, Inc. et al.*; Case No. LA CV16-05217 (BRO(GJXx) (the "Stipulated Order"). Yet, the ICA must balance these obligations by taking steps to ensure a seamless transition for management and employees, and accomplish these goals while minimizing any interference with the Company's operations and hierarchical structure.

Mr. Zlotnick is ideally suited for this engagement. Based on Mr. Zlotnick's more than two decades of experience working as and for federal equity receivers and examiners, he has already established credibility with the FTC. During this engagement he will endeavor to gain the confidence of the Company and its employees, from upper level executives to the sales and marketing force, with all constituencies working hand-in-hand to achieve not just FTC compliance, but success for the Company. He has an excellent reputation for integrity and results. He is the former head of litigation of the New York Office of an Am Law 100 firm and, throughout his career, Mr. Zlotnick has surrounded himself with formidable teams of highly specialized and experienced attorneys, as well as outside professionals, to assist with data analysis and monitoring of electronic company materials and communications.

Mr. Zlotnick believes the role of the ICA is forward-looking in perspective, but guided by a firm grasp of the Company's past practices, an understanding of the shortfalls of such practices, and a plan for remediation of those practices. Mr. Zlotnick's proposed work plan for this ICA project anticipates completion of the ICA's duties and responsibilities across three phases.

First, Mr. Zlotnick anticipates an initial assessment period, during which time the ICA team will focus on gathering and analyzing information necessary to make an initial review, assessment and evaluation of the Company's compliance with the Stipulated Order. This phase of the project would include high level meetings with the FTC and the Company, both in group settings and separately, as well as substantive review of critical Company data, documents and materials, including operating procedures, organizational charts, meeting minutes and other related materials sufficient to inform the ICA's work plan.

Additionally, Mr. Zlotnick expects that the Company will appoint a senior executive as the chief point of contact and liaison through which the ICA and his team will conduct such information gathering, as well as coordinate site visits and Company interviews. This appointment is intended

to minimize disruption to the Company's business operations and clarify the role of the ICA within the Company, while equipping the ICA with the tools necessary to fulfill his duties under the Stipulated Order.

The second phase of Mr. Zlotnick's work plan is focused on monitoring the Company's implementation of corrective actions to ensure compliance with the Stipulated Order, based on the ICA team's initial assessment and ongoing recommendations. The interviews and document and data analysis critical to the first phase will continue throughout the second and third phases and will inform and substantiate the ICA team's regular reports to the Company and the FTC.

The critical feature of the third phase of Mr. Zlotnick's proposed work plan is the Company's institutionalization of the compliance program that the ICA, together with the Company and the FTC, will devise to ensure that, as of the conclusion of the ICA project, the Company has in place systems, controls and resources to enable it to continue to operate in full compliance with the Stipulated Order.

The core team of Farrell Fritz attorneys Mr. Zlotnick proposes for this matter worked together recently on a federal equity receivership engagement which concluded with the sale of a real estate portfolio worth more than \$10 million dollars. Added to this team are attorneys from the Firm's Restructuring, Dispute Resolution, Litigation and e-Discovery groups. Collectively, they provide a full-service, dynamic group, each of whom come from a background of Am Law 100 firms and the Federal Government. The team includes attorneys experienced in corporate governance and integrity, corporate fraud, internal investigations, fiduciary law, data analysis and a variety of commercial litigation and dispute resolution settings.

Mr. Zlotnick has selected, subject to the review and approval of the parties, BRG to assist him in monitoring and analyzing financial data and D4 to assist with electronic data gathering, hosting and analysis. The professionals at these firms are familiar with Mr. Zlotnick, including his work ethic and style of professional conduct, and with FTC engagements generally.

Mr. Zlotnick, Farrell Fritz, and the auxiliary professionals selected by Mr. Zlotnick for this engagement represent a rare opportunity for both the FTC and the Company. They are a team of highly skilled and experienced professionals that charge reasonable, middle-market rates and focus on efficiency and collaboration in achieving the goals of their clients. Mr. Zlotnick's well-established track record of successful, relevant engagements speaks for itself.

This proposal outlines in more detail our qualifications, strategic action plan, anticipated time lines and activities, estimated budget forecast, and an outline of how we expect to accomplish the core objectives of this ICA project; namely, to monitor the Company's compliance with Stipulated Order in a collaborative, independent and neutral manner.

B. Personnel and Qualifications

The ICA team would consist of attorneys and professionals from the law firm of Farrell Fritz, P. C., supported by forensic and statistical analysis provided by Berkeley Research Group, LLC (BRG) and information technology expertise provided by D4.

Farrell Fritz litigation partner Peter B. Zlotnick would lead the team. Mr. Zlotnick has served as, or represented, federal equity receivers for more than 25 years. A regional firm of 90 attorneys with offices in New York and on Long Island, the firm handles complex litigation and bankruptcy and restructuring matters, including monitorships and receiverships.

BRG is a leading global advisory firm experienced in monitoring entities subject to a settlement agreement or court order. The firm's data analytics experts have been engaged as monitors and independent compliance consultants in a wide variety of industries. Their deep experience and tested methodologies assist courts and regulators in determining that wrongful conduct has ceased, corrective measures have been fully implemented, and that all provisions of a given settlement agreement have been satisfied.

BRG's two Los Angeles offices provide the ICA team with access to a local office when not onsite at Herbalife.

D4 is an international provider of sophisticated managed data and discovery services to law firms and corporations. D4 employs 200 professionals in 14 offices across the US and in Shanghai.

Further details on each firm, as well as a map showing BRG's U. S. and worldwide offices, are included in **Exhibit 1**.

The Farrell Fritz Legal team would consist of:

Peter B. Zlotnick, Partner, Commercial Litigation (ICA team leader)

Ted A. Berkowitz, Partner, Bankruptcy & Restructuring

Kevin P. Mulry, Partner, Commercial Litigation – former Assistant U. S. Attorney

Patrick T. Collins, Partner, Bankruptcy & Restructuring

Matthew D. Donovan, Counsel, Commercial Litigation

Katherine C. Cole, Counsel, eDiscovery

Kristina M. Wesch, Counsel, Corporate, Bankruptcy & Restructuring

Adam M. Rafsky, Associate, Commercial Litigation

Joshua M. Herman, Associate, Commercial Litigation

Xavier Saunders, Paralegal, Commercial Litigation

Peter Zlotnick has served as a court-appointed equity receiver and examiner in federal regulatory actions for nearly 20 years. He has also represented numerous other equity receivers of corporations and business entities that have been accused by the Federal Trade Commission (the "FTC") and/or by other federal and state law enforcement agencies of defrauding consumers by

means of unfair and deceptive trade practices since 1994. He is a member of the National Association of Federal Equity Receivers (“NAFER”), serving as co-chair of NAFER’s Regulatory Outreach Committee. He is also a member of the Fourth Cohort of the Russell and Angelica Berrie Foundation’s Berrie Fellows Leadership Program.

A comprehensive list of Mr. Zlotnick’s experience related to receiverships appears in Section D. Prior Experience and References, and in his professional biography in **Exhibit 3**.

Ted A. Berkowitz has more than 30 years of experience in the areas of bankruptcy, dispute resolution, litigation management, and turnaround and restructuring. He has been appointed as both an Examiner and a Chapter 11 operating trustee by the Bankruptcy Court for the Eastern District of New York.

Kevin Mulry was an Assistant United States Attorney in the U. S. Attorney’s Office for the Eastern District of New York for fifteen years prior to joining Farrell Fritz. He held several supervisory positions in the U. S. Attorney’s Office,, including Principal Deputy Chief of the Civil Division and Chief of the Long Island Civil Division. He personally directed monitorships of carting companies in two criminal RICO and forfeiture prosecutions, *United States v. Hickey* and *United States v. Avellino*, and supervised other cases involving labor union monitorships. He handled numerous fraud and forfeiture investigations and prosecutions, and also represented the National Credit Union Administration in conservatorship litigation involving CEDC Federal Credit Union and Polish and Slavic Federal Credit Union.

Patrick Collins’ experience includes representation of parties to receivership proceedings and litigation/liquidation and bankruptcy trustees. He currently represents the trustee of the liquidation trust formed in the chapter 11 bankruptcy cases of Metro Affiliates, Inc. and its affiliates (SDNY).

Matthew Donovan and **Adam Rafsky** have served as counsel to federal equity receivers appointed by the FTC in consumer fraud receiverships. In this capacity, they participate in all phases of the compliance and/or regulatory enforcement receivership activities.

Kathryn Cole is a commercial litigator and co-leader of the eDiscovery practice group at Farrell Fritz. She supervises and coordinates in house resources and outside vendors in relation to electronic discovery involved in litigation matters.

Kristina Wesch has represented official creditors’ committees, national banks and other institutional entities as well as debtors in related bankruptcy, creditors’ rights and distressed debt matters. Kristina has also worked with ad hoc committees of secured and unsecured debt holders in both in-court and out-of-court restructurings.

Joshua Herman has represented businesses engaged in commercial disputes involving breach of contract in state and federal courts and in international arbitration. Josh has also defended companies in administrative proceedings and qui tam actions arising under the False Claims Act.

Xavier Saunders has over 15 years of experience as Paralegal and Litigation Support Manager. In these roles, Mr. Saunders's responsibilities have included: managing and supervising teams of paralegals and clerks and coordinating the successful completion of multi-faceted projects; electronically filing litigation papers in federal and state court proceedings; performing legal research; assisting in preparing and assembling legal reports and memoranda; creating and maintaining document management and tracking indices and databases; and assisting in the production, receipt, storage, organization, searching and review of electronically stored information. Mr. Saunders received his B.A. in Criminal Justice, with Dean's List honors, from John Jay College of Criminal Justice.

Both **Peter Zlotnick** and **Kevin Mulry** are members of the International Association of Independent Private Sector Inspectors General (IAIPSIG). Members of IAIPSIG are independent, private sector firms with legal, auditing, investigative, management and loss prevention skills, employed by an organization to ensure compliance with relevant law and regulations, and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization.

The BRG Forensic & Statistical Analysis team would include:

Jay I. Borow, Managing Director, Restructuring & Transaction Advisory (BRG team leader)

Edwin N. Ordway, Jr., Managing Director, Restructuring & Transaction Advisory

Allen Applbaum, Global Leader & Managing Director, Global Investigations & Strategic Intelligence

Michael A. Fahlman, CPA, CFF, CIRA, Managing Director

C. Paul Wazzan, Ph.D., Managing Director & head of Century City (Los Angeles) office

Dawn W. Eash, Senior Managing Consultant, Los Angeles

Kerry Ruoff, CPA, CFF, Managing Director

William Russo, Managing Director, Restructuring & Transaction Advisory

Andrew Cowie, Director, Restructuring & Transaction Advisory

Alex Roque, Director, Restructuring & Transaction Advisory

Eric S. Berman, Managing Consultant, Restructuring & Transaction Advisory

Practice leaders; Forensic & Financial Analysis; Overall Case Administration

Jay Borow has over 30 years of experience in the areas of bankruptcy, turnaround and restructuring as well as forensic and financial investigations, and litigation consulting. He has acted as Receiver and Financial Advisor to the Receiver in several cases brought by the FTC.

Ed Ordway specializes in providing financial restructuring advisory and investigative services to companies, creditors, equity holders, and third-party purchasers in the workout and financial communities.

Practice leader; Forensic & Data Analysis; Monitor Expertise

Allen Applbaum is a leading expert in independent monitorships and receiverships, providing oversight to the government, regulators, and the judiciary. Among his high-profile monitorships was his selection by the U.S. Attorney's Office for the Southern District of New York to serve as the Independent Monitor for the world's largest online gaming site, with more than 50 million registered users.

Industry Expertise; Monitor Expertise; Forensic & Data Analysis

Michael Fahlman has served as a court-appointed auditor to evaluate and opine on litigants' compliance with court orders, and prepared reports and testified in court in these independent roles. He has also consulted in numerous matters involving direct sales organizations, including multilevel marketing companies.

Statistical Analysis

Dr. Paul Wazzan specializes in large-scale (i.e., millions of records) data analytics (e.g., data acquisition, database design and development and statistical/econometric analysis).

Dawn Eash's experience includes sampling and survey design, advanced statistical and analytical methods, predictive analytics, and database construction and validation.

Forensics & Data Analysis

Kerry Ruoff has over 30 years of success in performing financial audits, leading-high profile forensic accounting investigations, and serving as expert witness in a variety of commercial litigation disputes.

On behalf of the appointed Monitor of a demolition and hauling company mandated by the New York City Business Integrity Commission (BIC), Ms. Ruoff led the auditing and forensic accounting investigations involving internal controls, operations and financial reporting risks. During this two-year commitment, she identified key financial and operational risks, interacted directly with senior management and accountants to address concerns and feasible solutions. Ms. Ruoff provided quarterly reports on findings and recommendations to BIC and assisted company personnel in implementing changes to its financial reporting practices.

Industry Expertise & Financial Analysis

William Russo specializes in providing financial restructuring advisory and investigative services to companies and creditors. Mr. Russo has worked on restructuring of a multilevel marketing company as well as restructurings in many other industries.

Financial Analysis, Document Review

Andrew Cowie has over 12 years of experience in bankruptcy, turnaround, restructuring, forensic and financial investigations, and litigation consulting.

Alex Roque is a Certified Public Accountant with over 20 years of experience providing financial and accounting-related advisory services. He has provided financial reporting and analysis for both private and public companies.

Eric Berman specializes in financial advisory services in the troubled company and corporate finance environment.

The D4 Information Technology team would be comprised of:

Charles Kellner, SVP Discovery Engineering (D4 team leader)

John Evans, SVP, Forensic Services

John Clingerman, VP Forensic Services

Olivia Gerroll, VP and Senior Consultant

Chris VanAernam, Forensic Consultant II

Lori Ramsperger, Enterprise Solutions Engineer

John Forames, Senior Forensic Consultant

Jill Ragan, Esq., Senior Litigation Support Manager

Charles Kellner brings more than 30 years of experience in legal technology, computer forensics, and business process for eDiscovery, internal investigations and responses to government subpoenas and requests for production. During this period he worked with Debevoise & Plimpton, Arthur Andersen LLP, Electronic Evidence Discovery, Daticon, SPi, and D4 LLC. He has provided expert testimony on computer forensic examination and also in the areas of discovery cost and burden, proportionality, and defensible uses of search and concept-based search technologies. He has served as a court-designated neutral third party repository for ESI. He speaks and writes frequently on best practices for eDiscovery, most recently as invited panelist at Georgetown Law Center Advanced eDiscovery Institute and the ABA Section of Employment Litigation for ethics in eDiscovery. He worked with Ms. Gerroll and Messrs. Coons and Forames to coordinate discovery response and investigations on behalf of the City of New York following the World Trade Center attack. He holds a BA from Brandeis University and a JD from Lewis & Clark Law School.

John Evans is D4's Senior Vice President, Forensic Services. He brings more than twenty years of computer forensics, information technology and investigative experience from D4, Project Leadership Associates, the Illinois Office of Executive Inspector General, Quantum BioMod, Corp., and the Illinois Criminal Justice Information Authority. He is a Certified eDiscovery Specialist and a licensed private investigator. He has led more than 200 investigations involving digital evidence for matters involving trade secrets, intellectual property, fraud, and employment matters and has substantial experience as an expert witness and in preparation of complex expert reports. Besides multiple advanced training in computer forensics technologies, Mr. Evans holds a BA Computer Science from Wittenberg University.

John Clingerman is D4 Vice President of Forensic Services. He brings more than ten years of experience as a computer forensic examiner and 24 years in law enforcement, of which 14 years were served at the rank of Police Investigator. He has experience as a testifying expert in hundreds

of cases and as a third-party neutral investigator and repository of ESI (electronically stored information). His expert work has been cited in multiple United States District Court judicial opinions. He is a Certified Forensic Computer Examiner, Certified Electronic Evidence Collection Specialist, Certified Cellebrite UFED Mobile Device Examiner, a licensed Private Investigator, and a member of HTCIA, IACIA and InfraGard, among others. He holds a BS in Computer Forensics Champlain College and AAS degrees in both Information Technology and in Criminal Justice.

Olivia Gerroll is D4 Vice President and Senior Discovery Consultant. She brings 25 years of experience with D4, Hyperion Technologies, eSentio Technologies, Continuum Worldwide, Thomson-West Baker Robbins, Heller Ehrman LLP, Uniscribe, Anderson Kill Olick, PC, and Dewey Ballantine LLC. She is a business process specialist for eDiscovery and internal and governmental investigations response planning with broad experience in eDiscovery technologies and process. She is a Certified Litigation Support Specialist, eDiscovery Professional, Relativity Review Specialist and IPRO Eclipse Administrator. She holds a BS Marketing cum laude from SUNY-FIT with advanced coursework in paralegal studies, marketing and economics at New York University and Baruch College. With Mr. Coons and Mr. Forames, she served on the computer forensics and data collection and analysis team for the City of New York Law Department in assistance to thirty New York City agencies following the World Trade Center attack.

Christopher VanAernam is a D4 Forensic Consultant II. He is responsible for computer forensic imaging, computer forensic examination, forensically sound collection of ESI from email, file server, mobile device and structured data systems for litigations, internal investigations, and responses to government subpoenas and information requests. He brings five years of experience from D4 and from Onondata County Center for Forensic Sciences, a certified ASCLD computer forensics lab. Mr. VanAernam holds a BA in Cybersecurity and Information Assurance with a concentration in Cybercrime Investigations and Forensics, *cum laude*, from Utica College. He is a Certified Computer Examiner and AccessData Certified Examiner.

Lori Ramsperger is D4's Solutions Engineer for IAAS and Enterprise clients. She assists clients in the design, development, procurement and operation of enterprise-wide litigation support and compliance systems for structured and unstructured data, both for on-premises and cloud implementation. She has more than 25 years of experience in business model process improvement, project management, software development, and operations consulting at Peoplefluent, SumTotal Systems, Windstream, PAETEC, Pinnacle Software, CSC, Rochester Telephone and Unisys. She is ISO 9000-2001 certified as an auditor, writer and corrective action coordinator, Six Sigma Green Belt and ITIL Best Practices. She holds a BA from St. John Fisher College and Associate degrees in Applied Science, Accounting, Statistics and Computer Programming from Monroe County Community College and Rochester Business Institute.

John Forames is a Senior Forensic Consultant at D4, LLC. He brings more than 15 years of experience in computer forensics, law enforcement, and litigation support technologies from D4 LLC, New York County Office of the District Attorney (DANY), Sullivan & Cromwell, Baker Robbins & Co., and Frontline Communications. He holds a long list of computer forensic technology certifications including Mobile Phone Seizure Certification, GIAC Certified Forensic Examiner,

Access Data Certified Examiner, and HTCIA and IACIS. He served two tours in the United States Marine Corp and was honorably discharged at the rank of Sergeant. With Mr. Coons and Ms. Gerroll he served on the computer forensics and data collection and analysis team for the City of New York Law Department in assistance to thirty New York City agencies following the World Trade Center attack.

Jill Ragan is a Senior Litigation Support Manager at D4 LLC. She brings more than fifteen years of experience in legal technology, law practice, public service and project management with D4, Friends of Homeless Veterans, Robbins Arroyo LLP, Robbins Geller Rudman & Dowd LLP, Pacific Ergonomics, Horton Oberrecht Kirkpatrick & Martha, Robbins Umeda & Fink, and Williamson Enterprises. She is an expert in the organization and management of eDiscovery resources for the analysis and review of large volumes of ESI in complex litigations and investigations.

The D4 team will be supported by various members of their Forensic Services, Operations, Litigation Support and Technical Support groups as needed. D4's personnel includes computer forensics investigators and ESI collection specialists, litigation discovery consulting and compliance professionals, litigation support project managers, a Microsoft Azure and Office 365 specialist, and data center operations staff. Practice leaders each have more than 20 years of experience in their specialties, experience with neutral third party assistance in judicial proceedings, and substantial professional accomplishment and contribution in the litigation support industry.

Team members from each of these firms do not have existing or expected significant time commitments that would limit their time available to work on the ICA team.

Organization charts for each firm's team are included in **Exhibit 2** and professional biographies are included in **Exhibit 3**.

C. Prior Experience and References

Prior Experience and References of Peter B. Zlotnick, Esq. and Farrell Fritz, P.C.

Specific Equity Receivership References:

Project

- *FTC v. Metropolitan Communications Corp., et al.*, 94 Civ. 0142 (JSR) (S.D.N.Y. 1994).

Reference

- **Current Organization:** Asset Forfeiture Program, Defense Criminal Investigative Service
-
- **Contact Person:** Stephen Gurwitz, Esq. (formerly Lead Trial Counsel, Federal Trade Commission)

- **Current Title:** Senior Investigator
- **Address:**
Mid-Atlantic Field Office
4800 Mark Center Drive, #10D25-04
Alexandria, VA 22350
- **Email Address:** Stephen.Gurwitz.ctr@DODig.Mil
- **Telephone Number:** 703-604-0174

Reference

- **Current Organization:** Cerberus Capital Management LP
 -
 - **Contact Person:** Daniel R. Goodman, Esq. (Court-Appointed Receiver of Metropolitan Communications Corp, et al.)
 - **Current Title:** Deputy General Counsel
 - **Address:** 875 Third Avenue, New York, NY 10022
 - **Email Address:** DGoodman@cerberusoperations.com
 - **Telephone Number:** 212-909-1412
-

Project:

- *FTC v. Five Star Auto Club, Inc., et al.*, 99 Civ. 1693 (CM) (S.D.N.Y. 1999)

Reference:

- **Organization:** Federal Trade Commission
 -
 - **Contact Person:** James Kohm, Esq.
 - **Current Title:** Associate Director, Division of Enforcement, Bureau of Consumer Protection
 - **Address:** 600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
 - **Email Address:** jkohm@ftc.gov
 - **Telephone Number:** 202-326-2640
-

Project:

- *Artis v. Mount Moriah Church of God, et al.*; 98 Civ. 4247 (BAF) (E.D.N.Y. 2006)

Reference:

- **Current Organization:** Paulose & Associates PLLC
 - **Contact Person:** Mathew Paulose, Jr.
 - **Current Title:** Partner
 - **Address:** 5676 Riverdale Ave., Ste. 314, Bronx, NY 10471-2100
 - **Email Address:** mpaulose@paulosepllc.com
 - **Telephone Number:** 347-843-6640
-

Project:

- *FTC v. World Interactive Gaming Corp. et al.*, 98 Civ. 5115 (JS) (E.D.N.Y. 1998)

Reference:

- **Current Organization:** BSA
- **Contact Person:** Joel M. Schwarz, Esq. (Formerly Trial Counsel, Office of the New York State Attorney General)
- **Address:** 20 F. Street, NW, Suite 800, Washington, DC 20001
- **Email Address:** Joels@bsa.org
- **Telephone Number:** 202-530-5166
-

Reference:

- **Current Organization:** BSD Advisors, LLC
 - **Contact Person:** Hernan M. Serrano (Court-appointed Receiver of World Interactive Gaming Corp. and Better Budget Financial Services, Inc. (See Below))
 - **Current Title:** Principal
 - **Address:** 217 Woodbury Road, Suite 153, Woodbury NY 11797
 - **Email Address:** H.Serrano@BSDAdvisors.com
 - **Telephone Number:** 866-982-2822
-

Project:

- *FTC v. Better Budget Financial Services, Inc., et al.*, 1:04-CV-12326 (WGY) (D. Mass. 2004)

Reference:

- **Current Organization:** Law Offices of Carole A Paynter (Formerly Trial Counsel, Federal Trade Commission)
 - **Contact Person:** Carole A. Paynter, Esq.
 - **Address:** 22919 Merrick Blvd., Ste. 239, Laurelton, NY 11413-2108
 - **Email Address:** NYLadyLaw9@gmail.com
 - **Telephone Number:** 917-856-4045
-

Project:

- *FTC v. The Tax Club, Inc. et al.* 13-CV-210 (JMF) (S.D.N.Y. 2013)

Reference:

- **Organization:** Federal Trade Commission
- **Contact Persons:**
 - o Deborah A. Marrone; Esq., Assistant Regional Director, Northeast Region
 - o Ann Weintraub, Esq., Senior Trial Counsel, Northeast Region
- **Address:** One Bowling Green, Suite 318, New York, New York 10004
- **Email Address:** dmarrone@ftc.gov; aweintraub@ftc.gov
- **Telephone Numbers:** Marrone Direct: 212-607-2802; Weintraub Direct: 212-607-2815
-

Reference:

- **Organization:** Karr Tuttle Campbell, P.C. (Special Counsel to the Receiver)
 - **Contact Person:** George Treperinas, Esq.
 - **Title:** Shareholder
 - **Address:** 701 Fifth Avenue, Suite 3300, Seattle WA 98104
 - **Email Address:** gtreperinas@karrtuttle.com
 - **Telephone Number:** (206) 224-8053
-

Project:

- *United States Commodity Futures Trading Commission v. Hunter Wise Commodities, LLC, et al.*, Case No. 12-81311-CIV-Middlebrooks 2012

Reference:

- **Organization:** Damian & Valori, LLP
 - **Contact Person:** Kenneth Dante Murena, Esq. (General Counsel to the Receiver)
 - **Title:** Partner
 - **Address:** 1000 Brickell Avenue, Suite 1020, Miami, FL 33131
 - **Email Address:** kmurena@dvlp.com
 - **Telephone Number:** 305-371-3960
-

General References:

- **Organization:** National Association of Federal Equity Receivers
 - **Contact Person:** Maureen M. Whalen
 - **Title:** Executive Director
 - **Address:** 2828 Cochran Street, Unit 178, Simi Valley, CA 93065
 - **Email Address:** maureen.whalen@nafer.org
 - **Telephone Number:** 805-285-0756
-

- **Organization:** McKenna Long & Aldridge, LLP
 - **Contact Person:** Gary O. Caris, Esq.
 - **Title:** Partner and Member, NAFER Board of Trustees
 - **Address:** 300 South Grand Avenue, 14th Floor, Los Angeles, CA 90071
 - **Email Address:** gcaris@mckennalong.com
 - **Telephone Number:** 213-243-6107-3960
-

- **Organization:** Wiand Guerra King, LLP
 - **Contact Person:** Burton W. Wiand, Esq.
 - **Title:** Partner and Member, NAFER Board of Trustees
 - **Address:** 5505 West Gray Street, Tampa, FL 33609
 - **Email Address:** bwiand@wiandlaw.com
 - **Telephone Number:** 813-347-5101
-

For further information regarding the prior experience and relevant matters handled by Peter B. Zlotnick, Esq., please refer to his full CV, attached hereto at **Exhibit 3.

BRG

Liberty Contracting Monitorship

For the New York City Business Integrity Commission, designed and executed auditing procedures to monitor the company's operational and financial reporting activities, including the impact, if any, on customers' billings. Conducted field site visits and coordinate investigations. Prepared written quarterly reports summarizing findings, next steps and recommendations.

BRG Professional: Kerry Ruoff

Organization: Kaiser Law Firm

Dates: September 2012 – September 2014

Contact:

Geoffrey Kaiser, Esq. (now a partner at Rivkin Radler)

Rivkin Radler

926 RXR Plaza

Uniondale, NY 11556

Tel: 516.357.3161

Email: Geoffrey.Kaiser@rivkin.com

PokerStars Monitorship

Selected by the U.S. Attorney's Office for the Southern District of New York to serve as the Independent Monitor for the world's largest online gaming site, with more than 50 million registered users, following the government's filing of a civil suit to seize the company's domain names. Subsequently, the company reached a "domain name use agreement" that allowed it to reopen on the condition that the company agree to have the government appoint an independent monitor who would oversee its compliance with the blocking of players from the United States from accessing the site to play for real money. Mr. Applbaum put together a multidisciplinary team comprising former prosecutors, investigators, technology experts, financial and enterprise data analytics experts, and forensic accountants to assist him in monitoring the company and evaluating its cooperation and compliance with this agreement with the government. This work helped to pave the way for the parties to negotiate a fair and equitable settlement resolving all civil disputes.

BRG Professional: Allen Applbaum

Organization: Skadden, Arps, Slate, Meagher & Flom LLP

Contact:

Larry Spiegel, Partner

4 Times Square

New York, New York 10036

Tel: 212.735.4155

Email: lawrence.spiegel@skadden.com

Natural Products Group, LLC

As advisor to the Senior Secured Lenders, assisted the lenders in reviewing the Company's short term liquidity, long term business plan, challenging business plan assumptions, negotiating debt documents including new business terms and future reporting requirements.

BRG Professional: William Russo

Organization: GE Capital (Agent for bank syndicate)

Dates: 2009 – 2011

Contact:

Daniel Wallitt

GE Capital

Tel: 201.956.4405

Email: Daniel.Wallitt@ge.com

Direct Sales

In multiple cases, analyzed various legal and case law implications on the legitimacy of direct sales organizations' business models. The analyses include consideration and evaluation of the Koscot, Amway, Omnitrition, and Burnlounge cases. Analyzed tens of millions of financial records to perform the economic analyses to address a key legal issue on whether an organization is a pyramid scheme or a legitimate business. The analyses assessed whether an organization's compensation structure primarily compensates its consultants based on sales versus recruiting. The analyses also evaluated the issue of internal consumption, inventory loading and other related key issues.

BRG Professional: Michael Fahlman

Organization: Quarles & Brady LLP

Contact:

Edward Salanga, Partner

One Renaissance Square

Two North Central Avenue

Phoenix, AZ 85004

Tel: 602.229.5422

Email: edward.salanga@quarles.com

Direct Sales

While Mr. Fahlman was the partner-in-charge of Grant Thornton's west region forensic practice, he regularly worked with Grant Thornton's general counsel and professional standards offices to handle complex irregular and fraud related issues for direct sales organization audits. The issues included allegations of fraud, misconduct and general corporate oversight and governance. Mr.

Fahlman was responsible for assessing, evaluating and concluding on whether an organization's response to allegations and events were reasonable and appropriate in light of the relevant facts and circumstances, and whether the findings were reliable. Mr. Fahlman's work was integral to the audit opinion and assessment of management and the company's corporate compliance.

BRG Professional: Michael Fahlman

Contact:

These engagements were while Mr. Fahlman was at Grant Thornton, and his role was at times in a privileged consulting role on behalf of Grant Thornton's general counsel office, and he is not in a position to disclose the client names or waive potential attorney work product privilege. However, Mr. Brad Preber may be contacted regarding Mr. Fahlman's work.

Brad Preber – National Managing Partner Business Risk Services
Grant Thornton LLP
Tel: 602.474.3440
Email: brad.preber@us.gt.com

Independent/Neutral Compliance and Accounting Expert

Prior to BRG, Mr. Fahlman was the partner-in-charge of Grant Thornton's west region forensic practice. In this role, Mr. Fahlman was involved in numerous neutral expert roles, including serving as the signing partner issuing the binding decision, serving as a consulting partner on complex audit and fraud matters, and serving as the quality control partner prior to the issuance of a binding decision. Mr. Fahlman also served as a court appointed neutral.

BRG Professional: Michael Fahlman

Contact:

These engagements were while Mr. Fahlman was at Grant Thornton, and he is not in a position to disclose the client names or provide references. However, Mr. Brad Preber may be contacted regarding Mr. Fahlman's work.

Brad Preber – National Managing Partner Business Risk Services
Grant Thornton LLP
Tel: 602.474.3440
Email: brad.preber@us.gt.com

Forensics and Data Management

BRG Professionals: Global Intelligence + Strategic Intelligence team (Adam Cohen)

Organization: TPG Capital

Contact:

Clive Bode, General Counsel
301 Commerce Street, Suite 3300

Fort Worth, TX 76102
Tel: 817.871.4000

Organization: Global Atlantic Financial

Contact:

Virginia Johnson, Associate General Counsel
132 Turnpike Rd Ste 130
Southborough, MA 01772-2129
Tel: 508.460.2461

Organization: Weil, Gotshal & Manges LLP

Contact:

David Lender, Partner
767 Fifth Avenue
New York, NY 10153-0119
Tel: 212.310.8153
Email: david.lender@weil.com

Organization: Littler Mendelson P.C.

Contact:

Paul Weiner, Shareholder
Three Parkway
1601 Cherry Street, Suite 1400
Philadelphia, PA 19102
Tel: 267.402.3010
Email: pweiner@littler.com

BRG Professionals: Global Intelligence + Strategic Intelligence team (Antonio Rega)

Organization: Dorsey & Whitney LLP

Contact:

Caroline Boudreau Sweeney, Global Director, E-Discovery & Client Technology Services
Suite 1500, 50 South Sixth Street |
Minneapolis, MN 55402-1498
Tel: 612.340.2983
Email: Sweeney.Caroline@dorsey.com

D4

With its seventeen year history, its depth of professional skills, its breadth across the US and its presence in Europe and Asia, D4 is well-positioned to support the Herbalife ICA for the services it requires and for the period of years it may span. Here are examples of D4 projects:

Neutral Repository, Reporting, Information Technology, Computer Forensics

In the Matter of JP Morgan Chase Bank, N.A. v Durham Commercial Capital, Index No 14/8813 in the Supreme Court of the State of New York, County of Monroe, a Special Master engaged D4 to take custody of, preserve, analyze and produce the computerized data resources of a law firm which performed mortgage enforcement and foreclosure services for large multinational banks. The banks included JP Morgan Chase Bank, CitiMortgage, Santander Bank, Ocwen Loan Servicing, Select Portfolio Servicing, Wells Fargo Bank, and Bank of America. Each banking institution through outside counsel had petitioned the court for return of its customer files that were in receivership. D4 extracted data from a proprietary document management system and parceled out the requisite case files while maintaining the privacy of mortgage holders and the attorney-client privilege of the banking institutions. Reference James C. Moore, Esquire, Special Master (585) 732.0424. Jcmoore@gmail.com

Neutral Third Party, Project Design, Project Management, Sampling Cost Containment

On behalf of parties involved in False Claims Act litigation and following a discovery order by the US 4th Circuit Court of Appeals, D4 analyzed and provided sampling of a population of email spanning 12 years, more than 100 company employees, and from among more than 50,000 backup tapes. D4 provided the backup tape services, the sampling methodology, the extraction of emails from the backup tapes, and the services for processing, hosting and production for both parties. From design through completion the project took about eighteen months. United States ex rel King v. Solvay (USDC, SD Texas) No H-06-2662. Reference Andrea Trento, Esq. andrea.trento@hoganlovells.com (410) 659-2748

Multi-Matter eDiscovery Management and Hosting:

Stuart B. Claire, Esq., Buchanan Ingersoll & Rooney, stuart.claire@bipc.com (215) 665-3603. Others available on request.

Complex-Case Data Acquisition, Analysis, Storage and Management:

Following the attack on the World Trade Centers, the Office of the Corporation Counsel of the City of New York engaged core members of this D4 team to collect and analyze data from more than thirty city agencies and more than 800 individuals. D4 managed this ESI for many years on behalf of the City for many related legal matters. Jack Hupper, Esq., CIO, Office of the Corporation Counsel of the City of New York, jhupper@law.nyc.gov (212) 788-0990.

Longevity and Protection Against Obsolescence; Reporting; Information Governance

On behalf of a Fortune Global 20 company, D4 collected, preserved, and analyzed computer hard drives, server data, mobile devices, and email systems in multiple US states and in several other countries. The matter involved state, federal and Congressional investigations and several related

civil litigations. The volume managed and protected by D4 exceeded ten Terabytes for more than 400 individuals. During the phase of collection and analysis D4 reported to a US attorney and the FBI with respect to how potentially relevant data was identified, collected, and filtered. Data storage and hosting requirements have exceeded ten years. Through the consistency of D4's business model, the project is successfully managed even in the context of obsolescence of a generation of litigation support technologies. Project familiarity, knowledge, and support have stayed with D4 staff throughout. References are available confidentially and with client permission and submission of a non-disclosure agreement.

D. Proposed Activities

Overview of Proposed Activities

Mr. Zlotnick, in his capacity as the proposed ICA of Herbalife and its affiliated U.S. entities, proposes to engage a team of highly skilled legal (Farrell Fritz), forensic accounting and data analysis (BRG) and forensic information technology (D4) professionals. As described in greater detail below, the ICA's team has devised a preliminary work plan (the "Work Plan") to perform and implement the Scope of Work set forth in the FTC's Request for Applications (the "RFA") and the Stipulated Order. Mr. Zlotnick intends to refine this Work Plan further if he is selected for the position of ICA, as he and his team of professionals acquire additional information and data during the course of the project.

Proposed Herbalife ICA's Projected Timeline and Graph of Proposed Activities

From a broad perspective, the Work Plan covers three basic categories or phases of activities: (a) the Assessment Phase; (b) the Implementation Phase; and (c) the Institutionalization Phase. Each of the three phases is presented in the attached color-coded and cross-hatched bar graph, which is annexed hereto as **Exhibit 4**.

We anticipate that, taken as a whole, these phases of the ICA project will occur in the form of a classic "bell curve" with the first phase, the Assessment Phase, encompassing the ramp-up or "learning curve" portion of the project in which a significant amount of time will be dedicated to forming an understanding of the Company and its business practices. The second phase, the Implementation Phase, will comprise a transformative stage in which the ICA and his team of professionals, working collaboratively with the Company's management and officials from the FTC, will make recommendations and begin to implement material changes to the Herbalife business model, programs and policies. And the third and final phase of the project, the Institutionalization Phase, will see a lessening of activity by the ICA team as the recommendations and reports that the ICA will have made during the first and second phases, to implement systems, controls and staffing internally at Herbalife become institutionally actualized and integrated into the Herbalife corporate culture, policies and procedures. This last phase of the project, if we are successful, will result in the implementation of core standard operating procedures and organizational changes that will enable the Company to continue operating in the future in compliance with the Stipulated Order long after the ICA project ends

We anticipate that each phase of the ICA project will not be stand-alone initiatives. Many of the specific activities that we propose to undertake during each of the phases will be ongoing functions that will require greater or lesser involvement of team members throughout other phases of the project. Likewise, other work items will consist of discrete, one-time actions.

Exhibit 4 is intended to capture the specific activities that the ICA team intends to undertake through a color-coded and cross-hatched bar graph of the projected timeline and schedule of the specific proposed ICA activities, which are broken down quarterly. It demonstrates both the level of activity we anticipate will occur during each quarter (the cross-hatched or horizontal lines) and where the three phases are likely to overlap.

The color codes are broken into the following schemes: (i) the Assessment Phase is depicted by red bars; (ii) the Implementation Phase is depicted by blue bars; and (iii) the Institutionalization Phase is depicted by yellow bars. The action items that we anticipate undertaking during each phase of the project are numerically listed next to the color-coded bar graph and are accompanied by a descriptive list of activities. Those actions that occur in more than one phase appear in the description column for the phases that are applicable to them.

In addition to color coding, the Exhibit 4 bar graph also includes horizontal, cross-hatched or no lines, illustrating the level of activity that we anticipate will occur in connection with each action item during each quarter of the ICA project. The bars containing horizontal lines represent the periods of heaviest activity for a particular action item during each quarter. The cross-hatched bars depict relatively heavy periods of activity for any given quarter. And, the bars with no lines illustrate quarters when we anticipate relatively low- levels of work for that period.

Activities Specific to Farrell Fritz

Upon his selection, the ICA and a core team will conduct individual meetings with the FTC and Company's senior executives (and their advisors) and, if feasible, a joint initial meeting of all parties at which they can solidify the precise role and scope of the ICA within the Company. Thereafter, the ICA will refine the Work Plan as appropriate. In connection with formulating the revised Work Plan, ground rules and protocols will be agreed upon to permit the ICA to accomplish his tasks while ensuring minimal interference and disruption in the day-to-day operations of the Company. A clear and detailed initial budget will also be incorporated into the revised Work Plan. The revised Work Plan will be flexible and will remain a work in progress as the ICA and his team become familiar with the Company and as facts and data are developed. Adjustments to the revised Work Plan will take into consideration the input of both the FTC and the Company.

Simultaneously with the formulation of the revised Work Plan, the ICA and his counsel will engage in an initial period of intense diligence. The diligence phase will include additional meetings with Company senior executives, board members, representatives of the Company at which the ICA will, among other things, strive to gain a full understanding of the historic and current corporate structure of the Company, how information is housed at the Company and by the Company, and

how such information can best be accessed for review and collection. The diligence period will additionally include interviews with Business Opportunity Participants (as that term is defined on page 2 of the Stipulated Order), members of their Downline (as that term is defined at page 3 of the Stipulated Order), as well as Preferred and Retail Customers of Herbalife (as those terms are defined at page 4 of the Stipulated Order) and other third parties. The ICA will use this information to coordinate data collection with D4 (discussed in more detail below) and map out data analysis methodology and grid with BRG (also discussed in more detail below).

As set forth in greater detail above, the Projected ICA Timeline annexed hereto as Exhibit 4 identifies the various activities that the ICA currently believes will be necessary for him to engage in under the Work Plan, subject to adjustment based upon the ICA's findings during the initial diligence period. Paramount among these activities is the ICA's review of all current marketing materials and new marketing materials as they are produced – both by the Company and the Company's outside vendors in order to ensure compliance with the Consent Order.

Equally as critical to the revised Work Plan is the establishment of a safe harbor for open communications between the ICA and the Company's employees, which is essential to establish self-reporting that will allow employees beneath the officer level to communicate concerns regarding compliance with the new business practices to communicate directly with the ICA without fear of reprisal. Such self-reporting will be achieved through a dedicated portal maintained by D4. In addition, the ICA will set up hotlines and conduct up- and down-the-line surveys to assure compliance by Company representatives and to map, monitor and analyze website usage. The foregoing activities are intended to assist the Company in achieving its reform goals and to implement a sustainable, robust, long-term compliance program.

During the term of his engagement, the ICA anticipates he will report to the FTC and the Company on a formal basis as set forth under by the terms of the Stipulated Order, the RFA and the Monitor Agreement, but will also report to the FTC and the Company on an ad hoc informal basis.

Activities Specific to BRG

Methods of Analyzing Information

BRG's skilled data analytics and statistical evaluation team will review all financial information that has been obtained through the interview and data retrieval process, and will make additional diligence requests for other financial and performance-related information as required. Where practicable, BRG will be given direct access to the Company's internal information systems and databases to independently verify information and data received, as well as to obtain forensic information.

BRG will create various testing platforms and control mechanisms and metrics to evaluate and analyze the activities of the Company. Such testing platforms and methodologies will enable BRG to efficiently understand and evaluate large volumes of data and quickly determine the appropriateness of such related activities tested. BRG's forensics team will establish procedures

and processes to enable BRG to ensure that information BRG has received is complete, robust and accurate so that it can measure whether the Company's performance complies with the applicable provisions of Section I of the Stipulated Order.

Methods of reporting information

BRG is skilled at written report preparation as well as technical expert reports. BRG's ability to make the complex simple is a hallmark of its practice. In most situations, BRG's reporting will be accomplished through frequent updates, both verbally as well as in detailed and comprehensive written reports. Any written reports will include a detailed narrative and be accompanied by extensive exhibits to assist the ICA and simplifying the reporting process.

Proposed Activities Related to D4

Interviews

D4 will assist the ICA's legal and forensic accounting teams to interview Company resources in such a way as to identify sources of electronically stored information (ESI) that are relevant to the ICA's duties and responsibilities set forth in the Stipulated Order.

Data Mapping and Data Preservation and Acquisition

Based on interviews and verification, D4 will create a conceptual map of data resources that enables the proposed ICA to execute his duties pursuant to the Stipulated Order in an efficient and organized manner. D4 will also make recommendations for methods of preservation, sampling, review and analysis of ESI.

Hosting Document Productions

To the extent that the Company produces ESI to the ICA and/or has made other productions to the FTC and other parties in connection with any recent litigations and investigations, D4 will obtain, image and host copies of these productions for use by the ICA and his professionals for their analysis. These production resources and their underlying processed data sets have the potential to save time and cost in the identification, acquisition and analysis of baseline data.

Sources of ESI

Among the sources of ESI to be investigated by D4 are:

- Email systems and archives
- File Systems
- Website Content
- Local and offline storage of ESI
- Accounting systems
- Marketing content

Real estate records
Mobile device records
Records of relationships and/or complaints among customers and distributor

E. Potential Conflicts of Interest or Bias

Farrell Fritz

Except as otherwise stated herein, Farrell Fritz, P.C. (“Farrell Fritz”) is not aware that any attorney(s), para-professional(s) or other employee(s) or representative(s) employed by Farrell Fritz has knowledge of any actual, potential or perceived conflicts of interest or bias involving team members, associated firms or organizations and any employee(s) assigned to the project, or proposed subcontractor(s), including current or former employment, and contracts or grants, with the FTC or Herbalife.

In the interest of full disclosure, the firm notes that one of its shareholders, who is a member of the ICA team, is married to a partner of Sidley Austin LLP who has never been and is not involved in any Herbalife matter. The firm has considered this issue carefully and does not believe this relationship raises any ethical or conflicts issues.

BRG

Except as otherwise stated herein, neither Berkeley Research Group (“BRG”) nor any current or former employee(s) or representative(s) employed by BRG is aware of any actual, potential or perceived conflicts of interest or bias involving team members, associated firms or organizations and any employee(s) assigned to the project, or proposed subcontractor(s), including current or former employment, and contracts or grants, with the FTC or Herbalife.

While BRG does not believe that any actual or perceived conflicts or bias exist, out of an abundance of caution and in the interest of full and fair disclosure, BRG hereby discloses that the Firm has six matters adverse to the FTC, including matters relating to the pharmaceutical industry, and the *Federal Trade Commission v. Vemma Nutrition Company* matter, in which BRG expert Emre Carr testified in September 2015. This matter was last active in September 2015.

However, while the matters are open, the most recent activity was February 2016, when time was charged to one of the matters; the other matters have not been active since 2014-2015, and in no instance did any of these matters involve Herbalife. Therefore we are confident that no conflicts of interest or bias exist with respect to this project and BRG.

D4

In the context of the conflict-check requirements of the RFA at Section F and Section 6.1 of the Order, D4 has evaluated the docket sheets, parties and associated counsel in the following cases and also the content of the complaint.

2:2016-cv-05217	https://ecf.cacd.uscourts.gov/cgi-	Federal Trade
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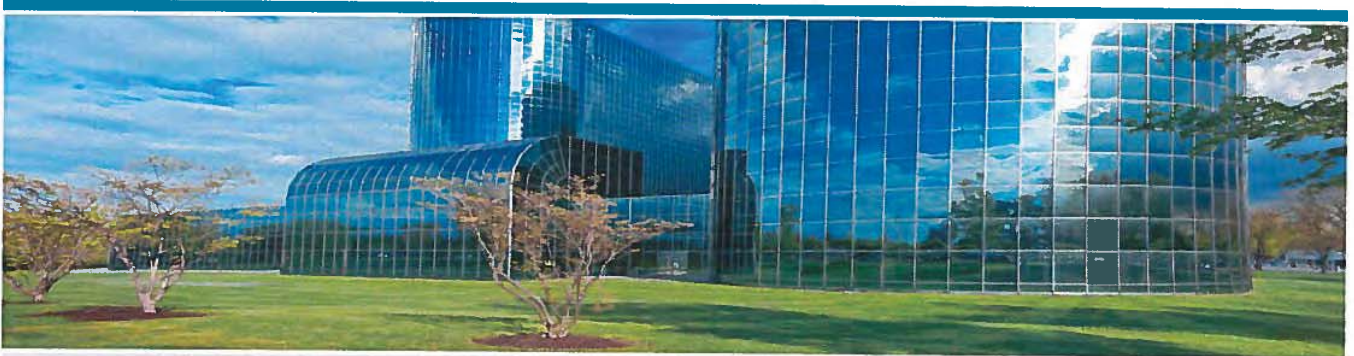
	bin/iqquerymenu.pl?653330	Commission v. Herbalife International of America Inc et al
1:2015-cv-00898	https://ecf.nysd.uscourts.gov/cgi-bin/iqquerymenu.pl?438180	Olagues v. Icahn Associates Holding LLC et al
2:2014-cv-02850	https://ecf.cacd.uscourts.gov/cgi-bin/iqquerymenu.pl?587220	Abdul Awad v. Herbalife Ltd. et al
1:2014-cv-01847	https://ecf.ilnd.uscourts.gov/cgi-bin/iqquerymenu.pl?293755	Clark v. Herbalife International, Inc.

Neither D4 nor its staff potentially assigned to this project have any conflict or potential conflict of interest. D4 systematically checks new matters against the full text content and contact list of existing matters in order to identify potential conflicts prospectively.

F. Estimated Costs



Exhibit 1



Attorney Advertising

Uniondale
1320 RXR Plaza
Uniondale, NY 11556-1320
516.227.0700

Hauppauge
631.547.8400

New York
212.687.1230

Water Mill
631.537.3100

www.farrellfritz.com

About Farrell Fritz

Farrell Fritz has built its reputation on trust, open communication and results. Since our founding in 1976, our mission has remained steadfast – to bring success to our clients, service to our community and honor to our profession.

Recognized as one of the most respected, progressive and dynamic law firms on Long Island, Farrell Fritz is home to more than 85 attorneys offering strong experience and depth in a diverse range of practice areas.

Our attorneys counsel corporations and individuals throughout the metropolitan New York region and beyond. Our partners are recognized leaders in their fields and are highly knowledgeable in the industries they serve.

When asked to define what separates us from other law firms, time and again our clients cite the core values that form our foundation. Among these are:

The highest level of integrity. Many law firms claim to have it. But few have established as strong a reputation for delivering what they promise as Farrell Fritz.

A team-oriented “no surprises” approach that emphasizes consistent communication.

A commitment to deliver the highest level of services cost-effectively – so that our clients' success is measurable on their bottom line.

Uncommonly strong depth of talent in each practice area.

A unique understanding of the most complex legal issues.

Bankruptcy & Restructuring

Business Divorce

Construction

Corporate & Finance

- Corporate
- Corporate Finance and Securities
- Corporate Governance
- Financial Services
- Not-For-Profits

Distressed Assets

eDiscovery

Emerging Companies
& Venture Capital

Environmental

Estate Litigation

Health Law

Labor & Employment

Land Use & Municipal

- Land Use and Zoning
- Land Use Litigation
- Municipal Representation

Litigation

- Alternative Dispute Resolution
- Appellate Practice
- Banking Litigation
- Commercial and Business Litigation
- Construction Litigation
- Corporate Governance Litigation
- Creditors' Rights
& Bankruptcy Litigation
- Criminal Law, including
White Collar Defense
- Environmental Litigation
- Franchise Litigation

Litigation continued...

- Insurance, Mass Tort and Products
Liability Defense
- Intellectual Property Litigation
- Real Estate Litigation

Real Estate

- Acquisitions, Sales and Development
- Construction
- Leasing
- Real Estate Finance

Retail

Tax

Tax Certiorari & Condemnation

Trusts & Estates

- Estate Administration
- Estate Planning



ABOUT BERKELEY RESEARCH GROUP

Berkeley Research Group is a leading global strategic advisory and expert consulting firm that provides independent advice, data analytics, authoritative studies, expert testimony, investigations, and regulatory and dispute consulting to Fortune 500 corporations, financial institutions, government agencies, major law firms, and regulatory bodies around the world. Drawing on a strong foundation in data analytics, BRG comprises highly credentialed experts, prominent academics, CPAs, experienced business leaders, former government officials, and seasoned consultants.

Named by *Forbes* as one of America's Best Management Consulting Firms in 2016, BRG is headquartered in Emeryville, California, with offices across the United States and in Asia, Australia, Canada, Latin America, the Middle East, and the United Kingdom. BRG has two offices in Los Angeles (Downtown LA and Century City).

BRG has the agility to assemble teams with the specific, nuanced talent needed to address a particular problem and provide highly specialized and strategic advice in areas including:

MONITORSHIPS

BRG's Global Investigations + Strategic Intelligence experts have experience monitoring entities subject to a settlement agreement or consent order. They can readily assess the organization, make recommendations for improvement, and report on the implementation of the required operational and organizational changes.

Our multi-disciplined monitoring teams include former federal prosecutors, cyber specialists, computer forensics and technology experts, data analytics professionals, and forensic accountants with established reputations with courts, regulators, and other government agencies around the world.

Our experts have been engaged as monitors and independent compliance consultants in the financial services, education services, construction, manufacturing, gaming, and pharmaceutical industries in response to violations of trade practices, OFAC sanctions regulations, the Bank Secrecy Act and money laundering, and other violations of banking regulations, as well as breaches of anti-bribery and corruption laws. Our deep experience and tested methodologies in these matters assist courts and regulators in determining that bad conduct has ceased, corrective measures have been fully implemented, and that all provisions of a given settlement agreement have been satisfied.

DATA AND STATISTICAL ANALYSIS

BRG's data analytics experts understand how complex data systems work. They are engaged by clients to collect, cull and sample, analyze, and produce billions of records and hundreds of terabytes of data from disparate systems. They employ the latest technologies, data visualization tools, and data science techniques to ensure that the right data is collected and analyzed efficiently and effectively to meet the needs of the investigation.

We are skilled at identifying the right information needed for analysis by using our experience in econometrics, finance, and statistics, coupled with a specialized understanding of corporate organization and technology systems. We can convert and standardize data from virtually any format (whether paper or electronic), and build useful databases that allow us to perform effective data analysis and reporting.

Our data analytics professionals play an important role in BRG's monitoring engagements, including undertaking critical testing of large volumes of data against regulatory rules, synthesizing disparate data to identify patterns of compliance and non-compliance, and provide pathways to allow our clients to better understand their own data. For example, our teams have:

- Created numerous customized testing platforms to absorb large volumes of U.S. dollar denominated transactions and test them for compliance with BSA/AML and OFAC sanctions regulations.
- Acquired over three million transactions from a peer-to-peer lender and conducted extensive analytics on the data to identify improper accounts, evidence of laundering, and provide the client with a roadmap to getting the institution's Know Your Customer ("KYC") program compliant with applicable KYC regulations.

FORENSIC ANALYSIS

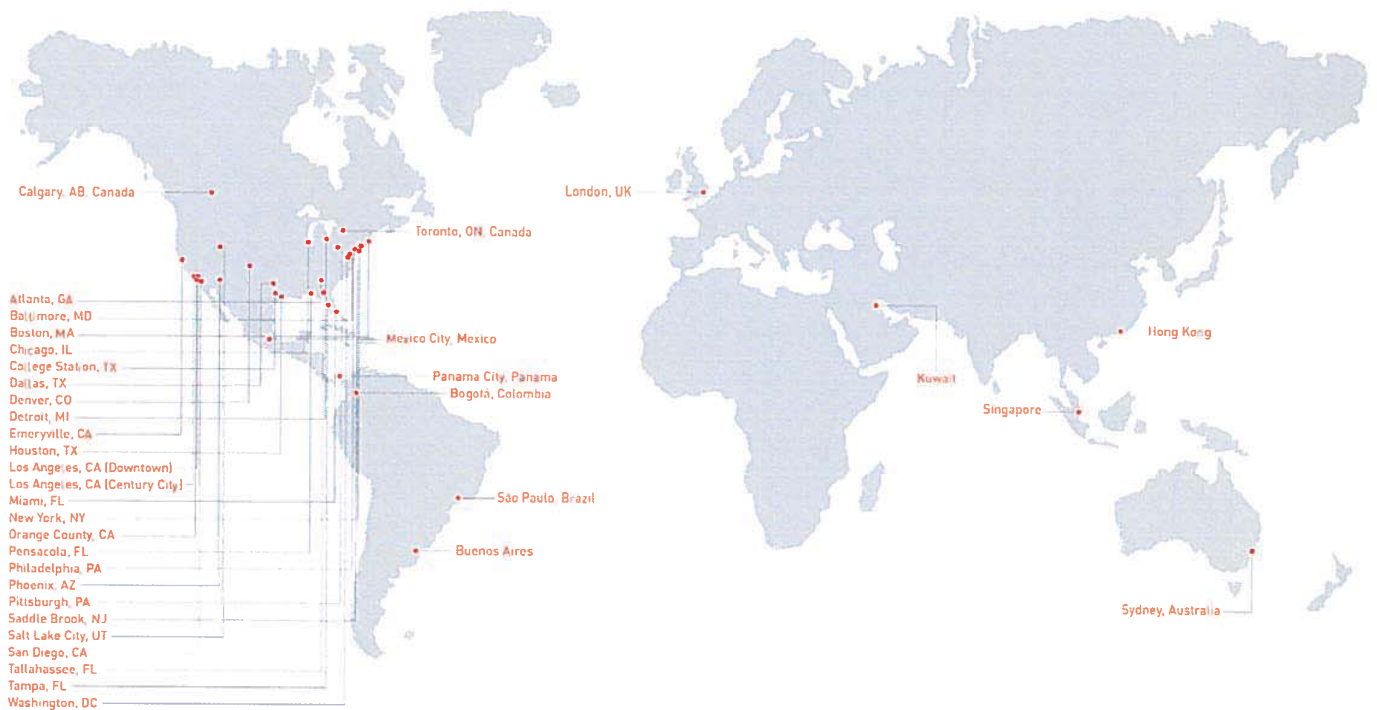
Our experts have experience in evaluating the financial and operational records of global organizations in multiple industries. We specialize in forensic accounting investigations, financial record reconstruction, interview techniques, computer forensics and electronic data retrieval, enterprise-wide complex data modeling and analysis, quantifying damages, providing expert witness testimony at trial, and designing, implementing, and remediating internal control environments.

Comprised of former Big Four partners, internal auditors, former prosecutors, and certified public accountants, BRG's forensic accounting teams are adept at translating complex financial transactions and numerical data into terms that laypersons can understand and interpret in a legal setting. Our forensic accountants use their understanding of industry, finance, accounting, economics, and data management, and their collective professional experience, to review business and financial reporting information, information systems, and accounting and auditing standards and procedures, all while leveraging eDiscovery, data analysis and evidence gathering, vetted investigative techniques, and hypothesis testing to assist clients in fact gathering in order to determine the who, what, when, where, why, and how of an alleged illegal or fraudulent activity.

We have repeatedly applied our expertise in high-profile investigations and litigation by advising companies and their legal counsel in both prosecuting and defending allegations of earnings manipulation, inadequate disclosure, fraudulent transactions, and foreign corruption, or in support of special committee investigations involving whistleblower allegations. We can assist in responding to allegations or a government subpoena, preparing for an external audit, and designing and remediating processes and procedures that will help prevent suspect activities from recurring.



GLOBAL LOCATIONS





D4 is a leading international provider of managed data and discovery services to law firms and corporations. D4 offers full-service capabilities with local infrastructure to support litigation, investigations, compliance and other legal matters worldwide. Depth of staff, experience and innovative technology allow the company to provide first-class performance worldwide.

Founded in 1997, D4 has grown to an international presence. With over 200 employees, D4 has offices in Buffalo, Chicago, Detroit, Grand Rapids, Lincoln, New York, Omaha, Orlando, Philadelphia, Phoenix, Rochester, San Diego, Tampa and Shanghai, China. D4's state-of-the-art Tier 3 data center and operations in Rochester are complemented by electronic discovery, litigation support, computer forensics and paper document services throughout other offices across the country. D4 also maintains data hosting environments in the United Kingdom and China.

D4 has landed on Inc. Magazine's Inc. 500/5000 list of the fastest growing private companies in America for six years in a row, giving D4 the distinction of being an Inc. 5000 Honor Roll Honoree. For the past six years, D4 has been recognized on the "Rochester Top 100," honoring the fastest growing companies in Western New York.

D4 is an Orange-Level Best-in-Service provider of Relativity, a title D4 has earned each year kCura has awarded the designation. D4 has also earned Ipro's Platinum Processing and Platinum Review statuses, the highest partnership levels Ipro offers.

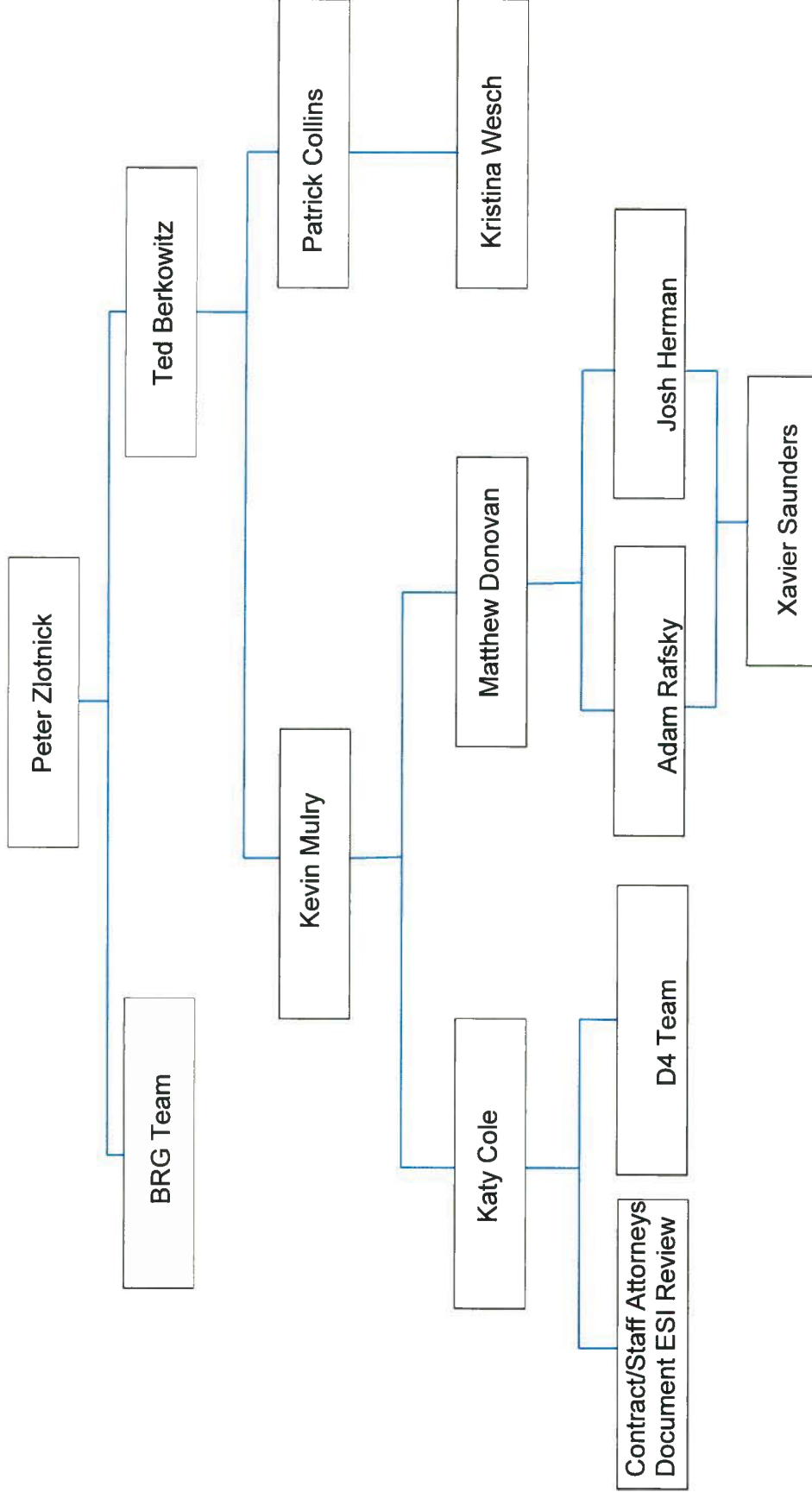
D4 and its team of professionals have long-term association and membership with ALSP, ARMA, AIIM, EDRM, The Sedona Conference, ILTA, Georgetown Advanced eDiscovery Institute, Women in eDiscovery, Today's General Counsel Institute, and the Association of Corporate Counsel. D4's senior staff speaks at continuing legal education seminars, writing about current issues in eDiscovery in industry and legal publications, and working with technologists on new tools for use in eDiscovery.

Our solutions are a unique combination of the latest hardware, software and people, packaged into a custom offering that meets a customer's specific set of requirements. Clients have the option of accessing their solution on demand (cloud-based) or on premise. Powered by best-of-breed software solutions, D4 offers corporate counsel and law firms the flexibility and power they need in an eDiscovery solution, while keeping costs predictable.

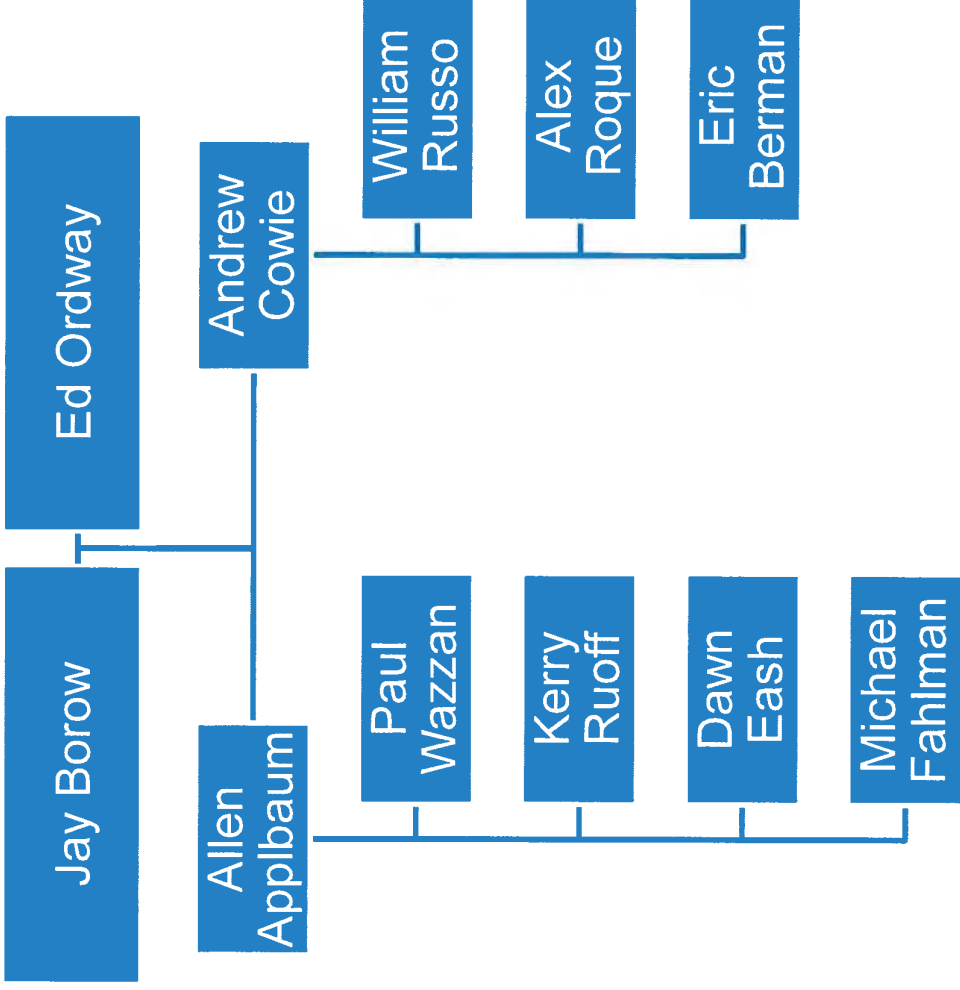
At D4, we focus on technology and process to streamline the discovery lifecycle in the most defensible, practical and cost-effective manner. These are reasons why D4's following continues to grow among Amlaw 250 law firms and Fortune 500 law departments.

Exhibit 2

Farrell Fritz Herbalife ICA Team Organization Chart



The BRG Team



powered by people

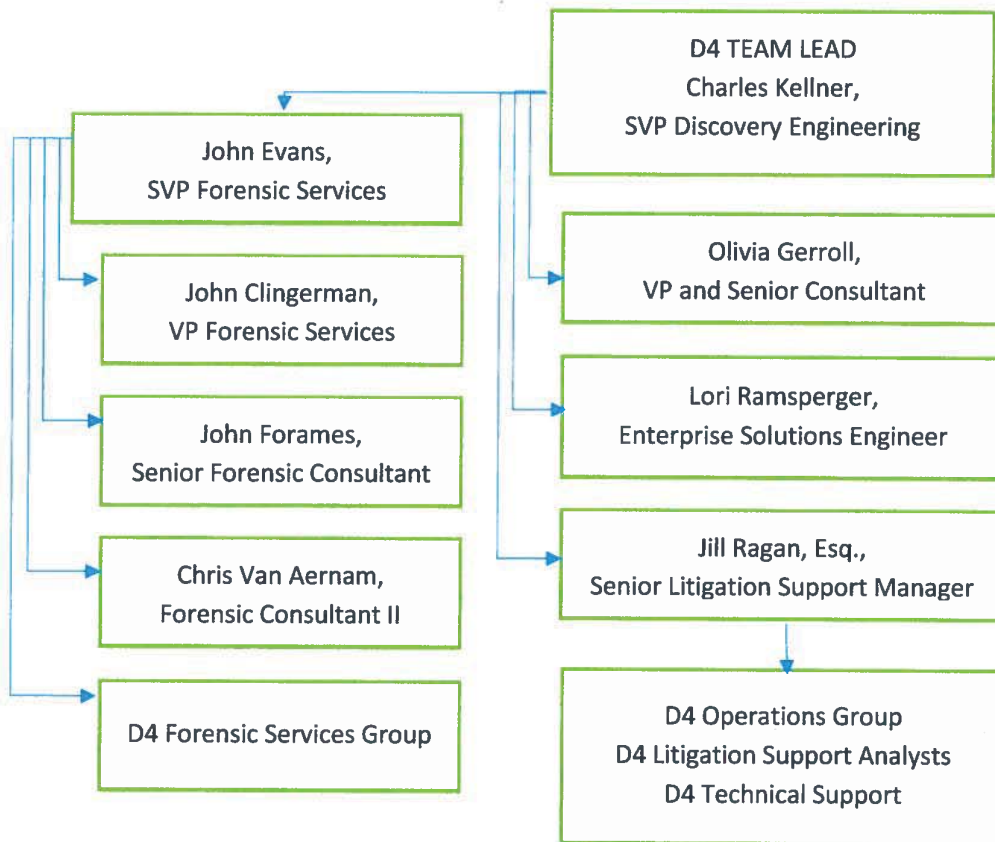


Exhibit 3

Peter B. Zlotnick

Commercial Litigation

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LOCATION: [New York City](#)

Peter B. Zlotnick is a partner in the Commercial Litigation Practice Group at Farrell Fritz. He practices in the area of complex commercial litigation, real estate and construction litigation, corporate and securities litigation, and bankruptcy litigation, including corporate restructuring, workouts and management disputes. In addition to his general practice, Peter has extensive experience in the area of federal equity receiverships, particularly in the context of consumer fraud actions brought by the Federal Trade Commission (the "FTC") and other federal and state enforcement agencies.

From July 2012 through April 2014, Peter was a partner and headed the Litigation Department at the law firm of Kagan, Lubic, Lepper, Finkelstein & Gold, LLP ("KLL"). Previously, from 2002 through June 2012, he was a member of Mintz Levin Cohn Ferris Glovsky & Popeo, P.C. ("Mintz Levin"). While at Mintz Levin, Peter served in numerous management capacities, including as in-house ethics counsel for the firm's New York office and as the administrative and case management partner of the firm's New York Litigation Practice Group. Before joining Mintz Levin, Peter led the litigation group at Duval & Stachenfeld LLP from 2000 through 2002. From 1997 through 2000, Peter was a member of Olshan Grundman Frome Rosenzweig & Wolosky LLP. He was previously associated with the firm of Whitman Breed Abbott & Morgan LLP ("WBAM"), and its predecessor, Whitman & Ransom, from 1990 through June, 1997.

Federal Equity Receiverships Experience

Metropolitan Communications

Peter's experience with federal equity receiverships first began in 1994. He and the law firm with which he was then associated, WBAM, were retained to represent Daniel R. Goodman, Esq., a court-appointed receiver and a bankruptcy partner of the firm. Mr. Goodman had also served as a trustee for a number of significant bankrupt companies. He had been appointed by the Hon. John F. Keenan, United States District Judge for the Southern District of New York, to serve as an equity receiver in connection with a massive wireless telecommunications scheme uncovered by the FTC in connection with the action captioned, *FTC v. Metropolitan Communications Corp., et al.*, 94 Civ. 0142 (JSR) (S.D.N.Y.).

Metropolitan Communications involved a fraudulent scheme to sell wireless telecommunication license application services to approximately 4,000 consumers for a fee of \$7,000, which fee the defendants misled consumers into believing was sufficient to construct and build a commercially viable wireless telecommunications system, called a specialized mobile radio ("SMR") system.

Pursuant to the then applicable rules and regulations promulgated by the Federal Communications Commission (the "FCC"), the SMR licenses were wasting assets that the consumers could lose in their entirety unless they satisfied certain stringent conditions and requirements. For instance, if the consumers did not invest hundreds of thousands of



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Education

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Peter B. Zlotnick

dollars to develop a commercially viable wireless telecommunications system within eight months from the date that the FCC issued the license, the license expired, and the consumers would lose any conditional rights that they otherwise would have obtained to operate a commercially viable cellular SMR system. At the commencement of the receivership, more than half of the consumers' licenses had expired and thousands more were soon going to lapse.

Ultimately, the *Metropolitan Communications* receivership team was able to preserve all of the consumers' SMR licenses. These unique SMR telecommunications licenses had been issued by the FCC on a first-come, first served basis, but, pursuant to certain FCC rules and regulations, those licenses expired and became void *ab initio* after eight months if the licensee did not properly load and construct a legitimate cellular system with end-users. The actual construction costs for these kinds of systems was approximately a quarter of a million dollars, but the *Metropolitan Communications* consumers were led to believe that, for the service fee of \$7,000, they could comply with all applicable FCC rules and regulations concerning the construction of their telecommunications systems. That was not true.

With the active support and assistance of United States Senators Alphonse D'Amato and John McCain, the receivership team petitioned the FCC and was able to obtain a four month extension of the eight month construction period. It also succeeded in convincing the FCC to issue a rule waiver -- the first in the FCC's history, thereby enabling the receivership team to revive expired licenses, elongate the construction time for those that were about to expire and to package on the secondary market each of the consumers' SMR licenses for sale to the Nextel Corporation ("Nextel"). Nextel purchased all the licenses for approximately \$35 million. Ultimately, after the receiver completed a claims distribution process, each *Metropolitan Communications* consumer received a recovery of virtually 100% of his, her or its original investment.

National Scholastic Society

A few years after *Metropolitan Communications*, Peter was recommended by the FTC and the Office of the Attorney General of the State of New Jersey to serve as the temporary examiner in *FTC v. National Scholastic Society, Inc. et al.*, 97 Civ. 2423 (WHW). In May 1997, the Hon. William H. Walls, United States District Judge for the District of New Jersey, appointed Peter, pursuant to an *Ex Parte* Temporary Restraining Order, to serve as the Temporary Examiner of National Scholastic Society, having the full powers of a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure. This authorized him, *inter alia*, to conduct an investigation and, if he deemed necessary or advisable, to conduct hearings and examine witnesses concerning the telemarketing practices of the defendants.

Five Star Auto Club

In April 1999, the Hon. Colleen McMahon, United States District Judge for the Southern District of New York, entered an Order appointing Peter to serve as the temporary receiver of Five Star Auto Club, Inc., together with each of its subsidiaries and affiliates, in connection with another action commenced by the FTC. In that action, *FTC v. Five Star Auto Club, Inc., et al.*, 99 Civ. 1693 (CM), the FTC alleged that Five Star and its principal officers and shareholders defrauded thousands of consumers by operating an automobile leasing pyramid scheme primarily over the Internet. After a bench trial, the Court issued findings of fact and conclusions of law, determining that Five Star and the individual defendants did defraud consumers in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Court thereafter continued Peter's appointment, naming him the permanent receiver of Five Star. *FTC v. Five Star Auto Club, Inc.*, 97 F.Supp.2d 502 (S.D.N.Y. 2000).

Mount Moriah

In Fall 2006, Peter was appointed permanent receiver in a mortgage fraud dispute, *Artis v. Mount Moriah Church of God, et al.*; 98 Civ. 4247 (BAF) (E.D.N.Y.). In *Mount Moriah*, Peter was ordered to marshal and liquidate, for the benefit of the creditors of the defendants, all of the defendant church's assets, as well as those of individual defendants.

Peter B. Zlotnick

The Tax Club

In 2014, Peter was appointed the liquidating receiver by the Hon. Jesse M. Furman, United States District Judge for the Southern District of New York, in connection with the settlement of a \$140 million consumer fraud action. The action, *FTC v. The Tax Club, Inc. et al.* 13-CV-210 (JMF) (S.D.N.Y.), was commenced by the FTC and the States Attorneys General of New York and Florida. Peter continues to serve in the capacity of liquidating receiver in *The Tax Club, Inc.* action, with the full power and authority of an equity receiver. The Stipulated Judgments and Orders authorize him, *inter alia*, to manage, operate and sell numerous multi-family residential, commercial and mixed-use real properties that were acquired by certain of the defendants during the period that they allegedly conducted their fraudulent scheme. Peter and his team successfully completed *The Tax Club, Inc.* receivership by selling each of the portfolio's real estate parcels for an aggregate sales price in excess of \$11 million.

Hunter Wise Entities

In July 2016, Peter and Farrell Fritz were appointed to serve as special counsel to Melanie E. Damian, Esq. in her capacity as the Court-appointed receiver of Hunter Wise Services, LLC, Hunter Wise Credit LLC and Hunter Wise Trading, LLC (collectively, the "Hunter Wise Entities"). This was in connection with a fraudulent transfer and unjust enrichment action against one or more third parties, captioned, *Damian, As Receiver, v. ICBC Standard Bank Plc, et al.* (the "Hunter Wise Claw-Back Action"). The Hunter Wise Claw-Back Action arose out of an action that the Commodity Futures Trading Commission ("CFTC") commenced in February 2013 against the Hunter Wise Entities and their principals in connection with the action styled *United States Commodity Futures Trading Commission v. Hunter Wise Commodities, LLC, et al.*, Case No. 12-81311-CIV-Middlebrooks.

Additional Experience

Since 1994, Peter has also actively represented other federal equity receivers, including Mr. Goodman., Jay I. Borow and Hernan Serrano, Jr., each of whom have been appointed receiver in connection with other actions brought by federal and state enforcement agencies in federal court, including, but not limited to, the FTC, pursuant to Sections 5 and 13(b) of the FTC Act, 15 U.S.C. § 45 and 53(b). Mr. Goodman, Mr. Borow and Mr. Serrano were appointed receiver in the following actions:

- (a) *FTC v. Metropolitan Communications Corp., et al.*, 94 Civ. 0142 (JSR) (S.D.N.Y.);
- (b) *FTC v. Micom, Corp., et al.*, 96 Civ. 0472 (SS) (S.D.N.Y.);
- (c) *FTC v. Student Aid, Inc., et al.*, 96 Civ. 6548 (LMM) (S.D.N.Y.);
- (d) *FTC v. Trans-Asian Communication, Inc., et al.*, 97 Civ. 5764 (MBM) (S.D.N.Y.);
- (e) *FTC v. Fighting Back, Inc., et al.*, 98 Civ. 1461 (RPP) (S.D.N.Y.);
- (f) *FTC v. World Interactive Gaming Corp. et al.*, 98 Civ. 5115 (JS) (E.D.N.Y.); and
- (g) *FTC v. Better Budget Financial Services, Inc., et al.*, 1:04-CV-12326 (WGY) (D. Mass.).

In connection with the above-captioned actions, Peter has been involved in all phases of the compliance and/or regulatory enforcement receivership activities from the inception of the matters through judgment, settlement and/or claims distribution. In each case, Peter has coordinated the receiver's activities with representatives of the FTC or enforcement agencies and other interested parties. Additionally, he has worked closely with teams of legal professionals, forensic accountants and financial advisors, as well as forensic IT and business professionals retained by the receiver for the principal purpose of ensuring that receivership assets are preserved, marshaled and frozen and the *status quo ante* is maintained for the duration of those matters.

Peter B. Zlotnick

Peter has also provided legal counsel and advice to the receivers with whom he has worked on a wide range of issues affecting receiverships, including, but not limited to, substantive issues concerning the powers, duties, liabilities and rights of the receivers to investigate, preserve, freeze and take custody of the business records and assets of the defendant companies. Peter has further taken discovery, examined witnesses under oath, conducted forensic investigations and asset tracing, drafted and argued motions and prepared and presented verbal and written reports on behalf of the receivers he has represented to the courts that have appointed those receivers.

In connection with receivership matters, he has also negotiated and reviewed contracts and settlements on behalf of himself, as examiner or receiver, and on behalf of the receivers he has represented. Prior to the commencement of, and during the course of, each receivership or Rule 53 proceeding, Peter, together with the receivership teams with which he has worked, has investigated the activities and transactions of the targeted companies and their principal shareholders, officers, directors and control persons. In accordance with the court orders governing his or the other receivers' respective appointments, Peter has also communicated with the appointing courts, regulatory agencies and consumers allegedly injured by the activities of the defendants in connection with a myriad of matters related to the receivership activities.

Peter has appeared in court in connection with numerous collateral actions, hearings and proceedings related to the foregoing receiverships and has participated in the liquidation and claims distribution process of one or more of those estates.

In sum, Peter has extensive experience in the administration of all phases and aspects of the equity receiverships and examinerships in which he has participated. He has been a member of the National Association of Federal Equity Receivers since 2013 and is a member of the International Association of Independent Private Sector Inspectors General since approximately 2011. In 2015, Peter was selected to serve as a member of the Fourth Cohort of the Russell and Angelica Berrie Foundation's Berrie Fellows Leadership Program (BFLP). The highly-selective, eighteen-month program is dedicated to, among other things, developing Fellows' senior level management and leadership skills. Peter has also written and spoken extensively on the subject of federal regulatory receiverships.

Peter is duly admitted and in good standing to practice law before the courts of the State of New York. He is also admitted to practice law before the United States District Courts for the Southern and Eastern Districts of New York, the District of Colorado, as well as before the United States Court of Appeals for the Second Circuit.

Peter received his Juris Doctorate from the Benjamin N. Cardozo School of Law, Yeshiva University in 1990. In addition to his law degree, Peter holds a Master's Degree in Public Policy from Harvard University's John F. Kennedy School of Government, which he received in 1988. Peter graduated with honors from Colgate University, earning a Bachelor of Science degree with a dual concentration in International Affairs/Political Science in 1985.

Ted A. Berkowitz

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Ted A. Berkowitz is a partner in the bankruptcy and restructuring practice group. He represents corporate debtors, secured and unsecured creditors, official committees, landlords, purchasers of assets and other parties in interest in bankruptcy court proceedings. He defends preference and fraudulent conveyance actions as well as claims arising out of failed business transactions. Mr. Berkowitz also counsels clients in out-of-court workouts and debt restructurings. Since 2002, he has developed a practice in health care restructuring on behalf of both debtors and creditors.

With more than twenty-five years in the bankruptcy field, Mr. Berkowitz's experience includes representation of major institutional lenders and corporate and individual creditors in many well known Chapter 11s. He has represented the Official Creditors' Committees in some of the largest and highest profile Chapter 11 cases filed in the Eastern and Southern Districts of New York. He has been appointed as both an Examiner and a Chapter 11 operating trustee by the Bankruptcy Court for the Eastern District of New York, and is a member of the official mediation panel for the Bankruptcy Courts of the Southern and Eastern Districts of New York. He also served on the subcommittee which advised the Bankruptcy Court for the Eastern District of New York concerning the formulation of the new local bankruptcy rules. He is past Vice Chair of the Bankruptcy Committee of the Nassau County Bar Association.

In 2012, Mr. Berkowitz was appointed to the Board of Editors of the *Journal of Bankruptcy Law*. An often-published author on bankruptcy and secured lending topics, he served as editor of the *Bankruptcy Strategist*, a publication of the *New York Law Journal*, and is currently a member of its board as well as a frequent contributor. He has been general counsel of the Long Island chapter of Turnaround Management Association and had been on its board since the chapter's inception. He is co-author of A Practitioner's Guide to Compensation under Sections 331 and 506 (c) of the Bankruptcy Code, 92 ComL.J. 126 (1987) and Representing the Indenture Trustee in Chapter 11 Cases, Bankruptcy Practice and Strategy, (Warren, Gorham & Lamont 1991). He frequently lectures for the New York State Bar Association, the National Business Institute, the Nassau County Bar Association, the American Bankruptcy Institute and Practising Law Institute, and is a member of the board of trustees of the Association of Bankruptcy Professionals and the advisory board of the Bankruptcy LL.M. program at St. John's University Law School.

Mr. Berkowitz was selected for the *New York Super Lawyers® – Metro* lists in 2011 and 2012 (Bankruptcy & Creditor/Debtor Rights) and in 2013-2015 (Bankruptcy). In 2007, he was recognized by *Long Island Business News* in "Who's Who in Litigation Law".

Mr. Berkowitz earned his juris doctorate from Boston University Law School in 1983, *cum laude*, where he was a member of the *Law Review*. In 1980, he graduated from the State University of New York with honors.

Mr. Berkowitz is admitted to practice in New York and the United States District Courts for the Eastern and Southern Districts of New York. He has an AV Preeminent Martindale-Hubbell Peer Review Rating.



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Kevin P. Mulry

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Kevin P. Mulry is a partner in Farrell Fritz's commercial litigation department and also works with our healthcare and labor & employment practice groups. Mr. Mulry has handled all aspects of civil litigation through trial and appeal. He is a frequent contributor to Farrell Fritz's [New York Health Law](#) blog.

Prior to joining Farrell Fritz, Mr. Mulry served for fifteen years as an Assistant United States Attorney in the Civil Division of the U.S. Attorney's Office for the Eastern District of New York. From 2005 through 2010, he was Principal Deputy Chief of the Civil Division, with supervisory responsibility for the office's affirmative civil litigation, including health care fraud, mortgage and government procurement fraud, civil rights, environmental litigation, civil racketeering and labor litigation, civil penalty actions, financial litigation and civil and criminal forfeiture. He was previously Chief of the Long Island Civil Division, supervising the affirmative and defensive work in the Long Island office, and Chief of Employment Litigation, overseeing the employment cases in the district.

Mr. Mulry has extensive trial and litigation experience in all areas of civil litigation. He has tried cases involving employment discrimination, criminal forfeiture, tort, medical malpractice, and environmental law. He has coordinated the national investigation of pharmaceutical health care fraud cases under the False Claims Act, including allegations of off-label marketing, kickbacks and improper billing. He has also argued numerous appeals to the U.S. Court of Appeals for the Second Circuit. Notable cases he has handled include the Benefit Plan Administrators prosecution, a bribery, fraud and obstruction of justice case arising out of the awarding of two multi-million dollar health care contracts by Nassau County; the Hickey and Avellino Carting cases, involving forfeiture and monitorship of carting companies controlled by organized crime; and the defense of the Department of the Interior in litigation with the Shinnecock Indian Nation, which sought federal recognition as an Indian tribe. In 2004, he received the Henry L. Stimson Medal from the Association of the Bar of the City of New York for outstanding service as an Assistant United States Attorney.

Mr. Mulry was a law clerk to the Honorable John E. Sprizzo, United States District Judge for the Southern District of New York. He was associated with Simpson Thacher & Bartlett in New York and Cahn, Wishod & Lamb in Melville. He has also been an Adjunct Professor of Law at St. John's University School of Law.

Mr. Mulry is a member of the Second Circuit Pro Bono Panel and serves on the Board of Directors of New Ground, Inc. He is a member of the Federal Bar Council, the Association of the Bar for the City of New York, and the Nassau County Bar Association. He is also a member of the International Association of Independent Private Sector Inspectors General (IAIPSIG). He is a former school board president of St. Agnes Cathedral School.



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Mr. Mulry received his Juris Doctor degree, *magna cum laude*, from St. John's University School of Law in 1987, where he was a member of the *Law Review*. He received his Bachelor of Arts degree in History, *summa cum laude*, from St. John's University in 1984. He is admitted to practice in New York, to the United States District Courts for the Eastern and Southern Districts of New York, and to the United States Court of Appeals for the Second Circuit. Mr. Mulry has an AV Preeminent Martindale-Hubbell Peer Review Rating.

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Patrick T. Collins is a partner in the commercial litigation practice group, concentrating in bankruptcy and restructuring and commercial litigation in federal and state courts. He has represented creditors, debtors, trustees, committees, asset purchasers, unions and other parties involved in all aspects of bankruptcy proceedings and out-of-court insolvency matters, including workouts.

Mr. Collins represents parties in preference and fraudulent conveyance recovery actions and other litigation arising out of bankruptcy proceedings. His experience includes representation of parties to receivership proceedings and litigation/liquidation and bankruptcy trustees. He currently represents the trustee of the liquidation trust formed in the Chapter 11 bankruptcy cases of Metro Affiliates, Inc. and its affiliates (S.D.N.Y.).

He has also represented banks and other institutions in non-bankruptcy related commercial litigation involving, among other subject areas, the Uniform Commercial Code and federal securities laws.

Mr. Collins frequently represents charitable organizations and indigent individuals on a *pro bono* basis in bankruptcy, insolvency and litigation matters.

He has participated as a speaker or contributing author for numerous continuing legal education programs.

Mr. Collins was selected for the *New York Super Lawyers – Metro* lists in Bankruptcy (2013-2015), Bankruptcy & Creditor/Debtor Rights (2012) and Business/Corporate (2011).

He was previously associated with a Dallas, Texas law firm with a national bankruptcy practice.

In 1995, Mr. Collins graduated, *magna cum laude*, from St. John's University School of Law, where he served as Editor-In-Chief of the *American Bankruptcy Institute Law Review* and authored a note published in that law review.

Following his graduation from Duke University in 1986 with a B.S.E. in Mechanical Engineering and Materials Science, Mr. Collins worked for eight years as an engineer for a prominent aerospace company.

Mr. Collins is admitted to practice in New York and the federal district courts for the Eastern and Southern Districts of New York.

Mr. Collins is a director of the Nassau County Bar Association and served as Vice Chair and then Chair of the Association's Bankruptcy Law Committee. Mr. Collins also serves on the Executive Committee of the Board of Directors of Mercy Haven, Inc.



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Matthew D. Donovan

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Matthew D. Donovan is counsel in the commercial litigation department. His practice involves the resolution of complex business disputes, shareholder and partnership disputes, construction disputes, insurance-coverage disputes, and a variety of other commercial matters through litigation and arbitration. He is a frequent contributor to Farrell Fritz's [New York Commercial Division Case Compendium](#) blog.

Mr. Donovan has also served as counsel to federal equity receivers appointed by the Federal Trade Commission ("FTC") in consumer fraud receiverships. In this capacity, Mr. Donovan participates in all phases of the compliance and/or regulatory enforcement receivership activities. He advises the receiver on substantive issues concerning the powers, duties, liabilities and rights of the receiver to investigate, preserve, freeze and take custody of the records and/or assets of the defendant(s), as well as on any local or federal laws affecting the receivership activities. He also is responsible for coordinating the receiver's activities with representatives of the FTC, working with forensic accountants, and other financial, forensic IT and business professionals to ensure that receivership assets are preserved, marshaled and frozen and the *status quo ante* is maintained. Mr. Donovan prepares and presents verbal and written reports on behalf of the receiver to the FTC and to the courts that appoint the receiver.

Prior to joining Farrell Fritz, Mr. Donovan was an associate at another prominent New York law firm, where he managed all phases of pre-trial litigation for matters related to employee benefits and securities in the state and federal courts of New York and Connecticut. Mr. Donovan also served as litigation counsel to a publishing company, where he handled matters related to advertising, employment, and trademarks in connection with a weekly news publication.

Following law school, Mr. Donovan served as a judicial law clerk to the Honorable Gordon W. Shumaker, Terri Stoneburner, and Bruce D. Willis of the Minnesota Court of Appeals in St. Paul, MN.

Prior to attending law school, Mr. Donovan was a teacher at Saint John's High School in Shrewsbury, MA.

In 2014 & 2015, Mr. Donovan was selected for the *Super Lawyers New York Metro Rising Stars* list for Business Litigation.

Mr. Donovan serves on the Benefit Committee of the Celiac Disease Center at Columbia University Medical Center. He also serves on the Annual Giving Committee for the University of St. Thomas School of Law Alumni Advisory Board and is a member of the Catholic Lawyers Guild of New York. He is a member of the Westchester Celiac Sprue Support Group.



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Matthew D. Donovan

Mr. Donovan earned his Juris Doctor degree in 2004 from the University of St. Thomas School of Law in Minneapolis, MN, where he was an articles editor of the Law Journal and a member of the Board of Advocates. He received a Master of Arts in theology from Boston College in 1998, where he was a recipient of a fellowship for the study of politics and religion, and a Bachelor of Arts in philosophy and political science from Marquette University in 1996.

Mr. Donovan is admitted in New York; Connecticut; the United States District Courts for the Southern, Eastern and Northern Districts of New York; the District of Connecticut; and the Supreme Court of the United States. He is a on the Corporate & Commercial Law Committee for the Westchester County Bar Association. He is also a part of the Commercial & Federal Litigation Section of the New York State Bar Association.

Mr. Donovan has an AV Preeminent Martindale-Hubbell Peer Review Rating.

Kathryn C. Cole

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Kathryn Carney Cole is counsel in the commercial litigation department, where she represents large and small businesses, financial institutions and individuals in both federal and state court as well as in arbitrations. Her practice areas include a variety of complex commercial, real estate and contract/licensing matters and since 2004, Ms. Cole has been engaged in all aspects of commercial litigation. She has litigated complex commercial cases involving contract claims, product liability claims, tort claims, consumer class action claims, and securities class actions claims. Ms. Cole has also been involved in a number of internal investigations and has represented corporations, investment banks, and other financial institutions before federal agencies and regulatory bodies. She is also a member of the firm's eDiscovery Practice Group, which advises clients and law firms on eDiscovery issues.

Ms. Cole publishes articles on litigation-related issues, including those relevant to eDiscovery and best practices. She is a frequent contributor to the firm's **All About eDiscovery** blog. Her judicial profiles, notes and legal commentaries can be found in *The Federal Lawyer*, *The Nassau Lawyer* and various law reviews.

Prior to joining Farrell Fritz, Ms. Cole was a litigation associate at Davis Polk & Wardwell. Ms. Cole's legal experience has also included positions as a law clerk to the Honorable Richard C. Wesley, United States Court of Appeals for the Second Circuit (2003-04) and New York State Court of Appeals (2002-03); a research assistant to Dean Joseph Bellacosa, St. John's University School of Law; and a summer intern to the Honorable Kevin Thomas Duffy, United States District Court for the Southern District of New York.

Ms. Cole has performed extensive pro bono work, which afforded her the opportunity to be a Member of The Special Commission on the Future of New York State Courts and a Member of The Fund for Modern Courts' Task Force on the Family Courts.

Ms. Cole was the recipient of the *Long Island Business News*' 2015 "Leadership in Law" and "40 Under 40" Awards. She was selected for the 2012-2015 *Super Lawyers New York Rising Stars –Metro* list (Business Litigation).

Ms. Cole earned her Juris Doctor degree, *magna cum laude*, in 2002 from the St. John's University School of Law, where she was a scholarship recipient, the Executive Notes and Comments Editor and a Member of the *Law Review*. In 1999, Ms. Cole received her Bachelor of Arts degree in English Literature from Colgate University.

Ms. Cole is secretary and a member of the board of directors of the St. John's University Alumni Association, a member of the Colgate University President's Club, of Colgate University's Alumni Admission Committee, of the New York State Bar Association, and of the Nassau County Bar Association. In 2012, Ms. Cole was the recipient of St. John's University School of Law's *Recent Graduate Service Award*. In 2010, she was selected to be the Long Island Chairperson for Colgate University's Alumni Admission Program.



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Ms. Cole is admitted to practice in New York State, the District Courts for the Southern and Eastern Districts of New York, the Second Circuit Court of Appeals and the United States Supreme Court. She previously was President of the Federal Bar Association's EDNY Chapter.

Ms. Cole has an AV Preeminent Martindale-Hubbell Peer Review Rating.

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Kristina Wesch's practice focuses on corporate restructuring matters, including representation of official creditors' committees, ad hoc committees of bondholders and secured lenders, and collateral and administrative agents in large, complex chapter 11 cases. Ms. Wesch's client base includes institutional investors and hedge funds investing in secured bank debt and debt relating to unsecured bonds and notes, as well as acquirers of distressed assets. Her restructuring experience encompasses a variety of industries, including the healthcare industry, the jewelry industry, the publishing industry, the energy industry and various manufacturing industries.

Ms. Wesch's engagements included:

- Representation of Westchester Medical Center in its acquisition of St. Francis' Hospital in Poughkeepsie, New York
- Representation of the Official Committee of Unsecured Creditors in the Metro Affiliates Chapter 11 bankruptcy
- Representation of a competing plan proponent and significant investor in the Tribune Chapter 11 bankruptcy
- Representation of a crossover group of lenders in the out-of-court restructuring of Houghton Mifflin Harcourt Publishing Company
- Representation of an ad hoc noteholder group in the chapter 11 reorganization of R.H. Donnelley Corp.

Prior to entering into private practice, Ms. Wesch clerked for Honorable Elizabeth S. Stong in the U.S. Bankruptcy Court for the Eastern District of New York. Ms. Wesch received her B.A. magna cum laude in 2000 from Queens College, CUNY and her J.D. with honors in 2003 from St. John's University School of Law, where she was a St. Thomas More Scholar and an article and notes editor on the *St. John's Law Review*. Ms. Wesch is a member of the New York and California State bars and is admitted to practice before the U.S. District Courts for the Southern and Eastern Districts of New York. She is an active member of the American Bankruptcy Institute and of IRWIRC, and sits on the board of the Long Island Chapter of the Turnaround Management Association.

In addition to serving as an author for the Collier Practice Guide, Ms. Wesch's publications include:

- *The Impact of Antitrust Regulations on Stalking Horse Bids*, ABI Journal, Vol. XXXIII, No. 8 (August 2014).
- *Collier Bankruptcy Practice Guide* § 88 (co-authored with Louis A. Scarcella);
- *Subrogation in Bankruptcy*, The Bankruptcy Strategist (co-authored with Adam L. Rosen, Esq.) 23 No. 2 Banker. Strategist 5 (December 2005);
- *511 West 232nd Owners Corp. v. Jennifer Realty Co: An Insight into the Duties of Cooperative Conversion Sponsors in NY*, 77 St. John's L.Rev. 189 (Spring 2003).



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LOCATION: **New York City**

Adam M. Rafsky is a commercial litigator who represents large and small businesses and individuals in federal and state court proceedings and in alternative dispute resolution forums. Mr. Rafsky is actively involved in all phases of the litigation lifecycle from pre-action investigation through trial and appeal, and has authored numerous dispositive, procedural, and discovery motions and appellate briefs as well as applications for emergency injunctive relief. He has experience in numerous industries and in a wide range of complex commercial disputes, including matters involving corporate governance, breach of contract, breach of fiduciary duty, fraud, business torts, and business dissolution and valuation.

Mr. Rafsky has also served as counsel to federal equity receivers appointed by the Federal Trade Commission ("FTC") in consumer fraud receiverships. In this capacity, Mr. Rafsky participates in all phases of the compliance and/or regulatory enforcement receivership activities. He advises the receiver on substantive issues concerning the powers, duties, liabilities and rights of the receiver to investigate, preserve, freeze and take custody of the records and/or assets of the defendant(s), as well as on any local or federal laws affecting the receivership activities. He also is responsible for coordinating the receiver's activities with representatives of the FTC, working with forensic accountants, and other financial, forensic IT and business professionals to ensure that receivership assets are preserved, marshaled and frozen and the *status quo ante* is maintained. Mr. Rafsky prepares and presents verbal and written reports on behalf of the receiver to the FTC and to the courts that appoint the receiver.

Previously, Mr. Rafsky was a law clerk and summer associate at the firm. His other legal experience includes an internship in the Investigations Division, Public Integrity Bureau, at the Westchester County District Attorney's Office; litigation legal assistant at Davis Polk & Wardwell and an internship at the Law Offices of John R. Gulash, Jr. & Eugene J. Ricco.

In 2014, Mr. Rafsky received the Huntington Chamber of Commerce's *30 Under 30* Award.

He is a co-chair of the Young Professionals Committee for the Parent Child Home Program and the co-chair of the Young Lawyer's Division of the EDNY Chapter of the Federal Bar Association. He is a member of the New York State Bar Association.

Mr. Rafsky earned his Juris Doctor degree, *cum laude*, from St. John's University School of Law, where he was a merit scholarship recipient, a Notes & Comments Editor on the St. John's *Law Review* (2010-2011) and a staff member (2009-2010). While in law school, Mr. Rafsky won the Internal Negotiation Competition and was named the "Outstanding Advocate" of the competition in the spring of 2010 and was a finalist in the spring of 2009.

Mr. Rafsky received his Bachelor of Arts degree, *cum laude*, in Psychology from Colby College. He studied at the University of Sydney in Australia.

Mr. Rafsky is admitted in New York State and the District Courts for the Southern and Eastern Districts of New York.



Office

New York City
622 Third Avenue Suite 37200
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Practice Areas

Commercial Litigation

Education

Colby College
St. John's University School of
Law



Joshua M. Herman

Commercial Litigation

Associate | 646-237-1809 | jherman@farrellfritz.com

LOCATION: **New York City**

Joshua M. Herman is a commercial litigation associate. He has represented businesses engaged in commercial disputes involving breach of contract in state and federal courts and in international arbitration. Josh has also defended companies in administrative proceedings and *qui tam* actions arising under the False Claims Act. In addition, he has represented hedge funds and other institutional creditors with respect to their investments in distressed companies and their participation in bankruptcy-related litigation.

Prior to joining Farrell Fritz, Josh was a litigation associate at Brown Rudnick in New York. He was a legal intern at the New York Legal Assistance Group and, before attending law school, a paralegal at Weitz & Luxenberg, P.C.

Josh earned his Juris Doctor degree from New York University School of Law and his Bachelor of Arts degree, *cum laude*, from Tufts University. He is admitted to practice in New York and the U.S. District Court for the Southern District of New York.



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New York City
622 Third Avenue Suite 37200
New York, NY 10017

Practice Areas

Commercial Litigation

Education

New York University School of Law
Tufts University

Jay Borow

Managing Director – Restructuring and Transaction Advisory
New York

Contact

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Industry Experience

Entertainment and Media

Financial Services

Gaming, Lodging and Hospitality

Healthcare and Pharmaceuticals

Infrastructure and Energy

Manufacturing, Metals and Mining

Professional and Other Services

Real Estate and Construction

Retail and Wholesale Distribution

Telecommunications

Selected Public Cases

Betsey Johnson LLC

Champion Windows Manufacturing Inc.

Columbia Gas

Eddie Bauer

Enron

Global Geophysical Services Inc.

Jamesway Corp

KX Industries, L.P.

Livent, Inc.

LTV Steel

Mattress Discounters, Inc.

Mattress Giant

McCrorry's

Nortel Networks

Prime Motor Inns

Rural/Metro Corporation

Safety-Kleen

Sleep Innovations

Spiegel Inc.

Sterling Optical

Sunrise Senior Living, Inc.

Experience

Jay Borow has over 30 years of experience in the areas of bankruptcy, turnaround and restructuring as well as forensic and financial investigations, and litigation consulting.

Mr. Borow has extensive experience advising companies and/or debtors through the restructuring and bankruptcy process, as well as creditors and creditors' committees including secured lenders, banks, financial institutions, lender groups, bondholders and unsecured creditors.

In addition, Mr. Borow has also served as Responsible Person, Examiner, and Financial Advisor to the Trustee in numerous restructuring and bankruptcy matters. He has also acted as Receiver and Financial Advisor to the Receiver in several cases brought by the Federal Trade Commission, as well as CRO and Receiver of a specialty manufacturing and distribution company. Mr. Borow served as the Financial Advisor to the Receiver in several cases, including Metropolitan Communications, Five Star Auto Club, and Micom. He was the Liquidating Trustee of the Hovensa Liquidating Trust that came out of a Chapter 11 plan. He was also the responsible officer for a water filtration company appointed by the Delaware Chancery court.

Before joining BRG Capstone, Mr. Borow was a Senior Managing Director in the bankruptcy and restructuring practice of FTI Consulting and a predecessor firm for over twelve years. Previously, he was a member of Arthur Andersen & Co.'s New York Bankruptcy and Reorganization practice, and at Spicer and Oppenheim (a national accounting firm), he was the co-partner in charge of the New York bankruptcy practice and a member of that firm's National Accounting and Auditing Standards Committee.

Education and Affiliations

Mr. Borow holds a B.S. in accounting from Brooklyn College, City University of New York. He is a Certified Public Accountant, Certified Insolvency and Restructuring Advisor, and Certified Fraud Examiner. Mr. Borow is a member of the American Institute of Certified Public Accountants, the New York State Society of Certified Public Accountants (NYSSCPA), the Association of Insolvency and Restructuring Advisors, the Association of Fraud Examiners, and the American Bankruptcy Institute. He has served as a member of the Bankruptcy and Insolvency Committee of the NYSSCPA, and on the panel of arbitrators of the American Arbitration Association, and on the panel of mediators in the Bankruptcy Court in the Southern District of New York.

Edwin N. Ordway, Jr.

Managing Director – Restructuring and Transaction Advisory
New York

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Industry Experience

Automobiles and Components
Consumer Products and Apparel
Entertainment and Media
Financial Services
Infrastructure and Energy
Manufacturing, Metals and Mining
Real Estate and Construction
Retail and Wholesale Distribution
Transportation

Selected Public Cases

Aleris International
Almatis BV
APS Auto Parts
Atlas Air Worldwide Holdings
Citation
Cooper Standard Automotive Inc.
Kmart Corp.
Loews Cineplex Entertainment Corp.
Metaldyne Corp.
National Energy Group
Polaroid
Progressive Moulded Products
Purina Mmills
Simply Wheelz LLC (Advantage
Rent-A-Car)
Smufit-Stone Container Corporation
Spheris Inc.
Sunbeam Products, Inc.
United Companies
U.S. Industries
U.S. Office Products
WCI Communities
W.R. Grace

Experience

Ed Ordway is a Managing Director in the restructuring practice of Berkeley Research Group ("BRG"). Prior to joining BRG in June 2015, he was a member of the firm and co-founder of Capstone Advisory Group, LLC.

Ed Ordway specializes in providing financial restructuring advisory and investigative services to companies, creditors, equity holders, and third-party purchasers in the workout and financial communities. Mr. Ordway has also served as a court-appointed examiner and a trustee, and has provided expert testimony concerning bankruptcy matters.

Before co-founding Capstone, Mr. Ordway was a senior managing director at the bankruptcy and turnaround consulting legacy practice of a global business advisory firm for fourteen years, most recently as co-leader of the firm's national restructuring practice. Previously, he spent five years as chief operating officer of a real estate development and investment company with projects valued in excess of \$100 million. He was also with a major auditing firm for eight years.

Education and Affiliations

Mr. Ordway holds a B.A. in economics and accounting from Rutgers University. He is a Certified Public Accountant and a Certified Insolvency and Restructuring Advisor (CIRA) whose professional memberships include the Association of Insolvency and Restructuring Advisors (AIRA), New Jersey State Society of CPAs, and American Institute of CPAs. He is a member of the board of directors of the AIRA. He has spoken at professional forums and to institutional lenders on topics ranging from DIP financing and valuation to exit-financing strategies, among other troubled company issues.

Allen D. Applbaum



GLOBAL LEADER AND MANAGING DIRECTOR
GLOBAL INVESTIGATIONS + STRATEGIC INTELLIGENCE

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SERVICES

- GLOBAL INVESTIGATIONS
- MONITORSHIPS
- RECEIVERSHIPS
- ANTI-CORRUPTION/FCPA INVESTIGATIONS
- COMPLIANCE
- ANTI-MONEY LAUNDERING INVESTIGATIONS
- BUSINESS INTELLIGENCE
- INVESTIGATIVE DUE DILIGENCE
- INTERNAL INVESTIGATIONS
- CORPORATE GOVERNANCE
- INTEGRITY ADVISORY SERVICES

Allen D. Applbaum is the global leader of BRG's Global Investigations + Strategic Intelligence practice. With more than 25 years of litigation and investigative consulting experience, Mr. Applbaum is a leading expert in independent monitorships and receiverships, providing oversight to the government, regulators, and the judiciary. He routinely serves as a trusted advisor to corporations, audit committees, special committees of boards of directors, financial institutions, and law firms.

In connection with his management of high-profile investigations and business intelligence assignments, Mr. Applbaum draws on his public- and private-sector experience to provide cutting-edge strategies and integrate investigative skills with technology and financial expertise to provide clients with seamless approaches to solve critical problems. In addition to his independent oversight experience, Mr. Applbaum's investigative expertise spans diverse areas including internal investigations, fraud investigations, investigative due diligence, Foreign Corrupt Practices Act and anti-corruption investigations, anti-money laundering investigations, corporate governance, and integrity advisory services.

Among Mr. Applbaum's high-profile monitorships was his selection by the U.S. Attorney's Office for the Southern District of New York to serve as the Independent Monitor for the world's largest online gaming site, with more than 50 million registered users, following the government's filing of a civil suit to seize the company's domain names. Subsequently, the company reached a "domain name use agreement" that allowed it to reopen on the condition that the company agree to have the government appoint an independent monitor who would oversee its compliance with the blocking of players from the United States from accessing the site to play for real money. Mr. Applbaum put together a multidisciplinary team comprising former prosecutors, investigators, technology experts, financial and enterprise data analytics experts, and forensic accountants to assist him in monitoring the company and evaluating its cooperation and compliance with this agreement with the government. This work helped to pave the way for the parties to negotiate a fair and equitable settlement resolving all civil disputes.

In a noted receivership, Mr. Applbaum was appointed by the U.S. District Court for the Southern District of New York to be the Receiver of a company whose owner had been arrested for conspiring to commit mail and wire fraud. He evaluated the financial condition of the business, safeguarded the assets, and put in place a regimen of procedures to pay existing staff and critical suppliers while assessing and documenting losses to victims which ran into the tens of millions of dollars. Simultaneously, he supervised a parallel investigation of an alleged Ponzi scheme perpetrated by a business owner. Mr. Applbaum determined that the business needed to be placed into bankruptcy, hired bankruptcy counsel, and worked with an appointed bankruptcy trustee to insure the orderly distribution of assets to creditors and victims.

Before joining BRG, Mr. Applbaum headed the investigations practices at two global consulting firms and served for one of the firms as regional counsel in its headquarters in New York. From 1990 to 1999, he was a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, where he led sensitive and high-profile law enforcement investigations of international money laundering, securities fraud, bank fraud, mail fraud, wire fraud, racketeering, extortion, organized crime, drug trafficking, gambling, identity theft and credit card fraud, immigration fraud, and corruption. His investigative work in two separate organized crime prosecutions earned him the Department of Justice Director's Award for Superior Performance and the Attorney General's Award for Distinguished Service. During his tenure in the Southern District, Mr. Applbaum served as deputy chief of the Criminal Division and as chief of the General Crimes Unit. In addition, he was appointed as the Southern District's International Affairs coordinator in charge of all requests for international legal assistance from foreign governments.

Mr. Applbaum began his career as a law clerk to the Honorable Lowell A. Reed, Jr., U.S. District Judge in the Eastern District of Pennsylvania. While in Philadelphia, Mr. Applbaum taught as an adjunct professor of law at Temple University School of Law.

Mr. Applbaum was the managing editor of the Law Review and published his Law Review Note at the Benjamin N. Cardozo School of Law. He is a member of the New York and New Jersey Bars and is a member of the Federal Bar Council, American Bar Association, and New York City Bar Association. He is a board member of the City Bar Fund of the New York City Bar.

Curriculum Vitae



Michael A. Fahlman, CPA, CFF, CIRA
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Mr. Fahlman is a Certified Public Accountant and is Certified in Financial Forensics by the American Institute of Certified Public Accountants, and is also a Certified Insolvency and Restructuring Advisor. He assists clients, including legal counsel, boards of directors and executive management, with complex commercial litigation, economic damages, valuation, dispute resolution, investigations, and distressed businesses. He has served in the testifying expert and consulting expert roles in litigation, arbitration and mediation, as an independent third party in alternative dispute resolutions, and as a court appointed neutral compliance auditor.

Mr. Fahlman has been before the Securities Exchange Commission on alleged fraudulent financial reporting, and has presented on fraud related cases before the Department of Justice and the Federal Bureau of Investigation. Additionally, Mr. Fahlman served as the turnaround Chief Financial Officer and Vice President of a 72-unit multi-state retail company.

NEUTRAL ACCOUNTING & AUDITING EXPERIENCE

Prior to BRG, Mr. Fahlman was the partner-in-charge of Grant Thornton's west region forensic practice. In this role, Mr. Fahlman was involved in numerous neutral expert roles, including serving as the signing partner issuing the binding decision, serving as a consulting partner on complex audit and fraud matters, and serving as the quality control partner prior to the issuance of a binding decision.

Mr. Fahlman also regularly worked with Grant Thornton's general counsel and professional standards offices to handle complex irregular and fraud related issues at clients. He was brought in as a neutral client service partner to review and assess the work performed by the client's hired experts, and advise the national office on the level of objectivity and independence by the attorneys and experts, and the quality of work.

Mr. Fahlman has worked on multiple cases and served as a court appointed auditor to evaluate and opine on litigants' compliance with court orders, and prepared reports and testified in court in these independent roles.

DIRECT SELLING EXPERIENCE

In addition to Mr. Fahlman's deep experience in various industries and issues, he has consulted in numerous matters involving direct sales organizations. His experience includes issues involving accounting and financial reporting, Foreign Corrupt Practices Act ("FCPA"), economic damages, corporate governance and compliance, and allegations of pyramid schemes and the related legality of direct sales organizations' business model. During his tenure as the west region partner-in-charge of Grant Thornton's forensic practice, Mr. Fahlman was involved with numerous direct sales organizations'

compliance, fraud and investigation matters. Mr. Fahlman also taught compliance and fraud controls to numerous direct sales organizations.

Examples:

Mr. Fahlman led a team providing expert consultation on a \$1 billion litigation matter. He worked with the executive management team and outside legal counsel, and was responsible for analyzing over 30 years of financial data, for 100+ entities in over 100 countries, for over 100 unique products. He built a complex financial and data analysis tool to evaluate the implications of various legal theories and factual underpinnings in order to assist the client in succeeding to a successful settlement.

While Mr. Fahlman was the partner-in-charge of Grant Thornton's west region forensic practice, he regularly worked with Grant Thornton's general counsel and professional standards offices to handle complex irregular and fraud related issues for direct sales organization audits. The issues included allegations of fraud, misconduct and general corporate oversight and governance. Mr. Fahlman was responsible for assessing, evaluating and concluding on whether an organization's response to allegations and events were reasonable and appropriate in light of the relevant facts and circumstances, and whether the findings were reliable. Mr. Fahlman work was integral to the audit opinion and assessment of management and the company's corporate compliance.

Mr. Fahlman has been involved with multiple FCPA issues for direct sales organizations in various countries around the globe. Mr. Fahlman worked with executive management and outside counsel investigating the matter, and ultimately concluded as the audit firm on the scope, procedures and findings of the investigation.

Mr. Fahlman has analyzed various legal and case law implications on the legitimacy of direct sales organizations' business model. The analyses include consideration and evaluation of the *Koscot*, *Amway*, *Omnitrition*, and *Burnlounge* cases. Mr. Fahlman has analyzed tens of millions of financial records to perform the economic analyses to address a key legal issue on whether an organization is a pyramid scheme or a legitimate business. The analyses assessed whether an organization's compensation structure primarily compensates its consultants based on sales versus recruiting. The analyses also evaluated the issue of internal consumption, inventory loading and other related key issues.

EXPERT WITNESS EXPERIENCE

Mr. Fahlman has testified and presented his findings and opinions over 75 times, including federal and state court, arbitration, mediation, government and regulatory hearings, law enforcement inquiries, and special investigation committees.

Mr. Fahlman is one of ten members nationally that serves on the American Institute of Certified Public Accountants' Forensic & Litigation Services Committee ("FLS"). The FLS is focused on identifying, collecting, developing and disseminating technical, industry, legislative and regulatory issues related to forensic accounting along with practice management tools through such vehicles as newsletters, AICPA Online, publications, continuing education and conferences. In addition to the AICPA, Mr. Fahlman is a co-chair on an expert witness sub-committee of the American Bar Association. This group is focused on providing current expert issues content to members of the ABA.

Mr. Fahlman is a regular contributor and reviewer of content for both the AICPA and ABA, and teaches at universities, bar associations, and law firms on the topics of forensic accounting.

PREVIOUS POSITIONS

Partner – Grant Thornton, LLP
Chief Financial Officer – AAW, LLC
Senior Consultant – Arthur Andersen, LLP

PROFESSIONAL AFFILIATIONS

- Certified Public Accountant
- Certified Financial Forensics
- Certified Insolvency & Restructuring Advisor
- American Institute of Certified Public Accountants – Forensic & Litigation Services Committee
- American Institute of Certified Public Accountants – Chair of Economic Damages Task Force
- Arizona Society of Certified Public Accountants – Forensic & Litigation Services Committee
- American Bar Association – Co-Chair of Expert Witness Damages Committee
- Association of Insolvency & Restructuring Advisors

PUBLICATIONS & THOUGHT LEADERSHIP

- “Reasonable Certainty Standard, Part III” (American Bar Association – May 2015 podcast)
- “The Neutrality of Expert Testimony” (American Bar Association – November 2014 article)
- “Commercial Damages” (American Institute of Certified Public Accountants – November 2014 presentation)
- “Rebuttal Reports” (American Institute of Certified Public Accountants – November 2014 presentation)
- “Foundations in Financial Statement Analysis: Introduction and Case Study” (Maricopa County Bar Association – June 2014 presentation)
- “Expert Methodologies: Must They be Subject to Peer Review” (American Bar Association – May 2014 article)
- “Reasonable Certainty Standard, Part II” (American Bar Association – April 2014 podcast)
- “An Introduction to the Reasonable Certainty Standard” (American Bar Association – November 2013 podcast)
- “Calculating Lost Profits – 101” (law firm – October 2013 presentation)
- “Comcast Decision: Split Class” (American Bar Association – April 2013 article)
- “Reserving and Disclosing for Loss Contingencies” (Panel with major law firm – presented to Corporate Counsel members – January 2013)
- “Expert Witness Skills Workshop” (American Institute of Certified Public Accountants – January 2013 Instructor)
- “Attaining Reasonable Certainty in Damages Calculations” (American Institute of Certified Public Accountants – November 2012 presentation)
- “Understanding the FCPA, and how to respond” (Accounting and compliance department of multiple corporations – June 2012 presentation)
- “Understanding the FCPA, and how to respond” (Accounting and compliance department of an international corporation – May 2012 presentation)

- “Increase Recovery...by managing expert costs” (Attorney at Law magazine – April 2012 article)
- “Senior Executive Investigations – When Allegations Point to the C-Suite or Board” (Institute of Internal Auditors: Seattle Chapter – March 2012 presentation)
- “Post-Acquisition Trouble Spots and How to Avoid Them” (law firm – February 2012 presentation)
- “The New World of Fraud Detection: FCPA, Dodd-Frank and Beyond” (Institute of Internal Auditors: San Gabriel Valley Chapter – February 2012 presentation)
- “Post-Acquisition Trouble Spots and How to Avoid Them” (law firm – January 2012 presentation)
- “Damages for Newly Formed Entities” (CalCPA – October 2011 presentation)
- “Post-Acquisition Trouble Spots and How to Avoid Them” (law firm – October 2011 presentation)
- “10 Common Misconceptions Increase the Likelihood of FCPA Violations” (Attorney at Law – September 2011 article)
- “Damages for Newly Formed Entities” (American Institute of Certified Public Accountants – September 2011 presentation)
- “Post-Acquisition Trouble Spots and How to Avoid Them” (law firm – September 2011 presentation)
- “Understanding Financial Information & Finding the Evidence” (law firm – May 2011 presentation)
- “Business Damages Measurement: Lost Profits or Business Valuation?” (Attorney at Law – January 2011 article)
- “Look Before You Leap: Considerations When Determining the Necessity, Scope, and Protocol of an Internal Investigation” (Oregon State Bar – November 2010 presentation)
- “Employee Theft, Fraud and Trade Secret Misappropriation” (Joint seminar with law firm – November 2010 presentation)
- “Advising Clients on Financial Fraud” (Arizona State Bar – October 2010 presentation)
- “Lost Profits v. Valuation in Litigation” (American Institute of Certified Public Accountants – September 2010 presentation & article)
- “Complexities of Tribal Gaming Investigations” (Institute of Internal Auditors – April 2009 presentation)
- “Post-Acquisition Trouble Spots and How to Avoid Them” (Maricopa County Bar Association – May 2008 presentation)
- “Occupational Fraud Case Study” (University of Southern California – April 2008 presentation)
- “Understanding Financial Reports & Finding the Financial Evidence” (Maricopa County Bar Association – April 2008 presentation)
- “Working with Expert Witnesses” (law firm – January 2008 presentation)
- “Occupational Fraud Case Study” (Arizona State University – April 2007 presentation)
- “Post-Acquisition Dispute Trouble Spots and How to Avoid Them” (law firm – September 2006 presentation)
- “Corporate Occupational Fraud” (Thunderbird School of Global Management – July 2006 presentation)
- “The Practical Witness – Assess Damages Early and Often” (American Bar Association – June 2006 article)
- “Fraud Detection and Internal Controls” (law firm – April 2006 presentation)
- “Understanding Financial Statements & Tax Returns” (law firm – March 2006 presentation)

- “The Litigation Process – Discovery & Damages” (accounting firm – February 2006 presentation)
- “Fraud Detection and Investigation” (law firm – January 2006 presentation)
- “Discovery and Production” (accounting firm – October 2004 presentation)

EDUCATION

B.S. Accountancy Arizona State University

C. PAUL WAZZAN, PH.D.
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Los Angeles, CA 90067

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Cell: 310.210.6216
pwazzan@thinkbrg.com

BIO/SUMMARY

C. Paul Wazzan, Ph.D. heads the Firm's Century City (Los Angeles) office. Dr. Wazzan specializes in providing financial, economic and statistical expertise in the following areas:

- Complex damages,
- Finance (e.g., valuation, corporate finance, securities fraud/10b5, option valuation, class certification, pricing of mortgage risk and MBS/CDOs, commodities price manipulation)
- Intellectual property (e.g., patent and trademark infringement, theft of trade secrets)
- Labor and employment (e.g., class certification, managerial misclassification, wage and hour, discrimination)
- Antitrust and competition policy (e.g., market definition, merger analysis, predatory pricing, price-fixing, exclusionary conduct, price discrimination, attempted monopolization)
- Public policy

Dr. Wazzan also specializes in large-scale (i.e., millions of records) data analytics (e.g., data acquisition, database design and development and statistical/econometric analysis).

Dr. Wazzan's analyses have covered a wide range of industries, including basic manufacturing (e.g., automotive, mining, oil and gas, steel, food processing and distribution), high-tech (e.g., aircraft and avionics, semiconductors, digital signal processors, computer peripherals), real estate (e.g., appropriate interest rates in bankruptcy settings, lending discrimination), financial services (e.g., banking, metals and other commodities trading, organized financial markets), and pharmaceuticals (e.g., pricing of proteins, drugs and the modeling of expected sales).

Dr. Wazzan's research has been published in peer reviewed economics journals and law reviews, and he has testified in a wide range of matters in federal, state, and bankruptcy Courts, the International Trade Commission, domestic and international arbitration proceedings, and in front of legislative bodies. In addition, his testimony has been featured and relied upon in published judicial decisions.

Dr. Wazzan is president and CEO of Wazzan & Co. Investment LLC, a venture capital firm providing seed-level funding to firms specializing in semiconductor, optical networking, bio-mechanical, bio-medical, and related technologies.



Dr. Wazzan has been an adjunct assistant professor of business and economics at California State University, Los Angeles and has also taught MBA classes at the University of Southern California, Marshall School of Business.

EDUCATION

Ph.D., Finance	University of California, Los Angeles, Anderson Graduate School of Management, 1996
B.A., Economics	University of California, Berkeley, 1989

PRESENT POSITIONS

Berkeley Research Group, LLC, Managing director and head of Century City (Los Angeles) office
Wazzan & Co. Investment, LLC, President and CEO

LITIGATION EXPERT RETENTIONS (client underlined)

Joseph P. Ausikaitis, derivatively on behalf of Masimo Corp. v. Joe Kiani, Steven J. Barker, Robert Coleman, Jack Laserohn, Sanford Fitch, Jon Coleman, Mark P. DeRaad, Rick Fishel, Yongsam Lee and Anand Sampath, and Masimo Corp.

U.S. District Court, District of Delaware. September 2014: Report, October 2014: Deposition.

Federal Deposit Insurance Corporation, as Receiver for Pacific Coast National Bank v. Michael S. Hahn, Colin M. Forkner, Michael V. Cummings, Richard W. Grinyer, Stanley M. Cruse, and David L. Adams

U.S. District Court, Central District of California. August 2014: Report, November 2014: Deposition.

Starr International Company, Inc. et al. v. United States of America

U.S. Court of Federal Claims. February 2014: Report, April 2014: Report, May 2014: Deposition, October 2014: Trial.

VFS Financing, Inc. v. Stacey L. Gonfiantini et al.

U.S. District Court, District of Nevada. September 2013: Report, October 2013: Report, November 2013: Deposition.

Stryker Corporation v. Joseph P. Errico, Thomas J. Errico, James D. Ralph, Warburg Pincus Private Equity VII, L.P. Vertical Fund I, L.P., Vertical Fund Physicians' Fellowship Partners, LLC
State of Michigan, Ninth Judicial Circuit, Kalamazoo County, Civil Division. August 2013: Report, October 2013: Report, November 2013: Deposition.

Glovia Sociedad Anomina v. Universal Surface Technology et al.
Superior Court of the State of California, County of Los Angeles. May 2013: Deposition.

Kenneth Barton v. RPost International Ltd. et al.
Superior Court of the State of California, County of Los Angeles. Appointed by the Court as an independent expert pursuant to Evidence Code Section 730, March 2013: Report, April 2013: Trial.

U.S. Bank National Association v. PHL Variable Insurance Company
U.S. District Court, Central District of California, Western Division. February 2013: Report.

In re: Desert Inn Management Company, Ltd.
U.S. Bankruptcy Court for the District of Nevada. Retained by Debtor, Desert Inn Management Co. Ltd., February 2013: Report, February 2013: Deposition.

Sonoma Tires, Inc. v. Big O Tires LLC
U.S. District Court, Northern District of California. January 2013: Report.

Frontier Hot Oil, LLC. v. Parka Inc. et al.
District Court, Larimer County Colorado. August 2012: Report, October 2012: Report, Deposition, March 2013: Trial.

Margaret McCarthy v. Goldline International, Inc.
JAMS Arbitration, Santa Monica, CA. August 2012: Deposition.

Ecotality, Inc v. California Public Utilities Commission et al.
Court of Appeal for the State of California, First Appellate District, Division Two, May 2012: Declaration, June 2012: Declaration.

Stephen J. and Linda L. Rogers v. The United States
U.S. Court of Federal Claims. January 2012: Declaration.

Cable, LLC v. Petroleum Pressure Surveys, Inc.
District Court, Logan County, Colorado. January 2012: Report.

Dorothy L. Biery et al. and Jerramy and Erin Pankratz et al. v. United States of America
U.S. Court of Federal Claims, December 2011: Declaration, February 2012: Report, March 2012: Deposition, May 2012: Report.

Best Buy Stores, L.P. v. Manteca Lifestyle Center, LLC
U.S. District Court, Eastern District of California, Sacramento Division. August 2011: Report, October 2011: Deposition.

In Re: The Preserve, LLC

U.S. Bankruptcy Court, Central District of California, Los Angeles Division. Retained by Lender/Plaintiff Point Center Financial, Inc., June 2011: Report, August 2011: Deposition, August 2011: Trial.

In the Matter of: Certain Video Game Systems and Controllers; Investigation No. 337-TA-743; U.S. International Trade Commission, Washington, DC. Retained by plaintiff, Motiva, LLC, May 2011: Report, June 2011: Deposition, August 2011: Trial.

PRU/SKS Brannan Associates, LLC, v. *CA, Inc., Computer Associates International, Inc., Platinum Technology Inc., Platinum Technology International, Inc.*
Superior Court of the State of California, for the County of San Francisco. November 2010: Deposition.

International Accessories Corporation v. *Biasia Francesco S.p.A.*
International Arbitration Association (Milan, Italy). October 2010: Report.

Opal Jones, Claudia A. Caldwell, Kalina Thomas, Vincent Jones, and C. Renae Walker Jones, et.al. v. *Wells Fargo Bank, N.A. Wells Fargo Home Mortgage Inc.*
Superior Court of the State of California, for the County of Los Angeles. May 2010: Report.

Frontier Energy Holding Group, LLC v. *John L. Suprock; PCS Business Brokers, LLC*
U.S. District Court, District of New Mexico. March 2010: Report, July 2010: Deposition.

In Re: Caviata Attached Homes, LLC

U.S. Bankruptcy Court, District of Nevada. Retained by Debtor/Defendant Caviata Attached Homes, LLC, February 2010: Report, February 2010: Deposition, March 2010: Trial.

Star News Building, LLC v. *Glabman Furniture, Inc. et al.*
Superior Court of the State of California, for the County of Los Angeles. February 2010: Report, February 2010: Deposition.

David Loera et al. v. Akal Security Inc.

Superior Court of the State of California, in and for the County of Imperial, November 2009: Deposition.

Anna's Linen Overtime Cases

Superior Court of the State of California, for the County of Orange, Central Justice Center. Retained by Defendant Anna's Linen, November 2009: Report, December 2009: Deposition.

California National Bank v. 501 Grant Street Partners, LLC

Court of the Common Pleas of Allegheny County, Pennsylvania. June 2009: Report.

FemPharm Pty Ltd. v. *Vivus, Inc.*

JAMS Arbitration (Reference No. 1100052964). January 2009: Arbitration.

In Re Mortgages Ltd.

U.S. Bankruptcy Court for the District of Arizona. Retained by Creditors Rightpath Limited Development Group, LLC and Maryland Way Partners, LLC, August 2008: Declaration.

WKN Windkraft Nord USA, Inc. v. Wind Energy System Technology, LLC et al.

Superior Court of the State of California, County of San Diego. July 2008: Report.

Stamps.com, Inc. v Endicia, Inc. and PSI Systems, Inc.

U.S. District Court, Central District of California. May 2008: Report, December 2008: Deposition.

Herman T. Guerrero and Jesus T. Guerrero, as Trustees of the Guerrero Family Trust et al. v. Kinki Nippon Tourist Co., Ltd., Saipan Hotel Corporation, Pacific Development Inc. et al.

Superior Court for the Commonwealth of the Northern Mariana Islands. April 2008: Report, July 2008: Deposition.

Ruth Oates v. City of Los Angeles, Board of Public Works

U.S. District Court, Central District of California. April 2008: Report.

Nissani v. Long Beach Motors et al.

Superior Court of the State of California, County of Los Angeles, Central District. March 2008: Report, April 2008: Deposition.

United States of America v. Frederick S. Schiff

U.S. District Court, District of New Jersey. Retained by Plaintiff United States of America, Department of Justice, U.S. Attorney's Office, State of New Jersey, February 2008: Report, March 2008: Hearing.

First National Mortgage Company v. Federal Realty Investment Trust

U.S. District Court, Northern District of California. January 2008: Report.

United States of America v. Mark D. Lay

U.S. District Court, Northern District of Ohio, Eastern Division. Retained by Plaintiff United States of America, Department of Justice, U.S. Attorney's Office, State of Ohio, October 2007: Report.

Edward D. Ekstrom and Juliet M. Ekstrom-Anderson v. Trend Micro Kabushiki Kaisha

Third District Judicial Court for Salt Lake County. August 2007: Report.

Karl Sapper & Son, Inc. v. Chalmers-Randolph, LLC

Superior Court of the State of California, County of Los Angeles, Central District. February 2007: Report, July 2007: Deposition, February 2008: Trial.

James Vlahos and Nicholas Vlahos v. International Baking Company, Inc. and Sara Lee Fresh Inc.

Superior Court of the State of California, for the County of San Mateo. December 2006: Deposition.

In Re Copper Antitrust Litigation

U.S. District Court, Western District of Wisconsin. Retained by Defendant J.P. Morgan Chase & Company, and Morgan Guaranty Trust Company of New York, November 2006: Report, December 2006: Deposition.

Richard Cavanaugh v. Unisource Worldwide Inc.

U.S. District Court, Eastern District of California, Fresno Division. October 2006: Report, January 2007: Deposition.

VCode Holdings, Inc. and VData LLC v. Adidas America Inc., Advanced Micro Devices, Inc., Boston Scientific Corp., Stamps.com Inc., Hitachi Global Storage Technologies (Thailand), Ltd., and Hitachi Global Storage Technologies, Inc.

U.S. District Court, District of Minnesota. March 2006: Report.

Joseph C. Canouse v. True Religion Apparel, Inc.

U.S. District Court, Central District of California, Western Division. October 2005: Report, December 2005: Report, February 2006: Deposition.

Rita F. Oliai v. Coram Healthcare Corporation

U.S. District Court, Central District of California. May 2005: Report, August 2005: Deposition, October 2005: Trial.

Foundstone Inc. v. Jassen Glaser; Eric Caso; Michael Morton and Dan Kuykendall

American Arbitration Association, Arbitration Tribunal. February 2004: Report.

Scott William Curry v. AXT, Inc.

U.S. District Court, Central District of California. January 2004: Report.

Walter Brashier et al. v. KPMG LLP

Court of Common Pleas, State of South Carolina, County of Greenville. September 2003: Report.

Joseph J. Jacoboni v. KPMG LLP

U.S. District Court for the Middle District of Florida, Orlando Division. August 2003: Report.

Scott E. Barmer v. Lincoln Financial Advisors Corp.

Superior Court of the State of California, County of San Francisco. January 2003: Report.

Ernest H. Sponzilli v. Regents of the University of California et al.

Superior Court of the State of California, County of Los Angeles. October 1998: Report, October 1998: Deposition.

PUBLICATIONS

- (1) "Public Policy by Settlement of Litigation: A Case Study," *California Journal of Politics and Policy* 0:0, ISSN (Online) 1944-4370, ISSN (Print) 2194-6132, DOI: 10.1515/cjpp-2013-0035, January 2014
- (2) "Patent Exhaustion," *Palgrave Encyclopedia of Strategic Management*, David Teece and Mie Augier (eds.), Palgrave Macmillan Publishers, October 2013
- (3) "Capital Structure," *Palgrave Encyclopedia of Strategic Management*, David Teece and Mie Augier (eds.), Palgrave Macmillan Publishers, October 2013
- (4) "A Review of the 2011 and 2013 Digital Television Energy Efficiency Regulations Developed and Adopted by the California Energy Commission," *California Journal of Politics and Policy* 3:1, Article 22, 2011
- (5) "Determining the Appropriate Interest Rate Under *Till* in a Bankruptcy Case," *California Journal of Bankruptcy* 31:2, 2011
- (6) "Allocating Costs in Ninth Circuit Predatory Pricing Cases: Marsann Co. v. Brammall, Inc. and its Problematic Progeny, *Inglis v. Continental Baking* and *Thales v. Matsushita*," *Antitrust Bulletin* 54:3, Fall 2009
- (7) "Predatory Pricing and the Allocation of Costs in the Ninth Circuit," *Antitrust Litigator* 7:3, Antitrust Litigation Committee, Section of Litigation, American Bar Association, Summer 2008
- (8) "The Effects of *KSR v. Teleflex* on Patent Licensing Costs," *UCLA Journal of Law and Technology* 11:2, Spring 2007
- (9) "Consideration of Design Around Solutions in Determining Patent Damages," *IP Remedies*, Intellectual Property Litigation Newsletter, American Bar Association, Section of Litigation, November 2007
- (10) "Junk Forecasts in the Courtroom? Assessing the 'S' Curve Approach to Calculating Damages," *Journal of Forensic Economics* 19:3, 2007
- (11) "An Economic Analysis of the Impact of Pay-for-Performance Initiatives on Physicians, Patients and Insurance Providers," *Indiana Health Law Review* 3:2, University of Indiana School of Law, 2006
- (12) "An Economic Assessment of Damage Caps in Medical Malpractice Litigation Imposed by State Laws and the Implications for Federal Policy and Law," *Health Matrix: Journal of Law-Medicine* 16:2, Case Western Reserve University School of Law, 2006
- (13) "Controlling Medical Malpractice Insurance Costs – Congressional Act or Voter Proposition?" *Indiana Health Law Review* 3:1, University of Indiana School of Law, 2006
- (14) "Statistical Analysis and Interpretation of Data Commonly Used in Employment Litigation," *Duquesne Business Law Journal* 8:1, Duquesne University School of Law, Spring 2006
- (15) "Simple Statistics for Employment Law Practitioners," *Employer-Employee Relations Committee Newsletter*, American Bar Association, Tort Trial and Insurance Practice Section, Fall/Winter 2005
- (16) "The Statistical Analysis and Interpretation of Survey Data in Wage and Hour Litigation," in *Wage-Hour Class Actions: How to Bring, Defend and Resolve Them*, Los Angeles County Bar Association, Labor & Employment Law Section, 2005
- (17) "Reasonable Royalty: Countering Claims of Non-Profitability," *Perspectives* 2:1, January 2001

- (18) "The Effect of Socially Activist Investment Policies on the Financial Markets," *Journal of Business* 72:1, January 1999
- (19) "The Correlation Between Market Liquidity and Information-Based Trading," UCLA Department of Finance, 1996
- (20) "The Impact of Earnings Announcements on Market Liquidity and Price Discovery: An Intraday, Multi-Market Analysis," UCLA Department of Finance, 1996

TESTIMONY AND WRITTEN SUBMISSIONS TO REGULATORY ENTITIES

"A Critique of the Regulations on Battery Charging Systems Proposed by the California Energy Commission," November 21, 2011. Study filed with the California Energy Commission.

California State Senate, before the Energy, Utilities and Communications Committee, on SB 1198; An act to amend Section 25213 of the Public Resources Code, relating to energy. April 20, 2010. Testimony.

California State Assembly, Committee on Utilities and Commerce, hearing regarding the California Energy Commission's Proposed Energy Efficiency Standards for Televisions. October 21, 2009. Testimony.

California Energy Commission, Proposed Amendments to Appliance Efficiency Regulations, California Code of Regulations, Title 20, Sections 1601 through 1607, Docket Number 09-AAER-1C. October 13, 2009. Testimony.

"A Review of the 'December 2008 Draft Efficiency Standards for Televisions' Proposed by the California Energy Commission," March 23, 2009. Study filed with the California Energy Commission.

"A Review of Canadian Private-Sector Lawyer Income," prepared for the Canadian Superior Courts Judges Association, and included in Submission of the Canadian Superior Courts Judges Association and the Canadian Judicial Council to the 2007 Judicial Compensation and Benefits Commission. December 13, 2007. Filed study.

ACADEMIC POSITIONS

California State University, Los Angeles, College of Business and Economics, 2007–2008
Marshall School of Business, University of Southern California, 2001

AWARDS

1999 Moskowitz Prize for outstanding research in the field of socially responsible investing. Awarded by Social Investment Forum/Center for Responsible Business, U.C. Berkeley Haas School of Business

PAST AND PRESENT PROFESSIONAL ACTIVITIES

Founder and editor of the *BRG Review*. The *Review* is published twice a year and was established by Dr. Wazzan to present original research and analysis on topics of interest to a variety of audiences, including economists, accountants, legal scholars, and industry leaders.

American Finance Association

American Economic Association

Venture Finance Institute, Claremont Graduate University: Referee

SELECTED CONSULTING EXPERIENCE

Securities, Valuation, and Corporate Finance

- Computed option values for publicly and privately held firms.
- Analyzed the business and stock price impact of tender offers.
- Analyzed the stock price impact of gaining or losing investment bank analyst coverage.
- Conducted solvency analyses using option-based and accounting-based models.
- Evaluated damages sustained due to artificially imposed capital constraints.
- Evaluated the stock price impact of negative public announcements and news including the temporary and permanent stock price impact of SEC-imposed trading halts.
- 409A valuation.
- Evaluated the nature and impact of exchange traded commodities/metals futures and forward transactions including hedging strategies and techniques. Evaluated allegations of commodities market manipulation and insider trading.
- Analyzed the potential profitability of off-shore tax strategies.
- Analyzed foreign currency hedging strategies and markets in connection with commodities metals trading.
- 10b5 analyses.
- Evaluated commodities price impacts due to selected transactions on the London Metals Exchange and COMEX markets.
- Class certification.
- Estimation of "just compensation" for the value of real estate properties taken by the federal government through operation of the *Trails Act*.

Real Estate, Mortgage Backed Securities, Lending, and Risk

- Evaluation and pricing of mortgage risk and appropriate interest rates
- Evaluated mortgage terms in alleged predatory lending context
- Analysis of FICO scores, analysis of how scores are computed, which variables predominate, and how these scores are used with respect to lending and rates
- Analyzed the economic significance of structured and off-balance sheet finance transactions from both a general point of view and with respect to specific transactions
- Analysis of appropriate interest rate in cram-down bankruptcy setting (following Till methodology)
- Determination as to whether loan covenants are being breached
- Valuation of partnership holdings in real estate transaction disputes, including alleged expropriation of minority shareholders
- Forensic analysis as to bank solvency, and ability to fund made loans, in the context of commercial real estate development and construction
- Analysis of lost profits from tenant default
- Valuation of real estate options

Commercial Damages

- Analyzed of damages as a result of business interruption in various industries, including: steel, software/internet commerce and railroad/truck shipping
- Analysis of damages from alleged breach of contract
- Analysis of damages from alleged breach of fiduciary duties
- Analysis of damages from alleged fraud
- Analysis of damages from alleged construction defects

Labor Economics

- Computed damages resulting from alleged wrongful termination
- Conducted class certification analyses in "wage and hour" litigation in industries including food service, retailing, and lab technicians
- Conducted damage analyses in "wage and hour" litigation including statistical analysis of survey results
- Conducted statistical and econometric analyses in disparate impact matters (including use of data from U.S. Census Bureau, U.S. Bureau of Labor Statistics, and others)
- Conducted statistical and econometric analyses in alleged age, race, and gender discrimination, including EEOC matters

Intellectual Property

- Conducted financial and economic valuation of patent infringement damages, including lost profits and reasonable royalties analyses, in a wide range of industries including semiconductors, oil-field services, chemical compounds, aerospace, medical systems, avionics, semiconductor capital equipment, automated manufacturing, software, and 3D computer graphics systems
- Conducted financial and economic valuation of damages arising from theft of trade secrets in a wide range of industries including authored literature, semiconductors, software, and semiconductor capital equipment
- Analysis of antitrust counterclaims
- Market definition

Antitrust Economics and Competition Policy

- Class certification
- Analysis of the competitive impact of mergers or joint ventures in various industries including satellite communications, multi-channel video programming distribution, petroleum refining, bio-agricultural products, lead-acid batteries, broadcast radio, credit cards, and aerospace
- Predatory pricing
- Price fixing
- Collusion
- Vertical and horizontal restraints
- Market definition

Statistics, Econometrics, Large-Scale Data Analytics

- The application of econometric and statistical models to a variety of areas including class certification, complex litigation, damages, market power, and economic impact studies
- Random sampling
- Point estimation
- Construction of confidence intervals
- Determinations of appropriate sample sizes
- Analysis of large (i.e., millions of records) datasets (e.g., intraday securities data, commodities exchange futures transactions).
- Data acquisition
- Database design and development

Life Sciences Economics/Healthcare

- Valuation of startup firms and new technologies
- Patent portfolio valuation
- Pharmaceutical price modeling
- Damages calculations from infringement actions

- Public policy (e.g., analysis of legislative impacts on the cost and provision of health care; analysis of the impact of pay-for-performance legislation)
- Analysis of lost profits as a result of government actions (e.g., FDA decisions) affecting domestic and worldwide pharmaceutical sales of specific products
- Investigations determining how claims were documented, coded, priced, and/or paid
- Econometric analyses of pharmaceutical pricing (including use of IMS Health and related data)

DAWN E. EASH
BERKELEY RESEARCH GROUP, LLC
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deash@thinkBRG.com

SUMMARY

Dawn Eash is a senior managing consultant in Berkeley Research Group’s Los Angeles, Century City office where she consults on matters in the fields of labor and employment, intellectual property, commercial damages, public policy, healthcare, technology, and securities. Dawn’s experience includes sampling and survey design, advanced statistical and analytical methods, predictive analytics, and database construction and validation.

Ms. Eash has conducted analyses and studies specifically relating to matters involving wage and hour class actions; discriminatory hiring, promotion, and termination practices; class certification; lost profits; reasonable royalties; breach of contract disputes; quality control; government audits of insurance claim fraud; and securities fraud.

EDUCATION

M.S. Statistics, North Carolina State University, 2006
B.S. Finance and Statistics, California Polytechnic University, San Luis Obispo, 2004

PRESENT POSITION

Senior Managing Consultant Berkeley Research Group LLC, 2010-

PREVIOUS POSITIONS

Senior Consultant	LECG, 2009 - 2010
Manager	Resolution Economics, 2008-2009
Senior Associate	Alvarez & Marsal, 2007-2008
Senior Associate	LECG, 2006-2007
Graduate Student Instructor	North Carolina State University, Statistics Department, 2005-2006

LITIGATION EXPERT RETENTIONS

Dennis Nollette v. Sony Pictures Home Entertainment, Inc.
Judicial Arbitration and Mediation Services (JAMS Reference No. 1220041935)
September 2012. Report.

April Stewart v. Glendon Partners, LLC
Superior Court of the State of California, for the County of Los Angeles.
June 2011. Designated.

HONORS AND AWARDS

National Science Foundation VIGRE Fellowship

PROFESSIONAL AFFILIATIONS

Member, American Statistical Association, 2004-present
Member, Committee on Career Development, American Statistical Association, 2013-2015
Mu Sigma Rho
Phi Beta Kappa

PUBLICATIONS

"Observational Studies in a Litigation Context: Important Practices in A Large-Scale Case Study," BRG Review 3:1, Spring 2013.

"A Review of the 2011 and 2013 Digital Television Energy Efficiency Regulations Developed and Adopted by the California Energy Commission," *California Journal of Politics and Policy*, Vol. 3: Issue 1, Article 22, 2011.

WRITTEN SUBMISSIONS TO REGULATORY ENTITIES

"An Economic Assessment of Public Policies to Compel Unreimbursed Services to be Provided by Nonprofit Hospitals in California," Commissioned by the California Hospital A

"A Review of the 'December 2008 Draft Efficiency Standards for Televisions' Proposed by the California Energy Commission," Commissioned by the Consumer Electronics Association. March 23, 2009.

REPRESENTATIVE ENGAGEMENTS

Labor and Employment

- Performed analysis of executive compensation data to benchmark C-suite short term and long term compensation for a small, privately-owned medical company.
- Performed analysis of base and overtime pay as compared to similar positions in the police and aviation industry.

- Conducted primary research to understand and estimate the short term and long term effects of having an accredited or unaccredited doctorate degree.
- Analyzed personnel documents and conducted telephone interviews to assess job performance and whether termination was reasonable.
- Analyzed historical payroll and punch data to estimate exposure due to missed 1st and 2nd meal breaks being compensated incorrectly.
- Analyzed executive compensation data to benchmark C-suite short term and long term compensation within the Food and Kindred Products industry.
- Performed in-person interviews and reviewed personnel documents to assess a particular employee's job performance and whether appropriate protocol was followed in termination.
- Performed analysis of historical compensation data for a large class of technical workers across multiple firms in connection with an allegation of a conspiracy to suppress pay by their employers.
- Gather and analyzed publicly available data to benchmark base compensation for Sheet Metal Workers in the Bay Area.
- Analyzed executive compensation data to benchmark C-suite short term and long term compensation within the Petroleum industry.
- Performed statistical analysis of employment termination data in a single plaintiff age discrimination case in the entertainment industry. Submitted a declaration.
- Performed quantitative and qualitative review of time records, job descriptions, training materials, and electronic record in a single plaintiff independent contractor misclassification case for a large insurance company.
- Analyzed time records for potential exposure in a missed meal and rest break class action for a Fortune 100 company. Assisted counsel with random sampling for mediation purposes.
- Consulted with a national fuel delivery company to consolidate employment data and create statistical analyses in response to an OFCCP audit.
- Performed questionnaire design and statistical analysis for managerial misclassification case involving a large automotive retail chain.
- Designed sampling protocol and analysis for an observational study used to estimate hours worked, meal breaks, and rest breaks taken by sales representatives for a Fortune 500 company.
- Conducted interviews, designed phone survey and questionnaire, and performed statistical analysis on the results for a large tire store chain in a manager misclassification case.
- Performed an analysis of job descriptions, employee tasks, interviews of relevant employees and relevant public statistical data for a financial services company in a single plaintiff misclassification matter.
- Managed data collection and analysis for a large logistics corporation seeking to resolve an unpaid vacation class action suit with mediation.
- Constructed stratified random sampling design and analyzed results to estimate number of missed meal and rest breaks by guards at a prison.
- Constructed and analyzed relational database to determine whether employees were misclassified as independent contractors in a large class action suit.
- Analyzed validity of opposing expert's sampling methodology proposed for class certification purposes.

- Managed and analyzed several large databases of employee personnel information to determine the legitimacy of alleged age discrimination in a national reduction in force in an investigation of a leading microchip, computing and communications company.
- Managed large databases of information and complex statistical techniques to investigate claim in a race and gender discrimination case for a national financial brokerage firm.
- Organized, managed, and analyzed several large databases containing years of data in order to calculate economic damages in a wrongful termination lawsuit against a large investment firm.
- Specified statistical models to analyze the racial distribution of the true applicant pool in a racial discrimination suit alleging biased practices in the job application and hiring processes.
- Created and maintained job applicant and hire databases and also performed statistical analyses to rebut the allegation in an OFCCP investigation of a large poultry processing firm relating to discriminatory hiring practices.
- Calculated potential exposure to the firm given a variety of outcomes in the case in an OFCCP investigation of a large automotive supplier company relating to alleged discriminatory hiring practices.
- Statistically analyzed survey data, point of sales data, and employee turnover data in a wage and hour class action suit of department managers against a major retailer chain over failure to pay overtime.
- Performed a rebuttal analysis of the other experts' survey design and analysis in an alleged unpaid meal break case against a large grocery store chain.
- Statistically analyzed applicant and employment practices and their distributions to investigate allegations in a case against a temp agency and a large poultry processing firm relating to allegations of discrimination due to religious practices.
- Designed a survey about managers' working habits in a wage and hour class action suit against a large electronic equipment retail chain.
- Analyzed the plaintiffs' expert's models for economic damages in a multi-plaintiff wrongful termination and age discrimination case against a large telecommunication company.

Healthcare

- Statistically analyzed random sample of elderly citizens to determine whether a transition to community care resulted in increased monthly costs of care.
- Designed sampling plan to audit historical claims for accuracy in a regulatory audit of a large health plan.
- Designed and performed statistical sampling plan in a case involving alleged physician upcoding, unbundling, and overprescribing.
- Performed statistical analysis in the class certification process in a major healthcare class action suit over alleged abuse of federally funded healthcare system by a large hospital chain.
- Analyzed the government's sampling methodology and performed alternative extrapolations using the corrected statistical techniques in a government audit of alleged overpayment for a multi-specialty physician group.

- Assisted in developing a stratified sampling plan and extrapolating the results to all claims to provide an accurate and precise estimate of actual overpayments in a dispute between CMS and a research hospital over alleged overpayments.
- Employed statistical data mining techniques on a large claims database resulting in the identification of a systematic error which had led to the nonpayment of claims in a case where a large group of providers alleged failure of reimbursement of claims against local and state agencies.

Securities

- Performed option valuation using both the Black-Scholes model and Hull-White methods to account for early exercise and employee exit rates.
- Validated and critiqued a sampling plan of loans to be assessed for breach of underwriting standards and alleged damages.
- Validated and critiqued the valuation of a real option put on long term contracts with partial guarantees from other parties.
- Analyzed the grant option date distribution to establish the likelihood of stock option backdating in a criminal investigation of executives at a prominent semiconductor supply corporation.
- Performed an event study of litigation related events to assess how alleged improper accounting practices by management affected stock price in a large securities litigation derivative case.
- Performed statistical analyses to assess whether a proposed portion of a class action settlement was acceptable to the company in lieu of an independent settlement for a large management fund company.
- Utilized multi-trader models to assess potential damages to the class of shareholders in a securities litigation case for a large provider of semiconductor equipment.
- Performed statistical scenario analyses of how restatements affected the firm's historical stock prices in a stock option backdating case.
- Performed statistical analysis to assess correlations between grant dates, the size of grants and stock returns on or around the grant dates to investigate any improper behavior in an SEC investigation of alleged stock option backdating practices.

Intellectual Property

- Created and managed large databases in order to determine lost profits and reasonable royalty damages on a patent infringement case involving wireless and cellular technology.
- Performed statistical analysis of sales data to determine whether product launch had an effect on related products in a patent infringement case.
- Determined lost profits and reasonable royalty damages on a patent infringement case involving financial market data compression technology.
- Calculated lost profits and reasonable royalty damages on a patent infringement case for a web-based software and service provider.

- Calculated the fair market value of specialty data to be used for marketing and compensation strategy at a large pharmaceutical firm including reasonable royalties.

Other

- Analyzed historical success and secondary data to optimize location placement for a medical company and recommend future center locations.
- Validated and critiqued the use of certain statistical methods to estimate lost revenue or damages due to a breach of contract.
- Performed analysis to optimize investment allocation for a Fortune 500 company in the Pharmaceutical industry.
- Performed quantitative analysis of commodity market in commercial damages case.
- Performed quantitative analysis, model validation in accordance with federal standards, and simulations for two risk models under consideration by a federal financial institution.
- Developed complex econometric time series models based on IMS sales data to estimate global lost profits to a large pharmaceutical company in a business interruption case.
- Co-authored white paper discussing the efficiency of electricity futures markets.
- Analyzed an opposing expert's hedonic regression methodology used to determine damages to a real estate market caused by groundwater contamination.
- Determined which branches of a large bank were located within a certain proximity to Census tracts and Census block groups with a proportion of minority residents larger than 50% for class certification purposes.
- Performed an industry-specific valuation of the company to assess economic damages in a breach of contract dispute between an entrepreneur and their development partner.
- Performed a valuation of drug development in an emerging pharmaceutical niche market in a breach of contract dispute between a pharmaceutical research and pharmaceutical development company.
- Created a comprehensive database of transportation and financial related data to create statistical models to rebut plaintiff allegations in a case against a transportation commission in a large metropolitan area alleging discriminatory subsidiary practices.
- Calculated probabilities of incidence and performed statistical analyses of climate data in a safety gross negligence case against a large mall operator related to the malfunction of escalators which led to personal injuries.
- Specified statistical forecasting models to compute but-for revenues and profits for an economic damages estimate in a business interruption case.
- Utilized statistical sampling based control methodologies to assess quality measures of large data entry projects on several occasions.

- On behalf of a former CEO of a large insurance conglomerate, critiqued the claims of alleged schemes to reportedly enhance the financial performance of the company statements
- On behalf of an appointed Monitor of a demolition and hauling company, provides extensive forensic accounting services by identifying key risks, conducting investigations, and providing observations and recommendations
- On behalf of a diversified technology company, develops and prepares damages theories and analyses involving patent infringement
- On behalf of a leading insurance company, prepared damages analysis for a copyright infringement matter involving the use of licensed software
- On behalf of a prominent insurance and financial services company, evaluated, critiqued and prepared expert reports involving multiple disciplines including corporate governance, government policy, and bankruptcy issues in a high-profile takings claims matter

Kerry Ruoff, CPA, Rockville Centre, NY

April 2008–July 2011

- Developed and managed litigation consulting assignments in preparation of serving as an expert witness on various damages issues
- On behalf of a leading chemical company, provided expert testimony pertaining to environmental costs incurred at a manufacturing facility and allocated those costs among insurance policies
- On behalf of the insured, provided expert testimony pertaining to damages involving the remediation of a site in New Jersey
- Consulted on a forensic accounting assignment to confirm a Ponzi scheme and help identify potential areas for financial recovery to investors
- Consulted on a high-profile white collar crime matter involving insider trading and fraudulent accounting allegations by reviewing the work of other accountants and consultants for counsel's consideration in preparation for trial
- Consulted on a white collar crime matter involving financial statement misrepresentations and fraud allegations by reviewing the underlying documents and assessing the quality of work performed by independent accountants

Kroll Inc., New York, NY

July 1999–March 2008

Managing director and Head of Forensic Accounting Practice and Litigation Consulting Practice

- Developed and managed a variety of litigation consulting and forensic accounting matters and became the head of the practice in New York in March 2006
- Prepared numerous claims for damages for lost profits and reasonable royalties in multiple intellectual property disputes
- In connection with a Section 363 Asset Purchase Agreement within Chapter 11 proceedings, performed analytical procedures in assessing the vitality of an evolving industry along with the financial viability of certain industry leaders
- On behalf of the insured, testified as an expert witness on damages and allocation methodologies and various insurance policies
- On behalf of an investor, ascertained how a fraud was perpetrated and assessed the quality of independent audits

- On behalf of a Fortune 500 company, provided expert testimony in federal court pertaining to a royalty rate for a popular consumer electronics product yielding financial recovery for the client and a basis to negotiate licenses with other users of the patent
- On behalf of a public international advertising agency, led the forensic accounting investigation in response to certain allegations made by internal audit. Presented findings to the Audit Committee and all other interested parties.
- On behalf of an apparel wholesaler, identified and quantified unreported transactions pursuant to Internal Revenue Code 60501 in response to money laundering concerns
- On behalf of the Master Trust of a bankrupt retailer, reviewed sales contract data to identify and account for any payments made to the Debtor and not remitted to the Master Trust

Hoerberlein Associates, LLC, New York, NY
Co-founder and Member

April 1996–June 1999

- Actively developed this startup company into a profitable litigation consulting firm
- Prepared numerous claims for damages for lost profits and reasonable royalties in a variety of intellectual property disputes
- Prepared several damages reports, including rebuttals, which not only provided the quantitative analysis, but corresponding and conclusive theories
- On behalf of a leading telecommunications company, prepared the damages report and the rebuttal testimony involving fraudulent inducement, breach of contract, and trade secret claims
- Analyzed business valuations and prepared rebuttal claims involving partnership disputes and breach of contract matters
- On behalf of a government agency, conducted several financial fraud investigations involving the operation of housing facilities

BDO Seidman, LLP, New York, NY
Partner

May 1995–March 1996

- Developed and managed complex litigation consulting matters while working with other professional service lines
- On behalf of a major municipality, provided consultation and damage analyses in a high-profile breach-of-contract matter
- Conducted a financial fraud investigation involving hotel chain locations throughout the United States
- On behalf of the owners of a retail chain store, provided consultation and an expert report to assist in the dismissal of all counts of alleged fraud

Arthur Andersen, LLP, New York, NY
Senior manager

July 1985–May 1995

- Actively managed numerous financial/operational audits and litigation consulting matters
- Assisted in the development of the Environmental Management Services Practice, which resulted in a multimillion project for the New York office
- On behalf of an international oil and gas company, identified and quantified environmental costs resulting in tripling the original estimated damages

- On behalf of a reinsurance company for automobile warranty programs, reviewed its policies and procedures relative to accounting for premiums and maintaining reserves and prepared several analyses
- Provided financial analyses and accounting consultation to counsel pertaining to the calculation of net worth involving a financial services company and a large hotel chain in a breach of contract dispute
- Assisted in the development of effective management programs to help management prevent undetected and/or unreported risks and to ensure compliance with its policies

EXPERT TESTIMONY EXPERIENCE

<i>Nature of Dispute</i>	<i>Case Name</i>	<i>Nature of Testimony</i>	<i>Venue</i>
Copyright Infringement	Alan Kaplan and Stella Hall v. Lilly of France	Calculation of Incremental Profits	Trial, December 1996, U.S. District Court, New York
Patent Infringement	Jerry Kirsch v. Brother International Corporation	Calculation of Reasonable Royalties	Deposition, June 1997, subsequently settled
Breach of Contract/ Fraud Claims	Martin Wildmoser v. John Mueller et al.	Business Valuation	Arbitration, April 1998, Morris County, NJ
Copyright Infringement/ Breach of Contract	Data Systems Analysts, Inc. v. The Netplex Group et al.	Calculation of Profits and Damages	Deposition, May 2000, subsequently settled
Breach of Contract	Joseph Pappo and Donald Reid v. Weiss, Peck & Greer, LLC	Cost Allocation Issues	Arbitration, May 2000, Chicago, IL
Environmental Insurance Coverage	Amerace v. Aetna et al.	Calculation of Costs Per Policy	Deposition, November 2002
Breach of Contract	Joey Cho v. AT&T	Calculation of Commissions Payable	Arbitration, July 2003, New York, NY
Patent Infringement	Philips Electronics v. Comp Micro Tech	Calculation of Reasonable Royalties	Deposition, March 2004; Trial, April 2004; U.S. District Court Delaware
Breach of Contract	White Revere v. Utica Mutual Insurance Group et al.	Calculation of Damages	Deposition, June 2009, subsequently settled
Environmental Insurance Coverage	Engelhard Corporation v. Allstate Insurance Company et al.	Calculation of Damages and Costs Per Policy	Deposition, May 2010; Deposition, January 2015; Trial, March 2015, Philadelphia, PA

PUBLICATIONS

- 1) "Recovering the Costs of Environmental Remediation," *Real Estate Review*, WG&L, Summer 1996
- 2) "The Environment: The Issue of the 90's," *Arthur Andersen Counsel to Counsel* 2(5), October/November 1992

William Russo

Managing Director – Restructuring and Transaction Advisory
New York

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Industry Experience

Consumer Products and Apparel

Financial Services

Healthcare and Pharmaceuticals

Real Estate and Construction

Retail and Wholesale Distribution

Selected Public Cases

Caesars Entertainment Operating
Company

Chem Rx Corp

Latham International

Natural Products Group, LLC

Sleep Innovations

Experience

William Russo specializes in providing financial restructuring advisory and investigative services to companies and creditors. He has advised various parties in litigation and non-litigation matters. His areas of concentration include strategic business planning and negotiating, transaction analysis and due diligence, transaction proposal valuations, business plan review, 13-week cash-flow forecasts, and multiyear financial models.

Before joining BRG, Mr. Russo worked at Capstone Advisory Group, LLC. Prior to Capstone, Mr. Russo worked at Citigroup's Corporate and Investment Bank, where he analyzed complex lending arrangements and created relevant deal documents. Other responsibilities included financial modeling, debt portfolio management, and recommendations to the corporate credit committee. Previously, he worked at PricewaterhouseCoopers, LLP, where he specialized in litigation consulting and fraud analysis and worked on several fraud investigations.

Education and Affiliations

Mr. Russo holds a BS in Accounting and Finance from Syracuse University's School of Management. He is also a member of Association of Insolvency and Restructuring Advisors.

Andrew Cowie

Director – Restructuring and Transaction Advisory
New York

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Industry Experience

Entertainment and Media
Financial Services
Food and Agriculture
Manufacturing, Metals and Mining
Real Estate and Construction
Retail and Wholesale Distribution

Selected Public Cases

Mirant
Spiegel Inc.

Experience

Andrew Cowie has over 12 years of experience in bankruptcy, turnaround, restructuring, forensic and financial investigations, and litigation consulting.

In restructuring, Mr. Cowie has advised creditors and creditors' committees, including secured lenders, banks, financial institutions, lender groups, bondholders, and unsecured creditors, as well as debtors through the bankruptcy process.

Before joining BRG Capstone, Mr. Cowie was a director at the Policano & Manzo legacy practice of FTI Consulting. Previously, Mr. Cowie was a manager at Five Continents Financial, Grand Cayman and at Coopers & Lybrand (predecessor firm to PricewaterhouseCoopers), both in Toronto, Canada, and in Grand Cayman.

Education and Affiliations

Mr. Cowie holds a B.A. from Western University, London, Ontario, Canada, and an M.B.A. from Schulich School of Business, York University, North York, Canada. He is a Canadian Chartered Accountant, Certified Insolvency and Restructuring Advisor and a CFA charterholder.

Alex Roque

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New Jersey

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Industry Experience

Fund Services
Gaming, Lodging and Hospitality
Healthcare, CCRC

Selected Public Cases

Caesars Entertainment Operating Co.
La Paloma Generating, LP
Lake Road Generating Company
Longacre
Wesleyan Senior Living

Experience

Alex Roque is a Certified Public Accountant with over 20 years of experience providing financial and accounting-related advisory services in industries such as management advisory, technology, specialty chemicals, international wholesale food service, and retail. He has held positions within senior management and has provided financial reporting and analysis for both private and public companies. He has been involved in an initial public offering of securities and several leveraged and management buyout transactions. He specializes in areas such as LLC taxation, GAAP, public and private company reporting, and SALT issues.

Before joining BRG, Mr. Roque worked at Capstone Advisory Group as the controller. Prior to Capstone, he was a chief financial officer at DCI and the assistant controller at Phibro Animal Health.

Education and Affiliations

Mr. Roque received his Bachelor of Science degree in Accounting and Business Administration from Bloomfield College and his Master's Degree in Business Management from Thomas Edison State College.

Mr. Roque is a Certified Public Accountant and holds a CGMA designation as a member of the American Institute of Certified Public Accountants.



Eric S. Berman

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Industry Experience

Gaming, Lodging & Hospitality

Real Estate & Construction

Entertainment and Media

Financial Services

Latin America

Selected Public Cases

Newland International Properties, Corp.

Extended Stay Hotels

Experience

Eric Berman specializes in financial advisory services in the troubled company and corporate finance environment. His assignments have included strategic planning, due diligence, financial modeling and cash management, business plan analysis, profit improvement, mergers and acquisitions, liquidations, recapitalization and restructuring.

Mr. Berman has advised debtors, owners, developers, and lenders in hospitality and real estate matters pertaining to assets throughout the United States and Latin America. He serves as the advisor to Newland International Properties, Corp., developer of the Trump Ocean Club Panama, one of the largest mixed-use projects in Latin America. In addition to managing an out-of-court financial restructuring process with holders of \$220 million construction financing notes, Mr. Berman is responsible for oversight of the operational performance of the hotel and amenities assets.

In addition, Mr. Berman has advised the institutional lenders of a \$250 million mezzanine loan, to a portfolio of 42 full-service and select-service hotels across the United States. He was responsible for analyzing performance of all 42 properties in the portfolio, as well as operational and capital expenditure budgets, and ensuring the portfolio was in compliance with all loan covenants. Mr. Berman also currently assists with managing the Extended Stay Hotels Litigation Trust and Plan Administration.

Mr. Berman has worked on several private matters, including financial due diligence and business viability evaluation accompanying a large capital raise at a privately held digital media company. Most recently, he conducted and co-authored an economic impact assessment report for a real estate developer of a luxury resort and golf course in a well-known island destination.

Prior to joining BRG, Mr. Berman was a consultant at Capstone Advisory Group, LLC. Previously, he was a member of the audit practice of Deloitte & Touche, LLP. He was responsible for the planning and execution of audits, reviews and compilations of numerous SEC registered corporations, in addition to providing consultation to executives on the appropriate application of complex accounting matters.

Mr. Berman has lived and spent extensive time in Colombia, Panama, and Mexico, and speaks English and Spanish, and has an elementary understanding of Portuguese.

Education and Affiliations

Mr. Berman graduated from the Pennsylvania State University – Smeal College of Business where he earned a Master of Science and a Bachelor of Science in Accounting with a minor concentration in Legal Environment of Business. He is a Certified Public Accountant and is a member of the American Institute of Certified Public Accountants. Mr. Berman is also a member of the Association of Insolvency and Restructuring Advisors.



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Chuck is a veteran litigation support professional and leading eDiscovery strategist. With more than two decades of litigation support and eDiscovery experience, Chuck has developed litigation support systems at Debevoise & Plimpton in New York and served as its first litigation and practice support manager. As a service provider, he developed and directed organizational efforts in consulting, project management, computer forensics, operations, project engineering and business development.

Chuck's experience is both consultative and hands-on. He works with clients to develop eDiscovery strategy for identification, collection, preservation, and negotiating the scope of discovery. He has provided expert testimony in a variety of discovery disputes concerning computer forensic examination, the cost and burden of particular discovery requests, and the requirements for defensible search. He is a frequent writer and CLE speaker about proactive management of discovery costs and the multiple disciplines required for effective technology-assisted review, predictive coding, and early case assessment.

Chuck holds a JD from Lewis & Clark Law School and a BA from Brandeis University. He is not an attorney and does not provide legal advice. Among industry groups, Chuck is a board member of the New England Legal Technology Professionals and has been active in Electronic Discovery Reference Model (EDRM), The Sedona Conference Working Groups 1 and 6, and the East Coast Association of Litigation Support Managers (ECALSM).

PROFESSIONAL EXPERIENCE

D4 LLC (2010-) Senior Vice President, Discovery Engineering

- Consults regarding methodology, size, scope and budgets of eDiscovery projects
- Assists clients with defensible strategies for culling and other data reduction
- Works with executive team on selection of technologies and market strategy

Anacomp, Inc. (2009-2010) Vice President Consulting for Electronic Discovery

- Developed collections, ECA and hosting services for then-owner of CaseLogistix software
- Assisted clients with defensible strategies for culling and data reduction
- Supervised Sales, Consulting, and onsite data collection teams.

SPi Legal (2005-2009) Vice President of Consulting & Project Engineering

- Developed US and EU preservation and collection protocols for products, environmental and DOJ matters.
- Supervised onsite data collection and computer forensics.
- Supported clients with budgets, pricing, and RFP response.

Daticon, Inc. (2002-2005) Senior Consultant

- Staffed preservation and collection for more than 800 staff in 20 government agencies
- Developed the company's first computer forensics lab and served as examiner and expert witness
- Certified as CLE provider in eleven states.

Electronic Evidence Discovery, Inc. (1999-2002) Vice President and Senior Consultant.

- Collected ESI for civil litigations and government investigations in the US and UK for matters in antitrust, banking, commercial, employment, insurance, IP, trade secrets mass tort, and pharma.
- Developed computer forensics evidence and testified as expert.

Strategic Solutions, Inc. (1998-1999) Senior Consultant

- Worked with law firms and corporations on the full text search of ESI for litigation support.
- Developed business requirements for an early web-based ASP.

Ibis Consulting (1997-1999) Director of Client Services

- Developed, staffed and managed review for resolution of life insurance marketing conduct complaints for a major life insurance carrier.

Arthur Andersen LLP (1994-1997) Manager, Legal Information Consulting

- Directed litigation support image scanning and document coding facility
- Instituted statistical sampling for quality control and for litigation support document
- Supervised up to 300 staff over three shifts; managed projects ranging in size from one to nine million pages

Debevoise & Plimpton (1986-1994) Manager of Litigation and Practice Support

- Instituted support for document retrieval, data conversion, production of ESI, financial analysis, case management, demonstrative evidence, statistical modeling, and trial support graphics.
- Developed practice group support for bankruptcy, corporate finance, derivatives, insurance, and international transactions.
- Provided staffing for contract attorneys, paralegals, and technical staff large-scale ADR matters.

EDUCATION

JD Lewis & Clark Law School (Portland, OR); BA Brandeis University (Waltham, MA)

PROFESSIONAL AFFILIATIONS

New England Litigation Technology Professionals (board member, 2014-) Sedona Conference WG1, WG6 2012-, RFP+ Working Group 2004; ACEDS, 2011-. Association of Litigation Support Professionals, 2009-11. Electronic Discovery Reference Model (EDRM) 2006-. Chair 2007 EDRM Evergreen Identification. Massachusetts MCLE Faculty 2001-2011. AIIM, 2002-2006. ARMA 2002-2006. Legalworks CLE Faculty 2001-2007, 2009; Nat'l Society Compliance Professionals, 1997-1999. ABA Legal Technology Resource Center, Working Group for Litigation Support Guidelines, 1990-1994. Vice President, East Coast Association of Litigation Support Managers, 1990-1994.

TESTIMONY

- Written testimony to support Plaintiff's discovery protocol, *Cung Le, et al v. Zuffa LLC d/b/a/ Ultimate Fighting Championship and UFC*, U.S.D.C. D- Nevada, February and April 2016.
- Oral testimony to support Plaintiff's discovery protocol, *Delgado et al v. Ocwen Loan Servicing, Cross Country Homes, et al*, 1:13-cv-04427 (NGG)(RML) 2015-2016
- Oral testimony to support motion to compel, *Agerbrink v. MSA Models, et al*, U.S.D.C (S.D.N.Y) 14 Civ 7481 (JPO)(JCF), 2015
- Written testimony to support motion to compel, *Lloyd, et al v. J.P. Morgan Chase & Co.* U.S.D.C. (S.D.N.Y) No. 11 Civ. 9305 (LTS) (HPB) August 2015.
- Written testimony to support motion for protective order, *People Sales & Profit Co. et al. v Steak N Shake Enterprises, Inc* 1:13 CV 00654 (S.D. Ind.) August 2015
- Written testimony to support motion for protective order, *Montesa v. Schwartz et al* 12 CV 6057 (S.D.N.Y) August 2015
- Written testimony to support motion to compel, *Scott et al. v. Chipotle Mexican Grill Inc.*, 12 CV-8333 (S.D.N.Y.) March 2015

- Written testimony to support motion to compel BNY Mellon et al in re Estate of Norman Mercer New York Suffolk Surrogate's Court June 2015
- Written and oral testimony to support motion to compel, Aurora v Aventine et al (D. Neb) December 2014
- Written testimony to support motion to quash deposition subpoenas, Murphy and Creazzo et.al. v. Lenderlive Network, Inc., District of Colorado 13 cv 03135-RBJ October 2014
- Written testimony to support motion to compel, Alberta Ltd. Dba Outdoor Museum v Fossil Industries, Inc. , Suffolk County, NY Index No. 060275/2013
- Written testimony to support protective order, Oxford Global Resources, Inc. v Ziskind and Entegee, Inc. Mass Super, Essex Co ESCV2013-00496-C (2014)
- Written testimony in opposition to motion for sanctions: FH Chase, Inc. v. Advanced Technology Group, Arizona Maricopa Superior CV2008-002628 (2014).
- Oral testimony on production cost, burden, timing and scope: EEOC v. Signal Intl. 12-557 E.D. La. (2014)
- Hearing and written testimony to support Ford's Motion to Compel Disclosure of Search Methodology, Ford Motor Company v. Edgewood Properties, Inc, 06CV1278, 06CV4266, 08CV0774, (D. N.J) 2009.
- Written testimony to support 3rd party motions to quash and for protective orders v 3rd party subpoenas, Chelsea Grand LLC v. NY Hotel & Motel Trades Council, 07CV2614 (E.D. Va.) Nov. 2007.
- Expert report on recovery and authentication of deleted email in trade secrets / trade practices litigation, Custer Battles, LLC, et al. V. Eagle Global Logistics, et al.,1:04CV01002 (E.D. Va.) Dec. 2004.
- Trial testimony on forensic examination to determine intentional spoliation of computer data in fraud and commercial litigation, Longhitano v. McClelland, Sup. Ct. NY (Westchester) Jan. 2003. (Qualified as expert).
- Written testimony evaluating the requirements for production of e-mail and costs and burdens of electronic discovery, Dean v. Priceline.com, U.S.D.C., D-Ct. 3:00 CV 1273 (DJS), June 2002. (Approved by Court as neutral custodian of ESI in dispute.)
- Trial and written testimony on computer forensic examination for misuse of confidential business information, Leeds International, Inc. v. Smallwood, Sup. Ct. NY (Manh.) No. 601160/02, April 2002. (Qualified as expert).
- Written testimony evaluating cost and burden of email production, completeness of discovery, and cost sharing, in cross motions to compel and motions for protective orders, Rowe Entertainment, Inc., et al. v. The William Morris Agency, Inc., et al. USDC SDNY, 98 Civ. 8272, Nov. 2001.
- Written testimony evaluating discovery compliance for e-mail and business data contained on e-mail and network servers and backup tapes, In the Matter of Certain Network Interface Cards And Access Points For Use In Direct Sequence Spread Spectrum Wireless Local Area Networks And Products Containing The Same (Consolidated Actions), US International Trade Commission, No. 337-TA-455, Sept. 2001.
- Written testimony on method and purpose to preserve data and to evaluate Internet usage privacy controls, In Re DoubleClick Cases, Superior Ct. Cal. (Marin) Judicial Council Coordination No. 4120, June 2001.
- Deposition and written testimony on forensic examination on motions for preliminary injunction, EMC Corp. v. Gresham and Eurologic Systems, Inc. Civil 01-2084, Suffolk County, MA, July 2001. (Stipulated as expert.)
- Written and oral testimony on technique, cost, burden to recover and authenticate electronic files from network, accounting, inventory, and desktop systems; on cross-motions to compel. Am. Booksellers Ass'n v. Barnes & Noble, No. 98CV1059, USDC, ND Cal, Mar. 2000 – Jan. 2001. (Stipulated as expert).
- Written testimony on techniques to acquire disk images for forensic exam, Sup. Court MA (Essex) May 2000.
- Written testimony on forensic examination and recovery of deleted files, and on the content and chain of custody of files acquired in discovery, on behalf of the Federal Deposit Ins. Corp, USDC MD Fla, Aug. 1998.

PUBLICATIONS

- "Microsoft Mail and the 4th Amendment: Do Any of Us Seriously Think We Have a Right Not to Have Email Seized as Possible Evidence?" *JDSupra*. May 2014
- "Hybrid Approach of eDiscovery Managed Services Yields the Best of Both Worlds" *Inside Counsel*, Jan 2013.
- "Ten Things to Consider When Bringing eDiscovery In-House" with Peter Coons. *Inside Counsel*, Nov 2012.
- "Electronic Discovery By The Numbers" *Inside Counsel*, October 2012.
- "Electronic Discovery", Ch. 20 *Massachusetts Discovery Practice, 2nd*, with J. Follet and M. Mazzone, Esqs, MCLE, Inc 2010.
- "Electronic Discovery: What Is Causing Pain and What Do You Need To Know?" *Chi.Law Bulletin eDiscovery*, June 2009.
- "The Electronic Discovery Vendor – Third Leg of the Litigation Team" *Metropolitan Corp. Counsel*, Dec 2008.
- "Preparing for Meet and Confer – More Carrot, Less Stick?" *Digital Discovery & E-Evidence*, 7 BNA No 11, Nov 2007.
- "Interviewing Business and IT Clients for Electronic Discovery", with Kenneth R. Shear, Esq. *Electronic Discovery and Electronic Records Retention*, MCLE, Inc., Boston, June 2005. LCCN 2005926471.
- "The Skeptical Searcher: How to Give Up the Review of Everything and Discover What Matters", *Glasser*, Oct 2004.
- "Concept-Based Search Engines: Tools for Records Management", Vol XX, "Peer-To-Peer", *The Quarterly Magazine of LawNet*, Inc. Aug 2004. Reprinted in *eTechnews*, November 2004.
- "Strategy and Planning for Preservation and Collection", *Technology Update for Paralegals* MCLE, Boston, Jul 2004.
- "A Practical Guide To Electronic Discovery, 2nd" Chapter 12 *Business Litigation*, MCLE, Boston, Jan 2004.
- "A Practical Guide To Electronic Discovery", *Electronic Discovery and Computer Forensics* MCLE, Boston, May 2003.
- "Cost Factors and Cost Shifting in the Discovery of Electronic Data", *Electronic Discovery and Records Mgt*, *Glasser* 2002.
- "Electronic Discovery", with Paul Robertson, Esq., Chapter 20, *Mass. Discovery*, MCLE Inc., Boston, MA, May 2002. (Update, with Paul Robertson, Esq., January 2005.)
- "Computer Forensics", with Paul Robertson, Esq., Chapter 11, *Massachusetts Expert Witness*, MCLE Boston, Mar 2002.
- "Electronic Discovery—Basics, Burdens, and Costs", *Business Litigation* (course materials for panel discussion) 1st Annual Conference on Business Litigation, MCLE, Feb 2002.
- "Electronic Discovery – The Basics". Chapter 1, *CyberDiscovery—How to Manage, Discover, Produce and Decipher Electronic Evidence*, MCLE, Inc. Boston, MA, 2001
- "Electronic Discovery – Trends, Pleading & Practice". *Handling Complex Discovery Matters*, MCLE, Boston, May 2000.
- "Using a Basic Business Tool Can Simplify Selection of a Litigation Support Vendor", *New York Law Journal*, Jan 1994.
- "Computers in the Courtroom" *International Corporate Law*, with D. Abuhoff, Dec 1993.
- "Adapting Litigation Support to Practice Support" *NALSM Views*, Nat'l. Ass'n. Of Lit. Support Managers, Sep 1993.
- "Practice Support: A New Tool for Productivity", *Computer Counsel*, May 1993.

PUBLIC CONTINUING LEGAL EDUCATION SEMINARS

- Panel "Don't Get Stuck in the TAR" Georgetown Law Center Advanced Institute for EDISCOVERY (with Hon. Andrew Peck (SDNY), Maura Grossman, Thomas Gricks and David Cohen, November 2015
- "Ethics of EDISCOVERY in Complex Litigation" American Bar Association Section of Labor & Employment Law, Ethics & Professional Responsibility Committee, Panel, Philadelphia PA November 2015
- "Ethics of EDISCOVERY" with Gordon Calhoun, Esq., (CLE certified in 11 states) May 2015.
- "Ethics of EDISCOVERY in Complex Litigation" American Bar Association Section of Labor & Employment Law, Ethics & Professional Responsibility Committee, Panel, Naples, FL March 2015
- Moderator, "How to Manage Preservation Costs" with Hon. David Waxse (D-Kansas), Hon. William Gallo (S.D. Ca.), Prof. William Hubbard, (University of Chicago Law School) ; Geoff Vance, Esq. (September 2014; 383 attendees)
- "Current Issues in Litigation Discovery" (half day panel) Massachusetts Continuing Legal Education, May 2014
- "Predictive Coding: What it is, How it Works and Why Care" ARMA Nebraska Jan 2014
- Moderator, "eDiscovery Case Law Update" CALSMposium Chicago Ass'n Lit Support Managers Oct 2013
- "It Can Happen To Any Good Company - Top Five Ways to Manage eDiscovery Costs" Ass'n of Corp Counsel (ACC) Cen FL Jan 2013
- CV0013: Civil Discovery Practice: MCLE BasicsPlus! Mass. Continuing Legal Educ. MCLE, Inc. May 2012
- Moderator, "Building a Defensible Program for Technology-Assisted Review" IQPC 6th Ann Conf for Pharma, Biotech & Medical Devices. Oct 2011
- "Cooperation in eDiscovery" Nebraska Bar Association Annual Meeting October 2011
- Moderator, "Data Preservation Begins With Data Management" Chicago Law Bull. EDISCOVERY Conf. 2011
- "Collecting from the Cloud" and "Defensible Search: Power and Payoff" Access Data Users Conf. 2011
- "Civil Discovery", full-day panel, Massachusetts Continuing Legal Education, Inc., Boston, 2011

"Social Media and Electronic Discovery", Association of Litigation Support Professionals, Boston 2011
 "Techniques in Early Case Assessment", Association of Litigation Support Professionals, Boston 2010
 "Process and Project Management: Are You Ready?" EDiscovery and Records Retention, LegalWorks, NY, Chi, SF 2009
 "Can't We All Just Get Along? How to Enable Cooperation in E-Discovery" Masters Conference panel, Washington D.C., 2009
 "Bridging the Technology/Process Gap Between Forensics and Native Review" Masters Conference, Washington D.C., 2009
 "Early Case Assessment" Texas Lawyer Roundtable on eDiscovery: Dallas, TX September 2009.
 "What is Causing Pain and What Do You Need to Know?" Chicago Law Bulletin eDiscovery Seminars, June 2009
 "Identification: Understanding What You Have", Thomson West LegalWorks, NY, Chicago, SF, 2007.
 "Using the Rules to Advantage: Putting New FRCP Rules to Work", New Eng. Lit. Sup. Mgrs, Boston, Nov. 2006
 "T3 Trial Tactics & Technology" American Lawyer Media expert panel moderated by Francis, J (SDNY), 2005
 Chair, "Electronic Discovery and Electronic Records Management", MCLE, Inc., Boston. June 2005
 "Virtual Reality: Finding the Smoking Gun in the Electronic Haystack", LegalWorks-Journal of Commerce, NY, Chicago, SF, 2004
 "Organizing, Processing and Producing Electronic Data", Technology Update for Paralegals, MCLE, Inc., Boston. July 2004
 "Avoiding the Spoliation Trap" Glasser LegalWorks-Daily Journal of Commerce, San Francisco, April 2004
 "Audits & Preservation: How to Manage Electronic Data, Control Costs & Avoid Spoliation", LegalWorks, NY, Chicago, SF, 2003
 Chair, "Electronic Discovery and Computer Forensics". MCLE, Inc., Boston. 2003
 "Electronic Discovery: Trends, Strategy and Technology". Daticon, Inc. Atlanta, Boston, Chicago, Houston, Los Angeles, Minneapolis, Feb-June 2003. CLE Accredited in CA, DE, GA, MN, NY, OK, PA, RI, TX, WI
 "Electronic Discovery and Electronic Records Risk Management: Trends, Strategy and Technology" Houston, TX, December 2002; State Bar of Texas MCLE Sponsor 10881, Course Number 000041654
 "Computer Forensics and the Discovery of Electronic Evidence", City of San Mateo Police Dept, CA, Dec 2002
 "Electronic Discovery and Electronic Records Risk Management – Trends, Tactics and Technology", Boston College Law School American Inn of Court of Intellectual Property Law, November, 2002.
 "Preserving & Analyzing Data" & "Electronic Discovery Preservation Tactics & Litigation Strategies", LegalWorks, Chi, SF, 2002
 "Discovery in the Electronic Information Age", General Counsel University, State of PA Ofc.General Counsel, Hershey, PA, 2002
 "Electronic Information in the Post-Enron Era: Records Retention to EDiscovery", General Counsel Roundtable, MA, 2002
 "Electronic Discovery Issues in Products Litigation", ABA Litigation Section, Annual Mtg, Products Liability Commi Panel, April 2002
 "Electronic Discovery Practice & Technique" Guest Lecture, New Eng. Sch. Law., Internet Law, Prof. Stephen Meltzer, Apr 2002
 "Electronic Discovery Considerations in Business Litigation", Panel Conference on Business Litigation, MCLE, Boston, 2002
 "Trends in Electronic Discovery". Mass Paralegal Association, Inc., Boston, 2001
 "Managing Corporate Documents" and "Electronic Discovery". Southeastern Corporate Law Institute and Alabama Bar Institute Continuing Legal Education, Point Clear, AL, 2001
 "Electronic Discovery: The Basics" Guest Lecture NE Sch. of Law, Internet Law, Prof. Stephen Meltzer, Apr 2001
 "CyberDiscovery", Massachusetts Continuing Legal Education, MCLE, Boston, MA, February 7, 2001.
 "Electronic Discovery in Workplace Controversies", Chicago-Kent College of Law, Illinois Institute of Technology, Institute for Law and the Workplace, Chicago, Ill., November 17, 2000
 Keynote, "Effective Electronic Discovery", Atlanta Bar Ass'n "Discovery of Electronic Evidence", Nov. 2000
 "The Latest Battlegrounds", Glasser LegalWorks 4th Annual Conference on Electronic Discovery, New York, Nov. 3, 2000; New York, November 2000. Chicago, December 2000
 "The Use of Electronic Evidence in Litigation" and "Reducing Risks of Electronic Discovery: Challenges for Corporate IT and Records and Knowledge Managers", Association for Information and Image Management (AIIM) Keystone Chapter, Harrisburg, PA, November 1, 2000
 Keynote, "The Use of Electronic Evidence in Litigation", Pharmaceutical Education and Research Institute (PERI), Georgetown University Conference Center, Washington, DC, Sept. 18-19, 2000
 "Electronic Discovery: Trends, Burdens and Costs", Massachusetts MCLE, Boston, MA, June 8, 2000
 "Burdens and Costs of Electronic Discovery", panel of litigators and federal judges, Technology and the Administration of Justice, 49th Ann. Mtg. of the Seventh Circuit Bar Association, Chicago, Ill., May 1-3, 2000
 "When Crises Strike" and "Responding to the Crisis" Glasser LegalWorks, NY and Chicago, 2000
 "Trends and Strategy in Electronic Discovery", Roger Williams Law School Inns of Court, Jan. 2000
 "Electronic Discovery: Risks & Opportunities for Litigation, Mergers, and Acquisitions", Boston ARMA, Oct 1999
 "A Case for Effective Electronic Discovery: Trends, Strategy and Practice" Boston Area Lit Supp Software Users', Oct 1999
 "Leveraging Knowledge Management in Mergers and Acquisitions" Ass'n of Records Mgrs and Admrs (ARMA), Boston 1999
 "Law Firm Governance: Using Latest Technology: Taking Time to Increase Future Productivity", NY Feb 1994
 "Working with Vendors and Writing the Request For Proposal", East Coast Ass'n Lit. Supp. Mgrs., Dec 1993
 "The Role of Attorneys in Planning Litigation Support", PriceWaterhouse Legal Tech NY Jan 1993

John H. Evans
Senior Vice President, Forensic Services
Email: jevans@d4discovery.com

BIOGRAPHY

With over 20 years of experience in the information technology industry, John Evans brings his extensive expertise in digital forensic investigation to D4. As Senior Vice President of the Forensic Services Group, he is responsible for consulting with clients about digital forensics and eDiscovery best practices, and he manages a team of digital forensic analysts and ESI collection specialists.

John is an experienced digital forensic investigator with a vast working knowledge of computer hardware, operating systems, file systems, software, cloud and mobile device technologies. Combined with a degree in computer science from Wittenberg University, John has the knowledge and expertise to handle any digital forensics challenge.

Before joining D4, John was a Managing Consultant with Project Leadership Associates, and served as an Investigator at the Illinois Office of the Executive Inspector General.

In addition to his on-the-job experience, John has also been called on to serve as an expert witness for computer forensic analysis and defensible collection of ESI for numerous litigations in both state and federal courts. He has also led more than 200 investigations involving digital evidence for matters concerning trade secrets, intellectual property, fraud, employment, and computer misuse.

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PROFESSIONAL EXPERIENCE

D4 LLC, Chicago, IL

Sr. Vice President, Forensic Services, June 2013 – Present

- Manage Forensics Services practice
- Conduct digital forensic investigations and provide expert consulting
- Architect and implement defensible ESI collection
- Provide expert testimony
- Provide consultative services to clients on best practices for handling, processing and producing electronic evidence

Project Leadership Associates, Chicago, IL

Managing Consultant, Litigation Solutions Group

June 2007 – June 2013

- Responsible for consulting engagements with law firm, corporate and government clients.
- Conducted forensic investigations, electronic discovery collections and provided expert witness testimony in depositions and trials in state and federal cases.
- Present on various digital forensic and e-discovery topics to attorneys for MCLE credit and at industry events.

Illinois Office of Executive Inspector General, Chicago, IL

Investigator / IT Manager, 2004 - 2007

- Responsible for obtaining, inventorying, imaging, analyzing and presenting electronic evidence related to agency investigations.
- Planned, tested, and implemented agency-wide case tracking system that greatly improved the flow of information as well as serving as a central repository for all case data.
- Managed all network activity including end-user support, software upgrades, data backups and hardware support. Q

Quantum BioMod Corp., Chicago, IL

Director of Technology

2001 - 2003

Illinois Criminal Justice Information Authority, Chicago, IL

Deputy Associate Director, Information Systems Unit, 1996 - 2001

Bill-Tech Consultants, Chicago, IL

IL System Administrator/Network Consultant, 1993 – 1996

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CERTIFICATIONS & PROFESSIONAL ORGANIZATIONS

- Certified E-Discovery Specialist (CEDS), Association of Certified E-Discovery Specialists (ACEDS)
- State of Texas Private Investigator license

ARTICLES AND SPEAKING ENGAGEMENTS

- Numerous CLE presentations on digital forensics at Project Leadership Associates, Chicago, IL, 2007 - 2013
- CALSM-POSUIM Panel: Forensic Collection Trends Now And Into The Near Future, Chicago, IL, October 2012
- CLE presentation on digital forensics at the Illinois State Bar Association Law Ed Program: Technology to Know Now in Tort Litigation, Chicago, IL, May 2012
- CLE presentation on digital forensics at Chuhak & Tecson law firm, Chicago, IL, May 2010
- CLE presentation on digital forensics at Arnstein & Lehr law firm, Chicago, IL, May 2010
- CLE presentation on digital forensics at the Illinois CPA Society's Fraud Conference, Chicago, IL November 2009
- CLE presentation on digital forensics at Trial Attorneys of American Annual Meeting, Chicago, IL, June 2009
- CLE presentation on digital forensics at the Lake County Bar Association, Waukegan, IL, February 2009
- CLE presentation on digital forensics at Johnson & Bell law firm, Chicago, IL, February 2009
- Article "Mitigating Risk with Digital Forensics and EDD," International Legal Technology Association, Peer to Peer magazine, November 2008
- CLE presentation on digital forensics at Katten Muchin Rosenman law firm, Chicago, IL, June 2008
- CLE presentation on digital forensics at the Illinois CPA Society's Fraud Conference, Chicago, IL November 2007

EXPERT TESTIMONY, AFFIDAVITS AND DECLARATIONS

- Case No. 05-CH-605, Circuit Court of the Nineteenth Judicial Circuit, McHenry County, IL Emerson Network Power, et al. v Michael R. Cosley, et al.
- Case No. 05-L-9164, Circuit Court of Cook County, IL, County Department, Law Division Catmet Company, Inc, et al v Michael Melnick, et al.
- Case No 07-CV-06881, United States District Court for the Northern District of Illinois Eastern Division Group One Trading, LP v. DeLuca et al.
- Case No 07-CH-03780, Circuit Court Of Cook County, IL, County Department, Chancery Division Robert Bosch Tool Corp. v. Sanchez, et al.
- Case No. 33 155 Y 00049 07, American Arbitration Association Quixtar v Merritt et al.
- Case No. 08-CH-34714, Circuit Court of Cook County, IL, County Department, Law Division Tigor Title Insurance Company v. RNB Title, LLC, et al.
- Case No. 08-CV-1831, Circuit Court of Waukesha County, WI Milwaukee Electric Tool Corporation v. Michael Bykowski, and Robert Bosch Tool Corporation
- Case No. 51 116 M 00276 08, American Arbitration Association Rho Trading Securities v John Keazirian
- Case No. 08-L-005749, Circuit Court of Cook County, IL, County Department, Law Division Iqbal

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Hussain v. Astellas Pharma US, Inc.

- Case No. 08-CV-00409, District Court of Montgomery County, MD Beyond Systems, Inc. v. Kraft Foods, Inc. et al.
- Case No. 09-CV-014011, Circuit Court of Milwaukee County, WI ASI Technologies, Inc. v. Paul Stellberg and Power Shed, LLC
- Case No. 10-CH-1627, Circuit Court Of Cook County, IL, County Department, Chancery Division Cargowise, Inc. v. Kurt Corman, et al.
- Case No. 80351-422, District Court Of Kaufman County, TX, 422nd Judicial District Voltaix, LLC. v. Metaloid Precursors, Inc., et al.
- Case No. 11-CV-2983, United States District Court for the Northern District of Illinois Eastern Division Mobile Mark, Inc. v. Daniel Pakosz, et al.
- Case No. 11-CV-1857, United States District Court of New Jersey Howmedica Osteonics Corp., et al. v. Zimmer, Inc., et al.
- Case No. 08-L-013703, Circuit Court Of Cook County, IL, County Department, Law Division Schandelmeier-Bartels v. Chicago Park District

EDUCATION AND TRAINING

- Guidance Software Encase Introduction to Computer Forensics, 32 hours
- Guidance Software Encase Intermediate Analysis and Reporting, 32 hours
- AccessData Bootcamp (Intermediate), 24 hours
- AccessData Windows Forensics (Advanced), 24 hours
- Paraben Corp PDA Seizure and Analysis, 16 hours
- National White Collar Crime Center Secure Techniques for Onsite Preview, 16 hours
- Katana Forensics, Inc. iOS forensics (20 hours)
- BA in Computer Science, Wittenberg University



John R. Clingerman
Vice President, Forensic Services
Email: jclingerman@d4discovery.com

BIOGRAPHY

John has been with D4 since September 2007 and is currently a Vice President and member of the company's Forensic Services Group. John's responsibilities are varied and include; project management of digital forensic and data collection projects, overseeing all laboratory operations, personnel and equipment in the Rochester, NY office, and personally assisting on projects. John has conducted several digital evidence collections and computer forensic examinations and provides peer review to other examiners.

John comes to D4 after retiring from law enforcement with over 24 years of service, the last 14 years holding the rank of Police Investigator. During his career, he held several positions including Patrolman, Youth Officer/D.A.R.E. Instructor, Evidence Technician, Firearms Instructor, and Narcotics Task Force Supervisor. He has investigated all types of major felony crimes including murder, rape, robbery, burglary and also many types of computer related criminal activities. He has testified hundreds of times in all levels of criminal court from local to federal. In November 2006, he was featured in the National White Collar Crime Center's quarterly issued magazine for uncovering a major international identity theft ring. He has earned many citations during his career including Officer of the Year and two Life Saving Awards.

John's computer forensic trainings have been with the National White Collar Crime Center, International Association of Computer Investigative Specialists (IACIS), Guidance Software, Access Data Corporation and Sumuri Forensics. He is a Certified Forensic Computer Examiner (CFCE), a Certified Cellebrite UFED Mobile Device Examiner, and a Certified Electronic Evidence Collection Specialist (CEECS). He has taught computer forensics at a local community college as well as coached others in the law enforcement community with the CFCE process. John is also employed as a part time Police Investigator for the Town of Macedon, NY Police Department and is also a licensed Private Investigator in New York State.



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PROFESSIONAL EXPERIENCE

D4 LLC, Rochester, NY

Vice President

January 2010 – Present

- Participation on company executive team
- Project management of all data collections and forensic examination engagements
- Invoicing
- Hiring personnel
- Managing the forensic laboratory environment and all levels of personnel and activities within
- Conducting forensic examinations
- Peer review
- Provide court room testimony
- Public speaking engagements

Data Forensics and Collections Manager, Rochester, NY

September 2007 – January 2010

- Managing the forensic laboratory environment to include data technicians and evidence clerk
- Overseeing the evidence intake and disposition process
- Conducting forensic examinations
- Assisting project management with assigning resources
- Provide court room testimony
- Public speaking engagements

Computer Forensic Analyst, Rochester, NY

February 2007 – September 2007

- Conducted forensic examinations on computers and cell phones

Town of Macedon, NY Police Department, Macedon, NY

Police Investigator, January 2011 - Present

- Investigate felony crimes that are electronic in nature and perform mobile device forensic examinations for the narcotics task force in Wayne County, NY

Finger Lakes Community College, Canandaigua, New York

Adjunct Instructor, January 2006 – May 2007

- Instructed college students in the topic of Computer Forensics

NY Police Department, Newark, New York

Police Investigator, October 1993 – September 2007

- Investigated all felony crimes, which include: murder, rape, robbery, burglary, narcotics trafficking and crimes committed with computers

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Wayne County Narcotics Enforcement Team

Supervisor, February 2006 – September 2007

- Coordinated all police personnel from various county departments and all activities during undercover narcotics investigations and search warrant executions

Youth Officer

D.A.R.E. Officer, June 1989 – October 1993

- Investigated all crimes committed by persons 15 years of age and younger, provided educational and public speaking engagements for the department

Patrolman

March 1983 – June 1989

- Patrolled the village in marked police car, first responder to all incidents, investigated citizen complaints and traffic accidents

CERTIFICATIONS & PROFESSIONAL ORGANIZATIONS

- Certified Forensic Computer Examiner (CFCE)
- Certified Electronic Evidence Collection Specialist (CEECS)
- Certified Cellebrite UFED Mobile Device Examiner
- Private Investigator – Licensed in New York State
- New York State Certified Police Officer – Finger Lakes Law Enforcement Academy
- Member of International Association of Computer Investigative Specialists (IACIS)
 - Member of Communications Committee
 - Past Staff Member at the Basic Computer Forensic Examiner Training
 - Past Website Administrator
 - Past CFCE process coach/mentor for law enforcement officers
- Member of High Technology Crime Investigation Association (HTCIA)
- Member of InfraGard
- Member of Williamson Flying Club
 - Private Pilot – June 2014
 - Member Board of Directors - January 2015 to present
 - Chair of Membership and Activities Committees – February 2016 to present
- Member of Newark Elks Lodge #1249
 - Past Club Officer holding Tiler Position
- Member of Newark Park Presbyterian Church
 - Past Session Member
- Member of Newark, NY Rotary Club
 - Member of Rotary Group Study Exchange shadowing Argentine Federal Police, May 1999
 - Past Member Board of Directors 2002 to 2007
 - Past Website Admin
 - Past Youth Exchange Committee Chair
 - Past Member Board of Directors Newark, NY Public Library

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ARTICLES AND SPEAKING ENGAGEMENTS

- Independent Insurance Agents & Brokers of NY, Social Media Panel Discussion CLE, June 2015
- Western NY Paralegal Association, Best Practices for Social Media Collections and Investigations Part 1, April 2012
- Western NY Paralegal Association, Best Practices for Social Media Collections and Investigations Part 2, July 2012
- Presenter at Champlain College DFIR Online Case Study web based presentation, February 2012
- Genesee County Bar Association Social Media Investigations (CLE), Buffalo, NY November 2011
- Presenter at Genesee County Bar Association Social Media Investigations (CLE), Buffalo, NY November 2011
- Presenter at Legal Med's Social Media Investigations, Buffalo, NY September 2011
- Presenter at Erie County Bar Association's "Facebook Still Got You All A- Twitter?" (CLE), Buffalo, NY March 2011
- Presenter at Association of Legal Administrators, Rochester, NY April 21, 2010
- Presenter at Erie County Bar Association, "Facebook Got You All A- Twitter?" (CLE), Buffalo, NY, March 2010
- Presenter at Western NY Certified Fraud Examiner's Meeting, SUNY Brockport, Brockport, NY, December 2009
- Presenter at Career Day, Lyons High School, Lyons, NY, October 2009
- Presenter at "Document Retention and Destruction" seminar in Rochester, NY, January 21, 2009
- Presenter at "Document Retention and Destruction" seminar in Buffalo, NY, January 13, 2009
- Presenter at Career Day, Corning Community College, Corning, NY, October 2008
- Presenter on Computer Forensics at Finger Lakes Community College in Canandaigua, NY, April 2008
- Expert Witness in Mock Rule 26-f Conference, Erie County Bar CLE, January 11, 2008
- "Best Practices on Preservation and Collection" presentation at Erie County Bar CLE, January 11, 2008
- Expert Witness in Mock Rule 26-f Conference, Trials Tactics & Technology Conference, New York, NY, November 2007

EXPERT TESTIMONY, AFFIDAVITS AND DECLARATIONS

During the course of a law enforcement career spanning over 24 years, testimony has been given hundreds of times in all levels of courts (local, state and federal) during various types of hearings and at trial on a multitude of criminal matters which include: murder, rape, robbery, burglary, major narcotics trafficking, and also many types of computer related criminal activities (child pornography, identify theft, and grand larceny).

During the course of a corporate career spanning over seven years, testimony has been given:

- For Civil Defendant – October 2013 at arbitration hearing for Kevin Wailes v. Tel-Networks, USA, LLC, JAMS Arbitration No. 1425013444 in Manhattan, NY.
- For Civil Defendant – September 2013 at trial for Michael Weidner vs. Lisa Six Weidner, Index No. 9621/2012 in the State Supreme Court, Monroe County, NY.
- For Civil Plaintiff - June 2012 second formal deposition for American Builders & Contractors Supply Co., Inc. vs. Roofers Mart, Inc., Bernard S. Miller Jr., Michael L. Burger, Lucas Y. Abbott, Mark E. Lineberry, Daniel Woodall, Steven G. Declue, and John E. Slattery, Case No. 1:11-cv-00019 CEJ in the United States District Court for the Eastern District of Missouri

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- For Civil Defendant – May 2012 formal deposition for Juan and Ramona Medina vs. Pile Trucking, Inc., Case No. CV-11-06329 GHK in the United States District Court for the Central District of California Western Division
- For Civil Plaintiff - September 2011 first formal deposition for American Builders & Contractors Supply Co., Inc. vs. Roofers Mart, Inc., Bernard S. Miller Jr., Michael L. Burger, Lucas Y. Abbott, Mark E. Lineberry, Daniel Woodall, Steven G. Declue, and John E. Slattery, Case No. 1:11-cv-00019 CEJ in the United States District Court for the Eastern District of Missouri Southeastern Division
- For Civil Defendant - July 2010 at trial for Haute Couture vs. Continental Casualty Company, Case No. 4:09-cv-809 JLH in the U.S. District Court, Eastern District of Arkansas, Western Division
- For Criminal Prosecution - October 2008 at Grand Jury New York County, NY for State of NY vs. Testwell, Inc.
- Generated dozens of affidavits that were subsequently submitted to various federal district courts

EDUCATION AND TRAINING

- **B.S. in Computer Forensics and Digital Investigations – May 2013**
 - Champlain College, Burlington, VT
 - GPA 4.0 – Graduated Summa Cum Laude
 - Member of Honor Society Alpha Sigma Lambda
 - Commenced with graduate program courses August 2012
- **A.A.S. Degree in Information Technology - May 2010**
 - Finger Lakes Community College, Canandaigua, NY
- **A.A.S. Degree in Criminal Justice May 1982**
 - Finger Lakes Community College, Canandaigua, NY



Olivia Gerroll, CLSS, CeDP
Vice President, Senior Discovery Consultant
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[Twitter](#)

BIOGRAPHY

Olivia Gerroll brings over 25 years of experience and skills in electronic discovery services, global litigation, and eDiscovery strategy and management initiatives within the legal community to her role as Vice President and Senior Consultant for D4.

Olivia works closely with corporations and law firms to develop the most effective and efficient solutions related to eDiscovery technology assessment and implementation. Her specializations range from service model development and implementation to process workflow, best practice development, litigation strategy, and case management services. Additionally, Olivia has worked with clients to provide expert consultative services, testimony and documentation around appropriate identification and collection methodologies, defensible search, production protocols and general eDiscovery best practices.

As an industry thought leader, Olivia coordinates with several groups including the Association of Certified eDiscovery Specialists (ACEDS), where she has published several articles on identifying and implementing managed eDiscovery service models and standardized approaches for selecting eDiscovery technologies.

Olivia has also held numerous positions in which she developed and published much of the industry's thought leadership. As the Director of Education for the Organization of Legal Professionals (OLP), she also assisted in the development and coordination of their eDiscovery certification courses, published timely articles, and presented educational webinars on numerous industry topics. Olivia holds a degree in marketing.

PROFESSIONAL EXPERIENCE

D4 LLC, Omaha, NE

Vice President, Senior Discovery Engineer, May 2014 – Present

- Provide consultative solution services to clients focused on strategic eDiscovery options relating to technology, implementation options, service modeling and support processes, best practice workflows and project oversight and management.
- Provide technical support for internal technology implementations and support to include training, process development, workflow designs.
- Provide eDiscovery Certification project management and support for the Organization of Legal Professionals.
- Client support services for discovery demands around data management and support.
- Education, seminar development, industry panel presentations.

Hyperion Global Technologies, Houston TX/Omaha NE

Managing Director, Litigation Strategy & Management, September 2011 – September 2013

- Consulted with clients on implementation of the most progressive technologies, understanding of industry trends and crucial application of workflow and best practices
- Developed strategic solutions responding to the identification, management and procedures surrounding electronically stored information.
- Led global, high-profile engagements in a number of critical areas, including Litigation Support Technology Assessment and Implementation, Process Workflow and Best Practice Development, Litigation Readiness Services, Litigation Strategy and Case Management Services, Litigation Hold Process, and Automation Development, Education and Training.
- Worked with many of the world's leading law firms and corporations to develop and manage litigation processes, including the implementation of best practice litigation process management workflows and methodologies and supporting documentation.

eSentio Technologies, Washington, DC/Omaha, Ne

Director, Litigation Services, September 2010 – September 2011

- Developed and lead a dedicated practice group to provide litigation support and electronic discovery consulting services to AmLaw 200 firms.
- Created and implemented innovative strategies for global law firms to provide effective and efficient solutions in direct response to electronic discovery and related litigation challenges across the entire spectrum of the EDRM landscape.
- Developed core service offerings around:
 - Litigation Readiness strategies
 - Litigation/Legal Hold processes and automation options
 - Assessments and development of recommendations surrounding people, process and technology relating to electronic discovery and litigation support,
 - Workflow design
 - Technology product selection and implementation,
 - Interim department and project management support
 - Training and CLE seminars.

Focus Solutions/Continuum Worldwide, Omaha, NE

Managing Director, eDiscovery Solutions Group, August 2008 - September 2010

- Developed and managed strategic vision for eDiscovery Solutions Group.
- Developed and implemented client focused standard operating procedures and best practice workflow methodologies.
- Created and managed departmental budget.
- Developed pricing model for all related service offerings within the group.
- Managed professional staff of Project Managers, Technical Support, Data Collection and Hosting Support.
- Coordinated with IT support in all phases of eDiscovery-related Infrastructure requirements including analysis and design, timeframe requirements and budget generation.
- Coordinated with Software Development team in development and support of related proprietary software initiatives.
- Provided market research to assist Business Development teams in messaging, industry understanding, branding and standardization of corporate message.
- Generated all RFP and client proposal work product.

THOMSON WEST/BAKER ROBBINS & CO, New York, NY

Director of Litigation Services Group, 2007- August 2008

Shareholder, Baker Robbins & Company, August 2006 – 2007

Consultant, Baker Robbins & Company, June 2000 – March 2005

- Project manager for City of New York Law Department WTC litigation matters.
- Project manager for West Coast law firm in all matters of litigation support initiatives including set-up and management of review databases, coordination with service providers for data conversion, production generation, training of internal staff on review application.
- Project manager for law firm supporting Tobacco litigation and coordination with UK corporate client relating to collaborative hosting reposition selection and implementation.
- Supported several consulting initiatives relating to selection of replacement litigation support technologies, support development and staffing outlines.
- Oversight of practice group business strategy development.
- Trained new litigation support consultants.

HELLER EHRMAN LLP, Los Angeles, CA

Firm Wide Director of Practice Support, April 2005 – August 2006

- Developed, implemented, and supported firm wide practice support services, processes, and systems at 750+-attorney international law firm.
- Introduced internal best practices for technology and work process methodologies.
- Developed highly effective standardized end user training programs.
- Evaluated, recommended, and deployed new technologies firm-wide.
- Generated and administered expense and capital budgets for practice support program.
- Prepared and implements staff billable goals.
- Supervised staff of 25 eDiscovery professionals.

UNISCRIBE PROFESSIONAL SERVICES, New York, NY

Director, Litigation February 2000 – June 2000

Promoted to oversee litigation services operations, including finances, personnel, and work product quality. Coordinated imaging and data production services. Supervised 48 imaging and 15 coding personnel. Prepared budgets, carried out billing, and provided financial forecasts to corporate headquarters.

- Improved efficiency by restructuring operations to increase workflow and maximize staff utilization.
- Conducted staff training on Summation, Concordance, IPRO, and Access, among other applications.

Practice Support Manager September 1999- February 2000)

Provided on-site management at large client facility (Cadwalader, Wickersham & Taft). Maintained all practice support applications and hardware, including imaging systems. Managed database design to meet client's requirements. Worked with various client departments to determine needs.

- Increased productivity by improving management of in-house scanning and coding.
- Coordinated workflow, designed coding manuals, and worked in conjunction with records department.
- Additionally supported second client by remediating legacy TechLaw system and exporting data and images to Y2K compliant system.

ANDERSON KILL & OLICK, PC, New York, NY
1998 - September 1999

September

Manager, Automated Litigation Support

Developed, managed, and supported client-based and in-house projects related to automated litigation and general practice support. Maintained software and hardware for computer and imaging systems. Oversaw all scanning, coding, and database management.

- Successfully investigated and resolved Y2K issues to ensure compliance of all databases and systems.
- Provided clients with compliancy statements as needed, regarding software and data.
- Developed electronic discovery knowledge package for attorneys to present to prospective clients.
- Recruited electronic evidence expert to facilitate success of client project.
- Implemented off-site coding facility for large project requiring additional coders.
- Reduced costs by negotiating competitive pricing with vendors for coding and scanning.

DEWEY BALLANTINE, LLC, New York, NY

Litigation Support Manager / Senior Case Manager, March 1995 – September 1998

Senior Legal Assistant (White & Case¹), June 1992 – March 1995

- Oversaw large document review project and supported imaging review system.
- Supervised case team legal assistants for large projects.
- Prepared case budgets and prepared billing for clients.
- Hired and trained coding teams.
- Conducted staff training for all litigation support systems.
- Conducted successful presentation to attorney teams to propose and demonstrate technical options for case management later adopted by company.
- Helped carry out firm wide Windows upgrade and database implementations.
- Played key role in relocation of imaging system and implementation of backup network when team left from White & Case and moved to Dewey Ballantine

¹ Senior Partners and client left White & Case and moved case team to Dewey Ballentine.

CERTIFICATIONS & PROFESSIONAL ORGANIZATIONS

- Certified Litigation Support Specialist (CLSS)
- Certified eDiscovery Professional (CeDP)
- Member of the Organization of Legal Professionals (OLP)
- Certified Relativity Review Specialist
- Certified IPRO Eclipse Administrator

ARTICLES, PUBLICATIONS AND SPEAKING ENGAGEMENTS

- Presented at Detroit ACEDS Chapter – Spring 2016 – “Global and International eDiscovery” – March 24, 2016
- Panel member at 24th Annual Insurance Coverage Litigation Committee Mid-Year Program – February 18-20, 2016 “The Proposed FRCP Discovery Amendments And Your Coverage Case”.
- Presented at ARMA Central Iowa Chapter “Predictive Coding aka Technology Review aka Computer Assisted Review – Not Just For Discovery” – February 26, 2015
- Panel member at ARMA Omaha Chapter “Rapid Fire – Wearable Technology” – December 17, 2014
- Presented at ARMA Omaha Chapter “Forensics for Discovery” – October 15, 2014
- CLE Sessions – Texas Law Practice – Global/Cross Border Discovery – September, 2014
- CLE Sessions Texas Law Practice – eDiscovery Cost Shifting and Taxation of Costs” – August 2014
- “Taking Control of the e-Discovery Process” 3-Part Series for Inside Counsel – July 18, 2014, August 11, 2014, September 9, 2014
- Co-Presented at Skanska’s Construction Management Building Blocks Training Program on “Document Management and Control” – June 26, 2014
- Presented at Women in eDiscovery “Social Media and Discovery – June 18, 2014
- Presented for Organization of Legal Professionals Webinar on Cross-Border Litigation – eDiscovery Landmines - 2014
- Presented for Organization of Legal Professionals Webinar on Cost Shifting & Taxation –, 2014
- Presented for Organization of Legal Professionals Webinar “Standardized Approach for Successful Selection of Firm-Wide eDiscovery Technologies” – April 3, 2014
- Presented for Organization of Legal Professionals Webinar “How to Identify and Implement a Managed eDiscovery Service Model” – March 25, 2014
- “Key considerations for selecting the appropriate eDiscovery service model” ACEDS, January 2, 2014
- “Guidance for successfully selecting firm-wide litigation support technologies” ACEDS, January 16, 2014
- “eDiscovery Service Models – Which is the Right Model for your Firm?”, NePA In Brief, December 2013
- “EDD Checklist: Five Hurdles Your Firm Faces,” Law Technology News, 2005
- Presentation at LitCon “eDiscovery – Data Wrangling – Maximizing Efficiencies” November 6, 2010
- “Best Practices for Handling Electronic Discovery in Small Cases” Nebraska Lawyer, September 2009
- Various presentations at XPLOR Global Conference on “Document Security Issues”, “Federal Rules Highlights”, “eDiscovery: The New Corporate Burden”, “Handling Electronic Evidence: From Complaint to Case Closed”, “Electronically Stored Information (ESI) Best Practices”, 2009
- Nebraska Paralegal Association Presentation, “eDiscovery 101 – Myth Busting”, October 29, 2008

- Presenter at LegalTech on “Litigation Support Processes and Technologies” New York, NY, February 2004

EDUCATION and TRAINING

Diploma in Paralegal Studies (ABA Approved) – May 1992
New York University, New York, NY

Graduate level coursework in Marketing and Economics – 1985-1988
Baruch College, New York, NY

Bachelor of Science in Marketing, cum laude – May 1984
State University of New York, Fashion Institute of Technology, New York, NY



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Christopher D. VanAernam
Forensic Consultant II, Forensic Services
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BIOGRAPHY

Christopher VanAernam has been with D4 since September 2012 and is currently a Forensic Consultant II with the Forensic Services Group (FSG). His responsibilities are varied and include forensic imaging, evidence tracking, equipment testing, forensic analysis, and evidence/data collections. Chris has conducted or assisted on numerous computer and mobile device forensic examinations. He has also conducted both on-site and remote digital evidence collections involving systems such as desktops, laptops, servers and mobile devices.

From May to August 2012, Chris interned in the Computer Forensics Lab at the Onondaga County Center for Forensic Sciences, which is a certified ASCLD lab and maintains the highest standards for forensic crime labs. In his time there Chris observed and assisted Computer Evidence Specialists in the examination of digital evidence. He also documented and preserved the chain of custody according to law enforcement standards.

Chris holds a bachelor's degree in Cybersecurity and Information Assurance with a concentration in Cybercrime Investigations and Forensics from Utica College, where he graduated with honors. He is a Certified Computer Examiner (CCE) and an AccessData Certified Examiner (ACE).

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PROFESSIONAL EXPERIENCE

D4 LLC, San Diego, CA

Forensic Consultant II

May 2014 – Present

- Travel to client locations and conduct basic and complex collections of electronically stored information (ESI) from workstations, networks, mobile devices, email systems, cloud-based repositories and other systems
- Conduct basic and complex remote data collection of ESI
- Follow industry best practices to preserve, collect, process and analyze ESI
- Follow industry best practices to fully document ESI collections including chain of custody
- Conduct forensic examinations on computers and mobile devices
- Consult with engagement managers and clients regarding project scope, case investigations and status
- Provide basic support for project scoping, planning and execution

Data Forensics Technician

September 2012 – May 2014

- Assist senior team members with examinations and report creation
- Perform on-site evidence/data collections of computers, servers, mobile devices and external storage devices
- Consult with supervisors, engagement managers, and clients regarding case investigation and status

Onondaga County Center for Forensic Services, Syracuse, NY

Intern, May 2012 – August 2012

- Observe and assist certified computer examiners to perform investigations in an ASCLDcertified lab
- Document and preserve chain of custody under law enforcement standards
- Photograph and maintain evidence integrity
- Organize, document, and inventory all pieces of media and equipment in the lab
- Sanitize media for destruction.

CERTIFICATIONS & PROFESSIONAL ORGANIZATIONS

- AccessData Certified Examiner (ACE)
- Certified Computer Examiner Training (CCE)

EDUCATION AND TRAINING

- **B.S. in Cybersecurity and Information Assurance – August 2012**
 - Utica College, Utica, NY
 - GPA 3.43
- **A.S. in Liberal Arts: General Studies - May 2010**
 - Mohawk Valley Community College, Utica, NY
 - GPA 3.54



Lori A. Ramsperger
Enterprise Solutions Engineer
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Lori A. Ramsperger is a D4 Solutions Consultant who works with D4 IT and D4 IaaS and Enterprise clients. She was previously employed by PeopleFluent for solutions consulting and engineering as a Business Implementation Consultant and Project Manager for its Recruitment Management and Vendor Management products. Prior to PeopleFluent, she served as Business Implementation Consultant and Project Manager for SumTotal Systems, responsible for implementing Software as a Service Learning Management Systems and for data migrations. Prior positions include Senior Manager of National Strategic Programs for Windstream, formerly PAETEC Holding Corp.; Manager of Business Operations for PAETEC Software Corp, a wholly owned subsidiary of PAETEC Holding Corp.,

Ms Ramsperger has over 25 years of experience in Customer Relations, Project & Resource Management, Professional Services Consulting, Implementation, Product Support, Quality Assurance, System Architecture & DBA, Program Code Development, Accounting & Finance, Sales, Contracts, Account Management and general Business Model & Process Improvement.

She holds certifications in ISO 9000-2001 as an Auditor, Writer and Corrective Action Coordinator, Six Sigma Green Belt and ITIL / Best Practices.

She has previously obtained certifications in and for the following (while not limited to the following): Oracle Database Administration, SQL, Informix, UNIX, Basic, COBOL, RPG II, HTML, Apex, GUI tools (Power Builder, Omnis), 3rd party Report Writers, Toastmasters and several Quality & Customer programs and seminars.

I have extensive industry experience in the following vertical markets: Telecommunications, Higher Ed, Health Care, Government, Financial and Fortune 1000. She has delivered thousands of presentations and training sessions both internally and externally throughout my career to all levels of personnel including C-level, Senior Officers, Vice President's, Board Members, all levels of management and end users. She has delivered numerous business process documents and resource material. I have authored Business Terms & Conditions in hundreds of Contractual Agreements.

PeopleFluent, Raleigh, North Carolina (January 2015 – Present)

Services Sales Manager

Responsible for Solution Architecting the Recruiting & Contingent products

Assure customer satisfaction and retention through proper scoping and engagement.

Assist RFP team in providing the proper elements to win the bid.

Work with the Salesforce to ensure proper solution for customer and Professional Services

Author services; LOE, pricing, Terms & Conditions into contractual agreements

Transition from sale to Implementation

SumTotal Systems, Des Moines, Iowa (April 2013 – January 2015)

Business Implementation Consultant and Project Manager

Responsible for custom and configurable LMS implementations.

Manage a team in India for legacy and new logo data migrations.

Windstream, formerly PAETEC, Fairport, New York (April 2000 – April 2013)

Sr. Manager of National Strategic Programs – EFS/SFS (Apr 2011 – April 2013)

Manage finance solution program for equipment, software and services, \$900m annual ENR.

Manage Billing, Administration, Sales Support, Training, Process, of the EFS/SFS Program & its Employees.

Build new Programs and Enhance existing Programs.

Provide Sales Engineering / Solution Sales Support daily and for all complex and large deals.

Implement new Back Office Processes & Toolsets to drive Efficiencies & Proactive Resolution.

Manage relationships and contracts with Financial Institutions & Vendors.

Work with IT for System Enhancements, New Design and Functionality.

Responsible for Project Management for all pricing, proposal, order, billing systems integration & processes

Manager of Business Operations – Professional Services (Oct 2008 – Apr 2011)

Responsible for Resource Utilization Management for Professional Services Consultants.

Responsible for Capacity Management of virtual servers in hosted/managed, VPD & Cloud environments.

Manage Contractual customer instance audits for compliance.

Responsible for Professional Services revenue.

Responsible for monthly metrics & funnel reporting / Sales.

Provide final approval of business terms and scope to all contracts.

Manage all aspects of 3rd party supplier and business partnerships.

Manage the financial and legal logistics related to Regional Advisory Board Meetings & Annual Customer Conference.

Manager of Business Operations – Sales & Account Development (Oct 2007 – Oct 2008)

Responsible for authoring all contract agreement templates.

Managed Agent, Partner, Non Disclosure and End User License Agreements.

Authored and implemented internal process documents for utilization throughout the sales cycle.

Created and implemented a contract lifecycle / tracking process.

Manager of Project Managers – Professional Services (Jan 2004 – Oct 2007)

Responsible for establishing, developing and growing a team of Project Managers.

Authored and implemented Project Plans.

Responsible for resource management, project scope, budget and on time delivery.

Project Manager – Professional Services (Jan 2003 – Jan 2004)

Responsible for establishing and developing the methodology, processes and toolkit for Project Management.
Solely transitioned all new projects / implementations from Sales into Professional Services.

ISO Certification – PAETEC Software Corp., all Departments (Jan 2001 – Jan 2003)

Responsible for getting PAETEC Software Corp. ISO 9000-2001 certified.
Personally certified in writing, auditing and corrective active coordinating.

PINNACLE Software, Fairport, New York (July 1995 - April 2000)

*PAETEC Holding Corp. acquired PINNACLE Software

Manager of Quality Assurance (Dec 1999 – Jan 2001)

Responsible for establishing and developing a testing and acceptance process for all software releases.
Monitored and supported the BETA program.
Developed testing templates for all release types, based on release notes and enhancements.

Manager of Customer Support (Jul 1995 – Dec 1999)

Responsible for establishing, developing and growing a customer support department, process and toolkit.

PINNACLE Users Conference / PAETEC World (Jul 1995 – Apr 2011)

Responsible for facility & employee logistics, conference media, F&B, training & technical session agendas, internal resource preparation, customer communication & registration, onsite execution and follow through.

Griffin Technology, Farmington, New York (1994 - 1995)

Implementation Consultant
Housing Software for Higher Ed.

Computer Science Corporation, Denver, Colorado (1992 - 1994)

Implementation Consultant
Telephony Route Distribution Software for various Sprint locations across the country.

Rochester Telephone, Rochester, New York (1990 - 1992)

Service Bureau Manager / Programming Assistant
Manager of Repair Answer call center. Wrote scripts to report on ACD stats and bureau statistics.

Unisys, Rochester, New York (1989 - 1990)

Account Manager
Up sell current customers. Resold 3rd party.

Unisys / Convergent Technologies, Hunt Valley, Maryland (1987 - 1989)

Implementation Consultant
Route Distribution & Inventory Software for the beverage industry.

Curtice Burns / National Brands Beverage, Rochester, New York (1985 - 1987)

Sales Support, System Backups & Support, Statistical Reporting, Accounts Receivable and Accounts Payable.

powered by people



St John Fisher College, Rochester, New York (1981 - 1982)

Liberal Arts & Psychology

Monroe Community College, Rochester, New York (1982 - 1984)

Associates in Applied Science, Accounting and Statistics

Rochester Business Institute, Rochester, New York (1984 - 1985)

Associates in Applied Science, Computer Programming and Accounting



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John P. Forames
Senior Forensic Consultant, Forensic Services
Email: jforames@d4discovery.com

BIOGRAPHY

John Forames has been with D4 since June 2014 and is currently a Senior Forensic Consultant and member of the company's Forensic Service Group in the New York City office. John conducts digital forensic investigations across all types of electronic media. In addition, John's responsibilities include data collection of electronically stored information from computer hard drives, file servers, email servers, mobile devices, cloud-based storage and social media.

John began his career in eDiscovery in 2005 performing data collection for the World Trade Center case. During that investigation, John conducted over 500 custodian interviews across thirty New York City agencies, including the Office of the Mayor, Departments of Transportation and Sanitation and the New York City Fire Department. He also conducted over 100 live acquisitions of desktops and servers to locate documents, logs and emails. John was also responsible for tracking all the collected evidence in an evidence management system.

In 2007 John assisted D4 with the Deutsche Bank fire case. During that case John conducted live forensic acquisitions of desktops and file servers, as well as email servers. John assisted the investigative team with custodian interviews of individuals from various city agencies. John then worked as a Computer Forensic for the New York County District Attorney's Office. While there John executed over 100 search warrants ranging from identify theft to fraud and sex crimes. John acquired over 850 cellular devices and analyzed numerous hard drives.

John has testified in over 40 trials and has been entered as an expert in computer forensics, cell phone forensics and digital forensics. Additionally, John has conducted in-depth analysis using industry standard software and is Certified Forensic Examiner (GCFE) and Certified Examiner (ACE).

PROFESSIONAL EXPERIENCE

D4 LLC, Rochester, NY

Senior Forensic Consultant

June 2014 – Present

- Conduct digital forensic investigations across multiple types of electronic media.
- Data acquisition of computer hard drives, file server, email servers, mobile devices, cloud-base storage and flash media.
- Strong relationships with clients, across many sectors including international law firms and pharmaceuticals.
- Maintain forensic software and hardware for the New York Office.

Computer Forensic Collection Specialist

August 2007 – December 2007

- Member of forensic collection and analysis team involved in the investigation of the Deutsche Bank fire.
- Conducted live forensic acquisition of desktops and various files and email servers via Ghost Le, Helix, FTK imager and Encase.
- Coordinated with offsite analytical team in processing all collections using Encase and AccessData PRTK.
- Executed forensic collection of digital evidence in stealth manner without targets' knowledge.
- Assisted investigative team with the interviews of custodians from various city agencies.
- Responsible for setup and maintenance of LAN used by forensic lab workstations and forensic team.
- Responsible for setup and maintenance of forensic workstations in lab, including hardware / software maintenance and repair.

New York Country District Attorney's Office (DANY)

Senior Computer Forensic Analyst, December 2007 – June 2010

- Extensive experience using various software/hardware tools such as Encase, FTK, PRTK, Registry Viewer, RegRipper, Cellebrite, MPE+, Lantern 3, VM Ware, Paladin, Raptor, Solo V, etc.
- Supported 500+ attorneys, including the Cybercrime and Identity Theft Bureau (CITB) - add others, particularly in the Investigations division in complex, long term investigations often with a national and sometimes international scopes.
- Assisted with development of advanced wireless investigative capabilities, including tool identification, hardware and software testing protocols.
- Performed forensic analyzes of a broad range of digital devices, including but not limited to hard drives, servers, cell phones, flash memory, GPS, cameras and MP3 players.
- Executed numerous search warrants with NYPD and DA Detective Squad.
- Qualified as an Expert witness in NY State Supreme Court and Federal Court.
- Testified in over 40 Trials and Grand Jury on a wide variety of cases ranging from misdemeanors to high-level felonies.
- Managed inventory of forensic hardware and software utilities of forensic laboratory as well as maintaining forensic workstations and laboratory LAN.

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- Performed the following Forensics procedures: Timeline Analysis, Registry Analysis, Data Carving using manual and automated tools, Keywords and GREP Searches, Generated Sweeping Bookmarks, Detecting Viruses/Malware, Metadata Analysis, EXIF Data Analysis and Password Recovery of User Account and office documents.
- Performed the following Cell Phone Analysis procedures: Acquired physical/file system extractions and analyzed using Cellebrite UFED Physical Analyzer, Cloned SIM Cards using SIM Cloning Software.
- Utilized the following tools to analyze over 850 cell phones: Cellebrite, MPE+, Via Extract, Lantern 3, XRY, BK Forensics.
- Assisted in creating protocols for wireless assessment.
- Conducted whois searches for hosting of mail server and websites.

Self-Employed Computer Forensics Specialist

January 2005 – December 2007

Sullivan and Cromwell

Senior Evidence Specialist, January 2007 – June 2007

- Supervised evidence management team responsible for in-take, tracking, and management of all electronic evidence throughout entire e-discovery process – from matter inception until final disposition.
- Managed and tracked original evidence, as well as media containing work products.
- Created reports of case processing and evidence analysis throughout e-discovery process.
- Assisted Technical Processing team in conducting forensic acquisition and analysis of seized evidence using Encase.
- Researched various evidence logging and tracking tools in order to streamline case and evidence process and management.

Baker Robbins & Company

Electronic Evidence Collection Specialist, January 2005 – August 2006

- Member of 4-person evidence collection team responsible for collecting evidence related to the World Trade Center Case.
- Conducted 100+ live acquisitions of desktops and servers to locate documents, logs, and other digital evidence of interest.
- Conducted live acquisitions of email servers including Microsoft Exchange and Groupwise.
- Converted and Analyzed 50+ hours of videos acquired from Dept of Sanitation related to 9/11 clean up at World Trade Center.
- Conducted interviews of 500+ custodians across 30 New York City agencies, including Office of the Mayor, Dept of Transportation, NYC Fire Department, and Dept of Sanitation amongst others.
- Managed and tracked all evidence collected across all agencies using MS Access.
- Created custom reports used in upper management level meetings regarding collection processing of evidence during this project.

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Frontline Communications

Technical Support, September 2001 – December 2004

- Helped to troubleshoot network connection issues for various service platforms.
- Diagnosed various email issues across multiple client platforms.
- Performed network troubleshooting, application/operating system installations and software upgrades.
- Installed and repaired multiple pieces of hardware, including printers, workstations and storage networks.

Mitchell Wireless

Assistant Warehouse Manager, December 1999 – August 2001

- Managed warehouse team and supervised daily operations.
- Performed technical support for an in-house computer network.
- Supervised Shipping/Receiving and Quality Control departments.
- Maintained inventory database and created inventory reports using Microsoft Access.

United States Marine Corps

Rank of Sergeant – Honorably Discharged

Assistant Warehouse Supervisor

March 1997 – November 1999

- Responsible for efficient management of day-to-day operations of supply warehouse, staffed with thirty Marines.
- Created and maintained inventory and shipping databases to efficiently control supplies and equipment inventory
- Trained assigned personnel on custom designed software.

Issue Point Clerk, December 1995 – March 1997

- Responsible for the daily assurance and return of field gear and ordinance to U.S. Marines using Turbosir database.

CERTIFICATIONS & PROFESSIONAL ORGANIZATIONS

- Mobile Phone Seizure Certification (MPSC)
- GIAC Certified Forensic Examiner (GCFE)
- AccessData Certified Examiner (ACE)
- Certified BlackLight Examiner (CBE)
- High Technology Crime Association (HTCIA) – Member in Good Standing
- International Association of Computer Investigative Specialists (IACIS) – Member in Good Standing

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FORENSIC TOOL EXPERIENCE

- Logicube Talon, Dossier and Image Masster Solo IV
- Guidance Software EnCase , AccessData Forensic ToolKit (FTK) , X-WAYS, Nuix, Sift Workstation, FTK Imager, Frhed, AccessData PRTK Registry Viewer, RegRipper
- Paladin, Raptor, Black Bag Tech Forensic Suite, SIFT Workstation, Caine, TUX4N6, LinEn, osTriage, Live Memory Tools – Memoryze, Volatility, Cofee and US-Latt
- Writeblockers such as FastBloc2, Tableau, and FireFly, WriteBlocker XP
- Cellebrite, Data Pilot SecureView for Forensics, Via Forensics, SIMCon Reader, MobilEdit Forensic, Paraben Device Seizure, Lantern, MPE Plus
- VMware Workstation, LiveView, Mount Image Pro, VirtualBox,
- Internet Evidence Finder, Fox Analysis, Net Analysis, Internet and Email Analysis, Network Email Examiner, Email Examiner, P2P Marshal, MAC Marshal, HstEx, IEF, EXIFTool, C4All, Chrome Analysis, Plist Editor, DCode
- WireShark, BackTrack, Cain & Abel, Karen's Hasher, Kill Disc, MIF Port Scrubber, CoolFind, TCPView, PCscan, TrueCrypt, Sam Spade, Email converting tool dbxconv, Ost to Pst

EDUCATION AND TRAINING

- DeVry University Information System's - Present
- BlackLight Tool Training (BTT) - May 2014
- P2P Marshall, P2P Forensics and Emule Forensics - September 2013
- GIAC Certified Forensic Examiner (GCFE) - August 2013
- Cellebrite UFED Ultimate Certification (Logical + Physical) - June 2013
- National Computer Forensic Institute Mobile Device Data Recovery (MDDR) - October 2012
- Basic Data Recovery and Acquisition (BDRA) - February 2012
- Mac Marshal v2.0 - March 2011
- AccessData FTK 3 Boot Camp - June 2010
- IACIS Basic Computer Forensic Examiner (BCFE) Course - May 2009
- SANS Network Penetration Testing and Ethical Hacking - October 2008
- BK Forensic Cell Phone Seizure Certification Course - October 2008
- TCP/IP Protocols and Investigative Tools - October 2008
- NW3C Secure Techniques for Onsite Preview (STOP) - February 2008
- Guidance Software Encase Intermediate Analysis and Reporting - October 2006
- Guidance Software Encase Essentials - September 2006
- A.S. Computer Network Administration Graduated Cum Laude, 3.5 GPA
Westchester Business Institute White Plains, NY - February 2003
- A+ Hardware Training - 2001
- USMC Logistics Training Center Albany, GA - July 1996

Exhibit 4

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2016	Q1 2017	Q2 2017	Q3 2017
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heavier time = ##### heaviest time = =====

1. Initial meetings and consultations w/FTC & Herbalife to discuss audit, the results that the FTC is looking to achieve, etc.

2. Periodic meetings among members of the ICA team

3. Preparation for interviews

4. Set up regular meetings and consultations with Herbalife's BOD, C-level and/or key reps from various departments

5. Obtain & review corporate materials

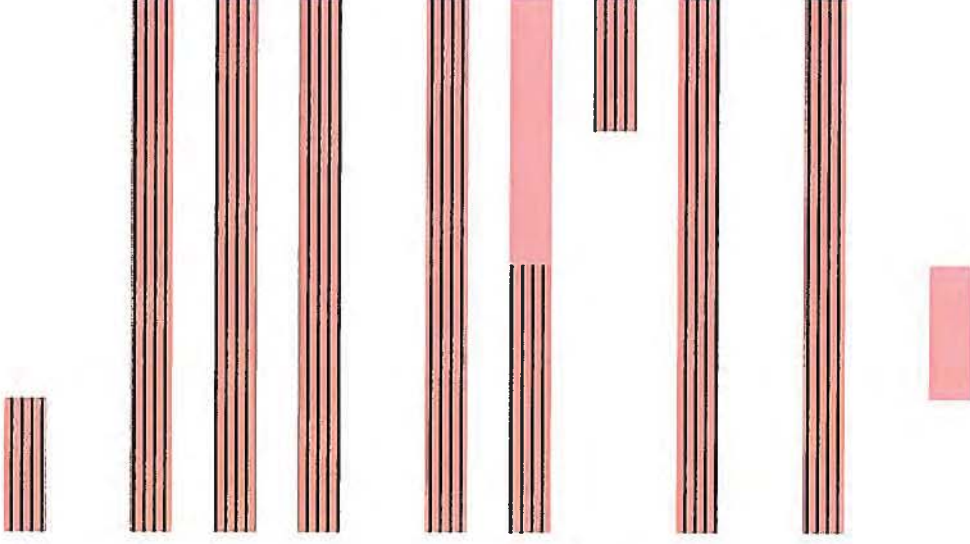
6. Educate ICA team regarding Herbalife's existing U. S. business

7. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife

8. Conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers and consumers at various levels

9. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance

10. Prepare and present an Initial Annual Budget and written Work Plan to the FTC and Herbalife (due 2/24/2017)



Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2017	Q1 2018	Q2 2018	Q3 2018
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heavier time = ██████████ heaviest time = ██████████

1. Periodic meetings among members of the ICA team
2. Preparation for interviews
3. Coordinate an annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of non-compliance needing improvement
4. Obtain & review corporate materials
5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue *ad hoc* non-compliance reports if/as needed
6. Examine & analyze operating practices, documentation, financials, marketing materials, etc.
7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments
8. Conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers and consumers at various levels
9. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance
10. Review and assess advertising & marketing compliance - Herbalife & outside vendors

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2017	Q1 2018	Q2 2018	Q3 2018
heavier time = [grid] heaviest time = [grid]				
11. Assess Herbalife multi-level compensation structure and program (Monthly)	[red]	[red]	[red]	[red]
12. Review new materials as they are produced	[red]	[red]	[red]	[red]
13. Map, monitor & analyze website usage	[red]	[red]	[red]	[red]
14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife	[red]	[red]	[red]	[red]
15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order (first report due 11/27/17)	[red]	[red]	[red]	[red]
16. Prepare and Present Annual Budgets and Written Work Plans to the FTC and Herbalife (commencing annually on or before 2/24/2018)	[red]	[red]	[red]	[red]

Farrell Fritz, P. C.
 Independent Compliance Auditor Activities - Herbalife
 Projected Timeline



Activities	Q4 2018	Q1 2019	Q2 2019	Q3 2019
<p>heavier time = [grid pattern] heaviest time = [horizontal lines]</p> <ol style="list-style-type: none"> 1. Periodic meetings among members of the ICA team 2. Preparation for interviews 3. Annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of compliance and non-compliance with Court Order 4. Obtain & review corporate materials 5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue <i>ad hoc</i> non-compliance reports if/as needed 6. Examine & analyze operating practices, documentation, financials, marketing materials, etc. 7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments 8. Conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers and consumers at various levels 9. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance 10. Review and assess advertising & marketing compliance - Herbalife & outside vendors 				

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2018	Q1 2019	Q2 2019	Q3 2019
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heavier time = [grid icon] heaviest time = [grid icon]
 11. Assess Herbalife multi-level compensation structure and program (Monthly through Q1 2019; quarterly starting Q2 2019)

12. Review new materials as they are produced

13. Map, monitor & analyze website usage

14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife

15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order

16. Prepare and Present Annual Budgets and Written Work Plans to the FTC and Herbalife (commencing annually on or before 2/24/2019)

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2019	Q1 2020	Q2 2020	Q3 2020
heavier time = ██████████ heavier time = ██████████				

1. Periodic meetings among members of the ICA team
 ██████████
2. Preparation for interviews
 ██████████
3. Annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of compliance and non-compliance with Court Order
 ██████████
4. Obtain & review corporate materials
 ██████████
5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue *ad hoc* non-compliance reports if/as needed
 ██████████
6. Examine & analyze operating practices, documentation, financials, marketing materials, etc.
 ██████████
7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments
 ██████████
8. Conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers and consumers at various levels
 ██████████
9. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance
 ██████████
10. Review and assess advertising & marketing compliance - Herbalife & outside vendors
 ██████████

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2019	Q1 2020	Q2 2020	Q3 2020
heavier time = [grid] heaviest time = [lines]				
11. Assess Herbalife multi-level compensation structure and program (Quarterly)	[grid]	[grid]	[grid]	[grid]
12. Review new materials as they are produced	[lines]	[lines]	[lines]	[lines]
13. Map, monitor & analyze website usage	[lines]	[lines]	[lines]	[lines]
14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife	[lines]	[lines]	[lines]	[lines]
15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order	[lines]	[lines]	[blue box]	[blue box]
16. Prepare and Present Annual Budgets and Written Work Plans to the FTC and Herbalife (commencing annually on or before 2/24/2020)	[lines]	[blue box]	[blue box]	[blue box]

Farrell Fritz, P. C.
 Independent Compliance Auditor Activities - Herbalife
 Projected Timeline



Activities	Q4 2020	Q1 2021	Q2 2021	Q3 2021
heavier time = [grid pattern] heaviest time = [horizontal lines]				
1. Periodic meetings among members of the ICA team	[horizontal lines]	[horizontal lines]	[horizontal lines]	[horizontal lines]
2. Preparation for interviews	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]
3. Annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of compliance and non-compliance with Court Order	[solid blue]	[grid pattern]	[grid pattern]	[grid pattern]
4. Obtain & review corporate materials	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]
5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue <i>ad hoc</i> non-compliance reports if/as needed	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]
6. Examine & analyze operating practices, documentation, financials, marketing materials, etc.	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]
7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]
8. Conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers and consumers at various levels	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]
9. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance	[horizontal lines]	[horizontal lines]	[horizontal lines]	[horizontal lines]
10. Review and assess advertising & marketing compliance - Herbalife & outside vendors	[grid pattern]	[grid pattern]	[grid pattern]	[grid pattern]

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2020	Q1 2021	Q2 2021	Q3 2021
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heavier time = ██████████ heaviest time = =====

11. Assess Herbalife multi-level compensation structure and program (Quarterly through Q1 2021; semi-annually starting Q2 2021)



12. Review new materials as they are produced



13. Map, monitor & analyze website usage



14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife



15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order



16. Prepare and Present Annual Budgets and Written Work Plans to the FTC and Herbalife (commencing annually on or before 2/24/2021)



Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2021	Q1 2022	Q2 2022	Q3 2022
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heavier time = [grid pattern] heaviest time = [horizontal lines]

1. Periodic meetings among members of the ICA team
[grid pattern] [horizontal lines] [yellow bar]
2. Preparation for interviews
[grid pattern] [blue bar] [yellow bar]
3. Annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of compliance and non-compliance with Court Order
[blue bar] [yellow bar]
4. Obtain & review corporate materials
[grid pattern]
5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue *ad hoc* non-compliance reports if/as needed
[grid pattern] [yellow bar]
6. Examine & analyze operating practices, documentation, financials, marketing materials, etc.
[grid pattern] [yellow bar]
7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments
[grid pattern] [blue bar] [yellow bar]
8. Continue to conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers & consumers at various levels
[grid pattern]
9. Ensure effective compliance and control systems, programs and procedures are in place to institutionalize compliance with Section I of Order during post-ICA period
[horizontal lines]
10. Review and assess advertising & marketing compliance - Herbalife & outside vendors
[grid pattern] [yellow bar]

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline



Activities	Q4 2021	Q1 2022	Q2 2022	Q3 2022
heavier time = ##### heaviest time = =====				
11. Assess Herbalife multi-level compensation structure and program (Semi-annually)	Implementation Phase			
12. Review new materials as they are produced	Implementation Phase			
13. Map, monitor & analyze website usage	Implementation Phase			
14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife	Implementation Phase			
15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order			Implementation Phase	
16. Prepare and Present Annual Budgets and Written Work Plans to the FTC and Herbalife (commencing annually on or before 2/24/2022)		Implementation Phase		
17. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance				Implementation Phase

Farrell Fritz, P. C.
 Independent Compliance Auditor Activities - Herbalife
 Projected Timeline

Assessment Phase
 Implementation Phase
 Institutionalization Phase

Activities	Q4 2022	Q1 2023	Q2 2023	Q3 2023
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heavier time = ██████████ heaviest time = =====				
1. Periodic meetings among members of the ICA team				
2. Preparation for interviews				
3. Annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of compliance and non-compliance with Court Order				
4. Obtain & review corporate materials	██████████	██████████		
5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue <i>ad hoc</i> non-compliance reports if/as needed				
6. Examine & analyze operating practices, documentation, financials, marketing materials, etc.				
7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments				
8. Continue to conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers & consumers at various levels	██████████	██████████		
9. Ensure effective compliance and control systems, programs and procedures are in place to institutionalize compliance with Section I of Order during post-ICA period	=====	=====		
10. Review and assess advertising & marketing compliance - Herbalife & outside vendors				

Independent Compliance Auditor Activities - Herbalife

Projected Timeline



















Activities	Q4 2022	Q1 2023	Q2 2023	Q3 2023
<p>heavier time = [grid icon] heaviest time = [lines icon]</p> <p>11. Assess Herbalife multi-level compensation structure and program (Semi-annually)</p>	[Redacted]	[Redacted]	[Redacted]	[Redacted]
12. Review new materials as they are produced	[Redacted]	[Redacted]	[Redacted]	[Redacted]
13. Map, monitor & analyze website usage	[Redacted]	[Redacted]	[Redacted]	[Redacted]
14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife	[Redacted]	[Redacted]	[Redacted]	[Redacted]
15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order	[Redacted]	[Redacted]	[Redacted]	[Redacted]
16. Prepare and Present Annual Budgets and Written Work Plans to the FTC and Herbalife (commencing annually on or before 2/24/2023)	[Redacted]	[Redacted]	[Redacted]	[Redacted]
17. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline

Assessment Phase
Implementation Phase
Institutionalization Phase

Activities	Q4 2023	Q1 2024	Q2 2024
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heavier time =  heaviest time = 			
1. Periodic meetings among members of the ICA team			
2. Preparation for interviews			
3. Annual mtg w/FTC & Herbalife to discuss status of the audit, recommendations, areas of compliance and non-compliance with Court Order			
4. Obtain & review corporate materials			
5. Review and assess Herbalife's compliance with the 9 areas outlined in Stipulated Order, Section I; issue <i>ad hoc</i> non-compliance reports if/as needed			
6. Examine & analyze operating practices, documentation, financials, marketing materials, etc.			
7. Ongoing periodic meetings with Herbalife's BOD, C-level and/or key reps from various departments			
8. Continue to conduct interviews & attend meetings with Herbalife employees, officers, agents, representatives, distributors, participants, retail & preferred customers & consumers at various levels			
9. Ensure effective compliance and control systems, programs and procedures are in place to institutionalize compliance with Section I of Order during post-ICA period			
10. Review and assess advertising & marketing compliance - Herbalife & outside vendors			

Farrell Fritz, P. C.
Independent Compliance Auditor Activities - Herbalife
Projected Timeline

Assessment Phase
 Implementation Phase
 Institutionalization Phase

Activities	Q4 2023	Q1 2024	Q2 2024
heavier time = ##### heaviest time = #####			
11. Assess Herbalife multi-level compensation structure and program (Semi-annually)			
12. Review new materials as they are produced			
13. Map, monitor & analyze website usage			
14. Review and assess ICA's confidentiality obligations regarding records and information of Herbalife			
15. Prepare and issue Written Compliance Reports to FTC & Herbalife on Herbalife's compliance & implementation of Section I of the Order			
16. Prepare and Present Final Budgets and Written Work Plan to the FTC and Herbalife (due on or before 2/24/24)			
17. Review and evaluate marketing and required training program materials for compliance with Order prior and subsequent to issuance			
18. Wrap up mtg w/FTC & Herbalife to discuss final compliance status with all areas of Court Order			

Exhibit 5



**HERBALIFE INDEPENDENT COMPLIANCE AUDITOR REQUEST FOR APPLICATIONS:
DISCLOSURE STATEMENT PURSUANT TO SECTION VI.A OF THE STIPULATED ORDER**

Pursuant to Section VI.A of the Stipulated Order for Permanent Injunction and Monetary Judgment, entered on or about July 25, 2016, by the Honorable Beverly Reid O'Connell, United States District Judge for the Central District of California, in the action captioned, *Federal Trade Commission v. Herbalife International of America, Inc., et al.*; Case No. LA CV16-05217 (BRO)(GJXx) (the "Action"), Peter B. Zlotnick, Esq., the proposed Independent Compliance Auditor (the "ICA"), hereby acknowledges and agrees that neither he nor any attorney or employee of Farrell Fritz, team member, associated firm(s) or organization(s), assigned to the ICA project or any proposed subcontractor(s) will be retained by the Federal Trade Commission or any of the Herbalife defendants in the Action for a period of two years after the conclusion of the ICA engagement.

Dated: New York, New York
August 29, 2016

By: 
Peter B. Zlotnick,
As Proposed ICA

Exhibit 6













