

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of:

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16-CRB-0001 SR/PSSR
(2018-2022)

WRITTEN REBUTTAL TESTIMONY OF

Glen Barros

**President and Chief Executive Officer
Concord Music Group**

February, 2017

I. Qualifications and Background

1. My name is Glen Barros. I am the President and CEO of Concord Music Group, Inc. (“Concord”), the recording arm of Concord Bicycle Music, one of the world’s leading independent music companies. I have been with Concord in that role for twenty-two years.

2. I have worked in the music industry for my entire professional career. After completing a Bachelor of Science degree summa cum laude in Music and Business from NYU in 1988, I held various positions in record distribution, record production and music publishing. Eventually I became Chief Operating Officer of AEC Music Group, a division of Alliance Entertainment Corporation. Shortly after Alliance purchased Concord in 1994, I became the President and CEO of Concord Music Group (then known as Concord Records). I have been in that position ever since.

3. I am proud to be part of Concord’s continuing legacy. The Concord Music Group, originally known as Concord Jazz, was named after the Concord Jazz Festival (in Concord, CA) and, since its origin in 1973, is renowned for producing legendary work in the jazz and traditional pop fields. Over the past twenty years, we’ve acquired a number of other labels and have significantly broadened our musical scope beyond just jazz. As a result, we now work in numerous genres and are leaders in rock, blues, bluegrass, Americana and children’s music. Such legends of the music industry as Ray Charles, Rosemary Clooney, Sam Cooke, Count Basie, John Coltrane, Creedence Clearwater Revival, Miles Davis, Duke Ellington, Ella Fitzgerald, Isaac Hayes, John Lee Hooker, Thelonious Monk, Otis Redding and Sonny Rollins have all recorded for labels that are now part of the Concord Music Group. This family of labels includes Concord Records, Rounder, Fantasy, Concord Jazz, Stax, Telarc, Heads Up, Vanguard, Sugar Hill, Wind-up and Fearless among many others.

4. In addition to representing our catalog of historical recordings, we have continued to develop new music, having the honor to have worked over the past several years with such diverse and important artists as Sir Paul McCartney, Paul Simon, Alison Krauss, Robert Plant, Chick Corea, James Taylor, Carole King, Rush, George Benson, Raffi, Kenny G, Dave Koz, Steve Martin, Gregg Allman, Ben Harper, and Esperanza Spalding.

5. With such a rich history among our labels, it is not surprising that we own the rights to a substantial number of recordings that were fixed prior to February 15, 1972 or, as they are commonly called, “Pre-72” recordings. For instance, one of our most iconic sets of recordings is the entire body of work from the band Creedence Clearwater Revival. Another is the evergreen Vince Guaraldi 1965 album “A Charlie Brown Christmas.” Many of the recordings of our classic soul label, Stax, are also Pre-72 recordings, as are those of Little Richard and Sam Cooke on our Specialty label. And many of the recordings in our truly legendary jazz catalog, including recordings by John Coltrane, Miles Davis, Thelonious Monk and Sonny Rollins, were also made prior to 1972. The list goes on and on. And while I don’t have an independent source to substantiate this claim, I am fairly sure that Concord’s collection of Pre-72 recordings receives greater commercial exposure than that of any company other than the three so-called major record companies (*i.e.*, Universal Music Group, Sony Music Entertainment and Warner Music Group).

6. While we regularly make substantial investments in new artists, a major part of our business is focused on showcasing our classic recordings and acquiring additional catalogs. Many of these catalogs include Pre-72 recordings, such as the Vee-Jay Records catalog that we purchased a few years ago. It includes some amazing gems from the 1950s and 1960s such as Gene Chandler’s “Duke of Earl”, John Lee Hooker’s “Boom Boom” and Betty Everett’s “The

Shoop Shoop Song (It's In His Kiss).” In all, I estimate we have more than [REDACTED]
[REDACTED]
of the database of recordings we currently make available to services.

II. Concord's Direct Licenses with Sirius XM

7. I have reviewed the portions of the public version of the written direct testimony of Sirius XM's witness, George White, which discuss Concord. Mr. White states that he communicated to Concord that we “would likely earn slightly less” under a direct license with Sirius XM than under the statutory license, as a result of a reduced rate applied to the way in which Sirius XM calculates royalties. Mr. White states that Concord's decision to sign a direct license reflected our “belief that greater access to and attention from [Sirius XM's] programming staff would ultimately lead to increases in plays and therefore royalties.” Mr. White also refers to “the value [Concord] placed on the transparency of [Sirius XM's] reporting.” *See* White WDT at ¶ 28.

8. I was directly involved in Concord's license negotiations with Sirius XM and, therefore, have firsthand knowledge of our rationale for entering into direct licenses with Sirius XM. While it is true that we took the potential benefits of a direct license outlined by Mr. White into consideration, Mr. White's testimony does not set forth the primary reason that Concord signed direct licenses with Sirius XM. Namely, we wanted to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED].

9. I believe that the first time Sirius XM contacted Concord about a possible direct license was early in 2012. It was during those negotiations that we learned for the first time that Sirius XM was not paying SoundExchange royalties for Pre-72 recordings. Because a substantial portion of Concord's catalog consists of Pre-72 recordings, this was a significant issue for us. We began discussing the possibility of a license with Sirius XM and were giving it careful consideration, but when we learned that Sirius XM would not be willing to pay us for our Pre-72 recordings even if we entered into a direct license with them for our Post-72 recordings, we discontinued the discussions at that time.

10. The Pre-72 issue was not limited to Concord. As is well known, Sirius XM has been engaged in a long-running disagreement with various copyright owners about whether Sirius XM must pay royalties for its performances of Pre-72 sound recordings. Some copyright owners ultimately filed lawsuits against Sirius XM in 2013 and 2014. Concord did not join any of those lawsuits, as we hoped to resolve our dispute without resorting to litigation. While we believed (and continue to believe) that Sirius XM should be required by law to pay for its performances of Pre-72 recordings, we recognized as a practical matter that it could take years for litigation against Sirius XM to reach a final resolution, and that there was a risk that the courts could ultimately hold that Sirius XM was not required to pay for its use of Pre-72 recordings. Further, we believe that Sirius XM is ultimately an important distributor of music and, as with all of our distribution partners, we wish to have a strong working relationship. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED].

11. Sirius XM again contacted Concord about the possibility of a direct license relationship in late 2013, shortly after George White joined Sirius XM. From that point, our negotiations with Sirius XM regarding direct licenses occurred from time to time over a period of almost two years. During the negotiations, we explained to Sirius XM that we would only be interested in a direct license relationship with Sirius XM if they would agree to [REDACTED]. As Sirius XM indicated that they would entertain such an arrangement, we sought information from Sirius XM about what portion of Concord's plays on Sirius XM's satellite radio service [REDACTED]. Sirius XM provided us with information showing that, at that time, Concord's recordings accounted for about [REDACTED] of Sirius XM's total music airplay (as measured by Sirius XM's webcasting results), and that approximately [REDACTED].

12. In the process of our negotiations with Sirius XM, they clearly indicated that, [REDACTED]. We indicated that we would be willing to do so provided that we could be reasonably assured that we would not receive significantly less for our Post-72 recordings under the terms of a direct license as compared to what we would otherwise receive from SoundExchange via the prevailing statutory license. Our rationale was that, even though [REDACTED] at the expense of our Post-72 artists (who might receive lower royalties under the terms of a direct license).

13. Using the historical information provided to me by Mr. White, we collectively analyzed Sirius XM's prior use of our recordings and determined that, despite the fact that we would be agreeing to a reduction from the statutory rate for our Post-72 recordings, the nature of our repertoire when paid through the internet-weighted calculation methodology explained in Mr. White's testimony was such that it was likely to yield close to the same amounts or "slightly less" (as mentioned in Mr. White's testimony) than the statutory amounts that we would otherwise receive through SoundExchange. At no point in the negotiations did Mr. White or anyone else from Sirius XM promise us that Sirius XM would play more of Concord's recordings if we signed direct licenses.

14. Despite our analysis that we would receive close to or slightly less under a Post-72 license than we would receive for our Post-72 recordings through SoundExchange, we needed further assurances that our royalties under a direct license wouldn't be significantly less than what we would expect to receive via a statutory license. We, therefore, asked for some type of protection that would allow us to terminate the direct license if our actual results were materially less than we anticipated. Sirius XM engaged in the discussion and [REDACTED]. To be specific, our analysis suggested that Concord would earn approximately [REDACTED] in SDARS royalties (inclusive of the artist share) in 2016 for Post-72 recordings if we did not sign a direct license, while Sirius XM informed us that their projection suggested that the royalties would be more in the range of [REDACTED]. Given that potential variations could result from changes in our new release schedule, Sirius XM and we agreed to allow for a little "cushion" and to consider [REDACTED] to be the threshold at which we would consider the direct license arrangement to be inferior to the statutory arrangement with respect to our repertoire in 2016. Accordingly, we agreed that, to ensure that Concord and our Post-72 artists

would not be materially worse off as a result of our signing a direct license, our Post-72 license with Sirius XM would include [REDACTED] [REDACTED]. Moreover, the Post-72 license also provided us with additional protection through [REDACTED] [REDACTED] [REDACTED].

15. The two direct licenses were entered into on the same date (January 11, 2016) and were viewed by both parties as a [REDACTED] [REDACTED] [REDACTED]. See SX Exhibit 169 (Post-72 license) at 1 [REDACTED] [REDACTED].

16. The [REDACTED] [REDACTED] [REDACTED] [REDACTED]. It does not include automatic renewals after that.

17. The [REDACTED] [REDACTED] [REDACTED]:

[REDACTED]

18. The [REDACTED]
[REDACTED]
[REDACTED]. See [REDACTED] at 9.

19. The Post-72 license includes the following royalty rates: [REDACTED]
[REDACTED]. The term of the Post-72 license is [REDACTED]
[REDACTED].

20. It should be noted that the rates for both the [REDACTED] were not determined via a free market process, but rather were negotiated against the ceiling set by the prevailing statutory rate.

21. Viewed together, the [REDACTED]
[REDACTED]
[REDACTED]. Under the [REDACTED]
[REDACTED]
[REDACTED] Sirius XM also agreed to [REDACTED] [REDACTED] in January 2016 for its performance of [REDACTED]
[REDACTED] in 2015. Thus, between the two direct licenses, we received [REDACTED]
[REDACTED] in 2016 alone. Advances are not available under the statutory license.

22. Leaving aside the aforementioned [REDACTED], our expectation was that the combined [REDACTED] direct license royalties would exceed our expected SoundExchange royalties for 2016. In fact, that is proving to be the case. While we only have received accountings for the first three quarters of 2016, we are on a trajectory to earn [REDACTED]
[REDACTED] under the Post-72 direct license (including payments that “leaked” through to

SoundExchange) versus an expectation of [REDACTED]. Although it is unlikely that our 2016 earnings under the [REDACTED] will achieve the parties' expectation of [REDACTED], it seems certain that the combined payments to us for 2016 under the two licenses will somewhat exceed our expectations.

III. Sirius XM's Distribution & Promotion

23. In their written direct testimony, Sirius XM's Steven Blatter and George White both indicate that Sirius XM provides promotional value to record labels and artists. I agree. But it is important to note that in addition to providing promotion for labels and artists, Sirius XM also acts as a distributor. I believe that they have millions of customers that are simply content to use Sirius XM as their primary source for music and that, even when they hear music that they enjoy via a Sirius XM channel, there is little or no call to action for these customers to stream, download or buy a physical copy via some other service. Accordingly, I view Sirius XM as an important distributor of music that, like all distributors, also generates promotional benefits. To clarify, we are delighted when a physical retailer agrees to prominently display one of our recordings in their stores, or when an internet retailer puts our offerings on their landing page, or when a streaming service includes one of our tracks in a prominent play list. These are all promotional benefits, but each of these distributors also pays us a fair percentage of the revenue generated from our music – indeed significantly higher than the rates SoundExchange has proposed be paid by Sirius XM. And moreover, the only reason for our music to be included in such promotions is if the distributor deems it to be desirable to their customers, which thereby promotes the distributor's business as well. In fact, Sirius XM tests the "likability" of songs that it adds to its programming and, afterward, recordings that don't test well are often dropped. This is no different than a physical retailer dropping a slow moving title from its inventory in favor of

one that will achieve better sales. Accordingly, I don't see how Sirius XM is any different than a physical or digital distributor in this regard. They choose what to "promote" on their channels presumably because they determine it's what their listeners want to hear and what will cause them to maintain their subscriptions. In return, they have happy customers who continue to pay their subscription fees each month. As a label, we are delighted and grateful when they choose our music and hope that it will benefit them as much as it benefits us. We certainly want the promotion, but we also feel that we should receive a fair portion of the revenue ultimately generated by our music. I view that to be the nature of a good distribution relationship, and that's the nature of the relationship that we wish to have with Sirius XM.

24. In his written direct testimony, Steven Blatter discusses a Concord artist, Nathaniel Rateliff & The Night Sweats. Mr. Blatter attributes the artist's success to airplay on Sirius XM. *See* Blatter WDT, at ¶ 47. His testimony creates the impression that an album's success can be attributed to a single source. The reality, however, is much more complicated. When we and most other record labels release an album, we market and promote it in a variety of ways. We would never rely on a single outlet. Rather, we try to gain exposure in as many different ways as makes sense for the particular artist and album, including not only plays of the recording on radio and digital services, but also placement in playlists on interactive services, touring, direct outreach to fans by email and social media, live appearances, retail marketing, advertising, press reviews, television appearances and other marketing endeavors. In doing so, we look for "drivers" or key partners who believe that the artist is right for their audience and, therefore, their business. In featuring our artist within their business, they contribute to everyone's enrichment, including their own. Sometimes we find these partners within the media, sometimes it's a digital partner, sometimes it's a concert promoter and sometimes it's Sirius XM.

No matter where we find them, we're always grateful for the support and the resulting business.

25. In the case of Nathaniel Rateliff & The Night Sweats' single "S.O.B.," it is true that Sirius XM's Spectrum channel played the song and significantly helped attract attention to the track when it was first released in late June and early July 2015. They continued to play the track thereafter and have been champions for the artist since the release of his last album. Both Concord and the band are grateful for Sirius XM's valuable support, as they have been one of our primary distributors for Nathaniel's music. But Sirius XM is not the only exposure that the band received. First, it is important to remember that Nathaniel Rateliff had started to generate acclaim prior to the release of "S.O.B." His first album "In Memory of Loss" was well received within critical circles.¹ In subsequent years, he toured actively,² released another album³ that helped him to build momentum and continued to generate other good press.⁴ By the time he recorded with his new band (The Night Sweats), he had "hit his stride" by finding his sound and writing some great material. Quite simply, "S.O.B." is a great recording of a great song. He had been performing the song live for some time, and the track was generating a "buzz" even before Sirius XM started playing it. When it was released, he was touring, and press coverage of the tour (before Sirius XM started playing it) referred to "S.O.B." as a "crowd favorite."⁵ Various

¹ *E.g.*, Martin Chilton. Nathaniel Rateliff: In Memory Of Loss, CD review, Telegraph (Mar. 22, 2011), <http://www.telegraph.co.uk/culture/music/worldfolkandjazz/8395710/Nathaniel-Rateliff-In-Memory-Of-Loss-CD-review.html>; Slavko Bucifal, Nathaniel Rateliff – In Memory of Loss, Line of Best Fit (Mar. 10, 2011), <https://www.thelineofbestfit.com/reviews/albums/nathaniel-rateliff-in-memory-of-loss-48421>.

² *E.g.*, <http://www.setlist.fm/setlists/nathaniel-rateliff-3d2c9ef.html>.

³ Jon Pareles, Nathaniel Rateliff and Regina Carter Release Albums, New York Times (Mar. 31, 2014), <https://www.nytimes.com/2014/04/01/arts/music/nathaniel-rateliff-and-regina-carter-release-albums.html>.

⁴ *E.g.*, Jon Pareles, Go West, Young Band, New York Times (Feb. 3, 2013) (referring to Rateliff as "a Denver influence" and "local folk-pop hero[]"), http://www.nytimes.com/2013/02/10/arts/music/the-lumineers-strange-road-to-the-top-10.html?pagewanted=all&_r=0.

⁵ Hilary Hughes, Nathaniel Rateliff Pushes His Pensive, Perspiring Limits With the Night Sweats, Village Voice (June 24, 2015), <http://www.villagevoice.com/music/nathaniel-rateliff-pushes-his-pensive-perspiring-limits-with-the-night-sweats-7298542>.

blogs and others reviewed the track favorably, and some made the track available for promotional streaming (again, before Sirius XM started playing it).⁶

26. Very early on, Sirius XM expressed their excitement over the track and started playing it as the release was building. In doing so, they were meaningful contributors to the “snowball effect” that was already building for the track. Accordingly, it is not surprising that their play of the track contributed to and coincided with growing sales, as depicted in the graph in Mr. Blatter’s testimony. It would be wrong, however, to attribute that growth solely to Sirius XM. While very meaningful, Sirius XM’s plays are only one factor that helped build excitement for the track and album.

27. In addition to Sirius XM’s support, another important factor in the success of Nathaniel Rateliff’s “S.O.B.” track was the band’s performance on the Tonight Show Starring Jimmy Fallon on August 5, 2015. Jimmy Fallon stated that he had been sent a clip of the band and liked them so much that he asked to book them on his show. Then, Fallon played a clip of the band’s recording during his opening monolog and gushed enthusiastically about them. The band performed on the show later in the same episode. Before the show aired, Fallon tweeted that fans should tune in to see the band. It is not every day that Jimmy Fallon gives so much public praise to musical acts on his show. After the episode aired, the video of the band playing on the Tonight Show went viral, with tastemakers like Questlove praising the band on Twitter. By way of comparison, while the band’s single sold about 1,600 downloads in the week prior to the Fallon appearance (while it was already being played on Sirius XM), it sold 12,000

⁶ Nathaniel Rateliff Releasing a Full-Band Album, Touring, Playing NYC Tonight & in the Fall, Brooklyn Vegan (June 24, 2015); James Hughes, Nathaniel Rateliff & The Night Sweats – S.O.B., Too Many Blogs (June 19, 2015), <http://toomanyblogs.co.uk/2015/06/19/asftd-167-nathaniel-rateliff-the-night-sweats-s-o-b/>; New Release: Nathaniel Rateliff & The Night Sweats – S.O.B, Thank Folk for That (June 9, 2015), <http://thankfolkforthat.com/new-release-nathaniel-rateliff-the-night-sweats-s-o-b/>.

downloads in the week of the Fallon appearance and 13,500 downloads during the week after. The album also went on to sell about 20,000 digital and physical copies upon its release at the end of August 2015.⁷ The point is certainly not to devalue the support of Sirius XM. Again, Sirius XM is a major contributor to Nathaniel's success and their efforts are very valued. Rather, it is that a recording, album or artist's success can rarely be attributed to one single outlet. And in the case of Nathaniel, he's a great artist, with great material that has connected with many fans via numerous channels.

28. Similarly, Mr. Blatter's testimony refers to the band, Ghost, whose album "Meliora," included the track "Cirice." See Blatter WDT at ¶ 57. That album was released by the Loma Vista label, with which Concord partnered in 2014. Mr. Blatter's testimony notes that Sirius XM's Octane channel played "Cirice," and that the track eventually won the 2016 Grammy for Best Metal Performance. This situation is similar to Nathaniel Rateliff: Sirius XM provided important support for this track and this artist for which we are very grateful, but it is overly simplistic to say that the track's success, let alone its Grammy Award, can solely be attributed to plays on Sirius XM. Like Nathaniel, we employed a multi-faceted marketing campaign for the "Meliora" album and it was well received by music critics and fans. And like Nathaniel's performance on the Tonight Show Starring Jimmy Fallon, on October 30, 2015, Ghost had a key television performance of the "Cirice" track on the television show The Late Show With Stephen Colbert, which attracted a large audience for the band. As for the Grammy, I don't doubt that the collective exposure, some which was attributable to Sirius XM, had an impact, but recordings don't win Grammys solely due to exposure. More importantly, they have

⁷ See <http://www.billboard.com/articles/news/magazine-feature/6700779/nathaniel-rateliff-and-the-night-sweats-jimmy-fallon-appearance-success>.

to be among the best recordings in their genre. This example highlights the point that, when record companies release tracks that are among the very best, distributors want to feature them for their audience's benefit. In turn, everyone should fairly share in the financial rewards of doing so.

29. Mr. Blatter also refers to a James Taylor pop-up channel and town hall in connection with the album "Before This World." Blatter WDT, at ¶ 34. That album is one of our releases. Here, the important thing to understand is that Mr. Taylor is a music legend with a worldwide following. He has been recording since the 1960s and was inducted into the Rock and Roll Hall of Fame in 2000. "Before This World" was his seventeenth studio album, and his first containing original material in 13 years. It was highly anticipated and well-reviewed.⁸ In the lead-up to its release, we engaged in numerous marketing activities in order to further fuel this natural anticipation. One key element was in fact the pop-up channel and town hall with Sirius XM. We also helped to organize a live concert featuring Mr. Taylor at the legendary Apollo Theater in Harlem which was broadcast by Sirius XM as part of a major subscriber promotion. All of this was indeed important in helping to create awareness such that Mr. Taylor's album had a great launch. But Sirius XM's promotion of this album was only one element. We also launched a major press campaign (including numerous national television appearances), pre-sold copies of the album as bundled offerings with tickets to his live shows, advertised the release of the album in various ways, launched a major social media campaign and

⁸ David Browne, James Taylor: Before This World, Rolling Stone (June 16, 2015), <http://www.rollingstone.com/music/albumreviews/james-taylor-before-this-world-20150616>; Glenn Gamboa, James Taylor's 'Before This World' Review: Sure-Handed Stunners, Newsday (June 12, 2015), <http://www.newsday.com/entertainment/music/james-taylor-s-before-this-world-album-review-sure-handed-stunners-1.10533276>; James Taylor's 'Before This World' coming in June, USA Today (Apr. 7, 2015), <http://www.usatoday.com/story/life/music/2015/04/07/james-taylor-before-this-world-june-16/25403373/>.

engaged in many additional marketing activities. Overall, I view our work with Sirius XM on this record to be an example of how a good distribution relationship should work. While we certainly wanted the promotion and distribution that they provided, I believe that Sirius XM was also excited to provide its subscribers with special access to Mr. Taylor. One way that Sirius XM builds its subscriber base is to trade off the popularity of star artists. I believe that their special association with Mr. Taylor in connection with this record certainly helped to deepen their bond with his considerable fan base and, therefore, helped to acquire or maintain subscribers. In return, they helped to spread the word about the new album. Hence, the promotion went in both directions. The financial rewards of such a relationship, therefore, should also be fairly distributed in both directions.

30. I believe that it's also important to point out that the examples mentioned in Mr. Blatter's testimony, including those addressed above, primarily pertain to new recordings for which the artist and label are trying to achieve audience discovery. A very major portion of Sirius XM's programming, however, includes older tracks that are already known or that serve smaller niche genres. Plays of these recordings on Sirius XM usually have little to no promotional value and, therefore, have little or no impact on sales in other channels. They do, however, help to widen and deepen Sirius XM's programming and to provide great diversity to their subscribers. I would think that this is a prime reason that many people subscribe to Sirius XM. With respect to our specific experience, we have a vast catalog that gets plays across many of Sirius XM's numerous channels. We are also leaders in particular genres such as jazz and bluegrass, which means that our music comprises a significant percentage of the plays on Sirius XM's "Real Jazz", "Watercolors" and "Bluegrass Junction" channels. While we are grateful that Sirius XM is playing our music on these channels, we rarely see any impact on sales in physical

or other digital channels. We believe this to be because those listening to catalog or niche genre stations are not primarily there to discover new music, but that the listening experience itself is enough for them. For example, I would argue that Sirius XM's Watercolors station is now one of the main distributors of contemporary or "smooth" jazz, as there is still a considerable fan base for this genre and yet digital and physical sales have dropped precipitously. Quite simply, I believe that many fans of this music feel that the Watercolors programming sufficiently satisfies their desire for a relaxing, laid back audio experience and that there is no need to spend money elsewhere. This is probably true of many of the "oldies" channels and other specific genre channels offered by Sirius XM. So again, I think this highlights the fact that Sirius XM does not just offer promotion to record labels, but is also an important distributor.

IV. Conclusion

31. I appreciate the opportunity to present this testimony and hope it assists the Copyright Royalty Judges in reaching their decision in this proceeding.

I declare under penalty of perjury that the foregoing testimony is true and correct.

Date: February 16, 2017

Glen Barros 

Exhibits Sponsored by Glen Barros

Exhibit No.	Description	Designation
SX Ex. 168	[Redacted]	Restricted
SX Ex. 169	[Redacted]	Restricted