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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

IN RE: CARLOS WATSON and OZY MEDIA, INC.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of New York (No. 23-cr-00082-EK)

EMERGENCY PETITION FOR A WRIT OF MANDAMUS

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Preliminary Statement and Introduction

This petition for a writ of mandamus, submitted on behalf of Petitioners Carlos Watson and OZY Media, Inc. ("OZY"), seeks relief from a decision of the United States District Court for the Eastern District of New York (Komitee, U.S.D.J.), made *sua sponte* at the first conference in the case on March 6, 2023, that there was no disqualifying conflict nor any "overlap" between this case and Viking Global Investors LP ("Viking"), which the district judge served as General Counsel before his nomination to the Bench, and that he therefore was not disqualified from presiding over this case.

After trial, on October 2, 2024, when the district judge's annual financial disclosure for 2023 first became publicly available, *see* the Courthouse Ethics and Transparency Act ("CETA"), Pub. L. No. 117-125, 136 Stat. 1205, 5 U.S.C. § 13101 *et seq.* (2022), the defense began looking under the hood of the district judge's *sua sponte* ruling that there was no disqualifying conflict nor overlap between his background and this case. The resulting analysis revealed multiple overlaps between alleged victims in this case and the district judge's financial, professional, and personal interests. On October 25, 2024, the Petitioners promptly moved for the judge's recusal *nunc pro tunc* as of February 23, 2023 (when the judge was first assigned to this case), arguing that his multi-

layered entanglements with alleged victims had required his recusal *ab initio* under 28 U.S.C. § 455(a), (b)(4), or both. *See* Exhibit D.

While the Petitioners' motion for recusal remains pending in district court, mandamus should be granted now and should not await the district judge's ruling (nor direct appeal from an adverse ruling) for at least the following four reasons.

First, this Court has repeatedly held that mandamus is appropriate in recusal motions, believing that there are "few situations more appropriate for mandamus than a judge's clearly wrongful refusal to disqualify himself." *In re International Business Machines Corp.*, 618 F.2d 923, 926 (2d Cir. 1980) (quoting from *Rosen v. Sugarman*, 357 F.2d 794, 797 (2d Cir. 1966). *See also In re United States*, 666 F.2d 690, 694 (1st Cir. 1981) (public confidence in the courts requires that questions of disqualification must be disposed of at the earliest possible opportunity); *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1321 (2d Cir. 1988) (immediate relief is necessary "to avoid compounding the harm already done to the public's perception of the integrity of the judiciary.") (Lumbard, J., dissenting).

Second, the atypical facts of this case favor immediate remediation of the irreparable harm caused over the twenty months since the district judge issued his *sua sponte* ruling on March 6, 2023, not indulgence of more harm to Petitioners

and public confidence in the courts in the short time until sentencing, currently scheduled for mid-December: the facts supporting disqualification are far more stark than typical claims of violations of 18 U.S.C. § 455, and a concomitant remedy should be fashioned. *See In re Sch. Asbestos Litig.*, 977 F.2d 764, 776 (3d Cir. 1992) ("While review after final judgment can (at a cost) cure the harm to a litigant, it cannot cure the additional, separable harm to public confidence that section 455 is designed to prevent.").

Third, the atypical and especially compelling factual basis for disqualification in this case establishes that the Petitioners' right to relief is "clear and indisputable." *See In re Drexel Burnham Lambert, Inc.*, 861 F.2d at 1312 (quoting *Moses H. Cone Memorial Hosp. v. Mercury Constr. Co.*, 460 U.S. 1, 18 (1983)); *Keane v. Dibbins*, No. 22-2833-cv, 2023 U.S. App. LEXIS 27211 at *6 (2d Cir. Oct. 13, 2023).

Fourth, the intrusion of wealth into our institutions has greatly increased as of late, and we act at our own peril with undue fealty to process and kicking an urgent problem down the road. *See* Sarah C. Baldwin, *"The dark side of extreme wealth,"* Brown University's Watson Institute for International & Public Affairs, Nov. 3, 2011[4] ("[G]reat wealth changes the culture. It feeds the sense that ordinary

people -- and politics itself - - can't really get anything done. Why participate if government can't deliver?").

Alternatively, if the Court determines that the district judge's ruling on the motion for recusal is a pre-condition to this petition, the Court should hold this Petition in abeyance and revisit it (if necessary) after the district judge rules.

Summary of the Relevant Facts

On February 23, 2023, an indictment was filed charging the Petitioners with conspiracy to commit securities and wire fraud for making misrepresentations to induce investments in OZY, a news and media company. It was not disputed at trial that OZY was founded in 2012 by Petitioner Watson, a graduate of Harvard University and the Stanford University's School of Law; produced premium newsletters, television shows, podcasts, and festivals; reached a cross-platform audience of millions of people; hired hundreds of people; won an Emmy Award; and enjoyed the support of many blue chip advertisers, including Walmart, Target, and Coca-Cola. *See* T 2909, 2925, 2946. The principal issue at trial was whether alleged misrepresentations to prospective investors between 2018 and 2021 were material, as the government alleged, or whether they were immaterial and not accompanied by larcenous intent. It was undisputed that Mr.

Watson did not misappropriate any investments or intend to do so, but invested his own money in OZY and took little compensation himself to help OZY succeed.

On March 6, 2023, at the first conference in this case in district court, the district judge, *sua sponte*, advised the parties that he saw no "overlap" between this case and his "bio," which included his work between 2008 and 2018 as Viking's General Counsel. Exhibit C at 7. Ostensibly discharging his non-delegable duty to "carefully examine possible grounds for disqualification and to promptly disclose them when discovered" (*see Litovich v. Bank of Am. Corp.*, 106 F.4th 218, 226-27 (2d Cir. 2024) (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 868 (1988)), thereby complying with *Liljeberg's* "stringent standard" (*In re Drexel Burnham Lambert, Inc.*, 861 F.2d at 1313), the district judge concluded that he was qualified to preside over this case. The defense had no basis to question the reliability of the district judge's representation and no obligation to do so nor authority to conduct an independent investigation into his various interests. *See Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 130-133 (2d Cir. 2003) ("Section 455 is not a provision that requires judicial action only after a party to the litigation requests it. The relevant provisions are directive and require some reasonable investigation and action on the judge's own initiative . . . . to avoid damage to public confidence in the federal judiciary's impartiality that would result from constant recusal motions or recurrent

controversies over judges' financial interest in parties to litigation."); Andrew L. Wright, *"Invested in the Outcome: When the Judge Owns Stock in the Victim of the Crime,"* University of Chicago Legal Forum: Vol. 1998: Issue 1, Article 20, at 495 ("[A] defendant reasonably might want to know how long a judge who refuses to recuse himself has owned the stock in question, what percentage of the judge's entire investment portfolio the stock constituted, or why the judge invested in that company in the first place. Yet a defendant is not entitled to this information. The judge is neither subject to any voir dire procedure nor permitted to testify in court.").

Nor could the defense have effectively investigated the district judge had it been so empowered and inclined. Information about financial, professional, or personal overlaps between the district judge and this case was uniquely known to him; his annual financial disclosures for 2022 and 2023 were not publicly available until 2024 (when the district judge presided over the trial in this case); and his annual financial disclosure for 2024 has not been filed to date. Exhibit F at 4-5. *See Chase Manhattan Bank*, 343 F.3d at 130-31 ("lawyers do not routinely search judges' financial disclosure forms - - the only information available on a particular judge's financial holdings - - but even if they did, those forms are generally a minimum of four months out-of-date, i.e., the forms are filed by May

[15] and report holdings and transactions for the previous calendar year. Judges therefore bear the principal burden of compliance with [Section 455].").

Two months after trial, when the district judge's 2023 Disclosure became publicly available, the defense undertook to scrutinize his earlier ruling that he had no disqualifying conflict as part of an effort to understand why, in its view, he had been unduly adversarial during trial, including unduly restricting presentation of the defense, and, upon the jury's verdict, unnecessarily remanding (to Brooklyn's notoriously brutal Metropolitan Detention Center[1]), Mr. Watson, an honors graduate of Harvard University and Stanford University's School of Law and an accomplished journalist and philanthropist with no criminal history (until a benefactor posted $1 million to secure his monitored release two months later). During trial, defense counsel and multiple observers of the trial, including prominent professionals who attended the trial wrote letters of complaint about the district judge to the Eastern District's Chief Judge which were thereafter redirected to this Court's Chief Judge. Exhibit M. One of those complainants, a professor

[1] *See* John Annese, "Judge Says He'll Vacate Fraudster's Sentence If He's Sent to 'Barbaric' MDC Brooklyn Federal Jail," N.Y. Daily News, Aug. 7, 2024, *available at https://www.nydailynews.com/2024/08/07/judge-says-hell-vacate-fraudsters-sentence-if-hes-sent-to-barbaric-mdc-brooklyn-federal-jail/*

from Duke University who testified as a defense expert, emphasized that he was not writing at the request or with the assistance of the defense. Exhibit J at 1.

The defense tested the district judge's representation of no overlap and disqualifying conflict principally by comparing his annual financial disclosure for 2023 with periodic Forms 13F and Forms ADV filed with the Securities and Exchange Commission by Viking and two other hedge funds in which the district judge invested, as reported in his 2023 Disclosure. The filings, which the district judge himself signed when he was Viking's General Counsel, helped reveal that the district judge in 2023 suffered from multi-layered entanglements with alleged victims in this case - - none of which had been disclosed - - that the defense believes disqualified him from presiding over this case *ab initio*, entanglements which may continue to this day.

The chart on page 12 hereinafter, submitted in district court (Exhibit F at 3), depicts the following disqualifying overlaps between the district judge and this case, which represents only what the defense has been able to discover from publicly available sources and does not purport to be exhaustive:

1. **Financial Stake in Alleged Victims:** The district judge in 2023 had pecuniary interests in four alleged victims in this case through three different hedge funds: Viking; D1 Capital Partners Onshore LP, a hedge fund offered

by D1 Capital Partners LP ("D1"); and Junto Capital Partners LP, managed by Junto Capital Management LP ("Junto"). Both D1 and Junto were founded and managed by former Viking portfolio managers who had worked side-by-side with the district judge when he was Viking's General Counsel and sat with him on Viking's Management Committee.

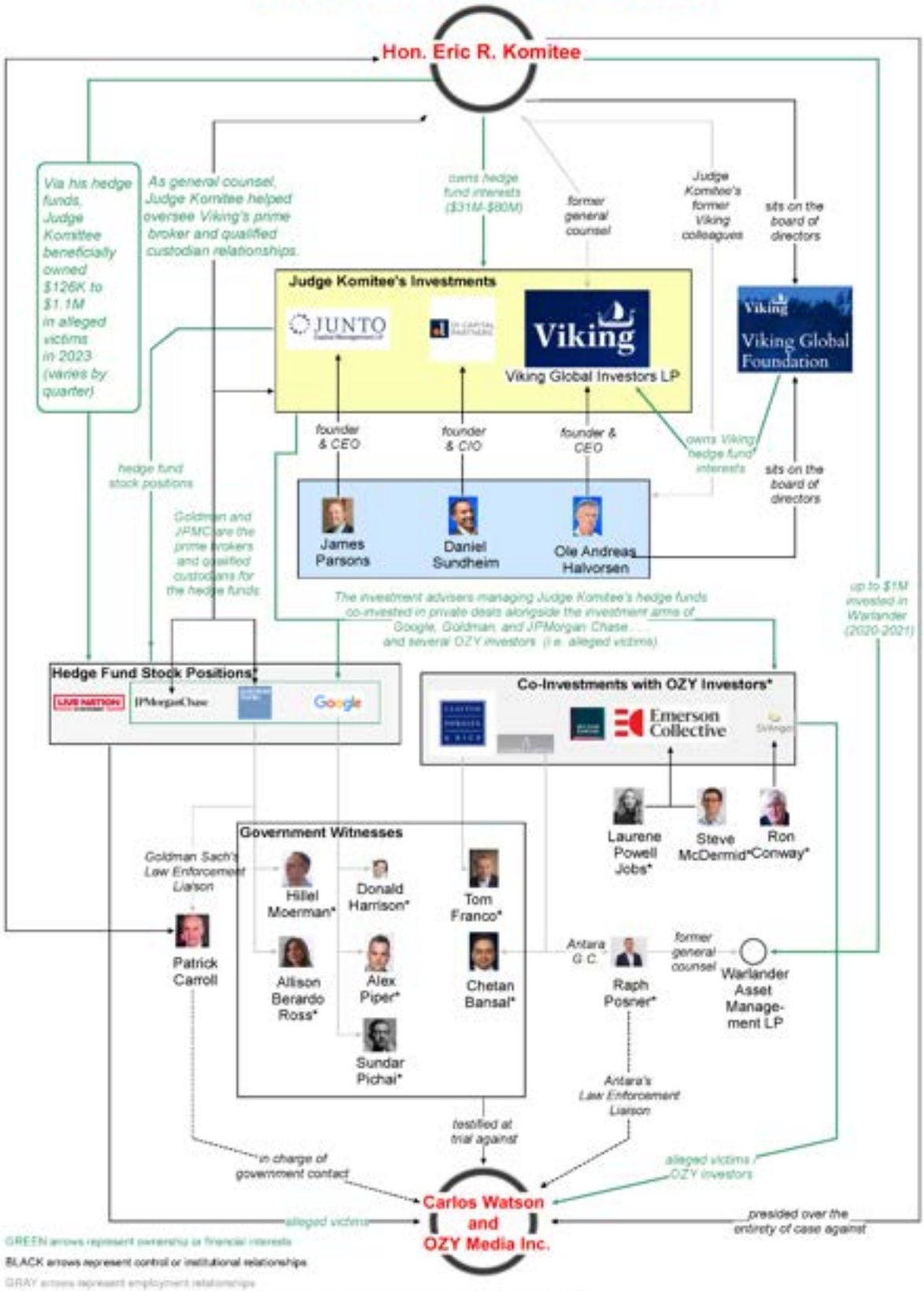
2. **Continued to Sit on a Viking Board:** The district judge in 2023 served as a director of Viking Global Foundation Inc. ("the Foundation"), along with senior Viking executives, including Viking's Chief Executive Officer, Ole Andreas Halvorsen, who had been the district judge's boss at Viking. The Foundation is a charitable entity headquartered at Viking's offices; is entirely dependent on Viking for its operating revenue; and is itself invested in a Viking hedge fund. During the pendency of this case, while the district judge participated in directing the Foundation, Viking held stock positions worth hundreds of millions of dollars in alleged victims in this case.
3. **Viking's and D1's Co-Investment Relationships with Alleged Victims:** Viking and D1 have co-invested more than a dozen times with these same alleged victims in this case, including as recently as June 11, 2024, when Viking and the venture arms of three alleged victims co-invested together in a $650 million deal that closed two and three days before their respective representatives testified in the district judge's courtroom at trial in this case.

Viking co-invested with alleged victims in this case who invested in defendant OZY, including about eighteen people or entities who testified at trial or were identified by the government in its list of "Possible Witnesses and Other Individuals," filed in advance of jury selection. Exhibit G.

4. **Actively Managed Strategic Partnerships with Alleged Victims Worth Hundreds of Millions of Dollars**: Apart from the district judge's pecuniary interest in alleged victims in this case, he had substantial and longstanding institutional and likely personal relationships with at least two of the entities, which served Viking as qualified custodians of Viking's client's assets and Viking's prime brokers, likely generating hundreds of millions of dollars in revenue for those two alleged victims.
5. **Connections to Executives of Alleged Victims:** The district judge had such a close relationship with one victim's executive in charge of the victim's contacts with federal law enforcement that the executive accompanied the then nominee to his confirmation hearing before the United States Senate Judiciary Committee in 2018, during which the then nominee Komitee noted their "friendship that has survived and only grown stronger over the years." Another executive at an alleged victim entity was the general counsel of a hedge fund in which the district judge had up to a $1 million investment interest; this second executive was named on the government's witness list.

See Exhibit D at 10-12 (district judge's relationships with Patrick Carroll and Raph Posner).

6. **The Investment Positions Were Long Standing:** Apart from the district judge's pecuniary interests in alleged victims in 2023 when this case began, he held such interests in the same alleged victims throughout the multi-year time period covered by the indictment in this case.


Judge Komitee's Case Overlap 2023
Hon. Eric R. Komitee
Via his hedge funds, Judge Komitee beneficially owned $126K to $1.1M in alleged victims in 2023 (varies by quarter)
As general counsel, Judge Komitee helped oversee Viking's prime broker and qualified custodian relationships.
owns hedge fund interests ($31M-$80M)
former general counsel
Judge Komitee's former Viking colleagues
sits on the board of directors
Judge Komitee's Investments
JUNTO
Viking
Viking Global Investors LP
Viking Global Foundation
founder & CEO
founder & CIO
founder & CEO
owns Viking hedge fund interests
sits on the board of directors
hedge fund stock positions
James Parsons
Daniel Sundheim
Ole Andreas Halvorsen
Goldman and JPMC are the prime brokers and qualified custodians for the hedge funds
The investment advisers managing Judge Komitee's hedge funds co-invested in private deals alongside the investment arms of Google, Goldman, and JPMorgan Chase . . . and several OZY investors (i.e. alleged victims)
up to $1M invested in Warlander (2020-2021)
Hedge Fund Stock Positions*
LIVE NATION
JPMorganChase
Google
Co-Investments with OZY Investors*
Emerson Collective
Laurene Powell Jobs*
Steve McDermid*
Ron Conway*
Government Witnesses
Goldman Sach's Law Enforcement Liaison
Patrick Carroll
Hillel Moerman*
Donald Harrison*
Tom Franco*
Allison Berardo Ross*
Alex Piper*
Chetan Bansal*
Sundar Pichai*
Antara G.C.
Raph Posner*
former general counsel
Warlander Asset Management LP
Antara's Law Enforcement Liaison
testified at trial against
in charge of government contact
alleged victims / OZY investors
Carlos Watson and OZY Media Inc.
alleged victims
presided over the entirety of case against
GREEN arrows represent ownership or financial interests
BLACK arrows represent control or institutional relationships
GRAY arrows represent employment relationships
* ASTERISK indicates an individual or company named in ECF No. 141 (Gov't's List of Persons, Entities, and Places)

The district judge's financial, institutional, and personal relationships were not abstract or indirect. His investments include stakes in entities that were central to this case, including Alphabet, Inc. (Google's parent company), JPMorgan Chase, Goldman Sachs Group, Inc., and LiveNation Entertainment. Moreover, his historical and ongoing ties to Viking and its affiliates deepen the appearance of bias, as these entities have a vested interest in the outcome of these proceedings. Such entanglements violate both the letter and spirit of 28 U.S.C. § 455, which mandates recusal when a judge's impartiality can reasonably be questioned or when a judge has a prohibited interest in the case. Additionally, the district judge's failure to disclose these financial, professional, and personal interests itself undermines the transparency essential to the integrity of judicial process. Under 28 U.S.C. § 455(e), even potential conflicts require full transparency to protect the integrity of the judicial process.

The violation of Section 455 denied the petitioners a fair resolution of the issues in dispute and fair consideration of the Petitioners' defense that they did not commit the charged crimes. This Petition details the district judge's above-described overlaps with alleged victims, discusses how the district judge's orders since the filing of the pending motion to recuse have perpetuated an appearance of partiality, and demonstrates ongoing irreparable prejudice to the Petitioners and their "clear and indisputable" right to mandamus.

A. The District Judge's Multi-Layered Entanglements with Multiple Alleged Victims

On October 2, 2024, the district judge's annual financial disclosure covering the calendar year 2023 (Form AO 10, the "2023 Disclosure") first became available to the public, more than two months after conclusion of the trial in this case. Such disclosures are required by CETA, which served to amend the Ethics in Government Act of 1978, enacted in the aftermath of Watergate, to "increase public confidence in the federal government, demonstrate the integrity of government officials, deter conflicts of interest . . . and enhance the ability of the citizenry to judge the performance of public officials." *Lovitky v. Trump*, 949 F.3d 753, 754 (D.C. Cir. 2020) (citation and quotation marks omitted); *Bader v. United States*, 97 F.4th 904, 909 (Fed. Cir. 2024). CETA "mandates the creation of a publicly-available online database to house judges' financial-disclosure reports." Albert Diaz and Steven J. Alagna, *"The Courthouse Ethics and Transparency Act: New Obligations for Federal Judges,"* 107 Judicature 78, 79 (2023); *see also* Memorandum of Director of the Administrative Office of the United States Courts, May 17, 2022 (Hon. Rosylnn R. Mauskopf memorandum to "All United States Judges" with overview of CETA requirements). By signing the AO 10, the district judge stated:

> I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and

> complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure. I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 13141 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Exhibit D, Financial Disclosure Report for Calendar Year 2023 on Form AO10, page 8, Item IX Certification).

The defense investigation revealed the following sets of disqualifying interests, each of which alone and together required disqualification as of the first conference in the case:

1. *The District Judge's Pecuniary Interest in Alleged Victims*

The district judge's 2023 Disclosure showed that he had between $6 million and $30 invested in two hedge funds managed by Viking, a large hedge fund manager with $64.5 billion in regulatory assets under management ("AUM"). The two Viking funds were Viking Global Equities LP (in which the district judge's interest was worth between $5,000,001 and $25,000,000) and Viking Global Opportunities LP ($1,000,001 to $5,000,000). *See* Exhibit D at 4; Exhibit D, Financial Disclosure Report for Calendar Year 2023 on Form AO10, page 4, Item VII Investments and Trusts, lines 1-2). The district judge served as Viking's General Counsel from 2008 until June 2018 (upon his nomination to the

federal bench by then-President Trump) and personally signed periodic reports to the Securities and Exchange Commission about Viking's investments, including investments in the alleged victims identified below. *See* Exhibit D at 8, n. 15.

In 2023, the district judge also had between $5 million and $25 million in D1 ($27.5 billion AUM) and $5 million to $25 million in Junto ($8.8 billion AUM). Both Junto and D1 were founded and managed by former Viking portfolio managers who worked side-by-side with the judge at Viking and sat with him on Viking's Management Committee. *See* Exhibit D at 4-5, n. 5; Exhibit D, Financial Disclosure Report for Calendar Year 2023 on Form AO10, page 4, Item VII Investments and Trusts, lines 3-4).

The alleged victims in which the district judge, through the hedge funds, held investments throughout 2023 are referred to in the Indictment in this case, and representatives of two of them testified at trial:

(1) the Goldman Sachs Group, Inc. ("Goldman"), to which the Petitioners allegedly made material misrepresentations and omissions about OZY's "historical and projected financial results, debts and business relationships" to induce an investment of up to $45 million, and to which Samir Rao, a conspirator, posed as an employee of YouTube, owned by Google, Inc. ("Google"), in a call to Goldman to misrepresent the extent of Google's interest in OZY.

(2) Google, owned by Alphabet, Inc., to which the Petitioners allegedly provided inflated revenue figures and about which they misrepresented their business relationship.

(3) LiveNation Entertainment ("LiveNation"), which conspirators allegedly misrepresented had an interest in investing up to $10 million in OZY.

(4) JPMorgan Chase ("JPMC"), to which conspirators allegedly misrepresented OZY's "historical and projected financial reality" in the context of a Series E fund raising round organized by JPMC.

The government at trial stressed the importance of these alleged victims to its proof. *See* T 4401-02 ("I want to start with the Goldman call because, keep in mind, to find the defendants guilty, you only need one lie . . . . If you find beyond a reasonable doubt one of those lies including the Goldman call, that is enough to convict and you can stop;" T 4412-13 ("[I]f you find beyond a reasonable doubt that Watson was in on the impersonation, then this case is basically over. If he agreed with [conspirator Samir] Rao to impersonate [YouTube's] Alex Piper to land an investment from Goldman, that's fraud. Because Goldman was buying OZY stock, that's securities fraud. And that means Watson is guilty of Count One. Because the impersonation involved electronic communications between California and New York, that's wire fraud

and that means Watson is guilty of Count Two. And because they stole Alex Piper's identity to do it, Watson is guilty of Count Three . . . . [T]he Goldman call alone is enough to find Watson and OZY guilty on all counts and to be done"); T 4127 ("You have learned over the last several weeks that for years, Carlos Watson went around the country and around the world telling people that OZY was a proven success . . . that it had secured licensing agreement[s] with major media players like [Google's] YouTube and that OZY's fundraising rounds were being led by big names like Google and Live Nation . . . . But you now know that none of that was true"); T 4180 ("Watson, Rao, and [conspirator Suzee] Han also told Goldman Sachs that OZY had earned $5.75 million in licensing revenue from YouTube based on a licensing agreement . . . But you know that was a lie"); *see also, e.g.*, T 4140, 4159, 4167, 4169-75, 4177, 4191, 4195, 4199, 4206, 4214, 4216-17, 4222, 4238.

The defense analysis of the district judge's holdings was based principally on his 2023 Disclosure as well as two sets of periodic reports filed with the Securities and Exchange Commission by Viking and the other hedge fund managers through which the district judge maintained investments: (1) Form 13F, required by Section 13F of the Securities Exchange Act of 1934 to be filed each quarter by investment managers with control over at least $100 million in so-called "13F securities" and which lists all equity assets under management, including the

name of the issuer, the class of security, the number of shares owned, and the fair market value; and (2) Form ADV, required by the Advisors Act, 15 U.S.C. §§ 80b-3 and b-4, to be filed annually by registered investment advisers and which discloses information about the investment adviser's business, ownership, clients, employees, business practices, and affiliations. When the district judge was General Counsel of Viking, he personally signed dozens of Viking's Forms 13F and Forms ADV, vouching for their truth.

The defense analysis established that the district judge's pecuniary interest in the alleged victims in 2023 (and possibly the first two quarters of 2024) was at least between $126,000 and $1.1 million, depending on the financial quarter. *See* Exhibit D at 9, 27, Table 2; Exhibit F, Declaration of Gregory L. Florio, Tables on pages 6-9. These holdings were not transient or isolated positions (*compare United States v. Teman*, No. 21-1920-cr, 2023 U.S. App. LEXIS 14247 at 89-10 (2d Cir. June 8, 2023) (Judge Engelmayer held stock in one victim through Berkshire Hathaway); *United States v. Lauersen*, 348 F.3d 329 (2d Cir. 2023) (Judge Pauley owned stock in an insurance company that was among the alleged victims)), but part of continuing, longstanding, and substantial relationships. For example, the analysis shows that the district judge's pecuniary interests in the alleged victims between 2012 and 2021, before his assignment to this case, temporally overlapped with the Indictment's allegations, including

OZY's inception in 2012 [Indictment at ¶ 5], its accumulating debt beginning in 2016 [Indictment at ¶¶ 10-11], and the charged conspiracy to commit securities and wire fraud from January 2018 to October 2021 [Indictment at ¶¶ 13-101], which allegedly began about six months *before* the district judge resigned as Viking's General Counsel upon his nomination to the Bench. Exhibit B; Exhibit D at 22-24, Table 3 (2008 to 2011); 24-25, Tables 4-5 (2012 to 2017); 25-26, Tables 6-8 (2018 and 2019); 26, Table 9 (2020 to 2021).

2. *The District Judge's Continuing Relationship with Viking through Which he Held Some of His Pecuniary Interests in Alleged Victims*

The district judge's 2023 Disclosure also established that, even after his assignment to this case, he continued to have working relationships with Viking's principals, including Viking's Chief Executive Officer, Ole Andreas Halvorsen, who was the district judge's boss at Viking. In 2023, the district judge served as a director of Viking Global Foundation Inc. ("the Foundation"), along with Halvorsen and other senior officials at Viking. The Foundation is a charitable entity headquartered at Viking's offices; is entirely dependent on Viking for its operating revenue; and is itself invested in a Viking hedge fund. During the pendency of this case, while the district judge sat on the Foundation's board with Halvorsen and other senior Viking officials, Viking held stock positions worth hundreds of millions of dollars in one or more of the above-identified alleged

victims. As a director of the Foundation, the district judge might have had a fiduciary duty to participate in the evaluation and monitoring of the Foundation's investments, including Goldman, Google, JP Morgan, and more. *See* Exhibit D at 5-6, notes 6-9; Financial Disclosure Report for Calendar Year 2023 on Form AO10, page 1, Item I, Positions, line 1)

3. *The District Judge's Relationships with Two of the Alleged Victims*

The district judge also had substantial and longstanding institutional, strategic and likely personal relationships with two of the alleged victims, Goldman and JPMC. Viking's regulatory filings for 2023, as well as those signed by the district judge when he was Viking's General Counsel, disclose that both Goldman and JPMC served Viking as qualified custodians of Viking's client's assets and Viking's prime brokers. The Custody Rule of the Investment Advisers Act requires Viking to maintain its clients' assets at qualified custodians. *See* 17 C.F.R. § 275.206(4)-2. Prime brokers provide multiple indispensable services to clients like Viking, including extension of credit and financing that permits transactions to be conducted efficiently, investment banking and consulting services, and introductions to sources of capital. *See Securities Law Handbook Series: Advising Private Funds, a Comprehensive Guide to Representing Hedge Funds, Private Equity Funds and Their Advisors, 2023-24* (Thomson Reuters)

(Chapter 22 citing Staff Report to the SEC, Implication of the Growth of Hedge Funds (Sept. 2023); *The Role of a Prime Broker*, www.investopedia.com, June 26, 2024. Serving as qualified custodian and prime broker are among the core capacities of Goldman and JPMC, can generate hundreds of millions of dollars in annual revenue for them, and require deep relationships with their clients. Viking's relationships with its prime brokers are of crucial importance: without prime brokers, Viking could not conduct business. Conversely, the largest prime brokers, like Goldman and JPMC, compete for the highly lucrative role of serving as prime broker for large hedge funds - - and Viking's hedge funds are among the largest in the world. Goldman and JPMC provided prime broker services to Viking in 2023 when the district judge maintained his interest in them (and other alleged victims through Viking). As Viking's General Counsel, the district judge would likely have been at least partially responsible for selecting and monitoring Viking's engagement of Goldman and JPMC as prime brokers and custodians of its client's assets (worth tens of billions of dollars) and would have likely played an important role in maintaining such relationships. Indeed, the district judge touted his leadership of the prime broker relationship at various conferences and in his Senate nomination questionnaire. *See* Exhibit D at 12-13, n. 22.

4. *Viking's and D1's Co-Investments with the Alleged Victims*

In addition to serving as Viking's prime brokers and qualified custodians, Goldman and JPMC co-invest with Viking and D1. Viking and D1 have co-invested alongside the private equity or venture arms of Goldman and JPMC, as well as alleged victim Google more than a dozen times, including as recently as June 11, 2024, when Viking and the venture arms of Goldman, JPMC, and Google *all* co-invested together in a $650 million deal with AlphaSense; Goldman and Google representatives testified in this case two and three days after this deal closed, respectively. In total, Viking and D1 joined Goldman, Google and JPMC on more than *$7.5 billion* in co-investments. *See* Exhibit D at 13-14, Table 1 (Viking and/or D1 co-investments with Goldman, Google, JPMC).

In addition to co-investing with alleged victims Goldman, JPMC, and Google, Viking and D1 have co-invested with other investors who invested in OZY and were alleged to be victims. Viking and D1 co-invested with OZY investors in deals worth more than *$911.9 million*. The government's list of "Possible Witnesses and Other Individuals" filed in advance of jury selection identified eighteen people or entities alleged to be victims in this case who have co-invested with Viking or D1. *See* Exhibit G at 13-18 (*e.g.*, SV Angel: Ron Conway; Emerson Collective: Laurene Powell Jobs, Steve McDermid; Clayton

Dubilier & Rice: Dave Novak, Robert Quarta, Michael Dubilier, the Martin Tate Dubilier Accumulation Trust, the Riley Conchrane Dubilier Accumulation Trust; SuRo Capital Corp. and GSV: Mark Klein, Michael Moe, Tom Franco, Deborah Quazzo; Wilson Sonsini and WS Investment Company LLC). One of those alleged victims, Thomas Franco, a partner in Clayton Dubilier Rice, testified at trial. To the extent that the district judge's investments in Viking (or another fund) are deployed in co-investments, private equity holdings, or hedge fund's so-called "side pocket" deals, the district judge is or was an indirect co-investor with alleged victims in this case. *Compare* Exhibit D at 14 and Table 1 (list of Viking and D1 co-investments with OZY Investors) *with* Exhibit G at 13-18 (list of Possible Witnesses).

5. *The District Judge's Personal Relationships*

The public record provides only a limited window into the district judge's personal relationships with alleged victims. For example, as detailed in Exhibit D at 10-11, the district judge has publicly acknowledged his close friendship with Patrick J. Carroll ("Carroll"), a veteran of the Federal Bureau of Investigation. Goldman hired Carroll in 2015 as a vice president in its compliance, surveillance, and strategy group, according to Bloomberg News, which reported that "Carroll says he already knew many people at Goldman Sachs, having worked with 'their compliance for many years.'" Patricia Hurtado, *Goldman New Cop Is*

FBI Agent Who Put Away Madoff, Rajaratnam, Bloomberg News, May 16, 2015 ("[i]t can help to have some people who know how government prosecutors and investigators think"). Carroll eventually became Global Head of the Monitoring and Assurance Group and Law Enforcement/Regulatory Liaison for Federal Crime Compliance, retiring in late February or March 2023. Thus, when the government was investigating the Indictment's alleged misrepresentations to Goldman, including Samir Rao's highly-publicized call to Goldman in which he impersonated a representative of Google's YouTube as a reference for OZY [*see, e.g.*, The New York Times, beginning Sept. 26, 2021], Carroll or his underlings were presumably in contact with the FBI agents and the prosecutors investigating the Petitioners. Goldman hired Carroll for precisely that type of purpose, and he remained employed at Goldman until just after the Indictment was filed in this case.

Carroll accompanied then nominee to his confirmation hearing before the United States Senate Judiciary Committee in 2018, during which he singled out Carroll as "a great friend. Pat was the FBI Special Agent in charge of squad C1, which is one of the two securities fraud squads in New York, when I was chief of

the securities fraud section for the US Attorney's Office in Brooklyn. Pat and I forged a friendship that has survived and only grown stronger over the years."[2]

Similarly, in 2020 and 2021, after the district judge had been confirmed by the Senate and during the period of the conspiracy for which the Petitioners were indicted, the district judge held an investment worth up to $1 million in Warlander Asset Management LP, whose general counsel, Raph Posner, subsequently became general counsel of Antara Capital, another alleged victim. Posner's name was on the government's pretrial list as a potential witness, and Posner's Antara colleague Chetan Bonsal testified for the government. *See* Exhibit D at 11-12.

[2] The government below claimed that the district judge had no cause to disqualify himself based on his friendship with Carroll (*see* Exhibit E at 16-17) but the judge appears to have recused himself when such a close friendship was his only connection to a case. As detailed in Exhibit F at 11-12, Carroll was one of three of the judge's close friends to attend his confirmation hearing. He also singled out attendee Paul Schoeman, described by the judge as a "longtime friend[] from the US Attorney's Office. I've known Paul for almost two decades now . . . . Paul was the Chief Assistant in the US Attorney's Office while I was there." Two days after Schoeman filed his notice of appearance to join a team of defense lawyers in *United States v. Levy, et al.*, Case No. 22-cr-00281 (E.D.N.Y.), the judge *sua sponte* recused himself, citing 28 U.S.C. § 455(a), without elaborating. *Levy*, Docket Nos. 41 and 44.

6. *The District Judge's Continuing Status as an Active Investor and Apparent Day Trader*

Apart from the district judge's professional experience, he is not a casual or disinterested investor. *Compare Litovich*, 106 F.4th at 218 (vacatur of judgment for violation of Section 455(a) where judge's wife owned $15,000 of a party in a retirement account). His financial disclosures reveal that, since his investiture, he has continued to be an active investor and apparent day trader who trades in highly volatile assets, such as high-risk short sales of GameStop, a "meme" stock; trades in Tesla during a period of high volatility; Chinese stocks like Tencent; and buying and selling hundreds of thousands of dollars' worth of crypto-currencies, which are subject to wild price swings (Bitcoin and Ethereum). *See* Exhibit D at 17-18, n.24. The district judge's status as an active investor distinguishes him from judges (or their spouses) who unknowingly held positions in alleged victims or parties. *See e.g. Litovich*, 106 F.4th at 218.

7. *The District Judge's Positions in Alleged Victims Were Longstanding*

The Petitioners motion to recuse provided an analysis of the district judge's relationships with the alleged victims in 2023 and during each of the time periods covered by the Indictment, as follows:

a. 2023 and 2024 (The Pendency of the Case, Including Trial)

Beginning in 2008, the district judge began as Viking's General Counsel. In April 2010, Viking's CEO Halvorsen promoted him to Viking's Management Committee, to take on "greater responsibility for the day-to-day management of the firm." *"Dear Viking Global Investors,"* Dealbreaker, Apr. 14, 2010 (publishing Halvorsen's first quarter letter to investors announcing promotions). The district judge signed all of Viking's quarterly Form 13Fs, itemizing Viking's public stock holdings. Because he signed Viking's initial Form ADV and subsequent ADVs, he was presumably aware of Viking's investments beyond public equities. *See CIE Prepares for Post-Registration Exams*, Compliance Reporter, Jan. 27, 2012 (reporting on Viking's initial ADV registration process).

Because Viking's public stock positions were, and are, the largest part of its portfolio, with Viking using a "limited diversification" strategy and concentrating assets in a few select stocks [Viking Global Investors LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC May 27, 2011, p. 10], Viking "investigat[ed]" companies before purchasing stocks, a process that included "interviews with a company's management team; background checks on key members of a management team; discussions with a company's customers and competitors; analysis of the assets on a company's balance sheet; a detailed review of a company's products and services; and consultation with industry

experts." *Id.* at 9. As General Counsel, the district judge presumably participated in, oversaw, or signed off on aspects of those investigations. Between 2008 and 2011, the years immediately preceding the time period covered by the Indictment, Viking's largest quarterly position in the four alleged victims was worth $835 million and held an average quarterly position in the alleged victims worth $162.4 million.

Assuming that the district judge's positions during trial in 2024 were the same as in 2023 for which information became available in 2024, and calculating the district judge's position in alleged victims using his *pro rata* share of the hedge funds' total positions (an assumption that may serve to understate the district judge's pecuniary interests, see Exhibit I-1), the district judge's average allocable interest in the alleged victims was worth between $180,854 and $904,272 per quarter in 2023. The first quarter of 2024 was the high-water mark, with the district judge holding a pecuniary interest in all four of the alleged victims worth between $219,703.95 (low-end) and $1,098,519.54 (high-end). Even at its lowest point, the district judge's allocable interest in the four alleged victims measured into the six digits. *See* Exhibit D at 21-22, Table 2 (district judge's financial interests in alleged victims in 2023 and 2024).

b. 2012 to 2017 (The Pre-Conspiracy Period Described in the Indictment)

Between 2012 and 2017, a time period described in the Indictment before the charged conspiracy (Exhibit B) and overlapping with the district judge's work as Viking's General Counsel, the importance of Google to Viking's investment portfolio is difficult to overstate. Returns from Viking's ownership of Google stock "saved" Viking in 2015's third quarter and, in 2016, propelled Viking into the "top tier" of global hedge fund operators, ranking sixth in the world with $33 billion in assets under management. Stephen Taub, *Hedge Funds Get a Boost from Microsoft, Google,* Institutional Investor's Alpha, Oct. 26, 2015; Stephen Taub, *In a Tough Year Viking Global Stages an October Comeback, Institutional Investor's Alpha*, Nov. 4, 2015; Antoine Gara, *Billionaire Andreas Halvorsen's Viking Global is Betting Over $6 Billion on FANG [Facebook, Amazon, Netflix, and Google] Stocks,* Forbes, May 17, 2016; Stephen Taub, *Hedge Fund Report Card,* Institutional Investor's Alpha, Feb. 11, 2016.

Other alleged victims were also important for Viking during this time period. For the quarter ending March 31, 2017, for example, Viking held combined positions in Google and JPMC exceeding $2.4 billion. The following quarter, when Viking co-invested alongside Clayton Dubilier & Rice, whose senior

partners and CEO were OZY investors, in a $233.5 million private deal, Viking held a $634.3 million stake in Google. Another of the hedge funds which appears on the district judge's 2023 Disclosure, Junto, also held positions in Google and Live Nation exceeding $100 million in the final quarters of 2017. *See* Exhibit D at 24-25, Tables 4-5 (2012 to 2017).

c. 2018 and 2019 (The First Two Years of the Charged Conspiracy)

As alleged in the Indictment, the charged conspiracy extended from January 2018 (Q1 2018) until October 2021 (Q4 2021). The district judge served as Viking's General Counsel until August 2018 when he resigned upon his nomination to the Bench.

During the first part of the conspiracy (2018 to 2019), the district judge had not yet been confirmed and was not yet required to file financial disclosures pursuant to CETA, but evidence supports the reasonable inference that he maintained investments in Viking and other hedge funds during this period. After the district judge's nomination to the bench, a reporter for the publication *Corporate Counsel* gained access to and reported on the then-nominee's financial disclosures to the Senate Judiciary Committee, revealing, among other details, that the then was "contractually obligated" to maintain a specified minimum balance in certain funds managed by Viking for at least three

years, unless Viking waived the lock-up period. *See* C. Ryan Barber, *Eric Komitee, Trump Pick for NY Court, Made Millions as Hedge Fund GC,* Corporate Counsel, July 11, 2018 (disclosing the district judge's Viking salary and bonus). Further, according to the same article, the nominee's Senate disclosures "reveal[ed] interests in several investment funds, including some run by Viking Global Investors," meaning that the district judge, in 2018, was invested in funds outside of Viking, as he was in 2023 (Junto and D1).

During this period (2018 to 2019), while the charged conspiracy was underway, Viking owned sizeable positions in Google in every quarter, exceeding $1 billion in 1Q 2018 and $969 million in 4Q 2018. If the district judge had been invested in the Viking funds in 2018 and 2019 at the same level as he was in the 2020 to 2023 period, then his pro-rated allocation of Viking's holding in Google from 2018 to 2019 was worth as much as $900,000. D1 also owned positions in Google between 4Q 2018 and 4Q 2019, topping out at $308.3 million in 1Q 2019; during various quarters in 2018 and 2019, Junto owned tens of million dollars' worth of stock in Google, Goldman, and Live Nation. *See* Exhibit D at 25-26, Tables 6-8 (2018 and 2019).

d. 2020 and 2021 (The Second Two Years of the Charged Conspiracy)

For 2020 and 2021, the district judge was first required to make financial disclosures as a judicial officer. During just the fourth quarter of 2020, Viking, D1, and Junto collectively held more than $2 billion worth of Google and $80 million worth of Goldman. The district judge's allocable interest in these two alleged victims for 2020 to 2021, assuming a *pro rata* share, was between $700,000 and $3.5 million, depending on the quarter. For each quarter of 2020, the district judge's minimum financial interest in the alleged victims was between approximately $346,000 (low-end of 1Q 2020) and $6.5 million (high-end of 4Q 2020) - - exceeding his salary as a judge, for example, by a multiple of 1.6 for 2020's first quarter and by a multiple of six for 2020's fourth quarter. *See* Exhibit D at 26, Table 9 (2020 to 2021).

B. The District Judge's Sua Sponte Ruling on March 6, 2023, and his Orders Since the Motion to Recuse Was Filed

1. *The Judge's Sua Sponte Ruling*

On February 23, 2023, the government filed a "List of Interested Parties" pursuant to Fed. R. Cr. P. 12.4 and did so *ex parte* and under seal. Exhibit A. At the first conference in the case on March 6, 2023, the district judge said that

he "didn't see any overlap between the people and entities listed there [the disclosure pursuant to Rule 12.4] on the one hand, and my bio on the other hand" and asked the government "to confirm that [it] doesn't see anything along those lines either." *See* Transcript of Mar. 6, 2023 ("Tr of Mar 6, 2023"), Exhibit C at 7. The district judge said that it "would be meaningful" if the government "saw the name Viking in anything." *Id.* at 8. The district judge failed to mention D1 or Junto - - two hedge funds in which the value of his investments may have exceeded the value of his investment in Viking. He further asked if anyone had "seen a cap table" (i.e. a capitalization table showing the company's ownership structure) or "[a] current list of investors [in Defendant OZY Media Inc.] and their percentage ownership." *Id.* at 8-9. The district judge said it was "revealing in itself" that the government had seen various version of the cap table, and that the government was "telling me that everybody, person or entity you see on any of them, those names have made their way to the interested parties list." *Id.*

The district judge did not satisfy his burden to "inform himself about his personal and fiduciary financial interests," *see* 28 U.S.C. 455(c), to avoid an "objective appearance of a conflict of interest requiring disqualification under Section 455(a)," by reviewing the government's filing pursuant to Rule 12.4 and inquiring about ownership of OZY. The district judge had actual or constructive knowledge of his various connections with the alleged victims described above and

unique access to other information about his financial, professional, and personal relationships, but the district judge made no disclosures.

The government's filing pursuant to Rule 12.4 remains *ex parte* and under seal. On October 14, 2024, new defense counsel asked the district judge's case manager if the filing could be provided. Defense counsel thereafter asked the government if it could provide it. On October 17, 2024, the government emailed defense counsel that it would internally discuss counsel's request for disclosure of the filing and also determine whether a court order was needed to share it. On October 25, 2024, as part of the motion to recuse, the Petitioners noted that neither the government nor the district judge had otherwise responded to the defense counsel's request for the filing. *See* Exhibit D at 19 (detailing the Petitioners' requests for the unsealing of the disclosure pursuant to Rule 12.4).

2. *The Orders Since the Motion to Recuse was Filed*

On October 28, 2024, the district judge acknowledged receipt of the motion to disqualify and issued an order as follows: "Given that sentencing is pending, the government is directed to respond by November 1, 2024. The response should address both the timeliness of the motion and the merits thereof." *See* Exhibit A, Order of Oct. 28, 2024. In responding to the motion, the government did not mention its filing pursuant to Rule 12.4. Exhibit E. In reply,

the Petitioners asked the district court to make the filing available immediately and permit the defense an opportunity to address it in support of the motion. *See* Exhibit F at 5 n.1.

On November 5, 2024, the district judge ordered defendants to "lay out the calculations underlying the 'indirect beneficial ownership' ranges for each victim for the period range for Q1 2023 to Q2 2024" and explain the basis for any assertion that the four alleged victims lost money as a result of the Petitioners' fraudulent conduct, as well as an information they wish to provide relating to the amount of those losses." Exhibit A, Order of Nov. 5, 2024.

The following day, November 6, 2024, the defense requested that the district court immediately make the filing pursuant to Rule 12.4 available and permit the defense an opportunity to address it as part of the above-described submission due November 8, 2024. Exhibit H. The district judge issued an order that the request was "taken under advisement." Exhibit A, Order of Nov. 6, 2024. It is thus not possible for the defense to compare the government's filing pursuant to Rule 12.4 on February 23, 2023, with its filing of its "list of persons and entities," filed in advance of jury selection on May 6, 2024 (Exhibit G at 13-18) to determine whether the government's list pursuant to Rule 12.4 was sufficiently fulsome.

On November 8, 2024, the defense provided the information requested in the district judge's order of November 5, 2024, but objected to the inquiries, explaining that "the burden under Section 455 belongs exclusively to the presiding judge who has unique and firsthand information about the judge's investments and any other overlaps with a particular case." Exhibit I at 1. As for the district judge's question about loss and restitution, the defense explained that Section 455 requires disqualification if a judge has any interest that "*could* be substantially affected by the outcome of the proceeding," Section 455(b)(4) (emphasis added), and "does not permit a judge to wait for the end of a case to assess any damage after an actual conflict or an appearance of partiality may have been realized." Exhibit I at 1.

The defense answered the substance of the district court's questions by filing a Declaration of Gregory L. Florio, an expert in private funds and a former senior counsel and chief compliance expert for a large hedge fund manager with over $12 billion in assets under management. Exhibit I at 3-11. Mr. Florio was engaged by the defense on or about October 16, 2024, to assist with its review of the district judge's financial disclosures. *Id.* at ¶ 3. Mr. Florio's Declaration explained that "most or at least much of the information necessary to provide a complete picture of the district judge's pecuniary interests is *exclusively known to the district judge and uniquely within his possession*" especially because funds like

Viking are reserved for sophisticated investors who are provided access to many types of reports and audited financial statements, to permit a "deep understanding" of portfolio contents. *Id.* at ¶¶ 4-5 (emphasis added).

Mr. Florio explained that the defense likely understated the district judge's pecuniary interest in his positions in alleged victims because: (i) the defense assumed that the alleged victim's securities were held *pro rata* across all of the funds managed by Viking, D1, and Junto, including certain private equity funds, when in fact such positions are likely primarily in the hedge funds managed by the investment advisers and owned by the district judge; and (ii) ignored the hedge funds' use of leverage. *Id.* at ¶ 8. Mr. Florio also explained that the hedge funds at issue maintained capital accounts beneficially owned by investors like the district judge who are allocated a portion of the profit and loss associated with each of the funds' security positions, giving each fund investor a direct pecuniary interest in each security held by the funds. *Id.* at ¶ 6.

Even if the district judge disagreed that Section 455 required his recusal, his orders since filing of the motion perpetuated an appearance of bias. His first order, noting that "sentencing is pending" and requiring the government to respond to the motion four days later, risked the impression that he was more concerned about prosecuting the Petitioners than affording due deliberation to the

substance of his overlap with this case. Exhibit A, Order of Oct. 31, 2024. His direction to the government that it address the timeliness of the motion was gratuitous as the government would certainly have marshaled any available procedural objections without a judicial reminder. The judge's subsequent order, Exhibit A, Order of November 5, 2024, that the defense explain *its* understanding of *his* pecuniary interests perpetuated his failure on March 6, 2023, to rely on information uniquely known to him and not silo the inquiry into ownership of OZY. *See United States v. Amico*, 486 F.3d 764, 776 (2d Cir. 2007) ("A disinterested observer would have discerned on occasion a defensive or perhaps even hostile approach by the judge when addressing the accusations.").

C. While the Defense at Trial Suspected Actual Bias, Section 455(a) Requires Only an Objective Appearance of Partiality

1. *The Standard of Section 455(a): Appearance of Bias Alone Mandates Disqualification*

The test for disqualification under Section 455 "is an objective one which assumes that a reasonable person knows and understands all the relevant facts." *In re Drexel Burnham Lambert, Inc.*, 861 F.2d at 1313. "[J]udges determine appearance of impropriety . . . by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge." *Id.*

Earlier this year, this Court ruled that a district judge should have recused himself, pursuant to Section 455(a) - - not Section 455(b)(4) prohibiting financial interest in a party - - because his spouse owned $15,000 worth of stock in a party through a retirement account at Charles Schwab, and even though she divested herself of the stock before the judge ruled on a motion to dismiss. *See Litovich v. Bank of America, Corp.*, 106 F.4th at 228-29; Financial Disclosure Report for 2021 of the Honorable Lewis J. Liman at 23, 28. The district judge's connection to the alleged victims was far more substantive, longstanding, and lucrative than the relatively *de minimis* holding of $15,000 in a retirement account by the judge's spouse in *Litovich*, a civil case. Yet the Circuit vacated the judgment in *Litovich*. *Id.* at 228. Because the statute's purpose is to "promote public confidence in the integrity of the judicial process," even an appearance of impropriety requires disqualification. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. at 847; *Liteky v. United States*, 510 U.S. 540, 548 (1994) (Section 455(a) requires an "objective" evaluation of a potentially disqualifying interest; "what matters is not the reality of bias or prejudice but its appearance.").

The judge in *Litovich* disclosed his spouse's holding only after he was contacted by the Wall Street Journal as part of research for an article which it published a few days later. *See Litovich*, 106 F.4th at 224 (citing James V. Grimaldi, et al., *"Fallout From Judges' Financial Conflicts Spreads to Appeals*

Courts," Wall St. J. (Sept. 28, 2021)). Citing the article, Chief Justice John G. Roberts, Jr. wrote in 2021 that judges must "adhere to the highest standards:"

> We are duty bound to strive for 100% compliance because public trust is essential, not incident, to our function. Individually, judges must be scrupulously attentive to both the letter and spirit of our rules, as most are.

2021 Year-End Report on the Federal Judiciary (Dec. 31, 2021) at 3-4 (emphasis added). Legislators also recognize the imperative of avoiding judicial conflicts of interest: "Failure to recuse can cause real harm to parties seeking fair and impartial justice and leave a cloud of doubt over any decision that is made once the conflicts are subsequently uncovered." 168 Cong. Rec. H4522 (daily ed. Apr. 27, 2022) (statement of Rep. Hakeem Jeffries). *See also* "Senator Warren, Representative Jayapal Reintroduce the Judicial Ethics and Anti-Corruption Act," June 8, 2023 (statement introducing legislation to "forbid[] judges from owning individual stocks and securities, commercial real estate, trusts, and private companies").

Unlike the civil litigants in *Litovich*, the Petitioners here have a constitutional right to due process and a fair trial. As the Supreme Court has explained:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest

> cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Tumey v. Ohio*, 273 U.S. 510, 532 [1927]. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 [1954].

In re Murchiso, 349 U.S. 133, 136 (1955).

2. *The Standard of Section 455(b)(4): The District Judge's Interests in the Case Require Disqualification*

Apart from Section 455(a)'s mandate, Section 455(b) also requires the district judge's disqualification. Section 455(b)(4) and (d)(4) require disqualification when a judge possesses an equitable interest, "however small," in "the subject matter in controversy or in a party in the proceeding, *or* any other interest that could be substantially affected by the outcome of the proceeding (emphasis added)." Section 455 does not permit a judge to wait until the end of the case to determine whether "any other interest . . . could be substantially affected by the outcome of the proceeding" and assess any damage after an actual conflict or an appearance of partiality may have been realized.

The overlaps here are different from cases like *Teman*, No. 21-1920-cr, 2023 U.S. App. LEXIS 14247 at *9-10 (2d Cir. June 8, 2023), where Judge

Engelmayer held a *de minimis* interest in a victim through Berkshire Hathaway, or *Lauersen*, 348 F.3d at 329, where Judge Pauley held stock in an insurance company that was a victim. In *United States v. Rechnitz*, 75 F.4th 131 (2d Cir. 2023), this Court held that Section 455(a) required recusal even though Section 455(b) was not technically violated, and even though any financial interest may have been minimal, because the judge maintained a "remarkably close" relationship with a person who was directly involved in the defendant's case, and where the interests of the judge and the defendant were "plausibly adverse" on the issue of restitution. *Id.* at 144-45.

A forest shadows this case even as the government might take an axe to any one of its trees. Not one of the cases on which the government relied below presents the multiplicity of the district judge's connections to alleged victims, each of which and collectively constitute a disqualifying interest under Section 455(b), an appearance of partiality which might reasonably be questioned under Section 455(a), or both. *See* Wright, "Invested in the Outcome" at 488-90 ("[A] judge who owns stock in a bank which is robbed might realize a substantial financial benefit by ordering restitution or meting out particularly harsh sentences that send a message to others contemplating similar crimes against the bank" . . . . "The judge may possess another type of prohibited interest in the disposition of a case beyond the mere fiscal. For example, a judge's sense of loyalty to the company in which he

owns stock may influence him to punish more severely those who harm the company. Such feelings can infect a judge's decision making in spite of the judge's best efforts to maintain impartiality.").

D. The Defense's Complaints During Trial

The defense raised concerns about the district judge's conduct of the trial before his 2023 Disclosure became publicly available in 2024. Their concerns help explain why the defense took a deep dive into information about the district judge's finances help answer the government's claim in opposing recusal that the motion was just another defense "attempt[] to avoid responsibility by deflecting blame onto others. *See* Exhibit E at 1-2.

During trial, Duke University's David T. Robinson wrote to the Eastern District's Chief Judge expressing "concern about the judicial bias" he observed when testifying for the defense as an expert. He emphasized that he was not writing at the request or with the assistance of the defense. Exhibit J at 1. Trial counsel for Mr. Watson and OZY, respectively, each filed letters of complaint with the district judge, with multiple detailed supporting citations to the trial record. Attorney Ronald S. Sullivan, Jr., the Jesse Climenko Clinical Professor of Law at Harvard Law School and faculty director of the Harvard Trial Advocacy Workshop, wrote: "What has happened in this trial is anything but fair.

. . . . From the court's pro-government bias to the racial dynamics in the courtroom (including the audience), a reasonable person's confidence in the administration of justice will be shaken." Exhibit K at 1.

In the words of Attorney Frison, a retired judge of the Massachusetts Superior Court and a Major in the United States Marines:

> While the nature of a criminal trial is adversarial, the role of the prosecutor, defense team, and especially the Court is to ensure a fair trial. The United States v. Carlos Watson and OZY[] Media Inc. is not a fair trial. In instance after instance, The Court has put its thumb on the scale of justice by providing inappropriate assistance to the prosecution, undermining the credibility of Mr. Watson's defense team, and through rulings that have reflected a disturbing bias.

Exhibit L at 1.

Apart from Professor Robinson and trial counsel, twenty other trial observers wrote letters of complaint to the Eastern District's Chief Judge which were redirected to this Court's Chief Judge. These include investors, lawyers, doctors, and religious leaders, including Rabbi Rachel Timoner, Pastor Jordan Tarwater, NPR Board Member Judith Segura, and noted surgeon Dr. Rodney Taylor. As Rabbi Timoner put it: "All of us were taken aback by Judge Komitee's ongoing and visible antipathy toward the defense team, sometimes in front of the jury, so much so that he appeared to be on the side of the prosecution. He cut the defense team off, spoke disrespectfully to them, objected to their arguments on

behalf of the prosecution, expressed irritation with them, and generally gave the impression of bias. . . [I]f a judge in a federal courtroom is supposed to appear impartial, that standard was not met." Exhibit M at p. 38 of 68.

E. Petitioners Moved for Recusal Immediately Upon Discovering the Basis for Disqualification

The government in opposition to recusal claimed that the motion to recuse was untimely because (1) the district judge's financial disclosure for 2021 established that he held positions in unspecified investments through Viking; and (2) the government had begun to provide discovery on April 21, 2023, identifying alleged victims. *See* Exhibit E at 6-9.

Motions for recusal are untimely only where the grounds for recusal were known to the defendants long before seeking recusal. *See In re IBM Corp.*, 45 F.3d 641, 643 (2d Cir. 1995). A motion is timely where, as here, it is filed "at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." *See Gil Enters. v. Delvy*, 79 F.3d 241, 247 (2d Cir. 1996).

The state of the district judge's finances in 2021 - - two years before the Indictment in this case - - was not apparently relevant to his representations at the conference on March 6, 2023, that he had no disqualifying conflicts with this case. All that the defense could have known from the district judge's most recent

available disclosure for 2021 was that he held positions in hedge funds in unidentified entities two years before his assignment to this case. *See United States v. Amico,* 486 F.3d 764, 774 (2d Cir. 2007) ("A motion for recusal at that point [before the emergence of facts creating a basis for moving to recuse the judge] would have had little substance and would have risked antagonizing the judge.").

Meanwhile, the grounds warranting recusal here were uniquely known to the district judge and not known to the defense until last month. If the district judge did not realize his overlaps with this case at the conference on March 6, 2023, he should have realized them as the case proceeded through pretrial proceedings and alleged victims were identified, the government's filing of its list of names and witnesses in advance of jury selection (Exhibit G at 13-18), and at trial. The district judge made no disclosures to the parties.

Even if a defendant has an independent obligation to scrutinize a judge's representation of no actual nor apparent conflict -- and no defendant has such an obligation - - the district judge's assurance on the record at the conference on March 6, 2023, coupled with the unavailability of the 2023 Disclosure until after trial (and the continuing unavailability of the district judge's disclosure for 2024) constituted good cause for any untimeliness, which the government

acknowledged below can excuse delay. *See* Exhibit E at 3-4; *Apple v. Jewish Hosp. & Med. Ctr.*, 829 F.2d 326, 333-34 (2d Cir. 1987) ("[I]n considering the question of timeliness, the actual time elapsed between the events giving rise to the charge of bias or prejudice and the making of the motion is not necessarily dispositive . . . . A number of factors must be examined, including whether . . . . the movant can demonstrate good cause for delay."). But for serendipity and the defense's enterprise, the overlaps in this case would have gone "unnoticed and unremedied." *See Litovich*, 106 F.4th at 226-27.

While the defense has uncovered facts supporting recusal, it has never had a true window into the district judge's financial, professional, and personal relationships. The window likely remains only partially opened. For precisely this reason, Section 455 burdens judges with identifying potentially and apparently conflicting relationships and does not expect defendants to figure it out on their own. The government's view of timeliness, if adopted, would upend Section 455 and the cases that interpret it, untenably require litigants to question judges and conduct their own independent investigations into judges. Section 455 keeps that Pandora's Box closed by putting the burden on judges to "carefully examine possible grounds for disqualification and to promptly disclose them when discovered." *See Litovich*, 106 F.4th at 226-27 (quoting *Liljeberg*, 486 U.S. at 868); *see* Wright, "Invested in the Outcome" at 495 n 88 ("Most judges, thinking

themselves capable of objectively evaluating a case, react poorly when someone questions their impartiality . . . . Moreover, a lawyer may hesitate to challenge a lifetime-tenured federal judge before whom he is likely to appear again because he may fear the judge will dislike him. *See also* David C. Hjelmfelt, Statutory Disqualification of Federal Judges, 30 U Kan L Rev 255, 256 (1982) ('[B]oth lawyers and clients recognize the potentially disastrous effects on their case of unsuccessfully seeking to disqualify a judge.').").

For these same reasons, the Petitioners did not somehow waive their challenge to the district judge's presiding over this case or waive their constitutional rights to due process and a fair trial. A judge's knowledge about and unique access to his or her financial, professional, and personal interests underscore Section 455(e), which provides that a defendant can never waive a violation of Section 455(b) and can only waive a violation of Section 455(a) after full disclosure:

> No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

28 U.S.C. § 455(e). *See Gil Enters. v. Delvy*, 79 F.3d at 247; *In re Kensington Int'l, Ltd.*, 368 F.3d 289, 294 (3d Cir. 2004) ("The evil that a timeliness

requirement is intended to prevent - - namely, holding in reserve a recusal demand until such time that a party perceives a strategic advantage - - is served by requiring actual knowledge. Because the Petitioners did not themselves learn about the Advisors' conflict of interest . . . until shortly before they moved for disqualification, their motions were timely."); *Summers v. Singletary*, 119 F.3d 917, 921 (11th Cir. 1997) ("We hold that a motion to disqualify filed under § 455(b) must be filed within a reasonable time after the grounds for the motion are ascertained."); *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1295 (9th Cir. 1992) ("While there is no per se rule that recusal motions must be made at a fixed point in order to be timely, see *Preston* (section 455 motion timely even though made 18 months after assignment to district court judge and shortly after an adverse discovery ruling), such motions 'should be filed with reasonable promptness after the ground for such a motion is ascertained.'" (quoting *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991)).

Waivers are found only where a judge had previously disclosed the conflict to the parties on the record. *See, e.g.*, *United States v. Lauersen*, 348 F.3d at 333 (2d Cir. 2003) (judge affirmatively disclosed holdings in multiple companies all of negligible value); *United States v. Ravich*, 421 F.2d 1196, 1205 (2d Cir. 1970) ("the judge remembered and disclosed that he owned some 325 shares of stock" in bank worth between $10,000 and $15,000). Here, the district

judge never disclosed the extent of his financial interests in the alleged victims (measuring at least into six and seven figures) nor the extent of his related professional and personal relationships.

F. The Petitioner's Right to Relief is "Clear and Indisputable"

Mandamus is reserved precisely for extraordinary cases [*Kerr v. United States District Court*, 426 U.S. 394, 402 (1976); *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980) (per curiam)] where the petitioner has demonstrated that his right to the relief is "clear and indisputable." *See Moses H. Cone Memorial Hosp. v. Mercury Constr. Co.*, 460 U.S. 1, 18 (1983); *Allied Chem. Corp.*, 449 U.S. at 35; *In re International Business Machines Corp.*, 618 F.2d 923, 927 (2d Cir. 1980). This Court has held that "the standard for review of a judge's refusal to recuse himself is not an abuse of discretion standard. Rather, we must query whether the trial judge could exercise that discretion in the face of a "personal, extrajudicial bias which precludes dispassionate judgment." *In re International Business Machines*, *supra*, at 926; *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1320–21 (2d Cir. 1988). Mandamus may be appropriate in "situations in which a party will be irreparably damaged if forced to wait until final resolution of the underlying litigation before securing review of an order denying its motion to disqualify opposing counsel." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 378 n.13 (1981).

Here, the Petitioners have been irreparably prejudiced since March 6, 2023, when the district judge failed to satisfy *Liljeberg*'s "stringent standard" to inform himself and disclose potentially disqualifying interests (*see In re Drexel Burnham Lambert*, Inc., 861 F.2d at 1313), and the irreparable prejudice is ongoing. The Petitioners endured an unconstitutional two-month trial, revealed their strategies through cross-examination and argument, and subjected their witnesses to cross-examination, including Mr. Watson himself who testified, waiving his constitutional right to remain silent. Mr. Watson was remanded upon the jury's verdict, is currently on monitored home confinement, and is facing sentencing on December 13, 2024, by a judge who should not have been presiding over this case in the first place.

Applying *Litovich*, the Petitioners in district court demonstrated why vacatur of their convictions was compelled by the Court's vacatur of judgment in *Litovich*, a civil case in which the conflict was a holding of $15,000 by Judge Liman's wife in a Charles Schwab retirement account. *See* Exhibit D at 21-22. The Petitioners also argued below that dismissal of the case is the proper remedy because the error here is sufficiently serious and so substantially implicates the fair administration of justice, and because a new trial would not return the Petitioners to the *status quo ante*. Exhibit D at 30-32. A new trial would represent a windfall to the government, which could prepare to meet the defense with advance granular

knowledge of it and with the government's unlimited resources. Meanwhile, the investment of judicial and defense time and resources, including depletion of the life savings of Mr. Watson and his family cannot be recouped. *See United States v. Mahaffy*, 693 F.3d 113, 133 (2d Cir. 2012).

The prejudice to the Petitioners is too longstanding and irreparable and the attendant harm to public confidence in the courts is too great for resolution of this issue to wait.

Dated: November 18, 2024

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EXHIBIT A

U.S. District Court
Eastern District of New York (Brooklyn)
CRIMINAL DOCKET FOR CASE #: 1:23-cr-00082-EK All Defendants

Case title: USA v. Watson et al Date Filed: 02/22/2023

Assigned to: Judge Eric R. Komitee

Defendant (1)

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Pending Counts **Disposition**

Title 18, United States Code, Sections 371 and 3551 et seq. - CONSPIRACY TO DEFRAUD THE UNITED STATES
(1)

Title 18, United States Code, Sections 1349 and 3551 et seq. - ATTEMPT AND CONSPIRACY TO COMMIT MAIL FRAUD
(2)

Title 18, United States Code, Sections 1028A(a)(1), 1028A(b), 1028A(c)(5), 2 and 3551 et seq. - FRAUD WITH IDENTIFICATION DOCUMENTS
(3)

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Assigned to: Judge Eric R. Komitee

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Pending Counts **Disposition**

Title 18, United States Code, Sections 371 and 3551 et seq. - CONSPIRACY TO DEFRAUD THE UNITED STATES
(1)

Title 18, United States Code, Sections 1349 and 3551 et seq. - ATTEMPT AND CONSPIRACY TO COMMIT MAIL FRAUD
(2)

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints	**Disposition**
None	

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Date Filed	#	Docket Text
11/08/2024	336	AFFIDAVIT in Support re 325 MOTION to Disqualify Judge MOTION for Recusal (Attachments: # 1 Exhibit A) (Frisch, Andrew) (Entered: 11/08/2024)
11/08/2024	335	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Carlos Watson, Ozy Media, Inc. held on July 12, 2024, for hearing type Further Jury Trial, before Judge Eric R. Komitee. Court Reporter/Transcriber Annette M. Montalvo, Telephone number 718-804-2711. Email address: annette.montalvo@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 11/29/2024. Redacted Transcript Deadline set for 12/9/2024. Release of Transcript Restriction set for 2/6/2025. (Montalvo, Annette) (Entered: 11/08/2024)
11/06/2024		ORDER: Defendants' request 334 to unseal ECF No. 7 is taken under advisement. Defendants shall, in the meantime, file the letter required by the Court's November 5, 2024 order as directed. Ordered by Judge Eric R. Komitee on 11/6/2024. (CAM) (Entered: 11/06/2024)
11/06/2024	334	Letter as to Carlos Watson, Ozy Media, Inc. (Frisch, Andrew) (Entered: 11/06/2024)
11/05/2024		ORDER: In the memorandum 326 accompanying their Motion to Disqualify 325 , Defendants estimate the presiding judge's "indirect beneficial ownership" interests in four alleged corporate victims. In a filing not to exceed ten double-spaced pages, Defendants are directed to: (1) lay out the calculations underlying the "indirect beneficial ownership" ranges for each victim for the period ranging from Q1 2023 to Q2 2024, inclusive, with citations to a source for each input, and (2) explain the basis for any assertion that the four alleged victims lost money as a result of Defendants' fraudulent conduct, as well as any information they wish to provide relating to the amount of those losses. This filing shall be submitted on or before November 8, 2024. Ordered by Judge Eric R. Komitee on 11/5/2024. (CAM) (Entered: 11/05/2024)
11/04/2024		ORDER: The Probation Office has informed the Court that Defendant Ozy Media, despite having committed to a deadline of November 3, 2024, has not yet provided the financial information necessary to complete the Presentence Investigation Report. Ozy Media shall provide the requested information within twenty-four hours of this order. Ordered by Judge Eric R. Komitee on 11/4/2024. (CAM) (Entered: 11/04/2024)

11/03/2024	331	REPLY TO RESPONSE to Motion re 325 MOTION to Disqualify Judge MOTION for Recusal (Frisch, Andrew) (Entered: 11/03/2024)
11/01/2024	330	RESPONSE in Opposition re 325 MOTION to Disqualify Judge MOTION for Recusal (Attachments: # 1 Exhibit 1 - 2021 Disclosure, # 2 Exhibit 2 - 2022 Disclosure) (Siegel, Jonathan) (Entered: 11/01/2024)
10/31/2024		ORDER: The Probation Office has informed the Court that the defendants, despite having committed to a deadline of October 30, 2024, have not yet provided the financial records necessary to complete the Presentence Investigation Report. Defendants are directed to provide such records forthwith. Ordered by Judge Eric R. Komitee on 10/31/2024. (CAM) (Entered: 10/31/2024)
10/31/2024	329	Letter as to Carlos Watson, Ozy Media, Inc. (Attachments: # 1 Declaration, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D) (Frisch, Andrew) (Entered: 10/31/2024)
10/28/2024		ORDER: The Court is in receipt of Defendants' motion 325 to disqualify the presiding judge. Given that sentencing is pending, the government is directed to respond by November 1, 2024. The response should address both the timeliness of the motion and the merits thereof. Ordered by Judge Eric R. Komitee on 10/28/2024. (CAM) (Entered: 10/28/2024)
10/27/2024	328	Letter as to Ozy Media, Inc. (Frison, Shannon) (Entered: 10/27/2024)
10/27/2024	327	Letter as to Ozy Media, Inc. (Frison, Shannon) (Entered: 10/27/2024)
10/25/2024	326	MEMORANDUM in Support re 325 MOTION to Disqualify Judge MOTION for Recusal (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Frisch, Andrew) (Entered: 10/25/2024)
10/25/2024	325	MOTION to Disqualify Judge , MOTION for Recusal by Carlos Watson, Ozy Media, Inc.. (Frisch, Andrew) (Entered: 10/25/2024)
10/25/2024	324	Letter as to Carlos Watson, Ozy Media, Inc. (Frisch, Andrew) (Entered: 10/25/2024)
10/25/2024	323	Letter *Reply in support of Rules 29 and 33 Motion* as to Carlos Watson (Attachments: # 1 Declaration) (Sullivan, Ronald) (Entered: 10/25/2024)
10/21/2024	322	TRANSCRIPT of Proceedings as to Carlos Watson, Ozy Media, Inc. held on October 8, 2024, before Judge Komitee. Court Reporter/Transcriber Transcriptions Plus II, Inc.. Email address: rl.transcriptions2@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 11/11/2024. Redacted Transcript Deadline set for 11/21/2024. Release of Transcript Restriction set for 1/20/2025. (LH) (Entered: 10/21/2024)
10/08/2024		Minute Entry for proceedings held before Judge Eric R. Komitee on 10/8/2024: conference held. Appearances: AUSAs Jonathan Siegel, Dylan Stern, Gillian Kassner for the government. Andrew Frisch, Ronald Sullivan, and Janine Gilbert for defendant Carlos Watson (present). P.O. Erica Vest for the U.S. Probation Department. The defendant's presentence interview shall be conducted on October 9 at 1:00 p.m. The defendant shall submit the reply brief to the *Rule* 29 or 33 motion by October 25, and any motion for substitution of counsel shall be submitted by that date. The motion

		should outline the basis for the substitution and state whether there are any actual or potential conflicts of interest in relation to representing both Mr. Watson and Ozy Media Inc., and, if so, whether such conflicts are waivable. The Court granted the government's motion 297 to unseal document ECF No. 81 (Memorandum & Order). (Recorded on AT&T Teleconference Bridge.) (APJ) (Entered: 10/08/2024)
10/07/2024	321	RESPONSE in Opposition re 314 MOTION to Set Aside Verdict *under Rule 29 or 33* (Siegel, Jonathan) (Entered: 10/07/2024)
10/07/2024		Set/Reset Hearings as to Carlos Watson & Ozy Media, Inc.: The status conference initially scheduled to be held in person on October 8 at 10:30 a.m. will now be conducted by telephone. The parties are directed to call 888-808-6929 five minutes before the scheduled start of the conference and use access code 564-7824. Ordered by Judge Eric R. Komitee on 10/7/2024. (APJ) (Entered: 10/07/2024)
10/04/2024	320	Letter as to Carlos Watson, Ozy Media, Inc. (Frisch, Andrew) (Entered: 10/04/2024)
10/04/2024		SCHEDULING ORDER: A status conference will be held on October 8, 2024 at 10:30 a.m. in Courtroom 6G North, in light of the indication that Mr. Watson wishes to substitute counsel. Mr. Frisch and Mr. Sullivan are both requested to appear. Ordered by Judge Eric R. Komitee on 10/4/2024. (APJ) (Entered: 10/04/2024)
10/03/2024	319	Letter as to Carlos Watson, Ozy Media, Inc. (Frisch, Andrew) (Entered: 10/03/2024)
10/03/2024	318	NOTICE OF ATTORNEY APPEARANCE: Andrew James Frisch appearing for Carlos Watson, Ozy Media, Inc. (Frisch, Andrew) (Entered: 10/03/2024)
10/02/2024		Minute Entry for proceedings held before Judge Eric R. Komitee on 10/2/2024: conference held. Appearances: AUSAs Jonathan Siegel and Dylan Stern for the government. Ronald Sullivan and Janine Gilbert for defendant Carlos Watson (not present). P.O. Erica Vest for the U.S. Probation Department. The Court ordered the following schedule: (1) the presentence interview is ordered to be conducted by the close of business on October 9; (2) Probation is directed to file and circulate the PSR on or before November 5; and (3) the sentencing is adjourned to December 13 at 10:30 a.m. in Courtroom 6G North. (Recorded on AT&T Teleconference Bridge.) (APJ) (Entered: 10/02/2024)
10/02/2024	317	Letter *in response to Probation's request to adjourn sentencing* as to Carlos Watson, Ozy Media, Inc. (Siegel, Jonathan) (Entered: 10/02/2024)
09/16/2024		The government is directed to respond on or before October 7 to the defendants' motions at ECF 315 and 314 for a judgment of acquittal or (in the alternative) a new trial. The defense may reply, if it chooses, to that response on or before October 16. Ordered by Judge Eric R. Komitee on 9/16/2024. (ALR) (Entered: 09/16/2024)
09/16/2024	315	Letter as to Ozy Media, Inc. (Frison, Shannon) (Entered: 09/16/2024)
09/15/2024	314	MOTION to Set Aside Verdict *under Rule 29 or 33* by Carlos Watson. (Sullivan, Ronald) (Entered: 09/15/2024)
09/13/2024	313	The parties are respectfully directed to be prepared to address the questions in the attached order at sentencing. Ordered by Judge Eric R. Komitee on 9/13/2024. (ALR) (Entered: 09/13/2024)
08/28/2024	312	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Carlos Watson, Ozy Media, Inc. held on July 2, 2024, for hearing type Jury Trial, before Judge Eric Komitee. Court Reporter/Transcriber Sophie Nolan, Telephone number

EXHIBIT B

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
* FEBRUARY 22, 2023 *
BROOKLYN OFFICE

DCP:JRS/GK/DAS
F. #2021R00900

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

Judge Margo K. Brodie
Magistrate Judge Ramon E. Reyes

UNITED STATES OF AMERICA

- against -

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

----------X

INDICTMENT

Cr. No. 23-CR-82
(T. 18, U.S.C., §§ 371, 981(a)(1)(C), 1028A(a)(1), 1028A(b), 1028A(c)(5), 1349, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendants and Co-Conspirators

1. The defendant OZY MEDIA, INC. ("OZY") was a Delaware corporation headquartered in Mountain View, California. OZY was a media and entertainment company whose businesses included digital newsletters, television production, podcasts and live events.

2. The defendant CARLOS WATSON was a resident of Mountain View, California. WATSON was OZY's founder and Chief Executive Officer ("CEO"), as well as the star and host of several of OZY's television programs.

3. Samir Rao ("Rao") was a resident of Menlo Park, California, and Palo Alto, California. Rao was OZY's Chief Operating Officer.

4. Suzee Han ("Han") was a resident of San Francisco, California, and New York, New York. Han was OZY's Chief of Staff from approximately 2019 to 2021.

II. OZY's History

5. The defendant CARLOS WATSON founded OZY in 2012. That same year, WATSON recruited Rao to join the company, and Rao was later given the title of "Co-Founder."

6. OZY had a five-person board of directors (the "Board") with three directors appointed by holders of OZY common stock and two directors appointed by outside investors. Because WATSON held a controlling interest in the common stock, WATSON effectively appointed three of the directors and controlled the Board.

7. OZY officially launched in 2013. At the time, its core products were its website and daily newsletters sent to subscribers summarizing news and highlighting content on OZY's website.

8. From its inception to approximately the end of 2014, OZY raised approximately $35 million dollars from investors including Early Investor 1, a philanthropy- and venture capital-focused limited liability company, an entity the identity of which is known to the Grand Jury. During this time period, OZY closed three fundraising rounds (the Series Seed, Series A and Series B rounds), grew its audience and obtained several high-profile interviews and collaborations.

9. By 2015, however, OZY's digital business was not succeeding. In part in an attempt to diversify revenue away from a pure digital business, OZY began to focus more on creating television content and on producing a live festival, known as "OZY Fest."

10. OZY's television and festival businesses were significantly more expensive to run than a digital business. As a result, by 2016, OZY was rapidly spending its

available cash. OZY borrowed several million dollars in 2016, primarily from preexisting investors, but that cash began to run out in 2017.

11. Beginning in 2018, OZY took on increasing debt in order to survive. Much of this debt was high-interest loans secured by OZY's accounts receivable. At times, OZY was paying tens of thousands of dollars a day in interest on these debts. To service that debt and to continue its operations, OZY took on even more debt and sought additional money from investors and potential investors.

III. The Fraudulent Scheme

12. In or about and between 2018 and 2021, the defendants CARLOS WATSON and OZY, together with Rao, Han and others, engaged in a scheme to defraud OZY's investors, potential investors, potential acquirors, lenders and potential lenders through material misrepresentations and omissions about, among other things, OZY's historical and projected financial results, OZY's debts, OZY's audience numbers, the identities of OZY's investors and the sizes of their investments, the existence and timing of investment rounds, the identities of OZY's business partners, the existence and terms of key contracts and purported offers to purchase OZY by high-profile corporations.

A. 2018: Misrepresentations to Investors and Potential Investors Regarding Revenue

13. In 2018, OZY raised money in part through the sale of convertible notes. To induce investors to purchase these notes and to maintain investors' interest in making future equity investments, beginning in at least January 2018, the defendant CARLOS WATSON, together with Rao and others, misrepresented, among other things, OZY's historical and forecasted revenue.

14. For example, the defendant CARLOS WATSON, together with Rao and others, represented to numerous investors and potential investors that OZY had approximately

doubled its revenues from 2016 to 2017, from approximately $6 million in 2016 to approximately $12 million in 2017. In reality, OZY's revenue had been almost flat in 2017 and totaled less than $7 million.

15. The defendant CARLOS WATSON, together with Rao and others, further represented to investors and potential investors that OZY would approximately double its revenue again in 2018 and would achieve revenue of $22 million. WATSON and Rao repeated this forecast to investors and potential investors in emails over the course of 2018, even after it became clear that OZY could not achieve that result, and knowingly provided false representations on OZY's progress towards meeting that result.

16. For example, on or about August 5 and 8, 2018, the defendant CARLOS WATSON sent emails to investors in OZY's convertible notes, which emails included a company update and an invitation to invest further. Those emails stated that OZY had raised $12 million in revenue in 2017 and had already booked $14 million in revenue in 2018 against its $22 million goal. However, WATSON knew at that time that OZY had earned less than $7 million in revenue in 2017 and had not booked $14 million in revenue at that time in 2018. WATSON received weekly internal revenue updates, and on or about August 4, 2018, WATSON received an internal weekly revenue update stating that OZY had as of that date booked approximately $8.1 million in revenue for 2018.

17. On or about August 27, 2018, Rao, copying the defendant CARLOS WATSON, sent an email to the CEO of a venture capital lender ("Venture Lender 1 CEO"), an individual whose identity is known to the Grand Jury. WATSON was soliciting an investment from the venture capital lender ("Venture Lender 1"), an entity the identity of which is known to the Grand Jury. Rao's email to Venture Lender 1 CEO falsely stated that OZY had raised $12

million in revenue in 2017 and booked $14 million in revenue against its $22 million goal. At that time, both WATSON and Rao knew that OZY had not raised $12 million in revenue in 2017, had not booked $14 million in revenue in 2018 and did not expect to earn $22 million in revenue in 2018. On or about August 17, 2018, an OZY finance employee ("Finance Employee 1"), an individual whose identity is known to the Grand Jury, sent an email to WATSON and Rao in which she explained that she had reduced OZY's 2018 revenue forecast from $22 million to $12.7 million. Further, on or about August 25, 2018, WATSON and Rao received a weekly internal revenue update stating that OZY had booked only approximately $8.3 million in revenue for 2018.

18. At the end of 2018 and in early 2019, the defendant CARLOS WATSON, together with Rao and others, sent emails to numerous investors and potential investors in OZY falsely representing that OZY had achieved $22 million in revenue in 2018. To make this false claim appear more impressive, WATSON also falsely claimed that OZY's revenue target for 2018 had been $18 million (as opposed to the $22 million figure he had earlier claimed) and that achieving $22 million in revenue meant that OZY had exceeded its revenue target. In fact, WATSON knew from weekly internal revenue emails he received in December 2018 that OZY's final revenue for 2018 was less than $11 million.

B. 2018-2019: The Fraudulent Series C Offering

19. OZY's financial difficulties persisted into late 2018 and throughout 2019. During that period, the defendant CARLOS WATSON, together with Rao, Han and others, sought to raise additional money for OZY through the sale of preferred stock in a new "Series C" financing round. During the Series C process, WATSON, together with Rao, Han and others, induced and attempted to induce investors and potential investors to purchase Series C preferred

shares by means of material misrepresentations and omissions regarding, among other things, OZY's historical and projected financial results, as well as the participants in the Series C offering and the size of various individuals' and entities' investments in OZY.

20. In addition, to induce investors to provide money to OZY as quickly as possible, the defendant CARLOS WATSON, together with Rao, Han and others, misrepresented and omitted material facts regarding the timing of the Series C closing and the Board's authorization for the issuance of Series C shares. The Board did not authorize issuance of Series C shares until September 2019, and the Series C did not actually close until later that month. Nevertheless, beginning in at least February 2019, WATSON, together with Rao, Han and others, falsely claimed to certain investors that the Board had already approved the Series C issuance and that closings were scheduled to occur on a rolling basis beginning as early as February 2019. As a result, WATSON, together with Rao, Han and others, induced these investors to transfer millions of dollars to OZY on the basis of misrepresentations and omissions, purportedly in exchange for shares that, unbeknownst to those investors, did not in fact exist and whose issuance had not yet been authorized by the Board.

i. Misrepresentation to Series C Investor 1

21. On or about November 5, 2018, the defendant CARLOS WATSON sent to a partner at a venture capital firm headquartered in Dallas, Texas, and New York, New York ("Series C Investor 1 Partner" and "Series C Investor 1," as applicable), an individual and entity whose identities are known to the Grand Jury, an investor presentation falsely claiming, among other things, that OZY had earned $12 million in revenue in 2017 and was on track to achieve $22 million in revenue in 2018. WATSON knew that these claims were false. On October 15, 2018, Rao had sent WATSON a copy of OZY's 2017 federal tax return, which stated that OZY

had earned less than $7 million in 2017. Further, on or about November 3, 2018, two days prior to his email to Series C Investor 1 Partner, WATSON received a weekly internal revenue report stating that OZY had booked only approximately $8.6 million in revenue for 2018 year-to-date. Based in part on this misrepresentation, on or about December 28, 2018, Series C Investor 1 Partner agreed that Series C Investor 1 would invest $2 million in the Series C offering.

22. On or about March 1, 2019, Rao, blind carbon copying the defendant CARLOS WATSON, emailed Series C Investor 1 Partner a set of purported closing documents for the Series C. On or about March 7, 2019, Series C Investor 1 wired $2 million to OZY, purportedly in exchange for Series C preferred stock, which in fact had not been issued and the issuance of which had not been authorized by OZY's Board.

ii. Misrepresentations to Series C Investor 2

23. On or about January 2, 2019, the defendant CARLOS WATSON spoke to an individual investor ("Series C Investor 2"), an individual whose identity is known to the Grand Jury, by telephone and induced him to invest $1 million in the Series C offering. That same day, WATSON texted Rao to inform him that Series C Investor 2 had agreed to invest $1 million of his personal money, but that Rao should misrepresent the investment in investment materials as coming from the venture fund that Series C Investor 2 had operated before it closed ("Venture Capital Fund 1"), an entity the identity of which is known to the Grand Jury. Specifically, WATSON sent a text message to Rao in which he stated: "[Series C Investor 2] in for another $1M . . . Put that in the document as [Venture Capital Fund 1]."

24. On or about January 4, 2019, the defendant CARLOS WATSON sent an email to Series C Investor 2 in which he misrepresented that OZY had "doubled revenue" in 2018 to "$22M in revenue ($4M above plan)." In fact, as set forth above, WATSON knew that

OZY's 2018 revenue was less than $11 million and that OZY's 2017 revenue was less than $7 million.

25. On or about February 26, 2019, Rao, copying the defendant CARLOS WATSON, sent an email to Series C Investor 2 to which he attached a set of purported closing documents for the Series C offering. The following day Series C Investor 2 wired $1 million to OZY, purportedly in exchange for Series C preferred stock, which in fact had not been issued and the issuance of which had not been authorized by OZY's Board.

iii. Misrepresentations to Series C Investor 3

26. On or about January 15, 2019, the defendant CARLOS WATSON sent an email to the owner of a large hedge fund ("Series C Investor 3"), an individual whose identity is known to the Grand Jury, in which he stated that the Series C offering was scheduled to close in January, with a second closing in February. On or about February 25, 2019, WATSON sent an email to Series C Investor 3 to which he attached a set of purported Series C closing documents and falsely claimed that a first Series C closing was scheduled for that week. In the email, WATSON repeated, among other material misrepresentations, that OZY had earned $22 million in revenue in 2018.

27. On or about March 19, 2019, Series C Investor 3 sent an email to the defendant CARLOS WATSON and Rao in which he asked how much other investors had invested in the purported first Series C closing. Rao responded, copying WATSON, and provided a list of investors who had purportedly invested in the first Series C closing and the purported amounts of their investments. In fact, many of the investors listed in the email had not yet invested in the Series C and would not invest for months. In other cases, the investor had wired money to OZY, purportedly in exchange for Series C preferred stock, but had sent

significantly less than Rao represented. For example, although Series C Investor 1 had wired $2 million approximately two weeks earlier, Rao claimed Series C Investor 1 had invested $10 million. In this email, Rao also misrepresented that the personal investment of Series C Investor 2 had been made by Venture Capital Fund 1.

28. On or about March 21, 2019, Series C Investor 3 wired $1 million to OZY, purportedly in exchange for Series C preferred stock, which in fact had not been issued and the issuance of which had not been authorized by OZY's Board, and a seat on the Board.

iv. Misrepresentations to Series C Investor 4

29. In or about May 2019, the defendant CARLOS WATSON flew to South Korea, where he met with potential investors, including representatives of a Korean venture capital firm ("Series C Investor 4"), an entity the identity of which is known to the Grand Jury. On or about June 4, 2019, after Series C Investor 4 had expressed interest in investing in OZY, Rao, copying WATSON, sent representatives of Series C Investor 4 a purported income statement claiming that OZY earned approximately $22 million in revenue in 2018. As set forth above, OZY in fact earned less than $11 million in revenue in 2018.

30. On or about June 13, 2019, after a representative of Series C Investor 4 told the defendant CARLOS WATSON that Series C Investor 4 hoped to rely in part on due diligence done by other Korean investors, WATSON falsely told representatives of Series C Investor 4 that at least one of two specific Korean firms would be investing in OZY in the Series C offering.

31. On or about July 1, 2019, Series C Investor 4 wired $2 million to OZY, purportedly in exchange for Series C preferred stock, which in fact had not been issued and the issuance of which had not been authorized by OZY's Board.

v. Misrepresentations to Middle East Investors 1 and 2

32. In or about March 2019, OZY engaged an intermediary to assist OZY in raising funds from Middle Eastern investors (the "Middle East Liaison"), an individual whose identity is known to the Grand Jury. In or about May 2019, the Middle East Liaison and the defendant CARLOS WATSON traveled to the Middle East to meet potential investors in person, including two Middle Eastern investment funds ("Middle East Investor 1" and "Middle East Investor 2"), entities the identities of which are known to the Grand Jury. In meetings with these potential investors, WATSON falsely claimed, among other things, that OZY had earned $12 million in revenue in 2017 and $22 million in revenue in 2018.

33. On or about June 21, 2019, the Middle East Liaison sent an email to representatives of Middle East Investor 1, copying the defendant CARLOS WATSON and Rao, to which he attached OZY documents provided by Rao. One of the attached documents purported to list committed investors in the Series C offering and falsely stated that Series C Investor 1 had committed to invest $10 million and that the "[Series C Investor 3] Group" had committed to invest $5 million. In fact, Series C Investor 1 had invested only $2 million, and Series C Investor 3 had invested only $1 million, all of which was in his individual capacity. No "[Series C Investor 3] Group" existed.

34. On or about July 24, 2019 and July 26, 2019, Middle East Investor 1 and Middle East Investor 2 wired to OZY $3 million and $250,000, respectively, purportedly in exchange for Series C preferred stock, which in fact had not been issued and the issuance of which had not been authorized by OZY's Board.

vi. The Real Series C Closing

35. OZY's Board authorized issuance of the Series C shares on or about September 11, 2019. The Series C closed two days later, on or about September 13, 2019. In connection with the Series C offering, OZY raised approximately $13 million in new money. In addition, in connection with the Series C offering, the approximately $22 million of convertible notes previously sold to investors in and before 2018 were converted into Series C preferred shares. The vast majority of the new money had been raised in purported Series C closings prior to the actual close. Virtually all of the money raised in the Series C had been induced through material misrepresentations and omissions regarding, among other things, OZY's historical and projected financial results, as well as misrepresentations and omissions about the timing of the Series C offering, investors in the Series C offering and the size of various individuals' and entities' investments in OZY.

C. August-December 2019: Misrepresentations During the Potential Acquisition by Media Company 1

36. Just prior to the real Series C closing, beginning in or about August 2019, the defendant CARLOS WATSON began discussions with a digital media company headquartered in New York, New York ("Media Company 1"), an entity the identity of which is known to the Grand Jury, about Media Company 1 potentially acquiring OZY and hiring WATSON to work at Media Company 1. In connection with those discussions, and in an effort to induce Media Company 1 to acquire OZY at a higher price, WATSON, together with Rao, Han and others, made a series of material misrepresentations and omissions to Media Company 1 about, among other things, OZY's revenue, the existence of certain key contracts and the terms of key contracts.

37. On or about September 26, 2019, Han sent an email to the defendant CARLOS WATSON to which she attached an OZY presentation intended for Media Company 1 and in which she stated, "Samir [Rao] wanted you to take a look @ the numbers to confirm this is what we want to share." The purported financial results shown in the presentation were false. For example, the presentation stated that OZY's 2018 revenue was $18.5 million, which was not only different from the fraudulent $22 million figure that WATSON, Rao and Han had previously provided to Series C investors, but also was well above the true revenue of less than $11 million. The presentation also stated that OZY's 2017 revenue was $12 million, which was well above the actual total 2017 revenue of less than $7 million.

38. Soon after Han sent the presentation, the defendant CARLOS WATSON sent a text message to Rao and Han in which he stated that he had spoken to Han about the presentation and told her to "[m]ake sure we lead with TV/Festivals throughout the deck" and to "[u]pdate financials appropriately." Han then sent WATSON and Rao a revised presentation for WATSON's review. The revised presentation altered the false numbers to, among other things, increase OZY's projected revenue for 2020 and increase the share of OZY's forecasted revenue in 2019 and 2020 attributed to television and events.

39. After receiving the revised presentation, the defendant CARLOS WATSON sent a text message to Han and Rao, in which he stated, "Looks good overall . . . Financials — Please review numbers with Samir. Check things like comparative growth rates to make sure it will stand up to fresh scrutiny." Later that night, Han sent Media Company 1 a further revised presentation, copying WATSON and Rao. The revised presentation further increased the already false 2020 revenue forecast and again increased the share of OZY's revenue in 2019 and 2020 attributed to television and events.

40. As part of due diligence of OZY, Media Company 1 asked to review OZY's contracts for some of its television shows. The defendant CARLOS WATSON, together with Rao, Han and others, had previously misrepresented to Media Company 1 that some of the contracts contained terms more favorable to OZY than the actual terms of the contracts. As a result, Rao and Han, with WATSON's knowledge, fraudulently altered the contracts for two of OZY's television shows to make the contracts' terms appear to be significantly more favorable to OZY. Han then emailed the falsified documents to Media Company 1 on October 16, 2019.

41. In reliance in part on the false financial data and false descriptions of OZY's television contract terms, Media Company 1 began preliminary discussions with the defendant CARLOS WATSON and Rao to potentially acquire OZY for up to $225 million of Media Company 1 stock. As part of the ensuing negotiations, WATSON pushed for a $35 million cash payment to himself, Rao and others.

42. Ultimately, the transaction did not proceed. Nevertheless, the defendant CARLOS WATSON, together with Rao, Han and others, made false claims about the negotiations with Media Company 1 in order to induce investors and potential investors to invest in OZY. For example, on or about December 7, 2019, WATSON sent a text message to Rao and Han, in which he stated: "FYI — told [the Middle East Liaison] that [Media Company 1] offered $300M to buy us." As WATSON knew, Media Company 1 had never offered $300 million to buy OZY.

D. December 2019-March 2020: Misrepresentations to Bank Lender 1

43. In or about December 2019, OZY was again on the verge of running out of money. To address the need for cash, the defendant CARLOS WATSON, together with Rao, Han and others, attempted to induce an FDIC-insured bank ("Bank Lender 1"), a financial institution the identity of which is known to the Grand Jury, to lend OZY money based on

misrepresentations and omissions about, among other things, OZY's revenue, the existence of signed contracts for new OZY television shows and the terms of such contracts.

44. The defendant CARLOS WATSON, together with Rao and others, sought a loan from Bank Lender 1 to be secured by anticipated revenues from a second season of an OZY television show (the "OZY Television Show"), the first season of which had aired on a cable network ("Cable Network 1"), an entity the identity of which is known to the Grand Jury. Because the loan from Bank Lender 1 was predicated on the anticipated revenue from the second season of the OZY Television Show, the loan could not go forward until the contract with Cable Network 1 for the second season was finalized.

45. To induce Bank Lender 1 to make the loan and make it sooner, the defendant CARLOS WATSON directed the then-CFO of OZY, an individual whose identity is known to the Grand Jury, to send Bank Lender 1 a fake signed contract purporting to be for the second season despite the fact that negotiations with Cable Network 1 were still ongoing. When the then-CFO refused, WATSON and Rao agreed that Rao would send a fake contract to Bank Lender 1 with false terms that were unrealistically favorable for OZY and a forged signature for the representative of Cable Network 1.

46. Rao sent the fake contract to Bank Lender 1 on or about December 30, 2019 and copied the then-CFO of OZY. This fake contract contained numerous favorable terms for OZY, including terms regarding the number of episodes and the contributions of Cable Network 1 to the production budget, and a forged signature of Cable Network 1's representative. Later the same day, after receiving the email with the fake contract, the then-CFO emailed the defendant CARLOS WATSON and Rao to say that she was resigning effective immediately. She explained, "this . . . is illegal. This is fraud. This is forging someone's signature with the

intent of getting an advance from a publicly traded bank." She continued, "To be crystal clear, what you see as a measured risk — I see as a felony. Did either of you (Carlos, when you asked me to put together a contract and / or Samir, when you sent the email) have any idea (or did it even occur to you to care) that I could go to jail for forgery and bank fraud?"

47. Despite the then-CFO's email, for the next several months, the defendant CARLOS WATSON, together with Rao and others, continued to attempt to induce Bank Lender 1 to lend OZY several million dollars based on misrepresentations and omissions about, among other things, the expected revenue from the second season of the OZY Television Show. As these discussions continued, Bank Lender 1 asked to speak to a representative of Cable Network 1. Because WATSON and Rao had misrepresented the status of the relationship between OZY and Cable Network 1 and had sent Bank Lender 1 a fake contract, WATSON and Rao agreed that Rao should impersonate an actual executive from Cable Network 1 ("Identity Theft Victim 1"), an individual whose identity is known to the Grand Jury, in communications with Bank Lender 1. On February 13, 2020, with WATSON's approval, Rao created a fake email address in the name of Identity Theft Victim 1, which he used to communicate with representatives of Bank Lender 1 about the potential loan. Due in part to the start of the COVID-19 pandemic, Bank Lender 1 ultimately did not lend OZY any money.

E. August 2019-October 2020: Additional Misrepresentations to Middle East Investor 1

48. In or about and between August 2019 and October 2020, the defendant CARLOS WATSON, together with Rao, Han and others, sought to induce Middle East Investor 1 and others to invest additional money in OZY by means of misrepresentations and omissions regarding, among other things, OZY's historical and projected financial results, the size of potential offers to acquire OZY and the identities of potential investors in OZY.

WATSON, Rao and Han ultimately succeeded in inducing Middle East Investor 1 to wire OZY an additional $5 million, purportedly in exchange for Series D preferred shares, which at that time had not been issued or authorized by the Board.

49. In an effort to induce additional investments, the defendant CARLOS WATSON, together with Rao, Han and others, repeatedly told Middle East Investor 1 and other potential investors through a series of fraudulent communications that OZY would soon have a Series D financing round led by one of the owners of Cable Network 1 ("Network Owner 1") and a live entertainment company ("Entertainment Company 1"), an individual and an entity whose identities are known to the Grand Jury. In fact, neither Network Owner 1 nor Entertainment Company 1 were ever in discussions to invest in OZY, and neither ever invested in OZY. For example:

(a) On or about August 20, 2019, WATSON sent an email to the Middle East Liaison, copying Rao, in which WATSON stated that he wanted "to confirm our Series D fundraising trip" the following month to the Middle East. WATSON wrote that he "expect[ed] to have clarity on [Network Owner 1] and [Entertainment Company 1]" participation in the Series D offering by the time of the trip, which would be "good ammo to drive conversations."

(b) On or about August 20, 2019, Rao sent an email to the Middle East Liaison, copying WATSON and Han, in which Rao falsely stated, among other things, "We are pleased to share that we have commitments from both [Network Owner 1] and [Entertainment Company 1] to lead our Series D financing round." Prior to sending the email, Rao had sent a draft of the email to WATSON and Han, stating, "Are we good to send this note? Wanted to make sure we're aligned on the Series D timing / details." WATSON responded, "Yes send."

(c) On or about September 3, 2019, WATSON, Rao and Han had a telephone call with the Middle East Liaison. During the call, WATSON sent text messages to Rao containing instructions of what to say, writing "$10M committed by [the initials for Entertainment Company 1] and [the initial of Network Owner 1's first name] — each," "$325M-pre" (a reference to the supposed valuation of OZY in the purported Series D), and "Great job!"

(d) In or about December 2019, WATSON traveled to the Middle East, along with the Middle East Liaison, to meet with potential investors for the purported Series D offering, including Middle East Investor 1. Prior to the meeting with Middle East Investor 1, on or about December 9, 2019, the Middle East Liaison sent to a representative of Middle East Investor 1 an investor presentation prepared by OZY, copying WATSON and Han, for use in the meeting. In addition to false financial information, the presentation repeatedly stated that the Series D offering would be led by Network Owner 1 and Entertainment Company 1.

(e) On or about January 27, 2020, Rao sent an email to the Middle East Liaison, copying WATSON and Han, in which he stated that "[Network Owner 1] is going to double her commitment to OZY in conjunction with the Series D." Prior to sending the email to the Middle East Liaison, Rao sent a draft to WATSON and Han for their review. After receiving the email, the Middle East Liaison sent it to Middle East Investor 1.

50. The defendant CARLOS WATSON, together with Rao, Han and others, repeatedly provided Middle East Investor 1 inflated revenue figures for 2019 and inflated projections for 2020. For example, although OZY's actual revenue in 2019 was, at most, approximately $13 million, WATSON, together with Rao, Han and others, falsely told Middle East Investor 1 that OZY had earned $35 million in revenue in 2019. WATSON, together with

Rao, Han and others, also falsely told Middle East Investor 1 multiple times that OZY was forecasted to earn $65 million in 2020. At the same time they were providing these inflated figures to Middle East Investor 1, WATSON, together with Rao, Han and others, was providing contradictory (but also false) figures to other investors. For example:

(a) On or about January 3, 2020, WATSON sent an email to the Middle East Liaison, copying Rao and Han, to which he attached a letter stating, "OZY revenue grew about 50% last year to $35M." On January 6, 2020, the Middle East Liaison relayed this information to Middle East Investor 1, copying WATSON, Rao and Han on the transmittal email. However, on or about January 5, 2019, WATSON sent a letter to another investor that claimed that OZY earned $30 million in revenue in 2019, and on January 9, 2020, Rao sent a letter to a third investor, copying WATSON, claiming $30 million in revenue in 2019. As set forth above, OZY's actual 2019 revenue was, at most, approximately $13 million.

(b) On or about March 21, 2020, Rao sent an email to Middle East Investor 1, copying WATSON and the Middle East Liaison, which included an update regarding OZY. Among other misrepresentations, Rao falsely stated that OZY had a target revenue of $65 million for 2020. WATSON knew that Rao's statement was false. Two weeks earlier, on or about March 12, 2020, WATSON had sent an email to an OZY finance employee ("Finance Employee 2"), an individual whose identity is known to the Grand Jury, stating that OZY's goal for the year was $35 million in revenue. Four days after the email to Middle East Investor 1, on or about March 25, 2020, Rao sent WATSON and Han a draft email for another investor that changed the annual revenue target for 2020 from the $65 million that was told to Middle East Investor 1 to $45 million, which was still $10 million higher than the target WATSON communicated internally. That same day, Rao sent the email to the other investor with the $45

million figure, copying WATSON. OZY ultimately earned approximately $11 million in revenue in 2020.

51. On or about April 5, 2020, Middle East Investor 1 wired $3 million to OZY, purportedly in exchange for Series D preferred stock, which in fact had not been issued and the issuance of which had not been authorized by OZY's Board. On or about October 7, 2020, Middle East Investor 1 wired an additional $2 million to OZY, purportedly in exchange for additional Series D preferred stock, which still had not been issued and the issuance of which had still not been authorized by OZY's Board. The Board did not actually authorize issuance of any Series D preferred shares until May 2021.

F. February-October 2020: Misrepresentations to Venture Lender 1

52. OZY remained heavily in debt in 2020, and much of OZY's debt was high-interest debt requiring tens of thousands of dollars of interest payments each day, which OZY often struggled to pay. In part to attempt to replace that debt load, the defendant CARLOS WATSON, together with Rao, Han and others, induced Venture Lender 1 to lend OZY approximately $11.5 million by means of misrepresentations and omissions regarding, among other things, OZY's historical and projected financial results, debt load and equity fundraising.

53. On or about February 4, 2020, the defendant CARLOS WATSON had breakfast with Venture Lender 1 CEO, during which they discussed a potential loan to OZY. WATSON connected Venture Lender 1 CEO and Rao by email and instructed Rao to provide Venture Lender 1 CEO with investment materials. On or about February 11, 2020, Rao sent an email to Venture Lender 1 CEO, copying WATSON, to which he attached a presentation falsely claiming that OZY was in the middle of a Series D financing round led by Network Owner 1 and Entertainment Company 1 and that OZY had earned approximately $30 million in revenue in

2019. As set forth above, each of these representations was false. The presentation also falsely claimed that OZY had lost only $1 million in 2019. In fact, OZY had lost over $6 million in 2019.

54. Among the conditions for Venture Lender 1's loans to OZY was that OZY not have any outstanding liens from prior debtors. Although OZY was subject to numerous liens and had significant outstanding debt, the defendant CARLOS WATSON, together with Rao and others, falsely told Venture Lender 1 that OZY had no outstanding debt. In addition, to remove liens imposed by other debtors, Rao fraudulently terminated several liens by forging emails from lenders stating that the liens had been released. Rao then represented to Venture Lender 1 that there were no liens against OZY, but omitted the material fact that the pre-existing liens had been fraudulently removed.

55. On or about March 3, 2020, Venture Lender 1 wired OZY $5 million in connection with its first loan to OZY.

56. In April and May 2020, the defendant CARLOS WATSON, together with Rao, Han and others, sought an additional loan from Venture Lender 1. On April 17, 2020, Rao, copying WATSON and Han, sent an email to Venture Lender 1 CEO to which he attached a presentation that included numerous misstatements and claimed, among other things, that Series C Investor 3 and Series C Investor 1 had committed to additional investments in OZY in 2020, which was not true. On or about May 13, 2020, Venture Lender 1 wired OZY $3 million in connection with a second loan to OZY.

57. In or about July 2020, the defendant CARLOS WATSON, together with Rao, Han and others, sought an additional loan from Venture Lender 1. On or about July 19, 2020, Rao sent an email to Venture Lender 1 CEO in which he falsely claimed that OZY had

earned over $18 million in revenue in the first half of 2020 and was on pace to exceed its target of $45 million in revenue for the year. Rao also attached to the email a presentation claiming that OZY had $14.9 million in cash as of June 30, 2020, as well as other misstatements about OZY's investors and the size of its revenues from particular customers and partners. Rao did not copy WATSON on the email to Venture Lender 1 CEO, but less than one minute after sending the email, Rao forwarded the email and attachments to WATSON and Han. Contrary to the claims in the email and attachments, WATSON, Rao and Han had been informed earlier that week by Finance Employee 2 that OZY was on track to earn only approximately $8 million in revenue in 2020. WATSON, Rao and Han had also been informed by Finance Employee 2 that OZY had less than $5 million in cash as of June 30, 2020 and had less than $4 million in cash at the time the email was sent.

58. On July 29, 2020, Venture Lender 1 wired OZY $2 million in connection with a third loan to OZY.

59. In September and October 2020, the defendant CARLOS WATSON, together with Rao, Han and others, sought an additional loan from Venture Lender 1. On or about September 14, 2020, Rao sent an email to Venture Lender 1 CEO soliciting an additional loan in which he claimed that OZY was on track to earn over $52 million in revenue in 2020. The email also attached a purported diligence file, which falsely stated, among other things, that OZY had been profitable in the second quarter of 2020 and was expected to earn over $5 million in profit in 2020. Before sending the email, Rao sent a draft of the email and its attachments to WATSON and Han for their review. WATSON, Rao and Han all knew that OZY was not on track to earn $52 million 2020; one week earlier, Finance Employee 2 had informed WATSON, Rao and Han that OZY was on track to earn only approximately $8.3 million in revenue in 2020.

WATSON, Rao and Han also all knew that OZY was not profitable. On or about August 12, 2020, WATSON had sent a text message to Rao in which he complained that a new person had been hired to work on one of OZY's newsletters, stating, in part, "Why? WTF? Are we profitable and I do not know it?" OZY in fact lost over $8 million dollars in 2020.

60. In 2020, Venture Lender 1 CEO's child was an intern at OZY. To prevent Venture Lender 1 CEO from learning of OZY's true financial situation, the defendant CARLOS WATSON, Rao and Han reminded each other to be careful in what they said around Venture Lender 1 CEO's child. For example, on or about August 11, 2020, Han sent a text message to WATSON and Rao in which she stated: "Need to be careful as [Venture Lender 1 CEO's child] is on . . . [Her or His] dad thinks we had a good q2." Similarly, on or about September 17, 2020, Han sent a text message to WATSON and Rao, in which she stated: "Be careful what [Venture Lender 1 CEO's child] heard . . . Hears . . . [Venture Lender 1 CEO] thinks we're doing 52." WATSON responded: "Assume he is listening . . . Unequivocally [s]ay we are doing well."

61. On or about October 23, 2020 Venture Lender 1 wired OZY $1.5 million in connection with a fourth loan to OZY.

G. November 2020-February 2021: Attempted Fraudulent Investment from Financial Institution 1

62. From approximately November 2020 to February 2021, the defendant CARLOS WATSON, together with Rao, Han and others, attempted to induce a financial institution headquartered in New York, New York ("Financial Institution 1"), an entity the identity of which is known to the Grand Jury, to invest up to $45 million in OZY by means of material misrepresentations and omissions regarding OZY's historical and projected financial results, debts and business relationships. Had the full $45 million investment occurred as

intended, $6 million of the $45 million would have been paid to WATSON personally, $3 million would have been paid to Rao and $1 million would have been paid to Han.

63. On or about November 1, 2020, Rao, copying the defendant CARLOS WATSON and Han, sent an email to an employee of Financial Institution 1, to which he attached an OZY investor presentation. The presentation falsely stated, among other things, that OZY had earned $22 million in revenue in 2018 and $33 million in 2019 and expected to earn $45 million in revenue and $4 million in profit in 2020. In fact, as set forth above, OZY's internal estimates from September 2020 predicted annual revenue of approximately $8 million and WATSON, Rao and Han knew that OZY was not profitable. The presentation also included false claims about the size of payments by certain OZY business partners that significantly overstated the payments by these partners to OZY. The presentation also claimed that certain individuals would be investing in OZY's Series D investment round, even though these individuals had not agreed to invest in the Series D offering.

64. On or about December 4, 2020, Rao, copying the defendant CARLOS WATSON and Han, sent an email to employees of Financial Institution 1 to which he attached an OZY investor presentation and a spreadsheet containing purported 2021 revenue forecasts. Both attachments falsely stated that OZY had already booked approximately $39 million in revenue for 2021, approximately $5.75 million of which was purportedly payments from an online video service ("Video Service 1") owned by a large technology company ("Technology Company 1"), entities the identities of which are known to the Grand Jury, for the OZY show "The Carlos Watson Show" ("TCWS"). In fact, OZY was not paid by Video Service 1 to produce TCWS. Prior to sending the materials to Financial Institution 1, Rao sent a draft of the cover email and the attachments to WATSON and Han for their review.

65. On or about December 9, 2020, Rao, copying the defendant CARLOS WATSON and Han, sent an email to an employee of Financial Institution 1 to which he attached due diligence materials, including a purported income statement for January through November 2020, which stated that OZY had earned over $41 million in revenue in that period. In fact, OZY earned only approximately $11 million in revenue in all of 2020. The due diligence materials also again claimed that OZY had already booked $5.75 million in licensing revenue for TCWS for 2021 from Video Service 1, even though OZY never earned any licensing revenue for TCWS. Prior to sending the materials to Financial Institution 1, Han sent multiple drafts of the purported diligence materials to WATSON and Rao for their review.

66. On or about January 13, 2021, as part of the due diligence process, Financial Institution 1 asked the defendant CARLOS WATSON and Rao to arrange a meeting with someone from Video Service 1 to discuss OZY's relationship with Video Service 1. WATSON and Rao knew that the arrangement with Video Service 1 that they had described to Financial Institution 1 was false and that such a meeting would reveal the falsity of their representations. Accordingly, WATSON and Rao agreed that Rao would impersonate an executive from Video Service 1 ("Identity Theft Victim 2"), an individual whose identity is known to the Grand Jury, in communications with Financial Institution 1.

67. On or about January 28, 2021, Rao, with the agreement of the defendant CARLOS WATSON, created a fake email address in the name of Identity Theft Victim 2. That same day, Rao sent an email to employees of Financial Institution 1, copying the fake email address he had created for Identity Theft Victim 2, to purportedly introduce certain employees of Financial Institution 1 to Identity Theft Victim 2. The employees of Financial Institution 1

corresponded with who they believed to be Identity Theft Victim 2 by email and scheduled a call for February 2, 2021 at 11:00 a.m. (EST).

68. During the February 2, 2021 call between the employees of Financial Institution 1 and Rao posing as Identity Theft Victim 2, the defendant CARLOS WATSON and Rao were in a room together. Rao used a voice alteration app he had downloaded to his cellular telephone to mask his voice on the call, and impersonated Identity Theft Victim 2. On the call, Rao, impersonating Identity Theft Victim 2, said, among other things, that he ordered a multi-episode pilot after meeting with WATSON, that TCWS had done exceptionally well in terms of viewership, and that Video Service 1 was expecting future seasons of TCWS and was considering whether TCWS could be Video Service 1's premium talk show. These statements were false.

69. Throughout the call, the defendant CARLOS WATSON sent a series of text messages to Rao, which included instructions of what to say and not say. For example, at approximately 11:19 a.m. (EST), WATSON texted Rao, "I am a big fan of Carlos, Samir and the show." At approximately 11:21 a.m. (EST), WATSON texted Rao, "Use the right pronouns . . . You are NOT OZY." At approximately 11:26 a.m. (EST), after Rao had repeatedly used the first name of one of the employees of Financial Institution 1 who was on the call, WATSON texted Rao, "Stop using her name."

70. Shortly after the February 2, 2021 call, one of the employees of Financial Institution 1 contacted the real Identity Theft Victim 2, who confirmed that he had not been on the call and that Video Service 1 had no role in the production of TCWS. On February 3, 2021, employees of Financial Institution 1 spoke to the defendant CARLOS WATSON, who falsely

claimed that Rao had acted alone and had impersonated Identity Theft Victim 2 as a result of a mental breakdown.

71. As a result of the Rao's impersonation of Identity Theft Victim 2 on the telephone call, Financial Institution 1 ended its due diligence and did not ultimately invest in OZY.

H. November 2020-February 2021: The Investment of Investment Fund 1

72. From approximately November 2020 to February 2021, the defendant CARLOS WATSON, together with Rao, Han and others, induced an investment fund ("Investment Fund 1"), an entity the identity of which is known to the Grand Jury, and related individuals to invest approximately $2 million in OZY by means of misrepresentations and omissions regarding OZY's historical and projected financial results and existing investors, as well as the reasons that Financial Institution 1 had not invested in OZY.

73. On or about November 5, 2020, Han, copying the defendant CARLOS WATSON and Rao, sent an email to a representative of Investment Fund 1 to which she attached an OZY investor presentation. The presentation included misrepresentations including, but not limited to, that OZY had earned $11 million in revenue in 2017, $22 million in revenue in 2018 and $33 million in revenue in 2019; and that OZY was on track to earn $45 million in revenue and $4 million in profit in 2020. As set forth above, WATSON, Rao and Han knew that each of these claims was false.

74. Investment Fund 1's investment strategy was to invest alongside larger investors. On or about January 4, 2021, the defendant CARLOS WATSON spoke to a representative of Investment Fund 1 and falsely told him that OZY had term sheets from three prominent financial institutions to invest in the Series D offering, including Financial Institution 1. In fact, OZY had not had any discussions regarding a Series D investment with any

of the financial institutions WATSON named except Financial Institution 1. WATSON also falsely told the representative of Investment Fund 1 that all existing investors in OZY would be participating in the Series D offering.

75. On or about January 22, 2021, the defendant CARLOS WATSON told a representative of Investment Fund 1 that Financial Institution 1 would be leading the Series D offering, which WATSON claimed would close on February 10, 2021.

76. On or about February 8, 2021, after Financial Institution 1 had ended its negotiations with OZY, a representative of Investment Fund 1 sent a text message to the defendant CARLOS WATSON in which he asked if there were any updates on the Series D offering. On February 15, 2021, the representative spoke to WATSON by telephone. During the call, WATSON falsely stated that OZY was significantly overperforming its financial goals and, as a result, WATSON no longer wanted to move forward with the investment from Financial Institution 1 or the Series D offering at that time. WATSON also stated that he would speak to the OZY Board about finding some way for OZY to allow Investment Fund 1 to invest in OZY. WATSON omitted the true reasons that Financial Institution 1 would not be investing in OZY, including the impersonation of Identity Theft Victim 2.

77. On or about February 17, 2021, Rao spoke to a representative of Investment Fund 1 and falsely told him that the OZY Board had agreed that Investment Fund 1 could invest in the Series C offering at the Series C valuation level, which was significantly lower than the purportedly anticipated Series D valuation level. On February 17, 2021, Rao sent an email to the representative to which he attached fabricated documents for a Series C closing. In response to the email, the representative responded to Rao that Investment Fund 1 might be

willing to invest up to $2 million. Rao forwarded the email thread to the defendant CARLOS WATSON and Han.

78. On or about February 23, 2021, Investment Fund 1, along with individual partners in Investment Fund 1 and their families, wired a total of $2 million to OZY, purportedly in exchange for Series C preferred stock.

1. March-May 2021: Misrepresentations to Technology Company 1

79. From approximately March 2021 to May 2021, the defendant CARLOS WATSON, together with Rao, Han and others, attempted to induce Technology Company 1 to invest $25 million in OZY in connection with a contemplated hiring of WATSON by Technology Company 1 by means of misrepresentations and omissions regarding, among other things, OZY's historical and projected financial results and investors.

80. Beginning in approximately October 2020, Technology Company 1 discussed hiring the defendant CARLOS WATSON to lead Technology Company 1's news business. In discussions with WATSON about the potential position, Technology Company 1 informed WATSON that he would have to leave OZY if he were to take the role. Because WATSON's leaving would potentially harm OZY's business, in or about March 2021, Technology Company 1 and WATSON began discussing the possibility that, if WATSON were hired by Technology Company 1, Technology Company 1 would invest $25 million in OZY's Series D offering to help smooth WATSON's transition away from OZY. WATSON requested that $5 million of Technology Company 1's investment would be paid personally to WATSON, Rao and Han.

81. On or about March 16, 2021, the defendant CARLOS WATSON sent a text message to Rao and Han in which he stated that he had a "[g]ood convo" with Technology

Company 1 and that he "told them $300M pre . . . and [initials for Early Investor 1] as the lead. I should have said [Series C Investor 3]." In fact, Early Investor 1 was not the lead investor in the Series D round, and neither Early Investor 1 nor Series C Investor 3 was investing in the Series D offering.

82. On or about the next day, March 17, 2021, Rao sent an email to two Technology Company 1 employees, copying WATSON and Han, which included a summary of the purported Series D terms and an investment presentation. In the email, Rao falsely claimed that the Series D offering would be led by Series C Investor 3. The presentation attached to the email contained false and inflated revenue figures for 2017, 2018, 2019 and 2020.

83. Conversations between Technology Company 1 and the defendant CARLOS WATSON continued through approximately May 2021. At approximately the end of May 2021, WATSON withdrew from consideration for the position at Technology Company 1. Technology Company 1 did not ultimately invest in OZY.

J. March-August 2021: Misrepresentations to Series D Investor 1

84. From approximately March 2021 to August 2021, the defendant CARLOS WATSON, together with Rao, Han and others, induced Series D Investor 1, an investment firm headquartered in New York, New York, the identity of which is known to the Grand Jury, to invest $22.5 million in OZY by means of material misrepresentations and omissions regarding, among other things, OZY's historical and projected financial results, debt and investors, as well as misrepresentations regarding purported offers to purchase OZY.

85. On or about April 21, 2021, the defendant CARLOS WATSON sent an email to Rao and Han, in which he asked Rao to send OZY's Series D investor presentation to a partner at Series D Investor 1 (the "Series D Investor 1 Partner"), an individual whose identity is

known to the Grand Jury. That same day, Han emailed a Series D investor presentation to WATSON, Rao and the Series D Investor 1 Partner. The presentation falsely stated that OZY had earned $46 million in revenue and $4 million in profit in 2020, when in fact OZY had earned only approximately $11 million in revenue that year and had lost over $8 million. The presentation also claimed that the Series D offering was being led by Technology Company 1, which would invest $30 million. In fact, Technology Company 1 had never agreed to lead the Series D offering and had not agreed to invest $30 million. The presentation also omitted that any investment by Technology Company 1 was contingent on WATSON leaving OZY to work at Technology Company 1.

86. On or about April 22, 2021, the defendant CARLOS WATSON spoke with the Series D Investor 1 Partner and repeated the false claims that OZY had earned $46 million in revenue in 2020 and that Technology Company 1 would be investing $30 million.

87. On or about May 5, 2021, in response to due diligence questions, Han sent an email to the Series D Investor 1 Partner, copying the defendant CARLOS WATSON and Rao, in which she stated that OZY had booked revenue of $35.8 million for 2021. That claim was false. Less than 24 hours earlier, Han had sent to WATSON and Rao an email in which she stated that the total revenue booked for 2021 was $13.3 million as of May 4, 2021.

88. On or about May 17, 2021, Series D Investor 1 wired OZY $20 million, purportedly in exchange for Series D shares. Over the following several days, Series D Investor 1 representatives repeatedly asked for confirmation that Technology Company 1, who Series D Investor 1 had been told by the defendant CARLOS WATSON, Rao and Han was the lead investor, had also closed on its investment in OZY. Rao, working in coordination with

WATSON, repeatedly assured them that Technology Company 1 would be closing soon, which was false. For example:

(a) On or about May 18, 2021, Rao sent an email to the Series D Investor 1 Partner, in which he falsely stated that "[Technology Company 1] gave us a heads up that they should be closing tomorrow given the focus on their [developer] conference today." Although Rao did not copy WATSON on the email, prior to sending it, he sent WATSON a text message containing the draft language for the email for WATSON's approval.

(b) Later on or about May 18, 2021, Rao sent an email to representatives for Series D Investor 1, in which he falsely stated that "remaining investors are coming in this week, and in [Technology Company 1]'s case, facilitating the close is just mechanical at this point." Although Rao did not copy WATSON on the email, prior to sending it, he sent WATSON a text message containing the draft language for the email for WATSON's approval.

89. On or about May 19, 2021, the Series D Investor 1 Partner asked Rao to reverse the wire and return Series D Investor 1's money so that Series D Investor 1 could close at the same time as Technology Company 1.

90. On or about May 20 and 21, 2021, on calls with the Series D Investor 1 Partner, the defendant CARLOS WATSON falsely told the Series D Investor 1 Partner that WATSON had spoken to the Chief Executive Officer of Technology Company 1, who said that Technology Company 1 was not going to be investing in OZY's Series D offering because Technology Company 1 instead wanted to purchase OZY for $600 million. In fact, Technology Company 1 and its CEO had never offered to purchase OZY at any price. Initially, WATSON

claimed to the Series D Investor 1 Partner that he was unsure if he would accept Technology Company 1's acquisition offer.

91. On May 20, 2021, the defendant CARLOS WATSON and the Series D Investor 1 Partner had a call scheduled for 6:00 p.m. (PDT). WATSON sent the following text message to Rao in anticipation of the call: "8 pm CT/6 pm PT — are you READY?" During the call, as Rao listened in, Rao sent text messages to WATSON, in which he stated: "Will he support us if we stay the course . . . You Got Him — how do we land it . . . Oh . . . He thinks they will still invest . . . Even if you say no." Rao had to leave before the call ended, and when the call was over, WATSON sent the following text message to Rao: "Ended well. Told him I would sleep on it. I think we go back and say we are going to say no to [Technology Company 1] (at least for now), so a smaller Series D so we avoid rampant dilution. Take in $40M including their $20M — and maybe some debt. Let's talk when you can."

92. The defendant CARLOS WATSON and the Series D Investor 1 Partner ultimately agreed that if OZY did not accept Technology Company 1's supposed acquisition offer, Series D Investor 1 would go forward with its $20 million investment in OZY. On or about May 21, 2021, WATSON sent an email to the Series D Investor 1 Partner to follow up on their May 21, 2021 conversation, in which he stated, "To confirm, you are good for the $20M investment in our Series D at $300M pre-, subject to [Technology Company 1]."

93. The defendant CARLOS WATSON eventually told the Series D Investor 1 Partner that WATSON had decided not to sell OZY to Technology Company 1, and Series D Investor 1 proceeded with its investment in OZY. On or about May 28, 2021, Rao sent sham closing documents to the Series D Investor 1 Partner and other Series D Investor 1 representatives. The documents included a fake list of investors that stated, among other false

claims, that Series C Investor 3 had invested $1 million in the Series D offering, Series C Investor 1 had invested $2.25 million in the Series D offering and Middle East Investor 1 had invested $7 million in the Series D offering. In fact, Series C Investor 3 and Series C Investor 1 did not invest in the Series D offering, and Middle East Investor 1 invested only $5 million in its two transactions in 2020.

94. On or about July 29, 2021, the defendant CARLOS WATSON sent an email to the Series D Investor 1 Partner and another individual in which he falsely claimed that OZY had earned approximately $50 million in revenue in 2020 and expected to earn $65 million in revenue in 2021. The previous day, on July 28, 2021, Han had reported to WATSON and Rao in an email that OZY had booked only $21.5 million in revenue for 2021 as of that date.

95. On or about August 11, 2021 Series D Investor 1 wired OZY an additional $2.5 million to purchase additional Series D shares, raising its total investment to $22.5 million.

K. August-September 2021: Misrepresentations for a Purported Series E Closing

96. From approximately August 2021 to September 2021, the defendant CARLOS WATSON, together with Rao, Han and others, attempted to induce potential investors to invest in a purported Series E fundraising round based on continued misrepresentations of OZY's historical and projected financial results. For example, on or about September 21, 2021, WATSON sent an email to a potential investor in which he claimed that he expected OZY to earn approximately $94 million in revenue in 2021. The prior day, Han had reported to WATSON and Rao in an email that OZY had booked only $32 million for 2021 as of September 20, 2021. WATSON also claimed in his email that OZY had earned $50 million in revenue in 2020, when the true number was approximately $11 million.

COUNT ONE
(Conspiracy to Commit Securities Fraud)

97. The allegations contained in paragraphs one through 96 are realleged and incorporated as if fully set forth in this paragraph.

98. In or about and between January 2018 and October 2021, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants CARLOS WATSON and OZY MEDIA, INC., together with others, did knowingly and willfully conspire to use and employ manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, by: (i) employing one or more devices, schemes and artifices to defraud; (ii) making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaging in one or more acts, practices and courses of business which would and did operate as a fraud and deceit upon one or more investors and potential investors in OZY MEDIA, INC., in connection with the purchase and sale of investments in OZY MEDIA, INC., directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, contrary to Title 15, United States Code, Sections 78j(b) and 78ff.

99. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants CARLOS WATSON and OZY MEDIA, INC., together with others, did commit and cause to be committed, among others, the following:

OVERT ACTS

(a) On or about March 21, 2018, Rao sent an email to a partner at a private equity company who resides in Brooklyn, New York ("WATSON Friend 1"), an individual whose identity is known to the Grand Jury, copying WATSON. WATSON Friend 1 had asked Rao and WATSON for a justification of OZY's purported valuation in connection with the convertible notes. WATSON Friend 1 told WATSON and Rao that he wanted to provide the justification to another potential investor in OZY. Rao's email to WATSON Friend 1 falsely stated that one justification for the valuation was that OZY's 2017 revenue was approximately $12 million.

(b) On or about May 11, 2019, WATSON flew from John F. Kennedy International Airport ("JFK Airport") in Queens, New York, to South Korea to meet with potential investors.

(c) On or about August 20, 2019, Rao sent an email to the Middle East Liaison, copying WATSON and Han, in which he falsely stated, among other things, "We are pleased to share that we have commitments from both [Network Owner 1] and [Entertainment Company 1] to lead our Series D financing round."

(d) In or about October 2019, Rao and Han altered contracts for two of OZY's television shows to make the contracts' terms appear to be significantly more favorable to OZY than the true contracts were and then emailed the falsified documents to Media Company 1.

(e) On or about December 6, 2019, WATSON flew from JFK Airport in Queens, New York, to the United Arab Emirates to meet with potential investors.

(f) On or about January 3, 2020, WATSON sent an email to the Middle East Liaison to which he attached a letter falsely stating, among other things, "While we

are still finalizing our numbers, early indication is that OZY revenue grew about 50% last year to $35M."

(g) On or about January 5, 2020, WATSON sent an email to WATSON Friend 1 to which he attached a draft letter and sought WATSON Friend 1's input before it was sent to other investors and potential investors. The letter falsely stated, among other things, "While we are still finalizing our numbers, early indication is that OZY revenue grew about 50% last year to $30M."

(h) On or about January 21, 2020, at approximately 11:50 a.m. (PST), Han sent an email to WATSON and Rao stating "I've have [sic] 2019 revenue at ~$35M, and 2020 projected at ~$45M," to which she attached a draft business update for Series C Investor 3 that contained false financial figures.

(i) On or about January 21, 2020, at approximately, 1:42 p.m. (PST), WATSON sent a text message to Rao and Han, which stated in part, "[Series C Investor 3] — 1. $35M seems too high."

(j) On or about January 21, 2020, at approximately 2:34 p.m. (PST), Han sent an email to WATSON and Rao stating, "Samir + Carlos -- I updated the #s to have 2019 rev at $30m. Revised financials and update attached," and attaching a revised draft update for Series C Investor 3 that contained false financial figures. WATSON responded, "Please double check against everything we have previously sent him."

(k) On or about January 21, 2020, at approximately 11:38 p.m. (PST), Rao sent an email to Series C Investor 3, copying WATSON, to which he attached a letter falsely stating, among other things, "While we are still finalizing our numbers, early indication is that OZY revenue grew about 50% last year to ~$30M."

(l) On or about February 14, 2020, Rao sent an email to Series C Investor 1 Partner, blind carbon copying WATSON and Han, in which he falsely stated, among other things, that OZY generated approximately $34 million in revenue in 2019 and $20 million in revenue in 2018.

(m) On or about February 28, 2020, Rao emailed several lenders located in Brooklyn, New York, in connection with removing liens to satisfy the conditions of Venture Lender 1's first loan.

(n) On or about July 15, 2020, during a call with Series C Investor 1 Partner, WATSON sent a text message to Rao and Han stating, "[Series C Investor 1 Partner] — what did we tell him our revenue was for the year?!" Rao responded, "33." WATSON responded, "Are you sure?" Rao responded, "Reference it as north of 40 . . . 3 . . . 0 . . . Last year . . . 33 . . . This year 45." Han responded, "I'm looking." Rao then continued, "7 thru q1 . . . Send him the cheat sheet." Han responded, "We told [WATSON Friend 1] . . . Q1 — 7m; Q2 7m; Q3 9m; Q4 12M — adds to 35M." WATSON then asked, "What adds to $45M." Han responded, "we told [Series C Investor 1] in Apr we were doing 45M in revenue . . . Adds up to: . . . Q1 — 6.4M; Q2: 10M; Q3: 17M; Q4: 12M . . . KEY NOTES: we told [Series C Investor 1] this in April. The 45M includes 6M of Events . . . If we remove events, annual revenue ends up 39M which breaks down as: 6.4M, 10M, 12M, 10M."

(o) In or about January 2021, Rao and Han, at WATSON's direction, created a falsified version of OZY's general ledger, which included a line-by-line listing of the company's purported accounting, that aligned with the fabricated financial figures that WATSON, Rao and Han had provided to Financial Institution 1.

(p) On or about January 19, 2021, during a call with the accountants retained by Financial Institution 1 to perform due diligence on OZY, which call was joined by a representative of Financial Institution 1 ("Financial Institution 1 Representative"), an individual whose identity is known to the Grand Jury, Rao sent a text message to WATSON, stating, "Remember [Financial Institution 1 Representative] is on and [Video Service 1] is paying us."

(q) On or about January 22, 2021, WATSON sent an email to Series C Investor 3, blind carbon copying Rao and Han, in which he falsely stated, among other things, "We reached ~$47M revenue and $5M EBITDA in 2020."

(r) On or about February 2, 2021, Rao spoke by telephone with employees of Financial Institution 1 and impersonated Identity Theft Victim 2 using a voice alteration application. During the call, Rao misrepresented not only his identity, but also the business relationship between OZY and Video Service 1.

(s) On or about February 2, 2021, during Rao's call with employees of Financial Institution 1, WATSON sent text messages to Rao containing various instructions, such as "Use the right pronouns," "You are NOT OZY," and "Stop using her name."

(t) On or about March 31, 2021, WATSON sent text messages to Rao stating, "[Series C Investor 1 Partner] at 9:30 . . . what have you told him? . . . Financials . . . Series D plans." Rao responded, "[Early Investor 1] / board numbers . . . 45 and 4 . . . We're en route to a series d . . . Sent him materials to come in early on C and pro rata on D . . . had to chase he never flllowed [sic] up . . . Told him [Financial Institution 1] was leading."

(u) On or about May 21, 2021, WATSON sent an email to the Series D Investor 1 Partner in which he stated, "To confirm, you are good for the $20M investment in our Series D at $300M pre-, subject to [Technology Company 2]."

(v) On or about May 25, 2021, WATSON sent text messages to Rao and Han stating, "[Series C Investor 1] — what numbers do they have? . . . Need it NOW please . . . On with [Series C Investor 1 Partner]." Rao responded, "Sent . . . 46 and 5 for 2020 . . . 70 and 12 for 2022 . . . Last update was in January . . . So he may not remember." WATSON responded, "Thanks."

(w) On or about September 8, 2021, WATSON flew to LaGuardia International Airport in Queens, New York, to meet with investors, potential investors and bankers in New York in connection with the Series E offering.

(x) On or about and between September 9 and 12, 2021, WATSON attended the U.S. Open in Queens, New York, where he met with investors, potential investors and bankers in connection with the Series E offering.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(Conspiracy to Commit Wire Fraud)

100. The allegations contained in paragraphs one through 96 are realleged and incorporated as if fully set forth in this paragraph.

101. In or about and between January 2018 and October 2021, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants CARLOS WATSON and OZY MEDIA, INC., together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud one or more investors, and potential investors in and lenders and potential lenders to, OZY MEDIA, INC., and to obtain money and property from them by means of one or more materially false and fraudulent pretenses, representations and promises, all affecting financial institutions and others, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means

of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT THREE
(Aggravated Identity Theft)

102. The allegations contained in paragraphs one through 96 are realleged and incorporated as if fully set forth in this paragraph.

103. In or about and between February 2020 and February 2021, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant CARLOS WATSON, together with others, during and in relation to the crime charged in Count Two, did knowingly and intentionally transfer, possess and use, without lawful authority, one or more means of identification of one or more persons, knowing that the means of identification belonged to other persons.

(Title 18, United States Code, Sections 1028A(a)(1), 1028A(b), 1028A(c)(5), 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS ONE AND TWO

104. The United States hereby gives notice to the defendants that, upon their conviction of either of the offenses charged in Count One or Count Two, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offenses.

105. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

FOREPERSON

BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

F.#: 2021R00900
FORM DBD-34
JUN. 85

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

CARLOS WATSON AND OZY MEDIA, INC.,

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 371, 981(a)(1)(C), 1028A(a)(1), 1028A(b), 1028A(c)(5), 1349, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.

Thomas J. Paradise

Foreperson

Filed in open court this _____ *day,*

of _____ *A.D. 20* ____

Clerk

Bail, $ _____

Jonathan Siegel, Gillian Kassner and Dylan A. Stern,
Assistant U.S. Attorneys (718) 254-6293/6224/6213

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	*	Case No. 23-CR-00082(EK)
	*	
	*	Brooklyn, New York
	*	March 6, 2023
v.	*	
	*	
CARLOS WATSON,	*	
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * * * *		

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE ERIC R. KOMITEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

JONATHAN SIEGEL, ESQ.
DYLAN STERN, ESQ.
GILLIAN KASSNER, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

NOAM BIALE, ESQ.
JUSTINE HARRIS, ESQ.
Sher Tremonte LLP
80 Broad Street
Suite 1301
New York, NY 10004

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, Connecticut 06484 (203)929-9992

(Proceedings commenced at 11:42 a.m.)

THE CLERK: Criminal cause for a status conference, United States of America versus Carlos Watson, docket no. 23-CR-82.

Before I ask you to state your appearances, I would just like to state that these proceedings are public. The recording and/or rebroadcasting of them are not allowed.

Please, for the government, would you state your appearances?

MR. SIEGEL: Good morning, Your Honor. Jonathan Siegel, Dylan Stern, and Gillian Kassner for the United States.

THE COURT: Good morning.

MR. BIALE: Good morning, Your Honor. Noam Biale and Justine Harris of Sher Tremonte LLP for Mr. Watson, who is present with us by phone. I just want to confirm, Mr. Watson, can you hear what's going on?

THE DEFENDANT: I can. Thank you.

THE COURT: Okay.

MS. HARRIS: Good morning, Your Honor.

THE COURT: Good morning, Ms. Harris, Mr. Biale, and Mr. Watson, good morning to you as well. You can hear me clearly?

THE DEFENDANT: I can. Good morning. Thank you.

THE COURT: Okay. So we're holding a status

conference here, as everyone knows.

Mr. Watson, let me kick it off by saying a couple of things to you that I say any time we have status conferences by telephone, which are number one, it's critically important that you hear and understand everything that's going on here today.

And so, if there's any problem with the audio at any point, if you get dropped from the call and need to dial back in at any point, please do not hesitate to speak up and let us know that and we will make sure we repeat anything that you may have missed.

Secondly, that you should have the ability to speak with your lawyers privately if anything gets said here that you don't understand or think you have a response to that requires you to engage with your attorneys.

And so if at any point you want to speak with your lawyers, pipe up and let us know that as well and we will have them step out and speak to you on a private line, the same way you'd be able to converse with them confidentially if you were here with us in the courtroom.

Do you understand everything I've just said?

THE DEFENDANT: I do. Thank you.

THE COURT: Okay. All right. So we're here for what I would call a preliminary status conference. We have a status conference scheduled for the first week of April that

was set down by the magistrate judge at Mr. Watson's initial appearance.

My view was there were enough moving parts in the mix with respect to representation, potential conflicts and otherwise that I wanted to just speak to the parties preliminarily to make sure that we all have a meeting of the minds on the subject of what's happening between now and early April.

And I think the flurry of letters that went back and forth last week, which I assume everybody has seen by now, are a good indication of why it made sense to gather sooner rather than later.

So here's my agenda for today. I want to ask the government, as I do in many first appearances before me, just to give a brief synopsis of the case. And I don't mean a comprehensive description of the indictment in its entirety. I mean, a very brief overview of what the government intends to prove at trial, recognizing, obviously, that that can be a moving target and everything you say this morning will be subject to change on that subject.

Two, I want to confirm representation. It sounds like many of my questions on that subject may have been answered by this morning's filing of notices of appearance by the lawyers we have with us today, but I just want to confirm that.

Next, I want to have a brief, brief discussion of where we stand with respect to possible conflicts. Whether the government has any concerns about the new representation that has appeared today and also a moment of confirmation with respect to the possibility of conflicts on behalf of the Court.

So as defense counsel may have seen on the docket, I asked the government to provide a list of interested parties, and the purpose of that was to make sure that I don't have a conflict of interest.

Obviously, it doesn't make sense for anybody for me to get deeply into this case only to have to step away from it at a later date. And so to the extent there's any issue with respect to my presiding, better for everyone to know that sooner rather than later.

And then my final agenda item for this morning is to have a brief and, again, preliminary conversation about discovery, what's going on, and what the government expects to happen between today and the April 3rd conference that's coming up.

So with that by way of preliminaries, let me ask the government first just to say a word or two about the case and what it is you intend to prove here.

MR. SIEGEL: Thank you, Your Honor.

As you alluded to, it's laid out in a lot of detail

in the indictment and the letter that we filed on the day of the arrest.

But Mr. Watson was the founder and CEO of Ozy Media, which was a media company, an online media company that also did festivals and television shows.

And what we intend to prove is that from approximately 2018 until approximately the -- October of 2021, Mr. Watson agreed with others to defraud investors and lenders, and potential investors and potential lenders to Ozy, by misrepresentations about Ozy's actual performance, Ozy's projected performance, the contracts that Ozy had and the terms of those contracts, and that in several cases Mr. Watson and his co-conspirators impersonated other people in order to advance that fraud.

THE COURT: Okay. Thank you for that.

Needless to say -- needless to say, the defendant has pleaded not guilty and I will not assume any sort of acquiescence by your silence in response to that. I just want to understand the government's synopsis of where they think we're going from here.

I don't know if it's Mr. Biale or Ms. Harris speaking today. Mr. Biale, prior counsel for Mr. Watson indicated at his arraignment that they were here for a limited purpose, namely, arraignment, the bail hearing, and nothing else. I take it by your and your firm's appearance

today that that's not the case with you, that you're now in the case for all purposes. Is that fair to say?

MR. BIALE: That's correct, Your Honor.

THE COURT: Okay. Welcome to the case.

MR. BIALE: Thank you.

THE COURT: In terms of conflicts of interest, you know, I find this now as I indicated -- because when conflicts surface late it has the potential to set things back significantly and unnecessarily.

Is there any issue that the government sees with respect to Sher Tremonte's appearance in this case? Any prior involvement they've had with any witnesses, counter parties, or otherwise?

MR. SIEGEL: No. Thank you, Your Honor. There's nothing that we're aware of. If we become aware of anything we'll of course promptly let defense counsel and the Court know, but right now there's nothing that we're aware of that could create any kind of potential conflict.

THE COURT: Okay. And as I indicated, the government has filed under seal, and ex parte, a list of interested parties.

I've been through that and I didn't see any overlap between the people and entities listed there on the one hand, and my bio on the other hand. I just want to confirm that the government doesn't see anything along those lines either.

MR. SIEGEL: Certainly there's nothing that we're aware of and we don't see any issues at this time.

THE COURT: Okay. Obviously, if you saw the name Viking in anything that would be meaningful. I think that's highly unlikely, but that's the main question perhaps.

Has anybody seen a cap table for this entity? A current list of investors and their percentage ownership? That would be maybe a definitive source to consult in this regard.

MR. SIEGEL: So, Your Honor, we've seen several different versions of cap tables, many of which are mutually contradictory. Some of which were sent to investors, and some of which we've gotten from prior counsel which conflict with records that we've seen.

What we tried to do in the interested party list that we gave you is, every person who we have seen --

THE COURT: Okay.

MR. SIEGEL: -- and that we have reason to believe invested, we included. But in terms of sort of a clean, straight forward cap table, because of the nature of the allege of fraud, I'm not sure that there -- that there is such a document.

THE COURT: Okay. But that's -- that's revealing in itself that you've seen whatever number of versions of the cap table, and you're telling me that everybody, person or

entity you see on any of them, those names have made their way to the interested parties list.

MR. SIEGEL: What I can say is that that's what we endeavor to do. We look through it. Everything we saw, we put on. I don't think we missed any, but that's exactly what we tried to do.

THE COURT: Okay. Okay. Any questions or comments from the defense on that subject?

MR. BIALE: Not at this time, Your Honor.

THE COURT: Okay. All right. So the reason I would preliminarily raise the subject of discovery is that I would envision this case going to trial sometime in the first half of 2024.

You know, I understand there's a lot of documents and other material in the government's possession that needs to be produced to the defense, and that somebody needs to review.

But I don't -- even given that volume, I don't see this as -- at least as of yet, as an extraordinarily complicated case. It's not Enron, for example.

And so I just want to understand what is the government doing now with respect to the discovery material in your possession, and what do you expect to happen between now and April 3rd?

MR. SIEGEL: So the vast -- virtually all the

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

UNITED STATES OF AMERICA

- v -

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

---------- x

Criminal Case No. 23-00082 (EK)

NOTICE OF MOTION
ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that, on the accompanying Memorandum of Law and exhibits thereto, Defendants Carlos Watson and OZY Media, Inc. will move this Court at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, at a date and time to be set by the Court for an order disqualifying the Honorable Eric R. Komitee from this case, vacatur of the convictions of the Defendants, and dismissal of the indictment or, alternatively, random reassignment of the case to a different district judge and a new trial.

Dated: October 25, 2024

Respectfully submitted,

/s/ Andrew J. Frisch
Andrew J. Frisch
The Law Offices of Andrew J. Frisch, PLLC
40 Fulton Street, 17th Floor
New York, New York 10038
(212) 285-8000
afrisch@andrewfrisch.com

Attorney for Carlos Watson and OZY Media, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

UNITED STATES OF AMERICA

- v - Criminal Case No. 23-00082 (EK)

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

---------- x

MEMORANDUM OF LAW ON BEHALF OF THE DEFENDANTS IN SUPPORT OF THEIR MOTION TO DISQUALIFY THE HONORABLE ERIC R. KOMITEE

Andrew J. Frisch
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Attorney for Carlos Watson and OZY Media, Inc.

October 25, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

UNITED STATES OF AMERICA

- v - Criminal Case No. 23-00082 (EK)

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

---------- x

MEMORANDUM OF LAW

This Memorandum of Law is respectfully submitted on behalf of Defendants Carlos Watson and OZY Media, Inc. ("OZY") in support of their motion for an order disqualifying the Honorable Eric R. Komitee from this case, vacatur of the convictions of the Defendants, and dismissal of the indictment. While dismissal of the indictment is the only proper remedy for the irreparable constitutional prejudice to the Defendants, alternate relief should include a new trial upon reassignment of the case to a different district judge.

Introduction

On October 2, 2024, Judge Komitee's annual financial disclosure covering the calendar year 2023 (Form AO 10, the "2023 Disclosure," Exhibit A) first became available to the public, more than two months after conclusion of the trial in this case. Such disclosures are required by the Courthouse Ethics and Transparency Act ("CETA"), Pub. L. No. 117-125, 136 Stat. 1205, 5 U.S.C. §§ 13101, 13105, 13107 (2022), which served to amend the Ethics in Government Act of 1978, enacted in the aftermath of Watergate, to "increase public confidence

in the federal government, demonstrate the integrity of government officials, deter conflicts of interest . . . and enhance the ability of the citizenry to judge the performance of public officials." *Lovitky v. Trump*, 949 F.3d 753, 754 (D.C. Cir. 2020) (citation and quotation marks omitted); *Bader v. United States*, 97 F.4th 904, 909 (Fed. Cir. 2024). CETA "mandates the creation of a publicly-available online database to house judges' financial-disclosure reports." Albert Diaz and Steven J. Alagna, *"The Courthouse Ethics and Transparency Act: New Obligations for Federal Judges,"* 107 Judicature 78, 79 (2023)[1]; *see also* Memorandum of Director of the Administrative Office of the United States Courts, May 17, 2022 (Hon. Rosylnn R. Mauskopf memorandum to "All United States Judges" with overview of CETA requirements).[2] By signing the AO 10, Judge Komitee stated:

> I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure. I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 13141 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Exhibit A, Part IX.

The 2023 Disclosure reveals that Judge Komitee, through four hedge funds, maintained holdings in four entities alleged to be victims in this case (the "Four Alleged Victims," the "Four Victims," or the "Victims") between February 23, 2023 (when he was assigned to the case by Order of the Hon. Margo K. Brodie) through December 31, 2023 (the end

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[1] *Available at https://judicature.duke.edu/articles/the-courthouse-ethics-and-transparency-act-new-obligations-for-federal-judges/*

[2] *Available at https://fingfx.thomsonreuters.com/gfx/legaldocs/zdpxowxrgvx/udiciary_stocks_memo2.pdf*

date covered by the Form AO 10), and possibly through the trial in this case in 2024 and currently.[3]

Judge Komitee's 2023 Disclosure shows that he had between $6 million and $30 invested in two hedge funds managed by Viking Global Investors LP ("Viking"), a large hedge fund manager, with $64.5 billion in regulatory assets under management ("AUM"). Judge Komitee's two Viking hedge funds were Viking Global Equities LP (in which his interest is worth between $5,000,001 and $25,000,000) and Viking Global Opportunities LP ($1,000,001 to $5,000,000). Judge Komitee served as Viking's General Counsel from 2008 until June 2018 (upon his nomination to the federal bench by then-President Trump) and personally signed periodic reports to the Securities and Exchange Commission about Viking's investments, including investments in the Four Alleged Victims, as detailed below.

In 2023, Judge Komitee also had between $5 million and $25 million in D1 Capital Partners Onshore LP, a hedge fund offered by D1 Capital Partners LP ("D1"; $27.5 billion AUM). Another $5 million to $25 million of Judge Komitee's net worth in 2023 was in the form of investment interests in a fourth hedge fund, Junto Capital Partners LP, managed by Junto Capital Management LP, $8.8 billion AUM.[4] Both Junto and D1 were founded by former Viking portfolio managers who worked side-by-side with Komitee at Viking and sat with him on

[3] There does not appear to be any Periodic Transaction Report (required by CETA) filed in 2024 indicating any change of the positions, and Judge Komitee's positions in these hedge funds held constant (in terms of the value code on the Forms AO 10) from 2020 to 2023. Judge Komitee's AO 10 for 2024 has not yet been filed and is not due until May 15, 2025. *See* 5 U.S.C. § 13103(d).

[4] *See* Exhibit A, Part I (2023 Disclosure detailing Judge Komitee's ownership in the funds); Viking Global Investors LP, Form ADV, filed with the SEC on Sept. 3, 2024 ("Viking Current ADV"), p. 10, Item 5F(2)(a) (AUM $64,496,929,630); D1 Capital Partners LP Form ADV, filed with the SEC on Mar. 31, 2023 (most recent ADV available), p. 9 (AUM $27,551,209,342); Junto Capital Management L.P., Form ADV, filed with the SEC on Sept. 17, 2024, p. 20 (AUM $8,821,371,747).

Viking's Management Committee.[5]

Judge Komitee's 2023 Disclosure also establishes that, even after his assignment to this case, he continued to have working relationships with Viking's principals, including Viking's Chief Executive Officer, Ole Andreas Halvorsen, who was Judge Komitee's boss at Viking. In 2023, Judge Komitee served as a director of Viking Global Foundation Inc. ("the Foundation"), along with Halvorsen and other senior officials at Viking.[6] The Foundation that Komitee directs is a charitable entity headquartered at Viking's headquarters[7]; is entirely dependent on Viking for its operating revenue[8]; and is itself invested in a Viking hedge fund.[9] During the pendency of this case, while Judge Komitee sat on the Foundation's board with

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[5] James Parsons ("Parsons") is a co-founder and Chief Executive Officer of Junto Capital Management LP. Junto Capital Management L.P., Form ADV, filed with the SEC on Sept. 17, 2024, p. 30. Parsons worked at Viking "for almost a decade" before co-founding Junto. *Manhattan's Renovated 550 Madison Adds Junto Capital*, *Bloomberg*, Feb. 6, 2023. Daniel Sundheim ("Sundheim") is the founder and Chief Investment Officer of D1 Capital Partners LP. D1 Capital Partners LP Form ADV, filed with the SEC on Mar. 31, 2023 (most recent ADV available), p. 109. Sundheim joined Viking as an analyst in 2002 and became sole Chief Investment Officer of Viking in 2014; he exited Viking to launch D1 in July 2018, a month after Komitee's departure from Viking. *See* Katya Kazakina and Hema Parmar, *Ex-Viking CIO Daniel Sundheim Plans to Start Equity Hedge Fund,* Bloomberg, July 3, 2017. *See* https://dealbreaker.com/2010/04/dear-viking-global-investors (letter to Viking investors announcing elevated responsibilities for then General Counsel Komitee).

[6] *See* Exhibit A, Part I, line 1 (Judge Komitee was a director of the Foundation in 2023); Viking Global Foundation Inc., EIN 90-0512778, Form 990 ("Foundation 2023 Form 990"), filed with the IRS on July 12, 2024, Part VII (roster of Foundation directors), *available at https://projects.propublica.org/nonprofits/organizations/900512778/202421949349100722/full.*

[7] *Compare* Foundation 2023 Form 990, Part I (address of 600 Washington Boulevard, 11th Floor, Stamford, CT 06901) *with* Viking Current ADV, Item I(F) (same).

[8] Foundation 2023 Form 990, Part I ($2,206,268 total contributions *received by* Viking Foundation) and Schedule B ($2,206,268 total contributions *from* Viking).

[9] Foundation 2023 Form 990, p. 45 (Foundation has $5,861,315 invested in "Viking Global Equ. III Ltd."). Like Viking Global Equities LP, in which Judge Komitee has a $5 million to $25 million investment interest, Viking Global Equities III Ltd. is a feeder fund into Viking Global Equities Master Ltd., Viking's flagship hedge fund, with gross assets of $36.7 billion Viking Current ADV, p. 35.

Halvorsen and other senior Viking officials, Viking held stock positions worth hundreds of millions of dollars in one or more of the Alleged Victims, as discussed in more detail below.

The Four Alleged Victims in which Judge Komitee, through the hedge funds, held investments throughout 2023 are referred to in the Indictment, and representatives of two of them testified at trial:

(1) the Goldman Sachs Group, Inc. ("Goldman"), to which the Defendants allegedly made material misrepresentations and omissions about OZY's "historical and projected financial results, debts and business relationships" to induce an investment of up to $45 million, and to which a conspirator posed as an employee of YouTube, owned by Google, Inc. ("Google"), in a call to Goldman to misrepresent the extent of Google's interest in OZY.[10]

(2) Google, owned by Alphabet, Inc., which the Defendants allegedly misrepresented had made certain investments in OZY, and to which the Defendants allegedly provided false and inflated revenue figures.[11]

(3) LiveNation Entertainment ("LiveNation"), which conspirators allegedly misrepresented had committed to an investment in OZY of $10 million.[12]

(4) JPMorgan Chase ("JPMC"), to which conspirators allegedly misrepresented

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[10] S*ee* Indictment at ¶¶ 62-71, 99(p), 99(s), and 99(t); Testimony of Goldman's Hillel Moerman (T 1744) and Allison Ross Berardo (T 1464).

[11] *See* Indictment at ¶¶ 64, 82, 85, 88, 90, 91; Testimony of Sundar Pichai, Google's Chief Executive Officer (T 1734); Testimony of Donald Harrison, President of Google's Global Partnerships (T 1638); Testimony of Alex Piper, Google subsidiary YouTube's former Head of Unscripted Content (T 1675).

[12] *See* Indictment at 49; T614-67 (Testimony of Samir Rao); T 1417-21 (Testimony of Mohammed Abbas Maniar); T 2014-15 (Testimony of Suzee Han); T 2236-38 (Testimony of Maurice Werdegar); T 2434 (Testimony of FBI Special Agent Cara Alpaugh).

OZY's "historical and projected financial reality" in the context of a Series E fund raising round administered by JPMC.[13]

The government at trial stressed the importance of the Alleged Victims to its proof. "I want to start with the Goldman call because, keep in mind, to find the defendants guilty, you only need one lie . . . . If you find beyond a reasonable doubt one of those lies including the Goldman call, that is enough to convict and you can stop" (T 4401-02). "[I]f you find beyond a reasonable doubt that Watson was in on the impersonation, then this case is basically over. If he agreed with [conspirator Samir] Rao to impersonate [YouTube's] Alex Piper to land an investment from Goldman, that's fraud. Because Goldman was buying OZY stock, that's securities fraud. And that means Watson is guilty of Count One. Because the impersonation involved electronic communications between California and New York, that's wire fraud and that means Watson is guilty of Count Two. And because they stole Alex Piper's identity to do it, Watson is guilty of Count Three . . . . [T]he Goldman call alone is enough to find Watson and OZY guilty on all counts and to be done" (T 4412-13). "You have learned over the last several weeks that for years, Carlos Watson went around the country and around the world telling people that OZY was a proven success . . . that it had secured licensing agreement[s] with major media players like [Google's] YouTube and that OZY's fundraising rounds were being led by big names like Google and Live Nation . . . . But you now know that none of that was true" (T 4127). "Watson, Rao, and [conspirator Suzee] Han also told Goldman Sachs that OZY had earned $5.75 million in licensing revenue from YouTube based on a

[13] S*ee* Indictment at ¶¶ 96, 99(w), 99(x); T 923-26 (Testimony of Samir Rao); T 2562-66 (Testimony of Chetan Bansal)

licensing agreement . . . But you know that was a lie" (T 4180). *See also, e.g.,* T 4140, 4159, 4167, 4169-75, 4177, 4191, 4195, 4199, 4206, 4214, 4216-17, 4222, 4238.[14]

The analysis of Judge Komitee's holdings contained herein is based on his 2023 Disclosure as well as two sets of periodic reports filed with the Securities and Exchange Commission by Viking and the other hedge fund managers through which Judge Komitee maintained investments: (1) Form 13F, required by Section 13F of the Securities Exchange Act of 1934 to be filed each quarter by investment managers with control over at least $100 million in "13F securities" and which lists all equity assets under management, including the name of the issuer, the class of security, the number of shares owned, and the fair market value; and (2) Form ADV, required by the Advisors Act, 15 U.S.C. §§ 80b-3 and b-4, to be filed annually by investment advisors with assets over $25 million and to disclose information about the investment adviser's business, ownership, clients, employees, business practices, and affiliations. When Judge Komitee was General Counsel of Viking, he personally signed dozens of Viking's Forms 13F and Forms ADV, vouching for their truth.[15]

The analysis contained herein establishes that Judge Komitee's indirect beneficial ownership, through the four hedge funds, of the Four Victims in 2023 alone was worth at least

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[14] As detailed below, the Four Alleged Victims are not the only alleged victims whose relationships to Viking and Judge Komitee form a basis for disqualification.

[15] *See* Viking Global Investors LP, Forms 13F, filed with the SEC on the quarters ending June 30, 2009 through Mar. 31, 2018 (41 filings) (General Counsel Komitee representing each time "that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form."); Viking Global Investors LP, Forms ADV, filed with the SEC on May 27, 2011 and at least annually through Mar. 29, 2018 (16 filings) (General Counsel Komitee "certify[ing], under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct.").

between $126,000 and $1.1 million, depending on the financial quarter. These holdings were not transient, one-time positions but part of continuing, longstanding, and substantial relationships. For example, the analysis shows that Judge Komitee's equity interest in the Four Victims between 2018 and 2021, even before his assignment to this case, temporally overlapped with the Indictment's allegations about the charged conspiracy to commit securities and wire fraud from January 2018 to October 2021 [Indictment at ¶¶ 13-101], which allegedly began about six months *before* Judge Komitee resigned as Viking's General Counsel. Viking and the other hedge funds in which Judge Komitee was invested held positions in the Four Victims throughout the entire duration of the events laid out in the Indictment, beginning with OZY's inception in 2012 [Indictment at ¶ 5], its accumulating debt beginning in 2016 [Indictment at ¶¶ 10-11], and at least through to trial. In the fourth quarter of 2020 - - when many of the acts against Goldman and Google alleged to be part of the charged conspiracy occurred - - each of Judge Komitee's hedge funds owned securities in each of the Four Victims, conferring upon Judge Komitee an allocable beneficial ownership interest in the Four Victims worth between $1.3 million and $6.5 million.

While the available information contained in the 2023 Disclosure alone warranted the disqualification of Judge Komitee from presiding over this case *ab initio*, this motion does not purport to detail the universe of facts and circumstances that may further support his disqualification: (1) Judge Komitee's required financial disclosure for 2024 is not due until May 15, 2015 [*see* 5 U.S.C. § 13103(d)]; (2) information about all the investment funds and advisors through which Judge Komitee holds investments does not appear to be publicly available; and (3) the conservative analyses contained herein almost certainly *understate* the value of Judge

Komitee's financial holdings in the Victims.[16]

Even apart from Judge Komitee's connections to the Four Victims through his investments alone, it is a fair inference that a General Counsel of a hedge fund like Viking making such substantial investments in entities like the Four Victims would have had communications and relationships with the Victims that are relevant to this motion.

For example, Judge Komitee has publicly acknowledged his close friendship with Patrick J. Carroll ("Carroll"), a veteran of the Federal Bureau of Investigation. Goldman hired Carroll in 2015 as a vice president in its compliance, surveillance, and strategy group, according to Bloomberg News, which reported that "Carroll says he already knew many people at Goldman Sachs, having worked with 'their compliance for many years.'" Patricia Hurtado, *Goldman New Cop Is FBI Agent Who Put Away Madoff, Rajaratnam*, Bloomberg News, May 16, 2015 ("[i]t can help to have some people who know how government prosecutors and investigators think"). Carroll eventually became Global Head of the Monitoring and Assurance Group and Law Enforcement/Regulatory Liaison for Federal Crime Compliance, retiring in late February or

[16] To calculate the approximate value of Judge Komitee's holdings in the Four Victims (and every other public equity disclosed by the investment advisers on quarterly Form 13Fs), we allocated Judge Komitee's hedge fund interests (at the low-end and high-end valuations disclosed in the Forms AO 10) pro-rata across *all* of the "AUM" of Viking, D1, and Junto (per Item 5F2A of their ADVs). The investment advisers' AUM figures encompasses two types of funds: private equity funds and hedge funds. Private equity funds generally hold illiquid positions in private companies. Therefore, the publicly traded equity securities reported in the Form 13Fs (so-called "13F securities") are in all likelihood held in Viking's *hedge* funds, not its *private equity* funds. Even though Judge Komitee has disclosed that he owns interest in the applicable hedge funds, in order to estimate most conservatively Judge Komitee's beneficial interest in the Four Victims, we used the manager's entire AUM figure (i.e. hedge funds + private equity funds) as the denominator, not just that portion of the AUM allocated to the manager's hedge funds. Further, we ignored the manager's use of leverage, which would amplify Judge Komitee's beneficial ownership of the Four Victims. Accordingly, the allocable portion of Judge Komitee's public equity beneficial ownership in the Four Victims, in reality, is almost certainly greater than stated herein.

March 2023.[17] Thus, when the government was investigating the Indictment's alleged misrepresentations to Goldman, including a conspirator's highly-publicized call to Goldman in which he impersonated a representative of Google's YouTube [*see, e.g.*, *Goldman Sachs, Ozy Media and a $40 Million Conference Call Gone Wrong,* The New York Times, Sept. 26, 2021], Carroll or his underlings were presumably in contact with the FBI agents and the prosecutors investigating the Defendants. Goldman hired Carroll for precisely that type of purpose, and he remained employed at Goldman until just after the Indictment was filed in this case.

Carroll accompanied then nominee-Komitee to his confirmation hearing before the United States Senate Judiciary Committee in 2018, during which Komitee singled out Carroll as "a great friend. Pat was the FBI Special Agent in charge of squad C1, which is one of the two securities fraud squads in New York, when I was chief of the securities fraud section for the US Attorney's Office in Brooklyn. Pat and I forged a friendship that has survived and only grown stronger over the years."[18]

Similarly, in 2020 and 2021, after Judge Komitee was confirmed by the Senate, and during the period of the conspiracy for which the Defendants were indicted, he held an interest worth up to $1 million in Warlander Asset Management LP ("Warlander"), a hedge fund then in the process of winding down.[19] Raph Posner ("Posner"), Warlander's General Counsel (and thus Judge Komitee's counterpart at Warlander when he served Viking as General Counsel)

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[17] *Compare* LinkedIn for Patrick Carroll, available at *https://www.linkedin.com/in/patrick-carroll-92860911/* (giving title and retirement date of "March 2023") *with* Carroll's Finra CRD Snapshot Report (showing employment dates with Goldman Sachs of Apr. 22, 2015 to Feb. 28, 2023).

[18] *Available at https://www.judiciary.senate.gov/committee-activity/hearings/08/01/2018/nominations (testimony beginning at 1:11:36)*

[19] 2020 Disclosure, line 6.

left Warlander and became General Counsel of Antara Capital ("Antara"), another alleged victim of the charged conspiracy. *See* Indictment ¶¶ 84-91. Before jury selection, the government filed a list of potential witnesses or names about which the jury might hear to assure that selected jurors would be fair and impartial. *See* Docket No. 141. Posner was identified in the government's pretrial disclosure as such a person, *id.* at 15, and his business partner at Antara, Chetan Bansal, testified at trial. *See* T 2514-70. Like Carroll at Goldman, Posner or his underlings were presumably in contact with the government investigating the alleged fraud on Antara.

Additionally, Viking's substantial and longstanding institutional relationships with two of the Victims themselves create the appearance of impartiality in violation of Section 455(a). Viking's regulatory filings for 2023, as well as those signed by Judge Komitee when he was Viking's General Counsel, disclose that both Goldman and JPMC served Viking as qualified custodians of Viking's client's assets and Viking's prime brokers. The Custody Rule of the Investment Advisers Act requires Viking to maintain its clients' assets at qualified custodians. *See* 17 C.F.R. § 275.206(4)-2. Prime brokers provide multiple indispensable services to clients like Viking, including extension of credit and financing that permits transactions to be conducted efficiently, investment banking and consulting services, and introductions to sources of capital. *See Securities Law Handbook Series: Advising Private Funds, a Comprehensive Guide to Representing Hedge Funds, Private Equity Funds and Their Advisors, 2023-24* (Thomson Reuters) (Chapter 22 citing Staff Report to the SEC, Implication of the Growth of Hedge Funds

(Sept. 2023)[20]; *The Role of a Prime Broker,* www.investopedia.com, June 26, 2024.[21] Serving as qualified custodian and prime broker are among the core capacities of Goldman and JPMC, can generate hundreds of millions of dollars in revenue for them, and require deep relationships with their clients. Viking's relationships with its prime brokers are of crucial importance: without prime brokers, Viking simply could not conduct its business. Conversely, the largest prime brokers, like Goldman and JPMC, compete for the highly lucrative role of serving as prime broker for the large hedge funds - - and Viking's are among the largest such funds in the world. Goldman and JPMC provided prime broker services to Viking in 2023 when Judge Komitee maintained his positions in the Four Victims through Viking.[22]

In addition to its positions in public equities, Viking and D1 often co-invest with other investors in emerging businesses. Viking's co-investors in these private equity or venture capital deals were also investors in OZY - - and are among the Alleged Victims in this case. *See* Table 1 (Exhibit B), List of Viking Co-Investment Deals. For example, Viking has co-invested alongside the private equity or venture arms of Google, Goldman, and JPMC more than a dozen times, including as recently as June 11, 2024, when Viking and the venture arms of Google, Goldman, and JPMC *all* co-invested together in a $650 million deal with AlphaSense; Goldman

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[20] *Available at https://www.sec.gov/files/implications-growth-hedge-funds-09292003.pdf*

[21] *Available at https://www.investopedia.com/articles/professionals/110415/ role-prime-broker.asp*

[22] Judge Komitee's expertise in managing Viking's relationships with its prime brokers is apparent from his participation on a panel "about best practices" in managing such relationships. *See* Eric Ross Komitee, US Senate Judiciary Committee Questionnaire for Judicial Nominees, p. 9, *available at https://www.judiciary.senate.gov/imo/media/doc/Komitee%20SJQ.pdf* (disclosing then General Counsel Komitee's participation on a panel on June 26, 2012, entitled "Managing Your Prime Broker Relationship and Counter-Party Risk.").

and Google representatives testified in Komitee's courtroom two and three days after this deal closed, respectively.[23]

Additionally, as Table 1 (Exhibit B) also presents, Viking co-invested alongside other OZY investors who are alleged victims: Clayton Dubilier Rice, one of whose former partners, Thomas Franco, testified in this case and was presented as a victim of the charged conspiracy (T 1328); Emerson Collective; SV Capital; GSV/SuRo Capital; and Wilson Sonsini. Persons from or affiliated with these investment firms, and the names of the investment firms themselves, appeared on the Government's List of "Possible Witnesses and Other Individuals," Docket 141 at 13-18 (*e.g.*, SV Angel: Ron Conway; Emerson Collective: Laurene Powell Jobs, Steve McDermid; Clayton Dubilier & Rice: Dave Novak, Robert Quarta, Michael Dubilier, the Martin Tate Dubilier Accumulation Trust, the Riley Conchrane Dubilier Accumulation Trust; SuRo Capital Corp. and GSV: Mark Klein, Michael Moe, Tom Franco, Deborah Quazzo; Wilson Sonsini and WS Investment Company LLC). To the extent that Judge Komitee's investments in Viking or D1 are deployed in private equity holdings, or invested in these investment advisers' sidecar "side pocket" deals or co-investment vehicles, it is possible that he is or was an indirect co-investor with some of the same alleged victims in the instant case.

These issues created by the 2023 Disclosure arise as public confidence in the judiciary is plummeting. Earlier this year, the United States Court of Appeals for the Second Circuit ruled that a district judge should have recused himself, pursuant to 28 U.S.C. § 455(a), because his spouse owned $15,000 worth of stock in a party through a retirement account at

[23] Goldman representative Allison Berardo testified on June 13, 2024; Google representative Donald Harrison, testified on June 13; Google representative Alex Piper testified on June 13 and June 14; Google CEO Sundar Pichai testified on June 14; and Goldman's Hillel Moerman testified on June 14.

Charles Schwab, and even though she divested herself of the stock before the judge ruled on a motion to dismiss. *See Litovich v. Bank of America, Corp.*, 106 F.4th 218, 228-29 (2d Cir. 2024); Financial Disclosure Report for 2021 of the Honorable Lewis J. Liman at 23, 28. Section 455(a) provides that a "judge of the United States *shall* disqualify himself in any proceeding in which his impartiality might reasonably be questioned" (emphasis added). While a judge's actual knowledge of a disqualifying conflict requires recusal, actual knowledge is not required. Because the statute's purpose is to "promote public confidence in the integrity of the judicial process," even an appearance of impropriety requires recusal. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-60 (1988). "The test for whether an appearance of partiality exists is an objective one based on what a reasonable person knowing all the facts would conclude." *Litovich*, 106 F.4th at 224 (quoting *Chase Manhattan Bank v. Affiliated FM Ins. Co*, 343 F.3d 120, 127 (2d Cir. 2003); *Liteky v. United States*, 510 U.S. 540, 548 (1994) (Section 455(a) requires an "objective" evaluation of a potentially disqualifying interest; "what matters is not the reality of bias or prejudice but its appearance.").

The judge in *Litovich* disclosed his spouse's holding only after he was contacted by the Wall Street Journal as part of research for an article which it published a few days later. *See Litovich*, 106 F.4th at 224 (citing James V. Grimaldi, et al., *"Fallout From Judges' Financial Conflicts Spreads to Appeals Courts,"* Wall St. J. (Sept. 28, 2021)). Citing the article, Chief Justice John G. Roberts, Jr. wrote in 2021 that judges must "adhere to the highest standards:"

> We are duty bound to strive for 100% compliance because public trust is essential, not incident, to our function. Individually, judges must be scrupulously attentive to both the letter and spirit of our rules, as most are.

2021 Year-End Report on the Federal Judiciary (Dec. 31, 2021) at 3-4. Legislators also

recognize the imperative of avoiding judicial conflicts of interest: "Failure to recuse can cause real harm to parties seeking fair and impartial justice and leave a cloud of doubt over any decision that is made once the conflicts are subsequently uncovered." 168 Cong. Rec. H4522 (daily ed. Apr. 27, 2022) (statement of Rep. Hakeem Jeffries). *See also* "Senator Warren, Representative Jayapal Reintroduce the Judicial Ethics and Anti-Corruption Act," June 8, 2023 (statement introducing legislation to "forbid[] judges from owning individual stocks and securities, commercial real estate, trusts, and private companies").

Unlike the civil litigants in *Litovich*, the Defendants here have a constitutional right to due process and a fair trial. As the Supreme Court has explained:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Tumey v. Ohio*, 273 U.S. 510, 532 [1927]. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 [1954].

In re Murchiso, 349 U.S. 133, 136 (1955).

Also unlike *Litovich*, Judge Komitee is not a casual investor presumptively disinterested in the nuts-and-bolts of a retirement account like the judge's spouse in *Litovich*. Investors in Viking hedge funds, such as Judge Komitee, are sent a constant stream of detailed account reports from Viking, including "weekly performance estimates" and "monthly attribution reports containing performance and exposure estimates, long equity positions reports and

statements of net asset value." Viking Global Investors LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC March 28, 2024, p. 62.

Further, apart from Judge Komitee's multiple professional and longstanding connections to the Victims and his experience as General Counsel of a major hedge fund, he is not a casual or disinterested investor. His financial disclosures reveal that, since his investiture, he has continued to be an active investor who trades in highly volatile assets, such as high-risk short sales of GameStop, a "meme" stock; trades in Tesla during a period of high volatility; and buying and selling hundreds of thousands of dollars' worth of crypto-currencies, which are subject to wild price swings (Bitcoin and Ethereum).[24]

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[24] The timing of Judge Komitee's trading activity - - trades on high volatility days, trades of multiple stocks on the same day, etc. - - appears to be more consistent with deliberate trades, as opposed to pre-set orders or setting pre-set execution instructions.

GameStop: Judge Komitee reported gains of between $115,002 and $1,050,000 on his December 2022 GameStop trades; these were only some of his GameStop transactions disclosed on various Forms AO 10 and AO-10T. *See, e.g.* Eric R. Komitee, Form AO 10 for 2021, line 35 (Judge Komitee held GameStop); Form AO 10 for 2022, lines 37-56 (GameStop trades). In the aggregate, Judge Komitee reported trading between $1,950,015 and $3,450,000 worth of GameStop common stock.

Tesla: In both 2020 and 2021, Judge Komitee held up to $15,000 in Tesla. *See* Eric R. Komitee, Form AO 10 for 2020, line 32; Form AO 10 for 2021, line 32. Judge Komitee did not disclose acquiring Tesla in 2020, so it is presumed that he went into 2020 already holding this position. This 2020–2021 period is when Tesla's stock price had its highest volatility, ranging from a low of $28.71 (Jan. 2020) to a high of $414.50 (Nov. 4, 2021). *See https://finance.yahoo.com/quote/TSLA/history/?period1=1577836800&period2=1640908800*

Bitcoin: Judge Komitee bought or sold Bitcoin in 2021, 2022, and 2023. *See* Form AO 10 for 2021, line 41; Form AO 10 for 2022, lines 63-65; Form AO 10 2023, lines 44-45. On Feb. 15, 2021, when Komitee first disclosed buying Bitcoin, the price was $47.945.06. On Sept. 19 or 20, 2023, when Komitee sold between $250,001 and $500,000 worth of Bitcoin, Bitcoin closed at $27,211.12.

Ethereum: Judge Komitee traded in Ethereum in 2022 and 2023. *See* Form AO10 for 2022, lines 66-67; AO10 Form for 2023, line 46. Judge Komitee bought into Ethereum at closing prices of $3,142.47 and $2,933.48; when he exited Ethereum, the closing price was $1,806. *See https://finance.yahoo.com/quote/ETH-USD / history/?period1=1675209600&period2=1680307200.*

Judge Komitee should not have presided over this case and should be disqualified *nunc pro tunc* as of February 23, 2023. Because Judge Komitee presided over the case in violation of Sections 455(a) and (b), the Defendants were denied their constitutional rights to due process and a fair trial. Judge Komitee's connection to the Victims was far more substantive, longstanding, and lucrative than the relatively *de minimis* holding of $15,000 in a retirement account by the judge's spouse in *Litovich,* a civil case. Yet the Circuit vacated the judgment in *Litovich*. *Id.* at 228. So here, the convictions must be vacated.

In addition, upon vacatur, the Indictment should be dismissed. The Defendants endured an unconstitutional two-month trial, revealed their defenses, and subjected their witnesses (including Mr. Watson himself) to cross-examination, even apart from the extraordinary costs of litigation - - "in terms of personal, financial and judicial resources." *See United States v. Mahaffy*, 693 F.3d 113, 133 (2d Cir. 2012). The Defendants have been irreparably prejudiced, and dismissal is the only proper and effective remedy. Meanwhile, the government can seek redress for the Defendants' allegedly fraudulent conduct in the pending *Securities and Exchange Commission v. OZY Media, Inc., Carlos R. Watson, Jr., Samir Rao, and Suzee Han*, 1:23-cv-01424 (E.D.N.Y.).

Argument

A. The actual and apparent conflicts should have been disclosed when the case was assigned to Judge Komitee.

When an indictment is filed, it is incumbent on the government to advise the judge of victims of the alleged criminal activity so that the judge may evaluate whether any actual or perceived conflict disqualifies the judge from presiding over the case. On February 23, 2023, the day that the Indictment was unsealed, the government filed a statement with the Court, pursuant to Federal Rule of Criminal Procedure 12.4, presumably identifying any and all organizational victims. The government's disclosure was filed *ex parte* and under seal. Within the last two weeks, defense counsel requested the filing from the Court via email and thereafter from the government, which said that would it discuss counsel's request internally and also determine whether a court order was needed to share it, but neither the Court nor the government has otherwise responded.

On May 6, 2024, over a year after the government's *ex parte* disclosure to the Court pursuant to Rule 12.4, the government filed a "list of persons, entities and places" to be provided to prospective jurors during *voir dire* to assure that selected jurors could be fair and impartial. That list identified the victims and witnesses and potential witnesses identified above, including Goldman, Google and Alphabet, Inc., JPMC, Live Nation, Raph Posner, Hillel Moerman, Sundar Pichai, and Chetan Bansal. Docket No. 141 at 13-18.

Independent of the government's various disclosures, a judge has an obligation to "inform himself about his personal and fiduciary financial interests," *see* 28 U.S.C. 455(c), to avoid an "objective appearance of a conflict of interest requiring disqualification under Section 455(a)." *Chase Manhattan Bank,* 343 F.3d at 129. As the Second Circuit has explained,

> [I]t is important to understand that judges have an obligation to exercise reasonable effort in avoiding cases in which they are disqualified. Section 455 is not a provision that requires judicial action only after a party to the litigation requests it. The relevant provisions are directive and require some reasonable investigation and action on the judge's own initiative . . . . to avoid damage to public confidence in the federal judiciary's impartiality that would result from constant recusal motions or recurrent controversies over judges' financial interest in parties to litigation. Another reason is that lawyers for the most part expect judges to disqualify themselves under Section 455(b)(4) without a formal motion. In fact, lawyers do not routinely search judges' financial disclosure forms - - the only information available on a particular judge's financial holdings - - but even if they did, those forms are generally a minimum of four months out-of-date, i.e., the forms are filed by May [15] and report holdings and transactions for the previous calendar year. Judges therefore be the principal burden of compliance with that section."

Id. at 130-31.

Thus, it was not incumbent on the defense to identify the bases on which the judge's "impartiality might reasonably be questioned" under 28 U.S.C. § 455(a), nor whether the judge had any "financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding" under 28 U.S.C. § 455(b)(4). Nor was it incumbent on the defense to search Judge Komitee's financial disclosure forms - - nor could the defense have done so effectively, since the 2023 Disclosure was not publicly available until October 2, 2024.[25] Moreover, Judge Komitee's disclosure for 2024, when the Defendants were tried, has not yet been filed and is not due until May 15, 2025. *See* 5 U.S.C. § 13103(d).

It is not the defense's obligation to speculate as to whether the government failed

[25] On October 2, 2024, a representative of the Administrative Office of the United States Courts, the entity that maintains judges' financial disclosures, emailed the defense that Judge Komitee's 2023 Disclosure had been posted to the public website on which such financial disclosures are maintained. Metadata shows that the PDF of the 2023 Disclosure posted to the website was created on October 1, 2024 at 8:09 p.m.

to provide a sufficiently fulsome disclosure pursuant to Rule 12.4 to enable a judge to evaluate any apparent or actual disqualifying conflict, or whether a judge failed to recognize all the possible bases for his disqualification. Here, at the very least, Judge Komitee must have realized that he might benefit from an order of restitution in favor of any of the Four Alleged Victims or other entities discussed herein. Indeed, Judge Komitee acknowledged that Mr. Watson "is facing a restitution obligation." T 4595. Whether or not any restitution is ultimately ordered for the benefit of one or more victims in this case, Judge Komitee's apparent failure to appreciate the potential that he himself might benefit from such restitution creates precisely the appearance of partiality that Section 455(a) is meant to guard against. See *Litovich*, 106 F.4th at 224; *Liteky*, 510 U.S. at 548. At the very least, a judge with Judge Komitee's atypical prior experience as General Counsel of one of one world's largest hedge fund managers and his continued holdings in 2023 should have appreciated his connections with the victims in this case and addressed the issue at the earliest opportunity.

B. Judge Komitee's holdings in the Four Victims in 2023

The 2023 Disclosure establishes that Judge Komitee in 2023 owned investments in four hedge funds, among other investments. Table 2 (Exhibit B) sets forth Judge Komitee's holdings in the Four Victims in 2023. It shows that, through hedge funds, Judge Komitee's allocable investments in the Four Victims in 2023 amounted to between $120,000 and $1.1 million, depending on the quarter. For comparison, in the second quarter of 2023, when his allocable ownership interest in the Four Victims was at its lowest (approximately $120,000 to $630,000), his lowest possible ownership interest in the Four Victims amounted to half of his annual judicial salary of $232,600; in the fourth quarter of 2023, when his allocable ownership in

the Four Victims was at its highest (approximately $215,000 to $1.1 million), the maximum value of his allocated investments in the Four Victims exceeded his salary by a factor of four.

Unlike the single investment of $15,000 that was part of a retirement account maintained by a judge's spouse at Charles Schwab in *Litovich*, Judge Komitee's investments in the Four Victims in just 2023 were substantially larger. Moreover, his relationship with at least one of his investment advisors (Viking) was far more substantive and longstanding than the relationship at issue in *Litovich*.

C. Judge Komitee's holdings in 2023 continued investments in the tens of millions of dollars that he held when he was Viking's General Counsel and signed forms disclosing investments in the Four Victims on behalf of Viking — all during the time period covered in the Indictment.

The test for disqualification under Section 455 "is an objective one which assumes that a reasonable person knows and understands all the relevant facts." *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988). "[J]udges determine appearance of impropriety . . . by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge." *Id.*

Judge Komitee's investments in the Four Victims in 2023 represent a continuation of his investments in and relationships with the Alleged Victims - - covering the time period of events alleged in the Indictment and in the government's evidence presented at trial.

1. 2008-2011 (Pre-Indictment Events)

Beginning in 2008, Judge Komitee began as Viking's General Counsel.[26] In April

[26] Biography of Eric Ross Komitee, Federal Judicial Center, *available at https://www.fjc.gov /history/ judges/komitee-eric-ross; see also* Eric Ross Komitee, US Senate Judiciary Committee Questionnaire for Judicial Nominees, p. 25, *available at https://www.judiciary.senate.gov/imo/media /doc/Komitee%20SJQ.pdf* (he "oversaw the firm's legal and regulatory affairs," "managed a broad spectrum of transactional work," and "supervised the legal aspects of Viking's counterparty-risk

2010, Viking's CEO Halvorsen promoted Judge Komitee to Viking's Management Committee, to take on "greater responsibility for the day-to-day management of the firm." *"Dear Viking Global Investors,"* Dealbreaker, Apr. 14, 2010 (publishing Halvorsen's first quarter letter to investors announcing promotions).[27] Judge Komitee signed all of Viking's quarterly Form 13Fs, itemizing Viking's public stock holdings.[28] Because he signed Viking's initial Form ADV and subsequent ADVs, he also was presumably aware of Viking's investments beyond public equities. *See CIE Prepares for Post-Registration Exams,* Compliance Reporter, Jan. 27, 2012 (reporting on Viking's initial ADV registration process). It is reasonable to infer that a general counsel in Judge Komitee's position would have gained familiarity with the Four Victims and may have had occasion to participate in or oversee interactions with their key managers, even apart from Goldman's and JPMC's roles as qualified custodians and prime brokers. Because Viking's public stock positions were, and are, the largest part of its portfolio, with Viking using a "limited diversification" strategy and concentrating assets in a few select stocks [Viking Global Investors LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC May 27, 2011, p. 10], Viking "investigat[ed]" companies before purchasing stocks, a process that included "interviews with a company's management team; background checks on key members of a management team; discussions with a company's customers and competitors; analysis of the assets on a company's balance sheet; a detailed review of a company's products and services; and

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management effort," among other things).

[27] *Available at https://dealbreaker.com/2010/04/dear-viking-global-investors*

[28] Viking Global Investors LP, Forms 13F, filed with the SEC on the quarters ending 6/30/2009, 9/30/2009, 12/31/2009, 3/31/2010, 6/30/2010, 9/30/2010, 12/31/2010, 3/31/2011, 6/30/2011, 9/30/2011, 12/31/2011.

consultation with industry experts." *Id.* at 9.

As Table 3 (Exhibit B) shows between 2008 and 2011, Viking's largest quarterly position in the Four Alleged Victims worth $835 million position, and held an average quarterly position in the Four Victims worth $162.4 million.

2. 2012 - 2017 (The Pre-Conspiracy Period Described in the Indictment)

A line can be drawn from Judge Komitee's 2023 Disclosure to the pre-conspiracy period described in the Indictment and evidence presented at trial (2012 to 2017). *See, e.g.,* Indictment ¶¶ 5 (OZY's history beginning with its inception in 2012), ¶ 7 (OZY's official launch in 2013), ¶ 8 (Emerson Collective's investment in OZY in 2014), ¶¶ 10-11 (transactions in 2016 and 2017); T at 3688 (cross-examination of Watson regarding 2017 term sheet referencing OWN/Discovery and Google). During this time period, the importance of Google to Viking's investment portfolio is difficult to overstate. Returns from Viking's ownership of Google stock "saved" Viking in 2015's third quarter and, in 2016, propelled Viking into the "top tier" of global hedge fund operators, ranking sixth in the world with $33 billion in assets under management. Stephen Taub, *Hedge Funds Get a Boost from Microsoft, Google,* Institutional Investor's Alpha, Oct. 26, 2015; Stephen Taub, *In a Tough Year Viking Global Stages an October Comeback, Institutional Investor's Alpha,* Nov. 4, 2015; Antoine Gara, *Billionaire Andreas Halvorsen's Viking Global is Betting Over $6 Billion on FANG [Facebook, Amazon, Netflix, and Google] Stocks,* Forbes, May 17, 2016; Stephen Taub, *Hedge Fund Report Card,* Institutional Investor's Alpha, Feb. 11, 2016.

Other Alleged Victims were also important stock positions for Viking during this time period, as Table 4 (Exhibit B) shows. For the quarter ending March 31, 2017, for example,

Viking held combined positions in Google and JPMC exceeding $2.4 billion. (This quarter was the high-water mark for Viking's AUM during Judge Komitee's tenure at Viking. Viking Global Investors LP, Form ADV, filed with the SEC March 29, 2017. The following quarter, when Viking co-invested alongside OZY investor Clayton Dubilier & Rice in a $233.5 million private deal, Viking held a $634.3 million stake in Google. Another hedge fund which appears on Judge Komitee's 2023 Disclosure, Junto, also held positions in Google and Live Nation exceeding $100 million in the final quarters of 2017, as shown in Table 5 (Exhibit B).

3. 2018 and 2019 (First Two Years of the Charged Conspiracy)

As alleged in the Indictment, the charged conspiracy extended from January 2018 (Q1 2018) until October 2021 (Q4 2021). During the first part of the conspiracy (2018 to 2019), Judge Komitee was not yet required to file financial disclosures pursuant to CETA, but evidence supports the reasonable inference that Judge Komitee in fact maintained investments in Viking during this period. After Judge Komitee's nomination to the bench, a reporter for the publication *Corporate Counsel* gained access to and reported on the then-nominee's financial disclosures to the Senate Judiciary Committee, revealing, among other details, that then-nominee Komitee was "contractually obligated" to maintain a specified minimum balance in certain funds managed by Viking for at least three years, unless Viking waived the lock-up period. *See* C. Ryan Barber, *Eric Komitee, Trump Pick for NY Court, Made Millions as Hedge Fund GC,* Corporate Counsel, July 11, 2018 (disclosing Judge Komitee's Viking salary and bonus).[29] Further, according to the same article, the nominee's Senate disclosures "reveal[ed] interests in several investment funds,

[29] *Available at https://www.law.com/corpcounsel/2018/07/11/eric-komitee-trump-pick-for-ny-court-made-millions-as-hedge-fund-gc/*

including some run by Viking Global Investors," meaning that Judge Komitee, in 2018, was invested in funds outside of Viking, as he was in 2023 (Junto and D1).

As Table 6 (Exhibit B) illustrates, during the first part of the charged conspiracy (2018 to 2019), Viking owned sizeable positions in Google in every quarter, exceeding $1 billion in 1Q 2018 and $969 million in 4Q 2018. If Judge Komitee had been invested in the Viking funds in 2018 and 2019 at the same level as he was in the 2020 to 2023 period, then his pro-rated allocation of Viking's holding in Google from 2018 to 2019 was worth as much as $900,000.

Tables 7 and 8 (Exhibit B) show, respectively, that D1 owned positions in Google between 4Q 2018 and 4Q 2019, topping out at $308.3 million in 1Q 2019; and that at various quarters in 2018 and 2019, Junto owned tens of million dollars' worth of stock in Google, Goldman, and Live Nation.

4. 2020 and 2021 (Second Two Years of The Charged Conspiracy)

For 2020 and 2021, Judge Komitee was first required to make financial disclosures as a judicial officer. As Table 9 (Exhibit B) sets forth, during just the fourth quarter of 2020, Viking, D1, and Junto collectively held more than $2 billion worth of Google and $80 million worth of Goldman. Judge Komitee's allocable interest in these two alleged victims for 2020 to 2021 was between $700,000 and $3.5 million, depending on the quarter in question. For each quarter of 2020, Judge Komitee's minimum financial interest in the Four Victims was between approximately $346,000 (low-end of 1Q 2020) and $6.5 million (high-end of 4Q 2020) - - exceeding his salary as a judge, for example, by a multiple of 1.6 for 2020's first quarter and by a multiple of six for 2020's fourth quarter.

5. *2023 and 2024 (The Pendency of the Case, Including Trial)*

The pendency of this case covers calendar year 2023 (for which Judge Komitee's 2023 Disclosure only recently became available) and calendar year 2024 (for which his disclosure will not be available until May 15, 2025). The analysis below assumes that Judge Komitee, in 2024, maintained ownership in the four hedge funds at the same levels as he did in 2023 and before.

Table 11 (Exhibit B) sets forth Judge Komitee's pro-rata financial interest in the Four Alleged Victims in 2023 and 2024. The table reveals the following. *First,* Judge Komitee's average allocable position in the Four Alleged Victims was between $180,854.46 and $904,272 per quarter in 2023. The first quarter of 2024 was the high-water mark, with Judge Komitee holding an ownership interest in all four of the Four Victims between $219,703.95 (low-end) and $1,098,519.54 (high-end). *Second,* 4Q 2023 was the second highest quarter in terms of Judge Komitee's stake in the Four Victims; he held, collectively, between $214,789.29 (low-end) and $1,073,946.10 (high-end). *Third*, of the seven relevant quarters during the pendency of this case, Judge Komitee's ownership in the Victims was lowest in Q2 2024: between $126,050.17 (low-end) and $630,250.71 (high-end). In other words, even at its lowest point, Judge Komitee's allocable ownership interest in the Four Victims still measured into the six digits.

D. Apart from Section 455(a), Section 455(b) also requires disqualification

Apart from Section 455(a)'s mandate, Section 455(b) also requires Judge Komitee's disqualification. Section 455(b)(4) requires disqualification when a judge possesses an equitable interest in "the subject matter in controversy or in a party in the proceeding, or any

other interest that could be substantially affected by the outcome of the proceeding." Section 455(d)(4)(I) exempts ownership in "a mutual or common investment fund" that holds "securities unless the judge participates in the management of the fund," but that exemption is inapplicable here for at least three reasons.

First, while the exemption is expressed in the present tense (*e.g.*, "unless the judge *participates* in the management of the fund") (emphasis added), Congress could not have intended to exempt a judge under the circumstances here who served the fund as General Counsel (thereby participating in the management of the fund), signed its Forms 13F and ADV, and who continues to serve with his former colleagues on a foundation, which itself is invested in the same fund and depends entirely on the fund for its operating revenue and endowment.

Second, the United States Courts Guide to Judiciary Policy Vol. 2B, Ch. 2, Nos. 57 and 106, provides guidance for compliance for Canon 3(C)(1)(c) and (3)(c) of the Code of Conduct for United States Judges, which tracks the language of Section 455 and focuses on the judge's interest, not his current management. *See id.* at 204 ("At the same time, however, a judge who chooses to invest in such mutual funds should evaluate whether his or her 'interest' in the fund might be affected substantially by the outcome of a particular case, which would require recusal under Canon 3C(1)(c)."). The government's claims about the materiality of the Defendants' misrepresentations to the Four Victims coupled with the temporal and monetary extent of Viking's investment in them precludes any reasonable conclusion that Judge Komitee's interests could not be substantially affected.

Third, the Committee on Codes of Conduct Advisory Opinion No. 106 (issued in March 2011) provides six criteria to assist judges "in determining whether a fund is a 'mutual or

common investment fund," within the meaning of the Code: "(1) the number of participants in the fund; (2) the size and diversity of fund investments; (3) the ability of participants to direct their investments; (4) the ease of access to and frequency of information provided about the fund portfolio; (5) the pace of turnover in fund investments; and (6) any ownership interest investors have in the individual assets of the fund." *Id.*

Each factor militates against viewing Judge Komitee's interests in the funds as exempt "mutual or common investment funds." *First*, unlike mutual funds, which can have hundreds of thousands or even millions of investors, the funds here have fewer than 1,000 investors each, because the thresholds to entry are so high.[30] *Second*, the funds concentrate their positions in a few public stocks, explicitly employing "limited diversification," unlike mutual funds.[31] *Third,* the funds are actively and aggressively managed, with positions changing quarter by quarter, as the Forms 13F show. *Fourth*, investors in the funds are sent a steady incoming stream of information about their investment portfolios - - "weekly performance estimates" and monthly "attribution reports" reporting long equity positions from Viking,[32] and, from Junto,

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[30] Junto Capital Management L.P., Form ADV, filed with the SEC on Sept. 17, 2024, p. 20 (minimum investment commitment of $5 million, 387 beneficial owners). D1 Capital Partners LP Form ADV, filed with the SEC on Mar. 31, 2023, p. 29 ($2 million investment minimum, 812 beneficial owners). Viking Current ADV, pp. 38 ($5 million minimum investment commitment, 637 beneficial owners for Viking Global Equities LP), 73 ($5 million minimum investment commitment, 276 beneficial owners for Viking Global Opportunities LP).

[31] Viking Global Investors LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC March 28, 2024, p. 19 (allowing for up to 12% of certain funds' investment capital to be concentrated in a single position); D1 Capital Partners LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC in Mar. 2024, pp. 22-23 ("limited diversification"); Junto Capital Management LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC on Sept. 17, 2024, p. 23 (same).

[32] Viking Global Investors LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC March 28, 2024, p. 62.

monthly reports and "information on a more frequent and detailed basis" for some investors.[33] *Fifth,* as the Forms 13F show, the funds turnover their portfolios rapidly within each quarter and across quarters. *Sixth*, these funds offer "sidecar" and other customized investment opportunities for individual investors to co-invest in specific assets, unlike mutual funds.[34] In sum, because ownership in a hedge fund is a "financial interest" not subject to the "mutual or common investment fund" safe harbor, disqualification is mandatory under § 455(b).

E. Dismissal of the Indictment is the proper remedy

The Second Circuit in *Litovich* considered three factors in determining that the holding of just $15,000 of the judge's spouse in a Charles Schwab retirement account required vacatur of the judgment in that case. Application of those factors to this case requires both vacatur of the convictions and dismissal of the indictment.

As to the first factor, *Litovich* considered "the risk of injustice to the parties in the particular case." *See Litovich*, 106 F.4th at 226-27. The court concluded that "there is a plausible risk of injustice . . . because it is conceivable, albeit highly unlikely, that the district judge's conflict of interest impacted the outcome of the case." *Id.* (citing *Liljeberg*, 486 U.S. at 867-68) (noting that even where the district court judge did not know of his fiduciary interest in the litigation, he should have known, which was "precisely the kind of appearance of impropriety § 455(a) was intended to prevent.").

As to the second factor, *Litovich* considered "the risk that the denial of relief will

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[33] Junto Capital Management LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC on Sept. 17, 2024, p. 40.

[34] Viking Global Investors LP, Part 2A of Form ADV: Firm Brochure, filed with the SEC March 28, 2024, p. 17 (describing "co-investment opportunities").

produce injustice in other cases." *Id.* The court concluded that the injustice "is that federal judges will fail to recuse themselves in future cases, which . . . may increas[e] the likelihood that conflicts [] go unnoticed and unremedied." *Id.* (quotation marks and citation omitted). As the court explained:

> As we have stated before, "judges have an obligation to exercise reasonable effort in avoiding cases in which they are disqualified," and accordingly bear the burden of complying with the strictures of § 455(a). *Chase Manhattan Bank*, 343 F.3d at 130. Thus, by enforcing it here, we hope to "prevent a substantive injustice in some future case" by urging our peers "to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered." *Liljeberg*, 486 U.S. 868.

Id.

As to the third factor, *Litovich* considered "the risk of undermining the public's confidence in the judicial process." *Id.* The court concluded that "vacating the judgment both complies with our statutory mandate and is the best means of dispelling any potential loss of faith in the judiciary" in part because "recurrent controversies legitimately risk undermining public confidence in the federal judiciary and its function: the fair adjudication of the law." *Id.* at 227-28. The court also concluded that the appearance of impartiality was sufficiently significant to require vacatur even though the judge's spouse divested her holding before the judge ruled on the motion to dismiss in part because of the length of time that the judge had already presided over the case. *Id.*

Litovich and this case are a galaxy apart in multiple ways. The basis for the appearance of impartiality here is not a spouse's holding of $15,000 through a Charles Schwab retirement account, but the judge's own six or seven figure holdings in victims during the pendency of the case, which followed holdings in the millions before his assignment to the case

and attendant relationships that were extensive, longstanding, at least some of which continued during the pendency of the case. It is far too late even to try to put the cat back into the bag.

Litovich's reasoning should compel dismissal of the Indictment. The Defendants have been irreparably prejudiced. They endured an unconstitutional two-month trial, revealed their strategies through cross-examination and argument, and subjected their witnesses to cross-examination, including Mr. Watson himself who testified, waiving his constitutional right to remain silent. While vacating the judgment in *Litovich* was sufficient to return the parties to the *status quo ante* in that civil case, it would not do so here as a new trial would represent a windfall to the government, which could prepare to meet the defense with advance granular knowledge of it and virtually unlimited resources - - all apart from the defense's irreplaceable investment in resources and time. *See Mahaffy*, 693 F.3d at 133. A new trial would perpetuate the irreparable prejudice already suffered and compromise the imperative to restore integrity to and public confidence in the courts, especially as the government can seek redress for the alleged fraud in the pending *Securities and Exchange Commission v. OZY Media, Inc., et al.*

Conclusion

For these reasons, an order should issue disqualifying Judge Komitee from this case, vacating the convictions of the Defendants, and dismissing the indictment or, alternatively, random reassignment of the case to a different district judge and a new trial.

/s/ Andrew J. Frisch
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New York, New York 10038
(212) 285-8000
afrisch@andrewfrisch.com

Attorney for Carlos Watson and OZY Media, Inc.

AO 10
Rev. 3/2023

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2023

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 13101-13111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Komitee , Eric R.	US District Court - Eastern District of New York	5/15/2024
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
ACTIVE STATUS	☐ Nomination Date ☐ Initial ☑ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2023 **to** 12/31/2023
7. Chambers or Office Address		
255 CADMAN PLAZA EAST BROOKLYN, NY 11201		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

I. POSITIONS. *(Reporting individual only; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 345 Trustees, Executors, Administrators, and Custodians; § 350 Power of Attorney; § 355 Outside Positions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	DIRECTOR	VIKING GLOBAL FOUNDATION INC. (NON-PROFIT CHARITABLE ORGANIZATION)
2.	ALUMNI BOARD MEMBER (NON-FIDUCIARY)	EMORY COLLEGE
3.	PROFESSOR	COLUMBIA UNIVERSITY LAW SCHOOL
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 340 Agreements and Arrangements.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/15/2024

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 320 Income; § 360 Spouses and Dependent Children.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2023	COLUMBIA LAW SCHOOL, LECTURING COMPENSATION	$15,000.00
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	RODEL INSTITUTE	September 2023	Syracuse, New York	Seminar	Transportation & Hotel
2.	GEORGE MASON UNIVERSITY SCALIA SCHOOL OF LAW	May 2023	Arlington, Virginia	Lecture and Panel Discussion	Transportation & Hotel & Meal
3.					
4.					
5.					

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/15/2024

V. GIFTS. *(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)*

☑ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.			
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 335 Liabilities; § 360 Spouses and Dependent Children.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	JP MORGAN	VISA CARD	L
2.	AMERICAN EXPRESS	CREDIT CARD	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/15/2024

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	
1. Viking Global Equities LP	H1	Dividend	P2	T					
2. Viking Global Opportunities LP	F	Dividend	P1	T					
3. D1 Capital Partners Onshore LP	A	Dividend	P2	T					
4. Junto Capital Partners LP	H1	Dividend	P2	T	Distributed (part)	02/15/23	O		
5. 151 Baltic ST JV LLC	A	Dividend	L	T					
6. Invesco QQQ Trust	D	Dividend	O	T	Sold (part)	04/03/23	O		
7. Ishares Russel 2000 ETF		None	L	T					
8. Lord Abbett Floating Rate A Fund		None	K	T					
9. Schwab US TIPS ETF	D	Dividend	M	T					
10. SPDR S&P 500 ETF	E	Dividend	P1	T					
11. Vanguard FTSE All World EX-US ETF		None	J	T					
12. SPDR Gold Shares ETF		None			Sold (part)	08/29/23	M	E	
13.					Sold	9/19/23	M	B	
14. JP Morgan Unallocated Gold Fund		None	J	T					
15. iShares MSCI EAFE ETF		None	K	T					
16. SPDR Dow Jones ETF		None	K	T					
17. Invesco Diversified Dividend Fund		None	M	T					

1. Income Gain Codes: (See Columns B1 and D4) — A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3) — J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

3. Value Method Codes (See Column C2) — Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/15/2024

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	
18. iShares S&P 500 Index Fund		None	M	T					
19. Clearbridge Large Cap Growth Fund		None	L	T					
20. iShares Russell Mid Cap Index Fund		None	L	T					
21. Delaware Small Cap Core Fund		None	L	T					
22. Invesco Asia Pacific Growth Fund		None	L	T					
23. Nuveen Real Estate Securities Fund		None	L	T					
24. Lehman Bros HLD VAR 2XXX	A	Distribution	J	T					
25. Vanguard S/T Investment - VFSTX		None	K	T					
26. iShares MSCI Emerging Markets - EEM	A	Dividend	J	T					
27. NY 529 Developed Markets Index Portfolio		None	L	T					
28. NY 529 Mid-Cap Stock Index Portfolio		None	M	T					
29. NY 529 Small-Cap Stock Index Portfolio		None	M	T					
30. NY 529 Inflation Protected Securities Portfolio		None	L	T					
31. iShares MSCI China ETF	B	Dividend	O	T	Sold (part)	02/13/23	O		
32.					Sold (part)	04/03/23	M		
33.					Sold (part)	12/27/23	K		
34. US Treasury Bonds	D	Interest	N	T					

1. Income Gain Codes: (See Columns B1 and D4) A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000
2. Value Codes (See Columns C1 and D3) J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000
3. Value Method Codes (See Column C2) Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/15/2024

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	
35. FINE TONY OUNCES OF UNALLOCATED GOLD		None	O	T	Sold (part)	02/13/23	N		
36.					Sold (part)	09/26/23	M		
37. JPM MANGAED INCOME FUND	B	Dividend	O	T					
38. JPM FLOAT RATE INC.	A	Dividend	M	T					
39. APPLE INC.	A	Dividend			Sold	05/11/23	J	D	
40. NOVOZYMES INC.	A	Dividend			Sold (part)	05/11/23	J		
41.					Sold	06/05/23	J		
42. TENCENT MUSIC ENTERTAINMENT		None			Sold	05/11/23	N		
43. ISHARE MSCI WORLD ETF	C	Dividend	M	T	Sold (part)	12/27/23	M		
44. BITCOIN (BTC)		None			Buy (add'l)	03/22/23	L		
45.					Sold	09/19/23	N		
46. ETHEREUM (ETH)		None			Sold	03/22/23	L		
47. LONG ISLAND, NY	E	Rent	P1	W					
48. LITCHFIELD COUNTY, CT	F	Rent	P1	W					
49.									
50.									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

3. Value Method Codes (See Column C2)
Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/15/2024

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 13141 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Eric R. Komitee**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 13106)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite G-330
One Columbus Circle, N.E.
Washington, D.C. 20544

Table 1. Viking and D1 Co-Investments with Alleged Victims				
Date	**Target**	**Round (Deal Size)**	**Komitee Investment Advisers**	**Alleged Victim**
2/23/2017	Xcell Biosciences	Later Stage VC ($12 million)	Viking	Wilson Sonsini Goodrich & Rosati
7/21/2017	Covetrus	Series F ($223.55 million)	Viking	Clayton, Dubilier & Rice (co-led on deal)
6/12/2019	Viela Bio	Series B ($75 million)	Viking	Goldman Sachs
9/17/2019	GitLab	Later Stage VC (Series E) ($268 million)	D1 Capital Partners	Goldman Sachs Growth Equity
6/25/2020	Frigo Group	Buyout/LBO	D1 Capital Partners	The Goldman Sachs Group
7/29/2020	Mantra Bio	Early Stage VC ($25 million)	Viking	SV Angel
1/29/2021	Robinhood	Series G ($3.4 billion)	D1	CapitalG
4/8/2021	Ramp	Early Stage VC (Series B) ($65.7 million)	D1 Capital Partners	The Goldman Sachs Group
4/14/2021	SpaceX	Series E ($1.16 billion)	D1	Alphabet
5/18/2021	ID.me	Series C ($100 million)	Viking	CapitalG Goldman Sachs Growth Equity
6/10/2021	Clip	Later Stage VC ($250 million)	Viking	The Goldman Sachs Group
7/30/2021	Ualá	Later Stage VC (Series D) ($350 million)	D1 Capital Partners	Goldman Sachs Asset Management
9/23/2021	Patina Health	Early Stage VC ($50 million)	Viking	Google Ventures Europe
10/4/2021	Course Hero	Later Stage VC (Series C) ($401 million)	D1 Capital Partners	SuRo Capital
10/29/2021	Guild	Series E ($150 million)	D1	Emerson Collective
11/9/2021	Color	Later Stage VC ($100 million)	Viking	Emerson Collective, SV Angel
1/27/2022	Fireblocks	Series E ($550 million)	D1	Capital G
1/26/2023	Pearl Health	Later Stage VC	Viking	SV Angel Growth I
2/21/2023	AlphaSense	Later Stage VC ($325 million)	Viking	CapitalG

Table 1. Viking and D1 Co-Investments with Alleged Victims

Date	Target	Round (Deal Size)	Komitee Investment Advisers	Alleged Victim
4/11/2023	ID.me	Later Stage VC ($132 million)	Viking	CapitalG
9/28/2023	AlphaSense	Later Stage VC ($150 million)	Viking	CapitalG, Goldman Sachs Asset Management
5/1/2024	DataSense Software	Buyout/LBO	D1 Capital Partners	Goldman Sachs Growth Equity
6/11/2024	AlphaSense	Later Stage VC ($650 million)	Viking	CapitalG, Goldman Sachs Asset Management Fund Services Ltd., JPMorgan Chase

Table 1 Source: PitchBook deal data

Table 2. Stock Holdings in Alleged Victims, 2023

Komitee Hedge Funds (combined) ($ millions)					Komitee Pro-Rata Beneficial Interest ($ thousands or M millions)									
Quarter	GOOGL	GS	JPM	LYV	GOOGL Low	GOOGL High	GS Low	GS High	JPM Low	JPM High	LYV Low	LYV High	COMBINED BENEFICIAL INTEREST Low	COMBINED BENEFICIAL INTEREST High
1Q23	324	42	97	230	70	348	27	136	64	318	42	208	202	1.0M
2Q23	274		117		50	248			76	382			126	630
3Q23	248		166		72	358			109	545			181	903
4Q23	734		160	42	103	513			105	523	8	38	215	1.1M

Table 2 Source: Form 13Fs and ADVs filed by Komitee Hedge Fund; Form AO 10 filed by Komitee.

Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GS is Goldman Sachs Group Inc.
JPM is JPMorgan Chase & Co.
LYV is LiveNation Entertainment Inc.

Table 3. Viking Global Investors LP, Stock Holdings in Four Victims, 2008 to 2011 ($ millions)

Quarter Ending	GOOG	GOOGL	GS	JPM	LYV
3/31/2008					
6/30/2008		39.5			
9/30/2008					
12/31/2008				101.5	
3/31/2009		208.3		147.4	
6/30/2009		306.3	234.5	294.0	
9/30/2009		199.4	151.9	456.5	
12/31/2009		127.9		339.0	
3/31/2010		240.8		265.8	
6/30/2010				228.4	
9/30/2010			51.2	81.2	
12/31/2010		179.8		79.8	
3/31/2011				466.3	
6/30/2011				390.5	
9/30/2011					
12/31/2011				119.7	

Table 3 Source: Form 13Fs filed by Viking Global Investors LP.

Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GOOG is the ticker for Alphabet Class C (no holdings during this period)
GS is Goldman Sachs Group Inc.
JPM is JPMorgan Chase & Co.
LYV is LiveNation Entertainment Inc. (no holdings during this period)

Neither D1 nor Junto existed during the 2008 to 2011 period.

Table 4. Viking Global Investors LP, Stock Holdings in Four Victims, 2012 to 2017 ($ millions)

Quarter Ending	GOOG	GOOGL	GS	JPM	LYV
3/31/2012		675.5	108.7	78.1	
6/30/2012					
3/31/2013			90.0		
6/30/2013					
9/30/2014		543.4			
12/31/2014		394.0			
3/31/2015	461.0	908.8			
6/30/2015	597.3	1,477.6			
9/30/2015	682.5	1,617.8			
12/31/2015	870.0	1,442.0			
3/31/2016	787.0	1,564.3			
6/30/2016	582.2	1,262.8			
9/30/2016	832.6	1,578.5			
12/31/2016	832.8	1,432.6			
3/31/2017	891.8	1,203.5		324.6	
6/30/2017		634.3			
9/30/2017		1,436.5			
12/31/2017		1,045.6			

Source: Form 13Fs filed by Viking Global Investors LP.

Notes: All 13Fs during this period were signed and certified by Komitee himself.
Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GOOG is the ticker for Alphabet Class C.
GS is Goldman Sachs Group Inc.
JPM is JPMorgan Chase & Co.
LYV is LiveNation Entertainment Inc. (no holdings during this period)

Table 5. Junto Capital Management LP, Stock Holdings in Four Victims, 2012 to 2017 ($ millions)

Quarter Ending	GOOG	GOOGL	GS	JPM	LYV
3/31/2012					
6/30/2012					
3/31/2013					
6/30/2013					
9/30/2014					
12/31/2014					
3/31/2015					
6/30/2015					
9/30/2015		24.9			
12/31/2015		39.8			
3/31/2016					
6/30/2016					
9/30/2016		25.6			
12/31/2016		42.4			
3/31/2017		36.2			
6/30/2017		52.7			
9/30/2017		76.9			30.3
12/31/2017		78.4			24.7

Table 5 Source: Form 13Fs filed by Junto Capital Management LP.

Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GOOG is the ticker for Alphabet Class C (no holdings during this period)
GS is Goldman Sachs Group Inc. (no holdings during this period)
JPM is JPMorgan Chase & Co. (no holdings during this period)
LYV is LiveNation Entertainment Inc.

Table 6. Viking Global Investors LP, Stock Holdings in Four Victims, 2018 and 2019 ($ millions)

Quarter Ending	GOOG	GOOGL	GS	JPM	LYV
3/31/2018		1,030.5			
6/30/2018		691.4			
9/30/2018		69.9			
12/31/2018	158.2	810.9			
3/31/2019	161.5	440.9			
6/30/2019	123.4	305.5			
9/30/2019	84.6	161.1			
12/31/2019	0.0	74.0			

Table 6 Source: Form 13Fs filed by Viking Global Investors LP.
Notes:
Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GOOG is the ticker for Alphabet Class C.
GS is Goldman Sachs Group Inc. (no holdings in this period)
JPM is JPMorgan Chase & Co. (no holdings during this period)
LYV is LiveNation Entertainment Inc. (no holdings during this period)

Table 7. D1 Capital Partners LP, Stock Holdings in Four Victims, 2018 and 2019 ($ millions)

Quarter Ending	GOOG	GOOGL	GS	JPM	LYV
3/31/2018					
6/30/2018					
9/30/2018					
12/31/2018		264.3			
3/31/2019		308.3			
6/30/2019		275.0			
9/30/2019					
12/31/2019		70.3			

Table 7 Source: Form 13Fs filed by D1 Capital Partners LP.

Empty cells indicate zero holdings that quarter.
GOOG is the ticker for Alphabet Class C. (no holdings in this period)
GOOGL is the ticker for Alphabet Class A.
GS is Goldman Sachs Group Inc. (no holdings in this period)
JPM is JPMorgan Chase & Co. (no holdings during this period)
LYV is LiveNation Entertainment Inc. (no holdings during this period)

Table 8. Junto Capital Management LP, Stock Holdings in Four Victims, 2018 to 2019 ($ millions)

Quarter Ending	GOOG	GOOGL	GS	JPM	LYV
3/31/2018					29.5
6/30/2018					33.6
9/30/2018			54.2		24.3
12/31/2018		82.5			
3/31/2019					
6/30/2019		3.7			
9/30/2019		29.9	22.4		
12/31/2019		56.4			43.8

Source: Form 13Fs filed by Junto Capital Management LP.

Empty cells indicate zero holdings that quarter.
GOOG is the ticker for Alphabet Class C. (no holdings in this period)
GOOGL is the ticker for Alphabet Class A.
GS is Goldman Sachs Group Inc.
JPM is JPMorgan Chase & Co. (no holdings during this period)
LYV is LiveNation Entertainment Inc.

Table 9. Stock Holdings in Four Victims, 2020 to 2021, Hedge Funds and Komitee

Hedge Funds – Viking, D1, Junto Combined **($ millions)**					**Komitee Pro-Rata Beneficial Interest** **($ thousands or M millions)**									
Quarter	GOOGL	GS	JPM	LYV	GOOGL Low	GOOGL High	GS Low	GS High	JPM Low	JPM High	LYV Low	LYV High	COMBINED BENEFICIAL INTEREST Low	COMBINED BENEFICIAL INTEREST High
1Q20	547		407	159	174	871			110	550	62	309	346	1.7M
2Q20	153		1,183	251	59	297			329	1646	97	486	486	2.4M
3Q20	799	60	1,639	496	275	1.4M	71	357	440	2.2M	192	962	978	4.9M
4Q20	2,006	80	2,088	66	602	3M	96	481	578	2.9M	25	127	1.3M	6.5M
1Q21	1,035		133		189	945			13	67			203	1.0M
2Q21	161				41	203							41	203
3Q21	69				66	331							66	331
4Q21	105				101	504							101	504

Source: Form 13Fs and ADVs filed by Komitee Hedge Funds; Form AO 10 filed by Komitee.

Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GS is Goldman Sachs Group Inc.
JPM is JPMorgan Chase & Co.
LYV is LiveNation Entertainment Inc.

Table 10. Stock Holdings in Alleged Victims, 1Q23 to 2Q24

Komitee Hedge Funds (combined) ($ millions)					Komitee Pro-Rata Beneficial Interest ($ thousands or M millions)									
Quarter	GOOGL	GS	JPM	LYV	GOOGL Low	GOOGL High	GS Low	GS High	JPM Low	JPM High	LYV Low	LYV High	COMBINED BENEFICIAL INTEREST Low	COMBINED BENEFICIAL INTEREST High
1Q23	324	42	97	230	70	348	27	136	64	318	42	208	202	1.0M
2Q23	274		117		50	248			76	382			126	630
3Q23	248		166		72	358			109	545			181	903
4Q23	734		160	42	103	513			105	523	8	38	215	1.1M
1Q24*	392	76	70	259	88	439	43	214	39	197	50	248	220	1.1M
2Q24*			609	332					57	283	64	318	120	601

Source: Form 13Fs and ADVs filed by Komitee Hedge Funds; Form AO 10 filed by Komitee.

Empty cells indicate zero holdings that quarter.
GOOGL is the ticker for Alphabet Class A.
GS is Goldman Sachs Group Inc.
JPM is JPMorgan Chase & Co.
LYV is LiveNation Entertainment Inc.

*1Q24 and 2Q24 are inferred, assuming no changes in the value ranges of Komitee's hedge fund interests versus 2023.

EXHIBIT E

DGR:JRS/GK/DAS
F. #2021R00900

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against - No. 23-CR-82 (EK)

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

----------X

THE GOVERNMENT'S OPPOSITION TO THE DEFENDANTS' MOTION TO DISQUALIFY THE HONORABLE ERIC R. KOMITEE

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Table of Contents

BACKGROUND 1

LEGAL PRINCIPLES 2

A. Disqualification Generally 2

B. Timeliness is a Threshold Issue on a Section 455 Disqualification Motion 3

C. Section 455's "Safe Harbor" Provisions Expressly Include Fund Investments 4

D. Financial Interests in Victims or Non-Parties Do Not Require Recusal 5

ARGUMENT 6

I. The Motion is Untimely 6

II. The Fund Investments at Issue Do Not Require Recusal Under Section 455 9

A. Judge Komitee's Investments in Various Funds Do Not Warrant Recusal 9

B. Judge Komitee's Prior Relationships with Victims Do Not Warrant Recusal 16

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Apple v. Jewish Hosp. & Med. Ctr.,
829 F.2d 326 (2d Cir. 1987) 3, 4, 7, 8

Cellspin Soft, Inc. v. Fitbit, Inc.,
No. 17-CV-5928 (YGR), 2023 WL 2176758 (N.D. Cal. Feb. 15, 2023) 11

Cent. Tel. Co. of Va. v. Sprint Commc'ns Co. of Va.,
715 F.3d 501 (4th Cir. 2013) 4, 5, 11

Clemmons v. Comm'r of Soc. Sec.,
No. 11-CV-1645 (KAM), 2011 WL 6130926 (E.D.N.Y. Dec. 8, 2011) 3, 4

HC2, Inc. v. Messer,
No. 20-CV-3178 (LJL), 2022 WL 61370 (S.D.N.Y. Jan. 6, 2022) 8

In re Aguinda,
241 F.3d 194 (2d Cir. 2001) 2, 3

In re IBM,
45 F.3d 641 (2d Cir. 1995) 3

Katzman v. Victoria's Secret Catalogue,
939 F. Supp. 274 (S.D.N.Y. 1996) 8

Keesh v. Quick,
No. 19-CV-08942 (PMH), 2022 WL 2160127 (S.D.N.Y. June 15, 2022) 4

Litovich v. Bank of America, Corp.,
106 F.4th 218 (2d Cir. 2024) 15

N.Y.C. Dev. Corp. v. Hart,
796 F.2d 976 (7th Cir. 1986) 4, 5, 10, 13, 14

NEC Corp. v. Intel Corp.,
654 F. Supp. 1256 (N.D. Cal. 1987) 11

Omega Eng'g, Inc. v. Omega, S.A.,
432 F.3d 437 (2d Cir. 2005) 4

Polizzi v. United States,
926 F.2d 1311 (2d Cir. 1991) 3

Qualls v. United States,
No. 07-CR-14 (DLI), 2018 WL 1513625 (E.D.N.Y. Mar. 27, 2018) 3

Reese-Thomas v. United States,
No. 03-CV-1812 (FB), 2003 WL 22709080 (E.D.N.Y. Nov. 17, 2003) 5

United States v. Brinkworth,
68 F.3d 633 (2d Cir. 1995) 3, 4

United States v. Burke,
756 F. App'x 93 (2d Cir. 2019) 3

United States v. Durrani,
835 F.2d 410 (2d Cir. 1987) 4

United States v. Gedinez,
280 F. App'x 47 (2d Cir. 2008) 5, 6

United States v. Halkbank,
No. 15-CR-867 (RMB), 2020 WL 4932772 (S.D.N.Y. Aug. 24, 2020) 4

United States v. Lauersen,
348 F.3d 329 (2d Cir. 2003) 5, 6, 10, 16

United States v. Lewis,
No. 22-1742, 2024 WL 1756104 (2d Cir. Apr. 24, 2024) 3

United States v. Lovaglia,
954 F.2d 811 (2d Cir. 1992) 16

United States v. Murphy,
768 F.2d 1518 (7th Cir. 1985) 16

United States v. Nobel,
696 F.2d 231 (3d Cir. 1982) 6

United States v. Pescatore,
No. 05-CR-128 (TCP), 2006 WL 47451 (E.D.N.Y. Jan. 5, 2006) 5

United States v. Ravich,
421 F.2d 1196 (2d Cir. 1970) 6, 15

United States v. Rogers,
119 F.3d 1377 (9th Cir. 1997) 6

United States v. Sellers,
566 F.2d 884 (4th Cir. 1977) 6

United States v. Teman,
No. 21-1920-CR, 2023 WL 3882974 (2d Cir. June 8, 2023) 6, 10, 12, 15

United States v. Wedd,
993 F.3d 104 (2d Cir. 2021) 2

United States v. Yu-Leung,
51 F.3d 1116 (2d Cir. 1995) 3

Weisshaus v. Fagan,
456 F. App'x 32 (2d Cir. 2012) 3

The government respectfully submits this letter in response to the defendants' motion to disqualify the Honorable Eric R. Komitee. See ECF Nos. 325, 326 ("Mot."), 328. The motion is nothing more than the next step of the defendants' ongoing efforts to attack and blame anyone and everyone who attempts to hold them accountable. It is untimely and utterly baseless, and it should be denied.

BACKGROUND

From the beginning of this case, the defendants have attempted to avoid responsibility by deflecting blame onto others. When the impersonation of Alex Piper was first discovered, Carlos Watson developed a plan for co-conspirator Samir Rao to take the fall by concocting a made-up mental health crisis. See Trial Tr. 841-44. When it became clear that the New York Times was about to break the story, Watson and Rao discussed plans to attack and undermine the story and its author, including "Accuse Ben [Smith]," "Not kosher to attack mental health" and "Not kosher to take down a black owned company." See Government Exhibit ("GX") 5131. The defendants later sued the author of the article. See Ozy Media Inc. v. Benjamin Smith, et al., No. 23-CV-9412 (FB).

Once the indictment was filed, the defendants turned their attacks to the individual prosecutors through wholly invented claims of racial bias, which they pushed publicly in press releases, websites, and even a feature film screened in New York a month before trial. See ECF No. 264. After a jury convicted them of fraud, the defendants redoubled their efforts, turning their focus to the judge presiding over the trial, the Honorable Eric R. Komitee. For example, the defendants and their supporters have published a series of letters accusing Judge Komitee of misconduct, which letters they posted on the same website previously used to accuse the prosecutors of racial bias. See Too Black for Business, 23 Separate Complainants Write

Letters of Judicial Complaint, available at https://www.tooblackforbusiness.org/cw/cw-unfair-trial & https://cdn.prod.website-files.com/6548cda829d7c8ad6c8d9e3f/670e311942b415a30af23c4f_Eric%20Komitee_Combined%20Letters%20of%20Complaint_FINAL_092624%20redacted-compressed.pdf.

On October 25, 2024, less than two months before the scheduled sentencing date, the defendants advanced their latest effort to avoid responsibility for their crimes by seeking to disqualify Judge Komitee and vacate their convictions. See Mot. Principally, the defendants claim that Judge Komitee must be disqualified because (1) he holds investments in hedge funds (the "Funds") managed by Viking Global Investors LP ("Viking"), D1 Capital Partners LP ("D1") and Junto Capital Partners LP ("Junto") that in turn have invested in four intended victims of the defendants' scheme: Goldman Sachs, Alphabet (Google), J.P. Morgan and Live Nation; and (2) he formerly served as Viking's general counsel and allegedly interacted in that role with several intended victims' of the defendants' scheme.

LEGAL PRINCIPLES

A. Disqualification Generally

Pursuant to 28 U.S.C. § 455, a judge must disqualify her or himself when the judge's "impartiality might reasonably be questioned" (§ 455(a)), including, as relevant here, when the judge "knows that he . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding" (§ 455(b)(4)). A district court's decision on whether to recuse itself is reviewed only "for abuse of discretion" and will "rarely" be disturbed on appeal. United States v. Wedd, 993 F.3d 104, 114 (2d Cir. 2021). However, "where the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited." In re Aguinda, 241 F.3d 194, 201 (2d Cir. 2001). As the Second Circuit has repeatedly stated, "a

judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." Id.

B. Timeliness is a Threshold Issue on a Section 455 Disqualification Motion

"While § 455 does not explicitly contain a timeliness requirement for the filing of a recusal claim, timeliness has been read into this section" by the Second Circuit. Polizzi v. United States, 926 F.2d 1311, 1321 (2d Cir. 1991). The timeliness of a § 455 motion is "a 'threshold' issue — i.e., one to be evaluated before matters of substance are reached." Clemmons v. Comm'r of Soc. Sec., No. 11-CV-1645 (KAM), 2011 WL 6130926, at *4 (E.D.N.Y. Dec. 8, 2011); see also Weisshaus v. Fagan, 456 F. App'x 32, 34 (2d Cir. 2012) ("The timeliness of a recusal motion is a serious threshold question.").

In order to be timely, a recusal motion must be filed "at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." Apple v. Jewish Hosp. & Med. Ctr., 829 F.2d 326, 333-34 (2d Cir. 1987); accord United States v. Lewis, No. 22-1742, 2024 WL 1756104, at *2 (2d Cir. Apr. 24, 2024); United States v. Burke, 756 F. App'x 93, 94 (2d Cir. 2019); United States v. Brinkworth, 68 F.3d 633, 639 (2d Cir. 1995). Strict adherence to the requirement of a "prompt application avoids the risk that a party is holding back a recusal application as a fall-back position in the event of adverse rulings on pending matters." In re IBM, 45 F.3d 641, 643 (2d Cir. 1995); accord Qualls v. United States, No. 07-CR-14 (DLI), 2018 WL 1513625, at *1 (E.D.N.Y. Mar. 27, 2018). As a result, the Second Circuit has held that where a defendant "fail[s] to file a timely disqualification motion," the motion is "waived." United States v. Yu-Leung, 51 F.3d 1116, 1120 (2d Cir. 1995); see also Polizzi, 926 F.2d at 1321 ("[W]e agree with the Government that [defendant] waived the claim that [the district judge] should have recused himself when he failed to timely move for such recusal pursuant to . . . 28 U.S.C. § 455"). "The timeliness requirement of motions to disqualify

and for recusal is strictly applied." Keesh v. Quick, No. 19-CV-08942 (PMH), 2022 WL 2160127, at *10 (S.D.N.Y. June 15, 2022).

In assessing whether a recusal motion is timely, courts consider whether, among other things, "(1) the movant has participated in a substantial manner in trial or pre-trial proceedings, (2) granting the motion would represent a waste of judicial resources, (3) the motion was made after the entry of judgment, and (4) the movant can demonstrate good cause for delay." Apple, 829 F.2d at 334; accord Brinkworth, 68 F.3d at 639. And while "the actual time elapsed between the events giving rise to the charge of bias or prejudice and the making of the motion is not necessarily dispositive," Apple, 829 F.2d at 333-34, courts regularly consider the length of this period when evaluating a motion to recuse, see, e.g., id. (finding a delay of two months untimely); United States v. Durrani, 835 F.2d 410, 427 (2d Cir. 1987) (delay of four months warranted denial of motion); Omega Eng'g, Inc. v. Omega, S.A., 432 F.3d 437, 448 (2d Cir. 2005) (delay of seven months rendered recusal motion untimely). In fact, "[r]ecusal motions are often denied on the basis of untimeliness when there has been only a short delay." Clemmons, 2011 WL 6130926, at *4; accord United States v. Halkbank, No. 15-CR-867 (RMB), 2020 WL 4932772, at *5 (S.D.N.Y. Aug. 24, 2020).

C. Section 455's "Safe Harbor" Provisions Expressly Include Fund Investments

Under § 455, a "financial interest" does not include an indirect interest in securities through "[o]wnership in a mutual or common investment fund that holds [such] securities . . . unless the judge participates in the management of the fund." 28 U.S.C. § 455(d)(4)(i). This provision is "a safe harbor" to allow "judges to hold securities without needing to make fine calculations of the effect of a given suit on their wealth." N.Y.C. Dev. Corp. v. Hart, 796 F.2d 976, 980 (7th Cir. 1986); accord Cent. Tel. Co. of Va. v. Sprint Commc'ns Co. of Va., 715 F.3d 501, 515 (4th Cir. 2013) ("Congress created this exception to

enable judges to hold securities without risking recusal across a broad range of cases."). The safe harbor applies without regard to the size of any investment, and "it is unnecessary and inappropriate to inquire how a case might affect the value of the fund's assets." N.Y.C. Dev. Corp., 796 F.2d at 980; accord Cent. Tel. Co., 715 F.3d at 516. Moreover, the safe-harbor provision applies to both § 455(a) and § 455(b)(4) — a "reasonable person would not question the impartiality of a judge who holds nothing but well diversified mutual funds," and permitting disqualification under either provision "would prevent § 455(d)(4)(i) from acting as a safe harbor." N.Y.C. Dev. Corp., 796 F.2d at 980; see also Cent. Tel. Co., 715 F.3d at 516 ("We note at the outset that a judge whose conduct has satisfied the § 455(d)(4)(i) safe harbor will almost certainly have complied with § 455(a) by acting in a reasonable and impartial manner.").

D. Financial Interests in Victims or Non-Parties Do Not Require Recusal

Even where the § 455(d)(4)(i) safe harbor does not apply, a judge's interest in a victim of a crime is treated differently than an interest in a party. See United States v. Pescatore, No. 05-CR-128 (TCP), 2006 WL 47451, at *9 (E.D.N.Y. Jan. 5, 2006) ("The Second Circuit has held that while even a judge's de minimis interest in a party will be grounds for automatic recusal, the same is not true of a judge's de minimis interest in a non-party."). In particular, a financial interest in a victim in a criminal case does not trigger automatic recusal under § 455(b)(4). See United States v. Lauersen, 348 F.3d 329, 336 (2d Cir. 2003) ("[W]e decline to adopt a per se rule requiring recusal in every instance where a judge has an interest in the victim of a crime."), judgment vacated on other grounds, 543 U.S. 1097 (2005); accord United States v. Gedinez, 280 F. App'x 47, 49 (2d Cir. 2008) (judge's stock ownership in victim bank did not require recusal); Reese-Thomas v. United States, No. 03-CV-1812 (FB), 2003 WL 22709080, at *2 (E.D.N.Y. Nov. 17, 2003) ("[C]ourts have held that the victim of a crime is not a party to a

criminal proceeding under § 455(b)(4), and that stock ownership in a corporate victim cannot be deemed a financial interest under that section.").[1]

Stock ownership in a victim also does not implicate § 455(a) unless "the extent of the judge's interest in the crime victim is so substantial, or the amount that the victim might recover as restitution is so substantial, that an objective observer would have a reasonable basis to doubt the judge's impartiality." Lauersen, 348 F.3d at 336-37. Ownership of a fractional percentage of a victim's total stock does not meet this threshold. See Gedinez, 280 F. App'x at 49 (ownership of 0.000091% of victim did not require recusal); see also United States v. Teman, No. 21-1920-CR, 2023 WL 3882974, at *3 (2d Cir. June 8, 2023); United States v. Ravich, 421 F.2d 1196, 1205 (2d Cir. 1970). Further, even if a claim for restitution by a victim partially owned by a judge might raise potential concerns, such concerns are eliminated where the victim does not seek restitution. See Lauersen, 348 F.3d at 338 ("Even if Judge Pauley's ownership of AXA shares had provided a basis for recusal, we see no valid reason why AXA's decision to forgo its restitution claim would not have sufficed to eliminate such a basis.").

ARGUMENT

I. The Motion is Untimely

The Court can deny the defendants' motion at the threshold because it is untimely. The defendants were required by law to file their motion at the earliest possible moment. They did not. Instead, the defendants waited until after they were convicted following a two-month

[1] See also United States v. Rogers, 119 F.3d 1377, 1384 (9th Cir. 1997) ("The victim of a crime is not a party under [§ 455(b)(4)]. The only parties in a federal criminal case are the named defendant and the United States. In addition, stock ownership in the corporate victim of a crime cannot be deemed a financial interest in the subject matter in controversy."); United States v. Nobel, 696 F.2d 231, 234-35 (3d Cir. 1982) (§ 455(b)(4) inapplicable where judge owned stock in corporate victim); United States v. Sellers, 566 F.2d 884, 887 (4th Cir. 1977) (recusal not required where judge owned stock in corporate victim).

trial and then deployed this motion as a last-ditch effort to avoid accountability and punishment. Based on the Second Circuit's precedent, as detailed above, the instant motion is untimely and should be denied on that basis alone.

Each of the factors for assessing whether a claim is timely weighs against the defendants. See Apple, 829 F.2d at 334. First, the defendants have certainly "participated in a substantial manner in trial or pre-trial proceedings." Second, in light of the substantial efforts put into the case by the Court over the prior 20 months, "granting the motion would represent a waste of judicial resources." Third, although the motion was made prior to the entry of final judgment, it was made after the defendants had been found guilty at a trial and only weeks before sentencing. And fourth, for the reasons set forth below, the defendants cannot demonstrate any good cause for the delay.

To the extent the motion is premised on Judge Komitee's investments in the Funds, those investments were a matter of public record before the beginning of this case and certainly long before trial. The defendants attempt to excuse their delay by suggesting that they learned of Judge Komitee's investments in the Funds only when Judge Komitee's 2023 annual financial disclosure was published online on or about October 2, 2024. See Mot. 2, 20. But that information had been known publicly for years — Judge Komitee's 2021 and 2022 financial disclosures (dated May 10, 2022, and July 7, 2023, respectively) both disclose his interests in the Funds. See Exs. 1, 2. The motion cites Judge Komitee's 2021 and 2022 financial disclosures — as well as his 2020 disclosure, which is not available online and is available only by request — making it plain that the defendants had access to those reports. See Mot. 17 n.24. Indeed, the defendants acknowledge that they corresponded with the Administrative Office of the United States Courts prior to October 2, 2024 to find out when the 2023 disclosure would be posted (see

Mot. 20 n.25), demonstrating that they were alert to and already investigating this claim prior to that date. See ECF Nos. 329-1, 329-2. And the defendants even admit that they began searching for Judge Komitee's 2022 financial disclosure as early as March 2024 and obtained that disclosure by at least August 27, 2024, approximately two months before they filed their recusal motion.[2] See ECF No. 329-1; see, e.g., Apple, 829 F.2d at 333-34 (finding a delay of two months untimely); Katzman v. Victoria's Secret Catalogue, 939 F. Supp. 274, 277 (S.D.N.Y. 1996) (same). There is thus no good cause for the defendants' delay in raising this claim.

Further, much of the motion is based on Judge Komitee's role and activities at Viking before becoming a judge. See Mot. 10-14, 22-26. The fact that Judge Komitee was Viking's general counsel prior to his appointment has long been a matter of public record — indeed, it is listed in his biography on the District's website.[3] Cf. HC2, Inc. v. Messer, No. 20-CV-3178 (LJL), 2022 WL 61370, at *3 n.4 (S.D.N.Y. Jan. 6, 2022) ("The Court also finds the recusal motion to be untimely as it comes over a year and a half after the start of the case and as the Court's former affiliation with the predecessor of WilmerHale has been a matter of public knowledge since I joined that firm over two decades ago." (citing cases)). And at the very first status conference in this matter, Judge Komitee noted that he reviewed the list of interested parties that the government provided ex parte and "didn't see any overlap between the people and entities listed there on the one hand, and my bio on the other. . . . Obviously, if you saw the name Viking in anything that would be meaningful." Mar. 6, 2023 Tr. 7:22-8:4. Thus, the defendants were on notice from the outset of the case of Judge Komitee's history with Viking.

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[2] The defendants are notably silent with regard to when they had access to Judge Komitee's 2020 and 2021 financial disclosures.

[3] See, e.g., U.S. Dist. Ct. E.D.N.Y., Judge Eric R. Komitee, https://www.nyed.uscourts.gov/content/judge-eric-r-komitee; see also Wikipedia, Eric R. Komitee, https://en.wikipedia.org/wiki/Eric_R._Komitee.

They cannot show good cause for their delay in raising this aspect of their motion, and indeed they do not even attempt to make such a showing.

Finally, the defendants were of course aware of the potential victims in the case. Even putting aside their personal knowledge of the facts, the defendants were charged in a detailed indictment (see ECF No. 1), and the government disclosed a list deanonymizing the entities in the indictment on April 21, 2023 (see ECF No. 55). Three of the four victims that are at the core of the defendants' instant motion — Goldman Sachs, Google and Live Nation — were included on that list. Moreover, all four of the victims referenced in the defendants' motion were included on the government's list of persons, entities and places for use in voir dire, which was filed before trial. See ECF No. 141. Thus, there can be no argument that the defendants have not long known the identities of the victims in this case.

Accordingly, the defendants' recusal motion is untimely. It should therefore be denied.

II. The Fund Investments at Issue Do Not Require Recusal Under Section 455

Even were the Court to consider the defendants' untimely motion, the defendants' claims fail on the merits. All of the challenged investments fall within the § 455(d)(4)(i) safe harbor, the indirect interests in certain victims at issue here are insubstantial in any event, and none of the past business or social relationships identified by the defendants warrant recusal. Each of the defendants' claims should therefore be rejected.

A. Judge Komitee's Investments in Various Funds Do Not Warrant Recusal

1. The § 455(d)(4)(i) Safe Harbor Applies

The defendants do not claim that Judge Komitee has directly invested in any victims but instead challenge Judge Komitee's investments in funds that, in turn, have at times invested in certain victims of the scheme. That is precisely the situation covered by the

§ 455(d)(4)(i) safe harbor. The motion for disqualification under both § 455(a) and § 455(b)(4) therefore fails. See Teman, 2023 WL 3882974, at *3 (affirming denial of recusal based on ownership of shares of "Berkshire Hathaway, which in turn owns stock in Bank of America, the victim in [the] case" because "such an ownership interest" fell within ambit of § 455(d)(4)(i)).

The defendants make three attempts to escape this conclusion. First, the defendants claim that despite the statutory language stating that the exception applies "unless the judge participates in the management of the fund," the exemption should not apply here because Judge Komitee previously participated in the management of Viking before becoming a judge. See Mot. 28. The defendants cite no authority for this claim; nor could they, as the claim makes no sense. The reason the lack of management participation matters is that it eliminates a judge's ability to control what stocks she holds at the time of a given decision. See N.Y.C. Dev. Corp., 796 F.2d at 980 (safe harbor is justified "in part because the fund may sell the stock before the judge decides the case"). The fact that a judge participated in a fund's management years before the case began therefore has no bearing on the safe harbor.

Second, the defendants assert that even where the safe harbor technically applies, a judge must consider whether her or his interest in a fund would be substantially affected by the outcome of a case. See Mot. 28. In support of this claim, the defendants cite an opinion from the Judicial Conference's Advisory Committee on Codes of Conduct (the "Advisory Committee"). See id. But the Second Circuit has held that such opinions are not authoritative interpretations of § 455. See Lauersen, 348 F.3d at 336 (declining to follow view of Advisory Committee). And the available judicial precedents reject such an analysis, holding that "§ 455(d)(4)(i) eliminates any inquiry into the size of the likely effect of a decision on the value of securities held through a mutual fund." N.Y.C. Dev. Corp., 796 F.2d at 980; accord Cent. Tel.

Co., 715 F.3d at 516. In any event, as discussed below, there is no basis to conclude that the outcome of the proceedings could have any effect, let alone a substantial effect, on the value of Judge Komitee's investments. This claim therefore also fails.

Third, the defendants claim that the Funds are not "mutual or common investment fund[s]" for purposes of the safe harbor. See Mot. 28-29. The defendants purport to reach this conclusion by applying six factors set forth in an Advisory Committee opinion, specifically: "(1) the number of participants in the fund; (2) the size and diversity of fund investments; (3) the ability of participants to direct their investments; (4) the ease of access to and frequency of information provided about the fund portfolio; (5) the pace of turnover in fund investments; and (6) any ownership interest investors have in the individual assets of the fund." Mot. 29. As noted, the Second Circuit has not treated the Advisory Committee's opinions as authoritative. See Lauersen, 348 F.3d at 336. But even assuming these are the correct factors to consider, they weigh in favor of applying the safe harbor under the facts of this case. See Cellspin Soft, Inc. v. Fitbit, Inc., No. 17-CV-5928 (YGR), 2023 WL 2176758, at *8 (N.D. Cal. Feb. 15, 2023) (treating above-listed factors as "not binding" but "instructive").

Number of Participants in the Fund. As the defendants acknowledge, each of the Funds has hundreds of participants. See Mot. 29 n.30. Although the defendants argue that this factor nevertheless weighs against applying the safe harbor, they cite no authority for that proposition. The sole case that has declined to apply § 455(d)(4)(i) based in part on the number of participants in the fund involved far fewer participants — only 24 — suggesting that hundreds of participants in facts weighs in favor of the safe harbor. See NEC Corp. v. Intel Corp., 654 F. Supp. 1256, 1258 n.1 (N.D. Cal. 1987) (§ 455(d)(4)(i) did not apply to an investment fund where "membership is limited to 24 members and decisions to buy or sell securities are made by vote of

a majority of the voting power present at the meeting"), order vacated, appeal dismissed sub nom. NEC Corp. v. U.S. Dist. Ct. for N. Dist. of California, 835 F.2d 1546 (9th Cir. 1988).

Size and Diversity of Fund Investments. The defendants do not dispute that the Funds are all large, with each managing billions of dollars. See Mot. 4, 5 n.9. But the defendants assert that the Funds lack diversity, claiming that "the funds concentrate their positions in a few public stocks, explicitly employing 'limited diversification.'" Mot. 29. The defendants are correct that the Funds' firm brochures identify the potential for limited diversification as a risk factor, but the actual disclosed assets of the Funds' advisors suggest that they are sufficiently diversified and in particular that the victims in this case make up a small fraction of each the advisors' portfolios. According to the Form 13Fs for each of the Funds' advisors for the periods since the beginning of 2023: (1) Viking has held 13F securities in between 80 and 86 different issuers each quarter, with no individual victim's securities ever making up more than 2.34% of the total 13F securities in a given quarter and the consolidated total of victims' securities never rising above 2.34% of the total 13F securities in a given quarter; (2) D1 has held 13F securities in between 29 and 39 different issuers each quarter, with no victim's securities ever making up more than 5.66% of the total 13F securities in a given quarter and the consolidated total of victims' securities never rising above 9.98% of the total 13F securities in a given quarter; and (3) Junto has held 13F securities in between 69 and 81 different issuers each quarter, with no victim's securities ever making up more than 3.94% of the total 13F securities in a given quarter and the consolidated total of victims' securities never rising above 5.28% of the total 13F securities in a given quarter. By comparison, as noted above, the Second Circuit has held that the safe harbor applied where a judge held an indirect interest in Bank of America through investments in Berkshire Hathaway, see Teman, 2023 WL 3882974, at *3, and

according to Berkshire Hathaway's Form 13F for the period ending June 30, 2021 (the last filing prior to the district court's entry of judgment in that case), Bank of America shares alone then constituted over 14% of Berkshire Hathaway's 13F holdings. The Funds are therefore sufficiently diversified that "a change in the value of [a victim's] stock [would] have a small effect on the fund as a whole," thus weighing in favor of the safe harbor. N.Y.C. Dev. Corp., 796 F.2d at 980.

Ability of Participants to Direct Investments. The defendants note that the Funds are "actively and aggressively managed" (Mot. 29), but the defendants make no claim that any of the Funds' participants have any ability to direct their investments. This factor therefore weighs in favor of the safe harbor.

Ease of Access to, and Frequency of, Information About the Fund Portfolio. The defendants state that some of the Funds provide monthly reports regarding their positions and some of the Funds provide weekly reports of the Funds' performance. See Mot. 29-30. While the defendants suggest this is unusually frequent, they offer no basis for that claim. For example, broad-based ETFs such as the SPDR S&P 500 ETF and the Schwab US Broad Market ETF — paradigmatic examples of common investment funds — publish their weighted holdings on a daily basis. See State Street Global Advs., SPDR S&P 500 ETF Trust, https://www.ssga.com/us/en/individual/library-content/products/fund-data/etfs/us/holdings-daily-us-en-spy.xlsx; Charles Schwab, Schwab US Broad Market ETF SCHB, https://www.schwab.wallst.com/schwab/Prospect/research/etfs/schwabETF/index.asp?type=holdings&symbol=SCHB. Thus, even accepting the defendants' claims as true, Judge Komitee has less visibility into the current positions of the Funds than investors in many popular diversified ETFs, weighing in favor of the safe harbor.

Pace of Turnover in Fund Investments. The defendants acknowledge that the Funds have rapid turnover in their portfolios, as reflected in the Form 13Fs. See Mot. 30. The defendants appear to believe that this weighs against the safe harbor, but the opposite is true. The more rapid the turnover, the less ability a judge would have to predict what effect a given case outcome would have on her or his holdings because it is less possible to predict what those holdings would be by the time the case is decided. See N.Y.C. Dev. Corp., 796 F.2d at 980 (safe harbor is justified "in part because the fund may sell the stock before the judge decides the case"). For example, while some of the Funds held positions in Alphabet or Goldman Sachs for portions of the case, none held positions in those companies as of the most recent 13F filings (for the second quarter of 2024). This factor therefore weighs in favor of the safe harbor.

Investors' Ownership Interest in the Individual Assets of the Fund. The defendants state that the Funds' advisors offer investment opportunities to individual investors (Mot. 29), but they do not claim that Judge Komitee, or any other investor, has an ownership interest in the individual assets of the fund by virtue of his fund investment. This factor therefore also weighs in favor of the safe harbor.

Accordingly, all of the factors set forth by the Advisory Committee weigh in favor of the safe harbor. Judge Komitee's investments in the Funds therefore categorically do not warrant recusal under either § 455(a) or § 455(b)(4).[4]

[4] The defendants call attention to Judge Komitee's service as a director of the Viking Foundation, a charitable entity affiliated with Viking, but do not argue that this service is a basis for recusal. See Mot. 5-6. In any event, such service is covered by a separate safe harbor providing that an "office in an educational, religious, charitable, fraternal, or civic organization is not a 'financial interest' in securities held by the organization." 28 U.S.C. § 455(d)(4)(ii).

2. Any Interest in the Victims is Insubstantial

Even if the safe harbor did not apply (and it does), the purported interests Judge Komitee has in the victims would not warrant recusal even if he directly owned stock in those companies. As set forth below, even using the absolute highest "pro rata beneficial interest" for each victim ascribed by the defendants to Judge Komitee during the pendency of the case, the amounts invested by Judge Komitee in each of these companies is a tiny fraction of each company's overall market capitalization.

Company	Highest Ascribed Pro-Rata Beneficial Interest (see Mot. Ex. B tbl. 10)	Market Capitalization at Relevant Time[5]	Ownership Percentage
Alphabet	$513 thousand	$1.765 trillion	0.000029%
Goldman Sachs	$214 thousand	$136 billion	0.00016%
J.P. Morgan	$545 thousand	$421 billion	0.00013%
Live Nation	$318 thousand	$21.7 billion	0.0015%

The Second Circuit has held that even direct ownership percentages in corporate victims many times higher than those here do not amount to a substantial interest and cannot justify recusal. See Ravich, 421 F.2d at 1205 (interest from ownership of 0.0072% of a victim's shares "not merely unsubstantial but nonexistent"); see also Teman, 2023 WL 3882974, at *3 (ownership of "approximately 0.00075 percent of the [victim] bank's $265 billion market capitalization" did not require recusal). The defendants ignore these cases, pointing the Court instead to Litovich v. Bank of America, Corp., 106 F.4th 218, 228-29 (2d Cir. 2024). See Mot. 15-16, 18, 21-22, 30-32. But Litovich involved an investment in a party to the case, a situation

[5] All market capitalization data obtained from YChart.com.

subject to entirely different rules and precedents than those governing investments in victims. See Pescatore, 2006 WL 47451, at *9. Litovich is thus wholly inapplicable.

Moreover, and in any event, the Second Circuit has held that any possible basis for recusal is eliminated where a victim does not seek restitution. See Lauersen, 348 F.3d at 338 ("Even if Judge Pauley's ownership of AXA shares had provided a basis for recusal, we see no valid reason why AXA's decision to forgo its restitution claim would not have sufficed to eliminate such a basis."). Here, none of the victims in which Judge Komitee has an indirect interest ultimately invested in Ozy, and none have sought restitution at this time. That fact standing alone is sufficient to reject the defendants' claims that Judge Komitee's investments require recusal.

B. Judge Komitee's Prior Relationships with Victims Do Not Warrant Recusal

The defendants' arguments that recusal is required because Judge Komitee had business relationships with victims as a result of his role at Viking prior to becoming a judge fare no better. See Mot. 22-26. Although the defendants again do not cite the applicable law, the Second Circuit has held that a social or business relationship with a victim from years in the past does not require recusal. See United States v. Lovaglia, 954 F.2d 811, 815-17 (2d Cir. 1992) (recusal not required where judge formerly represented victim company, had socialized with company's owners, and had been involved in a restaurant business with one of the company's owners).

Further, while the defendants single out Judge Komitee's friendship with one former Goldman Sachs employee (see Mot. 10-11), there is no case law suggesting that a friendship with a victim's employee is a basis for recusal. To the contrary, the law is that even a friendship with a party's attorney in the case at bar is not a basis for recusal, absent unusual circumstances. See United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985) ("Many

courts therefore have held that a judge need not disqualify himself just because a friend — even a close friend — appears as a lawyer.").[6]

Thus, none of the relationships identified by the defendants form a basis for recusal. The motion should be denied.

CONCLUSION

For the reasons set forth above, the defendants' disqualification motion should be denied in its entirety.

Dated: Brooklyn, New York
November 1, 2024

BREON PEACE
United States Attorney
Eastern District of New York

By: /s/
Jonathan Siegel
Gillian Kassner
Dylan A. Stern
Assistant U.S. Attorneys
(718) 254-6293/6224/6213

[6] The defendants speculate that this individual was somehow involved in the case. See Mot. 11. While the government cannot speak to Goldman Sachs's internal workings, the government has no knowledge of this individual's involvement in the case.

AO 10
Rev. 1/2022

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2021

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Komitee , Eric R.	US District Court - Eastern District of New York	5/10/2022
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
ACTIVE STATUS	☐ Nomination Date ☐ Initial ☑ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2021 **to** 12/31/2021
7. Chambers or Office Address		
255 CADMAN PLAZA EAST BROOKLYN, NY 11201		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

I. POSITIONS. *(Reporting individual only; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 345 Trustees, Executors, Administrators, and Custodians; § 350 Power of Attorney; § 355 Outside Positions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	DIRECTOR	VIKING GLOBAL FOUNDATION INC. (NON-PROFIT CHARITABLE ORGANIZATION)
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 340 Agreements and Arrangements)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 320 Income; § 360 Spouses and Dependent Children.)*

A. Filer's Non-Investment Income

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)

☑ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.					
2.					
3.					
4.					
5.					

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

V. GIFTS. *(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)*

☑ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.			
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 335 Liabilities; § 360 Spouses and Dependent Children.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	JP MORGAN	VISA CARD	L
2.	AMERICAN EXPRESS	CREDIT CARD	J
3.	JP MORGAN	CREDIT CARD	J
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	
1. Viking Global Equities LP	G	Dividend	P2	T					
2. Viking Global Opportunities LP	G	Dividend	P1	T					
3. D1 Capital Partners Onshore LP	H1	Dividend	P2	T					
4. Junto Capital Partners LP	H1	Dividend	P2	T	Redeemed (part)	10/01/21	O		
5. Lead Edge Capital QP II, LP	D	Dividend			Redeemed	03/11/21	K		
6. Warlander Asset Management LP	E	Dividend			Redeemed	05/31/21	O		
7. Invesco QQQ Trust	A	Dividend	P1	T					
8. Ishares Russel 2000 ETF		None	L	T					
9. Lord Abbett Floating Rate A Fund		None	K	T					
10. Schwab US TIPS ETF	D	Dividend	N	T					
11. SPDR S&P 500 ETF	D	Dividend	O	T					
12. Vanguard FTSE All World EX-US ETF		None	J	T					
13. SPDR Gold Shares ETF		None	N	T					
14. JP Morgan Unallocated Gold Fund		None	N	T					
15. iShares MSCI EAFE ETF		None	K	T					
16. SPDR Dow Jones ETF		None	K	T					
17. Invesco Diversified Dividend Fund		None	M	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3 Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e g , div , rent, or int)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e g , buy, sell, redemption)	D (2) Date mm/dd/yy	D (3) Value Code 2 (J-P)	D (4) Gain Code 1 (A-H)	
18. iShares S&P 500 Index Fund		None	M	T					
19. Clearbridge Large Cap Growth Fund		None	L	T					
20. iShares Russell Mid Cap Index Fund		None	L	T					
21. Delaware Small Cap Core Fund		None	L	T					
22. Invesco Asia Pacific Growth Fund		None	L	T					
23. Nuveen Real Estate Securities Fund		None	L	T					
24. Lehman Bros HLD VAR 2XXX	A	Distribution	J	T					
25. Vanguard S/T Investment - VFSTX		None	K	T					
26. iShares MSCI Emerging Markets - EEM	A	Dividend	J	T					
27. NY 529 Developed Markets Index Portfolio		None	L	T					
28. NY 529 Mid-Cap Stock Index Portfolio		None	M	T					
29. NY 529 Small-Cap Stock Index Portfolio		None	M	T					
30. NY 529 Inflation Protected Securities Portfolio		None	L	T					
31. iShares MSCI China ETF	D	Dividend	O	T					
32. Tesla (TSLA) stock		None	J	T					
33. US Treasury Bonds	D	Interest	O	T					
34. FINE TONY OUNCES OF UNALLOCATED GOLD		None	O	T	Buy (add'l)	05/06/21	O		

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3 Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	
35. GAMESTOP CORP - CLASS A		None	J	T					
36. JPM MANGAED INCOME FUND		None	O	T					
37. JPM FLOAT RATE INC.		None	L	T					
38. APPLE INC.	A	Dividend	J	T					
39. NOVOZYMES INC.		None	K	T					
40. TENCENT MUSIC ENTERTAINMENT		None	N	T					
41. BITCOIN (BTC)		None	N	T	Buy	02/15/21	M		
42.									
43.									
44.									
45.									

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Name of Person Reporting	Date of Report
Komitee , Eric R.	5/10/2022

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Eric R. Komitee**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite G-330
One Columbus Circle, N.E.
Washington, D.C. 20544

AO 10
Rev. 3/2023

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2022

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 13101-13111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Komitee , Eric R.	US District Court - Eastern District of New York	7/07/2023
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
ACTIVE STATUS	☐ Nomination Date ☐ Initial ☑ Annual ☐ Final	01/01/2022 **to** 12/31/2022
	5b. ☐ Amended Report	
7. Chambers or Office Address		
255 CADMAN PLAZA EAST BROOKLYN, NY 11201		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

I. POSITIONS. *(Reporting individual only; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 345 Trustees, Executors, Administrators, and Custodians; § 350 Power of Attorney; § 355 Outside Positions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	DIRECTOR	VIKING GLOBAL FOUNDATION INC. (NON-PROFIT CHARITABLE ORGANIZATION)
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 340 Agreements and Arrangements)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 320 Income; § 360 Spouses and Dependent Children.)*

A. Filer's Non-Investment Income

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	RODEL INSTITUTE	September 15 - 19, 2022	Sun Valley, Idaho	Seminar on Judicial Leadership	Transportation & Hotel
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT
Page 3 of 10

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

V. GIFTS. *(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)*

☑ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.			
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 335 Liabilities; § 360 Spouses and Dependent Children.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	JP MORGAN	VISA CARD	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 10

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	
1. Viking Global Equities LP	A	Dividend	P2	T	Distributed (part)	04/01/22	O		
2. Viking Global Opportunities LP	G	Dividend	P1	T					
3. D1 Capital Partners Onshore LP	A	Dividend	P2	T	Distributed (part)	01/28/22	P1		
4.					Distributed (part)	04/26/22	P1		
5.					Distributed (part)	07/25/22	N		
6. Junto Capital Partners LP	G	Dividend	P2	T					
7. 151 Baltic ST JV LLC	A	Dividend	L	T	Buy	08/16/22	L		
8. Invesco QQQ Trust	D	Dividend	O	T	Buy (add'l)	05/11/22	L		
9.					Sold (part)	05/18/22	L	A	
10. Ishares Russel 2000 ETF		None	L	T					
11. Lord Abbett Floating Rate A Fund		None	K	T					
12. Schwab US TIPS ETF	E	Dividend	M	T					
13. SPDR S&P 500 ETF	D	Dividend	P1	T	Buy (add'l)	02/23/22	K		
14.					Sold (part)	05/18/22	L	D	
15. Vanguard FTSE All World EX-US ETF		None	J	T					
16. SPDR Gold Shares ETF		None	N	T					
17. JP Morgan Unallocated Gold Fund		None	N	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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2 Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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FINANCIAL DISCLOSURE REPORT
Page 5 of 10

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Komitee , Eric R.	7/07/2023

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

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18. iShares MSCI EAFE ETF		None	K	T	Sold (part)	05/27/22	J		
19. SPDR Dow Jones ETF		None	K	T					
20. Invesco Diversified Dividend Fund		None	M	T					
21. iShares S&P 500 Index Fund		None	M	T					
22. Clearbridge Large Cap Growth Fund		None	L	T					
23. iShares Russell Mid Cap Index Fund		None	L	T					
24. Delaware Small Cap Core Fund		None	L	T					
25. Invesco Asia Pacific Growth Fund		None	L	T					
26. Nuveen Real Estate Securities Fund		None	L	T					
27. Lehman Bros HLD VAR 2XXX	A	Distribution	J	T					
28. Vanguard S/T Investment - VFSTX		None	K	T					
29. iShares MSCI Emerging Markets - EEM	A	Dividend	J	T					
30. NY 529 Developed Markets Index Portfolio		None	L	T					
31. NY 529 Mid-Cap Stock Index Portfolio		None	M	T					
32. NY 529 Small-Cap Stock Index Portfolio		None	M	T					
33. NY 529 Inflation Protected Securities Portfolio		None	L	T					
34. iShares MSCI China ETF	D	Dividend	O	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	
35. US Treasury Bonds	D	Interest	O	T					
36. FINE TONY OUNCES OF UNALLOCATED GOLD		None	O	T					
37. GAMESTOP CORP - CLASS A		None	J	T	Buy (add'l)	01/05/22	L		
38.					Sold (part)	01/05/22	L	D	
39.					Buy (add'l)	01/18/22	L		
40.					Sold (part)	01/18/22	M	F	
41.					Buy (add'l)	03/11/22	M		
42.					Sold (part)	03/11/22	M	D	
43.					Buy (add'l)	03/14/22	M		
44.					Sold (part)	03/14/22	M	F	
45.					Buy (add'l)	03/28/22	L		
46.					Sold (part)	03/28/22	L		
47.					Buy (add'l)	05/25/22	N		
48.					Sold (part)	05/25/22	N	D	
49.					Buy (add'l)	07/19/22	M		
50.					Sold (part)	07/19/22	M		
51.					Buy (add'l)	12/05/22	M		

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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FINANCIAL DISCLOSURE REPORT
Page 7 of 10

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e g , div , rent, or int)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e g , buy, sell, redemption)	D (2) Date mm/dd/yy	D (3) Value Code 2 (J-P)	D (4) Gain Code 1 (A-H)	
52.					Sold (part)	12/05/22	L		
53.					Buy (add'l)	12/08/22	L		
54.					Sold (part)	12/08/22	M	E	
55.					Buy (add'l)	12/16/22	M		
56.					Sold (part)	12/16/22	M	G	
57. JPM MANGAED INCOME FUND	B	Dividend	O	T					
58. JPM FLOAT RATE INC.	B	Dividend	M	T					
59. APPLE INC.	A	Dividend	J	T					
60. NOVOZYMES INC.	A	Dividend	J	T					
61. TENCENT MUSIC ENTERTAINMENT		None	N	T					
62. ISHARE MSCI WORLD ETF	C	Dividend	M	T	Buy	12/01/22	M		
63. BITCOIN (BTC)		None	M	T	Buy (add'l)	02/07/22	K		
64.					Sold (part)	02/14/22	L	D	
65.					Buy (add'l)	07/08/22	L		
66. ETHEREUM (ETH)		None	L	T	Buy	02/07/22	L		
67.					Buy (add'l)	02/14/22	L		
68.									

1 Income Gain Codes: (See Columns B1 and D4) — A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000

2 Value Codes (See Columns C1 and D3) — J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

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FINANCIAL DISCLOSURE REPORT
Page 8 of 10

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e g , buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	
69.									
70.									
71.									

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3 Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

The Gamestop position was a short position

FINANCIAL DISCLOSURE REPORT
Page 10 of 10

Name of Person Reporting	Date of Report
Komitee , Eric R.	7/07/2023

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 13141 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Eric R. Komitee**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 13106)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite G-330
One Columbus Circle, N.E.
Washington, D.C. 20544

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

UNITED STATES OF AMERICA

- v -

Criminal Case No. 23-00082 (EK)

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

---------- x

REPLY MEMORANDUM OF LAW ON BEHALF OF THE DEFENDANTS IN FURTHER SUPPORT OF THEIR MOTION TO DISQUALIFY THE HONORABLE ERIC R. KOMITEE

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Attorney for Carlos Watson and OZY Media, Inc.

November 3, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

UNITED STATES OF AMERICA

- v - Criminal Case No. 23-00082 (EK)

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

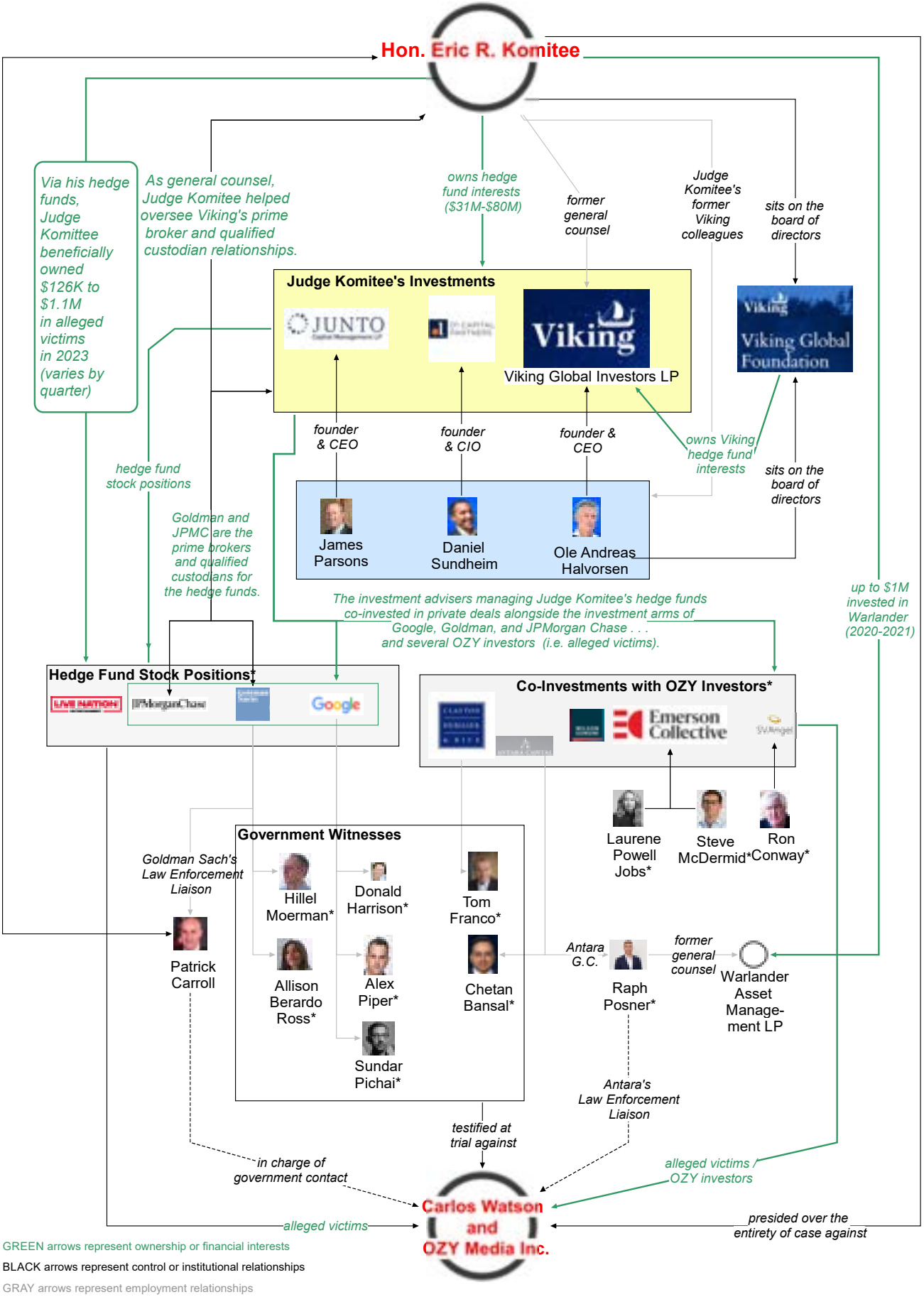
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REPLY MEMORANDUM OF LAW ON BEHALF OF THE DEFENDANTS IN FURTHER SUPPORT OF THEIR MOTION TO DISQUALIFY THE HONORABLE ERIC R. KOMITEE

This Reply Memorandum of Law is respectfully submitted on behalf of Defendants Carlos Watson and OZY Media, Inc. ("OZY") in further support of their motion for an order disqualifying the Honorable Eric R. Komitee from this case, vacatur of the convictions of the Defendants, and dismissal of the indictment.

The government's opposition ignores the letter, spirit, and purpose of 28 U.S.C. § 455 and Judge Komitee's multi-layered entanglements with this case, demonstrated on the chart that follows on the next page.

Judge Komitee's Case Overlap 2023



GREEN arrows represent ownership or financial interests

BLACK arrows represent control or institutional relationships

GRAY arrows represent employment relationships

* ASTERISK indicates an individual or company named in ECF No. 141 (Gov't's List of Persons, Entities, and Places)

A. This motion is timely.

The government claims that this motion for recusal is untimely (Gov't Br at 6-9), but such motions are untimely only where the grounds for recusal were known to the defendants long before seeking recusal. *See In re IBM Corp.*, 45 F.3d 641, 643 (2d Cir. 1995). A motion is timely where, as here, it is filed "at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." *See Gil Enters. v. Delvy*, 79 F.3d 241, 247 (2d Cir. 1996). The grounds warranting recusal here were uniquely known to Judge Komitee when he was assigned to this case and not known to the defense until last month.

The judge and the government gave the defense no reason to believe that any actual conflict or appearance of partiality could be of concern. In advance of a conference on March 6, 2023, just twelve days after the Indictment was filed, the government filed its "List of Interested Parties" pursuant to Fed. R. Cr. P. 12.4 and did so *ex parte* and under seal. At the conference, Judge Komitee said that he "didn't see any *overlap* between the people and entities listed there [the disclosure pursuant to Rule 12.4] on the one hand, and my bio on the other hand" and asked the government "to confirm that [it didn't] see anything along those lines either." *See* Transcript of Mar. 6, 2023 ("Tr of Mar 6, 2023," Docket No. 29) at 7 (emphasis added). Judge Komitee said that it would be "meaningful" if the government saw "the name Viking in anything" and asked if anyone had seen "[a] current list of investors [in Defendant OZY Media Inc.] and their percentage ownership." *Id.* at 8-9.

Judge Komitee in March 2023 had unique access to his overlap with this case and an obligation to "inform himself about his personal and fiduciary financial interests," *see* 28 U.S.C. 455(c), to avoid an "objective appearance of a conflict of interest requiring

disqualification under Section 455(a)." *See Chase Manhattan Bank v. Affiliated FM Ins. Co*, 343 F.3d 120, 129 (2d Cir. 2003). Judge Komitee knew or should have known that he held positions in Alleged Victims through D1 and Junto in addition to Viking, he knew of his professional relationships with Goldman and JPMC as Viking's prime brokers and qualified custodians, and he knew or should have known of Viking's co-investments with OZY's investors and Alleged Victims beginning when he was Viking's General Counsel. Judge Komitee disclosed none of it and did not adequately discharge his obligation to "inform himself" about his interests just by reviewing the government's notice pursuant to Rule 12.4 and asking the government if it had seen the name "Viking in anything," such as a list of investors in OZY. The government, of course, was presumably not privy to facts about Judge Komitee's financial, professional, and personal relationships to which he had unique actual or constructive knowledge. While Judge Komitee at the conference asked the defense if it had "[a]ny questions or comments" on the subject (Tr of Mar 6, 2023 at 9), the defense had no reason to question Judge Komitee's assurances nor has the defense *ever* been privy to the government's filing pursuant to Rule 12.4, which remains *ex parte* and under seal.[1]

"[L]awyers do not routinely search judges' financial disclosure forms - - the only information available on a particular judge's financial holdings - - but even if they did, those forms are generally a minimum of four months out-of-date, i.e., the forms are filed by May [15] and report holdings and transactions for the previous calendar year. Judges therefore bear the

[1] Despite the government's representation to defense counsel via email on October 17, 2024, that it would internally discuss counsel's request for disclosure of the sealed filing and also determine whether a court order was needed to share it, the government has not since responded, nor does it mention the filing in its opposition. The Court should immediately unseal the filing, make it available, and permit the defense to address it in support of this motion.

principal burden of compliance" with Section 455. *Chase Manhattan Bank*, 343 F.3d at 130-31. *See* Andrew L. Wright, *"Invested in the Outcome: When the Judge Owns Stock in the Victim of the Crime,"* University of Chicago Legal Forum: Vol. 1998: Issue 1, Article 20, at 495[2] ("[A] defendant reasonably might want to know how long a judge who refuses to recuse himself has owned the stock in question, what percentage of the judge's entire investment portfolio the stock constituted, or why the judge invested in that company in the first place. Yet a defendant is not entitled to this information. The judge is neither subject to any voir dire procedure nor permitted to testify in court.").

Even then, neither the 2023 Disclosure nor any other of Judge Komitee's disclosures themselves established his multi-layered entanglements with this case. *See Chart, supra.* They were revealed only after the 2023 Disclosure was made available and only by happenstance when the defense elected to conduct an analysis over the last month, which the law exclusively required Judge Komitee to conduct almost two years ago. *See* Wright, *"Invested in the Outcome"* at 495 n 88 ("Most judges, thinking themselves capable of objectively evaluating a case, react poorly when someone questions their impartiality . . . . Moreover, a lawyer may hesitate to challenge a lifetime-tenured federal judge before whom he is likely to appear again because he may fear the judge will dislike him. *See also* David C. Hjelmfelt, Statutory Disqualification of Federal Judges, 30 U Kan L Rev 255, 256 (1982) ('[B]oth lawyers and clients recognize the potentially disastrous effects on their case of unsuccessfully seeking to disqualify a judge.')).").

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[2] *Available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1263&context=uclf*

But even if a defendant has an independent obligation to scrutinize a judge's representation of no actual conflict or appearance of partiality, Judge Komitee's assurance on the record at the conference on March 6, 2023, coupled with the unavailability of the 2023 Disclosure until after trial (and the continuing unavailability of Judge Komitee's disclosure for 2024) constitute good cause for any untimeliness, which the government acknowledges is a relevant factor. *See* Gov't Br at 3-4; *Apple v. Jewish Hosp. & Med. Ctr.*, 829 F.2d 326, 333-34 (2d Cir. 1987) ("[I]n considering the question of timeliness, the actual time elapsed between the events giving rise to the charge of bias or prejudice and the making of the motion is not necessarily dispositive . . . . A number of factors must be examined, including whether . . . . the movant can demonstrate good cause for delay.").

The government claims that the defense nonetheless had no good cause for the timing of this motion because (1) Judge Komitee's financial disclosure for 2021 established that he held positions in unspecified investments through Viking; and (2) the government began to provide discovery on April 21, 2023, identifying alleged victims. *See* Govt Br. at 8-9; Docket No. 55. The state of Judge Komitee's finances in 2021 - - two years before the Indictment in this case - - was not apparently relevant to his representations at the conference in 2023, which he never corrected or modified as the case proceeded through pretrial proceedings, the government's filing of its list of names and witnesses as part of *voir dire* (Docket No. 141), and trial. The defense never had a window into Judge Komitee's financial, professional, and personal relationships, which likely remains only partially opened. For precisely this reason, Section 455 burdens judges with identifying potentially and apparently conflicting relationships and does not expect defendants to figure it out on their own.

The government's view of timeliness, if adopted, would upend Section 455 and the cases that interpret it, untenably encourage litigants to question judges about their representations, and require litigants to conduct their own independent investigations into judges, potentially including engagement of private investigators and experts on private capital markets, and the type of sophisticated financial analysis conducted here for which the lion's share of defendants lack the wherewithal. Section 455 keeps that Pandora's Box closed by putting the burden on judges to "carefully examine possible grounds for disqualification and to promptly disclose them when discovered." *See Litovich v. Bank of Am. Corp.*, 106 F.4th 218, 226-27 (2d Cir. 2024) (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 868 (1988)).

B. The Defendants did not waive their motion for recusal.

A judge's knowledge about and unique access to his or her financial, professional, and personal interests underscore Section 455(e), which provides that a defendant can *never* waive a violation of Section 455(b) and can only waive a violation of Section 455(a) *after* full disclosure:

> No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

28 U.S.C. § 455(e). *See Gil Enters. v. Delvy*, 79 F.3d at 247; *In re Kensington Int'l, Ltd.*, 368 F.3d 289, 294 (3d Cir. 2004) ("The evil that a timeliness requirement is intended to prevent - - namely, holding in reserve a recusal demand until such time that a party perceives a strategic advantage - - is served by requiring actual knowledge. Because the Petitioners did not themselves learn about the Advisors' conflict of interest . . . until shortly before they moved for disqualification, their motions were timely."); *Summers v. Singletary*, 119 F.3d 917, 921 (11th

Cir. 1997) ("We hold that a motion to disqualify filed under § 455(b) must be filed within a reasonable time after the grounds for the motion are ascertained."); *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1295 (9th Cir. 1992) ("While there is no *per se* rule that recusal motions must be made at a fixed point in order to be timely, see *Preston* (section 455 motion timely even though made 18 months after assignment to district court judge and shortly after an adverse discovery ruling), such motions 'should be filed with reasonable promptness after the ground for such a motion is ascertained.'" (quoting *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991)).

Waivers are found only where a judge had previously disclosed the conflict to the parties on the record, and recusal is denied where a judge's financial interest was relatively negligible. *See, e.g., United States v. Lauersen*, 348 F.3d 329, 333 (2d Cir. 2003) (judge affirmatively disclosed holdings in multiple companies all of negligible value); *United States v. Ravich*, 421 F.2d 1196, 1205 (2d Cir. 1970) ("the judge remembered and disclosed that he owned some 325 shares of stock" in bank worth between $10,000 and $15,000). Here, Judge Komitee never affirmatively disclosed the extent of his financial interests in the victims (measuring at least into six and seven figures) nor the extent of his related professional and personal relationships.

C. Judge Komitee's overlap with this case requires recusal.

The government in its opposition to recusal declines fulsomely to address all of Judge Komitee's multi-layered entanglements with this case, demonstrated in the summary chart, *supra*.

The government refuses to see the forest for the trees. While each of Judge Komitee's connections may itself require recusal, this motion is based on a multiplicity of inter-related connections, including, but not limited to, the extent of Judge Komitee's interests in alleged victims through Viking, D1, and Junto; Viking's and D1's co-investments with alleged victims; Viking's co-investments with investors in OZY; Judge Komitee's relationships with victims; his ongoing friendships; his membership on the board of Viking's Foundation with current principals of Viking and former colleagues; and the potential that Judge Komitee could benefit from restitution. Here, a forest shadows this case even as the government takes an axe to any one of its trees. Not one of the cases on which the government relies presents the multiplicity of Judge Komitee's connections, which constitute a disqualifying interest under Section 455(b), an appearance of partiality which might reasonably be questioned under Section 455(a), or both. *See* Wright, *"Invested in the Outcome"* at 488-90 ("[A] judge who owns stock in a bank which is robbed might realize a substantial financial benefit by ordering restitution or meting out particularly harsh sentences that send a message to others contemplating similar crimes against the bank" . . . . "The judge may possess another type of prohibited interest in the disposition of a case beyond the mere fiscal. For example, a judge's sense of loyalty to the company in which he owns stock may influence him to punish more severely those who harm the company. Such feelings can infect a judge's decisionmaking in spite of the judge's best efforts to maintain impartiality.").

As for particular trees in this case, the government cannot persuasively force the square peg of Judge Komitee's entanglements into the round hole of the safe harbor of Section 455(d)(4)(I). *See* Gov't Br at 9-14. Unlike *United States v. Teman*, No. 21-1920-cr, 2023 U.S.

App. LEXIS 14247 at *9-10 (2d Cir. June 8, 2023), in which a judge actually disclosed an isolated holding in Berkshire Hathaway which in turn held a *de minimis* position in a victim, Judge Komitee personally certified dozens of filings with the SEC when he managed the funds at Viking which held positions in alleged victims; continued positions through Viking while presiding over a case in which the alleged victims testified or were otherwise presented as victims; maintained membership on a board with Viking's managers (his former colleagues), who controlled the funds and co-invested with the victims and made co-investments in OZY itself; and developed substantial relationships with victims who served (and serve) Viking as prime brokers and qualified custodians.

As for another of the trees, the government claims that Judge Komitee had no cause to disqualify himself based on his friendship with Patrick Carroll, Goldman's Global Head of the Monitoring and Assurance Group and Law Enforcement/Regulatory Liaison for Federal Crime Compliance, even though Judge Komitee's friendship with Carroll is so close that Carroll accompanied then nominee-Komitee to his confirmation hearing before the United States Senate Judiciary Committee in 2018. *See* Govt Br at 16-17.

But Judge Komitee appears to have recused himself when such a close friendship was his *only* connection to a case. Carroll was one of three of Judge Komitee's close friends to attend his confirmation hearing. Judge Komitee singled out Carroll in his testimony as well as attorney Paul Schoeman, described by Judge Komitee as a "longtime friend[] from the US Attorney's Office. I've known Paul for almost two decades now . . . . Paul was the Chief

Assistant in the US Attorney's Office while I was there."[3] Two days after Schoeman filed his notice of appearance to join a team of defense lawyers in *United States v. Levy, et al.*, Case No. 22-cr-00281 (E.D.N.Y.), Judge Komitee *sua sponte* recused himself, citing 28 U.S.C. § 455(a), without elaborating. *See Levy*, Docket Nos. 41 and 44.

Judge Komitee's overlap with this case is too extensive and multi-layered to be considered analogous to *Teman, Ravich,* or other similar cases. In *United States v. Rechnitz*, 75 F.4th 131 (2d Cir. 2023), the circuit held that Section 455(a) required recusal where the judge maintained a "remarkably close" relationship with a person who was directly involved in the defendant's case, and where the interests of the judge and the defendant were "plausibly adverse" on the issue of restitution even though Section 455(b) was not technically violated, and even though any financial interest may have been minimal. *Id.* at 144-45. And unlike cases relied on by the government, the motion in this case *does not* even purport to present the universe of relevant facts and circumstances, presents only conservative estimates of Judge Komitee's financial interests, and lacks sufficient information to itemize all of his financial, professional, and personal connections.

United States Attorneys have day-to-day relationships with district courts that may inhibit their support of recusal in any particular case. Perhaps some of the government's more fanciful arguments here are rooted in that inhibition. But the prosecutors dishonor their fidelity to fair justice by trotting out their "blame-the-defendant" trope on this type of motion on the undisputed facts on which it is based. *See e.g.* Gov't Br at 1-2 ("the defendants have attempted

[3] *Available at https://www.judiciary.senate.gov/committee-activity/hearings/08/01/2018/nominations (testimony beginning at 1:11:36).*

to avoid responsibility by deflecting blame onto others."). It is never a defendant's obligation to investigate possible violations of Section 455 absent judicial disclosure, and the defendants did so here only after Judge Komitee's financial disclosure for 2023 became publicly available just last month. The defendants then did so only because they elected to look under the hood of Judge Komitee's assurance in 2023 that he saw no "overlap" with this case, not because the law required it. Public confidence in the courts should far outweigh any particular prosecutor's pursuit of any particular defendant.

The intrusion of wealth into our institutions has greatly increased as of late, raising new challenges for journalism, politics, and the media. *See Sarah C. Baldwin, "The dark side of extreme wealth,*" Brown University's Watson Institute for International & Public Affairs, Nov. 3, 2011[4] ("Great wealth threatens democracy itself. Billionaires have a disproportionate influence on politics. Through political donations, the wealthy can affect the outcome of elections. They alter the political world by reshaping the institutions that support democracy, such as newspapers and media. The very wealthy distort the entire political system by tilting policy away from the needs of the majority. And there's a more insidious effect: great wealth changes the culture. It feeds the sense that ordinary people – and politics itself – can't really get anything done. Why participate if government can't deliver?").

Wealth also threatens public confidence in the judiciary. The government acts at its own peril by attempting to sweep the types of overlaps in this case under the rug or kick them down the road for some other prosecutors to resolve in some other case. Foreseeing such folly,

[4] *Available at https://home.watson.brown.edu/news/2021-11-03/dark-side-extreme-wealth*

the circuit in *Litovich* concluded that the injustice created by inaction "is that federal judges will fail to recuse themselves in future cases, which . . . may increas[e] the likelihood that conflicts [] go unnoticed and unremedied." *Id.* (quotation marks and citation omitted) (we hope to "prevent a substantive injustice in some future case" by urging our peers "to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered.") (quoting *Liljeberg*, 486 U.S. 868.).

But for serendipity, the overlaps in this case would have gone "unnoticed and unremedied," permitting the challenges created by wealth in the judiciary to continue to mestastasize. The issues presented by this case are far too important to prioritize the government's interest in one case ahead of public confidence in the courts.

Dated: November 3, 2024

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EXHIBIT G

JPL:JRS/GK/DAS
F.#2021R00900

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA

- against -

Docket No. 23-CR-82 (EK)

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.

- X

THE GOVERNMENT'S PROPOSED STATEMENT OF THE CASE, VOIR DIRE REQUESTS, AND LIST OF PERSONS, ENTITIES AND PLACES

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PRELIMINARY STATEMENT

The following is the government's proposed statement of the case, voir dire and list of persons and entities.

STATEMENT OF THE CASE

The defendants in this case are Carlos Watson and Ozy Media, Inc. ("Ozy Media"). Both defendants are charged with one count of conspiracy to commit securities fraud and one count of conspiracy to commit wire fraud. Additionally, the defendant Carlos Watson is also charged with one count of aggravated identity theft.

The defendant Ozy Media was a media and entertainment company whose businesses included digital newsletters, television production, podcasts and live events. The defendant Carlos Watson was the founder and Chief Executive Officer of Ozy Media, as well as the star and host of several of Ozy Media's television programs. The indictment alleges that the defendants conspired (or agreed) with each other and with others to engage in a scheme to defraud Ozy Media's investors, potential investors, potential acquirors, lenders and potential lenders through material misrepresentations and omissions about, among other things, Ozy Media's historical and projected financial results, debts, and audience numbers; the identities of Ozy Media's investors and the sizes of their investments; the existence and timing of investment rounds; the identities of Ozy Media's business partners; the existence and terms of key contracts; and purported offers to purchase Ozy Media by high-profile corporations. The indictment further alleges that defendant Carlos Watson committed identity theft by knowingly and intentionally using a means of identification of one or more individuals without lawful authority.

This is just a summary of the charges to give you some background on the case. The Court will instruct the jury as to the elements of the crimes charges and the applicable law at

a more appropriate time during the trial. A few basic principles of law bear mention now. The indictment is simply the means by which the government gives the defendant notice of the charges against him and brings them before the court. The indictment is merely an accusation, and nothing more; it is not evidence and is not to be considered by the jury in arriving at a verdict. In response to the indictment, the defendants pleaded "not guilty." The defendants are presumed innocent until the jury unanimously decides the government has proven their guilt beyond a reasonable doubt.

PROPOSED VOIR DIRE REQUESTS

In accordance with Rule 24(a) of the Federal Rules of Criminal Procedure, the government respectfully requests that the Court ask the following questions in jury selection for this case, in addition to the Court's usual voir dire.

A. Knowledge of the Case

1. Do you have any personal knowledge of this case? Have any of you ever read or heard anything about this case, or are you familiar with any news stories or internet postings regarding a case involving Carlos Watson or Ozy Media? If so, have you formed any opinions regarding this case? Is there anything about what you have read or heard that would affect your ability to be fair and impartial in deciding this case?

2. The defendants in this case are charged with conspiring, or agreeing, to commit securities fraud and wire fraud. While the Court will give you further instructions on these crimes at a later time, the Court will also instruct that a conspiracy is an agreement to commit an unlawful act, and that since conspiracy is the making of the unlawful plan itself, the government does not have to prove that the conspirators succeeded in carrying out the plan. Do you believe that it should not be a crime to agree to do something unlawful, like agreeing to commit securities fraud or wire fraud, even if the object of that agreement does not succeed?

B. Knowledge of Trial Participants

3. The government is represented here by the United States Attorney for the Eastern District of New York, Breon Peace. This trial will be prosecuted by Assistant United States Attorneys Jonathan Siegel, Gillian Kassner and Dylan Stern. The government's investigative partner is the Federal Bureau of Investigation ("FBI"). The case agent is Special Agent Gurdeep Singh. At times the government will also be assisted by Jake Menz who is a paralegal in the U.S. Attorney's office. Do you know any of these individuals?

4. The defendants in this case are Carlos Watson and Ozy Media. Do any of you know, or have any of you had any dealings, directly or indirectly, with Mr. Watson or with any relative, friend or associate of his? Have you seen or heard any news stories or internet postings about Mr. Watson?

5. Carlos Watson is represented by Ronald Sullivan. Do any of you know him or have you had any dealings, either directly or indirectly, with him?

6. Do any of you know, or have any of you had any dealings, directly or indirectly, with Ozy Media? Do you have any relationship with Ozy Media? Have you ever worked or had any contractual relationship with Ozy Media? Have you seen or heard any news stories, newsletters, podcasts, television programs, media content or internet postings by Ozy Media? Have you attended any live festivals or events produced by Ozy Media, including Ozy Fest?

7. Ozy Media is represented by Shannon Frison. Do any of you know her or have you had any dealings, either directly or indirectly, with her?

8. Do any of you know, or have any of you had any dealings, either directly or indirectly, with any of the following persons or companies who may be mentioned or who may be witnesses in this case? [List of persons and companies is attached hereto as Exhibit A]. Please note that this list includes some well-known companies and public figures. Do you have any kind of relationship with these well-known companies and public figures that would affect your ability to be a fair and impartial juror?

C. Experience With the Financial Services Industry

9. Have you or has anyone close to you ever invested in securities such as stocks, bonds or options?

10. Have you or has anyone close to you ever invested in or otherwise participated in a fundraising round for a business?

11. Have you or has anyone close to you ever served on the Board of Directors of a business?

12. Have you, or anyone close to you, ever had training or worked in any of the following areas:

a. Banking/Finance
b. Auditing
c. Corporate Law
d. Insurance or Reinsurance
e. Investment Banking
f. Investment Management
g. Mutual Fund or Hedge Fund Management
h. Media or Entertainment Company Operations
i. Stockbroker or Financial Advisor
j. Start-up Business Fundraising or Operations
k. Accounting

13. Will any of the training or work experiences that you just reported affect your ability to be fair and impartial?

14. Have you or has anyone close to you ever worked for a Wall Street firm, an investment bank, stock brokerage firm, family office, hedge fund, investment advisor, private equity fund, venture capital fund, or some other financial institution related to the securities market?

15. Have you or has anyone close to you ever invested directly in a start-up business?

16. Have you ever made or lost so much money on an investment that it affected your lifestyle?

17. If yes, have you ever had such a positive or such a negative experience with an investment that it would affect your ability to be a fair and impartial juror?

D. Relationship with Government and Other Legal Professionals

18. Do any of you know, or have any of you had any association with, any member of the staff of the United States Attorney's Office for the Eastern District of New York, or any employee of any federal, state, or local law enforcement agency?

19. Do you have any feelings, bias, sympathy, or prejudice for or against the government or the U.S. Attorney's office which would make it difficult for you to render a fair and impartial judgment based solely on the evidence presented at trial?

20. Do you have any opinions or beliefs concerning law enforcement in general — including, the FBI or the Department of Justice — that would affect your ability to evaluate the evidence in this case fairly and impartially?

21. Have you, or has anyone close to you, either individually or in the course of business, ever been a party to any legal action or dispute with the United States or with any of the offices, departments, agencies, or employees of the United States, including the Securities and Exchange Commission ("SEC") and the FBI, or had any interest in any such legal action or dispute or its outcome?

22. Are you or is anyone close to you a judge, law clerk, court attendant, court clerk, other type of court personnel, probation officer, or person connected with any correctional institution?

23. Have you or has anyone close to you ever attended law school or been a lawyer?

24. Do you have any opinions — positive or negative — about lawyers or law school that would make it difficult for you to render a fair and impartial verdict?

25. Do you have any opinions — positive or negative — about the police or any law enforcement agency that would make it difficult for you to render a fair and impartial verdict?

26. Have you or has anyone close to you ever worked for or applied for a position at any law enforcement agency or in a related field – for example, as a police officer or a private security guard?

27. Have you or has anyone close to you ever worked for or applied for a position in any aspect of criminal defense work, including being a criminal defense lawyer or a private investigator?

E. Experience as a Witness, Plaintiff, Defendant or Crime Victim

28. Have you or has anyone close to you ever been involved, been the subject of, or appeared as a witness in, any investigation by a federal or state grand jury or by a Congressional or state legislative committee, licensing authority, or governmental agency? Would anything about this experience affect your ability to be a fair and impartial juror in this case?

29. Have you or has anyone close to you ever been involved or appeared as a witness in any investigations by the SEC or any other regulator or civil enforcement agency, or been questioned in any matter by investigators for such agencies? Would anything about this experience affect your ability to be a fair and impartial juror in this case?

30. Have you or has anyone close to you ever been questioned, investigated, arrested or prosecuted by any law enforcement officer, federal, state or local? If yes, do you believe that you or the person close to you was fairly treated in connection with such matter?

31. Have you or has anyone close to you ever been a witness or a complainant in any prosecution? Would anything about this experience affect your ability to be a fair and impartial juror in this case?

32. Have you or has anyone close to you ever been charged with a crime? Would anything about this experience affect your ability to be a fair and impartial juror in this case?

33. Have you ever been disciplined by the SEC or any other regulator or civil enforcement agency? Have you ever been investigated by any regulator or civil enforcement agency?

34. Have you or has anyone close to you ever been a victim of a crime, including a financial fraud? Was the crime reported to the police or another law enforcement agency? If yes, did law enforcement respond appropriately?

35. Have you or has anyone close to you ever been a plaintiff or a witness in a civil lawsuit? Have you or has anyone close to you ever asserted a claim against any person or firm in the financial industry or in connection with a financial investment?

F. Prior Jury Service

36. Have you ever served as a member of a grand jury, whether in federal, state, county, or city court?

37. Have you ever served as a juror in a trial in any court? If so, when, and in what court did you serve, and was it a civil or criminal case, what was the nature of the case? Without stating what the verdict was, did the jury reach a verdict?

38. Have you ever been a juror in a case that was dismissed because the jury was deadlocked (i.e., could not reach a verdict)?

G. General Questions / Legal Principles

39. This case involves venture capital investments by individuals and companies. Do you have any views or feelings about serving as a juror in a case involving venture capital investments?

40. This case involves a start-up media company. Do you have any views or feelings about serving as a juror in a case involving a media company or a start-up business?

41. Some witnesses in this case may be law enforcement officers and agents. The credibility of these witnesses is to be judged by the same standards as any other witness. Their testimony is not entitled to any greater or lesser weight simply because they are involved in law enforcement. Will you have any difficulty accepting and applying this rule?

42. You may hear testimony in this case from witnesses who have now pled guilty to crimes and entered into agreement with the government to testify in the hopes of obtaining leniency at sentencing. These witnesses may be referred to as cooperating witnesses. The government is permitted to enter into these kinds of agreements and the Court will instruct you that these agreements are legal and proper. The jury may take the terms of such agreements

into account, together with other factors which bear on the issue of credibility, in evaluating the witness's testimony. Do any of you have any experience with or feelings about such agreements, the use or testimony of cooperating witnesses generally, or the use of evidence or information obtained from such witnesses, which would make it difficult for you to be a fair and impartial juror in this case? Would you be able to follow the Court's instructions about how to evaluate the credibility of such witnesses?

43. Is there any juror who feels that, even if the evidence established a defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

44. Do you have any biases or prejudices against members of racial, ethnic, national or religious groups that would make it difficult for you to be fair and impartial? Do you have any knowledge about the parties or the case that might influence you in deciding the case? Would you be able to set aside any sympathies or biases you may have for any of the parties in reaching a verdict?

45. Is there any reason that you would have difficulty passing judgment on another person?

46. Will you be able to accept the proposition that the question of punishment is for the Court alone to decide and that the possible punishment must not enter into the deliberations of the jurors as to whether a defendant on trial here is guilty?

* * *

In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior questions, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she

will be able to serve conscientiously, fairly, and impartially in this case and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained?

H. Questions for Individual Jurors[1]

Now, let me find out some general information about each juror.

Starting with Juror No. 1:

a. What is the main way you get news—that is, the type of news reported on in newspapers, on television and on websites?

b. What websites do you regularly access for the news?

c. What magazines and newspapers do you regularly read?

d. What TV shows do you regularly watch including news programs?

e. Other than news websites, what Internet sites do you regularly visit?

f. Have you ever written a letter to the editor or posted opinions online?

g. How do you like to spend your free time? Please tell us about hobbies and interests.

[1] The Parties assume that Your Honor's typical individual oral voir dire includes inquiry regarding the prospective jurors' (i) place of residency/neighborhood; (ii) occupation; (iii) marital status; (iv) spouse or significant other's occupation; (v) number and ages and occupation of any children; (vi) educational background; (vii) military background; (viii) ability to serve/hardship claims; (ix) the indictment is not evidence or proof of guilt; (x) presumption of innocence and burden of proof; (xi) verdict is based on the evidence and jurors must not do outside research or use the internet; (xii) the roles of the Court and the Jury; (xiii) the defendant need not testify or present evidence; and (xiv) the burden never shifts to the defendant even if he puts on evidence. To the extent the Court does not usually inquire on those topics, the Parties respectfully request they be covered during oral voir dire in this case.

LIST OF PERSONS, ENTITIES AND PLACES

A. Defendants and Defense Counsel

- Carlos Watson
- Ozy Media, Inc.
- Ronald Sullivan, Esq.
- Shannon Frison, Esq.

B. Seated at the Government's Table

- Assistant U.S. Attorney Jonathan Siegel
- Assistant U.S. Attorney Gillian Kassner
- Assistant U.S. Attorney Dylan Stern
- Special Agent Gurdeep Singh, Federal Bureau of Investigation
- Paralegal Specialist Jake Menz

C. Possible Witnesses and Other Individuals[2]

- Babatunde Adediran
- Josephine Amy Aniobi
- Chetan Bansal
- John Barber
- Kelvin Beachum
- Eric Becker
- Allison Berardo (also known as Allison Ross)
- Alan Bersin
- Frank Bland
- Sean Braswell
- Luke Brindle-Khym
- Hannibal Amir Buress
- Richard Campbell-Breeden
- Keith Canton
- Rosemarie Carbone
- Michael Carter
- Alan Chebot
- Benjamin Chuchla
- Joseph Clemente

[2] The government reserves the right to supplement this list and will include names of any additional witnesses as they are identified.

- Elizabeth Coleman
- Ron Conway
- Terry Alan Crews
- Sebastian Cuvelier
- Joel Decapua
- Sanjan Dhody
- Anna Diop
- Iain Drayton
- Michael Dubilier
- Andreas Economou-Ellison
- Renata Erlikhman
- Andrew Fitzmaurice
- Thomas Franco
- Don Gogel
- Bruce Goldman
- Himanshu Gulati
- Anant Gupta
- Suzee Han
- Seth Harris
- Donald Harrison
- Harry Hawks
- Felipe Held
- R. Christopher Hoehn-Saric
- Darlene Hopkins
- Eungee Hwang
- Nicolas Ibanez
- Ali Iz
- Marc Jones
- Tim Jones
- Kosmo Kalliarekos
- Shruti Khare
- Steve Kim
- Mark Klein
- Georg Krause-Vilmar
- Marc Lasry
- Albert Lee
- George C. Lee
- Gregg Lemkau

- Claire Lightfoot
- Jennifer Lopez
- Linda Lorenat
- Humble Lukanga
- Robert Lynch
- Abbas Maniar
- Ryan Mannion
- Erik R. Manuel, Jr.
- Josh Martin
- Carol Martin
- Steve McDermid
- Alton McDowell
- Lenard McKelvey (also known as "Charlamagne tha God")
- Peter McMillan
- Liam McNett
- Ramiro Mendez
- John Miller
- Michael Millette
- Michael Moe
- Hillel Moerman
- Jens Mueffelman
- Petr Nadvornik
- Aviv Nevo
- Dave Novak
- Joon Oh
- Joseph O'Hara
- Lorena O'Neil
- Richard Ossoff
- Sam Parnell
- Kelly Pelletiere
- Jonah Peretti
- Tina Perry
- Sundar Pichai
- Emily Pierce
- Barry Pincus
- Alex Piper
- Raph Posner
- Janeen Poutre

- Laurene Powell Jobs
- Roberto Quarta
- Deborah H. Quazzo
- Aneesh Raman
- Samir Rao
- Venkat Rao
- David T. Robinson
- Eugene Robinson
- Alex Rodriguez
- Louise Rogers
- Daniel Lee Rosensweig
- Damian Rouson
- Sanjena Sathian
- Fay Schlesinger
- Aaron Siegel
- David Slayton
- William Snellings
- Ryan Sobeck
- Gene Sykes
- Steven Taslitz
- Mike Thaxton
- Tripti Thakur
- Ian Thomas
- Karrueche Tran
- Praveen Vasirreddy
- Leslie dela Vega
- Kim Walsh
- Anthony L. Wanger
- Kevin Watanabe
- Beverly Watson
- Maurice Werdegar
- Mimi Werdegar
- Kevin Williamson
- Oprah Winfrey
- Stanislav Zmachynski
- Google Witness [to be determined]
- Hulu Custodial Witness [to be determined]
- FDIC Witness [to be determined]

- Airline Witness [to be determined]
- Internal Revenue Service Witness [to be determined]
- Additional Federal Bureau of Investigation Witness [to be determined]

D. Other Entities

- A&E Television Network, LLC
- Abacus Software Limited
- Al Nahdha Investment LLC
- Alphabet Inc.
- Antara Capital
- A-Rod Corp
- Atinum Partners Co., Ltd
- Avenue Capital
- Axel Springer Digital Venture GmbH
- BCS Medtech LLC
- Broader Media Holdings, LLC (subsidiary of iHeart Media)
- Brookland Partners
- BuzzFeed, Inc.
- Clayton, Dubilier & Rice, LLC
- Connor Group
- Dan Klores Communications, LLC
- David Denzil Ventures, LLC
- Dechert LLP
- DLB Telecom Trust
- Duane Street General LLC
- Elfman Family Trust
- Emerson Collective Investments, LLC
- Explora Ventures
- Georgetown Opportunistic Fund Series LLC
- Goldman Sachs
- Google LLC (Google Ventures/YouTube)
- GSV Capital Corp. (now known as SuRo Capital Corp.)
- Guttersen Family Trust
- Hanmi Bank
- Hulu LLC
- Interlock Ventures Partner Fund I, LP
- Inversiones Mohor Ltd
- Iron Horse Credit

- Jeffrey Perelman Revocable Trust
- JPMorgan Chase & Co.
- JMP Group LLC
- King & Spalding LLP
- Lance A. White Revocable Trust
- LifeLine Legacy Holdings LLC
- LionTree Partners LLC
- Live Nation Entertainment
- Martin Tate Dubilier Accumulation Trust
- Monowise Limited Corporation
- Morgan Stanley
- Omeshorn Holdings Ltd
- Oprah Winfrey Network (OWN)
- Phoenix Holdings, Ltd
- Pola-Karr Family Trust
- Rashid Living Trust
- Revocable Trust
- Riley Conchrane Dubilier Accumulation Trust
- Rock Creek Group, LP
- Selden Road, LLC
- Singer Lewak
- SV Angel IV LP
- Sykes Family Revocable Trust
- The Definitive Trust
- Thomson Equity Group
- Titan Holdings Trust
- Venture Souq Capital SPC
- Western Technology Investment (WTI)
- Wilson Sonsini Goodrich & Rosati (WSGR)
- Woodland IV Trust
- WS Investment Company LLC

The government respectfully requests that the Court include the foregoing during jury selection. The government also requests permission to supplement or amend this request.

Dated: Brooklyn, New York
May 6, 2024

Respectfully Submitted,

BREON PEACE
United States Attorney

By: /s/
Jonathan Siegel
Gillian Kassner
Dylan A. Stern
Assistant U.S. Attorneys
(718) 254-7000

cc: Clerk of Court (EK) (by ECF)
All counsel of record (by ECF)

EXHIBIT H

THE LAW OFFICES OF ANDREW J. FRISCH, PLLC

November 6, 2024

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and OZY Media, Inc.;
Criminal Docket No. 23-0082 (EK)

Dear Judge Komitee:

In the reply memorandum in support of the pending motion to disqualify your Honor from this case *nunc pro tunc* as of February 23, 2023, we requested that the Court immediately make available the government's disclosure pursuant to Rule 12.4 which the government filed under seal and *ex parte* on February 23, 2023, and asked that the Court permit the defense an opportunity to address it in support of its motion. *See* Docket No. 331 at 5 n. 1. Yesterday, the Court issued an order directing the defense to address certain calculations contained in its memorandum of law in support of its motion and to do so by this Friday, November 8, 2024. We respectfully request that the Court make the government's disclosure pursuant to Rule 12.4 available today and permit the defense an opportunity to address it as part of the submission due on Friday.

Respectfully,

/s/ Andrew J. Frisch
Andrew J. Frisch

cc: Counsel of Record

40 FULTON STREET, 17TH FLOOR, NEW YORK, NEW YORK 10038 | TEL: (646) 349-7660 | FAX: (646) 304-0352 | WWW.ANDREWFRISCH.COM

EXHIBIT I

THE LAW OFFICES OF ANDREW J. FRISCH, PLLC

November 8, 2024

The Honorable Eric R. Komitee
United States District Judge
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and OY Media, Inc., 23-CR-0083 (EK)

Dear Judge Komitee:

On behalf of Carlos Watson and OZY Media, Inc., I am filing with this letter (Exhibit A) a Declaration of Gregory Florio, principal of Oracle LLC and Florio Leahy LLP, in response to the first question of the Court's order of November 5, 2024, regarding calculations of the value of your Honor's stock positions from Q1 2023 to Q2 2024. While we provide this response to assist the Court, we object to the Court's inquiry because the burden under Section 455 belongs exclusively to the presiding judge who has unique and firsthand information about the judge's investments and any other overlaps with a particular case.

The Court's inquiry requests analysis including for Q1 2024 and Q2 2024. Those quarters were included in our memorandum of law in support of recusal based on an assumption that your Honor's interests in the relevant hedge funds in those two quarters were comparable to those interests in 2023. So that we can accurately address the Court's inquiry (and the motion generally), we respectfully request that the Court disclose its holdings for 2024 to date and all other connections to and relationships with victims in this case. We also renew our request for disclosure of the government's disclosure pursuant to Rule 12.4.

As for the Court's second question, it is not our position that any victim lost money or is entitled to restitution as a result of the alleged fraud. *See* Docket No. 326 at 21. Our position is that your Honor's substantial and longstanding relationships with victims in this case, together with your Honor's continuing relationship with Viking Global Investors LP, which your Honor served as General Counsel and through which your Honor maintained some of its positions in victims during the pendency of this case (among other connections with this case), require disqualification under both Section 455(a) as well as Section 455(b). Apart from the extent of your Honor's relationships with victims, Section 455(b)(4) provides that a judge *shall* disqualify himself if he has any interest that "*could* be substantially affected by the outcome of the proceeding." Section 455(b)(4)) (emphasis added)). Section 455 does not permit a judge to wait until the end of the case to assess any damage after an actual conflict or an appearance of partiality may have been realized.

We have done our best to comply with the page limitation in the Court's order and believe that the filing complies. To the extent that the Court deems the filing to exceed the limitation, we respectfully request that the Court accept any slight oversize. Aside from the

complexity of the issue, we have endeavored to avoid any later claim of waiver or failure of preservation.

With great respect, we urge the Court to grant the pending motion and permit a different randomly-assigned judge to hear from the parties as to remedy.

Respectfully submitted,

/s/ Andrew J. Frisch

Andrew J. Frisch

cc: Counsel of Record

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

UNITED STATES OF AMERICA

Criminal Case No. 23-00082 (EK)

- v -

CARLOS WATSON and
OZY MEDIA, INC.,

Defendants.
---------- x

DECLARATION

GREGORY L. FLORIO declares the following under 28 U.S.C. § 1746:

1. I am a principal and founding member of Orical LLC ("Orical") and Florio Leahy LLP, firms in the business of providing legal, regulatory, operational and compliance consulting services to investment management firms. Throughout my career, which spans over two decades working as outside and in-house counsel to hundreds of private fund managers, I've advised on all legal, regulatory and operational matters related to the business of private fund managers. My expertise includes, without limitation, private fund formation, investment adviser registration, regulatory filings (including Form ADV and 13F reporting), compliance, regulatory interactions, and risk management.

2. Prior to founding Orical and Florio Leahy LLP, I was Senior Counsel and Chief Compliance Officer of a large internationally-renowned private fund manager (the "Firm"), which, during my tenure, had over $12 billion in assets under management. I was responsible for all aspects of the Firm's global compliance program, including regulatory audits, inquiries and filings, and assisting in various legal and operational matters affecting the firm's day-to-day operations. Before that position, I was a regulatory specialist in the Investment Management Division of Seward & Kissel LLP and was an

attorney in the Investment Funds Group of Sidley Austin LLP, where I represented various leading financial institutions, assisted in hundreds of investment adviser and broker-dealer registrations and advised private funds on all aspects of compliance, legal, regulatory, formation and operational matters. I began my career as an Assistant District Attorney in Bronx County. I am a member in good standing of the New York State bar. I graduated with honors from Fordham University School of Law in 1995 and hold a Bachelor of Science degree in Consumer Economics from Cornell University.

3. On about October 16, 2024, I was engaged by the defense in this case to assist with its review of financial disclosures of the Honorable Eric R. Komitee. During the course of my work, I examined, among other documents: Judge Komitee's financial disclosures; Forms ADV filed with the Securities and Exchange Commission ("SEC") by Viking Global Investors LP ("Viking"); Viking's Firm Brochure filed with the SEC as Form ADV Part 2A (the "Brochure"); and Form 13F Holdings Reports filed with the SEC by D1 Capital Partners L.P. ("D1"), Junto Capital Management L.P. ("Junto"), and Viking (with D1 and Junto, "the Hedge Funds"). Throughout my career — at Orical, Florio Leahy LLP, the Firm, Seward & Kissel LLP, and Sidley Austin LLP — I have prepared and reviewed Forms ADV, Form ADV Part 2A brochures, Forms 13F, fund creation documents, and other relevant records.

4. While I submit this Declaration at the request of the defense to comply with the Court's order of November 5, 2024, to "lay out the calculations underlying the 'indirect beneficial ownership' ranges for each victim for the period from Q1 2023 to Q2 2024," most or at least much of the information necessary to provide a complete picture of Judge Komitee's pecuniary interests is exclusively known to Judge Komitee and uniquely within his possession. Under applicable law, interests in such Hedge Funds are offered in private placements to sophisticated investors, with which the funds typically must have an existing substantive relationship. The minimum investment in such hedge funds is typically more than $500,000. Unlike mutual funds and other common investment funds, the Hedge Funds are exempt from registration under the Investment Company Act of 1940 ("IC Act"), and therefore are not regulated entities, unlike mutual funds, which are registered under the IC Act. As such, the Hedge Funds are not subject to any of the IC Act's statutorily directed concentration limits, or any other protections afforded

under the IC Act, which are designed to protect the investing public. Accordingly, the portfolios of hedge funds are typically highly concentrated, and investing in them is considered highly speculative and appropriate only for high net worth and sophisticated investors.

5. For these reasons, sophisticated investors conduct extensive due diligence on the hedge funds they invest in, paying particular attention to the fund manager's background, the fund's investment strategy and the contents of the fund's securities portfolio. To enable such due diligence and encourage investors to invest in their hedge funds, managers give investors access to many types of reports which include portfolio level information. The lack of regulation of hedge funds, sophisticated nature of hedge fund investors, and the reliance on such sophisticated investors to conduct their own due diligence, are some of the features that distinguish hedge funds from mutual funds. Further, the private placement of hedge fund interests, which requires a substantive relationship between a hedge fund and its investors, and the exchange of hedge fund information to enable the investor due diligence process, establish a basis for a deep understanding by such investors of the hedge fund's portfolio contents. Since Judge Komitee served as Viking's General Counsel and helped managed the operation of such funds, this detailed understanding of a hedge fund's portfolio, which can be assumed for all sophisticated hedge fund investors, is of course magnified with respect to Judge Komitee's investment in the Hedge Funds here by virtue of his relationships with Viking, D1, and Junto.

6. The Hedge Funds invested in by Judge Komitee maintain a capital account beneficially owned by Judge Komitee. Judge Komitee's capital account is allocated a portion of the profit and loss associated with each of the fund's securities positions ("Portfolio P&L"). The percentage of the total Portfolio P&L that is allocated to Judge Komitee's capital account is determined by the size of Judge Komitee's investment in relation to the total net asset value of such fund. Accordingly, Judge Komitee had a direct pecuniary interest in each security held by the Hedge Funds; and, to the extent the Hedge Funds held securities issued by victims, Judge Komitee had a direct pecuniary interest in them.

7. I reviewed the documentation which identifies the calculations of Judge Komitee's pecuniary ownership interest in alleged victims through his ownership of the Hedge Funds as prepared by

the defense team, which is attached hereto as Exhibit A (the "Report"). While only Judge Komitee, Viking, and the other managers of the Hedge Funds were privy to the exact direct pecuniary interest in victims owned by Judge Komitee at any given time, based on the information available to the defense team, the defense team was able to identify with reasonable certainty the minimum value ranges of Judge Komitee's pecuniary ownership interest in each victim, which is accurately reflected in the Report. The sources relied upon by the defense team for the underlying securities positions of the Hedge Funds, namely the Forms 13F filed by the managers of such funds — some of which were signed by Judge Komitee himself as General Counsel of Viking in prior years — are reliable sources for such data. The sources relied on for the aggregate assets under management of the managers of the Hedge Funds, specifically, the manager's Form ADV, and Judge Komitee's own report of the range of his beneficial ownership of the Hedge Funds as stated in his Form AO 10, are also reasonable sources for such information beyond any reasonable doubt.

8. The calculation methods used by the defense team to calculate Judge Komitee's pecuniary interest in the subject securities almost certainly understate such interest because:

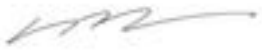
(i) While the securities positions held by the Hedge Funds are almost certainly exclusively held in hedge funds managed by such managers, in which Judge Komitee is invested, the defense team assumed that such positions were owned pro-rata across all of the investment manager's clients, which, in some cases, include private equity funds, which almost certainly do not own such positions. This assumption would reduce both the estimated size of the position in the victim securities actually held by the Hedge Funds and the resulting calculation of Judge Komitee's pecuniary interest therein; and,

(ii) the calculation of Judge Komitee's pecuniary interest ignores the use of leverage by the Hedge Funds. The Report compares the amount of Judge Komitee's unlevered investment in the Hedge Funds to the gross levered value of positions held by the Hedge Funds. For example, if an investor invests $100 in a hedge fund, and the hedge fund employs 100% leverage, the investor's $100 investment can be used to purchase $200 worth of securities. By comparing an *unlevered* investment amount to a

levered position value, the calculations would understate Judge Komitee's pecuniary interest in the securities to the extent the Hedge Funds use leverage.

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

Dated: November 8, 2024



Gregory Florio

EXHIBIT A

The calculations underlying Judge Komitee's beneficial ownership interest in the alleged victims through his hedge fund **D1 Capital Partners Onshore LP** are set forth in the below table.

A	*B*	*C*	*D*	*E*	*F*	*G*	*I*
Stock Symbol[1]	**Quarter**	**Investment Adviser's Regulatory Assets Under Management[2]**	**EK Hedge Fund Interest (LOW)[3]**	**EK Hedge Fund Interest (HIGH)[3]**	**Market Value of I.A.'s Quarterly Position in 13F Issuer[4]**	**EK $ Beneficial Interest in Position (LOW)[5]**	**EK $ Beneficial Interest in Position (HIGH)[6]**
GOOGL	3/31/2023	$27,600,000,000	$5,000,001	$25,000,000	$300,597,922	$54,456	$272,281
	6/30/2023	$27,600,000,000	$5,000,001	$25,000,000	$274,008,502	$49,639	$248,196
	9/30/2023	$27,600,000,000	$5,000,001	$25,000,000	$191,171,804	$34,633	$173,163
	12/31/2023	$27,600,000,000	$5,000,001	$25,000,000	$273,662,349	$49,577	$247,883
	3/31/2024	$26,100,000,000	$5,000,001	$25,000,000	$358,169,417	$68,615	$343,074
	6/30/2024	$26,100,000,000	$5,000,001	$25,000,000	$0	$0	$0
LYV	3/31/2023	$27,600,000,000	$5,000,001	$25,000,000	$229,584,670	$41,591	$207,957
	6/30/2023	$27,600,000,000	$5,000,001	$25,000,000	$0	$0	$0
	9/30/2023	$27,600,000,000	$5,000,001	$25,000,000	$0	$0	$0
	12/31/2023	$27,600,000,000	$5,000,001	$25,000,000	$42,450,595	$7,690	$38,452
	3/31/2024	$26,100,000,000	$5,000,001	$25,000,000	$259,192,770	$49,654	$248,269
	6/30/2024	$26,100,000,000	$5,000,001	$25,000,000	$332,170,690	$63,634	$318,171

Sources and Calculations:

1. GOOGL is Alphabet Inc. Class A. LYV is LiveNation Entertainment Inc. This investment manager's Forms 13F did not report any holdings of 13F securities issued by Goldman Sachs Group Inc. (stock symbol: GS) or JPMorgan & Chase Co. (stock symbol: JPM).
2. Source: Form ADV, Item 5F(2)(a), rounded to nearest one hundred million.
3. Source for 2023 quarters: Form AO10 for 2023 Part VII, line 3 (value code P2=$5,000,001 to $25,000,000). Your Honor possesses exclusive access to information about the exact value of your Honor's interest in this hedge fund in 2023. Source for 2024 quarters: Assumes no change in value code; your Honor's Form AO10 for 2024 is not due until 5/15/2025. At all times in 2024, only your Honor had access to information as to the exact value of his interest in this hedge fund in 2024.
4. D1 Capital Partners L.P., Form 13-Fs filed with the SEC on 5/15/2023, available at https://www.sec.gov/Archives/edgar/data/1747057/000117266123002096/0001172661-23-002096-index.htm; 8/14/2023, available at https://www.sec.gov/Archives/edgar/data/1747057/000117266123003002/0001172661-23-003002-index.htm; 11/14/2023, available at https://www.sec.gov/Archives/edgar/data/1747057/000117266123003845/0001172661-23-003845-index.htm ; 2/14/2024, available at https://www.sec.gov/Archives/edgar/data/0001747057/000117266124000870/0001172661-24-000870-index.htm; 5/15/2024, available at

https://www.sec.gov/Archives/edgar/data/0001747057/000117266124002322/0001172661-24-002322-index.htm; 8/14/2024, available at https://www.sec.gov/Archives/edgar/data/1747057/000117266124003352/0001172661-24-003352-index.htm

5. Calculated as (column D ÷ column C) * column F.
6. Calculated as (column E ÷ column C) * column F.

The calculations underlying Judge Komitee's beneficial ownership interest in the alleged victims through his hedge fund **Junto Capital Partners LP** are set forth in the below table.

A	*B*	*C*	*D*	*E*	*F*	*G*	*I*
Stock Symbol[7]	**Quarter**	**Investment Adviser's Regulatory Assets Under Management[8]**	**EK Hedge Fund Interest (LOW)[9]**	**EK Hedge Fund Interest (HIGH)[9]**	**Market Value of I.A.'s Quarterly Position in 13F Issuer[10]**	**EK $ Beneficial Interest in Position (LOW)[11]**	**EK $ Beneficial Interest in Position (HIGH)[12]**
GOOGL	3/31/2023	$7,640,000,000	$5,000,001	$25,000,000	$23,277,531	$15,234	$76,170
	6/30/2023	$7,640,000,000	$5,000,001	$25,000,000	$0	$0	$0
	9/30/2023	$7,640,000,000	$5,000,001	$25,000,000	$56,495,403	$36,973	$184,867
	12/31/2023	$7,640,000,000	$5,000,001	$25,000,000	$0	$0	$0
	3/31/2024	$8,820,000,000	$5,000,001	$25,000,000	$33,724,856	$19,118	$95,592
	6/30/2024	$8,820,000,000	$5,000,001	$25,000,000	$0	$0	$0
GS	3/31/2023	$7,640,000,000	$5,000,001	$25,000,000	$41,698,674	$27,290	$136,449
	6/30/2023	$7,640,000,000	$5,000,001	$25,000,000	$0	$0	$0
	9/30/2023	$7,640,000,000	$5,000,001	$25,000,000	$0	$0	$0
	12/31/2023	$7,640,000,000	$5,000,001	$25,000,000	$0	$0	$0
	3/31/2024	$7,640,000,000	$5,000,001	$25,000,000	$75,554,273	$42,831	$214,156
	6/30/2024	$8,820,000,000	$5,000,001	$25,000,000	$0	$0	$0
JPM	3/31/2023	$7,640,000,000	$5,000,001	$25,000,000	$97,029,087	$63,501	$317,504
	6/30/2023	$7,640,000,000	$5,000,001	$25,000,000	$116,755,887	$76,411	$382,055
	9/30/2023	$7,640,000,000	$5,000,001	$25,000,000	$166,399,719	$108,900	$544,502
	12/31/2023	$7,640,000,000	$5,000,001	$25,000,000	$159,737,168	$104,540	$522,700
	3/31/2024	$8,820,000,000	$5,000,001	$25,000,000	$69,652,723	$39,486	$197,428
	6/30/2024	$8,820,000,000	$5,000,001	$25,000,000	$0	$0	$0

Sources and Calculations:

7. GOOGL is Alphabet Inc. Class A. JPM is JPMorgan & Chase Co. GS is Goldman Sachs Group Inc. This investment manager's Forms 13F did not report any holdings of 13F securities issued by LiveNation Entertainment Inc. (stock symbol: LYV).
8. Source: Form ADV, Item 5F(2)(a), rounded to nearest one hundred million.

9. Source for 2023 quarters: Form AO10 for 2023 Part VII, line 4 (value code P2=$5,000,001 to $25,000,000). Your Honor possesses exclusive access to information about the exact value of your Honor's interest in this hedge fund in 2023. Source for 2024: Assumes no change in value code; your Honor's Form AO10 for 2024 is not due until 5/15/2025. At all times in 2024, only your Honor had access to information as to the exact value of his interest in this hedge fund in 2024.
10. Junto Capital Management LP, Form 13-Fs filed with the SEC on 5/15/2023, available at https://www.sec.gov/Archives/edgar/data/1595880/000159588023000002/0001595880-23-000002-index.htm; 8/14/2023, available at https://www.sec.gov/Archives/edgar/data/1595880/000159588023000003/0001595880-23-000003-index.htm; 11/14/2023, available at https://www.sec.gov/Archives/edgar/data/1595880/000159588023000004/0001595880-23-000004-index.htm; 2/14/2024, available at https://www.sec.gov/Archives/edgar/data/1595880/000159588024000002/0001595880-24-000002-index.htm; 5/15/2024, available at https://www.sec.gov/Archives/edgar/data/1595880/000159588024000003/0001595880-24-000003-index.htm; 8/14/2024, available at https://www.sec.gov/Archives/edgar/data/1595880/000159588024000004/0001595880-24-000004-index.htm
11. Calculated as (column D ÷ column C) * column F.
12. Calculated as (column E ÷ column C) * column F.

The calculations underlying Judge Komitee's beneficial ownership interest in the alleged victims through **Viking Global Equities LP** and **Viking Global Opportunities LP** are set forth in the below table.

A	*B*	*C*	*D*	*E*	*F*	*G*	*I*
Stock Symbol[13]	**Quarter**	**Investment Adviser's Regulatory Assets Under Management[14]**	**EK Hedge Fund Interest (LOW)[15]**	**EK Hedge Fund Interest (HIGH)[16]**	**Market Value of I.A.'s Quarterly Position in 13F Issuer[17]**	**EK $ Beneficial Interest in Position (LOW)[18]**	**EK $ Beneficial Interest in Position (HIGH)[19]**
GOOGL	3/31/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	6/30/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	9/30/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	12/31/2023	$52,100,000,000	$6,000,002	$30,000,000	$460,063,567	$52,982	$264,912
	3/31/2024	$64,500,000,000	$6,000,002	$30,000,000	$0	$0	$0
	6/30/2024	$64,500,000,000	$6,000,002	$30,000,000	$0	$0	$0
JPM	3/31/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	6/30/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	9/30/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	12/31/2023	$52,100,000,000	$6,000,002	$30,000,000	$0	$0	$0
	3/31/2024	$64,500,000,000	$6,000,002	$30,000,000	$0	$0	$0
	6/30/2024	$64,500,000,000	$6,000,002	$30,000,000	$608,766,598	$56,629	$283,147

Notes and Calculations:

13. GOOGL is Alphabet Inc. Class A. JPM is JPMorgan & Chase Co. This investment manager's Forms 13F did not report any holdings of 13F securities issued by Goldman Sachs Group Inc. (stock symbol: GS) or LiveNation Entertainment Inc. (stock symbol: LYV).
14. Source: Form ADV, Item 5F(2)(a), rounded to nearest one hundred million.
15. Source for 2023 quarters: Form AO10 for 2023 Part VII, line 1 (Viking Global Equities LP, value code P2 =$5,000,001 to $25,000,000); line 2 (Viking Global Opportunities LP, value code P1=$1,000,001 to $5,000,000). Your Honor possesses exclusive access to information about the exact value of your Honor's interest in these hedge funds in 2023. Source for 2024: Assumes no change in value code; your Honor's Form AO10 for 2024 is not due until 5/15/2025. At all times in 2024, only your Honor had access to information as to the exact value of his interest in these hedge funds in 2024.
16. Viking Global Investors LP, Form 13-Fs filed with the SEC on 5/15/2023, available at https://www.sec.gov/Archives/edgar/data/0001103804/000110380423000004/0001103804-23-000004-index.htm; 8/14/2023, available at https://www.sec.gov/Archives/edgar/data/1103804/000110380423000006/0001103804-23-000006-index.htm; 11/14/2023, available at https://www.sec.gov/Archives/edgar/data/1103804/000110380423000009/0001103804-23-000009-index.htm; 2/14/2024, available at https://www.sec.gov/Archives/edgar/data/1103804/000110380424000002/0001103804-24-000002-index.htm; 5/15/2024, available at https://www.sec.gov/Archives/edgar/data/1103804/000110380424000004/0001103804-24-000004-index.htm; 8/14/2024, available at https://www.sec.gov/Archives/edgar/data/1103804/000090514824002226/0000905148-24-002226-index.htm
17. Calculated as (column D ÷ column C) * column F.
18. Calculated as (column E ÷ column C) * column F.

EXHIBIT J

David T. Robinson, PhD

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July 1, 2024

Chief Judge Margo Brodie
United States District Court Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: United States versus Carlos Watson and Ozy Media, Inc.

Dear Judge Brodie:

I appeared as an expert witness for the defense in US v. Carlos Watson and Ozy Media on Thursday, June 27. I am writing to you to convey my concern about the judicial bias that I saw present that day.

At the outset, I want to be clear: I am not writing at the request of defense counsel, nor has defense counsel (or anyone, for that matter) reviewed or assisted in the preparation this letter. I am writing simply as a private citizen to express my concern based on what I witnessed in the courtroom, no different than if I were sitting in the public gallery listening to the trial.

At numerous points during the day in connection with my testimony, the judge took actions that seemed clearly to favor or assist the prosecution. For example, during my cross-examination, I found it impossible to understand a particular hypothetical question posed by prosecution. The judge then reformulated the hypothetical to help the prosecution get her point across. In fact, he began his interjection with, "I think the question is meant to imply …" and then went on to vary the hypothetical on her behalf, departing from what I understood her to be asking. I was then directed to answer his question instead of hers. I found myself wondering, "Is the Judge working for the prosecution? I didn't think a judge could do this." If leading the witness is a basis for objection, how is leading the prosecution not objectionable?

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Evidence of his disdain for the defense was rampant throughout the day. Over the weekend I shared the following courtroom exchange with a colleague who teaches in a law school:

> **Ron Sullivan**: "At this point, Your Honor, we would tender Dr. Robinson as an expert in the area of entrepreneurial finance."
>
> **Judge Komitee**: "I do not qualify witnesses as experts, but the witness may give testimony pursuant to Rule 702"

When my colleague heard this, he cackled and said, "Well when he allowed you to give testimony pursuant to Rule 702 he in fact DID qualify you as an expert, because 702 concerns the definition of an expert. It sounds to me that he just didn't want to say those words in front of the jury because he didn't want the jury to hear the word *expert* in connection with your testimony."

There were other instances that day where the context of the question from the judge, his tone of voice, nonverbal cues, etc., suggested to me that he looked on the defendant with suspicion, but did not look upon the prosecution with similar suspicion. When I shared my concerns about my experience to friends and colleagues who either teach in law schools or have argued cases before juries, they each said, "Judges can ask questions but they aren't supposed to be biased." Their reactions have led me to conclude that I needed to share my concerns with you.

I fully understand and accept that courtrooms are contentious places. I also understand that the prosecution has an obligation, as well as strong incentives based on career concerns, to work as hard as it can to win its case. My concern is that the behavior I saw in court deprives the accused of a fair trial by limiting his counsel's ability to mount a defense. My understanding is that it is the solemn responsibility of a jury, and their responsibility alone, to render a verdict based on the facts of a case as they understand them. If a judge behaves in a manner that suggests to the jury that he looks with suspicion at one side but not the other, then that judge surely biases their judgments. I worry that this is happening right now on the 8th floor of your courthouse in the matter of US vs. Carlos Watson and Ozy Media.

Very truly yours,



David T. Robinson

EXHIBIT K

RONALD SULLIVAN LAW, PLLC
Ronald S. Sullivan Jr.

July 2, 2024

By ECF

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and Ozy Media, Inc.
Criminal Docket No. 23-82 (EK)

Dear Judge Komitee:

It is with great regret that the defendants submit this objection letter in the present matter on trial, United States v. Carlos Watson and OZY Media, Ind. 23-cr-82. We have not come to this request lightly. But the court's repeated actions both in the lead up to trial and during the trial make this both of immediate necessity to protect the 6th Amendment Rights of our clients and for larger policy reasons in that our system relies on fair administration by judges. What has happened in this trial is anything but fair. One need only sit in this courtroom one day to see and hear much of the behavior and bias complained of in this letter. From the court's pro-government bias to the racial dynamics in this courtroom (including the audience), a reasonable person's confidence in the administration of justice will be shaken.

I. The Conduct of the Trial by the Court has Been Prejudicial to the Defendants.

The conduct of the trial by the court has led to certain impressions of the defendants' attorneys, witnesses, and evidence that are destructive of a fair trial. In Rivas v. Brattesani, where the trial judge made a series of comments, in apparent exasperation with defense counsel, the Court reasoned that while due process "requires a fair trial rather than a perfect trial," a court must "strive for that atmosphere of perfect impartiality which is so much to be desired in a judicial proceeding." Rivas v. Brattesani, 94 F.3d 802, 807 (2d Cir. 1996) (quoting Ricketts v. City of Hartford, 74 F.3d 1397, 1416 (2d Cir. 1996); Santa Maria v. Metro-North Commuter R.R., 81 F.3d 265, 273 (2d Cir. 1996)).

The court's entire interaction with the defense team has created an atmosphere where the defense is not perceived as equal participants in the judicial process. The judiciary's role demands not only fairness but also the appearance of fairness. When the judge makes disparaging remarks about defense lawyers or witnesses, it sends a signal to the jury and the courtroom that the defense's arguments and evidence are less worthy of consideration. This can influence the jury's perception and potentially sway their decision-making process.

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While a judge is entitled to ask questions during a trial to clarify both legal and factual issues to minimize confusion, those questions, "may not convey the court's view about the merits of a party's claim" (Berkovich v. Hicks, 922 F.2d 1018, 1025 (2d Cir. 1991), because the judge may not impose his own opinions on the jury. Rivas, 94 F.3d at 807 (quoting Care Travel Co., 944 F.2d at 991). The Second Circuit has observed that "while a trial judge may understandably become impatient with counsel's examination of a witness, either because of its ineptness, lack of clarity or organization, or for some other reason, the judge must exercise self-restraint in his interference lest "clarification" only create more confusion or the impression in the jurors' minds that the judge is hostile to one party's position." Anderson v. Great Lakes Dredge & Dock Co., 509 F.2d 1119, 1131 (2d Cir. 1974).

The judge's attitude towards the defense may also impact the demeanor and confidence of defense witnesses. Witnesses, particularly those called by the defense, must feel assured that they can testify without fear of bias or prejudice. Derogatory comments from the bench can intimidate witnesses and undermine their willingness to provide truthful and accurate testimony, thus impeding the search for truth that is central to any trial.

Moreover, the judge's role as a judicial officer requires upholding the highest standards of professionalism and respect. Comments that belittle or demean any party in the courtroom, including defense counsel and witnesses, fall short of these standards and erode public confidence in the judiciary's ability to administer justice fairly and impartially.

Even if the court were to make a curative instruction with regard to its interference, the damage cannot be undone. "No curative instruction, in our view, could undo the cumulative prejudicial effect of the court's various inappropriate comments in the presence of the jury." Rivas, 94 F.3d at 808 (quoting United States v. Filani, 74 F.3d 378, 386 (2d Cir. 1996) ("curative instructions to the jury, to the effect that they can decide what version to believe as sole judges of credibility, do not remove . . . an impression [that the judge believes one version of an event and not another] once it is created").

A. The court has assisted the government and acted as a "fourth" prosecutor.

At trial, it has become painfully clear that the court has not treated the parties equally. What was at first, an acknowledgement by the defendants that there may be a prosecutorial affiliation (since the judge served in the same U.S. Attorney's Office) has turned into the actual bias in favor of the prosecutors shown by this court. It is almost as if the court is grooming the prosecutors and coddling them at every turn on every issue. Clearly, the court has a true bias in favor of the prosecution due to personal likes and affection for the individual prosecutors trying the case.

For example, on May 31, 2024 (3rd day of trial) the court assisted the prosecutors by helping question Samir Rao to "clarify" for them that without advertisement revenue, The Carlos Watson Show made $0 (a theory and point of the prosecution). Tr. at 724, ln 14 – 23.

B. The court "sustains" objections that are not made by the prosecutors.

Beginning with the government's first witness, Janeen Poutre, the court sustained 3 or more of his own objections during the defense's cross examination of Ms. Poutre. Weighing in on the evidence, the court repeatedly exclaimed "sustained" without any objections being put forward by the government. It is absolutely imperative that the court allow the *lawyers* on both sides to fairly try the case. The court should not assist the prosecutors in trying the case because of their youth or inexperience. The roles in the courtroom are strict for a reason, especially in a criminal case. It does not take much for the judge, the leader of the courtroom, to affect the jury's attention, attitudes, and beliefs. The court must be much more reserved so as not to weigh in on the defendants' guilt or innocence.

A fair criminal trial is one in which the defendants have a full opportunity to challenge the government's evidence and confront the witnesses against them. That cannot happen when the court objects primarily to the questions put forth by the defense. The court has made more than 30 such objections on behalf of the prosecutors despite repeated respectful requests by defense counsel and a formal objection made by Attorney Ronald Sullivan that the court not aid prosecutors in such a biased and blatant way. This pattern has existed on cross examination of every government witness and the direct examination of 2 of the defense witnesses so far including:

1. Janeen Poutre, Tr. at 133, ln 23; 138, ln 21 – 22; 146, ln 14; 153, ln 22.
2. Samir Rao, Tr. at 985, ln 2; 1015, ln 14, ln 18; 1019, ln 14; 1029, ln 22; 1214, ln 24; 1215, ln 1; 1223, ln 6; 1232, ln 13; 1278, ln 15 – 16.
3. Allison Berardo, Tr. at 1522, ln 20; 1523, ln 16; 1525, ln 16; 1528, ln 17; 1529, ln 6, ln 8.
4. Tripti Thakur, Tr. at 1623, ln 13.
5. Alex Piper, Tr. at 1718, ln 8, ln 18; 1727, ln 22.
6. Hillel Moerman, Tr. at 1775, ln 24; 1776, ln 3; 1859, ln 3.
7. Suzee Han, Tr. at 2144, ln 12; 2315, ln 20.
8. Renata Erlikhman, Tr. at 2513, ln 8.
9. Dr. David Robinson, Tr. at 2732, ln 4.

C. The court has repeatedly asked questions of witnesses to help meaningfully bolster and advance the prosecution's case -- doing so multiple times with multiple witnesses more than a dozen times so far.

In addition to interrupting testimony with a slew of sua sponte and immediately sustained objections, the court continually interrupts the lawyers on both sides of the v in order to ask questions of the witnesses that completely serve to aid the government's theory of the case. The language, tone, and subject matters on which the court interrupts all signal to the jury what evidence

they should pay attention to and how they should feel about that evidence. This does more than put a thumb on the scales, the court is standing on the scales in this case.

In Anderson v. Great Lakes Dredge Dock Co., where the trial judge engaged in extensive questioning of witnesses, the Court reasoned that the judge's behavior "might be construed as protective rather than as merely investigative in nature." Anderson v. Great Lakes Dredge Dock Co., 509 F.2d at 1132. The Court concluded that the cumulative impact of a judge's behavior is an essential factor in determining prejudice against a defendant. Id. The Court stressed "it is essential, at least where appellant's brief (as here) raises a substantial issue as to the trial judge's fairness in conducting the trial, to make a close scrutiny of each tile in the mosaic. Id. (quoting United States v. Weiss, 491 F.2d 460, 468 (2d Cir. 1974) (footnote omitted)"). Here, there are more than 100 instances where the court has interrupted the examination of a witness to ask his own questions. However well-intended, the cumulative effect of his interjections has been prejudicial to the defense.

The court has asked its own questions of the following witnesses in assistance to the prosecution:

1. Janeen Poutre, Tr. at 82, ln 15; 110, ln 8; 112, ln 22; 119, ln 14; 123, ln 1 – 24; 129, ln 14; 146, ln 2, ln 6; 147, ln 16.
2. Samir Rao, Tr. at 321, ln 2 – 16; 399, ln 5 – 17; 405, ln 16; 476, ln 6 – 22; 543, ln 7; 549, ln 112; 559, ln 9; 579, ln 19; 593, ln 10 - 18; 606, ln 8; 608, ln 21; 639, ln 22; 668; ln 15 – 23; 734, ln 14 – 22; 980, ln 23; 992, ln 25.
3. Abbas Maniar, Tr. at 1416, ln 16; 1422, ln 8 – 20; 1461, ln 8 – 12; 1473, ln 11.
4. Allison Berardo, Tr. at 1516, ln 17.
5. Tripti Thakur, Tr. at 1609, ln 1; 1610, ln 10; 1615, ln 13; 1711, ln 19 – 25; 1712, ln 13 – 23; 1724, ln 23.
6. Suzee Han, Tr. at 1870, ln 13; 1924, ln 20; 2144, ln 9; 2160, ln 17.
7. Maurice Werdegar, Tr. at 2250, ln 19 – 24.
8. Joseph O'Hara, Tr. at 2408, ln 2; 2411, ln 14; 2412, ln 7.
9. Renata Erlikhman, Tr. at 2513, ln 11.
10. Chetan Bansal, Tr. at 2585, ln 19; 2589, ln 15; 2609, ln 14 – 19.
11. Dr. David Robinson, Tr. at 2700, ln 17, ln 20, ln 23; 2713, ln 10, ln 23; 2738, ln 5; 2750, ln 19; 2754, ln 10; 2755, ln 11; 2763, ln 16; 2770, ln 17; 2772, ln 2; 2775, ln 9, ln 16; 2776, ln 14.
12. Claire Lightfoot, Tr. at 2801, ln 5; 2802, ln 8, ln 17.

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Persistent questioning of witnesses may be perceived as belief in the defendant's guilt or innocence. In United States v. Guglielmini, where the judge frequently participated in the trial, by questions and comments, the Court concluded that his behavior "gave the jury the impression that he credited the prosecution and disbelieved the defense." United States v. Guglielmini, 384 F.2d 602, 605 (2d Cir. 1967) ("While the trial judge may, and indeed should, take an active part in the trial where necessary to clarify evidence and assist the jury, the persistent questioning the trial judge conducted in this case, together with his comments to defense counsel, conveyed to the jury far too strong an impression of his belief in the defendants' guilt"). This is exactly the impression the court in the trial at bar is giving the sitting jury.

D. The court rules are transparently biased in favor of the prosecution in its evidentiary rulings.

While quickly addressing and/or ruling in favor of the prosecution almost any time they raise an issue (even specious and irrelevant ones), the court has repeatedly and seemingly intentionally dragged its feet on ruling on critical defense motions throughout the last year including multiple Motions to Dismiss including with regard to racial bias, violation of attorney client privilege and improper venue. Even when the court has finally ruled on defense motions, it has done so in the most modest and lenient way.

The court has repeatedly flouted settled law to rule in favor of the prosecution in its evidentiary rulings, allowing the government to wrongfully prevail on matters of hearsay, impeachment, document admission, and expert witnesses threatening yet more bias.

On May 31, 2024 (the 3rd day of trial), the prosecution offered a resignation email of Tripti Thakur, in which she accuses Samir Rao of committing fraud and recruiting her to commit fraud. Because this is a communication from a nonlawyer on the ultimate issue of the case, the defense requested that it be excluded or redacted. The court denied both motions and refused to even give a limiting instruction *before* the email was read and shown to the jury in full. After allowing the jury to fully take in this highly prejudicial communication, the court gave a shallow (and likely pointless by then) limiting instruction. Tr. at 587, ln 8 – 25; 588, ln 1 – 3. The ruling and the timing of the limiting instruction essentially allowed the jury to make inappropriate inferences and conclusions that the limiting instruction is designed to prevent.

On June 7, 2024 (5th day of trial) with the government's star witness on the stand, the court refused to allow proper impeachment by prior inconsistent statements of the cooperator. The court conducted an extensive sidebar conference on how impeachment works, taking the word of the prosecutors over the analysis of a Professor of Evidence. Tr. 1005 – 1011. The court told Attorney Sullivan that he *cannot* read from the documents. This ruling governed the entire trial, and all witnesses the defense attempted to impeach with their own FBI interviews or other documents they authored. This scripting of the testimony in this way effectively prevented the defense from impeaching *any* witness unless the witness himself *agreed* that he had lied. It has operated as a

sweeping violation of the defendants' rights to confront their accusers per the 5th Amendment of the United States Constitution.

E. The court continuously disparages defense witnesses in front of the jury and outside the presence of the jury but in open court.

Webb v. Texas instructs against badgering or embarrassing witnesses at trial. In Webb, a defense witness, prior to testifying, was admonished at length by the trial judge and threatened with jail time if the witness lied. Webb v. Texas, 409 U.S. 95 (1972). The witness, who had previously elected to testify on the defendant's behalf, refused to do so after the judge's comments. Id. at 97. The Court ruled that "...the judge's threatening remarks, directed only at the single witness for the defense, effectively drove that witness off the stand, and thus deprived the petitioner of due process of law under the Fourteenth Amendment." Id. at 98 ("Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law").

Minor v. Harris is also instructive on this issue. In Minor, the Court opined that close questioning of witnesses is "particularly improper where a defendant's guilt or innocence rests almost exclusively on the jury's evaluation of the witnesses' demeanor and credibility." Minor v. Harris, 556 F. Supp. 1371, 1384 (S.D.N.Y. 1983). "[B]y coming quickly to the aid of prosecution witnesses during cross-examination, and by indicating that he credited their testimony and that defense counsel was trying to prevent the jury from hearing the truth, clearly risked leading the jury to believe that the judge favored the government's witness[es] and [their] version of the facts. His close questioning of petitioner clearly indicated disbelief in the defendant's testimony." Id. at 1384 (quoting United States v. Nazzaro, 472 F.2d at 308-10). This case on trial is one in which the credibility of the witnesses is of supreme importance and will be weighed heavily by the jurors.

On June 27, 2024 (12th day of trial) during the cross examination of defense expert Duke Professor David Robinson, the judge goaded the professor about his answers and gave the impression that he was not answering the questions truthfully by his tone and demeanor in questioning this witness on top of the prosecutor's questions on the very same topic. Professor Robinson was effectively driven off the stand by the court in this case.

F. The court has drenched this trial in insulting comments to the defense lawyers in front of the jury, their students, the public, and the press.

Since day one of the trial, the court has been particularly disparaging the defense team. Its comments have been purposely embarrassing to defense counsel and clearly meant to make anyone in the room think that the defense is incompetent.

On May 29, 2024 (the 1st day of trial), the court said to the defense team, ""I don't know where you've tried cases before…this is federal district court!"

On May 30, 2024 (the 2nd day of trial), the court continues what will be a consistent and almost daily verbal assault on the defense team. Regarding contracts that the government were in possession of, the court said to the defense team, "I am not getting a coherent explanation of what happened, what the services were […] Mr. Sullivan, this is a document case. I need you to know the documents better so that we don't have to stop and have you look for things every time we ask a question about what is where […] "I need you to stay on subject". After a period of interrupting defense counsel and both parties growing frustrated, the court directed to Attorney Ronald Sullivan: "First of all, Mr. Sullivan, I want you to lower your voice. […] I want you to lower your voice. Understood? […] Is that understood?"

Also, on May 30, 2024 (the 2nd day of trial), the court announced that it had "tried to guide the defense as best [it] could to comply, even in piecemeal, even in half-baked fashion with their obligations. But we are where we are."

On June 7, 2024 (the 5th day of trial), the court interrupted cross examination of Samir Rao to ask defense counsel, "Did you hear his answer?" indicating to the jury that Attorney Sullivan was not listening to the testimony. The court then stated, "asked and answered sustained because the previous question had 99% overlap" without objection from the prosecution. This meticulous micromanagement of the evidence the defense is allowed to elicit from witnesses is unwarranted, one-sided, and prejudicial to the defendants.

Also, on June 7, 2024 (the 5th day of trial) the court continued to signal to the jury that the defense is unprepared because they did not have multiple physical copies of exhibits that have been presented electronically for the entire trial.

Further on June 7, 2024 (the 5th day of trial), in front of the jury, the court stated "How much longer of this? I guess I'm just struggling to understand the relevance of this" then sat in silence as the jury and witness digested exactly what the court meant to imply – this is evidence is not important. This is very prejudicial to the defendants as the jury prepares to deliberate on this matter.

On June 26, 2024, the court addressed the defense counsel's mentorship to their law clerks, two of whom are still in law school. The court stated "Point two, which I have made before during this trial, and I will make again just because we have law students and young lawyers with us and some interns coming in and out, is, and I speak personally here, I was fortunate, as a young lawyer, to have mentors who impressed on me in no uncertain terms as a very young lawyer the absolutely critical nature of every word in every representation that we made to the Court." Tr. at 2628, ln 19 – 25. The court added, "And that principle has at times during the course of this litigation been observed again in a breach. I hope -- I wish for every law student and young lawyer that that message gets to them somehow, and I'm not entirely convinced that watching this trial has been the best way for young lawyers to absorb that lesson. I will leave it at that." Tr. at 2629, ln 1 – 9.

Also on June 27, 2024, at sidebar conference about the court blocking Attorney Sullivan's questioning of expert witness Professor David Robinson, the court said to Attorney Sullivan in a hostile tone that the jury was likely to hear, "Are you crazy!?"

These comments continue to jeopardize Mr. Watson's enjoyment of a fair trial. In Guglielmini, the Court observed "numerous instances of repartee between the judge and defense counsel," most of which were "wholly unnecessary" and only served to "demean counsel and case an unfavorable light on the defense." Guglielmini, 384 F.2d at 604. The Court found that "the cumulative effect of these errors was such as to render it highly doubtful that the appellants enjoyed the fair trial to which they were entitled." Id.

In United States v. Ah Kee Eng, the judge continuously "exhibited an attitude of impatience, and an annoyance at proper objections and interruptions" as well as "gratuitous comments disparaging the defense counsel and the defense." United States v. Ah Kee Eng, 241 F.2d 157 (2d Cir. 1957). The Court concluded that "repeated indications of impatience and displeasure of such nature to indicate that the judge to indicate that the judge thinks little of counsel's intelligence and what he is doing are most damaging to a fair presentation of the defense." Id. at 161.

The court has created an incredibly hostile environment and repeatedly aggressively insulted defense counsel including implying criminal and/or sanctionable behavior on the part of distinguished Harvard Law Professor Ronald Sullivan, veteran New York City Assistant District Attorney Janine Gilbert, and recently retired Massachusetts Superior Court Justice Shannon Frison.

While these comments are often made while the jury is dismissed, the court should be mindful that media reporters frequently attend trial and are present during these disputes. Consequently, several statements made by the court have been reported in various articles. While the court may instruct jurors not to seek case-related information, it cannot prevent inadvertent exposure to such media coverage – nor can it predict whether each juror will follow its instruction. Therefore, any statements made in open court should be presumed as having been made in front of the jury.

G. The court simply will not allow any examination or discussion of race in this trial, even where it is plainly relevant.

Despite the obvious and often troubling role that race plays in our society and most of our cases, the court has repeatedly and improperly denied the very obvious role of race in this case going so far as to block the impeachment of a witness (Allison Berardo) whose own racist statements had been put in evidence by the prosecution ("No white man has a voice that sounds like that"). The court flat out refused to allow the witnessed to be cross examined about her statement, and even asked Mr. Sullivan what is racist about the statement she made.

Other examples have included an improper ruling to completely preventing an expert witness on the very subject of how the race of founders affects fundraising for start-up companies (Duke University Professor David Robinson) to comment on the role of race in this case and the

casual dismissal of the Motion to Dismiss based on the prosecutors' demonstrated record of prosecuting black and brown people 90% of the time in a predominantly white district (EDNY).

H. The court has repeatedly accused defense counsel and the defense team of illegal and/or unethical conduct.

The court has allowed the prosecution wide lenience in getting things wrong (case law, facts, timing) and not being fully prepared to finish their case on June 18, 2024. Indeed, none of the government's missteps have been assumed to be for unethical or dilatory tactics, nor has a single prosecutor been accused of any misconduct. It has been obvious to anyone watching this case that the court has not extended the same goodwill to the defense -- indeed the opposite. The court has offered daily hostility towards the defense both in front of the jury and the public on similar matters. There are clearly two sets of rules being applied. Just two instances are discussed below.

On June 13, 2024 (the 7th day of trial), after the court shut down impeachment of witness Allison Berardo on her racist text messages, the court went to a recess. Upon resuming, prosecutor Jonathan Siegel reported to court that Mr. Watson had "shouted" in the hallway "Good thing this has nothing to do with race!" implying that he was within earshot of the jury. Without even *asking* Attorney Sullivan or any member of the defense team about this alleged incident (which absolutely did not occur the way Mr. Siegel alleged), the court automatically assumed government's account was true and threatened to revoke bail or otherwise change Mr. Watson's conditions of release because of it.

On June 14, 2024 (8th day of trial) the court inexplicably accused Attorney Gilbert of submitting a falsely modified version of a document into evidence. The court accused the defense attorney of purposely stapling an additional page to the top of DX629. When counsel expressed her indignation at the unwarranted accusation, the court responded, "Your outrage is noted." The court also announced in open court that compliance with production rules have been so spotty from defense and that it was a "sizeable coincidence" that this one page did not appear in the government's version of the same document. In reality, it was the *government's* use of and admission into evidence an early and incomplete version of the same document that caused the confusion the jury may now have about the document.

Therefore, the defendants respectfully urge the court to reflect on the impact of its comments on the proceedings of this trial. Specifically, the defense requests that the court not only refrain from making insulting comments towards counsel, but also from interrupting our remaining witnesses. As ongoing evidentiary disputes make it possible that many defense exhibits will be precluded and several defense witnesses will not be permitted to testify, the credibility of our remaining witnesses is crucial. Again, the Court in Minor v. Harris stresses that close questioning of witnesses is "particularly improper where a defendant's guilt or innocence rests almost exclusively on the jury's evaluation of the witnesses' demeanor and credibility." Minor v. Harris, 556 F. Supp. 1371, 1384 (S.D.N.Y. 1983). Having interrupted each of the defense witnesses so far, the court risks prejudicing the jury and undermining the ability of the defense to present a complete and effective case. Fairness dictates that all parties be afforded equal opportunity to present their arguments and

evidence without undue interference. Therefore, we urge the court to exercise restraint and impartiality in its conduct throughout the remainder of these proceedings.

Upholding the principles of fairness and impartiality requires vigilance and adherence to the highest standards of judicial conduct. By refraining from derogatory remarks and maintaining a demeanor of neutrality, as well as allowing for a robust and thorough defense by way of witness testimony and exhibits - the court can ensure that justice is not only done but is seen to be done in this courtroom.

Respectfully submitted,

RONALD SULLIVAN LAW PLLC

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EXHIBIT L

Frison
LAW FIRM, P.C.

July 7, 2024

By ECF

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and OZY Media, Inc.
Criminal Docket No. 23-82 (EK)

Dear Judge Komitee:

While the nature of a criminal trial is adversarial, the role of the prosecutor, defense team, and especially the Court is to ensure a fair trial. The United States v. Carlos Watson and OZY, Media Inc. is not a fair trial. In instance after instance, The Court has put its thumb on the scale of justice by providing inappropriate assistance to the prosecution, undermining the credibility of Mr. Watson's defense team, and through rulings that have reflected a disturbing bias. In doing so, the Court has constricted and restrained the defense's ability to provide effective representation.

This letter is a plea to the Court to uphold the standards expected in a criminal jury trial.

This is not the defense's first request of this Court. The defense has yet to receive a comprehensive response. After the initial letter (attached), the Court on July 2, 2024 (14th day of trial), briefly addressed the defendants' first letter on this topic before the testimony began that day. Tr. at 3084 – 3089. At that time, the Court gave an oral response in open court, cherry-picking and taking out of context several of defense counsel's claims. The Court noted that it would also respond in writing but has not yet published a letter on ECF. Tr. at 3084, ln 2 – 3. Of note, the Court did *not* allow undersigned counsel to respond in open court. Even upon a specific request to address the Court orally, the judge directed counsel instead to write yet *another* letter, hence this filing. Tr. at 3174, ln 1 – 24.

Response to the Court's July 2nd Comments:

1. The Court first stated that defense counsel made claims "without any citations." Tr. at 3084, ln 7 – 12. The first letter filed on July 2nd included several illustrative examples of the Court's treatment towards the defense as well as transcript citations; however, those instances are not exhaustive. Attached is a more comprehensive list of comments and rulings made by the Court, the dates of those instances, and transcript citations.

2. The Court next stated that it has given "constructive feedback" to the defense. Tr. at 3085, ln 5 – 14. In fact, what it has given the defense has been anything but constructive. The trial has been rife with demeaning and demoralizing comments, overly harsh penalties for alleged rule violations, and a general lack of care and appreciation for the optics and for the real consequences of this treatment.

   While these comments are *sometimes* made while the jury is dismissed, the Court is now making comments in front of the jury. For example, on July 3, 2024, the Court paused the direct examination of Mr. Watson, stating that the line of questioning was in a "place that is of questionable relevance" in front of the jury. Tr. at 3294, ln 13 – 18.

   Additionally, the Court signals to the jury its frustration with defense counsel and witnesses through its physical demeanor. At several points during the direct examination of Mr. Watson, the Court threw his face into his palms and became noticeably red at moments when Mr. Watson would elaborate on an answer. Please see attached tracker at entry 45.

   Anyone watching the Court's treatment of the defense can see that Mr. Watson is not receiving a fair trial, and the press continues to cover these disputes.

3. The Court then stated that "candor to the Court is an important feature in cases like this one." Tr. at 3086, ln 9 – 10. The defense does not lack candor with the Court. Defense counsel has been transparent and candid about its issues with the discovery platform and with receiving information from Mr. Watson's previous counsel.

   Defense counsel has provided the Court with as much information about its observance of the Court's orders as possible, yet the Court continues to misconstrue its actions and intentions. On June 26, 2024, for example, the Court suggested that defense counsel willfully violated its discovery and 26.2 disclosure obligations, calling it a "tactical choice and purposeful violation." Tr. at 2642 – 2643. The Court even suggested that defense counsel had a "brazen disregard for the rules and practices of this Court." Tr. at 2642 – 2643. That same day, the Court also suggested that defense counsel was not setting an appropriate example for the young lawyers in the room. Tr. at 2628 – 2629.

   The Court's belief that defense counsel has not been transparent throughout this trial has bled into its interactions with witnesses. For example, Professor David Robinson, the defense's expert witness, wrote a letter to both the Court and to the Chief Judge of the Eastern District of New York about the injustice he witnessed and experienced in courtroom 8D South. See attached. Professor Robinson also copied the prosecutors and defense counsel on that letter. In it, Professor Robinson made clear that he did not write the letter "at the request of defense counsel, nor has defense counsel (or anyone, for that matter) reviewed or assisted in the preparation this letter." Yet, on the afternoon of July 1, 2024, when it was received by all the above parties, the Court stated in open court that it came to his attention that the *defense* took issue with the fact that the Court refused to qualify Professor Robinson as a witness. Tr. at 3002, ln 18 – 21.

   Again, the defense was accused of something it did not do. The defense did not request or assist the professor in communicating with the Court or the Chief Judge. The allegations against counsel must end to ensure a fair trial for both defendants.

4. The Court then denied that it primarily sustains its own objections against defense counsel. Tr. at 3086, ln 14 – 18. In fact, the Court has sustained its own objections against questions from defense counsel approximately 32 times and against the prosecution team only four times. Tr. at 365, ln 6 – 7; 436, ln 12 – 13; 1588, ln 8; 2778, ln 9. See also the attached tracker for objections sustained against the defense.

5. The Court then denied that it has acted as a fourth prosecutor in this trial. Tr. at 3086, ln 21 – 25; 3087, ln 1 – 8. In fact, the Court's assistance to the prosecution has been legion. For example, the Court has granted every request for sidebar from the prosecution but has denied the defense counsel's request for sidebar on three occasions – each in front of the jury. Tr. at 3457, ln 2 – 3; 3494, ln 8 – 12, 17 – 19. The Court previously demanded that defense counsel ask for clarification about rulings "instead of just winging it." Tr. at 3299, ln 3 – 6; 3150, ln 21 – 23.

   The Court has also made controversial rulings in favor of the prosecution. Significantly, on June 6, 2024 (5th day of trial), during the cross examination of the government's first witness, inexplicably, the Court did not allow Mr. Sullivan to impeach Mr. Rao with a document that Mr. Rao himself authored. The Court opined that Mr. Sullivan could not read from a document not in evidence, notwithstanding that this was a rudimentary, non-hearsay impeachment permitted under the Federal Rules of Evidence and allowed in every court across the country. Tr. at 1010.

6. Lastly, the Court denied defense counsel's account of how he handled an accusation against Mr. Watson, stating, "That's not my recollection." Tr. at 3088, ln 19 – 25. The Court continued to suggest that he gave Attorney Sullivan the opportunity to respond after Attorney Siegel flagged the incident, but that is not true. The Court first chastised Mr. Watson and then threatened to revoke his pre-trial release on bail. Tr. at 1539. The Court specifically stated the following *before* Attorney Sullivan was able to speak:

   > "THE COURT: Yes. Obviously, the need to ensure -- Mr. Watson, I'm speaking to you directly now. Mr. Watson, the need to ensure an impartial jury that hears the evidence in this case and nothing else from anybody in this room, no lawyer, no party, you've heard me instruct the jury over and over again that they should not be engaged in any communication with you or the lawyers, and that you and the lawyers should not be engaged in any communication with them. If I hear one more thing along those lines, we are going to contemplate the state of your pretrial release on bail." Tr. at 1539.

Defense counsel has observed the following in the last week:

1. On July 1, 2024 (13th day of trial), during the direct examination of Mr. Watson, the Court sustained its own objection to the defendant's testimony once more. Tr. at 3063, ln 21. In doing so, the Court is not allowing for a vigorous examination of the issues from the defendant, who is facing 37 years in prison for these charges.

2. Also, on July 1, 2024 (13th day of trial), the Court repeatedly sustained government objections to the most basic information a witness can provide on the stand. Even as to *his own conduct*, Mr. Watson was shut down in explaining the business of OZY Media in meaningful ways that

3. would assist the jury. For instance, Mr. Sullivan asked Mr. Watson if he knew from his finance team whether OZY Media used a cash basis or accrual basis for its accounting. The prosecution objected, and the Court sustained the objection. Tr.at 3036 – 3039. So, Mr. Watson is unable at his own trial to state *whether his own company (also being tried) used a cash basis or accrual basis*. Not only does this hamper the jury in understanding what the actual dispute is as to OZY's finances and accounting, it completely violates Mr. Watson's ability to present his defense in this criminal trial.

4. Also, on July 1, 2024 (13th day of the trial), the Court sustained government objection to Mr. Watson testifying as to whether he received an email from Samir Rao (that also was sent to the entire OZY staff) announcing the company's Series C fundraising round. Tr. at 3045 – 3052. Mr. Watson was also not allowed to testify that he received the attachment to that email, which was a press release that was published in the Wall Street Journal and other publications. Tr. at 3045 – 3052. Mr. Watson was himself a board member and helped draft that press release and discussed with other board members how they would send it out. Again, this ruling completely deprives Mr. Watson of his right to testify about a specific *allegation* in the indictment and present a defense head-on against the charges against him.

5. On July 2, 2024 (14th day trial), the Court did not allow the cross examination of Mr. Watson by Ozy Media's undersigned counsel to meaningfully take place. Specifically, it did not allow Attorney Frison to question Mr. Watson on *all* of the topics on which he was directed by Professor Sullivan. Tr. at 3458 – 3460; 3485 – 3490. Instead, the Court has limited OZY's examination of him and ordered that the entire examination *conclude* on July 3, 2024, at 4:30 p.m. Tr. at 3459, ln 3 – 23. Notably, the Court allowed the government's star witness, Samir Rao, to testify on the stand for 6 days (May 29, 2024 – June 10, 2024). The Court is not allowing Mr. Watson a fair defense by rushing defense counsel along and shutting down relevant examination questions.

   The Court's desire to move questions along quickly – and seemingly wanting to adjourn early – might be related to the rigid schedule it has. See attached. It is clear from the transcript that the trial has been impacted by the Court's personal summer calendar. Tr. at 497 – 498.

6. The Court also holds defense counsel to a different standard than the prosecution as it relates to its presentation of witnesses and evidence. For example, when the defense asked for the lineup of prosecution witnesses to be called, the Court stated that the government only had to tell the defense the day before the witness testifies, Tr. at 13 – 14, which the prosecutors regularly did at or after 8:00 pm. However, during the defense case, the Court has asked defense counsel every day *in court* who its witnesses will be the next day and what they will be testifying about. See Tr. at 3510 – 3513. The government has also strangely and unfairly gotten a preview of defense witnesses, their testimony, and on several occasions the defense direct or cross examination of witnesses (Hillel Moerman, Kosmo Kalliarekos, Professor David Robinson, Carlos Watson) per order of the Court. Tr. at 1791 – 1824; 2785 – 2793; 2657 – 2682; 3153 – 3159. The unfairness is overwhelming and visible to all in the courtroom.

The Court's repeated indications of impatience and displeasure with defense counsel and their questions jeopardize Mr. Watson's right to a fair trial. Again, in United States v. Ah Kee Eng, where the judge continuously made disparaging remarks towards the defense and displayed an attitude of

impatience or annoyance, the Court concluded that "repeated indications of impatience and displeasure of such nature to indicate that the judge thinks little of counsel's intelligence and what he is doing are most damaging to a fair presentation of the defense." Id. at 161. This is exactly the problem in the trial at bar.

While the Court believes it is "revealing" that the defense has not quoted the long list of instances in which the Court has improperly intervened, Tr. at 3087, ln 18 – 23, it should note that the instances defense counsel has cited in its first letter do not even scratch the surface of the behavior it has witnessed. To better illustrate these instances, please find the attached tracker of the comments made by the Court. Some include actual quotations as well as notes about the tone and demeanor of the Court. The Court will find transcript citations for all comments made in open court. Defense counsel will continue to monitor this behavior.

Again, the defense team requests to be heard orally and in open court regarding these matters at the earliest opportunity. Further, on behalf of Mr. Watson and OZY Media, Inc., we request to be allowed to fully question remaining witnesses, to be treated with a modicum of respect, and to truly be allowed to defend our clients. Let us take the ruling in United States v. Coke, 339 F.2d 183 (2d Cir. 1964) to heart. There, the judge's "excessive interference in the examination of the witnesses, by repeated rebukes and disparaging remarks directed at appellant's counsel and by marked impatience, all in the presence of the jury, displayed an attitude of partisanship which resulted in the denial of a fair trial and a deprivation of due process of law." We hope to regain due process and the right to a fair trial in this case before it is given to the jury.

Shannon Frison, Esq. USMC
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7/7/2024

Frison
LAW FIRM, P.C.

EXHIBIT M

LETTERS OF JUDICIAL COMPLAINT

JUDGE ERIC KOMITEE



SEPTEMBER 2024

TABLE OF CONTENTS

01

Jaklin Idris
Cosmetic Executive



03

Beverly Watson
Lawyer and Education Executive



05

Dr. Carolyn Watson
Psychologist



08

Dr. Rodney Taylor
Surgeon



TABLE OF CONTENTS

09

Angela Spears
HR Executive



12

Rickie Spears
College Administrator and Professor



14

Emily Jenning
Biotech Researcher



17

Dr. Karen A. Johnson
Associate Professor



TABLE OF CONTENTS

20

Amy Troner
Local Government - Waste Enforcement



24

David Victor
Musician + Social Justice Advocate



26

Dr. Michelle Johnson
Associate Professor



28

Annye Watson
County Executive



TABLE OF CONTENTS

30

Sophia Victor
Artist + Social Justice Advocate



32

Rev. Jeannette Thomas Shegog
Retired Pastor



34

Patrice Johnson
Actress



36

Dr. Judith Segura
Engineer



TABLE OF CONTENTS

38

Rabbi Rachel Timoner
Rabbi



39

Reverend Dr. Jordan Tarwater
Pastor



43

Gary Ireland
Lawyer



45

Ron Sullivan
Harvard Law Professor



TABLE OF CONTENTS

53

David Robinson
Professor



55

Shannon Frison – Letter
Lawyer



60

Shannon Frison – Judge Tracker Exhibit
Lawyer



67

Dr. Norissa Williams
Psychologist



COMPLAINT OF JUDICIAL MISCONDUCT

Complainant: Jaklin Idris
Contact Address: [redacted]
Daytime telephone: [redacted]
Email: [redacted]

Judge: Eric Komitee

Court: United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Lawsuit: United States v Carlos Watson

Dear Chief Justice Margo Brodie,

I am writing to formally submit a complaint against Judge Eric Komitee for his behavior during the United States v Carlos Watson trial. This complaint is made with the expectation that it will be taken seriously and thoroughly investigated.

During the proceedings (as a member of the public), I noted the following actions and behaviors by Judge Eric Komitee which I believe constituted misconduct:

1. Biased Statements and Inappropriate Conduct.
   (i) Distorted Patterns of Portrayal of Black Males such as Exaggerated Negative Associations – in multiple occasions Judge Komitee, reprimanded the defense attorney Professor Ronald S. Sullivan Jr. with comments about a vocal strength or lively behavior, intended to vividly illustrate characteristics that may perpetuate stereotypes.
   (ii) Automatic Responses and Hostility – in multiple occasions, during the defendant Carlos Watson's testimony and throughout the entire trial, Judge Komitee negatively evaluated positive reactions from the defendant (i.e., smile or laughter) by exhibiting frustration and threating to punish. In one notable instance, the defendant was accused by the prosecution of "performing" or "entertaining" in front of the jury, with the judge appearing to lean towards the prosecution's viewpoint.
   (iii) Incorrect Assumptions About What Audiences Want/Inappropriate Humor – On July 12,2024, in front of the public, prosecution and defense teams (after the jurors left for deliberations), Judge Komitee made a "joke" about Oprah Winfrey not coming to court to testify, which in the context of this trial was at best tasteless, and overall cruel for insinuating a lack of trust in the defendant.

It is my strong belief that Judge Eric Komitee failed to uphold the standards of judicial conduct expected from them. Such conduct not only undermines the integrity of the judicial system but also erodes public trust in the judiciary.

I request that this complaint be investigated promptly and impartially. Please keep me informed of the progress and outcome of the investigation.

Thank you for your attention to this matter. I trust that appropriate action will be taken to address this issue and ensure that such incidents do not recur in the future.

I declare that the statements made in this complaint are true and correct to the best of my knowledge.

Sincerely, Date: 7/14/2024



Jaklin Idris

Complaint of Misconduct- Judge Eric Komitee
July 15, 2024

Clerk of Court
United States Court of Appeals
Thurgood Marshall, U.S. Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Margo Brodie,

This is a formal letter of complaint for misconduct against Judge Eric Komitee, in his role presiding over UNITED STATES OF AMERICA, v. CARLOS WATSON, and OZY MEDIA, INC. Defendants.

As a lawyer and social justice advocate, I am alarmed at the biased and hostile treatment by Judge Komitee against the defendant, Carlos Watson, and his counsel, Professor Ron Sullivan, Ms. Janine Gilbert and Ms. Shannon Frison. In fact, at every turn and every stage in the process from pre-trial, through the actual trial, and to closing arguments, Judge Komitee has behaved in a manner that is inconsistent with The Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364.

Pursuant to Rule 2(b) in the Act. Judge Komitee repeatedly engaged in egregious and hostile treatment of the defense:

• **Judge Komitee exhibited unwarranted aggression** by threatening Mr. Sullivan with contempt in front of the jury, simply for stating that an objection was overruled. (Tr. at 3316, ln 18-19).

• **During the defendant's testimony, Judge Komitee displayed overt bias** through his non-verbal physical communication including "doubling over" and "face-palming" at multiple points during proceedings to express exasperation. (Observation during Carlos DX on 07/01/24).

• **Judge Komitee consistently interrupted and admonished the defense in the jury's presence**, a behavior not similarly directed at the prosecution. This pattern of interruptions and rebukes (e.g., Tr. at 3149, ln 6-12; 3151, ln 13-16; 3065, ln 21) created an imbalanced courtroom atmosphere, potentially biasing the jury against the defense.

• **In an unprecedented breach of judicial conduct, Judge Komitee interrupted Mr. Sullivan's closing arguments on three separate occasions**. This interference at a crucial

juncture of the trial undermined the defense's ability to present their final case to the jury effectively. (Noted during Sullivan Closing on 07/11/24.)

• **Judge Komitee's jeered at the defendant,** saying (paraphrase) “at this point, it’s safe to say that Oprah [major topic of trial] won’t be making an appearance.”

Some additional egregious behavior towards the defense, that

These examples throughout the trial cause me great concern for the fair and impartial trial of my brother, the defendant, Carlos Watson. His life is at stake and constant appearance of bias and hostility towards him and the defense team (especially in front of the jury), jeopardizes his right to a fair trial. In fact, given the aforementioned reasons, I have no confidence that Judge Komitee will behave any differently during jury deliberations.

It is with urgency I request that you review Judge Komitee’s conduct in this case. I also request a copy of the audio/visual of the entire proceedings, to preserve the record of Judge Komitee’s biased conduct.

Respectfully,

Beverly Watson, Esq.

[redacted]

Letter of Judicial Complaint- Judge Eric Komitee

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Lawsuit: United States v Carlos Watson

July 14, 2024

Dear Chief Judge Margo Brodie,

I hope this letter finds you well. I am writing to formally lodge a complaint about the conduct of Judge Eric Komitee, who has been presiding over the case "United States of America vs. Carlos Watson" in the Eastern District of New York. I am deeply concerned by the apparent partiality and unfair treatment demonstrated by Judge Komitee throughout the proceedings. Based on his actions, I believe that my brother, Carlos Watson, has his right to a fair trial compromised in this case.

It has been over a year now that I have observed the consistent bias of Judge Eric Komitee. Since August 2023, I have attended every in-person status hearing for my brother, Carlos Watson, traveling from Northern California to New York, often for hearings lasting barely more than an hour. Despite the significant personal and financial burden, Judge Komitee insisted that my brother, who resides in the Bay Area, be physically present at each hearing.

As a concerned taxpayer and troubled sister, I am dismayed by Judge Komitee's repeated displays of bias and lack of impartiality. His rulings, comments, and scheduling decisions have been blatantly unfair and callous.

- **Egregious Scheduling:**
    - *The trial has been unnecessarily prolonged*, stretching what could have been a 3-4 week trial into a 2-3 month ordeal. This has imposed severe financial and emotional stress on our family, as we must bear the costs of travel, accommodation, and sustenance, both in New York and back home.
    - *It is unconscionable for Judge Komitee to insist on a trial schedule that he himself cannot adhere* to, taking a vacation in the midst of the trial and further extending our burden. His insistence on beginning the trial in May 2024, despite his unavailability, has demonstrated a profound disregard for the hardship imposed on us.

- **Judicial Bias and Hostility:**
    - *In court, it has become glaringly apparent how biased the judicial system can be,* particularly against Black individuals. Judge Komitee has repeatedly disrespected distinguished defense attorneys, including Professor Ron Sullivan and former Judge Shannon Frison. His behavior towards them has been dismissive and hostile, cutting them off mid-sentence while allowing the prosecution to drone on uninterrupted, often to the point where jury members fell asleep.
    - *Judge Komitee's offensive behavior includes making baseless insinuations about Prof. Sullivan's integrity,* such as accusing him of attempting to submit false files, and rudely instructing him to lower his voice. He also prevented Prof. Sullivan from properly cross-examining a witness who had made racist comments, yet allowed the prosecution free reign with the same witness.
- **Fourth Prosecutor:**
    - *Judge Komitee has acted more like a fourth prosecutor than an impartial adjudicator.* He has coached the prosecution, sustained his own objections unprompted by the prosecution, and intervened directly in the questioning of witnesses. For example, on June 7, 2024, he sustained his own objection at 11:15 am, and did so again on June 10 and June 13. Reviewing the court transcripts will reveal a clear pattern of such behavior.
    - *Throughout the trial, Judge Komitee continued to coach the prosecution* on what to say and what rules to look up. For example, on June 13, 2024, during a break in the afternoon, Judge Komitee looked up a code, read it to the prosecutors, thereby doing their job for them.
- **Allowing Uninterrupted Prosecution:**
    - Judge Komitee allowed the prosecutors to go uninterrupted for over four hours during their closing statements, despite initially stating they would only need two hours. In stark contrast, he almost immediately interrupted the defense during their closing statements three times, impeding justice and fairness.
- **Partial Treatment:**
    - *Judge Komitee's scheduling has been erratic and unfair, favoring the prosecution's needs while disregarding the defense's*. He has also made biased statements in the presence of the jury, openly questioning the relevance of the defense's cross-examination and consistently overruling the defense's objections while rarely doing so for the prosecution.
    - *For example,* on at least two occasions, including on June 7, 2024, and June 14, 2024, Judge Komitee said while the jury was present, "I struggle to understand the relevance of your questions" and "I'm struggling to understand the relevance" as the defense was cross-examining a witness. This undermines the defense's credibility in front of the jury.
- **Judge's Aggressiveness:**
    - *I found Judge Komitee to have a very angry and aggressive disposition towards both the defendant and the defense team.* His actions have eroded our faith in the fairness of the judicial process.

This situation is profoundly disappointing and underscores a troubling bias within our judicial system. Judge Komitee's conduct throughout this trial has been marked by an aggressive and hostile disposition towards both the defendant and the defense team. I urge you to review Judge Komitee's conduct and take appropriate action to ensure that justice is served fairly and impartially. More specifically, I am concerned that the jury deliberation process will be affected by an improper and undue influence of Judge Komitee. His behavior and conduct should be investigated immediately– and there should be an outside supervision when he oversees/engages with the jury.

Your immediate action and attention to this matter is greatly appreciated.

Sincerely,

Dr. Carolyn Watson

[redacted]

[redacted]

August 29, 2024

Clerk of Court
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Clerk of the Court,

My name is Rodney J Taylor, and I had the occasion to visit the Court on May 29, 2024, and again July 3, 2024. My profession is in Medicine, and I offer the disclaimer that I am not a legal expert, however, I have been in court on many occasions in a professional capacity as a medical expert. Hence, I am generally familiar with courtroom decorum.

I write to submit a complaint as I was aghast at what appeared to be preferential and unprofessional treatment. On May 29th as Attorney Sullivan was wrapping up his opening to the jury and indicated "…this is my last point and I promise to be just a couple more minutes", Judge Komitee interrupted him and asked Attorney Sullivan "How much longer are you going to be and can you please wrap it up (*tight paraphrase but may not be verbatim).* Later on July 3rd, I observed Judge Komitee reprimand Attorney Sullivan as he was dismissing the jury, however they were all clearly *still in the courtroom*, which felt unnecessary and an overreach given the context. Regularly, on that same day I also noted that whenever Judge Komitee denied a motion from the defense- he routinely and audibly stated: "Over-ruled" but never gave the same balanced and public treatment when the government was denied a motion- he simply continued the case. At one point after another sidebar, Judge Komitee queried where the court was prior to the interruption, Attorney Sullivan in refreshing that the government's motion was not granted indicated that the motion was "over-ruled", and an immediate sidebar was issued again so that Attorney Sullivan could be reprimanded. There existed a clear tension in the room and an animus that felt uneven throughout the days that I personally observed, which amounted to an aura of disadvantage for Mr. Carlos Watson.

As a citizen who regularly performs my civic duty via jury duty and a professional who understands appropriate decorum and the many complexities and nuances of legal cases, I feel strongly about the appropriateness and the obligation of impartiality and fairness. It is generally not my nature to be in the habit of submitting written complaints but understanding that when someone's life is hanging in the balance, the absence of that fundamental treatment (especially from the bench) is an egregious affront to our sensibilities as citizens of this great country. I respectfully request that that Judge Komitte's conduct be reviewed, especially as he enters the important phase of overseeing the jury deliberations in a fair and impartial manner.

Respectfully,

Rodney J. Taylor MD, MBA, MSPH
Inaugural Bruce and Isobel Cleland Professor and Chair
Department of Otorhinolaryngology-Head & Neck Surgery
University of Maryland School of Medicine

Complaint of Misconduct- Judge Eric Komitee
July 15, 2024

Clerk of Court
United States Court of Appeals
Thurgood Marshall, U.S. Courthouse
40 Foley Square
New York, NY 10007

Subject: Lack of Faith in the Justice System

Dear Judge Margo Brodie,

This is a formal letter of complaint for misconduct against Judge Eric Komitee, in his role. presiding over UNITED STATES OF AMERICA, v. CARLOS WATSON, and OZY MEDIA, INC. Defendants.

I am outraged over the biased and hostile behaviors against the against the defendant, Carlos Watson, and his counsel, Professor Ron Sullivan, Ms. Janine Gilbert and Ms. Shannon Frison. I observed Judge Komitee often yell, berate, and disrespect the defense in response to anyone on the defense team speaking, including Carlos Watson during his testimony. He was irritable evident from holding his head in his hands and other behaviors outlined from the facts outlined below. I didn't see these behaviors when the prosecution team spoke. Judge Komitee's behaviors demonstrated extreme bias and favoritism for the prosecution team.

Morning of July 3, 2024

- After a few minutes of Carlos on the stand, the head defense lawyer was attempting to submit documents for evidence. The prosecution objected multiple times, wanting to know exactly what the defense was presenting. As a result, Judge Komitee dismissed the jury **several times** to attempt to resolve the problem. This back and forth led to several sidebars, with the lengthiest lasting for 1 hour and 47 minutes. This specific sidebar could be heard by anyone in the courtroom, and I witnessed it in its entirety.

- This sidebar (1 hour and 47 minutes) was about the prosecution asking which financial records the defense team was presenting and why. To appease the prosecution team, Judge Komitee had the defense share a substantial portion of Carlos's testimony, giving the prosecution team a preview of the defense's case. It appeared as if the judge was coaching the prosecution team, while also demonstrating complete disrespect for the entire defense team from eye rolling, yelling, holding his head in his hand showing that he was irritated and angry. Judge Komitee's behaviors would make anyone in the room wonder what happened to him that day, but these behaviors were demonstrated consistently throughout the case.

- The jury was allowed in the courtroom around lunchtime where Carlos shared more of his testimony for about 8 minutes, until everyone was dismissed for lunch.

Afternoon of July 3, 2024

- As Carlos Watson continued his testimony, the defense entered another phase where the documents discussed during the morning sidebar were submitted for evidence.

- The prosecution objected at least 3 times at the start without stating a reason for their objection, and the jury was dismissed each time.

- There were several more objections after the jury came back in without a reason stated by the prosecution. Judge Komitee. responded with "Sustained" each time. At this time, the defense lawyer presenting got to a point where she asked Judge Komitee for clarity on how to proceed and he blatantly yelled "NO" and told her to proceed leaving the defense to proceed without any clarity on the issue. This confused me because in the morning, he told the defense team if they needed clarity on anything to simply ask. They asked and the judge didn't address and responded in a very rude and disrespectful manner as if he were speaking to a child to hurry it along. Keep in mind, most of the day was spent on sidebars and not much defense testimony.

- There were so many starts and stops throughout the day that it appeared that the prosecution team's goal was to control the narrative of the defense team and Judge Komitee fully supported this goal by how he responded with the examples shared above. The judge berated the defense and coached and supported the prosecution. It was very disturbing to watch such bias, unfairness, and disrespect demonstrated. It was a lot to watch and can only imagine how hard it was for the defense team who was just doing their job with interruption after interruption.

- There was a point where the judge again dismissed the jury for about 1 minute to tell Carlos to only ask the question and not add extra details. It was the yelling, rudeness, and disrespect to Carlos that was disturbing.

Afternoon of July 12, 2024

- I continued to see the same behaviors mentioned above during this time. Judge Komitee held his head in his hand, was irritable, and impatient. Is this how things are handled in a system that is supposed to support justice?

What I've outlined above briefly summarizes what I observed. The play-by-play of all the disturbing things witnessed would turn this letter into multiple pages. These observations of blatant unfair and preferential treatment have resulted in my lack of faith in the fairness and

equity of our justice system. I now refer to our justice system as simply a system because what I observed in no way represents justice, where people are treated **impartially, fairly, properly, and reasonably by the law and by arbiters of the law**.

Sincerely,

Mrs. Angela Spears
[redacted]

Complaint of Misconduct- Judge Eric Komitee
July 15, 2024

Clerk of Court
United States Court of Appeals
Thurgood Marshall, U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: "**EXTREME JUDICIAL MISCONDUCT"- Judge Eric Komitee – (Trial Case U.S.D.C. Eastern District vs. Carlos Watson- Ozy Media):**

Dear Honorable Chief Justice Brodie,

I am writing to express my strong/extreme concerns of "Judicial Misconduct" in the courtroom by Judge Eric Komitee during the trial case - U.S.D.C. Eastern District vs. Carlos Watson- Ozy Media the past several weeks. Judge Komitee courtroom behavior has been "EXTREMELY" partial and unethical. Over the past two weeks alone, I've witness Judge Komitee behavior in the courtroom that showed personal bias towards the defense attorneys, Mr. Watson, and OZY Media that brings to questions "IF" a fair trial is possible. During this trial alone, I have taken over 12 pages of notes. Unfortunately, over the past two weeks, most of notes are dealing with either Judge Komitee changing how the defense will proceed during trial, his anger and outburst. I would love to share to share everything, but for the sake of time, I will give a few brief examples of Judge Komitee judicial misconduct.

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Few Brief Examples:

July 3,2024

- Mr. Watson spent majority of the day on the stand. Unfortunately, Mr. Watson was not allowed to give specific details by Judge Komitee regarding questions from the defense attorneys.
- Spent at lease 3 hours in "Sidebar" conversations (107 minutes straight), with Judge Komitee yelling and showing disapproval of the Defense attorney and Mr. Watson.
- Allowing the prosecution team to object without reason.

July 10, 2024

- Allowing the Easter District Office over 5 plus hours to close utilizing exhibits without interruptions.
- Reprimanded the defense team for asking any questions.

*July 11,2024

During the Defense closing arguments, I and numerous witnesses was shocked at the judicial conducting from Judge Komitee. ALARMING!

- Judge Komitee would not allow the defense to present their case unless the Eastern District preview the closing agreement notes and data.

- The defense was reprimanded throughout the closing argument utilizing the "same" data/ material that the Eastern District prosecution team present during closing agreements on July 10,2024 with the complete contents, data, and outlined details of those exhibits.

Since the U.S.D.C. Eastern District of New York filed the indictment on February 22, 2023. Personally, being an impartial spectator, I wanted to learn more about the case. Professionally, as a professor at the University of Bridgeport (Business School), from 2019-2023, OZY Media business/operational model was used as one of the case studies in several courses (Sports Event Management, Marketing, and Sports Marketing courses).
Honestly, after experiencing Judge Komitee courtroom behavior over the past few weeks his conduct for holding a judicial position. Also, I'm concerned that Mr. Watson and OZY Media would receive an "UNBIASED" Trial. The image he is presenting to the citizens and the media is extremely alarming. Honesty, after experience this I am very, very, very concerned if our legal system, especially, for upstart companies. Judicial recording during the trial.
This trial is a great example why we the people need more transparency. At times, I wasn't. sure, who was really trying this case. Or whom was the lead prosecutor, Mr. Jonathan Siegel, or Judge Eric Komitee. As an educator, we try to teach students that the US justice is fair to all regardless of ethnical or financial background. Judge Komitee example of conduct, I'm starting question the legal system even more. If this is what the US Judicial System considers as justice, then the definition is misleading.

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Lastly, trying write in detail what I and many others experience in the courtroom is challenging. I would love the opportunity to speak in person to whomever regarding Judge Komitee judicial misconduct during this trial. His conduct must be addressed immediately. *Friendly reminder that if found guilty, he faces 37 years in prison. That means Mr. Watson's life is on the line. We the people need an unbiased judge presiding over this trial. I look forward to the opportunity of discussing in person. In the interim, thank you for your consideration, attention, and forthcoming response.

Sincerely,

Rickie L. Spears

Rickie L. Spears, MBA, ME
Business and Sports Management Professor
Ernest C. Trefz School of Business
Student, PhD in Sports/Business Management
Telephone: [redacted]
Email: [redacted]

ATTN: Judge Margo Brodie
United States District Court Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

July 14, 2024

Dear Judge Margo Brodie,

Please pay attention. Please hold Judge Eric Komitee accountable. I've been attending the trial of the United States vs. Carlos Watson and OZY Media. I am deeply concerned about the disparate treatment by Judge Komitee to the defense team of Mr. Watson and Ozy Media. There were multiple examples throughout the 7-week trial. Below are a few examples from throughout the trial:

- **Late Addition of New Charges:** Komitee added a charge of "Aiding and Abetting" **the last week of trial**, the day before summation started. This should have been included from the beginning of the trial.

- **Improper Objections**: Komitee did not require the prosecutors to specify what their objections were. He frequently guided the prosecutors, specifying their objections *for them*, acting as a 4th prosecutor. It appeared as if they were his students or children.

- **Closing Arguments:** He told Prosecutor Jillian Kassner to take as long as she needed during her summation which she said would be 2 hours but was over 4.5 hours. During the defense's summation, the judge objected, sustained, rushed, interrupted, scolded, and belittled Ron Sullivan.

- **Judge Not Acting Imparcial:** Komitee and the Prosecution repeatedly objected to **evidence** that contradicted their theory on several points. One being, that Carlos and Ozy Media lied about series C funding when there were PRESS RELEASES from members of OZY's board in major news publications confirming that series C funding was approved and did in fact happen. WHY ARE THE PROSECUTORS AND JUDGE MORE COMMITTED TO THEIR THEORY OF CARLOS' and OZY MEDIA's FRAUD THAN THE TRUTH?!?!

- **Disparate Treatment:** We sat through 6 days of Jonathan Siegel slowly reading texts and emails (admitted evidence) to the jury from their key witness Samir

Rao. However, Judge Komitee refused to let the Defense read their admitted evidence to the jury (including sections of executed Shareholder's Agreements) outlining investors' understanding that their investments were speculative and acknowledging that they were accredited investors— because these sections contradicted the governments' theory. Instead, as he did on many instances, he stated that it was "irrelevant". It seemed that Judge Komitee ruled anything that did not comport with the prosecution's case as irrelevant.

- **Misleading Statements:** The Prosecutors and Judge let their witness knowingly lie on the stand and mislead the jury "I know without a doubt that was Carlos Watson on the call." This misrepresentation happened even after it was fully established by Samir Rao himself that he was the only person responsible for the fake Goldman Sachs call.

- **Prosecution's Knowingly Misrepresenting Facts:** During the Prosecutors" Case-in-chief, they stated that *Ozy lied about having a Season 2 of "Black Women OWN the Conversation.(BWOC)"* However, during the Defense's Case-in-Chief, it became clear that the Prosecutors had knowledge and evidence that BWOC Season 2 was, in fact being negotiated. But the prosecution did not let this truth– stop them from lying about there being no Season 2 of BWOC in the prosecution's case-in-chief.

- **Improper Comments:** After the rebuttal to the Defense's summation, before reading jury instructions Judge Komitee mockingly said, "Well I guess it's safe to say Oprah won't be attending the trial." He then smirked and laughed.

As an observer, this trial seemed to be a sport to Judge Komitee and the prosecutors. It did not appear to be about truth, justice, or protecting the public. As a public policy, prison is for people who are a threat or danger to society. Not those trying to create opportunities and make lives and our community better. The government (and Judge Komitee) were constantly smirking and laughing about destroying Carlos and Ozy Media, using every manipulation to mislead the jury and distort the truth.

As an everyday citizen who follows social justice issues, I am very concerned that Judge Komitee and the three prosecutors will continue to mislead the jury toward their desired outcome during the jury deliberation process. I have little confidence that Judge Komittee will act differently than he has during the status hearings and the entire trial. I am very concerned about Judge Komitee's motivations in this case, as he has repeatedly demonstrated his partiality and leaning towards the prosecution's case.

His actions must be reviewed – and supervised during this important aspect of the American judicial system– the jury deliberations. I have no confidence that he will not put undue influence on the jury as they ask questions of the court. We ask that you investigate his conduct to ensure fairness in this process. It seems they are not concerned with truth or justice, but are solely concerned with proving their theory and are willing to destroy thousands of lives in the process.

Please pay attention. Please hold Judge Komitee and the government's prosecutors accountable.

Sincerely,

Emily Jennings July 14th 2004

Emily Jennings
[redacted]

Dr. Karen A. Johnson
1520 Inverness Parkway
Tuscaloosa, AL 35405
karenandrene@gmail.com
(718) 709-1907

August 30, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I hope this letter finds you well. My name is Dr. Karen A. Johnson, and I am writing to express my profound concern regarding the judicial conduct I witnessed in the courtroom of Judge Eric R. Komitee during the trial of Carlos Watson. As a social worker with over three decades of experience and a doctor of research with doctoral and post-doctoral academic training at institutions such as Columbia University, Yale University, and Johns Hopkins University, I have a deep understanding of the importance of fairness and justice in legal proceedings. The irregularities I observed during this trial compel me to bring these matters to your attention, as they pose serious questions about the impartiality and integrity of the judicial process in this case.

During the six occasions I was present in Judge Komitee's courtroom, I observed with alarm several actions that raised significant concerns about his conduct and the fairness of the trial. These observations include:

1. **Interruptions during the Defense's Opening Statement:** Judge Komitee interrupted Mr. Ron Sullivan, the defense attorney, during his opening statement to ask how much longer he would take. This interruption was not directed at the prosecution during their opening statement, suggesting a disparity in the treatment of the defense and prosecution.

2. **Interruptions during Questioning:** Judge Komitee interrupted Mr. Sullivan's questioning of the primary witness to inquire about the duration. Again, the prosecution was not subjected to similar interruptions, which created an appearance of bias against the defense.

3. **Sustaining Objections without Justification:** Judge Komitee sustained multiple objections made by the prosecution without requiring them to state the reasons for their objections. This

practice disadvantaged the defense, as it limited their ability to respond and adapt their questioning accordingly.

4. **Proactive Objections:** Judge Komitee made multiple objections on his own during Mr. Sullivan's questioning without any prompting from the prosecution. This unusual behavior further disadvantaged the defense and undermined the adversarial nature of the proceedings.

5. **Unwarranted Accusations:** Judge Komitee accused Mr. Sullivan of yelling on multiple occasions when he was not. These baseless accusations were not directed at the prosecution, further contributing to the perception of bias.

These actions, taken together, suggest a pattern of behavior that favored the prosecution and impeded the defense's ability to present their case fully and fairly. Such conduct is deeply troubling and raises serious questions about the impartiality of the proceedings. It appears that Judge Komitee's conduct may reflect not only personal bias but also broader issues of institutional bias and racism within the judicial system. These concerns are particularly significant given the historical context of systemic racism and the disproportionate impact of the criminal justice system on minoritized communities.

As a Black woman and an immigrant, I have often seen on TV and read in print media about the unfair treatment of Black individuals in the U.S. legal system. However, this trial was the first time I personally witnessed such unfairness. I had some hope that the jury would be given all the facts necessary for a fair deliberation. Unfortunately, I observed repeated instances where the jury did not receive complete information, thereby preventing them from deliberating with all the facts. For example, Mr. Sullivan was not allowed to mention race during the trial, and it took Judge Komitee nine months to rule on the defense's request related to selective prosecution. It was shocking to see how the Judge operated more as a prosecutor than as a fair interpreter of the law.

The role of a judge is to ensure that both sides are given a fair and equal opportunity to present their cases. It is essential that judges maintain an appearance of neutrality and refrain from actions that could be perceived as favoring one side over the other. The conduct I witnessed in Judge Komitee's courtroom did not meet these standards, and it compromised the integrity of the trial.

Since July 16, 2024, Carlos has been detained in the Metropolitan Detention Center in New York, where two murders have already occurred since his arrival. One of those murders of which took place just a few cells away from where he sleeps each night, within his hearing. Even placing Carlos in such a facility while awaiting sentencing is unheard of considering his conviction for a non-violent, white-collar crime. Despite this, Judge Komitee has continued to show a troubling alignment with the prosecution, supporting their efforts to create what, to my knowledge, is an unprecedented set of obstacles to Carlos being released on bail. This obstruction is particularly cruel given Carlos' personal circumstances—his sister is battling terminal cancer, and his 90-year-old father has been in and out of the hospital for the past year.

His family and friends have complied with every single request made by the judge and prosecutor, including presenting a bail package of 3 million dollars. Even in the face of these dire family emergencies, the judge and prosecution's insistence on these extraordinary measures underscores Judge Komitee's judicial impropriety.

Given these observations and concerns, I respectfully urge you to review, supervise, and intervene during the final phase of this court proceeding. A thorough investigation into Judge Komitee's conduct is necessary to ensure fairness in this and other cases. Judge Komitee must be held accountable for actions that undermine the judicial process and the pursuit of justice.

I trust that you will take the necessary steps to address these concerns and ensure that justice is served. The credibility of our legal system depends on the impartiality and fairness of its judges, and any deviation from these principles must be promptly and thoroughly addressed.

Thank you for your attention to this matter. I look forward to your response and hope for a resolution that upholds the integrity of our judicial system.

Sincerely,

Dr. Karen A. Johnson

[redacted]

August 28, 2024

Complaint of Misconduct – Judge Eric Komitee

Clerk of Court
United States Court of Appeals
Thurgood Marshall, U.S. Courthouse
40 Foley Square
New York, NY 10007

Dear Clerk of the Court:

This is a formal letter of complaint regarding the conduct of Judge Eric Komitee, in his role presiding over *United States of America vs Carols Watson* and *Ozy Media Inc*, the Defendants.

I attended the trial proceedings and was present in Mr Komitee's courtroom on the 15th and 16th of July 2024. As a witness to the proceedings, my complaint is that I believe Judge Komitee treated Mr. Watson and his defense team in a demonstrably egregious and hostile manner on those dates. It was very apparent throughout the days of the trial that I witnessed, that Judge Komitee was not a neutral party, clearly thought that Mr. Watson was guilty, and utilized his position as judge to ensure that legal decisions were made and that the jurors received limited information to ensure a guilty verdict. Such biased behavior was shockingly egregious. As a white person, I would like to convey that at least some, if not most of the behavior that I saw and the statements that I heard appeared to me to be racially discriminatory, due to prejudices that Judge Komitee holds, either consciously or unconsciously.

Please note, I have no legal background and have never before witnessed court proceedings. I have done my best to be accurate in my reflections without a copy of the transcript.

1) Judge Komitee misled the jury - On July 15, on two different occasions, the deliberating jury requested full transcript pages surrounding specific incidents or parts of the testimony. In both cases Judge Komitee only allowed certain sections of the transcript to be provided to the jurors. These transcript pages were vital to Mr. Watson's defense. The reason for denying the full transcripts was not made clear at any point, other than that Judge Komitee agreed with the prosecutors and did not wish for the jury to read all the pages. I question the merit of Judge Komitee's decision to withhold the full transcript pages. Rather than staying neutral and allowing the jury to review sections of the transcript that were imperative to Mr. Watson's defense, Judge Komitee did the opposite. The defense was understandably concerned and presented their legal argument to Judge Komitee, as any defense attorney should for their client. When Ms Gilbert tried to advocate on behalf of Mr. Watson, Judge Komitee became combative with her.

In an egregious display of his hostility, Judge Komitee admonished Ms. Gilbert, and later that day, called both the prosecuting and defense teams back into the courtroom to inform Ms Gilbert that she would be held in contempt of court. Judge Komitee spoke to Ms Gilbert in a disparaging manner as if she was beneath him rather than an equal and a professional. Judge Komitee stated that one of the reasons for being held in contempt was because the defense attorney had yelled at him during that day's trial proceedings. As a witness, I can tell you that this was an absolutely false statement; at no point did Ms Gilbert yell at anyone. When the attorney asked for the audio recording to be preserved for the record, Judge Komitee told her she

would only be given a written transcript. I believe that Judge Komitee inappropriately penalised the defense attorney as well as making a deliberate decision to withhold important information from the jury.

2) Judge Komitee misled the jury - After several days of jury deliberation, on the morning of July 16th before the jurors left for their morning deliberation, Judge Komitee addressed the jurors and stated that they would now be able to receive the remaining portions of the transcript that had been requested (and refused by Judge Komitee) the day before. He made no mention to the jury that these portions/pages had been withheld as a result of his decision at the request of the prosecutors. He provided no explanation as to why he was now allowing them to read these portions of the transcript after previously withholding them. Unfortunately, it was too late as the jurors were well into their deliberations and reaching their final conclusions. This was an egregious obstacle to truth, fairness, and justice for the defendant Mr. Carlos Watson.

This decision by Judge Komitee was a complete turn-around after the transcript denials/limitations that that Judge Komitee had imposed on the 15th July. It seems likely that the Judge understood the jury had more or less come to their conclusions and so he felt comfortable releasing the transcript portions that had been previously been denied to the jury, feeling confident now that they would find the defendant guilty. On this morning, compared to his previous behavior, Judge Komitee was exceptionally friendly and personable with the jury, making certain to sound very reasonable so that the jurors would trust him as he led them to believe that they did not need to request any further transcript portions because he was giving them all that they needed. Again, Judge Komitee at no time informed the jury of what had taken place the day before and I believe he manipulated the jury. I had the very distinct impression that the jury would not be requesting any further transcripts due to the judge's presentation of the situation. And in fact this is what transpired – the jury finished their deliberations that day without asking for anything further. It is my opinion Judge Komitee deliberately delayed the provision of the transcripts to the jury and led the jurors to make the decision that he wanted them to make. Again, extremely unjust, egregious, and hostile behavior especially coming from a Judge.

3) Judge Komitee behaved as if he was an additional prosecutor - In addition to Mr Watson's trial, I also attended the sentencing of young man of color whose case was occurring intermittently with Mr Watson's, in Judge Komitee's courtroom on July 15th. This young man, Angel was his first name, was issued a sentence for armed robbery.

During Angel's court procedure, Judge Komitee behaved like an additional prosecutor rather than a neutral party. He kept interrupting the proceedings by adding stipulations to the young man's sentence and chastising the prosecutor for not having asked for additional penalties, such as restitution to the businesses, drug testing, and an additional $1000 to be paid by the defendant, none of which had been initially requested by the prosecution. Judge Komittee continually micromanaged the prosecution, which I believe is wholly inappropriate in his position.

I have been told by other Justice Watchers, witnesses to Mr Watson's trial, that Judge Komitee behaved similarly throughout Mr. Watson's trial, so I have come to the conclusion that his egregiously hostile behavior is consistent.

4) Judge Komitee displayed overt bias – throughout July 15th and 16th, Judge Komitee, on more than one occasion, displayed very unprofessional non-neutral physical behavior, often stretching in an exhausted manner, rubbing his face in an exacerbated manner as if he was irritated and other non-verbal behaviors to indicate that the entire trial was an annoyance to him. Judge Komitee appeared to be biased against the defendant and his defense team with his use of non-verbal communication and I do not doubt that this type of behavior would have been a powerful influence on the jury, even if they were not conscious of it.

5) Judge Komitee appeared to be very hostile and prejudicial towards Mr. Watson. After the verdict came in

from the jury, on July 16th, the judge's stated reasons for not granting bail to Mr. Watson were outlandish and demonstrated his true hostility toward Mr. Watson. Judge Komitee portrayed Mr. Watson's accidental mistake of bringing his defunct phone into court one time as purposeful and reason to question Mr. Watson's trustworthiness. Judge Komitee also stated that Mr. Watson had committed perjury simply because he testified on his own behalf during the jury trial and "jury of his peers" found him guilty. However, in my understanding, that is not the case. The jury found him (incorrectly) guilty of fraud—and not perjury. It's conceivable that the jury could have believed what Mr. Watson said on the stand as well as believed some of the other 20 witnesses—and still found him guilty. So, Judge Komitee's insistence that Mr. Watson perjured himself as a reason to withhold bail seemed baseless. In addition, Judge Komitee painted an egregiously hostile and false picture of Mr. Watson, stating that Mr. Watson "took" one million dollars from his sisters, implying that it was against their will and using this as a reason that Mr. Watson was not to be trusted or granted bail. This was a completely false statement. Mr. Watson's sisters, other family, as well as friends, myself included, have willingly and lovingly given money to help Mr. Watson financially. The judge also harshly admonished Mr. Watson for including his property and his sister's condominium as bail security after one of the prosecutors stated that these properties had no value, again, a blatantly false statement. Judge Komitee then stated that this was an additional reason why Mr Watson could not be trusted and would be denied bail.

Mr Watson and his family have spent thousands of dollars traveling back and forth from California for a year and a half (certainly not the behavior of someone untrustworthy). Once in the last status hearing before the trial, Mr. Watson and his family flew out from California, paying for tickets and accommodation, and Judge Komitee at no time informed Mr. Watson or his attorneys that he had cancelled the day's proceedings. I believe that Judge Komitee has behaved in a prejudiced and vindictive manner towards Mr. Watson and the defense attorneys throughout the trial. I do not know if this is because of their race, or if Judge Komitee was trying to get another win for the prosecution, or both.

And finally, I believe that Mr Watson, unlike other people convicted of white-collar crime, was purposefully placed into a highly dangerous prison facility out of egregious hostility while he awaits his November sentencing. I understand that it is not standard procedure to place white collar criminals with upstanding reputations and no previous criminal record, in the same facility as violent offenders. Therefore, as a rational person, I can only conclude that the defendant, Carlos Watson, is being treated in a prejudicial, egregious, and hostile manner.

It was clear to me, even in my short two days at the trial, that Judge Komitee was not able to separate his personal hostile feelings toward Mr. Watson and act professionally and neutral during his court proceedings. This causes me great concern that Mr. Watson did not receive a fair trial.

Bail Proceedings

Subsequent to the trial, Judge Komitee has continued to demonstrate judicial impropriety. After a series of eight bail hearings, Mr. Watson's Defense Team presented a $3 million bail package, backed by a combination of real estate, retirement accounts, and brokerage accounts, all perfected as per legal standards. Despite the Defense team's full, immediate, and ongoing compliance, Judge Komitee and the prosecution have repeatedly expanded both the bail amount and the bail requirements in ways that are unprecedented for someone convicted of a non-violent, white-collar crime. For example, after the defense secured a comprehensive package, including $1.3 million in real estate and non-real estate assets with all appropriate legal measures taken to perfect these assets, Judge Komitee expressed unfounded concerns about the non-real estate assets not being sufficiently encumbered, despite the defense executing affidavits for confession of judgment and filing UCC-1 financing statements.

When Watson's team sought clarification on how to perfect non-real estate assets further, Judge Komitee refused to provide a definitive answer regarding the procedural requirements, even though he criticized the defense's attempts to comply. This situation was made more egregious when both the judge and the prosecution acknowledged that they lacked clarity regarding the appropriate procedures, further underscoring

the unprecedented nature of their demands. This continual shifting of requirements, without proper justification, and the wholesale lack of direction provided also points to a pattern of intentional obstruction.

Moreover, Judge Komitee's judicial misconduct extends to his handling of Watson's detention. Since July 16, 2024, Carlos Watson has been detained in the Metropolitan Detention Center in New York, a facility notorious for its dangerous conditions, where two murders have occurred since his arrival—one just a few cells away from where Watson slept. Housing Watson in such a perilous environment while he awaits sentencing for a non-violent offense is deeply inappropriate.

Despite these dire circumstances and Watson's family emergencies—his sister battling terminal cancer and his 90-year-old father being in and out of the hospital—Judge Komitee and the prosecution have shown a disturbing alignment in their efforts to prevent Watson's release. After Watson's family and friends complied with every request made by the judge and prosecutor, including presenting a $3 million bail package and raising the total amount to $2.3 million in assets to meet the judge's escalating demands, Judge Komitee continued to delay Mr. Watson's release. Finally, after the eighth bail hearing, Mr. Watson was finally released but only after yet again, another requirement was added with little justification. The judge asked Mr. Watson to provide an additional suretor to underwrite the entire $3M bail bond (there were already 17 people standing alongside of Mr. Watson to guarantee his compliance with self-surrender). He gave Mr. Watson a 1-hour recess to accomplish this additional task or face not being released. Thankfully, Mr. Watson's committed circle of family and friends were able to step up once again to meet this demand. Lastly, I understand that as part of the bail package $1M cash was being placed in an account for the court, to ensure "perfection" per the judge's order. But the judge took over a week to actually accept the funds. It was an example to me of the conscious delaying tactics to keep Mr. Watson in harm's way at the very dangerous facility of MDC.

Judge Komitee's repeated actions raise significant concerns that he is deliberately creating obstacles to prevent Mr. Watson's bail, is acting beyond his judicial duty, and is displaying an egregious abuse of power.

I sincerely request that you review Judge Komitee's conduct by reviewing the audio and video of this trial from the beginning to the end, as I do not believe the transcripts will adequately capture the Judge's truly egregiously hostile treatment of the defendant and his attorneys during this trial.

Yours sincerely,

Amy Troner

Amy Troner

[redacted]

David Victor
[redacted]

August 15, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I pray this letter finds you well. My name is David Victor and I am an African American music artist and minister of the gospel of Jesus Christ. I am also a vocal coach. I worked closely with and sang backup for world renowned artists including Chrisette Michele and Donnie McClurkin to name a few. In 2012, I graced the stage of the Barclays Center with living legends such Stevie Wonder, Chris Brown and Jay-z. As a vocal coach, I have worked with two contestants of McDonald's gospel fest 2011. I acted as the praise and worship leader of Perfecting Faith Ministries for over ten years. I have also counseled young court-involved men and prepared them for re-entry into society after incarceration. Through motivation and care, while trying to provide love, opportunity, safety, and security, I have been used as a vessel to help many of the young people that have come through our program. I am writing to make a formal complaint regarding the actions of Judge Eric Komitee. In all of my experiences I have never witnessed an unjust judge like Judge Eric Komitee. His actions in the courtroom were astonishingly unacceptable and this letter is an attempt to have him held accountable for his actions.

During the many days I was present in Judge Komitee's courtroom I witnessed several alarming and disturbing actions that caused me to question his capacity to facilitate a fair trial. Please see that all of these matters are addressed in a timely manner because they have negatively impacted the defendant's trial. These observations include:

1. **Judge Komiteenwas guiding the prosecution:** Judge Komitee would help the prosecutors on multiple occasions without them asking. For example he would state "You mean this, or like this, you would object here because of this." Also on multiple occasions Judge Komitee sustained his own objections in ways that clearly shows that there was biases in favor of the prosecutors.
2. **Judge Komitee went back on his word :** Judge Komitee agreed to order in which the defendant witnesses would testify early in pretrial, knowing that witnesses had a small

window to be in the courtroom. At the last minute he refused to let one of the witnesses who traveled from out of the country to be present in court that day to testify.

3. **Judge Komitee issued a gag order:** During mid-trial Judge Komitee issued a gag order, preventing the defendant from gaining any additional support from the public. This was done knowing that there are multiple articles, interviews and media that has existed for over 12 months that portrays the defendant in a negative light.

Best,
David Victor

Dr. Michelle Johnson
[redacted]

August 27, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I hope this letter finds you well.

My name is Dr. Michelle Johnson, and I am writing to express my deep concern regarding the conduct of Judge Eric R. Komitee during the trial of Mr. Carlos Watson. As a University Professor with academic training from institutions such as Stanford University and the University of Pennsylvania, and as an immigrant from Jamaica in the Caribbean now turned US citizen, I have always held the judicial process in the highest regard, expecting fairness, and impartiality in all proceedings.

However, on the final day of Carlos Watson's trial, I was present in Judge Komitee's courtroom and was taken aback by a remark he made, which sounded like, 'where is Oprah...I guess that she is not here to help you'. This comment was not only irrelevant to the proceedings but also seemed highly inappropriate. It gave the impression that Judge Komitee was mocking Mr. Watson and his defense team, which I found both surprising and disturbing. Given the gravity of the situation and the serious nature of the charges against Mr. Watson, such remarks should have no place in a courtroom where impartiality and respect are paramount.

As someone who has always believed in the integrity of the U.S. legal system, I was deeply troubled by what I witnessed. The remark undermined the dignity of the court and reflected poorly on the seriousness with which the case was being handled. Moreover, it suggested a bias that is unacceptable in any judicial process, especially one involving such significant consequences for the individuals involved.

I respectfully request that you to review this matter and take the necessary steps to ensure that the courtroom remains a place of fairness, respect, and justice. It is crucial that judges maintain the highest standards of conduct to preserve the trust and confidence of the public in our legal system.

Thank you for your attention to this matter. I trust that you will take appropriate action to address these concerns and uphold the integrity of the judicial process.

Sincerely,

Dr. Michelle Johnson

[redacted]

Annye Watson

[redacted]

August 26, 2024

Clerk of Court
United States Court of Appeals
Thurgood Marshall, U.S. Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Margo Brodie,

I have worked in County Government for almost twenty-four years. Sadly, I am writing to express my immeasurable concern regarding the judicial process I observed during both the pre-trial hearings and the trial itself. The role of the Judge is the key component in every trial to ensure a fair trial. Each Judge takes an oath to "faithfully and impartially discharge and perform all the duties incumbent upon him/her under the Constitution and laws of the United States. So help me God." Judge Eric Komitee's demeanor and the inconsistencies, that I observed over my twelve visits to his court gave me a solemn cause for pause and to raise genuine questions about the fairness and impartiality of the proceedings. As a concerned citizen and family member, I feel compelled to address these bias issues in the hope that they will be sincerely investigated and corrected, ensuring that no other African American citizen faces such an experience in the future.

During my five times I traveled from Texas to attend twelve visits to Judge Komitee's courtroom, I was shocked by several actions that seemed to undermine the defense and compromise the integrity of the trial:

- **Sustaining Objections:** Judge Komitee repeatedly sustained the prosecution's objections without requiring them to provide reasons, hindering the defense's ability to respond effectively.
- **Judge Objections:** During the defense's questioning on multiple occasions, Judge Komitee independently raised objections without the prosecutor, (often times it seemed as if the judge was guiding the prosecutors instead of guiding the trial) the Judge making the objections, this practice is uncommon, this action also deprived the defense of getting the true answers out to the jury during the trial.
- **Baseless Allegations and Aggression directed to Defense and Ozy Attorneys:** Judge Komitee accused the defense attorney Mr. Sullivan of yelling on several occasions without cause. Even stating to "lower his voice decimals" These accusations were not directed at the prosecution, further contributing to the perception of bias. He often scolded Ozy's attorneys as well, Ms. Janine Gilbert and Ms. Shannon Frison.
- **Interruptions During the Defense Testimony:** Judge Komitee rudely interrupted Mr. Sullivan during his questioning of Mr. Carlos Watson to inquire about the duration, a practice not applied to the prosecution. The Judge often made faces and jesters during this phase of the testimony while the

jury was present. Again, creating an appearance of bias unequal treatment. It was times during the trial Judge Komitee conducted himself as if he was on the prosecutor's team. These actions collectively suggest a pattern of conduct favoring the prosecution and obstructing the defense's ability to present their full case in a true and fair manner.

By withholding vital information regarding Mr. Carlos Watson's case from the jury, Judge Komitee continues to add onto the historic context of systemic racism in our criminal justice system for minorities. This trial was full of stumbling blocks that prevented an impartial, and just trial for Mr. Carlos Watson. It took Judge Komitee nine months to rule on race being discussed during this trial. The same biased attitude towards Mr. Carlos Watson is still evident even now with his bond. Again, this raises great concern within me.

Despite his conviction for a non-violent, white-collar crime, Judge Komitee has continued to align with the prosecution's efforts to create unprecedented obstacles to his release on bail. This is particularly heart-wrenching given Mr. Watson's personal circumstances, including his sister's terminal cancer battle and his Veteran elderly father's severe health challenges.

Mr. Watson has been detained in the Metropolitan Detention Center in New York, since July 16, 2024, where two murders have occurred since his arrival. One of these incidents took place just a few cells away from him.

After our family and friends complied with every request made by the judge and prosecutor, including presenting a $3 million bail package and raising the total amount to $2.3 million to meet the judge's escalating demands. Despite the successful submission of the fully perfected bail package on Thursday, August 15th, which even included a wire transfer to ensure the court had control over the funds. Judge Komitee continued to delay Mr. Watson's release, by adding even more layers and demands. Finally, after nine bail hearings on August 22, 2024 Mr. Watson was released.

Given all the injustice observations prior, during and after the trial, I respectfully with urgency request you review the videos and or listen to the court proceedings. The integrity of our Justice system is at stake. It was Judge Eric R. Komitee's duty to ensure an impartial and fair trial to Mr. Carlos Watson but instead he led the personal attack and bias charge towards Mr. Watson.

I will await your confirmation of this letter and the positive resolution to this egregious judicial problem.

Sincerely,

Annye Watson

2 page JEK CL CW



Sophia Victor
[redacted]

August 15, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I pray this letter finds you well. My name is Sophia Victor and I am a professional visual artist, educator and arts administrator. I have a Bachelor's Degree in Fine Arts from the School of Visual Arts, aMasters Degree in Visual Arts Administration from New York University, and a Master of Professional Studies Degree from the School of Visual Arts. I work both independently in my personal practice and also with various organizations including the Studio Museum in Harlem, the Whitney Museum of American Art, MOCADA, Amnesty International, and Artistic Noise. My work with these organizations involves the creation of large-scale murals and various art and educational initiatives. Through painting, I bring people together in order to address social justice issues affecting communities. I have worked closely with and mentored detainees at Rikers Island and also court involved youth. In my efforts to advocate for their immediate release I attended numerous court hearings for over ten years. In all of my experiences I have never witnessed an unjust judge like judge Eric Komitee. His actions in the courtroom were astonishingly unacceptable and this letter is an attempt to have him held accountable for his actions.

During the five occasions I was present in Judge Komitee's courtroom I witnessed several alarming and disturbing actions that caused me to question his capacity to facilitate a fair trial. Please see that all of these matters are addressed in a timely manner because they have negatively impacted the defendant's trial. These observations include:

1. **Objecting on behalf of the prosecution:** Over and over again Judge Komitee made objections on his own during the defense's questioning without any prompting from the prosecution. I have never witnessed such strange and unwarranted behavior. He spoke on behalf of the prosecutors and explained to them why they should be objecting as if he were coaching them.
2. **Interruptions during the defense's opening statement and during questioning:** Judge Komitee aggressively interrupted Mr. Sullivan multiple times during his opening statement and during questioning. This was done in a harsh and unacceptable manner. In the middle of Mr. Sullivan speaking Judge Komitee would interrupt with questions about how much time Mr. Sullivan planned to take which was unacceptable. At no time did the prosecution receive any of this unfair treatment in any way even when their opening statement and questioning of key witnesses would carry on for days.
3. **Judge Komitee displayed unwarranted aggression:** Judge Komitee was harsh when speaking with Mr. Sullivan and threatened to hold him in contempt in front of the jury and accused Mr. Sullivan of yelling when he had not raised his voice.

Best,
Sophia Victor



August 18, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I greet you in the name of our Lord and Savior, who calls us to work for justice and freedom for all people. My name is Rev. Jeanette Thomas Shegog, and I am writing to express my deep concern regarding the conduct of Judge Eric R. Komitee in the ongoing legal proceedings involving my nephew, Carlos Watson.

As a pastor, I have devoted my life to serving others and advocating for justice grounded in faith, fairness, and compassion. Throughout this difficult time, I have leaned heavily on my faith to guide me, and I believe that God has a plan for Carlos. Throughout his life, Carlos's journey has been one of hard work, dedication, and the pursuit of his mother's high hopes for him. My sister and Carlos, with a shared vision, created the first newspaper that would eventually become Ozy. This served as a testament to their determination and belief in the power of hard work, and perseverance. My sister, who is now deceased, had always envisioned great things for Carlos.

I am deeply troubled by the actions of Judge Komitee, which seem to deviate from the principles of justice that our system is meant to uphold. Since Carlos's conviction, there have been numerous bail hearings, and despite our family's best efforts to meet every requirement set forth by the court, Judge Komitee has continually created insurmountable obstacles to Carlos's release on bail.

Because of our belief in Carlos, our family, in an act of faith and love, put up land that has been in our possession for over 100 years as part of the bail package. This land is not just property; it represents our family's legacy and a testament to the blessings we have received over generations. We believed that offering it would ensure Carlos's release. Judge Komitee's refusal to accept this and other fully perfected assets, such as retirement and brokerage accounts, is deeply unsettling. Despite our presenting a $3 million bail package—backed by real estate and other financial assets—Judge Komitee has continually increased the bail amount and imposed additional requirements without providing clear guidance on how to meet them. This ongoing obstruction seems designed to prevent Carlos's release, a conclusion that is hard to escape considering the circumstances.

My experiences with Judge Scanlon during the earlier bail hearings were in stark contrast to Judge Komitee's conduct. Judge Scanlon was tough but fair. She ultimately approved a bail package and assured us that Carlos would be released soon. She also remarked about how committed we were as a family. However, once Judge Komitee took over the case, not only was Carlos not released, but the demands kept increasing. Despite the defense team's compliance with every request, including securing an additional $1 million in pledged assets, Judge Komitee has failed to act in a timely and fair manner.

This situation is made even more heartbreaking given Carlos's current family circumstances. His sister, my dearly beloved niece, is battling terminal cancer, and his 90-year-old father has been in and out of the hospital over the past year. Carlos's mother, my dear sister, is no longer with us, but I know how proud she was of Carlos and the man he has become. She always believed that Carlos would achieve great things, and I feel that her spirit is watching over him and is deeply saddened by these unjust proceedings.

As I reflect on the scriptures, I am reminded of Jeremiah 29:11, where it is written, "For I know the plans I have for you," declares the Lord, "plans to prosper you and not to harm you, plans to give you hope and a future." I hold onto this promise for Carlos, but I am disheartened by the actions of Judge Komitee, which seem to stand in the way of the justice and mercy that Carlos, and all human beings, deserves.

Furthermore, during one of the last days of the trial, Judge Komitee made an inappropriate remark regarding Oprah Winfrey, implying that if she had cared enough, she would have intervened to secure Carlos's release. Such a comment was not only unprofessional but downright cruel, as it undermined the gravity of Carlos's situation and our family's sincere efforts to secure his release.

I am deeply troubled by the apparent lack of impartiality and fairness in Judge Komitee's courtroom. His actions, which seem to align closely with the prosecution's efforts to keep Carlos detained, suggest a bias that is unbecoming of a judge. It is my belief that Judge Komitee is acting beyond his judicial duty and is displaying an egregious abuse of power.

Given these concerns, I respectfully ask for your help in intervening in this matter. A thorough review of Judge Komitee's conduct is necessary to ensure that justice is served and that Carlos is treated fairly and impartially.

As I close this letter, I pray for wisdom and discernment for you Judge Margo Brodie as you determine how best to proceed. I trust that the Lord will guide you in your decision-making and that justice, tempered with mercy, will prevail. "The Lord will take care of His own," as the scriptures say, and I believe He is taking care of Carlos. But I also believe it is within your power, Judge, to ensure that Judge Komitee is reprimanded for his improper conduct and removed from any future dealings with this case.

May God bless you and grant you the strength to do what is right.

Sincerely,

Rev. Jeannette Thomas Shegog

Ms. Jeanette Shegog,

[redacted]

[redacted]

August 30, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I pray that all is well. My name is Patrice Johnson, and I am writing to express my deep concern regarding the judicial conduct I observed in the courtroom of Judge Eric R. Komitee during the trial and bail proceedings of Carlos Watson. I am an Actor, Writer, Director, Producer, and University Instructor who immigrated from Jamaica in the Caribbean. I have a profound respect for the integrity and fairness that our legal system should embody. Unfortunately, the stark contrast between how Judge Komitee and Judge Vera M. Scanlon conducted their respective judicial proceedings has left me deeply troubled.

Over several days of the trial it became increasingly clear to me that Judge Komitee's behavior was anything but impartial. I also had the opportunity to observe Judge Vera M. Scanlon during the bail proceedings. She was the opposite. I found her to be tough yet fair, ensuring that both sides were heard and respected. In stark contrast, Judge Komitee appeared to side consistently with the prosecution. The difference between them was disturbing and raised serious concerns about the fairness of the trial.

One particularly concerning incident occurred during the defense's closing statement, led by Attorney Ronald S. Sullivan Jr. from Harvard Law School. As Attorney Sullivan began to say something along the lines of, "The prosecution will tell you that...reasonable doubt," Judge Komitee interrupted him, asserting that he did not have the right to say that. This was just one of several instances where Judge Komitee interrupted the defense's closing arguments, which seemed aimed at undermining their case.

Moreover, I was appalled when Judge Komitee shouted at Attorney Sullivan's wife, who is also a Harvard University attorney and served as co-counsel. This behavior was not only unprofessional but also seemed to be rooted in misogyny and racial bias. It was evident that the judge's harsh treatment was directed specifically at Black people and women. In

contrast, Judge Komitee treated the prosecution team with much more respect and deference.

It was disheartening to witness such clear bias in a courtroom where fairness should be paramount. Judge Vera M. Scanlon, on the other hand, listened intently and conducted her proceedings with the utmost fairness, which only highlighted the partiality and inappropriate conduct displayed by Judge Komitee.

Given these observations, I respectfully urge you to review Judge Komitee's conduct in this case. It is crucial that our judicial system maintains its integrity and that all parties are treated with fairness and respect, regardless of their race or gender. The behavior I witnessed in Judge Komitee's courtroom is inconsistent with these principles and demands careful scrutiny.

Thank you for your attention to this matter. I trust that you will take the necessary steps to address these serious concerns and ensure that justice is served.

Sincerely,

Patrice Johnson



Complaint of Misconduct- Judge Eric Komitee

August 26 2024

Clerk of Court United States Court of Appeals

Thurgood Marshall, U.S. Courthouse 40 Foley Square
New York, NY 10007

Dear Judge Margo Brodie,

I am Dr. Judith Segura and I attended the trial of UNITED STATES OF AMERICA, v. CARLOS WATSON, and OZY MEDIA, INC. with presiding Judge Komitee, on July 11-12, 2024.
I came to Court to observe and to support my friend Carlos Watson during his trial. Carlos and I met over 20 years ago as graduate students, he was in the school of law and I was in the Mechanical Engineering Thermosciences department at Stanford, and we have been friends for the decades since meeting.

I not a lawyer but as an educated person I'm sharing how I feel about some of the disturbing actions that I saw and heard from Judge Komitee while he was presiding over Carlos' trial.

#1. On Thursday (7/11) during closing arguments it appeared the Judge was assisting the prosecution present their case rather than acting as an impartial decision maker.

When Mr. Sullivan was giving his closing arguments to jury he was routinely interrupted by an exasperated Judge and the Jury was sent out up to 3 times.

The prosecution was never interrupted, despite their presentation to the jury being multiple times longer than Mr. Sullivan's presentation. This in spite of Mr. Sullivan arguing in the same manner as the prosecution as far as explaining the Court's instructions to the jury.

For example when Mr. Sullivan tried to explain reasonable doubt to the jury, with the definition that was already included in the Court's charge, the judge interrupted him with hostility and asked the jury to file out of the room. The Judge then lectured Mr. Sullivan in an incredibly demeaning and condescending way and almost shouted that "the judge" was the only person that could give instructions to the jury.

Yet, during the prosecutor's rebuttal argument, that lawyer was not only able to explain terms in the Court's instruction but he was also able to actually instruct the jury (beyond what was written by the Court) on how to find Carlos Watson guilty, with explicit instructions on where to mark "guilty" on "verdict page."

#2. On Friday (7/12) at the end of trial and before the jury comes in for final instructions:

The judge stood at the bench and asked "Should I stop waiting for Oprah Winfrey to arrive? Looks like she is not going to make it to court after all, right"?

I was shocked by these unprofessional remarks from the judge. I suspect the entire courtroom was shocked by how malicious the judge was behaving at such a critical point of a long trial.

It was and is hard for me to understand how the judge who is supposed to be impartial and neutral would be mocking a criminal defendant that sat before him ready to face judgement from the jury.

I could not understand why this would happen.

The actions above made me feel angry, helpless and that the justice system was not just.

I appreciate that judges are human and have bad days but this behavior displayed by Judge Komitee seemed excessively improper.

Mocking a defendant, who has already raised concerns about racial bias, with a racially charged snub was and is over the top. More importantly it demonstrates a sinister intent, or at a minimum the appearance of a sinister intent, to influence the trial process to ensure that the outcome was a guilty verdict.

I implore you to please help save the fairness or at least the appearance of fairness of the proceedings yet to come.

Thank you for your time and attention.

Dr Judith Segura August 26, 2024

From: **Rachel Timoner** [redacted]
Date: Mon, Jul 15, 2024 at 3:01 PM
Subject: Concerns about Judge Eric R. Komitee's treatment of the defense in US v. Watson
To: <Margo_Brodie@nyed.uscourts.gov>, <brodie_chambers@nyed.uscourts.gov>

Your Honor, Chief Justice Margo Brodie,

I am a rabbi and community leader in Brooklyn, though I am not writing today in my professional capacity. I attended several days of the trial of US v Watson in the courtroom of Judge Eric R. Komitee. On two occasions, I brought members of my congregation to watch as well.

All of us were taken aback by Judge Komitee's ongoing and visible antipathy toward the defense team, sometimes in front of the jury, so much so that he appeared to be on the side of the prosecution. He cut the defense team off, spoke disrespectfully to them, objected to their arguments on behalf of the prosecution, expressed irritation with them, and generally gave the impression of bias.

I am aware that I do not know the facts of the case, that I do not know what might have taken place behind the scenes to cause his attitude, and that I do not have much experience with legal proceedings. However, if a judge in a federal courtroom is supposed to appear impartial, that standard was not met.

It troubled me deeply each time I was there. I thought you should know.

Sincerely,

Rabbi Rachel Timoner
[redacted]

A Resolution from Avenue Church NYC
April 2024

Resolution by Avenue Church NYC calling on the United States Department of Justice ("DOJ") to work with the church in selecting an independent investigator to explore ongoing racism within the agency and help develop the implementation of reforms to eliminate this practice within, at minimum, DOJ - the heart of the legal system of our federal government.

WHEREAS, in the words of President Joseph R. Biden, "We need to root out systemic racism across our laws and institutions, and we need to make sure black Americans have a real shot to get ahead."[i]

WHEREAS, nowhere is it more important to eliminate racism than in law enforcement, particularly at the United States Department of Justice, the agency now accused of ignoring racial injustice by engaging in selective prosecution based on race.[ii]

WHEREAS, the Reverend Dr. Martin Luther King, Jr., in his Letter from Birmingham Jail, April 16, 1963, rebutted his critics, pointing out "Injustice anywhere is a threat to justice everywhere."[iii] More than 60 years later it is widely accepted that Black and brown people in the United States are over-policed, over-prosecuted, and over-sentenced at alarming rates. Responsible scholarship points to these documented systemic factors as what causes the crime rate disparity between Blacks and Whites.[iv]

WHEREAS, the United Nations' report on Human Rights released in the autumn of 2023, citing "a legacy of slavery, the slave trade, and one hundred years of legalized apartheid…"[v] concluded, "Police and criminal justice systems in the United States require urgent reform to eradicate 'systemic racism' against people of African descent."[vi]

WHEREAS, following several articles published in print and then circulated on the internet alleging the misleading of investors by Carlos Watson, a noted Black entrepreneur and producer of world-class music festivals, highly-regarded podcasts, as well as Emmy award-winning streaming content for Hulu, Amazon and other digital and print efforts, and Ozy Media, the company he founded, three Assistant United States Attorneys ("AUSAs") from the DOJ in the Eastern District of New York in Brooklyn - Jonathan Siegel, Gillian Kassner, and Dylan Stern – are criminally prosecuting Mr. Watson. In 2023, Ronald S. Sullivan Jr., Mr. Watson's lead attorney, commented that the prosecutors "…appear to be white…"[vii] If convicted, Mr. Watson faces up to 37 years in prison.[viii]

WHEREAS, defense counsel raised strong concerns that Mr. Watson and Ozy Media are the targets of "selective prosecution" by the three AUSAs as being "Too Black for Business,"[ix] the practice of prosecuting prominent Black entrepreneurs based on race, while seemingly ignoring White entrepreneurs alleged to have engaged in similar wrongdoing.

WHEREAS, history is littered with stories of Black business leaders being ruined, and their businesses destroyed, by DOJ's "selective prosecution," e.g., the case of Calvin Grigsby.[xi] The founder of the country's largest minority-owned bond firm at the time, Mr. Grigsby was targeted by federal prosecutors and indicted for bribery. Sadly, despite his acquittal by a jury, Mr. Grigsby no longer leads the prominent, Black-run firm he founded.

WHEREAS, Mr. Watson's defense attorneys provided data claiming to show that the AUSAs prosecuting Mr. Watson and Ozy Media charge people of color 90 percent of the time, these same prosecutors only charge whites in 6 percent of cases.[xii]

WHEREAS, according to United States Attorney General Merrick Garland, "The Justice Department was founded in the wake of the Civil War and in the midst of Reconstruction, with the first principal task of bringing to justice white supremacists and others who terrorized Black Americans to prevent them from exercising their civil rights."[xiii]

WHEREAS, AG Garland stated before the House Judiciary Committee, "The Justice Department's job then - and it is now - to fulfill that promise that is at the foundation of our democracy: that the law will treat all of us alike."[xiv]

WHEREAS, Avenue Church NYC has a long-standing commitment to civil rights and racial justice, e.g., some 25-years ago, the Church supported an earlier demand that the Department of Justice in the Eastern District of New York launch an investigation into the racial beating of Black Long Island resident John Mims by Southold Police Officers.[xv] As background, Mr. Mims was beaten by a member of the Southold Police Department; he was then criminally charged. When the criminal charges were eventually dropped, Mr. Mims filed a civil action against the Southold police officer who administered the beating. At trial the jury, containing no Black members, found for Mt. Mims, awarding him punitive damages. Following this jury trial, the DOJ in the Eastern District of New York - despite calls for an investigation and prosecution of the violent police officer - refused to file any criminal charges against the police or even respond to pleas for justice for the Black victim.[xvi] Mr. Mims, fearing for the safety of his family, fled from his home in Greenport.

WHEREAS, having this decades-long history of social justice initiatives and support for the victims of police violence, we at Avenue Church NYC continue to witness - in horror - acts of physical abuse by law enforcement reminiscent of the historic images, captured on film, of fire hoses and dogs being trained on, and beatings delivered against, Black citizens including the young, later Congressman, John Lewis, during many Civil Rights marches. These acts continue until today, as the sickening video of the murder of a helpless George Floyd, brought back memories for our Church, of beatings of Mr. Mims, an earlier victim of what is often perceived as a racist justice system with a DOJ that ignores the pleas of its citizens for racial justice, or even an independent investigation.

WHEREAS, we at Avenue Church NYC continue to hold to the truth within the Confession of Belhar, a theological statement arising out of apartheid South Africa, that "the Church as the possession of God must stand where the Lord stands, namely against injustice and with the wronged."[xvii]

WHEREAS, for President Biden to fulfill his promise to "...root out systemic racism across our laws and institutions..." and if he expects the public to believe that he cares that BLACK LIVES MATTER, his Administration and the Attorney General must commit to initiating an independent investigation, answering questions, and changing policies to end racism in the legal system.

WHEREAS, it has been shown that organizations and government agencies – including the DOJ - cannot investigate themselves.[xviii]

WHEREAS, Avenue Church NYC - the first Church in the Presbytery of New York City to ordain a female ruling elder and a congregation at the forefront of advocacy for the full inclusion of LGBTQ members in Church life as the original home to *Presbyterian Welcome*, an organization advocating such inclusive values - celebrates diversity, respect for the individual and the family, and is committed to racial justice;

Therefore be it RESOLVED, that we, the Ruling Elders comprising the Session, i.e., the Board of Directors, of Avenue Church NYC, a member congregation of the Presbytery of New York City, guided by our Book of Order, i.e., part of 8our denomination's constitution, in particular this excerpt from Section W-5.0301

"...through its mission in the world, the [Presbyterian Church (U.S.A.)] seeks, acts of compassion, [to] work for justice and peace…[xix] along with this guidance in Section W-5.0304 "promoting justice and fairness in the law; overcoming disparities between rich and poor; bearing witness against systems of violence and oppression; and redressing wrongs against individuals, groups, and peoples…[xx] calls on President Joseph R. Biden, and Attorney General Merrick Garland, to implement policies and programs to expedite the following:

1. Immediately retain an independent investigator, mutually agreeable to community leaders and members from Avenue Church NYC, to conduct an investigation concerning allegations of discriminatory, selective prosecution based on race within the DOJ; and
2. Immediately retain an independent investigator, mutually agreeable to community leaders and members from Avenue Church NYC, to conduct an investigation concerning allegations of selective prosecution based on racial discrimination in the prosecution of Carlos Watson; and,
3. All aspects of the above-referenced investigations be continuously and fully transparent and made public, redacting only those names and private information deemed necessary.

And be it also RESOLVED,

4. The Avenue Church NYC community welcomes President Joseph Biden, and Attorney General Merrick Garland, government officials, prosecutors, church leaders, members of the Presbytery and the public to join us in a dialogue to discuss practical ways to promote the full, independent, impartial, and transparent investigation; and
5. Discuss forward-thinking ways to promote and implement ways the DOJ can break free from race-based, and any other discriminatory practices.

Avenue Church NYC further encourages the circulation and adoption of this, along with complementary resolutions, to faith based communities, organizations committed to racial justice, schools, colleges and universities around the world, with the intent of helping develop reforms to eliminate this practice within, at minimum, the legal system of our federal government.

Respectfully,

Reverend Dr. Jordan A. Tarwater
Pastor

Josephine Wilson, Ruling Elder
Clerk of Session

Gary Ireland, Ruling Elder
Session Member

Stephen McKinley, Ruling Elder
Session Member

James Nedelka, Ruling Elder
Session Member

Deborah Widerkehr, Ruling Elder
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[i] https://www.usatoday.com/story/opinion/2020/06/10/biden-root-out-systemic-racism-not-just-divisive-trump-talk-column/5327631002/

[ii] https://assets-global.website-files.com/6548cda829d7c8ad6c8d9e3f/657ff6647546e59809756fe1_MTD%20(Aug.%202023)%20(84-1.pdf).pdf

[iii] https://digitalcollections.libraries.ua.edu/digital/collection/p17336coll22/id/2661

[iv] https://www.nyujlpp.org/wp-content/uploads/2014/01/Davis-In-Search-of-Racial-Justice-16nyujlpp821.pdf

[v] https://news.un.org/en/story/2023/09/1141652

[vi] https://www.ohchr.org/en/press-releases/2023/09/systemic-racism-pervades-us-police-and-justice-systems-un-mechanism-racial

[vii] https://www.dailymail.co.uk/news/article-12642179/Ozy-Carlos-Watson-fraud-racism-discrimination.html

[viii] https://www.justice.gov/d9/press-releases/attachments/2023/02/23/ozy_indictment_0.pdf

[ix] https://www.tooblackforbusiness.org

[xi] https://www.tooblackforbusiness.org/ewb-home/ewb-calvin-grigsby

[xii] https://www.dailymail.co.uk/news/article-12642179/Ozy-Carlos-Watson-fraud-racism-discrimination.html

[xiii] September 20, 2023, when Attorney General Merrick Garland testified before the House Judiciary https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-openingstatement-house-judiciary-committee

[xiv] https://www.tooblackforbusiness.org/ewb-home/entrepreneuring-while-black

[xv] https://www.nytimes.com/1999/01/10/nyregion/police-brutality-claim-roils-southold.html?searchResultPosition=2

[xvi] https://www.nytimes.com/2003/05/25/nyregion/officer-in-beating-case-will-remain-on-duty.html

[xvii] https://www.pcusa.org/site_media/media/uploads/theologyandworship/pdfs/belhar.pdf

[xviii] https://www.police1.com/officer-misconduct-internal-affairs/articles/for-better-misconduct-investigations-use-third-parties-UMx5DV9G0GI4edCn/

[xix] https://www.pcusa.org/site_media/media/uploads/oga/pdf/boo_2023-2023_publishedversion_cover_and_boo_complete.pdf p122

[xx] https://www.pcusa.org/site_media/media/uploads/oga/pdf/boo_2023-2023_publishedversion_cover_and_boo_complete.pdf p123

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Reverend Dr. Jordan Tarwater, Pastor
Moderator of Session
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Josephine Wilson, Ruling Elder
Clerk of Session
[redacted]

August 22, 2024

Honorable Joseph R. Biden
President, United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C 20500

Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice 950
Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Honorable Chief Justice Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
(margo_brodie@nyed.uscourts.gov)

Re: United States v. Carlos Watson and Ozy Media – Bias Impacting Trial
Criminal Docket No. 23-82 (EK)

Dear President Biden, Mr. Attorney General Garland, and Madame Chief Justice Brodie:

I am writing on behalf of the Session of Avenue Presbyterian Church located in New York City ("Avenue Church").

Members of the Avenue Church community have witnessed the trial of Carlos Watson and Ozy Media, including, regrettably, the ongoing, bias treatment directed at Mr. Watson and his defense counsel by Judge Eric Komitee.

Given the overt bias of trial Judge Komitee directed at the defendant, and because much of what we witnessed was also in front of the jury, we do not believe that Mr. Carolos Watson could have been given a fair trial. Moreover, the obvious bias we witnessed in the courtroom does a disservice to our justice system, as the same should be impartial. As such and based on what we have witnessed in the courtroom, Avenue Church supports the attached complaints of judicial bias filed by Duke Professor David Robinson, as well as defense counsel, Harvard Professor Ronald S. Sullivan, Jr., and Judge Shannon Frison USM (Ret.).

Avenue Church is similarly concerned by the Justice Department's selection for prosecution of Ozy Media and its founder, Black business leader, Carlos Watson, who is also a California resident, seemingly with few ties to the Eastern District of New York.

As stated in the Avenue Resolution from April 2024 (*attached*), our community respectfully requests an independent investigation concerning allegations of discriminatory and selective prosecution of Mr. Watson and Ozy Media by the Justice Department.

We have attached additional references to the historical record of law enforcement targeting members of Black and brown communities for prosecution, as well as the failure of the Justice Department in the Eastern District of New York to meaningfully investigate or prosecute members of law enforcement involved in the near death beating of EDNY resident, John Mims.

Thank you for your anticipated support to end racism and in upholding principles of impartiality in law enforcement.

Respectfully,

Gary Ireland
Gary Ireland
Session Member
with attachments

Copy to: Rev. Dr. Mary Newbern-Williams, Transitional Executive Presbyter, *The Presbytery of New York City*
Selma Jackson, Ruling Elder, Moderator, *The Presbytery of New York City*

RONALD SULLIVAN LAW, PLLC
Ronald S. Sullivan Jr.

July 2, 2024

By ECF

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and Ozy Media, Inc.
Criminal Docket No. 23-82 (EK)

Dear Judge Komitee:

It is with great regret that the defendants submit this objection letter in the present matter on trial, United States v. Carlos Watson and OZY Media, Ind. 23-cr-82. We have not come to this request lightly. But the court's repeated actions both in the lead up to trial and during the trial make this both of immediate necessity to protect the 6th Amendment Rights of our clients and for larger policy reasons in that our system relies on fair administration by judges. What has happened in this trial is anything but fair. One need only sit in this courtroom one day to see and hear much of the behavior and bias complained of in this letter. From the court's pro-government bias to the racial dynamics in this courtroom (including the audience), a reasonable person's confidence in the administration of justice will be shaken.

I. The Conduct of the Trial by the Court has Been Prejudicial to the Defendants.

The conduct of the trial by the court has led to certain impressions of the defendants' attorneys, witnesses, and evidence that are destructive of a fair trial. In Rivas v. Brattesani, where the trial judge made a series of comments, in apparent exasperation with defense counsel, the Court reasoned that while due process "requires a fair trial rather than a perfect trial," a court must "strive for that atmosphere of perfect impartiality which is so much to be desired in a judicial proceeding." Rivas v. Brattesani, 94 F.3d 802, 807 (2d Cir. 1996) (quoting Ricketts v. City of Hartford, 74 F.3d 1397, 1416 (2d Cir. 1996); Santa Maria v. Metro-North Commuter R.R., 81 F.3d 265, 273 (2d Cir. 1996)).

The court's entire interaction with the defense team has created an atmosphere where the defense is not perceived as equal participants in the judicial process. The judiciary's role demands not only fairness but also the appearance of fairness. When the judge makes disparaging remarks about defense lawyers or witnesses, it sends a signal to the jury and the courtroom that the defense's arguments and evidence are less worthy of consideration. This can influence the jury's perception and potentially sway their decision-making process.

RONALD SULLIVAN LAW, PLLC
Ronald S. Sullivan Jr.

While a judge is entitled to ask questions during a trial to clarify both legal and factual issues to minimize confusion, those questions, "may not convey the court's view about the merits of a party's claim" (Berkovich v. Hicks, 922 F.2d 1018, 1025 (2d Cir. 1991), because the judge may not impose his own opinions on the jury. Rivas, 94 F.3d at 807 (quoting Care Travel Co., 944 F.2d at 991). The Second Circuit has observed

that "while a trial judge may understandably become impatient with counsel's examination of a witness, either because of its ineptness, lack of clarity or organization, or for some other reason, the judge must exercise self-restraint in his interference lest "clarification" only create more confusion or the impression in the jurors' minds that the judge is hostile to one party's position." Anderson v. Great Lakes Dredge & Dock Co., 509 F.2d 1119, 1131 (2d Cir. 1974).

The judge's attitude towards the defense may also impact the demeanor and confidence of defense witnesses. Witnesses, particularly those called by the defense, must feel assured that they can testify without fear of bias or prejudice. Derogatory comments from the bench can intimidate witnesses and undermine their willingness to provide truthful and accurate testimony, thus impeding the search for truth that is central to any trial.

Moreover, the judge's role as a judicial officer requires upholding the highest standards of professionalism and respect. Comments that belittle or demean any party in the courtroom, including defense counsel and witnesses, fall short of these standards and erode public confidence in the judiciary's ability to administer justice fairly and impartially.

Even if the court were to make a curative instruction with regard to its interference, the damage cannot be undone. "No curative instruction, in our view, could undo the cumulative prejudicial effect of the court's various inappropriate comments in the presence of the jury." Rivas,
94 F.3d at 808 (quoting United States v. Filani, 74 F.3d 378, 386 (2d Cir. 1996) ("curative instructions to the jury, to the effect that they can decide what version to believe as sole judges of credibility, do not remove . . . an impression [that the judge believes one version of an event and not another] once it is created").

A. The court has assisted the government and acted as a "fourth" prosecutor.

At trial, it has become painfully clear that the court has not treated the parties equally. What was at first, an acknowledgement by the defendants that there may be a prosecutorial affiliation (since the judge served in the same U.S. Attorney's Office) has turned into the actual bias in favor of the prosecutors shown by this court. It is almost as if the court is grooming the prosecutors and coddling them at every turn on every issue. Clearly, the court has a true bias in favor of the prosecution due to personal likes and affection for the individual prosecutors trying the case.

For example, on May 31, 2024 (3rd day of trial) the court assisted the prosecutors by helping question Samir Rao to "clarify" for them that without advertisement revenue, The Carlos Watson Show made $0 (a theory and point of the prosecution). Tr. at 724, ln 14 – 23.

B. The court "sustains" objections that are not made by the prosecutors.

Beginning with the government's first witness, Janeen Poutre, the court sustained 3 or more of his own objections during the defense's cross examination of Ms. Poutre. Weighing in on the evidence, the court repeatedly exclaimed "sustained" without any objections being put forward by the government. It is absolutely imperative that the court allow the *lawyers* on both sides to fairly try the case. The court should not assist the prosecutors in trying the case because of their youth or inexperience. The roles in the courtroom are strict for a reason, especially in a criminal case. It does not take much for the judge, the leader of the courtroom, to affect the jury's attention, attitudes, and beliefs. The court must be much more reserved so as not to weigh in on the defendants' guilt or innocence.

A fair criminal trial is one in which the defendants have a full opportunity to challenge the government's evidence and confront the witnesses against them. That cannot happen when the court objects primarily to the questions put forth by the defense. The court has made more than 30 such objections on behalf of the prosecutors despite repeated respectful requests by defense counsel and a formal objection made by Attorney Ronald Sullivan that the court not aid prosecutors in such a biased and blatant way. This pattern has existed on

cross examination of every government witness and the direct examination of 2 of the defense witnesses so far including:

1. Janeen Poutre, Tr. at 133, ln 23; 138, ln 21 – 22; 146, ln 14; 153, ln 22.
2. Samir Rao, Tr. at 985, ln 2; 1015, ln 14, ln 18; 1019, ln 14; 1029, ln 22; 1214, ln 24; 1215, ln 1; 1223, ln 6; 1232, ln 13; 1278, ln 15 – 16.
3. Allison Berardo, Tr. at 1522, ln 20; 1523, ln 16; 1525, ln 16; 1528, ln 17; 1529, ln 6, ln 8.
4. Tripti Thakur, Tr. at 1623, ln 13.
5. Alex Piper, Tr. at 1718, ln 8, ln 18; 1727, ln 22.
6. Hillel Moerman, Tr. at 1775, ln 24; 1776, ln 3; 1859, ln 3.
7. Suzee Han, Tr. at 2144, ln 12; 2315, ln 20.
8. Renata Erlikhman, Tr. at 2513, ln 8.
9. Dr. David Robinson, Tr. at 2732, ln 4.

C. The court has repeatedly asked questions of witnesses to help meaningfully bolster and advance the prosecution's case -- doing so multiple times with multiple witnesses more than a dozen times so far.

In addition to interrupting testimony with a slew of sua sponte and immediately sustained objections, the court continually interrupts the lawyers on both sides of the v in order to ask questions of the witnesses that completely serve to aid the government's theory of the case. The language, tone, and subject matters on which the court interrupts all signal to the jury what evidence

they should pay attention to and how they should feel about that evidence. This does more than put a thumb on the scales, the court is standing on the scales in this case.

In Anderson v. Great Lakes Dredge Dock Co., where the trial judge engaged in extensive questioning of witnesses, the Court reasoned that the judge's behavior "might be construed as protective rather than as merely investigative in nature." Anderson v. Great Lakes Dredge Dock Co., 509 F.2d at 1132. The Court concluded that the cumulative impact of a judge's behavior is an essential factor in determining prejudice against a defendant. Id. The Court stressed "it is essential, at least where appellant's brief (as here) raises a substantial issue as to the trial judge's fairness in conducting the trial, to make a close scrutiny of each tile in the mosaic. Id. (quoting United States v. Weiss, 491 F.2d 460, 468 (2d Cir. 1974) (footnote omitted)"). Here, there are more than 100 instances where the court has interrupted the examination of a witness to ask his own questions. However well-intended, the cumulative effect of his interjections has been prejudicial to the defense.

The court has asked its own questions of the following witnesses in assistance to the prosecution:

1. Janeen Poutre, Tr. at 82, ln 15; 110, ln 8; 112, ln 22; 119, ln 14; 123, ln 1 – 24; 129, ln 14; 146, ln 2, ln 6; 147, ln 16.
2. Samir Rao, Tr. at 321, ln 2 – 16; 399, ln 5 – 17; 405, ln 16; 476, ln 6 – 22; 543, ln 7; 549, ln 112; 559, ln 9; 579, ln 19; 593, ln 10 - 18; 606, ln 8; 608, ln 21; 639, ln 22; 668; ln 15 – 23; 734, ln 14 – 22; 980, ln 23; 992, ln 25.
3. Abbas Maniar, Tr. at 1416, ln 16; 1422, ln 8 – 20; 1461, ln 8 – 12; 1473, ln 11.
4. Allison Berardo, Tr. at 1516, ln 17.

5. Tripti Thakur, Tr. at 1609, ln 1; 1610, ln 10; 1615, ln 13; 1711, ln 19 – 25; 1712, ln 13 – 23; 1724, ln 23.

6. Suzee Han, Tr. at 1870, ln 13; 1924, ln 20; 2144, ln 9; 2160, ln 17.

7. Maurice Werdegar, Tr. at 2250, ln 19 – 24.

8. Joseph O'Hara, Tr. at 2408, ln 2; 2411, ln 14; 2412, ln 7.

9. Renata Erlikhman, Tr. at 2513, ln 11.

10. Chetan Bansal, Tr. at 2585, ln 19; 2589, ln 15; 2609, ln 14 – 19.

11. Dr. David Robinson, Tr. at 2700, ln 17, ln 20, ln 23; 2713, ln 10, ln 23; 2738, ln 5; 2750, ln 19; 2754, ln 10; 2755, ln 11; 2763, ln 16; 2770, ln 17; 2772, ln 2; 2775, ln 9, ln 16; 2776, ln 14.

12. Claire Lightfoot, Tr. at 2801, ln 5; 2802, ln 8, ln 17.

Persistent questioning of witnesses may be perceived as belief in the defendant's guilt or innocence. In United States v. Guglielmini, where the judge frequently participated in the trial, by questions and comments, the Court concluded that his behavior "gave the jury the impression that he credited the prosecution and disbelieved the defense." United States v. Guglielmini, 384 F.2d 602, 605 (2d Cir. 1967) ("While the trial judge may, and indeed should, take an active part in the trial where necessary to clarify evidence and assist the jury, the persistent questioning the trial judge conducted in this case, together with his comments to defense counsel, conveyed to the jury far too strong an impression of his belief in the defendants' guilt"). This is exactly the impression the court in the trial at bar is giving the sitting jury.

D. The court rules are transparently biased in favor of the prosecution in its evidentiary rulings.

While quickly addressing and/or ruling in favor of the prosecution almost any time they raise an issue (even specious and irrelevant ones), the court has repeatedly and seemingly intentionally dragged its feet on ruling on critical defense motions throughout the last year including multiple Motions to Dismiss including with regard to racial bias, violation of attorney client privilege and improper venue. Even when the court has finally ruled on defense motions, it has done so in the most modest and lenient way.

The court has repeatedly flouted settled law to rule in favor of the prosecution in its evidentiary rulings, allowing the government to wrongfully prevail on matters of hearsay, impeachment, document admission, and expert witnesses threatening yet more bias.

On May 31, 2024 (the 3rd day of trial), the prosecution offered a resignation email of Tripti Thakur, in which she accuses Samir Rao of committing fraud and recruiting her to commit fraud. Because this is a communication from a nonlawyer on the ultimate issue of the case, the defense requested that it be excluded or redacted. The court denied both motions and refused to even give a limiting instruction *before* the email was read and shown to the jury in full. After allowing the jury to fully take in this highly prejudicial communication, the court gave a shallow (and likely pointless by then) limiting instruction. Tr. at 587, ln 8 – 25; 588, ln 1 – 3. The ruling and the timing of the limiting instruction essentially allowed the jury to make inappropriate inferences and conclusions that the limiting instruction is designed to prevent.

On June 7, 2024 (5th day of trial) with the government's star witness on the stand, the court refused to allow proper impeachment by prior inconsistent statements of the cooperator. The court conducted an extensive sidebar conference on how impeachment works, taking the word of the prosecutors over the analysis of a Professor of Evidence. Tr. 1005 – 1011. The court told Attorney Sullivan that he *cannot* read from the documents. This ruling governed the entire trial, and all witnesses the defense attempted to impeach with their

own FBI interviews or other documents they authored. This scripting of the testimony in this way effectively prevented the defense from impeaching *any* witness unless the witness himself *agreed* that he had lied. It has operated as a

sweeping violation of the defendants' rights to confront their accusers per the 5th Amendment of the United States Constitution.

E. The court continuously disparages defense witnesses in front of the jury and outside the presence of the jury but in open court.

Webb v. Texas instructs against badgering or embarrassing witnesses at trial. In Webb, a defense witness, prior to testifying, was admonished at length by the trial judge and threatened with jail time if the witness lied. Webb v. Texas, 409 U.S. 95 (1972). The witness, who had previously elected to testify on the defendant's behalf, refused to do so after the judge's comments. Id. at 97. The Court ruled that "...the judge's threatening remarks, directed only at the single witness for the defense, effectively drove that witness off the stand, and thus deprived the petitioner of due process of law under the Fourteenth Amendment." Id. at 98 ("Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law").

Minor v. Harris is also instructive on this issue. In Minor, the Court opined that close questioning of witnesses is "particularly improper where a defendant's guilt or innocence rests almost exclusively on the jury's evaluation of the witnesses' demeanor and credibility." Minor v. Harris, 556 F. Supp. 1371, 1384 (S.D.N.Y. 1983). "[B]y coming quickly to the aid of prosecution witnesses during cross-examination, and by indicating that he credited their testimony and that defense counsel was trying to prevent the jury from hearing the truth, clearly risked leading the jury to believe that the judge favored the government's witness[es] and [their] version of the facts. His close questioning of petitioner clearly indicated disbelief in the defendant's testimony." Id. at 1384 (quoting United States v. Nazzaro, 472 F.2d at 308-10). This case on trial is one in which the credibility of the witnesses is of supreme importance and will be weighed heavily by the jurors.

On June 27, 2024 (12th day of trial) during the cross examination of defense expert Duke Professor David Robinson, the judge goaded the professor about his answers and gave the impression that he was not answering the questions truthfully by his tone and demeanor in questioning this witness on top of the prosecutor's questions on the very same topic. Professor Robinson was effectively driven off the stand by the court in this case.

F. The court has drenched this trial in insulting comments to the defense lawyers in front of the jury, their students, the public, and the press.

Since day one of the trial, the court has been particularly disparaging the defense team. Its comments have been purposely embarrassing to defense counsel and clearly meant to make anyone in the room think that the defense is incompetent.

On May 29, 2024 (the 1st day of trial), the court said to the defense team, ""I don't know where you've tried cases before…this is federal district court!"

On May 30, 2024 (the 2nd day of trial), the court continues what will be a consistent and almost daily verbal assault on the defense team. Regarding contracts that the government were in possession of, the court said to the defense team, "I am not getting a coherent explanation of what happened, what the services were […] Mr. Sullivan, this is a document case. I need you to know the documents better so that we don't have to

stop and have you look for things every time we ask a question about what is where […] "I need you to stay on subject". After a period of interrupting defense counsel and both parties growing frustrated, the court directed to Attorney Ronald Sullivan: "First of all, Mr. Sullivan, I want you to lower your voice. […] I want you to lower your voice. Understood? […] Is that understood?"

Also, on May 30, 2024 (the 2nd day of trial), the court announced that it had "tried to guide the defense as best [it] could to comply, even in piecemeal, even in half-baked fashion with their obligations. But we are where we are."

On June 7, 2024 (the 5th day of trial), the court interrupted cross examination of Samir Rao to ask defense counsel, "Did you hear his answer?" indicating to the jury that Attorney Sullivan was not listening to the testimony. The court then stated, "asked and answered sustained because the previous question had 99% overlap" without objection from the prosecution. This meticulous micromanagement of the evidence the defense is allowed to elicit from witnesses is unwarranted, one-sided, and prejudicial to the defendants.

Also, on June 7, 2024 (the 5th day of trial) the court continued to signal to the jury that the defense is unprepared because they did not have multiple physical copies of exhibits that have been presented electronically for the entire trial.

Further on June 7, 2024 (the 5th day of trial), in front of the jury, the court stated "How much longer of this? I guess I'm just struggling to understand the relevance of this" then sat in silence as the jury and witness digested exactly what the court meant to imply – this is evidence is not important. This is very prejudicial to the defendants as the jury prepares to deliberate on this matter.

On June 26, 2024, the court addressed the defense counsel's mentorship to their law clerks, two of whom are still in law school. The court stated "Point two, which I have made before during this trial, and I will make again just because we have law students and young lawyers with us and some interns coming in and out, is, and I speak personally here, I was fortunate, as a young lawyer, to have mentors who impressed on me in no uncertain terms as a very young lawyer the absolutely critical nature of every word in every representation that we made to the Court." Tr. at 2628, ln 19 – 25. The court added, "And that principle has at times during the course of this litigation been observed again in a breach. I hope -- I wish for every law student and young lawyer that that message gets to them somehow, and I'm not entirely convinced that watching this trial has been the best way for young lawyers to absorb that lesson. I will leave it at that." Tr. at 2629, ln 1 – 9.

Also on June 27, 2024, at sidebar conference about the court blocking Attorney Sullivan's questioning of expert witness Professor David Robinson, the court said to Attorney Sullivan in a hostile tone that the jury was likely to hear, "Are you crazy!?"

These comments continue to jeopardize Mr. Watson's enjoyment of a fair trial. In Guglielmini, the Court observed "numerous instances of repartee between the judge and defense counsel," most of which were "wholly unnecessary" and only served to "demean counsel and case an unfavorable light on the defense." Guglielmini, 384 F.2d at 604. The Court found that "the cumulative effect of these errors was such as to render it highly doubtful that the appellants enjoyed the fair trial to which they were entitled." Id.

In United States v. Ah Kee Eng, the judge continuously "exhibited an attitude of impatience, and an annoyance at proper objections and interruptions" as well as "gratuitous comments disparaging the defense counsel and the defense." United States v. Ah Kee Eng, 241 F.2d 157 (2d Cir. 1957). The Court concluded that "repeated indications of impatience and displeasure of such nature to indicate that the judge to indicate that the judge thinks little of counsel's intelligence and what he is doing are most damaging to a fair presentation of the defense." Id. at 161.

The court has created an incredibly hostile environment and repeatedly aggressively insulted defense counsel including implying criminal and/or sanctionable behavior on the part of distinguished Harvard Law Professor Ronald Sullivan, veteran New York City Assistant District Attorney Janine Gilbert, and recently retired Massachusetts Superior Court Justice Shannon Frison.

While these comments are often made while the jury is dismissed, the court should be mindful that media reporters frequently attend trial and are present during these disputes.
Consequently, several statements made by the court have been reported in various articles. While the court may instruct jurors not to seek case-related information, it cannot prevent inadvertent exposure to such media coverage – nor can it predict whether each juror will follow its instruction. Therefore, any statements made in open court should be presumed as having been made in front of the jury.

G. The court simply will not allow any examination or discussion of race in this trial, even where it is plainly relevant.

Despite the obvious and often troubling role that race plays in our society and most of our cases, the court has repeatedly and improperly denied the very obvious role of race in this case going so far as to block the impeachment of a witness (Allison Berardo) whose own racist statements had been put in evidence by the prosecution ("No white man has a voice that sounds like that"). The court flat out refused to allow the witnessed to be cross examined about her statement, and even asked Mr. Sullivan what is racist about the statement she made.

Other examples have included an improper ruling to completely preventing an expert witness on the very subject of how the race of founders affects fundraising for start-up companies (Duke University Professor David Robinson) to comment on the role of race in this case and the

casual dismissal of the Motion to Dismiss based on the prosecutors' demonstrated record of prosecuting black and brown people 90% of the time in a predominantly white district (EDNY).

H. The court has repeatedly accused defense counsel and the defense team of illegal and/or unethical conduct.

The court has allowed the prosecution wide lenience in getting things wrong (case law, facts, timing) and not being fully prepared to finish their case on June 18, 2024. Indeed, none of the government's missteps have been assumed to be for unethical or dilatory tactics, nor has a single prosecutor been accused of any misconduct. It has been obvious to anyone watching this case that the court has not extended the same goodwill to the defense -- indeed the opposite. The court has offered daily hostility towards the defense both in front of the jury and the public on similar matters. There are clearly two sets of rules being applied. Just two instances are discussed below.

On June 13, 2024 (the 7th day of trial), after the court shut down impeachment of witness Allison Berardo on her racist text messages, the court went to a recess. Upon resuming, prosecutor Jonathan Siegel reported to court that Mr. Watson had "shouted" in the hallway "Good thing this has nothing to do with race!" implying that he was within earshot of the jury. Without even *asking* Attorney Sullivan or any member of the defense team about this alleged incident (which absolutely did not occur the way Mr. Siegel alleged), the court automatically assumed government's account was true and threatened to revoke bail or otherwise change Mr. Watson's conditions of release because of it.

On June 14, 2024 (8th day of trial) the court inexplicably accused Attorney Gilbert of submitting a falsely modified version of a document into evidence. The court accused the defense attorney of purposely stapling an additional page to the top of DX629. When counsel expressed her indignation at the unwarranted accusation, the court responded, "Your outrage is noted." The court also announced in open court that compliance with production rules have been so spotty from defense and that it was a "sizeable coincidence" that this one page did not appear in the government's version of the same document. In reality, it was the *government's* use of and admission into evidence an early and incomplete version of the same document that caused the confusion the jury may now have about the document.

Therefore, the defendants respectfully urge the court to reflect on the impact of its comments on the proceedings of this trial. Specifically, the defense requests that the court not only refrain from making insulting comments towards counsel, but also from interrupting our remaining witnesses. As ongoing evidentiary

disputes make it possible that many defense exhibits will be precluded and several defense witnesses will not be permitted to testify, the credibility of our remaining witnesses is crucial. Again, the Court in Minor v. Harris stresses that close questioning of witnesses is "particularly improper where a defendant's guilt or innocence rests almost exclusively on the jury's evaluation of the witnesses' demeanor and credibility." Minor v. Harris, 556 F. Supp. 1371, 1384 (S.D.N.Y. 1983). Having interrupted each of the defense witnesses so far, the court risks prejudicing the jury and undermining the ability of the defense to present a complete and effective case. Fairness dictates that all parties be afforded equal opportunity to present their arguments and

RONALD SULLIVAN LAW, PLLC

Ronald S. Sullivan Jr.

evidence without undue interference. Therefore, we urge the court to exercise restraint and impartiality in its conduct throughout the remainder of these proceedings.

Upholding the principles of fairness and impartiality requires vigilance and adherence to the highest standards of judicial conduct. By refraining from derogatory remarks and maintaining a demeanor of neutrality, as well as allowing for a robust and thorough defense by way of witness testimony and exhibits - the court can ensure that justice is not only done but is seen to be done in this courtroom.

Respectfully submitted,

RONALD SULLIVAN LAW PLLC

/s/
Ronald S. Sullivan Jr., Esq.
Admitted *Pro Hac Vice*
[redacted]
Telephone: [redacted]
Email: [redacted]
Email: [redacted]
Counsel for Carlos Watson

FRISON LAW FIRM P.C.

/s/
Shannon Frison, Esq. USM
[redacted]
Counsel for OZY Media, Inc

David T. Robinson, PhD

[redacted]

July 1, 2024

Chief Judge Margo Brodie
United States District Court Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: United States versus Carlos Watson and Ozy Media, Inc.

Dear Judge Brodie:

I appeared as an expert witness for the defense in US v. Carlos Watson and Ozy Media on Thursday, June 27. I am writing to you to convey my concern about the judicial bias that I saw present that day.

At the outset, I want to be clear: I am not writing at the request of defense counsel, nor has defense counsel (or anyone, for that matter) reviewed or assisted in the preparation this letter. I am writing simply as a private citizen to express my concern based on what I witnessed in the courtroom, no different than if I were sitting in the public gallery listening to the trial.

At numerous points during the day in connection with my testimony, the judge took actions that seemed clearly to favor or assist the prosecution. For example, during my cross-examination, I found it impossible to understand a particular hypothetical question posed by prosecution. The judge then reformulated the hypothetical to help the prosecution get her point across. In fact, he began his interjection with, "I think the question is meant to imply …" and then went on to vary the hypothetical on her behalf, departing from what I understood her to be asking. I was then directed to answer his question instead of hers. I found myself wondering, "Is the Judge working for the prosecution? I didn't think a judge could do this." If leading the witness is a basis for objection, how is leading the prosecution not objectionable?

Evidence of his disdain for the defense was rampant throughout the day. Over the weekend I shared the following courtroom exchange with a colleague who teaches in a law school:

> **Ron Sullivan**: "At this point, Your Honor, we would tender Dr. Robinson as an expert in the area of entrepreneurial finance."
>
> **Judge Komitee**: "I do not qualify witnesses as experts, but the witness may give testimony pursuant to Rule 702"

When my colleague heard this, he cackled and said, "Well when he allowed you to give testimony pursuant to Rule 702 he in fact DID qualify you as an expert, because 702 concerns the definition of an expert. It sounds to me that he just didn't want to say those words in front of the jury because he didn't want the jury to hear the word *expert* in connection with your testimony."

There were other instances that day where the context of the question from the judge, his tone of voice, nonverbal cues, etc., suggested to me that he looked on the defendant with suspicion, but did not look upon the prosecution with similar suspicion. When I shared my concerns about my experience to friends and colleagues who either teach in law schools or have argued cases before juries, they each said, "Judges can ask questions but they aren't supposed to be biased." Their reactions have led me to conclude that I needed to share my concerns with you.

I fully understand and accept that courtrooms are contentious places. I also understand that the prosecution has an obligation, as well as strong incentives based on career concerns, to work as hard as it can to win its case. My concern is that the behavior I saw in court deprives the accused of a fair trial by limiting his counsel's ability to mount a defense. My understanding is that it is the solemn responsibility of a jury, and their responsibility alone, to render a verdict based on the facts of a case as they understand them. If a judge behaves in a manner that suggests to the jury that he looks with suspicion at one side but not the other, then that judge surely biases their judgments. I worry that this is happening right now on the 8th floor of your courthouse in the matter of US vs. Carlos Watson and Ozy Media.

Very truly yours,



David T. Robinson

Frison
LAW FIRM, P.C.

July 7, 2024

By ECF

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and OZY Media, Inc. Criminal Docket No. 23-82 (EK)

Dear Judge Komitee:

While the nature of a criminal trial is adversarial, the role of the prosecutor, defense team, and especially the Court is to ensure a fair trial. The United States v. Carlos Watson and OZY, Media Inc. is not a fair trial. In instance after instance, The Court has put its thumb on the scale of justice by providing inappropriate assistance to the prosecution, undermining the credibility of Mr. Watson's defense team, and through rulings that have reflected a disturbing bias. In doing so, the Court has constricted and restrained the defense's ability to provide effective representation.

This letter is a plea to the Court to uphold the standards expected in a criminal jury trial.

This is not the defense's first request of this Court. The defense has yet to receive a comprehensive response. After the initial letter (attached), the Court on July 2, 2024 (14th day of trial), briefly addressed the defendants' first letter on this topic before the testimony began that day. Tr. at 3084 – 3089. At that time, the Court gave an oral response in open court, cherry-picking and taking out of context several of defense counsel's claims. The Court noted that it would also respond in writing but has not yet published a letter on ECF. Tr. at 3084, ln 2 – 3. Of note, the Court did *not* allow undersigned counsel to respond in open court. Even upon a specific request to address the Court orally, the judge directed counsel instead to write yet *another* letter, hence this filing. Tr. at 3174, ln 1 – 24.

Response to the Court's July 2nd Comments:

1. The Court first stated that defense counsel made claims "without any citations." Tr. at 3084, ln 7 – 12. The first letter filed on July 2nd included several illustrative examples of the Court's treatment towards the defense as well as transcript citations; however, those instances are not exhaustive. Attached is a

more comprehensive list of comments and rulings made by the Court, the dates of those instances, and transcript citations.

2. The Court next stated that it has given "constructive feedback" to the defense. Tr. at 3085, ln 5 – 14. In fact, what it has given the defense has been anything but constructive. The trial has been rife with demeaning and demoralizing comments, overly harsh penalties for alleged rule violations, and a general lack of care and appreciation for the optics and for the real consequences of this treatment.

   While these comments are *sometimes* made while the jury is dismissed, the Court is now making comments in front of the jury. For example, on July 3, 2024, the Court paused the direct examination of Mr. Watson, stating that the line of questioning was in a "place that is of questionable relevance" in front of the jury. Tr. at 3294, ln 13 – 18.

   Additionally, the Court signals to the jury its frustration with defense counsel and witnesses through its physical demeanor. At several points during the direct examination of Mr. Watson, the Court threw his face into his palms and became noticeably red at moments when Mr. Watson would elaborate on an answer. Please see attached tracker at entry 45.

   Anyone watching the Court's treatment of the defense can see that Mr. Watson is not receiving a fair trial, and the press continues to cover these disputes.

3. The Court then stated that "candor to the Court is an important feature in cases like this one." Tr. at 3086, ln 9 – 10. The defense does not lack candor with the Court. Defense counsel has been transparent and candid about its issues with the discovery platform and with receiving information from Mr. Watson's previous counsel.

   Defense counsel has provided the Court with as much information about its observance of the Court's orders as possible, yet the Court continues to misconstrue its actions and intentions. On June 26, 2024, for example, the Court suggested that defense counsel willfully violated its discovery and 26.2 disclosure obligations, calling it a "tactical choice and purposeful violation." Tr. at 2642 – 2643. The Court even suggested that defense counsel had a "brazen disregard for the rules and practices of this Court." Tr. at 2642 – 2643. That same day, the Court also suggested that defense counsel was not setting an appropriate example for the young lawyers in the room. Tr. at 2628 – 2629.

   The Court's belief that defense counsel has not been transparent throughout this trial has bled into its interactions with witnesses. For example, Professor David Robinson, the defense's expert witness, wrote a letter to both the Court and to the Chief Judge of the Eastern District of New York about the injustice he witnessed and experienced in courtroom 8D South. See attached. Professor Robinson also copied the prosecutors and defense counsel on that letter. In it, Professor Robinson made clear that he did not write the letter "at the request of defense counsel, nor has defense counsel (or anyone, for that matter) reviewed or assisted in the preparation this letter." Yet, on the afternoon of July 1, 2024, when it was received by all the above parties, the Court stated in open court that it came to his attention that the *defense* took issue with the fact that the Court refused to qualify Professor Robinson as a witness. Tr. at 3002, ln 18 – 21.

   Again, the defense was accused of something it did not do. The defense did not request or assist the professor in communicating with the Court or the Chief Judge. The allegations against counsel must end to ensure a fair trial for both defendants.

4. The Court then denied that it primarily sustains its own objections against defense counsel. Tr. at 3086, ln 14 – 18. In fact, the Court has sustained its own objections against questions from defense counsel approximately 32 times and against the prosecution team only four times. Tr. at 365, ln 6 – 7; 436, ln 12 – 13; 1588, ln 8; 2778, ln 9. See also the attached tracker for objections sustained against the defense.

5. The Court then denied that it has acted as a fourth prosecutor in this trial. Tr. at 3086, ln 21 – 25; 3087, ln 1 – 8. In fact, the Court's assistance to the prosecution has been legion. For example, the Court has granted every request for sidebar from the prosecution but has denied the defense counsel's request for sidebar on three occasions – each in front of the jury. Tr. at 3457, ln 2 – 3; 3494, ln 8 – 12, 17 – 19. The Court previously demanded that defense counsel ask for clarification about rulings "instead of just winging it." Tr. at 3299, ln 3 – 6; 3150, ln 21 – 23.

   The Court has also made controversial rulings in favor of the prosecution. Significantly, on June 6, 2024 (5th day of trial), during the cross examination of the government's first witness, inexplicably, the Court did not allow Mr. Sullivan to impeach Mr. Rao with a document that Mr. Rao himself authored. The Court opined that Mr. Sullivan could not read from a document not in evidence, notwithstanding that this was a rudimentary, non-hearsay impeachment permitted under the Federal Rules of Evidence and allowed in every court across the country. Tr. at 1010.

6. Lastly, the Court denied defense counsel's account of how he handled an accusation against Mr. Watson, stating, "That's not my recollection." Tr. at 3088, ln 19 – 25. The Court continued to suggest that he gave Attorney Sullivan the opportunity to respond after Attorney Siegel flagged the incident, but that is not true. The Court first chastised Mr. Watson and then threatened to revoke his pre-trial release on bail. Tr. at 1539. The Court specifically stated the following *before* Attorney Sullivan was able to speak:

   > "THE COURT: Yes. Obviously, the need to ensure -- Mr. Watson, I'm speaking to you directly now. Mr. Watson, the need to ensure an impartial jury that hears the evidence in this case and nothing else from anybody in this room, no lawyer, no party, you've heard me instruct the jury over and over again that they should not be engaged in any communication with you or the lawyers, and that you and the lawyers should not be engaged in any communication with them. If I hear one more thing along those lines, we are going to contemplate the state of your pretrial release on bail." Tr. at 1539.

Defense counsel has observed the following in the last week:

1. On July 1, 2024 (13th day of trial), during the direct examination of Mr. Watson, the Court sustained its own objection to the defendant's testimony once more. Tr. at 3063, ln 21. In doing so, the Court is not allowing for a vigorous examination of the issues from the defendant, who is facing 37 years in prison for these charges.

2. Also, on July 1, 2024 (13th day of trial), the Court repeatedly sustained government objections to the most basic information a witness can provide on the stand. Even as to *his own conduct*, Mr. Watson was

3. would assist the jury. For instance, Mr. Sullivan asked Mr. Watson if he knew from his finance team whether OZY Media used a cash basis or accrual basis for its accounting. The prosecution objected, and the Court sustained the objection. Tr.at 3036 – 3039. So, Mr. Watson is unable at his own trial to state *whether his own company (also being tried) used a cash basis or accrual basis*. Not only does this hamper the jury in understanding what the actual dispute is as to OZY's finances and accounting, it completely violates Mr. Watson's ability to present his defense in this criminal trial.

4. Also, on July 1, 2024 (13th day of the trial), the Court sustained government objection to Mr. Watson testifying as to whether he received an email from Samir Rao (that also was sent to the entire OZY staff) announcing the company's Series C fundraising round. Tr. at 3045 – 3052. Mr. Watson was also not allowed to testify that he received the attachment to that email, which was a press release that was published in the Wall Street Journal and other publications. Tr. at 3045 – 3052. Mr. Watson was himself a board member and helped draft that press release and discussed with other board members how they would send it out. Again, this ruling completely deprives Mr. Watson of his right to testify about a specific *allegation* in the indictment and present a defense head-on against the charges against him.

5. On July 2, 2024 (14th day trial), the Court did not allow the cross examination of Mr. Watson by Ozy Media's undersigned counsel to meaningfully take place. Specifically, it did not allow Attorney Frison to question Mr. Watson on *all* of the topics on which he was directed by Professor Sullivan. Tr. at 3458 – 3460; 3485 – 3490. Instead, the Court has limited OZY's examination of him and ordered that the entire examination *conclude* on July 3, 2024, at 4:30
p.m. Tr. at 3459, ln 3 – 23. Notably, the Court allowed the government's star witness, Samir Rao, to testify on the stand for 6 days (May 29, 2024 – June 10, 2024). The Court is not allowing Mr. Watson a fair defense by rushing defense counsel along and shutting down relevant examination questions.

   The Court's desire to move questions along quickly – and seemingly wanting to adjourn early – might be related to the rigid schedule it has. See attached. It is clear from the transcript that the trial has been impacted by the Court's personal summer calendar. Tr. at 497 – 498.

6. The Court also holds defense counsel to a different standard than the prosecution as it relates to its presentation of witnesses and evidence. For example, when the defense asked for the lineup of prosecution witnesses to be called, the Court stated that the government only had to tell the defense the day before the witness testifies, Tr. at 13 – 14, which the prosecutors regularly did at or after 8:00 pm. However, during the defense case, the Court has asked defense counsel every day *in court* who its witnesses will be the next day and what they will be testifying about. See Tr. at 3510 – 3513. The government has also strangely and unfairly gotten a preview of defense witnesses, their testimony, and on several occasions the defense direct or cross examination of witnesses (Hillel Moerman, Kosmo Kalliarekos, Professor David Robinson, Carlos Watson) per order of the Court. Tr. at 1791 – 1824; 2785 – 2793; 2657 – 2682; 3153 – 3159. The unfairness is overwhelming and visible to all in the courtroom.

The Court's repeated indications of impatience and displeasure with defense counsel and their questions jeopardize Mr. Watson's right to a fair trial. Again, in United States v. Ah Kee Eng, where the judge continuously made disparaging remarks towards the defense and displayed an attitude of Case 1:23-cr-00082-EK Document 234 Filed 07/07/24 Page 5 of 5 PageID #: 4471

impatience or annoyance, the Court concluded that "repeated indications of impatience and displeasure of such nature to indicate that the judge thinks little of counsel's intelligence and what he is doing are most damaging to a fair presentation of the defense." Id. at 161. This is exactly the problem in the trial at bar.

While the Court believes it is "revealing" that the defense has not quoted the long list of instances in which the Court has improperly intervened, Tr. at 3087, ln 18 – 23, it should note that the instances defense counsel has cited in its first letter do not even scratch the surface of the behavior it has witnessed. To better illustrate these instances, please find the attached tracker of the comments made by the Court. Some include actual quotations as well as notes about the tone and demeanor of the Court. The Court will find transcript citations for all comments made in open court. Defense counsel will continue to monitor this behavior.

Again, the defense team requests to be heard orally and in open court regarding these matters at the earliest opportunity. Further, on behalf of Mr. Watson and OZY Media, Inc., we request to be allowed to fully question remaining witnesses, to be treated with a modicum of respect, and to truly be allowed to defend our clients. Let us take the ruling in United States v. Coke, 339 F.2d 183 (2d Cir. 1964) to heart. There, the judge's "excessive interference in the examination of the witnesses, by repeated rebukes and disparaging remarks directed at appellant's counsel and by marked impatience, all in the presence of the jury, displayed an attitude of partisanship which resulted in the denial of a fair trial and a deprivation of due process of law." We hope to regain due process and the right to a fair trial in this case before it is given to the jury.

Shannon Frison, Esq. USMC FRISON

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7/7/2024

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Frison
LAW FIRM, P.C.

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July 8, 2024

By ECF

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and OZY Media, Inc.
Criminal Docket No. 23-82 (EK)

Dear Judge Komitee:

Attached please find a properly formatted "Judge Tracker" exhibit (attachment to the July 7, 2024 letter). The original exhibit was malformed when converted to PDF and submitted on ECF. The attached amended exhibit both fixed the formatting and added concerns from July 8, 2024 on the same topics.

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7/8/2024

Shannon Frison, Esq. USMC FRISON LAW FIRM, P.C.

[redacted]

Trial Date	Phase of Trial	Transcript Pg, Ln	Description of Inappropriate Conduct
05/29/24	Morning proceedings	Tr. at 8, ln 12 - 16	Court improperly characterizes conduct of the defense as unfair surprise even though the government is allowed to surprise the defense each night with the witnesses they plan on calling the next day.
05/29/24	Morning proceedings	Tr. at 156, ln 21 - 25; 1 - 24	Judge claims the BOR is not recent enough and that the 6th Amendment/5th Amendment argument advanced by Sullivan is a "waste of time"; says he will entertain arguments about 2nd circuit authority

05/29/24	Cross examination of Janeen Poutre	Tr. at 133, ln 23; 138, ln 21 – 22; 146, ln 14; 153, ln 22.	Sustained his own objection 4x
05/29/24	Cross examination of Janeen Poutre	Tr. at 82, ln 15; 110, ln 8; 112, ln 22; 119, ln 14; 123, ln 1 – 24; 129, ln 14; 146, ln 2, ln 6; 147, ln 16.	Interrupted counsel to question the witness
05/29/24	Trial break	Not yet located	"I don't know where you've tried cases before but this is federal district court"
05/30/24	Morning proceedings	Tr. at 270, ln 20; 273, ln 21; 274, ln 17; 285, ln 18, ln 22, ln 25.	Regarding contracts that the government were already in possession of; "not getting a **coherent** account of what the contract/terms were"; "document heavy case, defense should know it's documents"; May 16th task order excluded; "i need you to stay on subject"; interrupting defense; entertaining objections to keep docs out when the purpose of the hearing was to determine whether or not the information had been provided as a part of discovery; **did not** read the letters from defense; "take another look at the subpoenas"; "getting tired of sorting out the details"; "**I want you to lower your voice. Understood? Is that understood?**"; "I'm going to wait until I have your full attention"
05/30/24	Samir Rao direct examination	Tr. at 392, ln 3 - 25; 427, ln 2 - 21	Carlos' mugshot flashed on **all screens** (including juror screens) and Sullivan moved for a mistrial; the judge ruled against the defense and the government said it would resolve the issue but the mugshot flashed two more times (and took up half the screen) after the ruling; The court noted that the photo wasn't particularly prejudicial (no orange jumpsuit) and it was a small image that came up quickly even though the first time it came up it was blown up across the screen

05/30/24	End of day	Tr. at 501, ln 3; 512, ln 4 - 6	Not going to make prosecution conclude by Friday (meaning if the end at EOD Monday, the jury sits without a CX for 3 days; "I've tried to guide the defense as best as I could to comply, even in piecemeal, even in half-baked fashion with their obligations"

05/31/24	Morning break	Tr. at 587, ln 8 - 25; 588, ln 1 - 3	Refused to give a limiting instruction before Tripti Thakur email; he did one after the witness was able to read it fully and after the jury was able to digest it
05/31/24	Samir Rao direct examination	Tr. at 724, ln 18 - 23	judge helped clarify for attorney that without ads, the Carlos Watson show was bringing in $0
06/07/24	Trial break	Tr. at 960, ln 4 - 15	judge skeptical/raised his eyebrows when Sullivan said that Netsuite cut off access to data; evidence will not be admitted until predicate has been established for admission
06/07/24	Samir Rao cross examination	Tr. at 985, ln 1 - 8; 986, ln 5 - 9	"did you hear his answer?" indicating to the jury that Sullivan wasn't listening // "asked and answer sustained because the previous question had 99% overlap." // sustained objection to himself 3x //
06/07/24	Trial break	Tr. at 1010	extensive sidebar on how impeachment works; judge says Sullivan CANNOT read from documents (how else would the jury know that the witness lied); "as a professor of trial practice..."
06/07/24	Samir Rao cross examination	Tr. at 1013, ln 6 - 16	Judge continues to signal to the jury that defense counsel is unprepared with multiple physical copies
06/07/24	Samir Rao cross examination	Tr. at 1053, ln 8 - 16	judge in front of the jury "How much longer of this? I guess Im just struggling to understand the relevance of this" then sits in silence
06/07/24	Samir Rao cross examination	Tr. at 1136, ln 4 - 12	judge is saying there is no "literal" inconsistency between samir's inconsistent statements (even though there is 2nd circuit authority saying the two statements don't have to be completely unidentical)
06/10/24	Samir Rao cross day 2	Tr. at 1214, ln 24	judge sustained his own objection 1x
06/10/24	Thomas Franco direct examination	Tr. at 1343, ln 4 - 5	judge asks foundational questions during direct ("why do you know what a pitch deck is")
06/13/24	Trial break	Tr. at 1414, 16 - 20	precluded defense exhibits preliminarily without argument
06/13/24	Allison Berardo cross examination	Tr. at 1522, ln 20; 1523, ln 16; 1525, ln 16; 1528, ln 17; 1529, ln 6, ln 8.	sustained his own objection 6x

06/13/24	Trial break	Tr. at 1535	automatically assumes government's presentation of the facts about carlos shouting in the presence of jurors about race is true; immediately threatened Carlos to revoke bail without asking Sullivan for his version of the facts
06/13/24	Tripti Thakur direct examination	Tr. at 1605, ln 1 - 6	said something about being asked to get a contract and judge clarified "by whom" and witness responded that Carlos asked her to get a contract that didn't exist then made us take a break, allowing the jury to ruminate on that assist
06/13/24	Tripti Thakur cross examination	Tr. at 1611, ln 13	"was the deal done" to clarify that the contract wasn't complete
06/14/24	Alex Piper cross examination	Tr. at 1707 - 1708	asked witness "are those advertisers buying those spaces/times from Youtube or the creator"?
06/14/24	Alex Piper cross examination	Tr. at 1709, ln 19 - 21	"well beyond the scope of direct" and "struggling to understand the relevance" on **cross (which warrants more leeway)**
06/14/24	Alex Piper cross examination	Tr. at 1718, ln 8, ln 18; 1727, ln 22.	sustained his own objection (asked and answered); totals 5x (only 3 reflected in transcript; something is missing)
06/14/24	Alex Piper cross examination	Tr. at 1725, ln 20 - 25	cut Gilbert off in her response to the judge saying "i think the witness has testified ..." "let's have another question"
06/14/24	Hillel Moerman cross examination	Tr. at 1775, ln 24; 1776, ln 3; 1859, ln 3.	sustained his own objection 3x
06/14/24	Evidentiary discussion during break of Hillel Moerman's cross examination	Tr. at 1777 - 1778	says that whether the investors perform due diligence (to prove they didn't solely rely on Carlos Watson's words) is irrelevant; "we're gonna hear the questions one by one and you're gonna be aware of the pitfalls we're describing"; "you're saying you decline to reveal where you're going with your questions and I'm going to start sustaining relevance objections"
06/14/24	Evidentiary hearing/voir dire during break of Hillel Moerman's cross examination	Tr. at 1799, ln 17 - 25; 1800, ln 1; 1803, ln 16; 1828, ln 17 - 24	accused of purposely stapling the approval date on the top (DX629) "your outrage is noted" ; non-compliance of production rules have been so spotty from defense (assuming it's our fault the government's document is inconsistent with ours) ; "sizeable coincidence" ; he admitted the doc; Goldman's ideas about how much the business was worth is "utterly irrelevant"
06/17/24	Morning break	Tr. at 2024 - 2025	"statements of the law should be made with a good faith basis" regarding Gilbert stating that stipulations can be withdrawn before it is admitted

06/17/24	Suzee cross examination	Tr. at 2140, ln 4 - 16	judge sustained his own objection when the witness was saying she was told there was an oral agreement (Stern then objected when Sullivan correctly pointed out that there was no objection

06/18/24	Maurice Werdeger direct examination	Tr. at 2229, ln 5 - 11	"can you just stay on that point for a moment" and asking follow-up conversations ("does the timing matte (if the booking is for the following year and why?"); clarifying questions
06/18/24	Trial Break	Tr. at 2278 - 2279	"am I the only one who recognizes the [irony]" in the defense making a motion against the prosecutor's calling CW a con-man and us launching a "campaign to influence the public" about the ongoing case against CW.
06/18/24	Trial Break	Tr. at 2285 - 2291	CW got in trouble for allegedly lying to security officers that he was an attorney / had two non-operative phones and judge said carlos and interns could not have phones with them in court (even though a court order was received for interns)
06/18/24	Direct examination of Joe O'Hara (after jury left)	Tr. at 2370	judge doing Gillian's job of laying the foundation for GX1007 for her; admitted it absent case law saying why habit or routine practice couldn't be present sense impression
06/26/24	Direct examination of Renata Erlichman	Tr. at 2513, ln 4 - 13	sustained an asked and answered and when Sullivan said he didn't ask that question, judge asked the question himself
06/26/24	End of day	Tr. at 2628 - 2629	insinuated that lawyers weren't being good mentors to interns because they keep making misrepresentations
06/26/24	End of day	Tr. at 2642 - 2643	"tactical choice and purposeful violation" to not give 26.2 on April deadline; "brazen disregard for the rules and practices of this court"
06/26/24	End of day	Tr. at 2643, ln 10 - 16	withdrew Sullivan's ability to bring his phone in court; "i dont want a phone in anyone's possession at the table with Mr. Sullivan and Mr. Watson"
06/27/24	David Robinson's direct examination	Tr. at 2700, ln 23	judge interrupted sullivan's direct to ask his own questions about the difference between venture capital and private equity
06/27/24	David Robinson's direct examination	Tr. at 2732, ln 4	sustained his own objection 1x

06/27/24	David Robinson's cross examination	Tr. at 2763, ln 16 - 25; 2764, ln 1 - 3	interrupted kassner's cx to ask if he thought the amount of money a company brought in was completely irrelevant and made a face at his answer--hinting that he didn't agree
07/01/24	Carlos DX	Observation	judge doubling over and face palming in exasperation during Carlos's testimony
07/01/24	Carlos DX	Tr. at 3034, ln 15 - 17	going to sustain my own objection to that it's "clearly hearsay"
07/01/24	Carlos DX	Tr. at 3065, ln 21	sullivan sat in protest and judge said he would contemplate other actions if he didn't continue; sustained his own objection 1x

07/02/24	Carlos DX	Not put on the record	Sullivan: " can i add one thing" ; judge: "no" ; interrupting Sullivan while he's trying to make a record ; preventing us from showing DX627
07/02/24	Carlos DX	Tr. at 3149, ln 6 - 12; 3151, ln 13 - 16	"mistaken assumptions" "can't have the witness testify falsley to everything"; after Sullivan said he'd like to make an application that everything the government read onto the record is inadmissible--"put it in writing"
07/02/24	Carlos DX	Tr. at 3158, ln 19 - 23	does not allow Sullivan to read provisions of admitted documents that he doesn't believe are relevant ; "provisions that say things like accredited investors" are not relevant; Carlos is on trial for the representations that he made to investors and he is not beling allowed to talk about the representations he actually made to investors (yet Samir and Suzee were able to talk about representations Carlos made even though he actually wasn't on many of those communications)
07/03/24	Carlos DX	Tr. at 3294, ln 13 - 20; 3299, ln 3 - 6	called discussion of slides of "questionable relevance" in front of the jury; motion for mistrial denied (keeps cutting off Sullivan while he's making his application); judge above decibel that he will not allow Sullivan to speak on; "instead of winging it and doing what you want to do, ask me for clarification"
07/03/24	Carlos DX	Tr. at 3316, ln 18 - 19	threatened Sullivan with contempt for saying the objection was overruled in front of the jury

07/03/24	Proceedings	Tr. at 3361, ln 9 - 15	"those rights are not a license to engage in not only sustained gamesmanship, but also the willful choice to ignore Court orders."
07/03/24	Entire trial day	Throughout transcript	will not allow lawyers on both sides to make complete arguments and keeps interrupting, presumably to keep things moving forward. but the more this is done, the more the lawyers have to go in circles to explain--which keeps prolonging the process
07/03/24	Carlos Frison CX	3392, ln 14 - 20	says someone will have to explain after the trial why the ford foundation is donating money to a for-profit organization as a 501c3 in open court, in front of reporters
07/03/24	Carlos Frison CX	Tr. at 3494, ln 8 - 20	said Judge Frison couldn't be heard at sidebar (ultimately let her be heard because he said if defense counsel needs clarification it should to say something)
07/03/24	Carlos Frison CX	Tr. at 3475 - 3477	trying to elicit when SR first took out a loan in his name
07/03/24	Carlos Frison CX	Tr. at 3459, ln 3 - 23	4:10 pm Judge told Ozy they have to be done with ALL questions by 4:30 pm (out of frustration that Frison asked for a sidebar regarding why a series of objections were sustained (for which no basis was given)

07/03/24	Carlos Frison CX	Tr. at 3500, ln 2; 3503, ln 21 - 25	excused the jury for a 1 minute instruction to CW that could have been handled at sidebar; sends a signal that defense counsel has done something extra egregious; actually cut Frison off around 4:20 pm even though the objection raised only ended up being foundation...Frison could have asked one more question and finished until 4:30 without the jury having to leave

Dr. Norissa Williams
[redacted]

August 27, 2024

Judge Margo Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Brodie,

I hope that this letter finds you and your loved ones very well.

My name is Dr. Norissa Williams and I have my doctorate in psychology. I am writing to express my concerns regarding the judicial conduct I observed in the courtroom of Judge Eric R. Komitee during the trial of Carlos Watson. I was present in the courtroom on Friday, June 14, 2024, from approximately 9:00 AM to 12:30 PM. Despite the brevity of my visit, I witnessed several instances that suggested a clear bias in the proceedings.

What stood out most during my time in court was the frequency with which the prosecution raised objections, when Defense Attorney, Janine Gilbert, spoke. It seemed that nearly every sentence she attempted to articulate was met with an objection, and Judge Komitee sustained what felt like 90% of them. There was only one objection that he did not sustain in the time that I was present. As someone without legal expertise, I nonetheless found it troubling that the defense was scarcely able to present their case without being interrupted. Moreover, I did not observe any substantial justification for the objections that were upheld. In most cases, it appeared that Judge Komitee was simply following the prosecution's lead without critical assessment.

One of the most unsettling aspects of what I observed was that the jury was asked to leave the room on two occasions, aside from scheduled breaks. During these periods, critical discussions took place—discussions that were favorable to Carlos Watson's defense. However, because the jury was not present, they were not privy to these significant exchanges. This lack of transparency severely undermined the fairness of the trial, as the jury was left without crucial context.

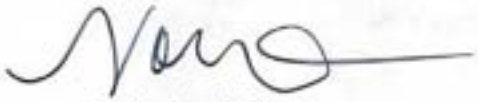
Additionally, Judge Komitee made a remark that implied he was exercising patience, though his tone suggested frustration directed at the aforementioned lawyer. It was clear to me that he was annoyed, and his behavior struck me as gaslighting. When the lawyer justifiably became upset, she was made to appear irrational, and Judge Komitee's remarks seemed to question her integrity. I found this particularly troubling, as it not only undermined her credibility but also suggested a bias against the defense.

Furthermore, these meaningful discussions often took place in the absence of the jury, and the substance of these conversations was not adequately communicated to them upon their return. As a result, the jury was left with an incomplete understanding of the case, which greatly impacted the fairness of the proceedings. It seemed to me that both Judge Komitee and the prosecution had already made up their minds regarding Carlos Watson's guilt, and that little could be done to alter this predetermined outcome. These biases informed juror conclusions by way of influencing the information made available to them.

While I was only present in the courtroom for a few hours, the bias I witnessed was deeply unsettling. It was clear to me that Carlos Watson did not receive a fair trial, and I urge you to take these concerns into consideration to ensure that justice is properly served.

Thank you for your attention to this matter.

Sincerely,



Dr. Norissa Williams

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