KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

[redacted]

Jay P. Lefkowitz, P.C.
To Call Writer Directly:
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Facsimile:
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June 19, 2009

VIA FEDERAL EXPRESS

[redacted]
United States Attorney's Office
Southern District of Florida
[redacted]

Re: Jeffrey Epstein

Dear [redacted]:

We prepared this answer in response to your letter dated June 15, 2009 and before receiving your follow up letter of June 17, 2009. At this point it has been almost three years since the federal government first intervened in what was originally a matter investigated and charged by state prosecutorial authorities. It has been almost a year since Mr. Epstein pleaded guilty in state court and began serving his sentence in county jail, pursuant to the terms and as a direct result of the federal Non-Prosecution Agreement (the "NPA"). When Mr. Epstein was sentenced, the U.S. Attorney promised me and my co-counsel that the United States Attorney's Office's involvement would cease with Mr. Epstein's execution of the NPA and incarceration in state custody. We were also promised that the federal government would not intervene in discretionary state or county decisions regarding the implementation of Mr. Epstein's sentence.

We take this opportunity to address in detail each of the alleged instances you describe to support your position that Mr. Epstein has engaged in a pattern of breaching the NPA. Mr. Epstein's overriding commitment is, and has always been, to complete his jail sentence, fulfill his other obligations under the NPA, and reach final settlements of pending section 2255 cases with plaintiffs who are agreeable to such settlements. We respectfully submit (and support through documentary evidence) that there have been no past breaches of the NPA. There have been no "willful" breaches of the NPA. There has been no pattern of breaches of the NPA.

As an initial matter, it is important to consider your letter of June 15 and its contents in context. Mr. Epstein has satisfied, and continues to satisfy, his obligations pursuant to the NPA. Mr. Epstein pleaded guilty to a registerable state offense. He has already registered as a sex

offender, and has served over 11 months of his sentence in county jail. While such a plea and punishment were not otherwise sought by the State Attorney, Mr. Epstein agreed to the plea, the sentence, and the obligation to register as a sex offender as a direct result of obligations he agreed to undertake pursuant to the NPA. Furthermore, Mr. Epstein has already paid over $300,000 in civil settlements and fees for the attorney representative, and has agreed to submit issues regarding further fees to a Special Master pursuant to a proposal suggested by the attorney representative himself. The claimants whose matters have already been settled were identified by you as victims and, in one case, as a sign of good faith, Mr. Epstein paid a settlement to an individual he had no recollection of ever meeting, solely because she appeared on your July 2008 list.

We are prepared to address each of the statements contained in your June 15 letter. First, your statement that Mr. Epstein did not use his "best efforts" to enter his guilty plea and to be sentenced is, respectfully, without merit. Exhibit 1, June 15, 2009 Letter at 2. The date of entry of the state plea was deferred with the express written consent of United States Attorney Acosta, who recognized and expressly provided us with the opportunity to pursue an independent assessment of this matter by the Justice Department. The subsequent nine-month "delay" was a direct result of the Justice Department's determination that it was appropriate to convene an intense and time-consuming review. Thus, the delay was not dictated at all by Mr. Epstein, but instead, by the review process agreed to and, if you recall, initiated by Mr. Acosta.

On June 23, 2008, the Justice Department concluded its final review and only seven days later, Mr. Epstein promptly entered his plea (on June 30, 2008) and immediately began serving his sentence. As the following timeline of events leading up to Mr. Epstein's entry of plea makes clear, the facts do not support your conclusion that Mr. Epstein willfully breached the NPA by delaying his sentence, and, instead, compellingly demonstrates that Mr. Epstein's participation in high-level Department of Justice reviews cannot factually or legally ground a claim that he "willfully" breached the NPA:

- The NPA, signed on September 24, 2007, provides that Mr. Epstein "begin serving his sentence not later than January 4, 2008." *See* Exhibit 2, NPA ¶ 11.

- On November 28, 2007, Mr. Epstein's defense counsel contacted Assistant Attorney General [redacted] to request a review of certain provisions of the NPA. We informed the USAO of this request the very next day in a letter to Mr. Acosta. *See* Exhibit 3, November 29, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta at 4.

- In a December 4, 2007 letter, Mr. Acosta stated that he supported the defense's appeal to Washington. *See* Exhibit 4, December 4, 2007 letter from U.S. Attorney Acosta to K. Starr with a copy to AAG [redacted] at 5 ("I do not mind this Office's decision being

appealed to Washington, and have previously directed our prosecutors to delay filings in this case to provide defense counsel with the option of appealing our decision.").

- On December 11, 2007, pursuant to Mr. Acosta's request, the defense team sent him submissions detailing the defense's concerns related to the NPA. *See* Exhibit 5, December 11, 2007 Letter from K. Starr to U.S. Attorney Acosta.

- On December 14, 2007, Mr. Acosta met with members of the defense team to discuss the serious issues raised about the NPA.

- In a December 19, 2007 letter, Mr. Acosta stated that "the issues raised are important and must be fully vetted irrespective of timeliness concerns." *See* Exhibit 6, December 19, 2007 Letter from U.S. Attorney Acosta to Attorney Lilly Ann Sanchez at 3. He also stated that he had spoken with AAG [redacted] to ask that she review this matter and to expedite the process. *Id.*

- In the beginning of January, 2008, Mr. Acosta and I discussed the need for further consideration of the issues raised by the defense. He postponed the plea and sentencing until the Child Exploitation and Obscenity Section (CEOS) was finished with its review of the case.

- In a February 29, 2008 email I sent to Mr. Acosta, I confirmed that that "there were significant irregularities with the deferred prosecution agreement" and that he would ask CEOS to evaluate the matter. I also confirmed Mr. Acosta's agreement to postpone the state plea deadline until after the matter was reviewed. On that same day, [redacted] responded in writing as follows: "Please be assured that it has not, and never has been, this Office's intent to interfere or restrict the 'review process' for either Mr. Epstein or CEOS. I leave it to you and CEOS to figure out how best to proceed and will await the results of that process." *See* Exhibits 7 and 8, February 29, 2008 Emails to U.S. Attorney Acosta and from Assistant U.S. Attorney [redacted].

- Given that CEOS determined that it would not review many of the defense's objections and that its review would be limited on the rest of the objections, CEOS's decision, rendered on May 15, 2008, left open the need for a more thorough review of critical issues by others at the Justice Department.

- In a May 28, 2008 email from Mr. [redacted] to myself, Mr. [redacted] further postponed the deadline to plead until the Deputy Attorney General's Office (DAG) completed its review. *See* Exhibit 9, May 28, 2008 Email from Assistant U.S. Attorney [redacted] to J. Lefkowitz.

- A final letter of determination was not issued by the Department of Justice until June 23, 2008.

- Just one week after that date, Mr. Epstein promptly entered his plea and immediately began serving his state sentence on June 30, 2008.

While you state that a breach occurred because Mr. Epstein and the defense team did not provide you with the state plea documents until the last business day before the plea, neither Mr. Epstein nor his counsel bear sole responsibility for timing of the delivery of these documents. It was the responsibility of the State Attorney's Office to provide the defense with the plea agreement. Defense counsel did not receive the plea agreement from the State until 10:00 A.M. on June 27, 2008 (the Friday before the plea). *See* Exhibit 10, June 27, 2008 Email from State Attorney [redacted] to J. Goldberger. Once the plea agreement was reviewed by Mr. Epstein's defense team, Mr. Goldberger sent it to you that same afternoon. At 5:55 P.M. on June 27, 2008, following your receipt of the agreement sent to you by Mr. Goldberger, Messrs. Black and Goldberger received a responsive letter from you alleging that the plea agreement violated the NPA. *See* Exhibit 11, June 27/28, 2008 Email String between Assistant U.S. Attorney [redacted] and R. Black and J. Goldberger (attaching Notice of Non-Compliance).

Second, you state that language contained in the first draft of the plea agreement proposed by the State violated the NPA, because it called for community control in lieu of jail. Exhibit 1, June 15, 2009 Letter at 2. You now suggest that this "error" evidences Mr. Epstein's alleged efforts to undermine the NPA. I respectfully submit that you are mistaken in both cases. The language in the first draft of the plea agreement was prepared by the State and, as stated above, it was not sent to the defense until the very day that it was sent to you.

Moreover, as Mr. Goldberger confirmed to you in a telephone conversation on the same day that he received your June 27 letter, the plea agreement, as originally drafted by the State, would have resulted in the exact same 12-month and 6-month consecutive jail sentences, followed by one year of community control, as was required by the NPA and ultimately imposed on Mr. Epstein. Although defense counsel asked the State to change the language of the plea agreement to alleviate your concerns, the same exact sentence and period of incarceration as required by the NPA would have been imposed on Mr. Epstein had the language of the State's first draft been allowed to apply. *See* Exhibit 11, June 27/28, 2008 Email String between Assistant U.S. Attorney [redacted] and R. Black and J. Goldberger (confirming a telephone conversation between the parties on June 27 that the state plea agreement was in compliance with the NPA and indicating a request by Assistant U.S. Attorney [redacted] to modify the language in the state plea agreement); *see also* Exhibit 12, the initial version and the signed version of the state plea agreements.

The bottom line here is that while Florida counsel for Mr. Epstein fully believed that the initial language in the State's draft would result in a sentence identical to the mandates of the NPA, changes were made solely to conform to your requests. Neither the USAO or the administration of federal criminal justice suffered any prejudice: lawyers often make linguistic alterations of form; we did so here. The changes were made in short order, namely, during the Friday and Saturday before Mr. Epstein's state plea; the plea and plea agreement completely complied with the NPA as did Mr. Epstein's sentence; and there was neither a breach, nor harm. Moreover, all communications were through counsel. Mr. Epstein was not a party to these communications and in no way can be considered, factually or legally, to have committed a "willful" breach of the NPA in this regard.

Third, you state that defense "counsel obstructed [your] ability to abide by [your] obligations to notify the victims of the outcome of the federal investigation." Exhibit 1, June 15, 2009 Letter at 2. We believe that this statement misconstrues the intentions and conduct of the defense team and, does not support any charge of "obstruction" against Mr. Epstein, as would be required to sanction him for a "willful" breach of the NPA. In October 2007, a full nine months before Mr. Epstein was sentenced, we first raised the issue of the notification. On October 10, 2007, I stated in a letter to Mr. Acosta that the defense team did not believe "it was the government's place to be co-counsel to the identified individuals," and reasonably proposed that the alleged victims be contacted by the selected attorney representative. *See* Exhibit 13, October 10, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta at 4-5.

Then, on November 28, 2007, you sent defense counsel the proposed victim notification letter indicating that the alleged victims had a federal right to be notified of the resolution of this matter pursuant to the Crime Victims' Rights under § 3771. *See* Exhibit 14, November 29, 2007 Draft Victim Notification Letter from Assistant U.S. Attorney [redacted]. Mr. Epstein's counsel objected to your draft letter and the proposed method and procedure for notifying the alleged victims and challenged whether you were in fact obligated to notify these individuals pursuant to 18 U.S.C. § 3771. Those objections were made in a timely and appropriate manner and our dialogue regarding notification issues continued. As you know, the notification letter was not finalized for several months.

The key point here is that our objections to the letter were made in good faith and were well-founded. After all, on December 6, 2007, Mr. Acosta agreed to many of our objections and adopted several of our modifications to resolve problems raised by the draft notification letter. *See* Exhibit 15, December 6, 2007 Letter from U.S. Attorney Acosta to J. Lefkowitz. This fact confirms both the good-faith nature of our objections and that neither Mr. Epstein nor his counsel could be considered to have violated the NPA by raising those objections in the first place.

Fourth, Mr. Epstein did not, as you stated, refuse "to fulfill promptly Mr. Epstein's obligation to secure the services of an attorney representative for the victims." Exhibit 1, June

15, 2009 Letter at 2. It was the United States' obligation to select a suitable attorney representative, subject to the good-faith approval of Mr. Epstein's counsel. *See* Exhibit 2, NPA ¶ 7. Indeed, due to a concern we had raised, your Office specifically modified the procedure to select an attorney representative and delegated that task to Judge Davis. *See* Exhibit 16, Addendum to NPA ¶ 7A. Again, the fact that your Office accommodated our concerns validates their legitimacy and undermines any claim that the NPA was breached by raising those concerns with you. To the contrary, Mr. Epstein executed the Addendum in an attempt to resolve outstanding, highly unorthodox and complex issues at the intersection of civil and criminal law. A letter to Judge Davis (authored by then [redacted] [redacted]) dated October 25, 2007 followed. *See* Exhibit 17, October 25, 2007 Letter to Judge Davis.

Once Mr. Podhurst's firm was selected by Judge Davis, Mr. Epstein did not object to the selection. Moreover, as you have acknowledged to the court, the open issues involving the attorney representative portions of the NPA were not finally resolved until September 3, 2008. *See* Exhibit 18, December 22, 2008 [redacted] Supplemental Declaration at 3 ¶ 9. Only five days later, on September 8, 2008, I sent a letter to [redacted] advising him that Mr. Epstein would pay his fees pursuant to the NPA for his role as an attorney representative. *See* Exhibit 19, September 8, 2008 Letter from J. Lefkowitz to [redacted]. Furthermore, in an effort to comply with the obligations under the NPA, Mr. Epstein already has paid Mr. Podhurst's firm over $160,000 in legal fees, despite significant concerns over the scope of the work for which he is billing Mr. Epstein, and has agreed with Mr. [redacted] proposal that a Special Master be empowered to resolve any fee related issues that the Podhurst firm and Mr. Epstein's civil counsel cannot resolve. *See* Exhibit 20, June 15, 2009 Letter from [redacted] to [redacted] There is nothing about the exchanges between counsel and the USAO regarding the attorney representative that even begins to approach a "willful" breach by Mr. Epstein.

Fifth, you suggest that Mr. Epstein willfully breached the NPA because of the actions of Mr. Tein and Mr. Goldberger, whom you state failed to approve the victim notification letter that contained incorrect information. *See* Exhibit 1, June 15, 2009 Letter at 2. The incorrect information in the letter was a proposed unilateral modification to the NPA without prior approval by Mr. Epstein or any member of the defense team. It was only first suggested by your Office in a letter from Mr. Acosta on December 19, 2007. We never agreed to that language. In fact, I personally raised several objections to the suggested modification in my letter to Mr. Acosta, dated December 21, 2007. *See* Exhibit 21, December 21, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta. I personally became aware of the inclusion of that language on Wednesday, August 13, 2008 and discussed the matter with you immediately. *See* Exhibits 22 and 23, August 13 and 15, 2008 Letters from Assistant U.S. Attorney [redacted] to J. Lefkowitz (confirming that the "December modification" is not a part of the NPA). Again, that oversight was not a willful breach or an expression of intent to violate the terms of the Agreement, but instead represented the efforts of counsel, acting in good faith, in an attempt to insure that the letter contained only previously agreed-upon language.

Sixth, you raise the issue of a delayed withdrawal of a motion to quash. *See* Exhibit 1, June 15, 2009 Letter at 2-3. There is no motion to quash that still remains pending. The fact that the motion was not withdrawn for some time was merely due to an administrative oversight that has long been remedied, but at no time did it prejudice the Government in any way. Nor did it result from an effort by myself or co-counsel to gain some tactical advantage. Furthermore, no effort was made by any counsel to seek a judicial decision on the pending motion. The motion had no adverse effect on the Government, and the delay in its withdrawal is legally and factually unrelated to the type of material and willful breach that alone could warrant remedies—not least of all because Mr. Epstein has suffered irreversible prejudice by complying with the core provisions of the NPA. Again, he has been imprisoned, he has pled guilty, he is registered, he has paid sums to claimants, all to comply with his obligations under the NPA.

Seventh, you state that additional issues arose in November regarding the issuance of work release to Mr. Epstein. Exhibit 1, June 15, 2009 Letter at 3. We have previously reviewed this very matter with you and other individuals in your Office in November 2008. At that time, Mr. Roy Black met with you, [redacted] in Miami to review the work release issue. Among other significant documents shown to you, we presented you with your own email in which you had previously acknowledged that the sheriff had discretion in the matter. *See* Exhibit 24, July 3, 2008 Email from Assistant U.S. Attorney [redacted] to [redacted] ("If Mr. Epstein is truly eligible for the [work release] program, we have no objection to him being treated like any other similarly situated prisoner . . ."). Furthermore, Mr. Acosta, as already stated, had previously assured me and other counsel that the USAO would not interfere in the ordinary implementation of discretionary administrative decisions by state or county officials. We believe we were under no obligation (in the NPA or anywhere else) to notify you of such discretionary and ordinary state-made decisions, and the fact that your Office confirmed that Mr. Epstein was entitled to the same discretionary administrative decisions as other similarly situated inmates fundamentally undermines any claim that Mr. Epstein breached the NPA in connection with the state and county officials' decision. In any event, after thoroughly reviewing and evaluating Mr. Epstein's application, the Palm Beach County Sheriff's Office properly exercised its discretion, in full compliance with its stated requirements, policies and procedures, to grant Mr. Epstein work release. In addition, after the Sheriff's Office received a multi-page letter from you to Captain [redacted], which recited the very allegations of errors on Mr. Epstein's work release application to which you refer in your latest letter, each allegation was fully reviewed, and the Sheriff's office found its initial decision appropriate.

Eighth, it is both unreasonable and unjustifiable to hold Mr. Epstein responsible—never mind declare him in breach—with regard to Judge McSorley's *nunc pro tunc* order. Exhibit 1, June 15, 2009 Letter at 3. Neither Mr. Epstein nor defense counsel had anything to do with and certainly no prior knowledge of this order. Defense counsel only learned of it after you brought it to our attention. The facts are as follows: the Department of Corrections requires an order

placing someone on community control before the Department of Corrections will supervise that person. Judge Pucillo, the retired judge that took Mr. Epstein's plea, inadvertently neglected to enter the order placing Mr. Epstein on Community Control 1. When Judge McSorley learned of this, she properly entered the order *nunc pro tunc* to the date of the plea. *See* Exhibit 25, Order of Community Control. If you will note on the 3-page court event form, circled at the top of page 2, is "C.C.1" (community control 1). Mr. Epstein was properly placed on community control 1 on the day of his plea to begin only after he completes his jail sentence, and the *nunc pro tunc* order simply ratifies the oral pronouncement made by the court at the time of the plea. Given that the NPA expressly provides that Mr. Epstein is to serve a sentence of 12 months in "community control consecutive to his two terms in county jail," Exhibit 2, NPA ¶ 2(b), your assertion that the inclusion of community control "directly contradicted the terms of the" NPA is incorrect.

Finally, the motion to dismiss that was the topic of discussion on June 12 has been withdrawn. As indicated in the letter I sent you on June 15, we have adopted an internal screening process aimed at eliminating future concerns about anything that reasonably could be considered a breach of the NPA. *See* Exhibit 26, June 15, 2009 Letter from J. Lefkowitz to Assistant U.S. Attorney [redacted]. Mr. Epstein has directed all counsel to make certain that no filing could be construed as a breach of the NPA. Furthermore, we proposed a supplemental new process, as stated in my June 15 letter to you, that would have provided you, if you chose, the opportunity to review any such filing *before* it is submitted to the court so that you may determine whether or not it constitutes a breach.

That being said, I wish to reiterate our firm belief that the NPA allowed Mr. Epstein the right to contest litigation whenever an express waiver of all other state, federal or common law claims or the right to bring contested litigation in the future was not sufficiently or correctly pleaded. As you know, we spent several weeks negotiating the language of the NPA with you and Mr. Acosta. We firmly believe that the motion to dismiss that was recently filed (and then promptly withdrawn) did not constitute a violation.

First, Paragraph 8 of the NPA clearly limits those who may benefit from any waivers by Mr. Epstein to an "identified individual" who "elects to proceed exclusively under 18 USC 2255, ***and*** *agrees to waive any other claim for damages, whether pursuant to state, federal, or common law*". Exhibit 2, NPA ¶ 8. More is required of a plaintiff than to simply allege, as did Jane Doe 101, that she "exclusively seeks civil remedies pursuant to 18 USC 2255." Exhibit 27, Amended Complaint ¶ 24. Such an averment satisfies only the exclusivity portion of the twin conditions set forth in the NPA at ¶ 8. The word "and" followed by the requirement of an affirmative waiver of any other claims, federal, state, or common law mandates an additional affirmative act by the plaintiff. No such waiver was filed or even pled. Jane Doe 101 did no more than restate that her complaint in civil action no 9:09-cv-80591-KAM was only for 2255 damages. She never affirmatively waived all future claims in state or federal court, as required by the NPA.

Because of this threshold issue, Jane Doe 101 did not, through the attorney representative, satisfy the NPA ¶ 8 requirements.[1] While Mr. Epstein's counsel still believe for these reasons that the motion did not conflict with Mr. Epstein's obligations under the NPA, the motion was in relevant part withdrawn at Mr. Epstein's insistence—further demonstrating that Mr. Epstein has prioritized his desire to avoid contentious additional litigation with the USAO over this matter.

In short, our good-faith efforts to raise litigation issues will be more carefully scrutinized in the future as to limit the possibility of being construed by your Office as supporting a notice that Mr. Epstein is in "willful" breach. Issues regarding the scope of the ¶ 8 waivers are unorthodox and even unprecedented. They result in part from the NPA being executed before you identified the individuals listed, *see* Exhibit 2, NPA ¶ 7, and, importantly, given the evolution of the civil litigation, before any joint statement as required by the terms of the NPA was provided to Mr. [redacted]. Nevertheless, as we stated on June 15, we had intended to provide you with future filings in advance so that we could discuss their interaction with the NPA before rather than after any filing, However given your rejection of that procedure, in a good faith attempt to avoid future conflict, we would nevertheless hope to clarify some of the more ambiguous parts of ¶ 8 of the agreement with you as soon as possible. To repeat, it is Mr. Epstein's overriding intent to fulfill his obligations under the NPA -- an intent we as his attorneys will do everything in our power to effectuate.

The facts demonstrate that Mr. Epstein has clearly not committed any breach of the NPA, much less a willful breach. As we have reiterated and as has been proven by Mr. Epstein's own actions, Mr. Epstein has no intention of breaching the NPA and has never had any such intention. Although you claim that Mr. Epstein received the benefits of the NPA and the Government only its burdens, I believe the reality is to the contrary. Mr. Epstein has suffered significant and irreversible prejudice: he has been imprisoned in a county jail for almost a year, he has pleaded guilty to a state felony that required sex registration and has, in fact, registered as a sex offender, he accepted civil burdens in his ongoing litigation that may result in millions of dollars of future payments, he has settled cases that could be won, in deference to the NPA and he is paying and

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[1] That Jane Doe 101 did not meet the *threshold* requirements for the imposition of the waiver of liability portion of Paragraph 8 of the NPA is demonstrated by the filings of Jane Doe II in 09-80469-CIV-Marra, a federal lawsuit filed in March, 2009 seeking "exclusively 2255" damages, while Jane Doe II already had a pending state court suit filed in July of 2008 seeking damages against Epstein for sexual assault and conspiracy. Jane Doe II in her federal complaint alleged Epstein could "not contest liability for claims brought exclusively pursuant to 18 U.S.C. §2255". Exhibit 27, Amended Complaint ¶ 24. In her response to Epstein's Motion to Dismiss in which Epstein challenged the "exclusivity" claim, she argued at page 7 that "Epstein appeared to be violating the agreement . . . [NPA]". However, her attorney withdrew that claim at the June 12, 2009 hearing (and in her subsequent Amended Response) agreeing that the state filing negated the "exclusivity" of the federal 2255 lawsuit. On the current record, nothing prevents Jane Doe 101 from filing a parallel state court claim.

will pay hundreds of thousands of dollars in legal fees for his adversaries to pursue him in court. The Government may have endured some delays and administrative costs due to certain of its own its decision — such as to evaluate the Sheriff's exercise of discretionary authority in implementing the Sheriff's own work release program —but neither the Government nor any civil plaintiff has suffered any harm, any prejudice, or any disadvantage as a result of the events you have identified. We signed a contract -- the NPA -- with you in good faith, and in exchange, Mr. Epstein gave consideration that cannot be returned (12 months of his freedom and his reputation). He is legally entitled to its benefits. He committed no "willful breach." As such, we believe it would constitute both a contractual and constitutional error to seek further remedy or to in any way withdraw from the NPA.

We will continue to make our best efforts to communicate with you about any potential problems and hope, in the interest of fairness, you will do the same.

Sincerely,

[redacted]

Jay P. Lefkowitz, P.C.

Enclosures