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GEORGE E. NORCROSS; CONNER STRONG  
& BUCKELEW, LLC; NFI, L.P.; THE  
MICHAELS ORGANIZATION, LLC;  
COOPER UNIVERSITY HEALTH CARE; and  
PARKER McCAY, P.A.,

Plaintiffs,

vs.

PHILIP DUNTON MURPHY, IN HIS  
OFFICIAL CAPACITY AS GOVERNOR OF  
THE STATE OF NEW JERSEY; THE TASK  
FORCE ON THE EDA’S TAX INCENTIVES;  
RONALD K. CHEN, IN HIS CAPACITY AS  
THE GOVERNOR’S DESIGNEE UNDER  
N.J.S.A. 52:15-7; WALDEN MACHT &  
HARAN LLP; JIM WALDEN; and QUINOÑES  
LAW PLLC,

Defendants,

and

THE NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY,

Nominal Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MERCER COUNTY

DOCKET NO: MER-L-\_\_\_\_\_-19

**COMPLAINT**

Plaintiffs, George E. Norcross (“Norcross”); Conner Strong & Buckelew, LLC (“Conner

Strong”); NFI, L.P. (“NFI”); The Michaels Organization, LLC (“Michaels”); Cooper University Health Care (“Cooper”); and Parker McCay, by way of Complaint against Defendants, Philip Dunton Murphy, Governor of the State of New Jersey (“Governor Murphy”); the Task Force on the EDA’s Tax Incentives (the “Task Force”); Ronald K. Chen (“Professor Chen”), in his capacity as the Governor’s designee under N.J.S.A. 52:15-7; Walden Macht & Haran LLP (“Walden Macht”); Jim Walden (“Walden”); Quiñones Law PLLC (“Quiñones Law”); and Nominal Defendant the New Jersey Economic Development Authority (the “EDA”), hereby allege:

### **NATURE OF THE ACTION**

1. This is an action for declaratory relief to redress the harm Plaintiffs have suffered and will continue to suffer as a result of Defendants’ unlawful acts in empowering, functioning as, presiding over, and counseling the Task Force, an entity cloaked with governmental power and charged with investigating the conduct of the EDA, a Nominal Defendant and necessary party to this action, in awarding tax incentives pursuant to New Jersey law. Plaintiffs, four of whom have made an enormous investment in the revitalization of Camden, one of America’s poorest cities, have been falsely and publicly accused of misconduct regarding the tax incentives that lawfully attend such investment and have been denied a fair opportunity to refute those defamatory accusations. Moreover, those accusations have been made through an entity that is unauthorized by law and is being counseled by New York attorneys who are not properly licensed to practice law in this State. In this action, Plaintiffs will ask the Court to declare the Task Force’s conduct unlawful, its powers unauthorized, and its counsel unlicensed.

2. In recent days, both chambers of the New Jersey State Legislature have announced that bipartisan legislative committees will investigate the process by which EDA tax

credits have been awarded. Plaintiffs welcome—indeed, insist upon—the opportunity to participate fully in those legislative investigations, which are certain to be operated fairly as they were empowered legally and will be counseled properly by duly admitted New Jersey lawyers, and thereby to establish the truth in a lawful manner.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over Governor Murphy because he is Governor of New Jersey, and his actions complained of herein were committed in New Jersey.

4. The Court has jurisdiction over the Task Force because it is an alleged instrumentality of the State, and its actions complained of herein were committed in New Jersey.

5. The Court has jurisdiction over Professor Chen because he is a New Jersey resident purporting to exercise a statutory designation conferred by the Governor of New Jersey, and his actions complained of herein were committed in New Jersey.

6. The Court has jurisdiction over Walden Macht, Walden, and Quiñones Law because they are transacting business in this State and have contracted to supply services in this State, and because their actions complained of herein were committed in or directed at New Jersey.

7. The Court has jurisdiction over the EDA because it is an instrumentality of the State and the actions complained of herein, which may affect its rights, were committed in or directed at New Jersey.

8. Venue for this action is properly laid in Mercer County pursuant to Rule 4:3-2 because the cause of action arose in this county.

**PARTIES**

9. Norcross is a New Jersey resident who serves as the Executive Chairman of Conner Strong and Chairman of Cooper's Board of Trustees.

10. Conner Strong is a New Jersey limited-liability corporation that provides risk-management, employee-benefits, and insurance-consulting services. Its principal places of business are 401 NJ Route 73, Marlton, New Jersey 08503 and 50 S 16<sup>th</sup> Street Suite 3600, Philadelphia, Pennsylvania, 19102.

11. NFI is a Delaware partnership that provides fully integrated, supply-chain-solution services. Its principal place of business is 1515 Burnt Mill Road, Cherry Hill, New Jersey 08003.

12. Michaels is a New Jersey limited-liability company in the residential real-estate industry, with full-service capabilities in development, property and asset management, construction and mortgage finance, and tax-credit syndication. Its principal place of business is 3 East Stow Road, Marlton, New Jersey 08053.

13. Cooper is a New Jersey nonprofit organization that provides a comprehensive network of health services in Southern New Jersey, including prevention and wellness, primary and specialty physician services, hospice care, ambulatory services, and diagnostic treatment services. Its principal place of business is One Cooper Plaza, Camden, New Jersey 08103.

14. Parker McCay is a law firm with its principal place of business at 9000 Midlantic Drive, Suite 300, Mount Laurel, NJ 08054.

15. Philip Dunton Murphy is Governor of the State of New Jersey and is joined as a defendant in his official capacity for acts undertaken by him in his official role as Governor.

16. Professor Chen is a New Jersey resident who has purportedly been designated by Governor Murphy pursuant to N.J.S.A. 52:15-7 to conduct an investigation into certain matters concerning the EDA.

17. The Task Force is an instrumentality of the State of New Jersey purportedly created pursuant to and having the powers set forth in N.J.S.A. 52:15-7.

18. Walden Macht is a New York limited-liability partnership with its principal place of business at One Battery Park Plaza, 34th Floor, New York, NY 10004.

19. Walden is a partner at Walden Macht and serves as lead counsel for the Task Force.

20. Quiñones Law is a New York limited-liability company with its principal place of business at 430 Park Avenue, 6<sup>th</sup> Floor, New York, New York, 10022.

21. The EDA is a public body corporate and politic that is in, but not of, the New Jersey Department of the Treasury. It is joined as a Nominal Defendant and necessary party in this action because its rights may be affected by the relief Plaintiffs seek. The term “Defendants,” as used throughout this Complaint, refers to all Defendants except the EDA.

### **FACTUAL ALLEGATIONS**

#### **A. The Governor’s Unlawfully Created Task Force And The Improper Manner In Which It Has Conducted Its Investigation.**

22. Governor Murphy unlawfully empowered the Task Force with powers he did not possess and authorized the retention and payment of New York lawyers who proceeded to commence and conduct an investigation in violation of multiple provisions of New Jersey law.

23. Governor Murphy created the Task Force on January 24, 2019, pursuant to Executive Order No. 52 (“E.O. 52.”), and appointed Professor Chen as its chair. (A true and correct copy of E.O. 52 is attached hereto as **Exhibit A.**)

24. The stated purpose of E.O. 52 was to investigate two tax-incentive programs administered by the EDA, the Grow New Jersey Assistance Program (“Grow NJ”)<sup>1</sup> and the Economic Redevelopment and Growth Grant Program (“ERG”). E.O. 52 ¶ 1. Governor Murphy commissioned this investigation although Grow NJ has been repeatedly lauded as a tremendous success that has revitalized impoverished New Jersey communities such as Camden. See, e.g., Chamber: Camden Has Real Hope for the First Time in More than Two Generations, Courier Post, May 14, 2019.<sup>2</sup>

25. Several of the Plaintiffs in this action (Cooper, Conner Strong, NFI, and Michaels) submitted applications to participate in Grow NJ in full compliance with the governing statutes and regulations. Three of those entities (Conner Strong, NFI, and Michaels) have not received a single dollar in tax incentives, while all have made important contributions to the Camden community. Specifically, upon transfer of their operations to Camden within the next ninety days, Conner Strong, NFI, and Michaels will exceed by 10-15% the number of jobs they promised and certified would be created, and have paid more than \$1.5 million in fees to the EDA. And Cooper has already created more than 500 jobs—approximately 150 more than anticipated—and invested millions of dollars in Camden’s revitalization.

26. In E.O. 52, Governor Murphy represented that “[t]he chairperson and any additional members of the Task Force shall serve without compensation.” E.O. 52 ¶ 3. He further represented that “[r]equests for legal assistance by the Task Force shall be made to the

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<sup>1</sup> The act that created Grow NJ was substantially amended on September 18, 2013 by the New Jersey Economic Opportunity Act of 2013 (“2013 Act”). See L. 2013, c. 161. Among other things, the 2013 Act created Garden State Growth Zones, which included certain distressed municipalities such as the City of Camden. A company that invested in these Growth Zones could be entitled to tax credits. All further references to “Grow NJ” refer to the program as amended by the 2013 Act.

<sup>2</sup> Available at <https://www.courierpostonline.com/story/opinion/readers/2019/05/14/chamber-camden-has-real-hope-first-time-more-than-two-generations/1168543001/>.

Attorney General”—not to outside lawyers—“upon the determination of the chairperson.” Id. ¶ 4.

27. Nevertheless, Governor Murphy simultaneously authorized the retention of two New York law firms, Walden Macht and Quiñones Law, to represent and counsel the Task Force at substantial taxpayer expense. Walden Macht was retained pursuant to a retention letter dated January 24, 2019, at a blended rate of \$395 per hour. (A true and correct copy of this retention letter is attached hereto as **Exhibit B**.) On information and belief, Quiñones Law was retained pursuant to a retention letter that set forth a similar rate.

28. Governor Murphy authorized the retention of Walden Macht even though the lead attorney at that firm, Walden, a New York lawyer who is not a member of the New Jersey bar, had previously been found “not credible” when attempting to shield from disclosure interview notes and memoranda prepared by attorneys at his prior firm, Gibson Dunn & Crutcher LLP. See Gruss v. Zwirn, 296 F.R.D. 224, 231 (S.D.N.Y. 2013).

29. Walden Macht abused its authority from the outset, in the process generating exorbitant legal bills to be borne by New Jersey taxpayers. At Walden Macht’s direction, the Task Force immediately singled out Conner Strong, NFI, Michaels, and Cooper from among grant applicants although they represented only a small fraction of applicants and Cooper received a small percentage of the total tax credits approved by the EDA. Indeed, according to the State Comptroller, as of February 2018, the EDA had approved 1,000 projects under its various programs, which provided close to \$11 billion in tax incentives. See State of New Jersey, Office of the State Comptroller, NJEDA – A Performance Audit of Selected State Tax Incentive Programs, Jan. 9, 2019, at 27.<sup>3</sup>

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<sup>3</sup> Available at [https://www.state.nj.us/comptroller/news/docs/eda\\_final\\_report.pdf](https://www.state.nj.us/comptroller/news/docs/eda_final_report.pdf).

30. Under E.O. 52 as originally enacted, the Task Force was declared to be a “purely advisory” body, E.O. 52 ¶ 6, with the power only to “seek to obtain voluntary cooperation from any individuals or entities who have access to information pertinent to the Task Force’s mission” and to refer instances in which entities or individuals did not comply with its requests to the State Comptroller or the EDA, *id.* ¶ 5. Yet the Task Force proceeded to issue document-preservation directives stating that failure to comply with its demands may result in referrals to “the New Jersey Comptroller to exercise its subpoena authority” or “to the Economic Development Authority, which will compel document production in accordance with the Programs’ terms.” (A true and correct copy of the document preservation letter sent by Walden Macht to Cooper on February 8, 2019, is attached hereto as **Exhibit C.**) As the Task Force knew or should have known, however, the State Comptroller has limited authority to compel the production of documents in connection with an open State Comptroller investigation, and the EDA lacks the authority, either by statute or contract, to make the sort of broad document demands the Task Force was threatening.

31. The Task Force nonetheless persisted in issuing these unauthorized document preservation demands and declaring its intent to make the above noted referrals if plaintiffs should not comply with their legally unauthorized demands. On March 20, 2019, for example, an attorney from Walden Macht e-mailed an attorney for Cooper requesting that Cooper submit an affidavit attesting to its compliance with the Task Force’s investigation. The draft affidavit attached to that e-mail stated that the firm’s compliance would obviate the need for the Task Force to exercise “subpoena power” (which it did not have) and would permit the company to participate in an “Accelerated Re-certification Program” (which did not exist). (A true and correct copy of this e-mail and its attachments is attached hereto as **Exhibit D.**)

32. Frustrated with its ineffectiveness, the Task Force apparently coordinated with Governor Murphy to alter its status to that of a State agency formed pursuant to N.J.S.A. 52:15-7 with the purported power to issue subpoenas, hold hearings, compel the attendance of witnesses, and examine witnesses under oath. See id.; N.J.S.A. 52:13E-1(a) (designating such a body a state “Agency” within the meaning of the Code of Fair Procedure). Rather than publicly issue a new Executive Order, Governor Murphy purported to alter the Task Force’s status and powers by letter to Professor Chen dated March 22, 2019 (the “Delegation Letter”). (A true and correct copy of the Delegation Letter, with material redacted by the Task Force, is attached hereto as **Exhibit E.**)

33. As explained below, N.J.S.A. 52:15-7 only empowers the Governor to investigate executive agencies and officers with respect to the management and affairs of their functions. It does not empower him or his appointees to investigate an entity such as the EDA, which is in but not of a department of the Executive Branch. Nonetheless, the Task Force promptly served several of the Plaintiffs with invasive subpoenas seeking a wide variety of documents and communications allegedly bearing on their dealings with the EDA.<sup>4</sup> (By way of example, a true and correct copy of the subpoena received by Cooper is attached hereto as **Exhibit F.**)

34. Certain of the Plaintiffs informed the Task Force, by letters to Walden Macht dated April 29, 2019, that its subpoenas to them not only contravened E.O. 52, but also were not authorized under N.J.S.A. 52:15-7 because (i) the EDA is not a “department, board, bureau or commission of the State”; and (ii) the statute only allows investigations into the “management and affairs” of covered entities, and the subpoenas’ document demands went far beyond that

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<sup>4</sup> As those subpoenas sought information far removed from the question of whether the EDA had been properly administered, they would not have been lawful even if the EDA were subject to the Governor’s investigative powers under N.J.S.A. 52:15-7, which it is not.

permissible scope. (By way of example, a true and correct copy of Connor Strong's the April 29, 2019 letter to Walden is attached hereto as **Exhibit G.**)

35. On May 1, 2019, Walden Macht informed counsel for Cooper, NFI, Michaels, and Conner Strong that the Task Force would withdraw the subpoenas issued to them, but did not explain how the Task Force's conduct was consistent with N.J.S.A. 52:15-7.

36. Late that afternoon, Walden Macht issued letters to Norcross, Cooper, NFI, Michaels, Conner Strong, and Parker McCay, among others, advising them that information adverse to their interests might be elicited at a public hearing scheduled for the following morning, May 2, 2019. (True and correct copies of the May 1, 2019 letters are attached hereto as **Exhibit H.**)

37. The Task Force did not elaborate on what that adverse information would be or give the letters' recipients an opportunity to contest that information at the hearing. Rather, the Task Force limited Plaintiffs' rights to respond to such defamatory comments to submitting a sworn statement that might, in the Task Force's discretion, be incorporated into the record of a future hearing. The following passage from the May 1, 2019 letter to Cooper exemplifies the Task Force's message:

I also write to advise you that information about The Cooper Health System (the "Company") may be offered at the Task Force's upcoming Public Hearing. If the Company believes this information is adverse to its interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that the Company will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence the Company believes to be adverse to its interests. *Id.* Accordingly, if the Company wishes to avail itself of this process, the Company must: (1) notify the Task Force by Friday, May 10, 2019 of its intention to submit a notarized, sworn statement; and

(2) submit an original of its notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business[.]

(Exhibit H, at 1.)

38. At the Task Force hearing on May 2, 2019, the Task Force stated publicly that it was investigating “entities of concern” and singled out or elicited testimony about Plaintiffs by name. Quiñones, without any basis in fact, even went so far as to impute criminal activity to certain entities, suggesting that they had committed federal crimes such as mail and wire fraud. (A true and correct copy of the transcript of the Task Force’s May 2, 2019 hearing is attached hereto as **Exhibit I.**)

39. By letter dated May 6, 2019, Plaintiffs’ attorneys informed the Task Force yet again of the illegality of its conduct. (A true and correct copy of this letter is attached hereto as **Exhibit J.**)

40. But the Task Force again refused to acknowledge the impropriety of its conduct or alter its approach to its investigation. Rather, by letter from Walden Macht dated May 9, 2019, the Task Force (i) invited a lawsuit challenging its authority, without explaining how its investigation was proper under N.J.S.A. 52:15-7; and (ii) said it would permit certain fact witnesses to voluntarily provide sworn testimony at the next hearing, while capping the time for their introductory remarks and “strictly limit[ing]” the role their counsel could play. (A true and correct copy of this May 9, 2019 letter is attached hereto as **Exhibit K.**)

41. Cognizant that the Task Force’s actions could not be justified under law, Walden and Professor Chen then took the remarkable step of publishing an Op-Ed on NJ.com to defend their investigation. In that editorial, they suggested that those companies and individuals who stated they had no opportunity to be heard at the May 2nd hearing were themselves to blame for

failing to comply with the Task Force’s arbitrary and unlawful demands and restraints. See Murphy task force probing N.J. tax incentives: Time to set the record straight, nj.com, May 13, 2019.<sup>5</sup>

42. Despite flouting New Jersey law and Plaintiffs’ rights,<sup>6</sup> the Task Force’s New York lawyers continued to bill New Jersey taxpayers for their legal work. By April 19, 2019, Walden Macht alone had submitted invoices totaling approximately \$1.3 million. (A true and correct copy of a statement from the New Jersey Division of Law displaying pending invoices from Walden Macht is attached hereto as **Exhibit L**.) The vast majority of that amount was for time spent within the month-and-a-half period from March 6, 2019 to April 19, 2019. (Id.)

**B. The Misconduct Described Above Violated and Continues to Violate Numerous Provisions of New Jersey Law.**

43. The manner in which the Governor, the Task Force, and its New York lawyers have commenced and conducted the Task Force’s investigation has violated and continues to violate numerous provisions of New Jersey law.

44. *First*, the Governor’s attempt to create the Task Force pursuant to the powers set forth in N.J.S.A. 52:15-7 is unlawful and invalid. The statute only authorizes gubernatorial investigations of entities that are subject to Executive control, and the EDA is not such an entity.

45. N.J.S.A. 52:15-7 was signed into law on March 15, 1941. L. 1941, c. 16. Patterned after a New York statute called the “Moreland Act,” N.J.S.A. 52:15-7 was designed to give the Governor “power to investigate State officials and their departments but not the right to

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<sup>5</sup> Available at <https://www.nj.com/opinion/2019/05/murphy-task-force-probing-nj-tax-incentives-time-to-set-the-record-straight.html>.

<sup>6</sup> Walden also refused to say whether he was using personal e-mails instead of complying with New Jersey records requirements. See New Jersey Globe, EDA Task Force refuses to say if they’re using personal e-mails, May 16, 2019, available at <https://newjerseyglobe.com/governor/eda-task-force-refuses-to-say-if-theyre-using-personal-e-mails/>.

remove any one.” New Road Board Sought in New Jersey, N.Y. Times, Mar. 11, 1941.<sup>7</sup> Its passage was prompted by the concern that, without such legislation, the Governor would have “practically no control or supervision over any of the executive departments once he has made his appointments.” Democrats Score Jersey Vote Bills, N.Y. Times, Sept. 20, 1940.<sup>8</sup>

46. Reflecting that legislative intent, the statute authorized the Governor “at any time, either in person or by one or more persons appointed by him for the purpose, to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State and to examine and investigate *the management and affairs of any department, board, bureau or commission of the State.*” L. 1941, c. 16 (emphasis added); accord N.J.S.A. 52:15-7.

47. Since the 1947 Constitution was ratified, the Legislature has been required to express in clear terms whether any new entity it creates is subject to executive control. This requirement is rooted in section 4 of Article V of the Constitution, which requires the Legislature to place all agencies “within” an Executive Branch Department.

48. To comply with that provision while ensuring that legislatively created entities remain free from executive control, the Legislature has adopted a signature phrase when creating new entities: it has designated them as agencies that are “in but not of” various Executive Departments. As the Supreme Court explained in In re Plan for the Abolition of the Council on Affordable Housing, 214 N.J. 444, 462, 465-66 (2013):

The phrase [“in but not of”] is hardly a colloquial expression; the language is precise, not random or accidental, and it is used with a

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<sup>7</sup> Available at <https://www.nytimes.com/1941/03/11/archives/new-road-board-sought-in-jersey-republicans-renew-talks-as-governor.html?searchResultPosition=2>.

<sup>8</sup> Available at <https://www.nytimes.com/1940/09/20/archives/democrats-score-jersey-vote-bills-tyranny-and-dictatorship-laid-to.html?searchResultPosition=6>.

particular meaning in mind: to denote an agency’s independent status.

Use of the phrase “in but not of” accomplishes two goals. As noted earlier, the Constitution requires that all executive offices “shall be allocated by law among and *within* not more than twenty principal departments.” *N.J. Const.* art. V, § 4, ¶ 1 (emphasis added). Each department, in turn, is “under the supervision of the Governor.” *N.J. Const.* art. V, § 4, ¶ 2. Thus, when the Legislature creates an agency and places it “in” a department of the Executive Branch, the above constitutional requirement is met.

But the precise language has an additional element: some entities are “in” an executive department—to satisfy the Constitution—but are “not of” that department. Those additional words express an agency’s independence. . . .

Enabling statutes can set limits to an agency’s independence. They can empower the Governor to appoint and remove an agency’s members. . . .

Often, principal department heads—who are appointed by and serve at the pleasure of the Governor, *N.J. Const.* art. V, § 4, ¶ 2—serve on independent agencies as *ex officio* members or designate representatives to serve. . . .

Many statutes also give the Chief Executive the power to veto the minutes of independent agencies. . . .

But independent agencies are nevertheless insulated from the full supervision and control of the Executive Branch. *See Byrne, supra*, 238 N.J. Super. at 89-90, 569 A.2d 264. The Chief Executive’s power over them extends only as far as their enabling statutes permit. . . .

49. The EDA is precisely the type of independent entity the Supreme Court described in *In re Plan for the Abolition of the Council on Affordable Housing*, 214 N.J. 444.

50. When creating the EDA in 1974, the Legislature specifically designated it a “public body corporate and politic” established “in, but not of, the Department of the Treasury.” N.J.S.A. 34:1B-4(a).

51. Consistent with that designation, the Legislature did not subject the EDA to the gubernatorial investigative powers set forth in N.J.S.A. 52:15-7, but rather to the much more limited control and oversight provisions in the EDA’s enabling statute—in particular, N.J.S.A. 34:1B-4(b), which permits certain EDA members to be appointed by the Governor, and N.J.S.A. 34:1B-4(c), which gives the Governor the right to remove members appointed by him “for cause, after a public hearing.”

52. At the same time, the EDA’s enabling statute reserved important powers to the Legislature. For example, the statute requires that two public members be appointed by the Governor “upon recommendation of the Senate President” and two be chosen “upon recommendation of the Speaker of the General Assembly.” N.J.S.A. 34:1B-4(b). The statute also reserves to the Legislature the authority to dissolve the EDA “on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations.”

53. By adopting that statutory language, the Legislature ensured that any investigation into or relating to the EDA would either require new legislation or would be conducted pursuant to the Legislature’s retained power under N.J.S.A. 52:13-1 to conduct plenary investigations through a joint, standing, or special legislative committee.

54. Indeed, the Legislature recently exercised its authority under N.J.S.A. 52:13-1, authorizing two bipartisan legislative committees to investigate the EDA’s affairs. On May 9, 2019, Assembly Speaker Coughlin announced that the Assembly Commerce and Economic Development Committee—a standing Assembly Committee comprising eight Democrats and four Republicans—will conduct hearings to examine the EDA’s tax-incentives programs, the very subject of the Task Force’s investigation. See Coughlin Announces Assembly Commerce

Committee Hearings on EDA, Insider NJ, May 9, 2019.<sup>9</sup> And on May 13, 2019, the Senate passed SR 139 to form the Senate Select Committee on Economic Growth Strategies, which will comprise seven members from both political parties. That Senate Committee, like the newly established Assembly Committee, will conduct a legally authorized investigation of the EDA tax-incentives question. (A true and correct copy of SR 139 is attached hereto as **Exhibit M**.)

55. **Second**, under N.J.S.A. 52:15-7, the Governor or his appointee is only authorized (1) “to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State” and (2) “to examine and investigate the management and affairs of any department, board, bureau or commission of the State.” By serving wide-ranging and invasive subpoenas on certain of the Plaintiffs and other third parties and using its alleged authority to investigate the conduct of all Plaintiffs—thereby attempting not only to examine the independent, “in but not of” EDA but also to probe the affairs of private individuals doing business with or concerning that entity—the Task Force well exceeded the scope of N.J.S.A. 52:15-7.

56. **Third**, even if N.J.S.A. 52:15-7 empowered the Task Force to examine Plaintiffs—and it does not—the Task Force did not afford Plaintiffs the extensive procedural rights that statute prescribes. According to the Task Force’s own statements and conduct, Plaintiffs would qualify as “individual[s] under investigation or scrutiny” who are afforded trial-like evidentiary and confrontational rights at any public hearing:

Whenever any person shall be examined by the Governor or by his duly authorized representative or representatives under the powers contained in this act at a public hearing, the officer, department, board, bureau, commission or ***individual under investigation or scrutiny*** may through his or its authorized representative or representatives ***cross-examine any such person on any phase of***

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<sup>9</sup> Available at <https://www.insidernj.com/coughlin-announces-assembly-commerce-committee-hearings-eda/>.

*the matter concerning which he has been examined or questioned, and such officer, department, board, bureau, commission or individual may introduce other witnesses and other evidence to explain, enlarge upon, or clarify the matter, situation or condition under investigation or scrutiny to the end that the full details of any such matter, situation or condition may be developed and presented at one and the same time.*

N.J.S.A. 52:15-7 (emphasis added).

57. While they examined witnesses at a public hearing purportedly held pursuant to N.J.S.A. 52:15-7, the Task Force and its lawyers failed to afford Plaintiffs the rights that would attend a properly convened inquiry under that statute. The Task Force only notified Plaintiffs of the May 2, 2019 hearing, at which information adverse to them would be publicly disseminated, less than 18 hours before that hearing was scheduled to begin, deprived them of the opportunity to testify at the hearing, and offered them only the opportunity to submit a limited affidavit in response to that information that would—in the Task Force’s discretion—be read into the record in some future, as-yet-undetermined setting.

58. **Fourth**, the Governor’s authorization of the payment of legal fees and expenses to Walden Macht and Quiñones Law is invalid under N.J.S.A. 52:15-7, the statute he improperly invoked to create and empower the Task Force.

59. The Legislature that enacted that statute anticipated that the Governor’s appointees would be State employees. In the event they were not, the Legislature reserved to itself the power to appropriate the funds needed to pay for compensation and necessary expenses:

Whenever any person so appointed shall not be regularly in the service of the State his compensation for such services shall be fixed by the Governor, and said compensation and all necessary expenses of such examinations and investigations shall be paid from the treasury *out of any appropriations made for the purpose* upon the order of the Governor.

N.J.S.A. 52:15-7 (emphasis added).

60. Consistent with the statute's plain language, the lawyers hired to conduct the first investigation pursuant to N.J.S.A. 52:15-7 in 1941 worked "without pay" because the Legislature had not approved a request "to provide \$50,000 for the investigation." Road Inquiry Staff Enlarged in New Jersey, N.Y. Times, July 9, 1941.<sup>10</sup>

61. Here, by contrast, the Legislature has appropriated no funds "for the purpose" of conducting the Governor's unlawful Task Force investigation, and the Governor has issued no executive order authorizing the expenditure of such unappropriated funds.

**C. The Task Force Is Counseled By An Attorney Who Is Not Admitted To Practice In New Jersey And Who Continues To Unlawfully Practice Law In This State.**

62. The Task Force's lead counsel, Walden, is not licensed to practice law in this State.

63. Although Walden has been advised several times to desist from his unlawful practice of New Jersey law, he has consistently refused to do so. Specifically, by letter dated May 1, 2019, Michael Critchley, Esq. ("Critchley"), counsel for certain of the Plaintiffs in this action, asked Walden, a New York lawyer, to explain the authority by which he was practicing law in New Jersey. Walden did not immediately respond to the letter and proceeded to conduct witness examinations and perform other acts prejudicial to Plaintiffs at the Task Force's May 2, 2019 hearing. (A true and correct copy of Critchley's May 1, 2019 letter is attached hereto as **Exhibit N.**)

64. Having received no response to his inquiry, on May 3, 2019, Critchley wrote Walden a follow-up letter requesting a response by the close of business on Friday, May 6, 2019. (A true and correct copy of Critchley's May 3, 2019 letter is attached hereto as **Exhibit O.**)

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<sup>10</sup> Available at <https://www.nytimes.com/1941/07/09/archives/road-inquiry-staff-enlarged-in-jersey-six-lawyers-appointed-to-aid.html?searchResultPosition=1>.

65. On May 3, 2019, Quiñones sent Critchley an e-mail informing him that the Task Force would not provide a response to his May 1st letter until May 7, 2019, and further stating that the Task Force “expects to consult with the Office of the Governor and the Office of the Attorney General about the issues raised in your letter next week.” (A true and correct copy of Quiñones’s May 3, 2019 e-mail is attached hereto as **Exhibit P.**)

66. Walden finally responded to Critchley’s inquiry by letter dated May 10, 2019, stating only that the matter had been referred to “appropriate authorities.” (A true and correct copy of Walden’s May 10, 2019 letter is attached hereto as **Exhibit Q.**)

67. On information and belief, Walden sought and secured limited approval as a multijurisdictional practitioner in New Jersey in response to Critchley’s May 1st inquiry. Under Rule 5.5(b)(3)(iv) of the New Jersey Rules of Professional Conduct, securing multijurisdictional registration to practice in this State enables a lawyer to practice on an “occasional” basis in New Jersey provided the lawyer designates and discloses to all parties in interest a New Jersey lawyer who shall be held responsible for his conduct. Assuming the mantle of New Jersey state government to conduct a protracted inquiry of an independent State entity such as the EDA—and thereby to establish a frequent, recurring, continuous, and systematic presence here, at a cost to New Jersey taxpayers of millions of dollars—does not comport with the letter or the spirit of RPC 5.5(b)(3)(iv). Moreover, Walden has not disclosed the identity of the lawyer of this State who is to be held responsible for his conduct, as that RPC requires.

68. In an interview published on NJ.com on Friday, May 17, 2019, Walden is quoted as inviting parties considering a lawsuit to redress the Task Force misconduct described above to “bring it on.” This Complaint follows.

**COUNT ONE**  
**(AGAINST ALL DEFENDANTS)**

**FOR A DECLARATORY JUDGMENT THAT ALL EXECUTIVE ACTIONS TAKEN  
TO CREATE AND EMPOWER THE TASK FORCE PURSUANT TO N.J.S.A 52:15-7  
ARE INVALID AND THAT THE TASK FORCE IS UNLAWFUL**

69. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 68 of this Complaint as though fully set forth herein.

70. Governor Murphy purported to create the Task Force as an agency under N.J.S.A. 52:15-7 and purported to vest it with the powers set forth in that statute.

71. N.J.S.A. 52:15-7 only permits the Governor or his appointee “to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State and to examine and investigate the management and affairs of any department, board, bureau or commission of the State.”

72. The Legislature expressly designated the EDA as an entity “in, but not of” any agency of the Executive branch, N.J.S.A. 34:1B-4(a), and carefully delineated in that statute the limited appointment and oversight authority granted the Executive over that entity. The Legislature thereby expressed its clear and unambiguous intent that the EDA not be subject to the gubernatorial investigative powers set forth in N.J.S.A. 52:15-7.

73. Moreover, the EDA is not a “department, board, bureau or commission” within the meaning of N.J.S.A. 52:15-7. Instead it is “a public body corporate and politic, with corporate succession.” N.J.S.A. 34:1B-4(a) (emphasis added). By using such language, the Legislature further ensured that public corporations like the EDA are excepted from the plain language of N.J.S.A. 52:15-7.

74. The executive actions Governor Murphy took to create the Task Force as an entity pursuant to and having the powers set forth in N.J.S.A. 52:15-7—in particular, the Delegation

Letter—are invalid because, among other reasons, they contravene the express terms of N.J.S.A. 52:15-7 and N.J.S.A. 34:1B-4; the Legislature’s intent to create the EDA as an entity free from the gubernatorial investigative powers set forth in N.J.S.A. 52:15-7; and the Legislature’s exclusive right to conduct plenary investigations of entities such as the EDA pursuant to its authority under N.J.S.A. 52:13-1.

75. Defendants have relied on and continue to rely on E.O. 52 and/or the Delegation Letter to unlawfully exercise the powers set forth in N.J.S.A. 52:15-7 by, *inter alia*, issuing subpoenas to prospective witnesses, compelling the attendance of witnesses at hearings, naming Plaintiffs at public hearings, and eliciting testimony about Plaintiffs at such hearings.

76. An actual and justiciable controversy exists between the parties, and there is a present need for a declaratory judgment to set forth and determine their respective rights and obligations with respect to the validity of Governor Murphy’s actions and the Task Force’s legality.

77. Plaintiffs therefore seek a declaration pursuant to the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62 (the “Declaratory Judgment Act”), that any and all executive actions taken to create the Task Force as an entity pursuant to and having the powers set forth in N.J.S.A. 52:15-7, including but not limited to E.O. 52 and/or the Delegation Letter, are invalid; that the Task Force is invalid and should be disbanded; and that any actions taken in furtherance of or in connection with the Task Force’s investigation are invalid and of no force and effect.

**COUNT TWO**  
**(AGAINST THE TASK FORCE, PROFESSOR CHEN, WALDEN MACHT, AND QUIÑONES LAW)**

**FOR A DECLARATORY JUDGMENT THAT N.J.S.A. 52:15-7 DOES NOT AUTHORIZE AN INVESTIGATION OF ENTITIES AND INDIVIDUALS WHO ARE NOT INVOLVED IN THE MANAGEMENT AND AFFAIRS OF STATE GOVERNMENT**

78. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 77 of this Complaint as though fully set forth herein.

79. The Task Force, Professor Chen, Walden Macht, and Quiñones Law (together, the “Task Force Defendants”) are, as shown above, unlawfully exercising the powers set forth in N.J.S.A. 52:15-7. Moreover, under no circumstances does that statute authorize the investigation of entities and individuals such as the Task Force Defendants have undertaken with respect to Plaintiffs.

80. Under N.J.S.A. 52:15-7, the Governor or his appointee is only authorized (1) “to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State”; and (2) “to examine and investigate the management and affairs of any department, board, bureau or commission of the State.”

81. The Task Force Defendants are not conducting a *bona fide* examination of any State officer or the management and affairs of any department of State government. Rather, as is evident from the subpoenas they issued and the statements they made at public hearings, the Task Force Defendants are conducting an unlawful investigation of entities and individuals who are not State officers and are not involved in the management and affairs of State government.

82. The Task Force Defendants have directed these unlawful efforts and actions at Plaintiffs, and continue to do so.

83. An actual controversy exists between the parties with respect to the Task Force Defendants' exercise of the purported authority given to them under N.J.S.A. 52:15-7. There is thus a justiciable controversy between the parties and a present need for a declaratory judgment setting forth and determining their respective rights and obligations with respect to the proper scope of their investigation, including but not limited to whether they have abused or exceeded any authority given to them under N.J.S.A. 52:15-7.

84. Plaintiffs seek a declaration pursuant to the Declaratory Judgment Act that the Task Force Defendants have exceeded and continue to exceed that authority by conducting an investigation of Plaintiffs, who are not State officers and are not involved in the management or affairs of any department of State government.

**COUNT THREE**  
**(AGAINST THE TASK FORCE DEFENDANTS)**

**FOR A DECLARATORY JUDGMENT THAT N.J.S.A. 52:15-7 DOES NOT AUTHORIZE AN INVESTIGATION THAT DENIES ITS SUBJECTS THE RIGHT TO CROSS-EXAMINE WITNESSES AND INTRODUCE WITNESSES AND EVIDENCE OR OTHERWISE TRANSGRESSES RIGHTS AFFORDED UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE DUE-PROCESS GUARANTEES OF THE UNITED STATES AND NEW JERSEY CONSTITUTIONS**

85. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 84 of this Complaint as though fully set forth herein.

86. Plaintiffs, as private citizens, cannot be the subjects of an investigation under N.J.S.A. 52:15-7. Moreover, at public hearings conducted pursuant to that statute, "individuals under examination or scrutiny" are entitled to cross-examine and to introduce witnesses and evidence to explain and clarify the matters under investigation.

87. Beyond conducting an investigation that is not authorized by N.J.S.A. 52:15-7, the Task Force Defendants have deprived and will continue to deprive Plaintiffs of the

fundamental rights enjoyed by subjects of investigations conducted pursuant to that statute, including by (i) informing them that adverse information regarding them might be presented to the public at a scheduled hearing less than 18 hours later; (ii) refusing to permit them to give testimony and cross-examine witnesses or exercise any of the other rights afforded them under N.J.S.A. 52:15-7 at that hearing; and (iii) indicating that they and their counsel will have only a limited opportunity to participate in a future hearing.

88. Moreover, the public hearings convened by Professor Chen and the Task Force are limited public fora under the First Amendment of the United States Constitution, and any restrictions on the rights of individual speech at those hearings must therefore be viewpoint neutral and narrowly tailored to further a compelling state interest. By (a) limiting Plaintiffs' responses at the May 2nd hearing to written affidavits to be entered into the record at the Task Force's discretion; and (b) offering Plaintiffs only a limited opportunity to testify at a future hearing at which their counsel would also have a strictly limited role, the Task Force has, without any compelling interest, circumscribed Plaintiffs' ability to respond to any targeted and adverse testimony within the same limited public forum.

89. These limitations are plainly designed to impair the ability of Plaintiffs, who are the obvious targets of Defendants' public inquiry, to respond to any adverse information about them that has been purposefully and publicly curated by the Task Force, and to foreclose them from providing their viewpoints in response to that information. These viewpoint-based limitations also constitute an unlawful prior restraint on Plaintiffs' speech because Defendants reserve the right to refuse to place Plaintiffs' written statements into the record if they deem those statements to be irrelevant to the Task Force's investigation.

90. The First Amendment forbids the Task Force from privileging the speech of certain hearing participants over others. The Task Force, however, has privileged the speech of witnesses at its hearing over that of Plaintiffs, and intends to continue doing so.

91. Finally, the due-process guarantees of the United States and New Jersey Constitutions at a minimum require individuals to be provided with adequate notice and a meaningful opportunity to be heard before they can be deprived of a protected liberty interest. The United States Constitution recognizes that a person has a protected liberty interest in safeguarding his reputation when that reputation is impaired along with tangible interests. The New Jersey Constitution affords New Jersey citizens broader protections than the United States Constitution by protecting their rights to reputation without requiring any tangible loss.

92. Plaintiffs who have submitted applications to the EDA have a concrete interest in the retention or pursuit of benefits and continued participation in the tax-incentive programs the EDA administers. Moreover, all Plaintiffs have a protected interest in safeguarding their reputations from the defamatory comments made or elicited about them by the Task Force Defendants.

93. The Task Force Defendants have violated and continue to violate the due-process rights secured to Plaintiffs under the United States and New Jersey Constitutions, including by depriving them of meaningful notice and an opportunity to be heard at public hearings.

94. An actual controversy exists between the parties with respect to Plaintiffs' procedural rights under N.J.S.A. 52:15-7, the First Amendment, and the due-process guarantees of the United States and New Jersey Constitutions. There is thus a justiciable controversy between the parties, and a present need for a declaratory judgment setting forth and determining

their respective rights and obligations with respect to the proper conduct of the Task Force's investigation.

95. Plaintiffs therefore seek a declaration pursuant to the Declaratory Judgment Act that they have a right under N.J.S.A. 52:15-7 to cross-examine witnesses and present evidence at public hearings, and that the Task Force Defendants have placed unreasonable restrictions on their ability to participate in hearings that violate their rights under the First Amendment and the due-process guarantees of the United States and New Jersey Constitutions.

**COUNT FOUR**  
**(AGAINST ALL DEFENDANTS)**

**FOR A DECLARATORY JUDGMENT THAT ALL PAYMENTS TO WALDEN MACHT AND QUIÑONES LAW VIOLATE N.J.S.A. 52:15-7 AND MUST BE PAID BACK TO THE STATE**

96. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 95 of this Complaint as though fully set forth herein.

97. N.J.S.A. 52:15-7 prohibits the payment of compensation and all necessary expenses of examinations and investigations unless (i) an "appropriation" has first been made "for the purpose" of the investigation; and (ii) the Governor issues an order directing payment from such appropriation.

98. The Legislature has not issued an appropriation for the purpose of the Task Force's investigation.

99. The Governor has not issued an order directing payment to Walden Macht and Quiñones Law from any Legislative appropriation.

100. As of April 19, 2019, Walden Macht had billed the State of New Jersey more than \$1.3 million for its services in connection with the Task Force's investigation, and will continue to bill the State for its work on that investigation.

101. On information and belief, Quiñones Law has also billed the State of New Jersey for its services in connection with the Task Force's investigation, and will continue to do so.

102. On information and belief, Governor Murphy has authorized, and the State of New Jersey has paid, fees for services performed by Walden Macht and Quiñones Law in connection with the Task Force's investigation.

103. Any payments made to Walden Macht and Quiñones Law for their work on the Task Force's investigation are unlawful under N.J.S.A. 52:15-7.

104. An actual controversy exists between the parties with respect to Defendants' right to pursue the Task Force investigation through payment of Walden Macht's and Quiñones Law's legal fees, including but not limited to fees generated by these firms to investigate Plaintiffs. There is thus a justiciable controversy between the parties, and a present need for a declaratory judgment setting forth and determining their respective rights and obligations with respect to the legality of payments to Walden Macht and Quiñones Law.

105. As detailed in this Complaint, Plaintiffs have been and will continue to be harmed by the unauthorized use of unappropriated State funds to compensate Walden Macht and Quiñones Law to investigate them.

106. Plaintiffs therefore seek a declaration pursuant to the Declaratory Judgment Act that Defendants are not permitted to pay the legal fees of Walden Macht and Quiñones Law and a declaration that Walden Macht and Quiñones Law must repay to the State all fees they have received to date for their work on the Task Force investigation.

**COUNT FIVE**  
**(AGAINST THE TASK FORCE, PROFESSOR CHEN, WALDEN, AND  
WALDEN MACHT)**

**FOR A DECLARATORY JUDGMENT THAT WALDEN IS UNLAWFULLY  
PRACTICING LAW IN NEW JERSEY**

107. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 106 of this Complaint as though fully set forth herein.

108. Walden has knowingly engaged in the unauthorized and illegal practice of law.

109. Walden and Walden Macht have derived a substantial monetary benefit from this unauthorized and illegal practice of law.

110. As (a) Walden now has only a limited multijurisdictional license to practice law in the State of New Jersey; and (b) on information and belief, none of the attorneys at Walden Macht who have participated in representing and counseling the Task Force have any license to practice law in this State, the Task Force is unlawfully acting through unlicensed attorneys.

111. This unlawful conduct has caused and continues to cause injury to Plaintiffs.

112. Plaintiffs therefore seek a declaration pursuant to the Declaratory Judgment Act and N.J.S.A. 2C:21-22a that the Task Force is knowingly and unlawfully acting through attorneys who are not properly licensed to practice law in New Jersey.

**PRAYER FOR RELIEF**

WHEREFORE, based on the preceding allegations, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants awarding the following relief:

- a. Declaring that Executive Order 52 and/or the Designation Letter are void *ab initio*, invalid, and of no force and effect;
- b. Declaring that the Task Force is void *ab initio*, invalid, and should be disbanded;

- c. Declaring that any action taken in furtherance of or in connection with the Task Force's investigation is invalid and of no force and effect;
- d. Declaring that N.J.S.A. 52:15-7 does not authorize an investigation of entities and individuals not involved in the management and affairs of any department, board, bureau or commission of the State of New Jersey;
- e. Declaring that N.J.S.A. 52:15-7 entitles Plaintiffs to cross-examine witnesses and present evidence at any public hearings the Court determines the Task Force is empowered to conduct;
- f. Declaring that the Task Force Defendants have placed unreasonable restrictions on Plaintiffs' ability to participate in hearings, in violation of their rights under the First Amendment and the due-process guarantees of the U.S. and New Jersey Constitutions;
- g. Declaring that Defendants have unlawfully authorized payments to Walden Macht and Quiñones Law in violation of N.J.S.A. 52:15-7 and continue to unlawfully make payments to those law firms, to Plaintiffs' detriment;
- h. Declaring that Walden Macht and Quiñones Law are required to reimburse the State for all fees and expenses they have received in connection with the Task Force's investigation;
- i. Declaring that Walden and the attorneys at his firm not admitted to the bar of this State are not authorized to serve as special counsel to the Task Force and can no longer do so;  
and
- j. Granting such other and further relief as the interests of justice require.

Dated: May 21, 2019

By: s/ William M. Tambussi

William M. Tambussi (Att'y No. 031431983)  
BROWN & CONNERY, LLP

*Attorneys for Plaintiffs George E. Norcross,  
Conner Strong & Buckelew, LLC, NFI, LP,  
and The Michaels Organization, LLC*

By: s/Michael Critchley

Michael Critchley (Att'y No. 251821972)  
CRITCHLEY, KINUM & DENOIA, LLC

By: s/ Michael Chertoff

Michael Chertoff (Att'y No. 006361990)  
COVINGTON & BURLING LLP

*Attorneys for Plaintiff  
Conner Strong & Buckelew, LLC*

By: s/ Herbert J. Stern

Herbert J. Stern (Att'y No. 259081971)  
STERN, KILLCULLEN & RUFOLO, LLC

*Attorneys for Plaintiff  
Cooper University Health Care*

By: s/ Kevin H. Marino

Kevin H. Marino (Att'y No. 023751984)  
MARINO, TORTORELLA & BOYLE, P.C.

*Attorneys for Plaintiff Parker McCay, P.A.*

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of any other action pending in any court. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, that no other action or arbitration proceeding is contemplated, and that there is no other party who should be joined in this action at this time.

Dated: May 21, 2019

By: s/ William M. Tambussi  
William M. Tambussi (Att’y No. 031431983)  
BROWN & CONNERY, LLP  
*Attorneys for Plaintiffs George E. Norcross,  
Conner Strong & Buckelew, LLC, NFI, LP,  
and The Michaels Organization, LLC*

By: s/Michael Critchley  
Michael Critchley (Att’y No. 251821972)  
CRITCHLEY, KINUM & DENOIA, LLC

By: s/ Michael Chertoff  
Michael Chertoff (Att’y No. 006361990)  
COVINGTON & BURLING LLP  
*Attorneys for Plaintiff  
Conner Strong & Buckelew, LLC*

By: s/ Herbert J. Stern  
Herbert J. Stern (Att’y No. 259081971)  
STERN, KILLCULLEN & RUFOLO, LLC  
*Attorneys for Plaintiff  
Cooper University Health Care*

By: s/ Kevin H. Marino  
Kevin H. Marino (Att’y No. 023751984)  
MARINO, TORTORELLA & BOYLE, P.C.  
*Attorneys for Plaintiff Parker McCay, P.A.*

# EXHIBIT A

**EXECUTIVE ORDER NO. 52**

WHEREAS, my administration has spent our first year in office focused on the central task of growing New Jersey's economy in a way that works for all New Jersey families; and

WHEREAS, during my first week in office, I issued Executive Order No. 3 (2018), which ordered the Office of the State Comptroller ("State Comptroller") to conduct a complete performance audit of the tax incentive programs administered by the Economic Development Authority ("EDA"); and

WHEREAS, the State Comptroller has completed this audit, which has revealed grossly inadequate compliance and enforcement efforts by the EDA that failed to ensure that the tax incentive programs operated to the benefit of the State's economy; and

WHEREAS, the State Comptroller's audit notably concluded that "[k]ey internal controls were lacking or nonexistent for the monitoring and oversight of recipient performance" and that "EDA relied only on recipient-reported data and recipient certifications" with respect to job creation and retention; and

WHEREAS, from a sample of approximately 10 percent of the EDA's certified projects that was projected to create or retain roughly 15,000 jobs, the State Comptroller's audit revealed that nearly 3,000 of those jobs could not be substantiated as being created or retained; and

WHEREAS, the State Comptroller's audit concluded that incentive awards were "improperly awarded, overstated, and overpaid" and specifically noted five commercial projects where the EDA failed to comply with the applicable statute and regulations and improperly awarded \$179 million in incentives; and

WHEREAS, the State Comptroller's audit further found that numerous recipients hired employees at the end of the annual reporting period, indicating that their job creation or retention numbers were artificially inflated; and

WHEREAS, it is plainly unacceptable that billions of dollars in taxpayer money were awarded to companies based on promises of job creation and retention that often did not materialize; and

WHEREAS, legislators, advocacy groups, and numerous observers have all voiced their outrage that the EDA did not have proper enforcement mechanisms in place; and

WHEREAS, while the State Comptroller's audit has demonstrated the deficiencies in the EDA's tax incentive programs, the taxpayers of New Jersey deserve a thorough explanation of how and why these tax incentive programs operated with minimal oversight and accountability; and

WHEREAS, with the Grow NJ and Economic Redevelopment and Growth ("ERG") programs scheduled to expire on July 1, 2019, a public accounting of the decisions regarding the operation of these tax incentive programs will help inform lawmakers in their deliberations about whether and in what form these programs should be renewed, and what types of controls are needed both in the law and in practice;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Task Force on EDA's Tax Incentives (the "Task Force"). The mission of the Task Force shall be to conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and ERG, including those identified in the State Comptroller's performance audit, to inform consideration regarding the planning, development and execution of any future iterations of these or similar tax incentive programs.

2. The Task Force will hold public hearings and shall ask individuals to testify who can provide insight into the design, implementation, and oversight of these programs.

3. The Task Force shall be led by a chairperson, who shall be appointed by and serve at the pleasure of the Governor. The Governor may appoint additional members to the Task Force as needed, who shall also serve at the pleasure of the Governor. The chairperson and any additional members of the Task Force shall serve without compensation.

4. The Task Force is authorized to call upon any department, office, division or agency of this State to supply it with data and any other information or assistance available to such agency as the Task Force deems necessary to execute its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the Task Force within the limits of its statutory authority and to furnish it with such assistance on as timely a basis as is necessary to accomplish the purpose of this Order. Requests for legal assistance by the Task Force shall be made to the Attorney General upon the determination of the chairperson.

5. The Task Force shall seek to obtain voluntary cooperation from any individuals or entities who have access to information pertinent to the Task Force's mission. If the Task Force encounters individuals or entities who refuse to cooperate, it may refer the matter to the State Comptroller, which may exercise its subpoena authority, or to the EDA, which may exercise its authority to compel information from recipients pursuant to the terms of the incentive programs and grants.

6. The Task Force, which shall be purely advisory in nature, shall report its findings to the Governor and the Legislature as appropriate.

7. This Order shall take effect immediately.

GIVEN, under my hand and seal this  
24<sup>th</sup> day of January,  
Two Thousand and Nineteen,  
and of the Independence of  
the United States, the Two  
Hundred and Forty-Third.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# EXHIBIT B



PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 112  
TRENTON, NJ 08625-0112

GURBIR S. GREWAL  
*Attorney General*

MICHELLE L. MILLER  
*Director*

January 24, 2019

Jim Walden, Esq.  
Walden Macht & Haran LLP  
One Battery Park Plaza, 34<sup>th</sup> Floor  
New York, NY 10004

Re: Economic Development Authority Incentives Task Force

Dear Mr. Walden:

This letter is to confirm our retention of your firm to provide advice and counsel to the Task Force of EDA's Tax Incentives. This retention will also include providing assistance to the Task Force in conducting the investigation directed by Executive Order #52 (Governor Murphy).

This letter will also confirm that you will bill us for your services at the following rates:

\$395/hr. blended rate for partners and associates at your firm; and  
\$90/hr. for paralegals.

As part of this retention, you and your firm agree to abide by the Department of Law and Public Safety Office of Attorney General Outside Counsel Guidelines, January 1, 2015, available at:

<http://www.nj.gov/oag/law/rfqs.htm> (Guidelines),

and incorporated into this letter. These guidelines address conflicts of interest, your responsibilities as counsel, confidentiality, case management, reporting



January 24, 2019

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and budgeting, settlement and use of alternative dispute resolution, staffing and billing policies, and media policies.

Regarding conflicts of interest or the appearance of impropriety, your firm should be guided by the standards set forth in Guidelines, pages 2-3, regarding the ethical obligations of special counsel retained by State agencies and employees. If you have any questions about whether a proposed representation by your firm of another client would be in violation of the Rules of Professional Conduct or the Guidelines, we encourage you to notify us in writing in advance so that we can discuss the issue.

We understand that you will be the primary contact on this matter. If this changes, please promptly notify the undersigned.

New Jersey Law contains additional requirements applicable to this retention agreement. Those requirements are set forth in detail in Exhibit A, Additional Requirements for Office of Attorney General, Division of Law Retention Agreements, attached hereto, and are incorporated into this Retention Agreement. Please note that several require additional information be submitted on the forms indicated prior to this Retention Agreement being executed or your firm beginning work.

Please complete the forms referred to in Exhibit A, and return all documents to the undersigned as soon as possible to me at P.O. Box 112, Trenton, N.J. 08625. Please note that you cannot be officially retained or be paid for any services rendered until this office has obtained final Department of Treasury approval of your Chapter 51 Certification as explained in Section E of Exhibit A. Official retention will be signified by the receipt of a copy of this letter with my additional counter-signature.

This letter also confirms our right to terminate your retention as counsel at any time by simply advising you either orally or in writing that your services are no longer needed. You further agree that once you receive our notice to terminate, all services that arise from your retention shall be immediately terminated and the State and our office is not responsible for the payment for any services provided by you beyond the date of termination.

If the terms and conditions set forth in this letter are acceptable to you, please acknowledge your acceptance of them by executing the enclosed copy and returning it to me.

January 24, 2019

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If you have any problems or questions regarding the terms and conditions of your firm's retention, please call me at your earliest convenience to discuss them.

Very truly yours,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: Michelle Miller  
Michelle Miller  
Director, Division of Law

Enc.

I hereby acknowledge and accept the terms set forth herein this 28<sup>th</sup> day of JANUARY, 2019.

By: Jim Walden  
Jim Walden, Esq.  
Walden Macht & Haran LLP

By: Michelle Miller  
(counter-signature)  
Michelle Miller  
Director, Division of Law

Dated: March 8, 2019

# EXHIBIT C

# Walden Macht & Haran LLP

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**W | M | H**One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

February 8, 2019

**VIA FIRST-CLASS MAIL**

Gary J. Lesneski  
Senior Executive Vice President and General Counsel  
Cooper Health System  
1 Cooper Plaza  
Camden, NJ 08103

Re: **Document Preservation Directive**

Dear Mr. Lesneski:

We are Special Counsel to New Jersey's Task Force on the Economic Development Agency's Tax Incentives (the "Task Force"). We write to direct that Cooper Health System (the "Company") take all appropriate steps to preserve all documents relating to New Jersey's Grow NJ ("Grow NJ") and Economic Redevelopment and Growth ("ERG") tax incentive programs (together, the "Programs").

As you may be aware, pursuant to Executive Order No. 52, Governor Murphy established the Task Force to "conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of" the Programs. The Task Force has authority to, among other things, seek documents and other information from individuals or entities who have access to information pertaining to their participation in the Programs. Consistent with Executive Order No. 52, the Task Force asks the Company to cooperate fully with its investigation, but if the Company fails to cooperate, the Task Force may seek compliance by referring the Company to (a) the New Jersey Comptroller to exercise its subpoena authority or (b) to the Economic Development Authority, which will compel document production in accordance with the Programs' terms.

Accordingly, we request that the Company preserve all documents and communications that may be potentially relevant to the Task Force's investigation. This includes, but is not limited to, all documents,<sup>1</sup> from January 1, 2010 to the present, relating to:

- Any tax incentives that the Company received or applied for in connection with Grow NJ and/or ERG;

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<sup>1</sup> "Documents" is used herein in the broadest possible sense, including, but not limited to, information stored, recorded, or communicated through any means whatsoever, including but not limited to emails, text messages, MMS, SMS, WhatsApp, Signal, instant messages, social media messages, notes, memoranda, and correspondence.

- Any data or certifications relating to Grow NJ and/or ERG;
- Any jobs created or retained in New Jersey as part of compliance with the Programs' requirements;
- Capital investments made in New Jersey as part of compliance with the Programs' requirements;
- The dates of retention and termination (if applicable) of all New Jersey-based employees;
- Any potential relocation of or offers to relocate offices or jobs to outside of New Jersey; and
- All internal communications within the Company about Grow NJ and/or ERG, including, but not limited to, communications about compliance with the Programs' requirements;
- All communications relating to the Programs between (a) any employee, principal or agent of the Company and (b) any private third party, including any lawyer, lobbyist, or agent; and,
- All communications between (a) any employee, principal or agent of the Company and (b) any employee or official at any agency of any department or agency of the State of New Jersey.

As part of this document preservation directive, the Company should suspend any auto-delete function that might otherwise cause the loss of information, including emails, text messages, instant messages, social media messages, and other electronic communications. Moreover, the company should ensure that electronic storage systems that maintain back-up documentation are fully preserved and not over-written.

Thank you for your anticipated cooperation in this matter. If you have any questions or need additional information, please feel free to contact me at the telephone number or email address below. We will contact you soon to further discuss document production, as well as other anticipated aspects of the Company's cooperation.

Sincerely,



Jim Walden  
Walden Macht & Haran  
212-335-2031  
jwalden@wmhlaw.com

# EXHIBIT D

**From:** [Jennifer Prevete](#)  
**To:** [Porrino, Christopher](#)  
**Cc:** [Jim Walden](#)  
**Subject:** Highly Confidential - NJ Task Force on EDA Tax Incentives (Cooper Health)  
**Date:** Wednesday, March 20, 2019 6:51:29 PM  
**Attachments:** [NJTF - Company Affidavit.pdf](#)  
[NJTF - Company Affidavit.docx](#)

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Chris,

As discussed, I have attached the sample affidavit connected to the Accelerated Re-certification process, which we would ask the company to return by Wednesday, March 27. If you have any questions, please don't hesitate to contact us.

Best regards,  
Jen

Jennifer A. Prevete  
**WALDEN MACHT & HARAN LLP**  
One Battery Park Plaza, 34th Floor  
New York, New York 10004  
Office Phone: (212) 335-2382  
Cell Phone: (516) 680-2340

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**AFFIDAVIT OF** \_\_\_\_\_ as \_\_\_\_\_ of  
Name of Affiant Chief Executive Officer/Other Applicable Position  
\_\_\_\_\_  
Company Name

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, deposes and says:

1. I am the \_\_\_\_\_ of \_\_\_\_\_  
Chief Executive Officer/Other Applicable Position Company Name

(the "Company") and make this Affidavit based upon my personal knowledge or information provided to me by others and with authority to act on behalf of and bind the Company as to the matters set forth in this Affidavit.

2. On \_\_\_\_\_, the Company received a preservation letter (the  
Date  
"Preservation Directive") from Walden Macht & Haran LLP as Special Counsel to the New Jersey Task Force on EDA Tax Incentives (the "Task Force") that Governor Philip Murphy established pursuant to Executive Order No. 52. Under paragraph 5 of Executive Order No. 52, the Task Force is authorized "to obtain voluntary cooperation from any individuals or entities who have access to information pertinent to the Task Force's mission" and to refer any individual or entity refusing to cooperate with the Task Force to the State Comptroller or the Economic Development Authority to utilize their authority to compel the disclosure of information.

3. The Company has sought or obtained tax incentives from New Jersey and therefore may have information pertinent to the Task Force's investigation.

4. The Company intends to voluntarily and fully cooperate with the Task Force's investigation, including, but not limited to, complying with the Preservation Directive.

5. Accordingly, the Company has taken the following steps to comply with the Preservation Directive.

a. The Company has identified that the following employees may (a) have had communications with the New Jersey Economic Development Authority (“EDA”), (b) have been part of internal or external discussions about the Company’s application for or receipt of tax incentive benefits, (c) have been directly or indirectly involved in drafting or certifying the Company’s application to EDA, or (d) possess documents that may be relevant to the Task Force’s investigation (the “Custodians”):

- i. \_\_\_\_\_  
Insert Name and Title
- ii. \_\_\_\_\_  
Insert Name and Title
- iii. \_\_\_\_\_  
Insert Name and Title
- iv. \_\_\_\_\_  
Insert Name and Title

b. The Company has identified that the following law firms, lobbying firms, consultants, or other third parties were engaged by the Company or represented the Company with respect to its application to EDA and (a) have had communications with EDA, (b) have been part of internal or external discussions about the Company’s application for or receipt of tax incentive benefits, (c) have been directly or indirectly involved in drafting or certifying the Company’s application to EDA, or (d) possess documents that may be relevant to the Task Force’s investigation. For each third party, the Company has identified an individual employee or representative of that third party and his or her contact information.

- i. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_

- ii. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_
- iii. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_
- iv. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_

- c. We understand that the Task Force may hereafter request any and all documents, in any form or medium, concerning the Company’s application for tax incentive benefits between December 2013 and the present, including, but not limited to, communications with EDA, internal communications about the tax incentive program, communications with consultants, third-party agents, or lobbyists, and documents reflecting our compliance with program requirements (together, the “Relevant Documents”).
- d. For each of the Custodians identified under paragraph 5(a), the Company has used and will continue to use reasonable good faith efforts to:
  - i. Preserve Relevant Documents, including, but not limited to, emails, text messages, chats, SMS, MMS or internet-based messaging services;
  - ii. Preserve Relevant Documents stored on information systems and servers, including shared drives, shared folders, database systems, backup tapes or other backup media, and cloud storage services;
  - iii. Identify, and is in the process of preserving data from, all devices on which the Custodians may have Relevant Documents, including, but not limited to, laptop computers, tablet computers, iPads, and smart phones;

- iv. Inform the Custodian that the Task Force has issued the Preservation Directive and instruct the Custodian to preserve Relevant Documents in the Custodian's personal accounts for emails, chats, SMS, MMS and internet-based messaging services;
  - v. Identify, and is in the process of contacting, any former employees who may possess Relevant Documents, to request that they preserve them, consistent with the Preservation Directive.
- e. The Company also has used and will continue to use reasonable good faith efforts to preserve all other documents subject to the Preservation Directive, including, but not limited to, hard copy files and documents; handwritten notes; calendars and phone logs (whether hard copy or electronic); data stored on information systems and servers, including shared drives, shared folders, database systems, backup tapes or other backup media, and cloud storage services.

6. The Company understands that the Task Force may offer an Accelerated Re-certification Program to Companies that seek to voluntarily cooperate with the Task Force's investigation and are willing to provide documents and supporting information necessary for re-certification of the Company's tax incentive benefit without receiving a document demand notice. The Company also understands that if the Company's submission as part of the Accelerated Re-certification Program is satisfactory to the Task Force, the Task Force will not issue a document demand notice to the Company.

7. The Company agrees, however, that the Task Force may require further disclosure and issue a document demand notice to the Company should the Task Force identify credible evidence of misconduct relating to the Programs or reason to believe that the Company did not

lawfully meet its obligations under the Programs, even if the Company has submitted otherwise satisfactory materials as part of the Accelerated Re-certification Program.

8. The Company agrees that, if the Task Force chooses to issue a document demand notice, the Company will comply voluntarily with the demand without the Task Force’s exercise of subpoena power within thirty days of receiving the request, unless the Company identifies extenuating circumstances.

9. Nothing herein will be construed as a waiver of attorney client privilege, and the company reserves its rights to request that a confidentiality agreement be in place before it produces any trade secrets, or confidential or proprietary information. Additionally, notwithstanding anything to the contrary above, execution of this Affidavit does not waive any rights, protections, or privileges under state or federal law.

10. I make these statements under penalty of perjury.

\_\_\_\_\_

Name of Affiant

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_

Notary Public

**AFFIDAVIT OF** \_\_\_\_\_ as \_\_\_\_\_ of  
Name of Affiant Chief Executive Officer/Other Applicable Position  
\_\_\_\_\_  
Company Name

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, deposes and says:

1. I am the \_\_\_\_\_ of \_\_\_\_\_  
Chief Executive Officer/Other Applicable Position Company Name

(the “Company”) and make this Affidavit based upon my personal knowledge or information provided to me by others and with authority to act on behalf of and bind the Company as to the matters set forth in this Affidavit.

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Date  
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3. The Company has sought or obtained tax incentives from New Jersey and therefore may have information pertinent to the Task Force’s investigation.

4. The Company intends to voluntarily and fully cooperate with the Task Force’s investigation, including, but not limited to, complying with the Preservation Directive.

5. Accordingly, the Company has taken the following steps to comply with the Preservation Directive.

a. The Company has identified that the following employees may (a) have had communications with the New Jersey Economic Development Authority (“EDA”), (b) have been part of internal or external discussions about the Company’s application for or receipt of tax incentive benefits, (c) have been directly or indirectly involved in drafting or certifying the Company’s application to EDA, or (d) possess documents that may be relevant to the Task Force’s investigation (the “Custodians”):

- i. \_\_\_\_\_  
Insert Name and Title
- ii. \_\_\_\_\_  
Insert Name and Title
- iii. \_\_\_\_\_  
Insert Name and Title
- iv. \_\_\_\_\_  
Insert Name and Title

b. The Company has identified that the following law firms, lobbying firms, consultants, or other third parties were engaged by the Company or represented the Company with respect to its application to EDA and (a) have had communications with EDA, (b) have been part of internal or external discussions about the Company’s application for or receipt of tax incentive benefits, (c) have been directly or indirectly involved in drafting or certifying the Company’s application to EDA, or (d) possess documents that may be relevant to the Task Force’s investigation. For each third party, the Company has identified an individual employee or representative of that third party and his or her contact information.

- i. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_

- ii. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_
- iii. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_
- iv. \_\_\_\_\_  
Insert Firm Name and Contact Information  
\_\_\_\_\_

- c. We understand that the Task Force may hereafter request any and all documents, in any form or medium, concerning the Company’s application for tax incentive benefits between December 2013 and the present, including, but not limited to, communications with EDA, internal communications about the tax incentive program, communications with consultants, third-party agents, or lobbyists, and documents reflecting our compliance with program requirements (together, the “Relevant Documents”).
- d. For each of the Custodians identified under paragraph 5(a), the Company has used and will continue to use reasonable good faith efforts to:
  - i. Preserve Relevant Documents, including, but not limited to, emails, text messages, chats, SMS, MMS or internet-based messaging services;
  - ii. Preserve Relevant Documents stored on information systems and servers, including shared drives, shared folders, database systems, backup tapes or other backup media, and cloud storage services;
  - iii. Identify, and is in the process of preserving data from, all devices on which the Custodians may have Relevant Documents, including, but not limited to, laptop computers, tablet computers, iPads, and smart phones;

- iv. Inform the Custodian that the Task Force has issued the Preservation Directive and instruct the Custodian to preserve Relevant Documents in the Custodian's personal accounts for emails, chats, SMS, MMS and internet-based messaging services;
  - v. Identify, and is in the process of contacting, any former employees who may possess Relevant Documents, to request that they preserve them, consistent with the Preservation Directive.
- e. The Company also has used and will continue to use reasonable good faith efforts to preserve all other documents subject to the Preservation Directive, including, but not limited to, hard copy files and documents; handwritten notes; calendars and phone logs (whether hard copy or electronic); data stored on information systems and servers, including shared drives, shared folders, database systems, backup tapes or other backup media, and cloud storage services.

6. The Company understands that the Task Force may offer an Accelerated Re-certification Program to Companies that seek to voluntarily cooperate with the Task Force's investigation and are willing to provide documents and supporting information necessary for re-certification of the Company's tax incentive benefit without receiving a document demand notice. The Company also understands that if the Company's submission as part of the Accelerated Re-certification Program is satisfactory to the Task Force, the Task Force will not issue a document demand notice to the Company.

7. The Company agrees, however, that the Task Force may require further disclosure and issue a document demand notice to the Company should the Task Force identify credible evidence of misconduct relating to the Programs or reason to believe that the Company did not

lawfully meet its obligations under the Programs, even if the Company has submitted otherwise satisfactory materials as part of the Accelerated Re-certification Program.

8. The Company agrees that, if the Task Force chooses to issue a document demand notice, the Company will comply voluntarily with the demand without the Task Force's exercise of subpoena power within thirty days of receiving the request, unless the Company identifies extenuating circumstances.

9. Nothing herein will be construed as a waiver of attorney client privilege, and the company reserves its rights to request that a confidentiality agreement be in place before it produces any trade secrets, or confidential or proprietary information. Additionally, notwithstanding anything to the contrary above, execution of this Affidavit does not waive any rights, protections, or privileges under state or federal law.

10. I make these statements under penalty of perjury.

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Name of Affiant

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2019

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Notary Public

# EXHIBIT E



## State of New Jersey

OFFICE OF THE GOVERNOR

P.O. Box 001

TRENTON, NJ 08625-0001

PHILIP D. MURPHY  
Governor

March 22, 2019

Mr. Ronald K. Chen



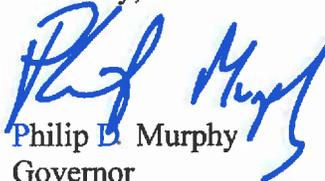
Dear Mr. Chen:

As you are aware, on January 24, 2019, I signed Executive Order Number 52, which established the Task Force on the Economic Development Authority's (EDA) Tax Incentives (the "Task Force"). On that same day, I appointed you to serve as Chair of the Task Force. The Task Force's mission is to "conduct an in-depth examination of the deficiencies in design, implementation, and oversight" of the GROW NJ and Economic Redevelopment and Growth (ERG) tax incentive programs, both of which are administered by the EDA.

The EDA is a public body corporate and politic established in, but not of, the Department of Treasury and is an instrumentality of the State exercising public and essential governmental functions. *See N.J.S.A. § 34:1B-4(a)*. As Governor, I am authorized to personally investigate or to appoint one or more persons to investigate the management and affairs of instrumentalities of the state, such as the EDA. *See N.J.S.A. § 52:15-7*. In furtherance of such an investigation, both I and any of my designated appointees are empowered to "subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material." *Id.*

In addition to your duties as Chair of the Task Force, I am hereby appointing you, pursuant to *N.J.S.A. § 52:15-7*, to examine and investigate the management and affairs of the EDA, and the management by any State officer of the affairs of the EDA, relating to New Jersey's tax incentive programs. You are hereby authorized to perform all of the functions of a duly authorized representative of the Governor pursuant to *N.J.S.A. § 52:15-7*, and to make the results of your investigation and examination available to me, my staff, and/or the Task Force at an appropriate time, consistent with applicable law.

Sincerely,

  
Philip D. Murphy  
Governor

# EXHIBIT F

# Walden Macht & Haran LLP

---

**W M H**

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

April 22, 2019

Christopher Porrino, Esq.  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068

The Cooper Health System  
1 Cooper Plaza  
Camden, NJ 08103

Re: **Administrative Subpoena**

Dear Mr. Porrino:

We are Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force"). Enclosed with this letter is an Administrative Subpoena to The Cooper Health System ("Cooper Health") to produce certain documents on or before May 2, 2019 (the "Subpoena"). Failure to comply with this Subpoena may render Cooper Health liable for such sanctions and penalties as are provided by law.

In our prior letter of February 8, 2019, we notified you that, pursuant to Executive Order No. 52, Governor Philip D. Murphy established the Task Force to investigate certain matters related to New Jersey tax incentive programs. Our letter requested that Cooper Health preserve all documents related to Cooper Health's application to the New Jersey Economic Development Authority (the "EDA") for tax incentives under the Grow New Jersey Assistance Program ("Grow NJ"), among other documents pertinent to the Task Force's investigation. On March 20, 2019, you and I had a telephone call in which you confirmed your representation of Cooper Health in this matter as well as your receipt of our February 8 document preservation letter to Cooper Health. During that conversation, I explained to you that the Task Force intended to allow certain tax incentive beneficiaries to participate in the Task Force's Accelerated Recertification Program (the "ARP"). As a threshold requirement to participate in the ARP, I explained that the Task Force required Cooper Health to complete an affidavit in which Cooper Health would provide certain information related to its application, attest that it intended to cooperate fully with the Task Force's investigation, and further attest that it had made reasonable good faith efforts to preserve relevant documents. We sent you a form affidavit that same day. Since then, Cooper Health has failed to execute the affidavit or otherwise provide any of the information requested. Additionally, separate and apart from Cooper Health's failure to execute the affidavit, the Task Force has received information on which basis the Task Force has concluded that Cooper Health is ineligible to participate in ARP.

On March 22, 2019, Governor Murphy, pursuant to N.J.S.A. § 52:15-7, empowered Ronald K. Chen, the Chair of the Task Force, to issue certain subpoenas within the scope of his delegated authority. Pursuant to such delegated authority, the enclosed Subpoena issued by Mr. Chen requires Cooper Health to produce the documents specified therein related to Cooper Health's application for Grow NJ tax incentives.

The Task Force is in possession of records indicating that when EDA processed Cooper Health's application for Grow NJ tax incentives, Cooper Health represented to the EDA that, in addition to Cooper Health's proposed site located in the City of Camden in the State of New Jersey, Cooper Health also considered a potential alternative location in the building located at 1500 Market Street, Philadelphia, Pennsylvania 19107 (the "Alternative Location"). The enclosed Subpoena relates to Cooper Health's consideration of such Alternative Location as well as any additional potential locations that may have been considered during this time.

If you have any questions or need additional information, please feel free to contact me at the telephone number or email address below.

Sincerely,



Jim Walden  
Walden Macht & Haran LLP  
212-335-2031  
jwalden@wmhlaw.com

**PHILIP D. MURPHY**  
**GOVERNOR OF THE STATE OF NEW JERSEY**



BY: **RONALD K. CHEN**  
*Pursuant to authority delegated by the Governor under  
N.J.S.A. § 52:15-7  
c/o Jim Walden, Esq.  
Walden Macht & Haran LLP  
One Battery Park Plaza  
New York, NY 10004  
212 335 2030*

**ADMINISTRATIVE ACTION**

**SUBPOENA DUCES TECUM**

**THE STATE OF NEW JERSEY to:** The Cooper Health System  
1 Cooper Plaza  
Camden, NJ 08103

**You Are Hereby Commanded** to produce for inspection and copying the documents to Ronald K. Chen, pursuant to authority delegated to him by the Governor under N.J.S.A. § 52:15-7, through the Special Counsel to the New Jersey Task Force on EDA Tax Incentives (“Special Counsel”), on or before May 2, 2019, the following:

**SEE ATTACHED SCHEDULE A**

You may provide the documents and information identified in the attached Schedule A to the Special Counsel on or before the return date above by certified mail, return receipt requested, addressed to the attention of: Jim Walden, Esq., Walden Macht & Haran LLP, One Battery Park Plaza, 34th Floor, New York, NY 10004. You may, at your own option and expense, provide certified true copies in lieu of the original documents identified in the attached schedule by completing and returning the Certification attached hereto.

**The subject of this investigation is:** the management and affairs of the Economic Development Authority (“EDA”) and the management by any State officer of the affairs of the EDA, relating to two of New Jersey’s tax incentive programs (the Grow New Jersey Assistance Program and the Economic Redevelopment and Growth Grant Program), including but not limited to (a) whether EDA’s policies and procedures were sufficient to identify potential fraud or misuse of the tax-incentive programs and (b) whether any company was able to defraud or misuse the tax-incentive programs through any oversight failures.

Failure to comply with this Subpoena may render you liable for such sanctions and penalties as are provided by law. This Subpoena is issued pursuant to the authority of N.J.S.A. § 52:15-7.

**Dated: April 22, 2019**

**RONALD K. CHEN**  
*Pursuant to authority delegated by the Governor  
under N.J.S.A. § 52:15-7*

## SCHEDULE A

### Instructions:

1. Responsive documents shall be produced as they have been kept during the ordinary course of business. Documents shall be produced in the order in which they appear in Your files, and documents shall not be shuffled or otherwise rearranged. Documents that were stapled, clipped, or otherwise fastened together shall be produced together in comparable form.
2. Responsive electronic documents shall be produced with accompanying metadata, to the extent it exists.
3. If any portion of a document is responsive to any request, the entire document shall be produced.
4. All documents You provide shall be marked with Bates stamps.
5. If there are no documents responsive to any particular request herein, You are requested to state so in writing.
6. In the event that any document falling within the scope of any of these requests has been destroyed, discharged, disposed of, or is otherwise unavailable, identify that document by date, author or preparer, subject matter, person(s) to whom distributed, shown, or explained, the date of destruction or other disposition and the reason therefor, the person(s) authorizing the destruction or other disposition, and the person(s) destroying or disposing of the document.
7. If You claim any form of privilege, whether based on statute or otherwise, as a ground for withholding any documents requested herein, set forth for each document withheld sufficient information to identify the date, author or preparer, recipient(s), subject matter of the document, and the basis for withholding the document.

### Definitions:

1. “You” or “Your” means The Cooper Health System and any of its agents, employees, affiliates, and/or representatives or any other person or entity acting on its behalf.
2. “EDA” means the New Jersey Economic Development Authority and any of its board members, employees, agents, and/or representatives or any other person or entity acting on its behalf.
3. “Grow NJ Tax Incentives” means tax incentive benefits pursuant to the Grow New Jersey Assistance Act, P.L. 2011, c. 149, as amended by the Economic Opportunities Act of 2013, P.L. 2013, c. 161 and all subsequent amendments.
4. “Your Application” means Your application to EDA for Grow NJ Tax Incentives, dated November 7, 2014.
5. The “Camden Location” means 1 Federal Street, Camden, New Jersey 08103.
6. The “Relevant Operations” means Your operations that You relocated to the Camden Location in connection with Your Application for Grow NJ Tax Incentives.
7. The “Alternative Location” means the rental space proposed for lease in the letter from CBRE dated December 5, 2014, that is, 113,756 sq. ft. of space on floors fifteen through eighteen of the building located at 1500 Market Street, Philadelphia, Pennsylvania 19107.

8. “Other Alternative Location” means any location outside of New Jersey other than the Alternative Location that you considered in or around the time of Your Application as a potential site to relocate the Relevant Operations.

9. “Contemporaneous documents” means documents that were created contemporaneously with the matters to which the documents concern.

10. “Communications” means any contact, oral or written, formal or formal at any time or place and under any circumstances whatsoever, including but not limited to e-mail, text messaging, any other messaging application or platform, and all other electronic communications whether through a personal account or a business account, whereby information responsive to any requests was transmitted.

### **REQUESTS**

1. Contemporaneous documents sufficient to show all site visits You made to the Alternative Location in connection with Your consideration of such location for the Relevant Operations, including the dates of such site visits and identities of all attendees who participated.

2. All business plans created prior to or contemporaneously with Your consideration of the Alternative Location showing Your plans for how You intended to utilize the Alternative Location for the Relevant Operations.

3. All analyses created prior to or contemporaneously with Your consideration of the Alternative Location showing Your analysis of the suitability of the Alternative Location for the Relevant Operations.

4. All analyses created prior to or contemporaneously with Your consideration of the Alternative Location showing Your analysis of the relocation costs associated with the use of the Alternative Location for the Relevant Operations.

5. All communications between You and CBRE concerning the Alternative Location.

6. All communications between CBRE and any attorney, consultant, or other agent representing You concerning the Alternative Location.

7. Contemporaneous documents sufficient to show any Other Alternative Location.

8. All communications between You and EDA concerning the Alternative Location or any Other Alternative Location.

9. All communications between EDA and any attorney, consultant, or other agent representing You concerning the Alternative Location or any Other Alternative Location.

10. All documents You provided to any law enforcement agency or prosecution office between January 1, 2015 and the present concerning the Alternative Location or any Other Alternative Location.



**CERTIFICATION OF TRUE COPY**

I certify that the copies of all documents produced in compliance with this Subpoena served upon \_\_\_\_\_ with the return date of \_\_\_\_\_ are true copies of the original documents requested in the Schedule A attached to the Subpoena.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name (signature)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title or Position

**EXECUTIVE ORDER NO. 52**

WHEREAS, my administration has spent our first year in office focused on the central task of growing New Jersey's economy in a way that works for all New Jersey families; and

WHEREAS, during my first week in office, I issued Executive Order No. 3 (2018), which ordered the Office of the State Comptroller ("State Comptroller") to conduct a complete performance audit of the tax incentive programs administered by the Economic Development Authority ("EDA"); and

WHEREAS, the State Comptroller has completed this audit, which has revealed grossly inadequate compliance and enforcement efforts by the EDA that failed to ensure that the tax incentive programs operated to the benefit of the State's economy; and

WHEREAS, the State Comptroller's audit notably concluded that "[k]ey internal controls were lacking or nonexistent for the monitoring and oversight of recipient performance" and that "EDA relied only on recipient-reported data and recipient certifications" with respect to job creation and retention; and

WHEREAS, from a sample of approximately 10 percent of the EDA's certified projects that was projected to create or retain roughly 15,000 jobs, the State Comptroller's audit revealed that nearly 3,000 of those jobs could not be substantiated as being created or retained; and

WHEREAS, the State Comptroller's audit concluded that incentive awards were "improperly awarded, overstated, and overpaid" and specifically noted five commercial projects where the EDA failed to comply with the applicable statute and regulations and improperly awarded \$179 million in incentives; and

WHEREAS, the State Comptroller's audit further found that numerous recipients hired employees at the end of the annual reporting period, indicating that their job creation or retention numbers were artificially inflated; and

WHEREAS, it is plainly unacceptable that billions of dollars in taxpayer money were awarded to companies based on promises of job creation and retention that often did not materialize; and

WHEREAS, legislators, advocacy groups, and numerous observers have all voiced their outrage that the EDA did not have proper enforcement mechanisms in place; and

WHEREAS, while the State Comptroller's audit has demonstrated the deficiencies in the EDA's tax incentive programs, the taxpayers of New Jersey deserve a thorough explanation of how and why these tax incentive programs operated with minimal oversight and accountability; and

WHEREAS, with the Grow NJ and Economic Redevelopment and Growth ("ERG") programs scheduled to expire on July 1, 2019, a public accounting of the decisions regarding the operation of these tax incentive programs will help inform lawmakers in their deliberations about whether and in what form these programs should be renewed, and what types of controls are needed both in the law and in practice;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Task Force on EDA's Tax Incentives (the "Task Force"). The mission of the Task Force shall be to conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and ERG, including those identified in the State Comptroller's performance audit, to inform consideration regarding the planning, development and execution of any future iterations of these or similar tax incentive programs.

2. The Task Force will hold public hearings and shall ask individuals to testify who can provide insight into the design, implementation, and oversight of these programs.

3. The Task Force shall be led by a chairperson, who shall be appointed by and serve at the pleasure of the Governor. The Governor may appoint additional members to the Task Force as needed, who shall also serve at the pleasure of the Governor. The chairperson and any additional members of the Task Force shall serve without compensation.

4. The Task Force is authorized to call upon any department, office, division or agency of this State to supply it with data and any other information or assistance available to such agency as the Task Force deems necessary to execute its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the Task Force within the limits of its statutory authority and to furnish it with such assistance on as timely a basis as is necessary to accomplish the purpose of this Order. Requests for legal assistance by the Task Force shall be made to the Attorney General upon the determination of the chairperson.

5. The Task Force shall seek to obtain voluntary cooperation from any individuals or entities who have access to information pertinent to the Task Force's mission. If the Task Force encounters individuals or entities who refuse to cooperate, it may refer the matter to the State Comptroller, which may exercise its subpoena authority, or to the EDA, which may exercise its authority to compel information from recipients pursuant to the terms of the incentive programs and grants.

6. The Task Force, which shall be purely advisory in nature, shall report its findings to the Governor and the Legislature as appropriate.

7. This Order shall take effect immediately.

GIVEN, under my hand and seal this  
24<sup>th</sup> day of January,  
Two Thousand and Nineteen,  
and of the Independence of  
the United States, the Two  
Hundred and Forty-Third.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor



## State of New Jersey

OFFICE OF THE GOVERNOR

P.O. Box 001

TRENTON, NJ 08625-0001

PHILIP D. MURPHY  
Governor

March 22, 2019

Mr. Ronald K. Chen



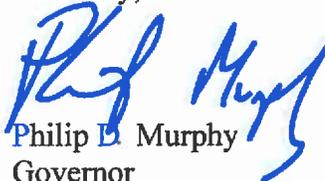
Dear Mr. Chen:

As you are aware, on January 24, 2019, I signed Executive Order Number 52, which established the Task Force on the Economic Development Authority's (EDA) Tax Incentives (the "Task Force"). On that same day, I appointed you to serve as Chair of the Task Force. The Task Force's mission is to "conduct an in-depth examination of the deficiencies in design, implementation, and oversight" of the GROW NJ and Economic Redevelopment and Growth (ERG) tax incentive programs, both of which are administered by the EDA.

The EDA is a public body corporate and politic established in, but not of, the Department of Treasury and is an instrumentality of the State exercising public and essential governmental functions. *See N.J.S.A. § 34:1B-4(a)*. As Governor, I am authorized to personally investigate or to appoint one or more persons to investigate the management and affairs of instrumentalities of the state, such as the EDA. *See N.J.S.A. § 52:15-7*. In furtherance of such an investigation, both I and any of my designated appointees are empowered to "subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material." *Id.*

In addition to your duties as Chair of the Task Force, I am hereby appointing you, pursuant to *N.J.S.A. § 52:15-7*, to examine and investigate the management and affairs of the EDA, and the management by any State officer of the affairs of the EDA, relating to New Jersey's tax incentive programs. You are hereby authorized to perform all of the functions of a duly authorized representative of the Governor pursuant to *N.J.S.A. § 52:15-7*, and to make the results of your investigation and examination available to me, my staff, and/or the Task Force at an appropriate time, consistent with applicable law.

Sincerely,

  
Philip D. Murphy  
Governor

# EXHIBIT G



Christopher Porrino  
Partner

One Lowenstein Drive  
Roseland, New Jersey 07068

T: 973.597.6314  
F: 973.597.6315  
E: cporrino@lowenstein.com

April 29, 2019

*VIA EMAIL (jwalden@wmhlaw.com)*

Jim Walden, Esq.  
Walden Macht & Haran LLP  
One Battery Park Plaza  
New York, NY 10004

**Re: Task Force on EDA's Tax Incentives (the "Task Force")**

Dear Mr. Walden:

We represent Conner Strong & Buckelew Companies, LLC (the "Company"). I write in response to your firm's letter and subpoena bearing dates of April 17, 2019 (the "Subpoena") and served on April 18, 2019. The Subpoena seeks documents pertaining to "a potential alternative business location in the building located at 1601 Market Street, Philadelphia, Pennsylvania 19103."

The Company is proud to have made the decision to invest in Camden and has assiduously adhered to the statutory and regulatory requirements of the Grow NJ program. I trust that you will glean as much from the documents already in possession of the New Jersey Economic Development Authority ("NJEDA"), to which we expect you have access. If you do not have access to those documents and wish to review them in our offices with appropriate protections for confidentiality, we would be glad to discuss making them available to you.

Based in part on the Company's approval of its tax credit application under the Grow NJ program, which approval was granted on March 24, 2017, and in good faith reliance upon the NJEDA actions taken then and subsequently, the Company and its co-tenants have invested approximately \$250,000,000 in the construction of the Company's headquarters building. The headquarters building project was entirely funded privately. The Company has not yet received any tax credit grants from NJEDA and does not expect to receive the first of any such grants until it files its project completion certification, the project completion certification is approved, the tax credit certificate is issued, and the Company files its annual report in the year following the issuance of the tax credit certificate. The tax credits will be issued over a ten-year period if the Company maintains the jobs at the facility in each of the ten years.

Given the Company's longstanding cooperation with the NJEDA and the Company's commitment to fulfilling its agreement with the NJEDA, it was surprised to receive an expansive subpoena for documents from the Task Force. In this regard, the Company is concerned that service of the Subpoena contravenes paragraph 5 of Executive Order No. 52, which states that the Task Force first "shall seek voluntary cooperation" from entities with access to pertinent information, and that the Task Force may only seek that subpoenas be issued

April 29, 2019

Page 2

to “entities who refuse to cooperate.” The only communication from the Task Force to the Company prior to the issuance of the Subpoena was a document retention letter sent from the Task Force to the Company. Kindly confirm whether the Task Force sought voluntary cooperation from the Company prior to the issuance of the Subpoena, whether the Task Force has determined that the Company has “refuse[d] to cooperate” with the Task Force’s investigation, and if so, what criteria the Task Force applied to reach that determination.

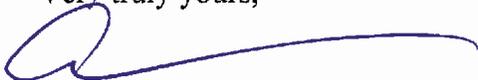
Second, we are hoping that you might explain the legal basis for the requests in the Subpoena that go far beyond the management and affairs of the NJEDA. The Subpoena seeks some information that was not (and should not have been) in the files of the NJEDA, and it seeks that information from a private, non-governmental party. These requests include information about site visits to potential alternative business locations, business plans about how those locations would be used, and internal analyses about the suitability and costs attendant to those alternative business locations. It is difficult for us to discern how information and documents that NJEDA never possessed or requested would inform an investigation into “the management and affairs of the [NJEDA]” and “the management by any State officer of the affairs of the [NJEDA].” We are also concerned that the requests explicitly seek privileged information and communications between, among others, the Company and its attorneys.

Third, the Governor’s March 22, 2019 letter of appointment to Ronald K. Chen describes NJEDA as an “instrumentality of the State.” While we appreciate that general categorization, the statute under which the Subpoena was issued only authorizes the Governor to appoint a representative to investigate the management or affairs of a “department, board, bureau, or commission of the State.” N.J.S.A. 52:15-7. We would be grateful if you would identify whether the NJEDA is, in the view of the Task Force or Mr. Chen, a department, board, bureau, or commission of the State, and its basis for that determination.

We look forward to hearing from you so that we might find a path for mutual cooperation, consistent with the law and the terms that authorized the formation of the Task Force.

The Company expressly reserve all rights, privileges, and arguments in response to the Subpoena.

Very truly yours,



Christopher Porrino

# EXHIBIT H

# Walden Macht & Haran LLP

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W | M | H

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 1, 2019

**VIA EMAIL**

George E. Norcross III  
Conner Strong & Buckelew  
401 NJ-73 #300  
Marlton, NJ 08053, USA  
gnorcross@connerstrong.com

Re: Public Hearing

Dear Mr. Norcross:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") to inform you that the second day of the multi-day Public Hearing of the Task Force will take place on May 2, 2019, at 10:00 a.m. at Rutgers Law School, located at 123 Washington Street, Newark, New Jersey (the "Public Hearing"). As part of the second day of the Public Hearing, the Task Force will call certain witnesses to participate and testify. Some witnesses will testify voluntarily while others will appear subject to subpoenas issued by the Task Force Chairman, Professor Ronald K. Chen, pursuant to the authority delegated to him by Governor Philip D. Murphy under N.J.S.A. § 52:15-7.

I also write to advise you that information about you may be offered at the Task Force's upcoming Public Hearing. If you believe this information is adverse to your interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that you will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence you believe to be adverse to your interests. *Id.* Accordingly, if you wish to avail yourself of this process, you must: (1) notify the Task Force by Friday, May 10, 2019 of your intention to submit a notarized, sworn statement; and (2) submit an original of your notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business:

Walden Macht & Haran LLP  
One Battery Park Plaza, 34th Floor  
New York, New York 10004

Should you have any questions, please contact me at the number or email address below.

Sincerely,

/s/ Jim Walden

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# Walden Macht & Haran LLP

---

W | M | H

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 1, 2019

**VIA EMAIL**

Christopher Porrino, Esq.  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068  
cporrino@lowenstein.com

Re: Public Hearing

Dear Mr. Porrino:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") to inform you that the second day of the multi-day Public Hearing of the Task Force will take place on May 2, 2019, at 10:00 a.m. at Rutgers Law School, located at 123 Washington Street, Newark, New Jersey (the "Public Hearing"). As part of the second day of the Public Hearing, the Task Force will call certain witnesses to participate and testify. Some witnesses will testify voluntarily while others will appear subject to subpoenas issued by the Task Force Chairman, Professor Ronald K. Chen, pursuant to the authority delegated to him by Governor Philip D. Murphy under N.J.S.A. § 52:15-7.

I also write to advise you that information about The Cooper Health System (the "Company") may be offered at the Task Force's upcoming Public Hearing. If the Company believes this information is adverse to its interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that the Company will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence the Company believes to be adverse to its interests. *Id.* Accordingly, if the Company wishes to avail itself of this process, the Company must: (1) notify the Task Force by Friday, May 10, 2019 of its intention to submit a notarized, sworn statement; and (2) submit an original of its notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business:

Walden Macht & Haran LLP  
One Battery Park Plaza, 34th Floor  
New York, New York 10004

Should you have any questions, please contact me at the number or email address below.

Sincerely,

*/s/ Jim Walden*

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# Walden Macht & Haran LLP

---

W | M | H

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 1, 2019

**VIA EMAIL**

Christopher Porrino, Esq.  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068  
cporrino@lowenstein.com

Re: Public Hearing

Dear Mr. Porrino:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") to inform you that the second day of the multi-day Public Hearing of the Task Force will take place on May 2, 2019, at 10:00 a.m. at Rutgers Law School, located at 123 Washington Street, Newark, New Jersey (the "Public Hearing"). As part of the second day of the Public Hearing, the Task Force will call certain witnesses to participate and testify. Some witnesses will testify voluntarily while others will appear subject to subpoenas issued by the Task Force Chairman, Professor Ronald K. Chen, pursuant to the authority delegated to him by Governor Philip D. Murphy under N.J.S.A. § 52:15-7.

I also write to advise you that information about NFI, L.P. (the "Company") may be offered at the Task Force's upcoming Public Hearing. If the Company believes this information is adverse to its interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that the Company will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence the Company believes to be adverse to its interests. *Id.* Accordingly, if the Company wishes to avail itself of this process, the Company must: (1) notify the Task Force by Friday, May 10, 2019 of its intention to submit a notarized, sworn statement; and (2) submit an original of its notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business:

Walden Macht & Haran LLP  
One Battery Park Plaza, 34th Floor  
New York, New York 10004

Should you have any questions, please contact me at the number or email address below.

Sincerely,

/s/ Jim Walden

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# Walden Macht & Haran LLP

---

WMH

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 1, 2019

**VIA EMAIL**

Christopher Porrino, Esq.  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068  
cporrino@lowenstein.com

Re: Public Hearing

Dear Mr. Porrino:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") to inform you that the second day of the multi-day Public Hearing of the Task Force will take place on May 2, 2019, at 10:00 a.m. at Rutgers Law School, located at 123 Washington Street, Newark, New Jersey (the "Public Hearing"). As part of the second day of the Public Hearing, the Task Force will call certain witnesses to participate and testify. Some witnesses will testify voluntarily while others will appear subject to subpoenas issued by the Task Force Chairman, Professor Ronald K. Chen, pursuant to the authority delegated to him by Governor Philip D. Murphy under N.J.S.A. § 52:15-7.

I also write to advise you that information about The Michaels Organization, LLC (the "Company") may be offered at the Task Force's upcoming Public Hearing. If the Company believes this information is adverse to its interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that the Company will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence the Company believes to be adverse to its interests. *Id.* Accordingly, if the Company wishes to avail itself of this process, the Company must: (1) notify the Task Force by Friday, May 10, 2019 of its intention to submit a notarized, sworn statement; and (2) submit an original of its notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business:

Walden Macht & Haran LLP  
One Battery Park Plaza, 34th Floor  
New York, New York 10004

Should you have any questions, please contact me at the number or email address below.

Sincerely,

*/s/ Jim Walden*

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# Walden Macht & Haran LLP

---

WMH

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 1, 2019

**VIA EMAIL**

Christopher Porrino, Esq.  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068  
cporrino@lowenstein.com

Re: Public Hearing

Dear Mr. Porrino:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") to inform you that the second day of the multi-day Public Hearing of the Task Force will take place on May 2, 2019, at 10:00 a.m. at Rutgers Law School, located at 123 Washington Street, Newark, New Jersey (the "Public Hearing"). As part of the second day of the Public Hearing, the Task Force will call certain witnesses to participate and testify. Some witnesses will testify voluntarily while others will appear subject to subpoenas issued by the Task Force Chairman, Professor Ronald K. Chen, pursuant to the authority delegated to him by Governor Philip D. Murphy under N.J.S.A. § 52:15-7.

I also write to advise you that information about Conner Strong & Buckelew Companies, LLC (the "Company") may be offered at the Task Force's upcoming Public Hearing. If the Company believes this information is adverse to its interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that the Company will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence the Company believes to be adverse to its interests. *Id.* Accordingly, if the Company wishes to avail itself of this process, the Company must: (1) notify the Task Force by Friday, May 10, 2019 of its intention to submit a notarized, sworn statement; and (2) submit an original of its notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business:

Walden Macht & Haran LLP  
One Battery Park Plaza, 34th Floor  
New York, New York 10004

Should you have any questions, please contact me at the number or email address below.

Sincerely,

*/s/ Jim Walden*

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# Walden Macht & Haran LLP

---

W | M | H

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 1, 2019

**VIA EMAIL**

Philip A. Norcross, Esq.  
Parker McCay P.A.  
9000 Midatlantic Drive, Suite 300  
Mount Laurel, NJ 08054  
pnorcross@parkermccay.com

Re: Public Hearing

Dear Mr. Norcross:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") to inform you that the second day of the multi-day Public Hearing of the Task Force will take place on May 2, 2019, at 10:00 a.m. at Rutgers Law School, located at 123 Washington Street, Newark, New Jersey (the "Public Hearing"). As part of the second day of the Public Hearing, the Task Force will call certain witnesses to participate and testify. Some witnesses will testify voluntarily while others will appear subject to subpoenas issued by the Task Force Chairman, Professor Ronald K. Chen, pursuant to the authority delegated to him by Governor Philip D. Murphy under N.J.S.A. § 52:15-7.

I also write to advise you that information about you may be offered at the Task Force's upcoming Public Hearing. If you believe this information is adverse to your interests, upon notice of the same and in accordance with the New Jersey Investigative Procedures Act, Professor Chen has determined that you will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force's investigatory Public Hearing. *See* N.J.S.A. § 52:13E-6. This statement of facts must relate solely to matters relevant to any testimony or evidence you believe to be adverse to your interests. *Id.* Accordingly, if you wish to avail yourself of this process, you must: (1) notify the Task Force by Friday, May 10, 2019 of your intention to submit a notarized, sworn statement; and (2) submit an original of your notarized, sworn statement to my attention at the following address by no later than Friday, May 17, 2019, at the close of business:

Walden Macht & Haran LLP  
One Battery Park Plaza, 34th Floor  
New York, New York 10004

Should you have any questions, please contact me at the number or email address below.

Sincerely,

/s/ Jim Walden

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# EXHIBIT I



**Ronald Chen: [00:00:00]** Good morning everyone. My name is Ronald Chen. I am a professor here at Rutgers Law School. I want to welcome you all to the second public hearing held by the New Jersey Governor's Task Force on the Economic Development Authorities tax incentives. As most of you already know, Governor Philip Murphy issued Executive Order Number 52 on January 24, 2019, which established the task force. I've been appointed to lead the task forces chair and carry out its mission to conduct an in-depth examination of the design implementation and oversight of two Tax Incentive Programs.

Before I further explain our mission and goals, let me reintroduce the members of my team. I'm being assisted in this task by a special counsel, Walden, Macht, and Haran. Jim Walden is leading the team to your right and he is being assisted by a Georgia Winston, Milton Williams, and Avni Patel. We also have sitting to my right Pablo Quiñones of Quinones Law serving the special counsel and providing corporate compliance expertise to the team.

I explained the background leading up to our work and our first public hearing on March 28, so I will not repeat those remarks here. Before and after that hearing, our team has been hard at work. Thankfully, the cooperation we are getting from most parties we've contacted has been robust. At the last chairing I announced my decision to offer an Accelerated Recertification Program for companies, which I will refer to as the ARP and which is not in any way related to EDAs own annual recertification program. Companies can elect to participate in the ARP if they believe (a) they applied for tax incentives in good faith and (b), they are in **[00:02:00]** compliance with the program requirements.

By providing timely and complete cooperation the company will benefit from an accelerated determination from the task force about his compliance with the requirements of the Tax Incentive Programs. Companies will not be eligible to participate in the ARP process, however, if we have information suggesting either potential misconduct or other significant irregularity that requires a deeper investigation, and that is true thus far of approximately nine companies, which we have identified as entities of concern. I will come back to that in a moment.

To streamline the ARP I have approved the recertification process that will culminate in the company submitting to the task force and affidavit scoring to certain facts and attaching detailed verified information to prove their compliance and good faith. The affidavit and documentation goes well beyond what the EDA typically requires for both programs. During the ARP process, the special counsel team led by Pablo will evaluate and investigate the information and then make a recommendation as to how to proceed with each individual company. I'll review the recommendation and either conclude our investigation of that company director further investigation by the special counsel or take other appropriate steps depending on the information received by the task force. To date, 841 eligible companies have elected to participate in the ARP, not every company who got AGLO or Yerger Ward, which the two programs at issue have done so for all those companies, not in the ARP, I plan



to conduct a thorough investigation of their awards. For companies who refuse to cooperate with the investigation, two things will happen, I will issue a subpoena for the documents and I will request that the EDA determine whether failure to cooperate in our probe runs afoul of regulatory or contractual requirements.

Today's [00:04:00] hearing will focus on a few topics but mainly we plan to present witnesses relevant to EDA's oversight of the Tax Incentive Programs in a moment. Jim Walden will explain what we hope to accomplish today as we have many witnesses but I would like to note one difference between this hearing and the last one. At the last hearing, we opted against naming specific companies and individuals in part based on fairness concerns and in part because we were at the very beginning of our work. For some companies, we are still digging into the facts. For others, we know much more. We have secured very important documents and corroboration from cooperating witnesses which have helped us better understand some of the critical problems with some of these applications and some have commented including members of the legislature that the public has a right to know more information about what we are finding as we investigate. That is a fair point.

Executive order 52 requires us to hold public hearings and part of the purpose of such hearing is to promote transparency about the design implementation and oversight of the EDA programs and the fact remains that much of the information we will be outlining to you today is either available through public record requests or through online searches. Thus, I've decided that we should in today's proceedings provide certain names as part of the public record to the extent that any entity or individual might be adversely portrayed we've endeavored to notify them in advance although we're not required to and we will give them the opportunities to submit a sworn statement with relevant facts which we'll read at the next day of are proceeding.

I want to further caution here that we are only a few months into our investigation after an initial ramp-up period so even adverse inferences we may [00:06:00] elicit maybe tempered or rebutted by other evidence we may find later. This is a hearing. It's not a trial. In other words, although our mandate requires public hearings everyone should expect us to follow the facts wherever they may lead us as we undertake our investigation which goes well beyond the public portion of our work. Before I pass the microphone to Jim, I also want to thank the EDA for its robust cooperation. Their outside counsel has been diligent, helpful and timely in addressing our many requests for documents and information. The EDA's staff has been very helpful to us and candid with us in interviews. While our work does require us to examine its past practices, we are heartened by their recognition of the room for improvement and by the professional dedication of their employees. With that introduction, I would like to call on Jim Walden to describe the testimony we plan to elicit at today's hearing.

**Jim Walden:** Thanks very much [inaudible 00:07:05] make. I just want to say thanks in advance to a great team that's been working really hard altogether. At the



first hearing, I emphasized the critical importance of people coming forward to disclose wrongdoing. As you alluded to a couple of moments ago many people have heeded that request. Some have disclosed, in large ways and small, evidence of potential corruption and self-dealing and arguable illegal activity. Now, I caveat those statements with the words potential and arguable because at the end of the day we do not intend to base any conclusions that Professor Chen will make based only on confidential sources although they are a critical first step in finding other evidence to substantiate the claims. I suspect today **[00:08:00]** that you're going to hear about a number of different topics. As in the last hearing, we will hear from a whistleblower about alleged misconduct within one company. I have a caveat about that in a moment. We will also hear from some current and some former EDA employees. We plan with these witnesses to focus on a couple of things but, in particular, on one topic that is both important and granular. I apologize in advance that what I'm about to say is going to get a little wonky. You can't really talk about tax incentives without getting wonky at some point.

For businesses desiring tax incentives one object of this program that is referred to as grow New Jersey was to protect jobs in New Jersey that were at risk of leaving the state. Now whether program applicants actually retained the jobs that they promised is not going to be a subject of today's hearing but will be a subject of another hearing later on. For companies with projects all over the state, the statute and the implementing regulations seem abundantly clear that if you are going to retain jobs in the state, you must show that you're actually considering a location out of the state meaning that you have an out-of-state location that is bona fide, suitable and available for your business. We're going to hear from one witness today who's going to talk about the extent of diligence that a company needs to do in order to show that a location was those three things, available, suitable and bona fide.

Now, there is one wrinkle and one nuance when it comes to jobs that were before Agro-application in New Jersey, but they were moving specifically to Camden **[00:10:00]** It's that wrinkle that we're going to explore in some detail through two of the witnesses today. Now, this is an important issue for jobs that are already in New Jersey and they're moving the Camden. Do you have to prove that there's an out-of-state location? What we found is that there's evidence of two schools of thought within the EDA itself on these. Those perspectives may not have been well known throughout the organization.

First, some of the people that we've interviewed and you're going to hear from one of them today. Have said that, "As the program was administered by the EDA, that EDAH 2013 required every applicant including those moving jobs to Camden from another city in New Jersey to demonstrate that the jobs were at risk of leaving the state. They couldn't get tax credits if they didn't prove that. According to this view, if the applicant couldn't show a location that was bona fide, suitable and available, they may not qualify for tax credits.



Others within the EDA however, and you'll hear from one of those people today as well, believe that applicants promising to move jobs from another location in New York to Camden were not actually required by the statute to show that they were considering a location out-of-state. It was just the move to Camden was enough. Those same witnesses though seem to suggest that there may not be a practical difference because of something that's called the net benefit test. Under this thing called the net benefit test and I'll try not to get too wonky here. Basically, the statute required a showing that you only get the money if the application over the years is a net benefit to the state and under that test, if you're moving jobs from say, Jersey City [00:12:00] to Camden, it's a statewide test so there's no net benefit to that move from the perspective of the statute and, therefore, you'd get a much lower award. To be clear, in-state move means no net benefit for the job transfer. The headcount associated with that would get reduced from any award that you get and that could be very significant.

Now for what it's worth on that last point about the net benefit test, we have found some evidence that at least one important consultant who handled many applications was giving the same advice to program applicants. They had the same understanding that if you're moving jobs within the state you don't get any money for those jobs. You don't get credit for those routine jobs. This memo is from a very reputable company called Biggins Lacy Shapiro & Company. It's dated February 25th, 2015 and this is the wonkiest part of what I'm going to say so I apologize for it but I think it's important that the record reflect this because it is some objective indicator that whether or not the statute required a showing of an out-of-state location for those companies that said they were considering a location out-of-state, it was really material. It was a material representation because it impacted the dollars in a significant way.

Let me read this language. "The most important source of such net benefit is the stimulus resulting from the payroll associated with the jobs based on the proposed project site. As the net benefits analysis is intended to measure the incremental new revenue generated by the project, the state includes the payroll associated with net new jobs created in the state. If applicable," here's the relevant part, "the state will also include payroll from [00:14:00] existing New Jersey jobs, but only if the company can demonstrate that existing jobs are at risk of leaving the state, i.e retaining jobs that otherwise would have left the state is accorded comparable economic and fiscal impact as creating new jobs."

Why does all this matter? First of all, qualifying and disqualifying requirements of a multi-billion dollar tax program should be clear. They should be clear such that they can properly be understood by businesses and enforced by whatever authority is responsible for vetting the applications and enforcing the rules. Second, if there was an ambiguity in the statute, and by the way, we're not taking a position on that we don't necessarily agree that the statute is ambiguous on this. The EDA as the administering agency really should have one interpretation, not two. Now, we cannot yet explain why people working within the EDA had differing perspectives on



program requirements concerning this issue of jobs moving within the state but to Camden. Either way, our investigation is clear to date based on the available evidence, that other than one exception that I'll explain in a moment, every single applicant promising to move jobs from within New Jersey to Camden, actually certified that they were considering an out-of-state location anyway, and the one exception was a company that said they were going to eliminate the jobs entirely and that qualifies under a different part of the statute. Put it another way, for any company seeking to retain jobs in New Jersey that wasn't going to eliminate those jobs, every single application included an out-of-state location to show that those jobs were at risk of leaving the state. Obviously, these [00:16:00] applications are submitted under penalties if there is a representation that was made in the applications and it turns out that that representation is false. The grants are subject to suspension, termination, recapture, and there's the potential of criminal enforcement.

I don't want to make too much of this we are at a very early stage of our proceedings and I'm not suggesting that will happen. I do think it's important for people that are going to apply to the program that they understand the law on this area a little bit and for that purpose, I'd like to turn to Pablo Quiñones.

**Pablo Quiñones:** Thank you, Jim. Thank you, Professor Chen. We don't want to make too much of this point, but as a criminal or practitioner both as a professor and an attorney in this area, I do think it's worth making it plain to the public that there is real criminal exposure for companies that lied to the EDA and thereby deprived New Jersey of tax revenue. Several cases applying Federal mail and wire fraud statutes. Hope to explain my point. Federal law makes it a crime for anyone to use a mail or interstate wires to devise a scheme to defraud or to obtain money or property by false or fraudulent pretenses. Title 18 United States code section 1341 is a mail fraud statute and section 1343 is the wire fraud statute. Now, the Supreme Court has addressed taxes in this particular context in a case called *In Pasquantino v. United States*. Where the court held that the right to collect taxes is money or property protected by the mail and wire fraud statutes. The court found that tax evasion inflicts an economic injury no less than embezzling funds from the government's Treasury. New Jersey Federal cases have followed this approach, for example, [00:18:00] the third circuit in a case called *US vs USIF* found that unpaid taxes which are unlawfully retained by mailing fraudulent tax returns that conceal the amount of tax revenue due may be considered criminal proceeds subject to the federal money laundering laws. Finally, in August of 2018, a case from the US court of appeal for the fifth circuit makes a point more clearly in connection with tax credits.

In *Hoffman*, the court upheld a fraud conviction that involved the defendant who schemed to get Louisiana tax credits by submitting false documents to the state. The court found that tax credits reduced the dollars otherwise owed to the state and lying to obtain them has the same effect as lying to evade taxes. The state collects less money. Some companies that lie to obtain tax breaks from New Jersey have hurt



New Jersey's economy and potentially committed a serious crime. With that, I'd like to return the floor to Jim.

**Jim:** Thank you, Pablo. First of all, for anyone who wants it, there is a handout here on this table that has a listing and this is all publicly available information that lists every company that has-- The 31 companies that I mentioned before. Companies that 30 of them were moving jobs in States to Camden. One of them was planning to eliminate jobs before the tax credits. To underscore Pablo's point, we very carefully looked at the EDA vote approval memos which is what is submitted to the EDA board when a vote is being requested of the board members to award these tax credits. As you all know I'm sure at this point, the amount of dollars is considerable and for the jobs moving to Camden [00:20:00] we're talking over a billion dollars. You'll see in the handout that in each and every circumstance, for every single one of these board memos, there is a statement in the board memo that says words to the effect that these jobs were at risk of leaving the state and on that basis, the board is asked to approve.

That just underscores the point that these are clearly a material representation, the EDA viewed it as material. They included it in the board members and the board memos and the board relied on those assertions in awarding the tax credits that they did. Understand as well that these weren't just simple representations by the company as the program was being administered, the EDA required some proof that the company had identified an out-of-state location that was bona fide, suitable and available and we're going to hear a little bit about that today. In doing that, we're going to take a look at four applications where companies claim to have an out-of-state location to demonstrate their jobs were at risk. I want us all to be very, very careful about how we consider this evidence. EO52 requires us to do some of our fact-finding in public so there's no choice about that. We're going to be as responsible and careful and moderate as one can imagine in doing it.

Understand we're going to put before you factual information. We are not drawing any conclusions today. We are not directly or indirectly insinuating that anyone broke the law. What we're trying to do is to figure out the level of diligence that was applied to these and that's what you're getting here today. You're going to hear essentially an expert witness from the EDA [00:22:00] who oversees this group of people that's called the Underwriters and they're the ones that are the primary group of people that vet the applications. He's reviewed files that he did not work on it at the time and we're going to put factual information into the record. He's going to give his perspective on whether or not more questions should have been asked, and then we're going to move on. It very well may be that when we talked to the companies about these, they have additional information that allays any concern. Again, the point here is not so much about what the companies did or didn't do but the EDA management and vetting of these applications which is where we're trying to focus.

With all that being said, let me just talk about the line up here.



At a high level, as you've heard him on the first day of our proceedings, there was a whistleblower. The whistleblower filed a lawsuit and that lawsuit had a number of different allegations. Again, caution here. We want to be careful. We're not saying the whistleblower was telling the truth or not. In a sense, it's not relevant. What's relevant is that there were some very specific allegations that were made about misconduct concerning specific awards.

That was something that could be investigated. Whether it turned out that that investigation yielded information that collaborated or undercut the allegations for any organization you learn from any experience and it was an opportunity for the EDA to increase its level of scrutiny, particularly over this idea of phantom locations and require additional diligence and articulate some clear rules about what business records company had to had to submit in addition [00:24:00] to a draft lease or a lease proposal for the out-of-state location.

That's by way of broad context what we're going to get to today. We're also going to hear from a witness who was aware of the way in which the legislation came to be, and the various individuals that were involved in that legislation, and whoever else was involved in it. We're really going to focus on the involvement of one specific individual at a firm called Parker McCay. That's broadly what you're going to hear today. The way we're going to frame that is as follows:

First, we're going to start off with my colleague, Jen Prevedy. For those of you who did not follow this whistleblower case that actually went to trial, Jen's going to just give people a high-level presentation of the case, how it was resolved, and what the key allegations were. Again, we have not yet investigated those things ourselves given the focus that we've had on these based on confidential sources. For that reason, she's not going to mention the names of the companies that were the subject of the allegations. She's just going to describe the allegations, so Jen Prevedy is first.

Then we're going to hear from Fred Cole. For those of you who were at the first day of our proceedings, you remember Mr. Cole's name. Mr. Cole was actually deposed during the Sucsuz, the case brought by a man named David Sucsuz. Mr. Cole was deposed. Mr. Cole actually had been the person that originally investigated his discrimination case before he made the claims of misconduct in a lawsuit, and ultimately, that lawsuit was going on when the comptroller started his audit at Governor Murphy's direction back in January of 2018.

You'll recall [00:26:00] that there was a specific letter that Cole signed indicating that there was no litigation where former employees were accusing the EDA of any sort of misconduct or fraud. Mr. Cole certified that there wasn't one even though the lawsuit with those allegations was pending at the time. The comptroller, as you remember, testified he had no idea about this lawsuit during the course of his audit. We're going to hear from Mr. Cole and get the explanation as to why that happened.



Next, we're going to hear from a man named John Boyd, who's at a company called The Boyd Company, a corporate site selection firm based in Princeton, New Jersey. Mr. Boyd will explain the procedures, processes, and analysis that companies typically use when making the important decisions of whether to repeat, locate and where to relocate their offices or facilities, and the seriousness with which they need to take that decision. Excuse me for a second.

Next, we will hear from a man named David Lawyer who is an EDA employee. He is actually the manager of the underwriting section. As I said before, he only became the manager of the underwriting section in May of 2017. For the period where at least we are focusing right now, everybody understands, I'm sure, that given the nature of our work we're focusing right now on the issues that we were talking to you about today. Behind the scenes, we're focusing on a much broader picture. As we get further along in our work, we will bring more information forward. I suspect that Mr. Lawyer is going to be a very clear witness who's going to describe the process through which the EDA vets the applications or the way that it was administered **[00:28:00]** in the period between begin 2013 and 2017. He's going to talk about the specific issue of out-of-state locations. He's going to talk about the consideration things that go into asking additional questions. He's going to review, as I said before, four applications that he did not work on and guide us through what the process looks like based on the review of the file. The files are very complicated we're not going to be able to go through all the documents. He's gone through the files and we're going to give you an overview of his conclusions concerning those applications.

Now, you saw me there being distracted for a second because I made a mistake. It won't be the last time you will see me make a mistake. There is another witness that I didn't put in the order. That is either before or after Mr. Cole and that's the whistleblower that I referred to before. Her name is Kerrie-Ann Murray. Again because we have not investigated her claims, and because the company very vehemently denies them and they believe they have data. We don't have it yet but they believe they have data showing that her allegations are not correct. We're going to have to not identify her former employer. I ask everyone to understand this is not a trial as Chairman Chen said.

We are here under the executive order to make information that's brought to our attention known, not to draw conclusions about it and in fairness to everyone when we present information if we find later on that there is additional information that cast doubt on the credibility of some evidence that we have elicited, we'll either notify the public or call witnesses to the stand. We will hear from Ms. Murray.

After David Lawyer, we will then going to hear from the former CEO of the EDA a man named Tim Lizura. **[00:30:00]** We will ask Mr. Lizura about the role that the EDA played in drafting the legislation that was created in 2013 and we're going to ask him about a draft that's a pretty specific draft. It was a draft that was created and sent to him after the Assembly had already passed its version of the statute and as



the Senate was considering what changes to make. We're going to ask some very detailed questions about that version of the bill and how certain of the amendments were added and by whom and what his understanding because Mr. Lizura I think that you will conclude a very experienced and knowledgeable policy expert on tax incentives has been doing this or versions of this throughout much of his career. We're going to ask him about what the policy was behind some of these changes whether he agreed or disagreed with it. We hope to get his perspective.

Finally, we're going to hear from Brandon McCoy of the Center on Budget and Policy and he's going to offer us his perspectives on the involvement of a private law firm representing clients in the legislative process and the in which a bill was created in this specific instance with respect to the Economic Opportunity Act of 2013. As you can see we're going to try to keep breaks to a minimum today because it will be it will take quite a bit of effort for us to stay focused enough to be able to get through all of these witnesses between now and five o'clock, which is our hope. Thank you and let me return the proceedings to the chair.

**Ronald:** As Mr. Walden has said, [00:32:00] [inaudible 00:32:03]

**Jen Prevedy:** Thank you, Professor Chen. I would like to introduce this presentation into the record as passports Exhibit 2. As you heard and saw in the first day of this hearing and as Professor Chen just mentioned, whistleblowers play an integral role in the investigative process. For those of you who are not present at the first day of the task force's hearing. We showed a brief timeline of a whistleblower complaint that had been lodged by a former EDA employee. Today I will be walking through some of those whistleblower allegations made by this former EDA employee who had worked on the Tax Incentive Programs at the focus of the task force's inquiry. This whistleblower, Veyis David Sucsuz, alleged that he had witnessed a misconduct in connection with the Incentives Program approvals, and was fired when he resisted directives from senior management to alter or promote applications that should have otherwise been rejected. This information described in this presentation consists of what we know from Mr. Sucsuz's lawsuit, and we emphasize that they remain allegations at this time.

To provide some background about Mr. Sucsuz, he was an employee with the EDA for over 10 years. He started as a legal assistant in the Lending Services Division and then became a Finance Officer with the EDA's Bonds and Incentives Division. After that, his title changed to Underwriter. As a Finance Officer, and later as an Underwriter, Mr. Sucsuz's primary responsibilities included reviewing applications submitted to the EDA under its various Funding and Incentive Program, addressing project summaries for those applications, [00:34:00] and presenting the applications at Project Review meetings and Incentive Committee meetings.

In the context of the lawsuits, Mr. Sucsuz certified under oath that he was also responsible for understanding the provisions of the applicable program statutes and regulations that governed the Funding and Incentive Program, and was responsible for ensuring that program applicants met the qualifications required by law. Mr. File name: Task Force on EDAs Tax Incentives Holds Second Public Hearing



Sucsuz filed an internal complaint with EDA on May 21, 2014. He was terminated on September 24, 2014.

Mr. Sucsuz filed his lawsuit on May 11, 2015, in New Jersey Superior Court, Mercer County, against the New Jersey Economic Development Authority and several EDA employees. He alleged discrimination and unlawful termination based on violation of New Jersey's Conscientious Employee Protection Act and based on discrimination. In addition to his claims of unlawful termination and discrimination, Mr. Sucsuz alleged various violations of EDA policies, regulations, and statutory requirements in connection with EDA Tax Incentive and Finance Program.

As we reviewed on the first day of our proceeding, after Mr. Sucsuz filed his complaint, various senior leadership team members of the EDA, as well as Mr. Sucsuz, were deposed in 2017 and early 2018. The last of these depositions took place on January 26, 2018. The case ultimately went through a jury trial, which started on April 30th, 2018 and lasted eight days. The jury announced its verdict on May 10th. **[00:36:00]** While Mr. Sucsuz did not ultimately succeed on his retaliation claim, the jury unanimously found that he had proven his whistleblower allegations via a preponderance of the evidence with respect to his claim under the New Jersey's Conscientious Employee Protection Act. In connection with that finding, the jury concluded 6-0 that Mr. Sucsuz had proven via a preponderance of the evidence, that he had a reasonable belief that the New Jersey Economic Development Authority had violated a law, rule or regulation in the processing of applications for loan grants and tax incentives.

Mr. Sucsuz alleged that during his tenure as an Underwriter in the Bonds and Incentives Division of the EDA between September 2011 and September 2014, members of the EDA management team had instructed him to falsify various grant and tax incentive applications in violation of rules and regulations for grant and tax incentive funding. I will now walk you through some of Mr. Sucsuz's allegations of misconduct related to the administration of the Tax Incentive Programs.

These include allegations of companies providing phantom alternative locations, allegations of manipulative cost input and allegations of falsified job figures. I will also briefly describe some of Mr. Sucsuz's allegations and some of the testimonies related to external pressures on EDA employees. Mr. Sucsuz alleged that the EDA requires applicants to demonstrate that the alternative and competing out-of-state locations are legitimate and comparable to the New Jersey site as part of the material factor requirement for certain of the Tax Incentive Programs.

It is a requirement of the Grow New Jersey grant that an applicant **[00:38:00]** is deciding between a legitimate alternative location and a New Jersey location that the company seeks to be the subject of the Grow NJ grant. Mr. Sucsuz alleged that in connection with this requirement, he notified EDA management that the competing out-of-state locations just were not real. He further alleged senior management took no action in response to his concerns and the applications of companies was apparently phantom alternative locations were approved anyway. Mr. Sucsuz gave

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several examples of specific project application that allegedly involved what he referred to as these phantom locations.

For Company A, Mr. Sucsuz testified that one applicant's proposed alternate location appeared not to be real because it was provided after the EDA had asked for it and it didn't seem to be comparable to the location in New Jersey in numerous ways. Including differences with the sites dimensions and certain issues with accessibility which was relevant because the management of the company would be traveling to the location. Mr. Sucsuz testified that another company seemed to be relying on a phantom alternative location because it had already moved in to a New Jersey location and was even hiring for this new site prior to submitting an application for a Grow NJ tax incentive grant. Mr. Sucsuz further testified that the alternate location provided was at a site where the company already had offices. He alleged that reported his concerns to EDA management but that nobody took any action.

With respect to a third application, Mr Sucsuz testified that the applicant was already in New Jersey, but wanted to move to a different part of the States. The company identified an ultimate location in North or South [00:40:00] Carolina. Mr. Sucsuz testified that because he could not conduct a site visit, he tried to find the alternate location through Google maps but was unable to do so based on the information provided by the applicant. When he raised this issue to his supervisor, he was told that since the applicant was a furniture company, he only needed to know that North and South Carolina were popular for furniture companies.

Mr. Sucsuz testified that another applicant had initially mentioned an alternate location in New York, but was unable to provide an address for that location and then claimed to have a second alternative location in Pennsylvania. He further testified that when the applicant submitted his application, he provided a city in Pennsylvania as the alternate location, but was unable to provide a specific address. Ultimately, after several requests, the company provided more information about these alternatives, but only after the application had been submitted. Mr Suesez suspected that the alternate location was fabricated for purposes of the application. Mr. Sucsuz also testified that it took much effort to obtain the information regarding the alternate location address, floor and term sheets noting that "this was a teeth pulling exercise."

Mr. Sucsuz further testified that another applicant provided a Pennsylvania location as part of its alternatives. He testified however, that the first proposed alternate location was not suitable because it did not fit the company's description and needs. The company then proposed a built-to-suit location, but did not provide any construction contract or other indicators. That's upon review of the second alternate location, Mr. Sucsuz determined that the alternate location was not suitable because the company would have to complete [00:42:00] if personal lives filled out in Pennsylvania within a year. Which seemed unlikely. Furthermore, Mr. Sucsuz testified that the company had already indicated its intention to extend in New Jersey. This application was also approved.



Mr. Sucsuz testified that in another incident an application lacked a material factor showing because of the phantom alternative site. He testified that the applicant failed to provide an alternate location at first and while they ultimately did provide an out-of-state location, he could not verify its existence and understood that they had already decided to move to a location within New Jersey. Mr. Sucsuz's supervisor testified that the application included some odds and ends that made it seem as though the company might have committed to moving to New Jersey already. Mr. Sucsuz's supervisor along with others and EDA management, visited this company's offices for due diligence purposes and his supervisor concluded that the company had already committed to staying in New Jersey. Nevertheless, the company's withdrawal application was approved. Although this company ultimately withdrew it from the programme and did not receive a tax credit, Mr. Sucsuz's supervisor testified that a deposition that it was an inadvertent **[unintelligible 00:43:24]** with that, that the application was approved.

Mr. Sucsuz alleged that there were other ways that the applicant manipulated their applications that EDA had overlooked. He testified that he was directed to alter or manipulate cost inputs for the cost-benefit analysis or the next benefit test in order to qualify a company that would not have otherwise qualified under the cost input the company provided. When he refused to alter the cost input, Mr. Sucsuz's supervisor would do it himself.

**[00:44:00]** Mr. Sucsuz alleged that when the net benefit analysis shows little or no economic benefits to New Jersey, his supervisor asked him to change the inputs to the calculation to make it show a benefit, When Mr. Sucsuz refused to do it, his supervisor would do this himself.

Mr. Sucsuz testified that in other instances, companies falsified job figures to obtain grow awards. A grant recipient eligibility an award amount under the Grow NJ program is based, in part, on the number of jobs created. Thus the more jobs that are created, the greater potential tax incentive grant. In one example, Mr. Sucsuz testified that he objected to an application because the company had very limited space for the number of employees for which they were trying to create jobs. Specifically, Mr. Sucsuz testified that one company indicated it would employ 150 employees at its new location in Camden. However, that location only had 9,000 square feet of working space when four or five times that square footage would have been required to accommodate that many employees. When confronted with the fact, the company indicated that it was running three eight-hour shifts at the site. Mr. Sucsuz testified that he objected to the application because advertising companies like Company G do not operate at a 24-hour per day basis, but his supervisor told him not to include that information in his project summary. Mr. Sucsuz alleged his supervisor directed him to change the company project summary to reflect inaccurate information.

Finally, in addition to his allegations about false or phantom locations, manipulative cost inputs, and falsified job figures, Mr. Sucsuz alleged that there were external



pressures [00:46:00] on EDA employees related to grant applicants. Mr. Sucsuz alleged that representatives from other public offices would call and inquire about certain applications regarding when they would be approved and for what award size. Mr. Sucsuz also recalled hearing EDA senior management complaining of these public officials overstepping with the EDA and being too involved in the approval process. Other EDA witnesses during the course of the litigation similarly noted that there's always pressure from the outside.

This concludes the task force's presentation regarding this whistleblower lawsuit. Thank you. I'll turn it back over to my colleague.

**Ronald:** Thank you, Miss Prevedy. I have no further questions at this time. Next, we will hear the testimony of Mr. Frederick Cole from the EDA. That'll be presented by Miss Lemon. Just for a moment. Mr. Cole will be with us shortly.

[silence] [00:48:00] [background conversations]

**Interviewer 1:** Good morning, Mr. Cole.

**Fredrick Cole:** Good morning.

**Interviewer 1:** Thank you for joining us today. Could you please state and spell your name for the record?

**Fredrick:** Yes. It's Fredrick Cole.

**Interviewer 1:** Mr. Cole, where do you currently work.

**Fredrick:** I work at the NJEDA.

**Interviewer 1:** What is your current role at the EDA?

**Fredrick:** I'm a Senior Vice President of Operations. Essentially, business support.

**Interviewer 1:** How long have you held that position?

**Fredrick:** For about seven years.

**Interviewer 1:** You've been in those role since approximately 2012 or 2013?

**Fredrick:** Correct.

**Interviewer 1:** '12 or '13? [background conversations] How long have you been at the EDA?

**Fredrick:** For approximately 24 years.



**Interviewer 1:** Have you been advised of your right to have counsel at this proceeding?

**Fredrick:** Yes.

**Interviewer 1:** Have counsel at this [00:50:00] proceeding? Is your council here today?

**Fredrick:** Yes.

**Interviewer 1:** Before I begin, I just want to make sure that you understand that you are here to tell the truth today?

**Fredrick:** Yes.

**Interviewer 1:** Is there any reason that you are unable to provide truthful and accurate testimony today?

**Fredrick:** No reason.

**Interviewer 1:** We spoke on the phone the other day, is that correct?

**Fredrick:** Yes.

**Interviewer 1:** Nice to meet you in person. Just for the record, I just also want to confirm that you met with two of my colleagues, Ms. Patel and Mr. Williams on April 12th.

**Fredrick:** I did.

**Interviewer 1:** Did you provide truthful and accurate responses during both the telephone call that we had and the meeting that you had with my colleagues?

**Fredrick:** Yes.

**Interviewer 1:** You are an SVP, a Senior Vice President of Operations at the EDA, is that right?

**Fredrick:** Correct.

**Interviewer 1:** Can you tell us a little bit about your responsibilities in this role?

**Fredrick:** Yes. Essentially like I said earlier it's a business support role so I'm responsible for overseeing that back up these operations of the authority functions such as IT, HR, accounting of financial reporting, internal audit, procurement, and labor standards.



**Interviewer 1:** In your role as a Senior Vice President do you have any role or responsibilities in connection with the EDA Tax Incentive Programs?

**Fredrick:** Minimal role.

**Interviewer 1:** But you at least have some awareness of the Tax Incentive Programs even though you didn't personally work on them?

**Fredrick:** Correct.

**Interviewer 1:** At some point at the EDA, did you also take on a role as an EEO Officer in Equal Employment Opportunity Officer?

**Fredrick:** Yes.

**Interviewer 1:** When was that?

**Fredrick:** I believe that concurrent with my promotion to Senior [00:52:00] Vice President in 2012.

**Interviewer 1:** Can you please tell us a little bit about your role and responsibilities as an EEO Officer?

**Fredrick:** Essentially, the role is based on responsibility with the State Civil Service Commission where I worked to ensure that the State Law against discrimination is upheld, is protected and that proper training occurs within our agency.

**Interviewer 1:** Was one of your responsibilities as the EEO Officer to investigate the allegations of discrimination by EDA employees?

**Fredrick:** Yes.

**Interviewer 1:** In May 2014, did you receive a complaint alleging discrimination filed by an EDA employee named Veyis 'David' Sucsuz?

**Fredrick:** I did.

**Interviewer 1:** Did you review the allegations in his complaint?

**Fredrick:** I did.

**Interviewer 1:** Is it your recollection that he had alleged that he had been discriminated against by a supervisor?

**Fredrick:** That's correct.

**Interviewer 1:** Did you investigate this claim?



**Fredrick:** I did.

**Interviewer 1:** Did you do that alone or with others?

**Fredrick:** Alone.

**Interviewer 1:** What was the result of your investigation?

**Fredrick:** My investigation found that there was no nexus between any of the roughly 30 allegations that were made and any violation of the State policy against discrimination.

**Interviewer 1:** Okay. In around September 2014, is that your recollection that Mr. Sucsuz was ultimately terminated from the EDA?

**Fredrick:** That's correct.

**Interviewer 1:** Moving forward a year, at some point later, after you issued this final finding on the discrimination claim [00:54:00] do you recall that Mr. Sucsuz filed a lawsuit in New Jersey Superior Court?

**Fredrick:** Yes.

**Interviewer 1:** That was against the EDA and other individuals at the EDA?

**Fredrick:** That's correct.

**Interviewer 1:** Did you read the complaint?

**Fredrick:** I did.

**Interviewer 1:** In fact, you are one of the named defendants as well?

**Fredrick:** Yes.

**Interviewer 1:** As part of the litigation, you were also deposed over the course of two days?

**Fredrick:** That's correct.

**Interviewer 1:** That was in late October 2017?

**Fredrick:** I'm sorry, I didn't hear the year.

**Interviewer 1:** 2017, in October of 2017?

**Fredrick:** Yes, that's correct.



**Interviewer 1:** Is it fair to say that you were pretty involved in the litigation both as a defendant and a senior official at the EDA?

**Fredrick:** Yes.

**Interviewer 1:** What, if any, reaction did you have when you read the allegations in the complaint?

**Fredrick:** I have to say personally, I was a little bit shocked that not only did the claim alleged that he was fired because of retaliatory measures, because of the EEO claim, but also because there were new allegations that were brought up that, prior to that time, I had never seen or heard of.

**Interviewer 1:** Okay. Just to be clear for the record, none of these new claims had been alleged in that discrimination claim he filed with you in 2014?

**Fredrick:** That's correct.

**Interviewer 1:** Part of the reason you're so surprised is that these new claims now implicated misconduct on behalf of both individuals of the EDA and potentially, applicants to the EDA program?

**Fredrick:** Yes.

**Interviewer 1:** Had you ever seen any other complaints like this in your 24 years at the EDA? [00:56:00] [chuckles]

**Fredrick:** No, I haven't.

**Interviewer 1:** Is it fair to say that seeing this particular complaint for the first time was very memorable?

**Fredrick:** Yes.

**Interviewer 1:** I'm going to direct you to the binder that is on the table in front of you. If you could turn to tab three, I'm going to introduce this document into the record as Task Force Exhibit 3. Do you recognize this document?

**Fredrick:** Yes.

**Interviewer 1:** Does this appear to be a cover letter attaching or enclosing the Sucsuz's complaint that was filed in 2015?

**Fredrick:** Yes.

**Interviewer 1:** Do you recognize the handwriting on this document to be yours?

**Fredrick:** Yes.



**Interviewer 1:** Could you please read the handwritten notes that are in the corner there.

**Fredrick:** Okay. "Deny Sandy applicants prevailing wage, construction in [unintelligible 00:57:15], no prevailing wage. One new job for tax-exempt debt, location costs, net benefits test, phantom locations, bracketing out to Susan Margie, film less than 60% costs in New Jersey and grow nonprofits (excluded)."

**Interviewer 1:** Thank you. Is it your understanding that these notes reference some of the eligibility requirements under the EDA tax incentive programs?

**Fredrick:** Yes, some of the items do.

**Interviewer 1:** Is it your understanding that location costs [00:58:00] and net benefit test are potential considerations related to a company's eligibility for a tax incentive award?

**Fredrick:** Yes.

**Interviewer 1:** Is it your understanding that phantom locations could potentially be a problem related to a company's eligibility for a tax incentive award?

**Fredrick:** Yes.

**Interviewer 1:** I would like to just walk through a couple of examples that Ms. Priveti had mentioned briefly, that were alleged in Mr. Sucsuz's complaint. If you could please turn to the following tab, tab four, and I'm going to introduce this into the record as task force exhibit four. Mr. Cole, do you recognize this as the complaint that was filed by Mr. Sucsuz in May of 2015?

**Fredrick:** Yes.

**Interviewer 1:** If you turn to page 6, paragraph 21. If you could just take a moment to read that paragraph to yourself.

[silence]

**Fredrick:** Okay.

**Interviewer 1:** Does this refresh your recollection that Mr. Sucsuz, alleged that he was treated with hostility after he complained that applicants that did not meet program requirements were nevertheless receiving funding or tax credits?

**Fredrick:** Yes, that's the nature of the allegation.

**Interviewer 1:** Okay. If you can turn back a couple of pages to page four and take a look at paragraph 15, and just take [01:00:00] a moment to read that.



[silence]

**Fredrick:** Okay.

**Interviewer 1:** Does this refresh your recollection that Mr. Sucsuz alleged that he found some applicants were giving phantom locations for their out-of-state alternative, a requirement under some of the EDA tax incentive programs, and yet those applications were still being approved?

**Fredrick:** Yes, it's the nature of the allegation also.

**Interviewer 1:** Is it a fair conclusion that your handwritten note on the document that we previously looked at regarding the phantom locations is a reference to this allocation?

**Fredrick:** Yes.

**Interviewer 1:** If you could take a look at page 3, paragraph 14 and take a moment to read that to yourself?

[silence]

**Fredrick:** Okay.

**Interviewer 1:** Does this refresh your recollection that Mr. Sucsuz alleged that when some applications showed little or no net benefit to the state, after he refused, his manager went ahead and changed those numbers to show that the applications did, in fact, have a benefit to the state?

[silence]

**Fredrick:** I'm sorry, I was looking for the last part of your statement. That's correct, that's the nature of **[01:02:00]** the allegation.

**Interviewer 1:** Is it a fair conclusion that your note regarding the net benefits test on the document we looked at previously is a reference to this allegation?

**Fredrick:** Yes.

**Interviewer 1:** If you take a look at page 4, on paragraph 17, and take a moment to read that.

**Fredrick:** Okay.

[silence]

**Fredrick:** Okay.



**Interviewer 1:** Does this refresh your recollection that Mr. Sucsuz alleged that certain projects that should've been precluded for receiving a tax incentive award were nevertheless approved under the Grow New Jersey program?

**Fredrick:** Not clear. I think that's overgeneralization. If you could just rephrase the question?

**Interviewer 1:** Sure. Does this refresh your recollection that Mr. Sucsuz alleged that he objected to a certain program approval for a tax incentive award on the basis that it was a non-profit and non-profits were excluded from the tax incentive award?

**Fredrick:** Yes, that's correct.

**Interviewer 1:** Is it a fair conclusion that your note on the previous document we looked at regarding the grow non-profits excluded as a reference to this allegation?

**Fredrick:** Yes.

**Interviewer 1:** Would you agree, Mr. Cole, that these allegations implicate conduct related to the EDA's tax incentive programs?

**Fredrick:** I'm sorry. Would I agree? [01:04:00]

**Interviewer 1:** That these allegations implicate conduct related to the EDA tax incentive programs?

**Fredrick:** Yes.

**Interviewer 1:** Specifically, some of these allegations identified potential fraud or misinterpretations in the applications submitted to the EDA for tax incentive awards. Is that right?

**Fredrick:** Yes.

**Interviewer 1:** Some of these allegations also focus on the EDA's review and approval of projects for tax incentive awards? Tax incentive awards?

**Fredrick:** Yes.

**Interviewer 1:** Okay. Earlier you had testified that Mr. Sucsuz had filed a complaint in 2014 and you looked into those discrimination claims. Now, turning back to the 2015 time period, did you discuss with anyone at the EDA after this complaint was filed in 2015, whether the EDA should conduct an internal investigation into the allegations that Mr. Sucsuz made?

**Fredrick:** I did not.

**Interviewer 1:** Why not?



**Fredrick:** Sitting here today, as I look back, probably for a few reasons. One, I had conducted what I thought was a thorough investigation of the EEO claims. As I said, I found no nexus between the claims and any violation of state policy. Lots of the actual claims themselves, the allegations themselves were baseless. Based on the timing of when the employee was put on a performance improvement plan compared to when he came to me with his EEO claim, it seemed like this was a frivolous lawsuit.

When I learned [01:06:00] of the new allegations and then I was actually somehow part of-- It was alleged that I was somehow part of firing the employee for making those allegations. I guess, I just thought they were baseless and there was no connection. He was looking for a larger lawsuit payout and then also, in my mind, at the time, the Attorney General's office was involved with the claim so I was looking for guidance as to the next steps.

**Interviewer 1:** Just to recap a little bit on what you just said. You testify that you found that his EEO discrimination complaints were unfounded, but you've also testified that he raised brand new allegations regarding the misconduct or potential misconduct of applicants at the EDA. Is it your testimony that you did not investigate these new claims because the discrimination claims were baseless?

**Fredrick:** Not directly, no. I was just setting the scene when you asked me why things weren't followed up on. I guess another example is we've never really had a situation like this where new allegations that the EDA or EDA's management was unaware of came through in a lawsuit claim. It was different, it was a different type of scenario here.

**Interviewer 1:** Then is it your testimony that no investigation, in fact, was ever conducted into these allegations?

**Fredrick:** That's correct.

**Interviewer 1:** [01:08:00] Would it be your belief that your colleagues took the claim seriously? The new claim?

**Fredrick:** Absolutely. I would say so.

**Interviewer 1:** Yet, they still took no effort to conduct an investigation into the claim?

**Fredrick:** They did not. Again, I think they were waiting to see how it played out at trial.

**Interviewer 1:** Okay. Based on what you know now, given that no investigation was conducted, is it possible that some or all of the allegations are true?

**Fredrick:** I don't know. They could be.



**Interviewer 1:** Do you know who within the EDA would have made the decision whether or not to initiate an investigation?

**Fredrick:** As I said, I think this case was different because of the way the claims had come through. It wasn't a whistleblower case where we were notified by the employee at the time. Had it been a typical-- and not that we have many of these, I can't even recall another incident. If it were a typical whistleblower case, it would probably be me who would receive that information and work with others to decide next steps including an investigation.

**Interviewer 1:** Would you agree that the allegations, if true, could have a very serious impact on the EDA?

**Fredrick:** I don't know.

**Interviewer 1:** If the allegations were true, would you agree that a significant amount of money that had been allocated as tax credits could have been improperly awarded?

**Fredrick:** I don't know. [01:10:00]

**Interviewer 1:** Would you agree that some amount of money would have been allocated improperly if these allegations were true?

**Fredrick:** Yes, it's possible.

**Interviewer 1:** Did the allegations, to your knowledge, cause the EDA to retrain any of its staff handling these tax incentive applications as a precautionary measure?

**Fredrick:** Sort of concurrent with the timing of that case, there's been lots of audits and reviews of EDA programs. I think we've learned a lot along the way and have begun to put many different other controls in place over the same time period. Whether it was directly related to these allegations in this complaint, I can't make that connection.

**Interviewer 1:** Do you recall the outcome of the litigation?

**Fredrick:** Yes, the jury found for the EDA.

**Interviewer 1:** Can you please turn to tab six? I'm going to introduce this into the record as task force exhibit five. Does this appear to be the jury verdict sheet from the trial that you just mentioned?

**Fredrick:** Yes.

**Interviewer 1:** Could you please read the first paragraph into the record, including the answer.



**Fredrick:** CEPA Count 1 is the heading, C-E-P-A. CEPA Count 1; has plaintiff proven by a preponderance of the evidence that he had a reasonable belief that the New Jersey Economic Development Authority violated a law, rule, or regulation in the processing of applications [01:12:00] or loans, grants, and tax incentives? The answer is yes.

**Interviewer 1:** Thank you. After the jury finding, did the EDA conduct an investigation into any of Mr. Sucsuz's claims about the EDA's administration of the tax incentive programs?

**Fredrick:** No.

**Interviewer 1:** After the verdict was issued, you had mentioned previously that during this time the EDA was improving its internal processes. As a result of this verdict, are you aware of any efforts to review whether its internal policies and procedures were sufficiently robust with respect to the tax incentive programs?

**Fredrick:** It seems like a broad question, robust. Among other things, the EDA looked at policy and process around the incentive programs in general.

**Interviewer 1:** Were there any efforts to re-evaluate those policies and procedures in the tax incentive programs to prevent the kind of fraud or misrepresentations or maybe detect the type of fraud and misrepresentations that Mr. Sucsuz alleged on the behalf of the applicant?

**Fredrick:** I'm not aware of all or many of the specific steps, but I would say yes in some that I can think of.

**Interviewer 1:** Was that as a result of this trial or just as a general matter as the EDA was evolving?

**Fredrick:** I would say as a general matter.

**Interviewer 1:** Moving forward a couple of years into 2018, [01:14:00] you're aware that Governor Murphy directed the New Jersey State Comptroller to conduct an audit of the EDA's oversight of tax incentive programs, correct?

**Fredrick:** Correct.

**Interviewer 1:** That audit began in February or March of 2018?

**Fredrick:** Yes.

**Interviewer 1:** At that time, you were still and you still are now the Senior Vice President of Operations, is that right?

**Fredrick:** Correct.



**Interviewer 1:** Were you involved with the audit from the EDA side?

**Fredrick:** Yes.

**Interviewer 1:** What was your role in the audit?

**Fredrick:** Generally when the audit was initiated, I met with the Comptroller's office team to ensure that they had all the resources that they needed, introductions were made, requirements regarding space and infrastructure for the audit itself took place and I was the audit liaison in terms of ensuring that the comptrollers had everything they needed to conduct the work.

**Interviewer 1:** This meeting that you just referred to, is this the opening conference or kickoff meeting that Comptroller Dougman had mentioned at the last hearing? You may have not actually heard what he said at the last hearing but we understand there's a sort of kickoff or opening conference of the audit. Is that the meeting you referred to?

**Fredrick:** Yes.

**Interviewer 1:** Do you recall during this kick-off meeting that the comptroller discussed a number of document production categories?

**Fredrick:** Yes.

**Interviewer 1:** One of those categories included documents related to all litigation, pending and settled claims during a 10-year period starting from 2010 through the end of the audit, is that correct?

**Fredrick:** Yes.

**Interviewer 1:** In your role as a senior vice president and as the audit liaison as you described [01:16:00] you would have been responsible for gathering, reviewing and producing documents responsive to that request, is that right?

**Fredrick:** To some degree, yes.

**Interviewer 1:** What's the degree that's not here?

**Fredrick:** Again, I sort of had an oversight role to make sure that documents and such that they requested were produced in a timely manner. Mine seemed to be more general in nature and way less than some of the problematic project-related requests that were made.

**Interviewer 1:** Understood. That 10-year period that I just mentioned, or approximately 10-year period from 2010 to the end of the audit, that period covered May 2015 when Mr. Sucsuz filed his complaint in New Jersey Superior Court?



**Fredrick:** That's correct.

**Interviewer 1:** Did you turn over or inform the comptroller's office of the Sucsuz complaint?

**Fredrick:** I did not.

**Interviewer 1:** Why not?

**Fredrick:** I believe my thought process was that-- It actually didn't occur to me that that particular case was related to anything that they were investigating regarding programs. It seemed to be characterized in my mind more of a appointment matter. In my mind as more of an appointment related litigation. [01:18:00]

**Interviewer 1:** I just want to make sure the record is clear on this. You did not report it because you thought that his complaint was employment-related? Mr. Sucsuz's complaint was employment-related, or was it your testimony that the audit was not investigating programs?

**Fredrick:** I guess what I'm saying is, you asked me if we turned over anything related to the case to the comptroller and the answer was no. It just was something that didn't occur to me that was something they were looking for.

**Interviewer 1:** Okay. Could you please turn to tab seven in your binder? I'm going to introduce this document as task force exhibit six. Do you recognize this document?

**Fredrick:** Yes.

**Interviewer 1:** There's some handwriting and mark up along the pages. Do you recognize that as your handwriting?

**Fredrick:** Yes.

**Interviewer 1:** Can you please turn to the second page. There's a paragraph nine and it says, 'lawsuits and audits'. Next to it, it says, "Management must report all known lawsuits, mediation, arbitration, and claims pending or settled," and it goes on. Next to that paragraph, there's a handwritten note that says, 'program specific'. That's your handwriting, is that right?

**Fredrick:** Yes.

**Interviewer 1:** Do you have an understanding of what that means?

**Fredrick:** I actually don't recall what that means.

**Interviewer 1:** Okay, but you understood that the comptroller's audit was about EDA tax and incentives programs, right?



**Fredrick:** Yes.

**Interviewer 1:** In fact, it says it right in the header. It says, 'economic incentive programs'.

**Fredrick:** Yes.

**Interviewer 1:** Is it a fair assumption that the term 'program-specific' refer to litigation and audits relating to the incentive programs? **[01:20:00]**

**Fredrick:** Perhaps, it could have. Again, I don't remember the specific discussions at that opening meeting.

**Interviewer 1:** Just to recap on your testimony from earlier, you testified that the allegations in Mr. Sucsuz's 2015 lawsuit involves EDA tax incentive programs, is that right?

**Fredrick:** Yes.

**Interviewer 1:** At the end of the audit, were you asked to sign a letter confirming certain information had been provided to the comptroller during the audit?

**Fredrick:** Yes.

**Interviewer 1:** If you please turn to the next tab, tab eight. I'm going to mark this into the record as task force exhibit seven.

**Fredrick:** Okay.

**Interviewer 1:** Do you recognize this as the management representation letter that you signed at the end of the comptroller's audit?

**Fredrick:** Yes.

**Interviewer 1:** You see that it's dated January 3rd, 2019?

**Fredrick:** Yes.

**Interviewer 1:** Did you draft this letter?

**Fredrick:** No.

**Interviewer 1:** Is it your understanding that someone from the comptroller's office drafted it?

**Fredrick:** Yes.

**Interviewer 1:** But you reviewed the contents and substance of the letter?



**Fredrick:** Yes.

**Interviewer 1:** Do you have an understanding of what the purpose was for this letter?

**Fredrick:** Generally, a management representation letter that's a standard issue in many audits and reviews at the end of the process to ensure that all the representations that were made during the audit or sort of acknowledged by management.

**Interviewer 1:** So this is a representation of information that had already been provided to the comptroller during the course of the audit?

**Fredrick:** Yes.

**Interviewer 1:** Could you please read on the first page, [01:22:00] paragraph five, the first line, where it says, "We have no knowledge of any--" Then going on to the next page, there's a second bullet. If you could just read those two things out loud into the record.

**Fredrick:** We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators or others.

**Interviewer 1:** Could you also read paragraph eight into the record?

**Fredrick:** We have disclosed all details concerning any pending claims, assessments, and litigation against us of which would have a significant effect on financial operations.

**Interviewer 1:** Just turning back to the first page, in the first paragraph you see it says, "This is for the period of January 1, 2010, to January 3rd, 2019," is that right?

**Fredrick:** Correct.

**Interviewer 1:** Do you recall making these representations?

**Fredrick:** Yes.

**Interviewer 1:** Prior to signing this letter, did you discuss this letter with anyone else?

**Fredrick:** I did not.

**Interviewer 1:** Do you recall having discussed whether to disclosed the Sucsuz litigation to the comptroller's audit?

**Fredrick:** I do not.



**Interviewer 1:** Are you aware of whether anyone else, in fact, turned over the information to the comptroller during his audit?

**Fredrick:** I honestly don't recall. I don't remember if anyone else on my team had turned that over. I recall a time when I may have turned over in hard-copy what was an inventory, if you will, of litigation [01:24:00] against the EDA that the Attorney General's Office prepares on our behalf for the annual financial statement audit, but I honestly don't recall whether that was turned over to the comptrollers.

**Interviewer 1:** You don't have an independent recollection of actually turning over this litigation to the comptroller's office? Sorry, you don't have an independent turning over the Sucsuz litigation materials to the comptroller during his audit?

**Fredrick:** That's correct.

**Interviewer 1:** Again, just to be clear, this would have been your responsibility given that you had signed this letter representing that all information had been turned over?

**Fredrick:** Yes, for the most part.

**Interviewer 1:** Did anyone direct you to withhold the information from the comptroller?

**Fredrick:** No.

**Interviewer 1:** In part by not turning it over, the comptroller did not know about these specific and detailed allegations of fraud?

**Fredrick:** Unless they learned about it in a different manner, if we didn't turn it over, they would not have been aware.

**Interviewer 1:** But you agree that Mr. Sucsuz's allegations directly relate to the tax incentive programs that were the subject of the comptroller's audit?

**Fredrick:** Yes. Actually, looking back at it now, I can see where that connection would be made.

**Interviewer 1:** In retrospect, should the comptroller's office have been provided with information regarding the Sucsuz litigation?

**Fredrick:** Yes, but I wouldn't say limited to the Sucsuz litigation, in that case, I would say, into any litigation related to the scope of their work during that time period.

**Interviewer 1:** Are you aware of any other litigation [01:26:00] that was within the scope of their work in that time period?



**Fredrick:** I can think of some project-related items, but whether they fell into the scope of their audit or if they were interested in it or not, I couldn't tell you. I would have preferred to share everything with them and let them decide what they wanted to do with it.

**Interviewer 1:** Just to be clear, the litigation that you're referring to that is program-specific, are you referring to the litigation involving the EDA or litigation that is involving the applicants that are applying for tax incentive programs?

**Fredrick:** It could be both.

**Interviewer 1:** We may want to follow up with you after this hearing to see if there's any other litigation that we should be aware of, but that is all I had for today. I just want to thank you for your cooperation and for coming here today. Professor Chen or anyone else?

**Jim:** Yes. Mr. Cole, can I just ask you a couple of questions? This was a shocking complaint. It raised allegations of at least potential fraud, which you took note of in your notes. Is it fair to say that the litigation was actually ongoing during the audit?

**Fredrick:** That's correct.

**Jim:** In fact, even as the comptroller was doing his work, there were people being deposed?

**Fredrick:** Yes, I believe so.

**Jim:** During the course of the audit, the case actually went to trial?

**Fredrick:** Yes.

**Jim:** Is it fair to say that during the entire audit, this was top of mind to you? The litigation was top of mind given the fact that senior executives were getting deposed and then the case ultimately went to trial where you were a defendant?

**Fredrick:** Yes, it would've been top of mind.

**Jim:** Okay. I want to be really clear. Did anyone put pressure on you in any way, shape, or form [01:28:00] to withhold this contrary to your wishes?

**Fredrick:** Absolutely not.

**Jim:** All right. Thank you.

**Interviewer 1:** Thank you, Mr. Cole.



**Ronald:** I got something to say. I'm trying to make clear of **[inaudible 01:28:19]**. Are you aware of any other litigation that was alleged that was any type of misconduct or **[inaudible 01:28:31]**?

**Fredrick:** No, not that I'm aware.

**Ronald:** So to say that it's **[inaudible 01:28:41]**?

**Fredrick:** Depending on the timing, yes.

**Ronald:** So you're you acknowledge?

**Fredrick:** Yes, I would've been aware of it.

**Ronald:** Thank you, Mr. Cole. Thank you very much.

**Fredrick:** Thank you.

**Ronald:** Next, we have Carrie Ann Murray.

[silence]

**Ronald:** I'm going to ask you to raise your hand. Do you solemnly swear or affirm that the testimony that you're about to give is going to be the truth, the whole truth, and nothing but the truth?

**Ms. Murray:** Yes.

**Ronald:** Thank you.

**Interviewer 2:** Good morning, Ms. Murray.

**Ms. Murray:** Good morning.

**Interviewer 2:** I want to thank you for taking the time to be here today. Can you hear me?

**Ms. Murray:** Yes.

**Interviewer 2:** Okay. We are aware that in April, **[01:30:00]** 2018, you filed a complaint with the New York Division of Human Rights against your former employer. We want to speak with you about your experience at that company and your allegations relating to employee and payroll information in connection with the EDA Grow New Jersey program. We're not here to draw conclusions about your case, but we look forward to hearing your perspectives.

One further note, as Mr. Walden mentioned previously, it's still early in this investigation. We want to be especially careful to protect everyone's due process



rights. We understand that your former employer disputes his claims. We ask that you hear with us your personal knowledge without identifying your former employer's name, without identifying your colleagues by name. Without saying what, if anything, you personally did as well. Do you understand?

**Ms. Murray:** I understand.

**Interviewer 2:** You're not represented by counsel here today, correct?

**Ms. Murray:** Correct.

**Interviewer 2:** You understand that you have a right to have counsel present?

**Ms. Murray:** Correct.

**Interviewer 2:** You've been sworn-in. Do you understand that you're required to tell the truth today?

**Ms. Murray:** Yes.

**Interviewer 2:** I'm going to ask you some questions about your background and your past employment. Again, please don't refer to any employers or any individuals by name. Is where you're currently employed?

**Ms. Murray:** Yes.

**Interviewer 2:** What do you do for a living?

**Ms. Murray:** I'm a payroll manager.

**Interviewer 2:** I'm sorry?

**Ms. Murray:** Payroll manager.

**Interviewer 2:** What does that entail?

**Ms. Murray:** It entails processing payroll for active employees for the company that I am employed by.

**Interviewer 2:** How long have you worked as a payroll manager?

**Ms. Murray:** Over 10 years.

**Interviewer 2:** Are you familiar with the New Jersey Economic Development Authority, which I'll refer to as the EDA?

**Ms. Murray:** Yes.



**Interviewer 2:** How did you become familiar with the EDA initially?

**Ms. Murray:** While being employed at my former employer. Once the grants was given or once the go-ahead was actually given, our staff was pulled [01:32:00] into a private meeting to explain to us what are the next step options to move the company to New Jersey. That was the first time I've heard about that.

**Interviewer 2:** I just want to unpack that a little bit. You referred to your former employer and you referred to a grant. Is that referring to an EDA tax incentive program?

**Ms. Murray:** Well, yes.

**Interviewer 2:** Is it your testimony that your former employer was applying for an EDA tax incentive program?

**Ms. Murray:** Based on the information that was given to us in the meeting, yes.

**Interviewer 2:** Do you know what tax incentive program it was applying for?

**Ms. Murray:** At the time, we were told it was the Grow New Jersey.

**Interviewer 2:** When did you start working for this company?

**Ms. Murray:** In 2015.

**Interviewer 2:** In 2015?

**Ms. Murray:** Yes.

**Interviewer 2:** What was your role at that company?

**Ms. Murray:** Payroll manager.

**Interviewer 2:** What kind of company was it?

**Ms. Murray:** Financial services.

**Interviewer 2:** Where was the company based when you started?

**Ms. Murray:** In New York City.

**Interviewer 2:** Did it move to New Jersey ultimately?

**Ms. Murray:** Yes.

**Interviewer 2:** Did it move to New Jersey while you were employed there?

**Ms. Murray:** Yes.

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**Interviewer 2:** Approximately when did it move to New Jersey if you recall.

**Ms. Murray:** July of 2016.

**Interviewer 2:** Why did it move to New Jersey?

**Ms. Murray:** It was a part of the EDA Grow New Jersey grant that we were previously told about prior and that was what the first initial meeting was about, was to get everyone together and get ourselves together for this move that was going to take place mid-summer of 2016.

**Interviewer 2:** Okay. I want to unpack that again a little bit. Your testimony is that your former company moved to New Jersey in connection with the EDA Grow New Jersey program, is that right?

**Ms. Murray:** Yes.

**Interviewer 2:** In connection with that program, [01:34:00] did your former employer intent to move from New York City to New Jersey?

**Ms. Murray:** No. I'm sorry. Can you say that again?

**Interviewer 2:** In connection with that program, did your company intent to move from New York City to New Jersey?

**Ms. Murray:** Yes.

**Interviewer 2:** That was in order to obtain tax incentive credit?

**Ms. Murray:** Correct. Yes.

**Interviewer 2:** You referred I think to summer of 2016, around when did you first hear that the company was going to move to New Jersey?

**Ms. Murray:** In mid-May of 2016.

**Interviewer 2:** Approximately how many employees did the company have in New York in May or June 2016 when you learned it planned to move to New Jersey?

**Ms. Murray:** Approximately around 80 employees at the time.

**Interviewer 2:** Was the company's intent to the best of your knowledge to move all of those 80-some odd employees from New York to New Jersey?

**Ms. Murray:** Yes.

**Interviewer 2:** Was the company planning to create additional jobs as part of its move?



**Ms. Murray:** Yes.

**Interviewer 2:** Do you know how many additional jobs the company was planning to create?

**Ms. Murray:** Approximately about 100 to 125 more additional positions.

**Interviewer 2:** 100 to 125 additional positions.

**Ms. Murray:** Yes.

**Interviewer 2:** Did you have any role in helping to hire for those 100-some odd additional jobs?

**Ms. Murray:** No.

**Interviewer 2:** Did you play any role at all in helping the company to find employees to fill those additional jobs?

**Ms. Murray:** Yes.

**Interviewer 2:** What was that role?

**Ms. Murray:** To contact the New Jersey Department of Labor?

**Interviewer 2:** Why were you told to contact the New Jersey Department of Labor?

**Ms. Murray:** Between the time that we were told that we had to move and the time, it was such a short span of time and the time that we had to move and the time that we were given **[01:36:00]** to create the positions. Previous, I'll say, job positions were not posted in New Jersey. At the time, I can only say that contacting the department of labor would be the easiest way to go as if they had employees who were already unemployed so it would be easier to pick from that pool than it is to post positions and then wait.

**Interviewer 2:** Do you have an understanding that you mentioned that your company was participating in the EDA's Grow New Jersey program? Was your company also intending to participate in any additional programs administered by the DOL?

**Ms. Murray:** Yes.

**Interviewer 2:** Do you know anything about that particular DOL program, generally?

**Ms. Murray:** Yes.

**Interviewer 2:** Can you explain just a little bit about what that was?



**Ms. Murray:** Subsequently, once we got to New Jersey there was an additional program from through the Department of Labor where the company was reimbursed half of the hourly salary for each hourly employee that was hired. On top of another incentive which was the Welfare to Work program tax incentive where if the company hired from a particular pool of employees who lived in certain areas in New Jersey who were on welfare, who were coming back from unemployment, who were veterans, would also receive an additional tax credit as well.

**Interviewer 2:** Okay. It's your understanding that separate from the EDA program, in connection with certain Department of Labor programs, your former employer was hiring employees. Through that hiring, would get some kind of reimbursement for the employee salaries.

**Ms. Murray:** Correct.

**Interviewer 2:** Just to be clear, I understand your testimony that your former employer participated in separate programs where the interval [01:38:00] administered by the EDA and administered by the DOL. I'm going to focus primarily on the Grow New Jersey EDA program.

**Ms. Murray:** Okay.

**Interviewer 2:** Did the people you were hiring generally have experience in the company's industry, in the financial services industry?

**Ms. Murray:** No.

**Interviewer 2:** Was the company ultimately able to hire the necessary number of employees to receive the tax credits under Grow New Jersey?

**Ms. Murray:** Yes.

**Interviewer 2:** That was the 100 some odd employees, it needed to hire those to receive the credit under Grow New Jersey?

**Ms. Murray:** Correct.

**Interviewer 2:** Do you know whether there was a deadline for the company to hire those employees?

**Ms. Murray:** I believe so, yes.

**Interviewer 2:** Did the company meet that deadline to your knowledge?

**Ms. Murray:** Yes.

**Interviewer 2:** The company hired 100 and some odd employees?



**Ms. Murray:** Yes.

**Interviewer 2:** Did your company ultimately move to New Jersey?

**Ms. Murray:** Yes.

**Interviewer 2:** Do you know when that was?

**Ms. Murray:** July of 2016.

**Interviewer 2:** July of 2016?

**Ms. Murray:** Yes.

**Interviewer 2:** Okay. Were the new employees that were hired, hired into pre-existing positions at the company or were new positions made for them?

**Ms. Murray:** New positions were created.

**Interviewer 2:** What was the role of these new positions, these new group? Was it a single department?

**Ms. Murray:** It was a single department.

**Interviewer 2:** What was the department?

**Ms. Murray:** The department name or what the?

**Interviewer 2:** What was the purpose of the department?

**Ms. Murray:** The purpose of the department was to make cold calls to potential small business loan borrowers.

**Interviewer 2:** Were you surprised when the company created this new group?

**Ms. Murray:** Yes.

**Interviewer 2:** Why?

**Ms. Murray::** Because it wasn't a role or positions that the company previously used. The company does subprime lending, if I could say that, so you would have to be very experienced in [01:40:00] sales, experienced in selling, experienced in getting borrowers to actually borrow money at the high percentage rate, big benefits.

**Interviewer 2:** What kind of experience generally did these new employees that were hired have?

**Ms. Murray:** Retail, fast-food experience, not sales.



**Interviewer 2:** Were the new hires paid hourly or were they paid a salary?

**Ms. Murray:** Hourly.

**Interviewer 2:** What was their average pay?

**Ms. Murray:** \$10 per hour.

**Interviewer 2:** Some of that was re-reimbursed by the department of labor?

**Ms. Murray:** Correct.

**Interviewer 2:** You testified that the company made approximately 100 or 120 additional new hires initially. Were any additional new hires made throughout later in 2016?

**Ms. Murray:** Yes.

**Interviewer 2:** Why was that?

**Ms. Murray:** Hires came and left. To the best of my knowledge, staff was told that we had to maintain a average number of 225 active employees, so there was a, if I can use the word, rolling hire that kept-- keepable rolling, if that's **[unintelligible 01:41:28]**

**Interviewer 2:** You said the company had to maintain an average number of 225 employees. Was that in order to obtain the Grow New Jersey grant?

**Ms. Murray:** Yes.

**Interviewer 2:** How did you know that these new people were being hired in connection with the EDA tax credit program?

**Ms. Murray:** Because when staff submitted the actual Grow New Jersey grant **[01:42:00]** spreadsheet which that was the name at the top of the spreadsheet, that was the subsequent number that we all was told had to be there.

**Interviewer 2:** I just want to unpack that a little bit as well. You just referred to a spreadsheet. Can you tell me what this spreadsheet is that you're referring to?

**Ms. Murray:** Monthly, a Excel spreadsheet that could not be manipulated at all which contained payroll data of employees' names, their departments, their salary earned for that month, their annual salary, hours worked, had to be submitted and at the top of that spreadsheet, it always said Grow New Jersey.

**Interviewer 2:** Just to make that clear, on a monthly basis, the staff of this company filled out a spreadsheet, the header of which was Grow New Jersey and that spreadsheet was filled out with employee data?



**Ms. Murray:** Correct.

**Interviewer 2:** What data did that include?

**Ms. Murray:** It included employees' names, employees' department, their work location, annual salaries.

**Interviewer 2:** Hours worked?

**Ms. Murray:** Hours worked, yes.

**Interviewer 2:** The staff submitted that internally to management, is that--?

**Ms. Murray:** Correct.

**Interviewer 2:** In terms of hours worked, to the best of your knowledge, were employees required to work a certain number of hours per period?

**Ms. Murray:** Correct.

**Interviewer 2:** Was there ever a time when a staff was filling out the EDA Grow New Jersey spreadsheet you referred to and one or more employees didn't meet the minimum hours requirement for that period?

**Ms. Murray:** Yes.

**Interviewer 2:** In those incidents, what did the staff do?

**Ms. Murray:** The staff was instructed to [01:44:00] reach out to the employee's manager to find out why this employee did not work the stated required amount of hours. If the manager didn't have any rhyme or actual reason as to why, staff was instructed to backfill those hours with what payroll people say. PTO time which is Paid Time Off, which is either sick or vacation or personal hours.

**Interviewer 2:** In other words, if the required minimum number of hours wasn't met, staff was instructed to essentially up those hours using paid time off?

**Ms. Murray:** Correct.

**Interviewer 2:** Separate from that paid time off issue, at any point, did management give staff other directives regarding current or former employees on how to document a pay or employment to meet the EDA's requirements?

**Ms. Murray:** Yes.

**Interviewer 2:** Can you tell me a little bit about that?



**Ms. Murray:** There was one particular case where eight employee employment was terminated while the office was still in New York City. However, to meet the Grow New Jersey headcount, that employees termination was subsequently pulled all the way across into 2016 and a severance pay was pulled all the way out until the end of 2016. Once the staff submitted the final spreadsheet for the Grow New Jersey grant, the employee was then removed from all HR function, removed from the company payroll.

**Interviewer 2:** Just to clarify, [01:46:00] when you say, "Pulled across 2016." Do you mean that there was a terminated employee who remained in payroll records because severance was essentially staged out? Is that what you mean by, "Pulled across."?

**Ms. Murray:** Yes.

**Interviewer 2:** Okay. Did the cold calling group, the sales group, the new group that you referred to that was created in 2016 continue to be employed at the company throughout 2017?

**Ms. Murray:** No.

**Interviewer 2:** Why not?

**Ms. Murray:** They were terminated in early January of 2017.

**Interviewer 2:** When you say, "They were terminated." All of those new hires were terminated?

**Ms. Murray:** Correct.

**Interviewer 2:** The entire new group?

**Ms. Murray:** Yes.

**Interviewer 2:** About how many people were terminated?

**Ms. Murray:** At the time, they were approximately maybe about 80 of them. When I say, 'them' because they were grouped into one particular department.

**Interviewer 2:** It was easy to see that they were there one day and gone the next essentially. They were terminated all at once, is that right?

**Ms. Murray:** Yes.

**Interviewer 2:** Do you know why they were terminated?

**Ms. Murray:** No.



**Interviewer 2:** Were any new employees hired into the group once those terminations took place in around January 2017?

**Ms. Murray:** No, those positions were eliminated.

**Interviewer 2:** Were eliminated?

**Ms. Murray:** Yes.

**Interviewer 2:** To your knowledge, did the company continue throughout the year to fill out the Grow New Jersey spreadsheets?

**Ms. Murray:** For maybe one or two months after that.

**Interviewer 2:** Then, it stopped?

**Ms. Murray:** Correct.

**Interviewer 2:** Are you aware of whether the company ultimately received a tax incentive credit through the Grow New Jersey program and what they did with it?

**Ms. Murray:** Staff inquired as to why we no longer needed to keep hiring employees, keep the relationship open [01:48:00] with the New Jersey Department of Labor or to complete the Grow New Jersey spreadsheet. We were told that the tax credit was sold to another company.

**Interviewer 2:** You don't work at this company any longer, is that correct?

**Ms. Murray:** No.

**Interviewer 2:** That's all I have for today. Thank you very much for your testimony, I'll turn it over to the--

**Ronald:** [inaudible 01:48:25]. You made reference to the department of labor. You're referring to the New Jersey State Department of Labor and Workforce Development.

**Ms. Murray:** Yes.

**Ronald:** Right. Not the Federal Department of Labor. Okay, thank you.

**Interviewer 2:** Thank you very much, Ms. Murray.

**Ronald:** Next we'll hear from Mr. John Boyd.

[silence]



**Ronald:** Do you solemnly swear or affirm that the testimony that you're about to give is going to be the truth, the whole truth, and nothing but the truth?

**John:** Yes.

**Interviewer 3:** Morning.

**John:** Morning.

**Interviewer 2:** Can you state and spell your name for the record, please.

**John:** John Boyd.

**Interviewer 3:** Mr. Boyd, we have never met before face-to-face but we have spoken before on the phone, is that right?

**John:** Yes.

**Interviewer 3:** Well, it's nice to see you now. Thank you for being here, for testifying. Just so you know, my questions will be the same questions or very similar to what I've asked you before so you shouldn't expect any surprises. Where do you work Mr. Boyd?

**John:** The Boyd company.

**Interviewer 3:** What is your title at the Boyd company?

**John:** Principal.

**Interviewer 3:** How long have you been at the Boyd Company?

**John:** I joined the firm in 2002 after college but I grew up in the business. **[01:50:00]** My dad founded our firm back in 1975. My earliest experiences in life were traveling different cities on behalf of our Corporate Site Selection projects. Traveling the country related to site selection projects that our firm has carried out over the years.

**Interviewer 3:** You said you grew up in the business. I want to make sure we understand this. What is the Boyd company's business?

**John:** We counsel major US and overseas corporations. We've located facilities throughout North America. Clients of ours include Boeing, Pepsico, JP Morgan Chase is a client of ours.

**Interviewer 3:** Is that referred to as corporate site selections?

**John:** Corporate site selection, yes.

**Interviewer 3:** Help us understand, why is corporate site selection important?

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**John:** Corporate site selection is the process of studying multiple locations and choosing the optimum location for a company to put a new facility. It's one of the most significant decisions that a company will make. It's a very long exhausting process.

**Interviewer 3:** Why do companies hire corporate site selection consultants like yourself?

**John:** Three major reasons. The first reason a company will hire a consultant is independence. A good consultant is not influenced by any type of downstream commission interest that is associated with a particular real estate site. They're also not influenced by any type of internal bias that may exist within a company. Another major reason is specialization.

While the site selection process is a rare process to go through for a corporation, a good consultant is constantly monitoring business climate factors that are critical to where companies have their operations. Lastly, confidentiality. Corporations and businesses want the site selection process to be confidential until a final decision's made.

**Interviewer 3:** Now you may have already mentioned this but in case you didn't, what kinds of companies does the Boyd Company work with?

**John:** Clients of ours include Boeing, Pratt & Whitney, [01:52:00] PNC Bank, TD Bank. Most of our work is with Fortune 500 to Fortune 100 companies, but we also service smaller companies as well.

**Interviewer 3:** Large companies and forgive the obvious observation, but I'm sure it's different to relocate a 10-person office than it is to relocate a 10,000-person office, right?

**John:** Yes.

**Interviewer 3:** I want to ask you today about the middle range if you would, offices of 200 to 400 employees. Do you have experience in relocation projects?

**John:** Absolutely, yes.

**Interviewer 3:** In corporate relocation projects of that size, and to make sure the record is clear by that size, I mean 200 to 400 employees.

**John:** Yes.

**Interviewer 3:** Approximately, how many times have you worked on projects of that size?

**John:** Dozens of times.



**Interviewer 3:** Great. Today when I ask you questions about how site selection works you'll understand that we're talking about moves of that size, several hundred employee offices, okay?

**John:** Yes.

**Interviewer 3:** All right. Is it fair to say that for companies the site selection decision picking a state, a region, a locality, and a particular building is a complex question?

**John:** Yes.

**Interviewer 3:** What kind of process do you use to help companies select the ideal relocation site.

**John:** Site selection is about the science in an art. The science is the quantitative analysis, measuring business costs and taxes and one market versus another. The qualitative analysis has to do with measuring things like transportation assets and specific tallying assets that a particular region has. The acronym that we use for office projects is TALIO, T-A-L-I-O. T is for tallying, companies are always good as their people. A is for access to the market. With transportation hubs, the presence of a major gateway international airport. L is for lifestyle. Companies want to be in locations that are attractive for retaining and recruiting a workforce. I is for incentives. **[01:54:00]** Incentives are an important and high-profile part of the site selection process today. Lastly, operating costs. Operating costs can vary significantly by geography. A labor costs in South Florida, for example, could be 20% less than in Manhattan.

**Interviewer 3:** There are a lot of factors you're looking at. Is that fair?

**John:** Yes.

**Interviewer 3:** From the beginning of the process to the end, from when a company decides it's thinking about moving to when it ultimately selects the location will move to, approximately how long does that take?

**John:** Typically, six months to a year.

**Interviewer 3:** Who with the company is typically involved?

**John:** The accounting department, the legal department. The HR department plays a very important role in the site selection process, and increasingly the communications department. The branding has become a big part of relocation decisions today.

**Interviewer 3:** If you will paint a picture for us for what the process looks like from beginning to end. Are there meetings, reports, site visits? What are you doing?



**John:** Every project is different, but typically the project begins with a meeting with various members of the company. Again, the HR folks will be in the room, the legal

department is typically in the room, the accounting folks are in the room. We talk about the objectives of the move, what are the key drivers? Are there any initial geographic preferences that we should take a look at?

Then we begin doing our work. We prepare a analytical document that documents operating costs and taxes and all of the markets that we're surveying. Then we begin the process of elimination. A big part of that process of elimination is developing a shortlist, and then we start doing field investigations. Field investigations really are an essential part of any competent diligence site selection process today.

**Interviewer 3:** You said field investigation. Is that the same as a site visit or-?

**John:** Site visit, yes.

**Interviewer 3:** Okay. How come in our site visits? Are they sometimes part of the process, [01:56:00] always a part of the process?

**John:** They're always part of the process.

**Interviewer 3:** In one project, just roundabouts figure how often would you go on a site visit?

**John:** Typically, the top three or five locations receive, at least three site visits from our firm, then the client will do site visits. They'll meet with many of the same individuals that we meet with. HR directors in the labor market to give a sense of real-time labor market factors, like turnover rates and prevailing wage rates.

They'll meet with leaders in the real estate community to get a sense of residential housing options for the workforce, and, of course, the commercial resident industry, to see what type of sites exist for the company. They'll also meet with academic officials and elected officials and other important people in the market to get a sense of the overall tenor of the market. Is it pro-business? Is it pro development?

**Interviewer 3:** I want to make sure I understand, if I got it right. It sounds like site visits are often to a region, is the site visit also to a particular piece of real estate considering whether this is the office we want?

**John:** That's really the last piece of the puzzle, where once a company is sold on a specific region, it becomes about finding the right site within that region. We may give special preference to an area that falls in an opportunity zone, for example. Then, of course, at this part of the process, the company's real estate folks begin to gradually take over. They look to us to make some initial recommendations based upon real estate, and we're happy to do that.



**Interviewer 3:** Okay. It sounds like during this process there are meetings at the company to discuss the sites.

**John:** Yes.

**Interviewer 3:** Reports are being drawn up.

**John:** Yes.

**Interviewer 3:** Thank you. Based on your testimony, it sounds like a lot of work and analysis goes into picking the best location. Is that a fair generalization?

**John:** Yes.

**Interviewer 3:** It sounds like a lot of document is [01:58:00] generated during the site selection process: memos, emails, reports. Is that fair?

**John:** That's accurate. I would also expect the company to be able to produce receipts related to onsite travel visits.

**Interviewer 3:** All right. I want to make sure this is clear. The testimony you're giving now is about office sizes of 200 to 400 employees. For moves of that sort, you would expect this sort of process?

**John:** Yes.

**Interviewer 3:** All right. The really small startup companies, of course, might do some things differently, but for a move of this size, this is what you would expect.

**John:** Yes.

**Interviewer 3:** All right. If the task force wants to know whether a company is seriously considering relocating to a site that the company says it's thinking about. It sounds like the company should be able to produce a lot of documentation of its deliberations. Do you agree with that statement?

**John:** I agree with that.

**Interviewer 3:** If we request this evidence from a company, but the company can't produce it, does that suggest that maybe the company was never seriously considering the site?

**John:** Yes.

**Interviewer 3:** Let me ask you a few hypotheticals. Before I do, though, I want to make sure this is clear. You have not examined any of the evidence that the task force is looking at related to specific companies, right?



**John:** That's correct.

**Interviewer 3:** The questions I'm going to ask you and the answers you're going to provide, none of them are about specific companies, right?

**John:** Yes.

**Interviewer 3:** I'd like to get something else out of the way. You're not a real estate broker, but part of your work is helping companies find real estate, right?

**John:** Yes.

**Interviewer 3:** When you find a potential office location to consider for relocation, if the company is interested in that property, one option the company has is to negotiate for an extended offer period so an offer will stay open and the company has time to consider whether it wants the site. Is that correct?

**John:** Yes.

**Interviewer 3:** A company can negotiate to keep an offer open for months. Is that correct?

**John:** Yes.

**Interviewer 3:** If a company is serious about relocating to a particular site, it may well negotiate for this sort of extended offer period. Correct? **[02:00:00]**

**John:** Yes.

**Interviewer 3:** For a company only has an offer valid for, let's say, a week or two, does that create a question to your mind about whether the company is seriously considering the site?

**John:** Yes.

**Interviewer 3:** Thank you. May I ask about a different issue? You help companies find space in office towers specifically, right?

**John:** Yes.

**Interviewer 3:** Often times companies are large enough that they could spread it across multiple floors of an office building, correct?

**John:** Yes.

**Interviewer 3:** When companies do spread across multiple floors, I imagine they usually want the floors to be contiguous. For example, two, three, four, five, is that correct?



**John:** They always want contiguous workspace.

**Interviewer 3:** Have you ever had any experience where clients have wanted non-contiguous floors, such as three, seven and 14?

**John:** No.

**Interviewer 3:** Would you ever recommend to your client that they adopt non-contiguous floors for their office configuration?

**John:** Barring some natural disaster response, the answer is no.

**Interviewer 3:** Okay. If a company said that it's seriously considered to move into floors 3, 7, and 14, would that raise an eyebrow for you?

**John:** Yes.

**Interviewer 3:** Let me ask you about a different issue. Let's say you're looking for a property for one of your clients, and a real estate broker tells you that a different company has a Right of First Refusal on the property. I want to make sure we understand what that means. What is a Right of First Refusal?

**John:** A Right of First Refusal is when a landlord has an agreement with a specific company to give them a first shot at taking or buying or leasing office space before they market, or try to get additional tenant for the space.

**Interviewer 3:** If you're looking at a property and a different company has a Right of First Refusal on it, you're behind them in line, so to speak. Is that right?

**John:** Yes.

**Interviewer 3:** You can only get the property if the other company turns it down first. Is that right?

**John:** Yes.

**Interviewer 3:** Okay, so if you're looking at a property and a different company has a Right of First Refusal on it, would you ever advice one of your clients that they should consider that property?

**John:** That wouldn't be an attractive option, no.

**Interviewer 3:** [02:02:00] A company said that it was considering a property that a different company had a Right of First Refusal on, would that strike you as questionable?

**John:** It would, yes.



**Interviewer 3:** All right. Thank you very much. Professor Chan, do you have any further questions?

**Ronald:** Have you ever had a client of your own confess to the recollection [inaudible 02:02:22]?

**John:** We requested ours, at least in New Jersey over the years. There are specific firms that handle negotiations [unintelligible 02:02:36], and we do not do that.

**Interviewer 3:** Mr. Boyd, thank you very much. I think your testimony is going to be really useful contexts for some other testimony I expect we'll hear today. Thank you.

**John:** Thank you.

**Ronald:** This will be a good time to have our lunch break. That was [inaudible 02:03:15]. We will resume at 1:00 PM.

[pause 02:03:45] [silence]

[02:52:00]

[silence]

**Ronald:** Well, possibly the epicurean delights of Newark have detained some of the morning's spectators, but I think we should proceed on time.

[02:54:00] Our witness is Mr. David Lawyer. Lawyer, can you-- Do you solemnly swear [unintelligible 02:54:09] that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

**David:** I swear.

**Interviewer 4:** Good afternoon, Mr. Lawyer. How are you?

**David:** Very well.

**Interviewer 4:** I have to apologize to you before we begin, I didn't realize that the step down means the chair doesn't move that well. Some of your testimony as you know, we're going to be doing slides, so I hope you can see it. Why don't you just say and spell your name for the record?

**David:** David Lawyer.

**Interviewer 4:** Common spelling?

**David:** Yes, common spelling.

**Interviewer 4:** I think we got it.



**David:** The last name's L-A-W-Y-E-R.

**Interviewer 4:** Okay, and you are not a lawyer?

**David:** No, I'm not a lawyer.

**Interviewer 4:** Okay. Where do you work?

**David:** I work in New Jersey Economic Zone.

**Interviewer 4:** Are you here voluntarily?

**David:** Yes, I am.

**Interviewer 4:** Have you been fully cooperative with the task force?

**David:** Yes.

**Interviewer 4:** You and I have met before, correct?

**David:** Yes.

**Interviewer 4:** We have spoken a couple of times.

**David:** Yes.

**Interviewer 4:** Thank you very much for all your cooperation and assistance. Was there an introductory statement that you wanted to read?

**David:** I do, yes.

**Interviewer 4:** Please.

**David:** Thank you, Mr. Walden. Again, my name is David Lawyer and I am the EDA's managing director of underwriting. I have been in this position since May of 2017. Prior to which, I have worked as the director of credit incentives and [unintelligible 02:55:23]. My background is in commercial lending and credit analysis at various financial institutions, and I started working at the EDA in 2006 as a senior credit analyst.

I understand that the purpose of today's hearing is to discuss the [unintelligible 02:55:41] of [inaudible 02:55:43]. While my personal involvement of the program began with my current role in 2017. In preparation for today's hearing, I have reviewed a number of fraudulent files from the beginning of the program to the [unintelligible 02:55:59]. [02:56:00] I have also spoken with underwriters and business development officers and community involvement officers whom I will refer to as DDOs and CIOs to better understand their involvement in [unintelligible 02:56:13].

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On behalf of the EDA, I would like to thank the task force for its work and **[inaudible 02:56:20]** to improve our administration for the grow program. I would also like to note that the EDA is constantly evolving. We have in the past couple of years significantly improved our oversight of the tax incentive programs we manage. Improvements include updating the documentation and other requirements we receive from program applicants as well as reviewing and updating program files after an application has already been approved.

We understand, however, that we need to further improve to better serve the taxpayers of the State of New Jersey. To that end, we welcome comments and recommendations from the task force. I hope that my testimony today will aid in formulating such recommendations.

**Interviewer 4:** I'm sure it will. You've been very helpful so far Mr. Lawyer, but actually one suggestion to you which is just to hold the mic towards your mouth just so that you'll be heard-- Not that you can't be heard, but it'll be easier.

During your opening statement, which I thank you for, you used a term that I just want to make sure that all of our listeners are familiar with. The term was underwriting or underwriter. Can you please describe what that means? I know that it's used in many different contexts, but give us a general understanding of the term.

**David:** The most general description that I can offer is an experienced individual having a finance or accounting background and specific technical skills, who completes a detailed analysis, understands the logic and tests the validity of an application and all supporting data related to a request of financial assistance.

**Interviewer 4:** Okay. Thank **[02:58:00]** you. That was clear. In other words, in a sense, an underwriter scrubs, dives, and analyses to make sure whatever he or she is looking at is what it purports to be.

**David:** Correct.

**Interviewer 4:** Okay. Now. just to frame your testimony, I want to make sure everyone understands. Essentially, you're testifying here as a corporate witness in the sense that you're not testifying about what you personally did during the period of time from 2013 to 2017, correct?

**David:** Correct.

**Interviewer 4:** Okay. In preparation for your testimony today, you said before you reviewed a whole bunch of files, right?

**David:** Yes.

**Interviewer 4:** Were they files that we asked you to review?



**David:** Yes.

**Interviewer 4:** We've had discussions about your findings and the facts in our prior interactions.

**David:** Correct.

**Interviewer 4:** You understand that what I'm really asking you about today from the perspective of the EDA's witness, like an expert witness is to help us understand how the program was being administered specifically by the underwriting department in the period between 2013 and 2017.

**David:** Correct.

**Interviewer 4:** You understand that, right?

**David:** Yes.

**Interviewer 4:** Okay. Good. At a high level from the underwriter's perspective, when he or she gets a file, give us a very brief description of what's happened with an application before. We're going to use a slide that we worked on together. Note for the record that this is task force exhibit-- Somebody help me here?

**Male Speaker:** Six.

**Interviewer 4:** Six, now? If there's a six, it's 6A. All right. I want you to start with the process that begins before the underwriter and we'll go from there.

**David:** Absolutely. What we have behind me is what I would classify as a pretty good visual illustration of what departments within the EDA touches a grow application, the initial application, board approval and post-closing processes or post-approval processes. **[03:00:00]** All grow applications, they begin within our business development team. A Business Development Officer, which again, I will refer to as a BDO is the primary point of contact in the beginning of the application process.

In many instances, an officer from the State's business Action Center may have been in contact with the real applicant prior to our BDO getting involved. Should that be the case, both individuals they will work together towards the completion of a grow application. It is the BDO's responsibility to meet with the applicant and understand the project, confirm that the grow project is in fact the appropriate method to assist the business and that the scope of the project agrees with the eligibility criteria that's spelled out in a law.

The BDO's methods to understand the project prior to application includes, meeting the applicant at the New Jersey site. If within a reasonable driving distance, a site



visit to the out of state location and reviewing all available documentation that pertains to **[inaudible 03:01:09]**.

Ultimately, a complete package consisting of an executed grow application, application fee, and all required documentation is signed off by the business development department and submitted to my department underwriting to commence the analysis.

That takes us to the second item underwriting, and so the complete application package is then assigned to an underwriter and this individual will live with the application throughout the entire underwriting process. The BDO remains actively engaged and collectively we refer the two as the DO team.

**Interviewer 4:** I'm sorry, did you say that they get the DO team?

**David:** The DO team.

**Interviewer 4:** Okay, thank you.

**David:** Underwriting then completes a financial review of the project. **[03:02:00]** This includes the completion of a net benefit analysis, the award calculation, financial feasibility analysis and cost-benefit analysis. Finally, the underwriter completes what is called a project summary, which essentially pulls all the analysis together in a public document that is submitted to the EDA Board for approval. Then we have the board approval, and then the last step which is not up there, but it's well to the right of board approval is post approval.

Once the project has been approved, what we refer to as an approval letter that outlines the details of the approval is drafted by separate closing apartment at the EDA, signed off by the state's Deputy Attorney General's office, which I will refer to as a DAG or an AG, reviewed by EDA staff, signed by me, and then sent to the applicant for execution.

Our post closing department ensures the return and see of that approval letter and they live with the project to develop final certification and payment of the **[unintelligible 03:03:08]** That takes us to the bottom half of your chart there which provides a good linear illustration of the internal meetings that take place leading up to the **[inaudible 03:03:22]**

**Interviewer 4:** In other words that's the journey on top, and the bottom is how you get there?

**David:** Correct.

**Interviewer 4:** Okay, go ahead, please describe it for us.



**David:** The first meeting is our incentive pipeline, and our incentive pipeline meeting, all grow applications pre-approval are discussed. Such applications include those that are anticipated to be received by BDO, those applications that have been received and are currently being processed by BDO, and those which had been being complete and have been submitted to underwriting for analysis. **[03:04:00]**

Each officer assigned to their respective applications will discuss certain particulars about the project such as what it entails and not requested any outstanding items and any significant issue including legal matters.

Present at incentives pipeline includes various levels of EDA staff including senior management and a member from the AG's office. Should there be any questions regarding how a certain aspects of the application lines up with the law, EDA staff refers to our AG for their opinion, and this is a closed-door meeting.

The next step of the process is what we call incentive project review. The purpose of this closed-door meeting is to discuss the draft analysis and attachments that those grow applications currently in the underwriting department and we still have merit to be heard at the upcoming forward meeting. Equally as important, it's an opportunity to ensure that EDA staff and senior management, we're all in the same page and agree that the projects discussed are ready to proceed to the next board.

Materials distributed to the participants to review in advance at this meeting include drafts of the project summary, our confidential analysis, net benefit analysis, cost benefit analysis, there's a confidential CDA verification worksheet, which was a process improvement and a draw award calculator. Present at incentives project review are the same participants at our pipeline meeting including a member from the AG's office.

The next step is our incentive committee and the purpose of this meeting is to present the same analysis and related attachments discussed at the prior incentive project review to the members of the incentive committee. Present at this meeting **[03:06:00]** are the same participants as Project Review including a member from the AG's office and certain members of the EDA board who were selected and agreed to be part of this committee. Unlike Project Review, the underwriting analysis and attachments at this point are in substantially final form. This is a closed door meeting to which the committee members, they have the opportunity to ask any questions about any of the projects and express concerns around the incentive. .

Finally, we have the EDA board. **[unintelligible 03:06:35]** EDA board, all items recommended for approval by EDA staff and the incentive committee are considered by the members of the board. The board is a public setting, traditionally at EDA's **[inaudible 03:06:49]** All grow application materials provided to the incentive committee are also provided to the board members in advance of the meeting to review and support of their respective votes. At every EDA board meeting, a member from the state's AG office is present.



**Interviewer 4:** Thank you. That was a mouthful. It's quite a process. Thank you very much. I just want to ask you about three things that I think you talked about and I'd like you to just describe it as simply as you can so that even a layperson can understand. Can you just explain what a net benefit analysis means?

**David:** Right. The net benefit analysis, it is an estimate of the incremental tax revenues the state will receive that will result from a specific type of project located in a certain part of the state that will also result in employment activity. It takes into consideration revenues [03:08:00] that the state was not realizing before that is going to result from this new capital investment, business activity related from that capital investment as well as new employment and tax revenue generated from the employees at that location.

**Interviewer 4:** In other words, if I could make it even more simple, is it just a way to measure how good or not the deal is for the state?

**David:** That is one way to say it. Yes.

**Interviewer 4:** Okay. You also mentioned something called the cost benefit analysis.

**David:** Yes.

**Interviewer 4:** If I can lead you just for the interest of time, is that basically a way to determine whether or not the out of state location is more or less expensive than the Camden alternative?

**David:** Yes.

**Interviewer 4:** Or the alternative in any locality in Jersey.

**David:** Yes.

**Interviewer 4:** Okay. Also, there's one document I want to make sure that I cover with you to figure out where along that stage this is generated. Is there something a confidential memo of analysis. What is that?

**David:** That analysis has a lot of same information that's on the project summary, but there, we also get into the financial feasibility of the project. That involves not a deep dive, but we review certain aspects of the financial statements of the applicant. That illustrates number of years of the financial statements, certain aspects of certain financial ratios. Since we're pulling that information, which likely should be in private company we really don't want that to be on a public document.

**Interviewer 4:** Did you say on a public document?

**David:** Yes. We do not want confidential information to be on a public document.



**Interviewer 4:** But is that confidential memo of analysis, something that goes to the board as part of the board package?

**David:** I believe the board members can see that, but it's not posted on our website as the public agenda.

**Interviewer 4:** The information that is contained in that confidential memo of analysis based on information provided by applicants and verified by underwriters and others, is the information that's in those confidential memos of analysis, is supposed to be truthful?

**David:** Absolutely.

**Interviewer 4:** Is it fair to say that part of the job of the underwriter is to verify that the information contained in the applications is confirmed true and that there are no red flags?

**David:** Correct.

**Interviewer 4:** In circumstances where information in the application seems questionable or suspicious, what is the underwriter's role?

**David:** They will question it.

**Interviewer 4:** To what end?

**David:** Until they receive a satisfactory response.

**Interviewer 4:** If in the course of work, an underwriter, again during this period from 2013 to 2017, could not satisfy him or herself of an important piece of information, what would generally happen in those circumstances?

**David:** It may be begin with a phone call or an email to call out the item that the underwriter has an issue with and then an explanation may be provided, which results in the request of **[unintelligible 03:11:24]** information to review in support of the response that was provided.

**Interviewer 4:** I apologize. My question was probably not crisp enough. So let me try it again. Once the questions are asked, and once the applicant provides whatever the applicant has, if at that point, the underwriter still has a question or concern, it's not resolved. Internally, can you just help us understand what happens next? What's the underwriter supposed to do if actually he can't or she can't get the question resolved to their satisfaction?

**David:** I think it really depends on what that issue is.

**[03:12:00]** If it's an issue that can impair the eligibility of the project, then that can lead us down a different path to where the project is no longer eligible.

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If it's a question that we feel should be answered, that may lead to the project being held for a period of time until we get resolution. It may be a question that we feel was so important, it doesn't impact the eligibility, but really for us to understand the project and to be consistent with other similar projects that we have reviewed in the past. Again, that project may be held until we've received an acceptable response.

**Interviewer 4:** I'm going to ask you a little bit about your observations about the training program of the EDA, but before I do, I just want to make sure I ask this. When an underwriter gets a file, obviously, the internet is a ready source of information that **[audio cut 03:12:59- 03:13:04]** process for the underwriter to do some level of diligence using resources like the internet?

**David:** Yes.

**Interviewer 4:** Great. On the internet, is it fair to say for example, you might be able to find prior statements that the applicant made about their intent to either stay in or leave New Jersey?

**David:** Correct.

**Interviewer 4:** You might find information about prior lawsuits that might be relevant to some of the questions about litigation in the application?

**David:** Yes.

**Interviewer 4:** You might find information that bears on whether or not the company is suitable from a business integrity perspective?

**David:** Correct.

**Interviewer 4:** That you might find regulatory violations?

**David:** Yes.

**Interviewer 4:** Do underwriters, again, you're answering based on your understanding of the way the process worked from 2013 to 2017, do underwriters generally look for those?

**David:** Yes.

**Interviewer 4:** Now, again, I'm going to ask you about this same period of time from 2013 to 2017, are you aware of **[03:14:00]** whether or not in that period of time there was ever a formal training process within the EDA to help underwriters actually understand all of the program requirements?

**David:** Not that I'm aware of.



**Interviewer 4:** Was there any sort of formal class where a lawyer came in for example and said, "Here's what that statute requires."

**David:** Not that I'm aware of.

**Interviewer 4:** Is there any sort of maybe online training that happens from time to time where underwriters get updated on new areas of concern or places where people are consistently experiencing problems?

**David:** Not that I'm aware of.

**Interviewer 4:** Again, just so we're clear. No formal training at all?

**David:** No.

**Interviewer 4:** You talked about recommendations before, do you think that it would be a better process and make it easier on underwriters if there actually was a formal training program?

**David:** I can see value in that, yes.

**Interviewer 4:** Would there also be value in a yearly recertification to explain developments in the program, the new regulations and amendments and those sorts of compliance refreshers?

**David:** I see the value in ongoing training, but as far as a specific certification.

**Interviewer 4:** I'm sorry, I didn't really mean certification in that way. I meant just an ongoing training on a yearly basis, so if there've been changes in the law or the regulations, the underwriters actually get some formal process to understand that.

**David:** I see value.

**Interviewer 4:** And to ask questions, for example.

**David:** Yes.

**Interviewer 4:** Okay. Let me just ask a question, make sure that we understand. At some point when you started in May 17, you did something to help familiarize yourself, given the fact that there wasn't a formal training program even then.

**David:** Correct.

**Interviewer 4:** What did you do so that you were familiar with the Grow Program?

**David:** The very first thing I did was to review study and understand as best I can the act and the rules. From there, you only just need to immerse yourself [03:16:00] into the process which actually was an existing process at the EDA for our loan



programs. So, when the underwriting department took over the approval process for grow applications, it made complete logical sense to follow that same process as well.

I took it upon myself to make sure that on almost a daily basis, I would sit with an underwriter to discuss what projects they were doing, what are their observations, what works, what does not work, are there any areas that they think may be improved. That was my way to understand what was the existing process.

I made clear to everyone in May of 2017 that my intent isn't to come in and make fast changes immediately. I thought as a good leader, it's best to understand what are the current process and then once I'm able to get my arms around it, look for opportunities to improve which ultimately we did.

**Interviewer 4:** Now that you've talked about your experience when you got in, I'm now going to go back to the questions I was asking before about the period between 2013 and May of 2017. Before I do that, let me ask you just to make sure I understand. The grow programs, so everyone's clear, is it fair to say that it's designed to create new jobs, retain new jobs, or encourage capital investments?

**David:** Correct.

**Interviewer 4:** It gives tax incentives if companies do one or more of those things.

**David:** Yes.

**Interviewer 4:** For companies that were at the time of their application, they were already in New Jersey, as the program was administered, **[03:18:00]** does every applicant have to show the jobs were at risk of moving out of the state?

**David:** That is my understanding.

**Interviewer 4:** Is that true even where an application proposes to move jobs intrastate from a city outside of Camden to Camden?

**David:** That is my understanding.

**Interviewer 4:** Okay. Did the EDA during this period, again as part of its administration, require the submission of proof regarding the out of state location?

**David:** Yes.

**Interviewer 4:** Okay, and before I talk about the kinds of proof that you found that the EDA was accepting, let me just ask you, as a general matter, did the EDA require that the location be bonafide?

**David:** Yes.



**Interviewer 4:** Did the EDA require that the location be suitable for the business?

**David:** Yes.

**Interviewer 4:** Did the EDA require that the location be available?

**David:** Yes.

**Interviewer 4:** Okay. Now, if you would, what kinds of proof did you find that the EDA was either accepting or asking for as a proxy for those issues?

**David:** Primary letters of intents.

**Interviewer 4:** Can we refer to those generally as LOI or?

**David:** LOIs.

**Interviewer 4:** LOI. I'm sure that the LOIs come in various shapes and sizes, but could you just give the people who are listening a brief explanation of your understanding of what an LOI is?

**David:** Another word is a term sheet. It's someone who has the actual asset. They're making an offer on this is what they are maybe willing to provide you to meet your need in whatever project that you have.

**Interviewer 4:** Would it be the underwriter's expectation that the company actually did diligence to make sure that that location was suitable?

**David:** Yes.

**Interviewer 4:** That the location was available?

**David:** Yes.

**Interviewer 4:** If the location didn't seem suitable [03:20:00] or available, or bonafide fair to say that the underwriter would ask more questions and ask for more documents?

**David:** Correct.

**Interviewer 4:** In your estimation, or based on your experience, does an underwriter have the authority to ask for underlying business records? Show me the business plan for why this site is suitable, for example.

**David:** Generally speaking, the underwriter can ask for any additional information they deem can support that ultimate location if they question an LOI.



**Interviewer 4:** Okay, this is a hypothetical question, but if there was a circumstance where a company made a submission of an out of state location and the underwriter determined that it was a phantom location, for example. That it was not a bonafide location, what impact could that have on that particular application?

**David:** It could be declined.

**Interviewer 4:** All right, so I'm going to ask you to look at tab one of your binder. Now, did you fairly say that we showed you this document before your testimony today?

**David:** Yes.

**Interviewer 4:** Is this a chart that represents 31 companies?

**David:** Yes, it is.

**Interviewer 4:** Are those 31 companies all of the companies that you're aware of between the start of the growth program and presently that applied to retain or to move jobs to Camden from within the state?

**David:** Yes.

**Interviewer 4:** Based on your work, is that chart accurate and complete?

**David:** It is.

**Interviewer 4:** Of the 31 companies, is it fair to say that 30 of them, according to their application, indicated an intention [03:22:00] to either move to Camden or to move to an out of state location?

**David:** Yes.

**Interviewer 4:** Is it fair to say that the one company that doesn't fall in the 30 was going to eliminate jobs in Camden?

**David:** Correct.

**Interviewer 4:** You can shut that now. Does anyone know the exhibit numbers on this?

**Female Speaker:** Nine.

**Interviewer 4:** Nine.

**Female Speaker:** [unintelligible 03:22:24]



**Interviewer 4:** Great. [unintelligible 03:22:26] this is a pretty [unintelligible 03:22:26] We're going to call this nine. I'm going to move on to the next subject. I want to ask you a little bit about that timing of the applications. Is it fair to say that the applications were fairly complex?

**David:** Very.

**Interviewer 4:** Even at the initial stages for the BDO's work, the Business Development Officer, does it take quite some time for the business officer to gather up all the information and make sure that he or she is comfortable with the level of documentation filed ?

**David:** They can, yes.

**Interviewer 4:** Is it fair to say that the expectation that underwriters going to have once the BDO passes it off? Most of the questions are already answered in the file.

**David:** Most of the information is contained in the file, yes.

**Interviewer 4:** [unintelligible 03:23:15] I'm sorry, most of the information is contained.

**David:** Correct.

**Interviewer 4:** The underwriter's job is hopefully, if all the information is there, then you can do the deep-dive and analyze it?

**David:** Correct.

**Interviewer 4:** And verify or vet it?

**David:** Yes.

**Interviewer 4:** That whole timeline that you talked about, is that something that generally can occur in a couple weeks or a month?

**David:** I haven't seen that.

**Interviewer 4:** What's the average time that you think an average application takes to go from the business development stage to the board approval stage?

**David:** I would say a fair assessment is anywhere between four to nine months. It could be more, it could be less.

**Interviewer 4:** [03:24:00] What we put an application at the back end of the time scale?



**David:** It could be various, sometimes if the application is not complete on the business development side and they're working on obtaining information, it's just a play on time to receive everything that they need. Or it could be a question that was either posed during the business development period or the underwriting process that prolongs the approval process waiting on additional information.

**Interviewer 4:** Now, is it fair to say that prior to coming here today, I asked you to review five applications?

**David:** Yes.

**Interviewer 4:** I asked you to review the project files for those five applications?

**David:** Yes.

**Interviewer 4:** I'm only going to ask you about four of the applications. Is it fair to say that that includes Conner Strong & Buckelew?

**David:** Yes.

**Interviewer 4:** The Michaels organization?

**David:** Yes.

**Interviewer 4:** NFI Industries.

**David:** Yes.

**Interviewer 4:** Cooper Health?

**David:** Yes.

**Interviewer 4:** Cooper Health. Did I also ask you whether or not you could speak to the BDO and the underwriter on those files to make sure that you were familiar with the relevant issues?

**David:** Yes.

**Interviewer 4:** As a general matter, I'll first ask you about the applications for Conner Strong, the Michaels organization and NFI. Did the BDO describe to you that she had a general process for how she went about her work?

**David:** Yes.

**Interviewer 4:** Is it fair to say that that process began with a preliminary step of diligence?

**David:** Yes.



**Interviewer 4:** Describe what she said in terms of what that step of diligence was.

**David:** Part of it is [03:26:00] to complete a Google search on the applicant specifically to look for illegal items. Also, to have a conversation with the applicant to ensure that she understands the project. Then ultimately, to start gathering information to ensure that the application package is complete when they're submitted to [unintelligible 03:26:25]

**Interviewer 4:** Now according to the BDO, did she actually perform this preliminary set of diligence on these three applications, Conner Strong and NFI and TMO?

**David:** She did, yes.

**Interviewer 4:** I want you to just look at slide 3 for a second. Is it fair to say that each of the applications was for a grow New Jersey award?

**David:** Yes.

**Interviewer 4:** Is it fair to say that they were all filed on October 24th of 2016?

**David:** Yes.

**Interviewer 4:** Each company indicated in its application that was considering a move to Philadelphia?

**David:** Yes.

**Interviewer 4:** Each of the companies was represented by the same consultant?

**David:** Correct.

**Interviewer 4:** Who was the consultant?

**David:** KMG.

**Interviewer 4:** Okay. Now, I just want you to know, just for the sake of your reference, that if you need to refer to the applications at any time, they are Tabs Two, Three, and Four of your binder.

**David:** Okay.

**Interviewer 4:** First of all, I'm going to ask you about a specific article that was discoverable with respect to Google, understanding that the application was submitted on October 24th of 2016. In order to ask that question, can you go to Tab Five of your binder? Can you describe what is in [03:28:00] Tab Five?

**David:** It's an article in the Philadelphia Inquirer titled, Plans Announced for Bastion Development [unintelligible 03:28:08] Waterfront.



**Interviewer 4:** I'm sorry, what is the date of the article?

**David:** September 24th, 2015.

**Interviewer 4:** A little bit more than a year before the applications were filed?

**David:** That's correct.

**Interviewer 4:** Now, did you see any indication in the file that the BDO or the underwriter found this document?

**David:** No.

**Interviewer 4:** Okay. Prior to your testimony today, did you have an opportunity to review this document?

**David:** Yes.

**Interviewer 4:** Does it raise a question or a concern for you?

**David:** It does.

**Interviewer 4:** Could you explain it to us?

**David:** Sure. In the article, and I can use names?

**Interviewer 4:** Yes.

**David:** In the article, it makes reference to Mr. George Norcross, Head of Cougar University Hospital Board, that his insurance firm, Conner Strong & Buckelew is considering moving its headquarters into the development. Other companies expected to join include Archer & Greiner Law Firm.

**Interviewer 4:** I'm sorry, I don't have this in front of me.

**David:** I'm sorry. Other companies expected to join the project include the Archer & Greiner, P.C. Law Firm, which has offices and headquarter in New Jersey and Philadelphia in Cherry Hill. Supply chain company, NFI Industries and the Michaels Organization in Cherry Hill Housing Company that has done work in Camden. For reading this, one can glean, have they already made a decision as far as their New Jersey location? We don't know that.

**Interviewer 4:** That's a question?

**David:** It is a question that comes up.



**Interviewer 4:** There might a completely [03:30:00] legitimate explanation that they're choosing another site in Philadelphia. In fairness, each of the companies actually submitted LOIs, letters of intent, for locations in Philadelphia. Correct?

**David:** Correct.

**Interviewer 4:** Okay, I'm going to ask you some questions about the proposed out of state locations for each. After I ask you the factual questions, I just want to make sure that everybody has a common understanding of the facts. Then I'm going to go and ask you some questions about the significance of those facts just from an underwriting perspective. You understand that?

**David:** Yes.

**Interviewer 4:** Okay. Each of these applicants submitted real estate proposals for commercial spaces in Philadelphia to substantiate the risk that the jobs at their companies could move out of state.

**David:** Yes.

**Interviewer 4:** Okay. What you see behind you, and again, I apologize that you don't have a chair that spins, but if it's easier for you, if you want to walk around and look at it while you point the microphone at the screen, that's fine.

**David:** No, I--

**Interviewer 4:** Okay, you're good. All right. You're familiar with this chart. We talked about it before, correct?

**David:** Yes.

**Interviewer 4:** Just tell me if I'm explaining it correctly and anything else you want to add.

**David:** Okay.

**Interviewer 4:** It's organized for each of the three companies, and each of them has a proposal one and a proposal two. There is a row for the date of the proposal, the total square footage, the floors and the basement. Correct?

**David:** Yes.

**Interviewer 4:** You've had an opportunity to review these LOIs prior to your testimony today.

**David:** Correct



**Interviewer 4:** In the interest of time, do you mind if I just lead you through the information since you've already verified that the information we're going to populate here is correct?

**David:** That's fine.

**Interviewer 4:** Okay. All right. Before I do that, let me just get the addresses down. Is it fair to [03:32:00] say that the address that Connor Strong and Buckelew was considering was at 1601 Market Street in the city of Philadelphia?

**David:** Yes.

**Interviewer 4:** Is it fair to say that the address for NFI was 1500 Spring Garden street in the city of Philadelphia?

**David:** Yes.

**Interviewer 4:** Was the address for the Michaels organization the same or different than the address that NFI had proffered them? Just drink.

Based on your discussion with the underwriter, is it fair to say that after the underwriter reviewed the first set of proposals, which we'll get to the details in a minute, he noticed a problem?

**David:** Yes.

**Interviewer 4:** What was the problem?

**David:** It was the length of time between proposal one and proposal two, and I believe a difference in the square footage.

**Interviewer 4:** Okay, I'm sorry the underwriter didn't -- Sorry if I'm, if I'm leading you a little bit on this. Is it fair to say that the underwriter noticed that the LOIs were expired?

**David:** Yes.

**Interviewer 4:** Okay. When I say expired, do you understand that to mean that the proposals are no longer available?

**David:** Correct. One can make an interpretation of this.

**Interviewer 4:** Okay, and is it fair to say that the proposals, according to what the underwriter found, the proposals for each of these companies; Conner Strong, NFI and the Michaels Organization had actually expired before the applications were even submitted?

**David:** That's right.

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**Interviewer 4:** In your experience is that unusual?

**David:** Yes, it's unusual.

**Interviewer 4:** Why?

**David:** Because it casts doubt on whether that slide is available.

**Interviewer 4:** Okay. I think I'm going to skip some questions in the interest of time. Okay, let me just ask this question. Just again to speed things up. **[03:34:00]** Is it fair to say that, based on your file review, when the underwriter determined that the initial LOIs had lapsed, had expired, he made a specific request of the consultant or the lawyer that would represent each of these three companies?

**David:** Yes.

**Interviewer 4:** Was the request for them to extend the LOI?

**David:** Yes.

**Interviewer 4:** Why would the underwriter use a word like that, extend the LOI that already existed?

**David:** To ensure that the same data points on the original LOI still exist in the future.

**Interviewer 4:** Is that also a recognition of the underwriter's perspective that this is an address that they vetted before, that they determined is suitable, that they've done some research on to make sure it will meet their company's needs?

**David:** Correct.

**Interviewer 4:** Okay. Is it fair to say that based on your review of the file that this individual that was handling these applications and again, just let me use his name, Mr. **[unintelligible 03:35:11]** actually did not get extensions for the LOIs that were originally filed but expired.

**David:** That's right.

**Interviewer 4:** Is it fair to say that he essentially got newer LOIs for similar space that had differences?

**David:** Yes.

**Interviewer 4:** Did he do that immediately or did some number of months pass?

**David:** It took some time.



**Interviewer 4:** Now, I'd like to just go through and populate the chart. Do I understand correctly that the first Conner Strong and Buckelew proposal was dated on August 29th, 2016?

**David:** That's correct.

**Interviewer 4:** It had roughly 153,345 square feet of space in the lease proposal.

**David:** Yes.

**Interviewer 4:** [03:36:00] Is that an indicator that's what Connor Strong believes it needs for its operations.

**David:** Right, yes.

**Interviewer 4:** It was on floors 3 through 7 and 11 and 12?

**David:** Yes.

**Interviewer 4:** The square footage was \$25.95 at retail square foot.

**David:** Yes.

**Interviewer 4:** Okay. Now let's go to proposal two. Proposal two was submitted on December 1, 2016?

**David:** Yes.

**Interviewer 4:** The LOIs had expired, if you remember, was it September 9, 2016?

**David:** Right.

**Interviewer 4:** There was approximately a three-month gap?

**David:** Yes.

**Interviewer 4:** The space on this one dropped from a 153,000 square feet roughly to approximately 110,000 square feet?

**David:** That's correct.

**Interviewer 4:** The floors changed slightly in the sense that it was still 3 through 7, but now instead of 11 and 12 it was floor 14?

**David:** Correct.

**Interviewer 4:** Despite the differences in space, the base rent stayed the same.

**David:** Correct.

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**Interviewer 4:** Okay. Again, we're going to come back to the significance of this at the end, but let's go to NFI. Do you have the first NFI? Fair to say that like the Connor Strong, it was submitted on August 29, 2016?

**David:** Yes.

**Interviewer 4:** It was a little bit more than a 103,000 square feet?

**David:** Correct.

**Interviewer 4:** It was all on the second floor?

**David:** Yes.

**Interviewer 4:** It was \$23 at retail square foot.

**David:** Yes.

**Interviewer 4:** Hold on one second. **[03:38:00]** Okay. If we can go to proposal number two, please? This one was submitted even later than the Connor Strong one. It was at the end of February, 2017?

**David:** Yes.

**Interviewer 4:** It dropped about 10,000 square feet in terms of the square footage?

**David:** That's correct.

**Interviewer 4:** It was just a little bit more than 93,000 square feet?

**David:** Yes.

**Interviewer 4:** It was still on the second floor?

**David:** Yes.

**Interviewer 4:** The price break they got for, I assume, with a bit difference was about ¢50 of square foot, correct?

**David:** Correct.

**Interviewer 4:** It was 22.50 at retail square foot.

**David:** Yes.

**Interviewer 4:** Okay. Now from the LOI, could you determine that the expiration date on this proposal was March 24, 2017?

**David:** Yes.

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**Interviewer 4:** Okay. Now, I just want to ask you a couple of questions before I move on to the Michaels Organization about what the underwriter did or didn't ask about based on your review of the file. Did you see any indication in the file that the underwriter called out the fact that the Conner Strong proposal dropped roughly 40,000 square feet in terms of the space that they were getting in the second proposal?

**David:** Yes.

**Interviewer 4:** You found indications that he asked about that change?

**David:** No, I'm thinking of a different question. No, there wasn't any indication.

**Interviewer 4:** Okay. Did you find any indication in the file that he asked about the change in configuration from the sense of 11 and 12 having been in the first proposal and floor 13 being in the second?

**David:** I do not.

**Interviewer 4:** Okay. For the NFI proposal, did you see anything that suggested [03:40:00] that the underwriter asked about the difference in space dropping from 103,000 to 93,000?

**David:** I do not recall that.

**Interviewer 4:** Do you recall that the underwriter calling out or getting an explanation for why there was a new LOI instead of an extension of the old LOI?

**David:** No, I don't recall this.

**Interviewer 4:** Was there any indication in the files that the underwriter asked questions about the gap in time? How this space could have been available if in the interviewing period they had to coverage and the original space was available the way it was configured originally?

**David:** No.

**Interviewer 4:** Okay. Let's then go to the Michaels Organization. Fair to say that the original date was just a day after the other two on August 30th of 2016.

**David:** Yes.

**Interviewer 4:** They had two different options. They had an option for 103,491 feet on floor two or they had an option for 103,710 square feet on floors one through seven. Now, just to be clear, the 103,491 feet on the second floor, that's the same space that had originally been offered to NFI with NFI's first proposal.

**David:** Yes.



**Interviewer 4:** Okay. The base rent was \$23 a square foot?

**David:** Correct.

**Interviewer 4:** Okay. Now, were you able to determine based on the issuance of this letter and the expiration date that this proposal actually even though it was expired was only good for 11 days? **[03:42:00]**

**David:** It was only good for 11 days.

**Interviewer 4:** Is that unusual?

**David:** Yes, it is.

**Interviewer 4:** Is it fair to say that with NFI, it had a similar problem, it was good for 12 days?

**David:** Yes.

**Interviewer 4:** Could you find any indication in the file that the underwriter asked about the short duration of time that these LOIs were good for?

**David:** No, I don't recall.

**Interviewer 4:** You don't recall. Okay. Let's go through TMO number two, please. Again, submitted on the same day as NFI on February 28th of 2017?

**David:** Yes.

**Interviewer 4:** Again, a change in the space. It was almost 96,000 square feet?

**David:** Yes.

**Interviewer 4:** Instead of either the second floor option or the first and seventh floor option, this one was configured where some space was in the basement, some space was on the 1st floor, some space was on the 7th floor, and some space was on the 12th floor.

**David:** Correct.

**Interviewer 4:** The price break they got based on the changing configuration was the same as the price break that NFI got.

**David:** Yes.

**Interviewer 4:** For significantly less material changes to the configuration.

**David:** Correct.



**Interviewer 4:** Okay. Now, let me just ask you a couple of questions, again, based on your review of the file. Just give me one second. With respect to the second TMO proposal, the one on the basement, the 1st floor, the 7th floor, and the 12th floor, is it fair to say that of [03:44:00] that space, not all of that square footage was actually even available?

**David:** Correct.

**Interviewer 4:** Do you know what a roffer is?

**David:** I'm sorry?

**Interviewer 4:** A roffer. [unintelligible 03:44:10]

**David:** Yes.

**Interviewer 4:** The proposal number two for the Michaels Organization made clear that one of those spaces had a tenant that existed already that had a right to first refusal on that space. Is it fair to say that that square footage was on the seventh floor and it represented approximately 30% of the 95,000 square feet?

**David:** Yes.

**Interviewer 4:** Okay. Could you find anywhere on the file that the underwriter asked about the fact that some of the space was not available?

**David:** No.

**Interviewer 4:** Could you find any evidence in the file that the underwriter asked about the significant change in configuration?

**David:** No.

**Interviewer 4:** Any evidence in the file that the underwriter asked about the the gap between September 9th and February 28th?

**David:** Yes.

**Interviewer 4:** Okay, so now that we understand the facts, let me turn then to the significance of those facts. Again, just from the perspective of your position now as the manager of a department that's supposed to be underwriting to the level of standards that you hold. That's a need to my questions. I want to be clear. This is not about the company, this is not about whether there are reasons to explain all this. We do not have all the records yet. I'm only asking you about whether or not the underwriter in your professional judgment should've done more. Do you understand that?

**David:** Got it.

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**Interviewer 4:** Does it raise a concern for you that the NFI and TMO proposals, proposal number one, were for such a short duration?

**David:** It does.

**Interviewer 4:** Okay. [03:46:00] From underwriting perspective, would that raise a potential that these out of state proposals that are the proxy for the jobs being at risk. That these proposals aren't really qualified?

**David:** They can.

**Interviewer 4:** In those circumstances, if you were the underwriter, would you ask more questions?

**David:** I would.

**Interviewer 4:** Does it raise a concern or question at least that the first three proposals expired before the applications were even submitted?

**David:** Yes.

**Interviewer 4:** Does that raise, again, the potential that the underwriter should be looking for other indicia that these places are modified, and that they're suitable, and that they are available?

**David:** Yes.

**Interviewer 4:** Does it raise a further question that there was such a large gap in all of the proposals, but more so in the NFI and TMO ones, there's such a big gap between the first proposal and the second proposal?

**David:** Yes.

**Interviewer 4:** Again, from an underwriting perspective, is that potential indicia that more questions need to be asked to assure that this location is bonafide?

**David:** Yes, I would ask more questions.

**Interviewer 4:** This one I'm really focusing on TMO. Does the fact that the configuration changed so much raises any further questions or concerns that merit additional questions?

**David:** It does.

**Interviewer 4:** Okay. Again, less so with NFI and Micheals Organization but more so with the Conner Strong one, does it raise an additional question or concern that there's such a large change in square footage between proposal one, proposal two? [03:48:00] requiring [unintelligible 03:48:01] more questions?

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**David:** Yes.

**Interviewer 4:** Again, I just want to know from an underwriting perspective, the fact that all the companies were using the same consultant, that two of the companies were intending to locate in the same exact building in Philadelphia, that they were offering the same space in one of the proposals, from an underwriting perspective, does that raise any additional questions or concerns?

**David:** Yes.

**Interviewer 4:** I take it, in your professional judgment, more questions would be [inaudible 03:48:40]?

**David:** Yes.

**Interviewer 4:** From an underwriting perspective, does it raise additional questions or concerns that, with respect to the Michaels Organization, a significant block of the space was not even available?

**David:** Correct.

**Interviewer 4:** Do you see these issues as serious issues from an underwriting perspective?

**David:** It depends on their responses.

**Interviewer 4:** I'm sorry. I should have asked you a question. Based on the totality of the circumstances and the number of Chenes in the LOIs and the various issues we've discussed, as an underwriter, would your questions in this regard be serious questions?

**David:** Yes, because I think there's a pattern.

**Interviewer 4:** I want to ask you about one more occupation. It's in tab 13. I just ask that you take a look, tell us what application this is?

**David:** Cooper Health Assistant.

**Interviewer 4:** Now, before I ask these questions-- You know this already, but I'm going to be clear. I asked you before, with respect to the other applications, whether or not the underwriters should ask more questions, [03:50:00] it's one of those questions depending on the oral information that they get, a question about obtaining business records that the company has that are contemporaneous to their evaluation of the sites to show things like they did this, they were doing site visits at the out-of-state location, they actually had a business plan, there was a spreadsheet that had been created months ago that showed what the relocation and the build-out costs should be, that's an option for the underwriter. Correct?



**David:** We lead with the CBA, but if additional information is needed to complete the analysis, yes, we can ask for additional items which would include some of those items that you had mentioned.

**Interviewer 4:** We don't have all the facts with respect to these applications so this is just a question about practice, not these applications, but if, with these applications, the underwriter had some serious questions about whether the sites were suitable, bona fide and available, the underwriter has the option of asking for some of the business records that I just outlined?

**David:** Yes.

**Interviewer 4:** Now we're going to show an example of where we actually do have business records, so you understand that. You said the application was for whom?

**David:** The Cooper Health System.

**Interviewer 4:** Just looking at the slide just to make things easy, it was filed on November 7th, of 2014?

**David:** Yes.

**Interviewer 4:** Is it fair to say that Cooper was intending to, with respect to the Camden option, move its administrative facilities from another location to Camden?

**David:** Yes.

**Interviewer 4:** Were they going to move into a building that was generally referred to as the L3 building?

**David:** Yes.

**Interviewer 4:** Is it fair to say that the company articulated that it was moving its [03:52:00] offices to Philadelphia?

**David:** Yes.

**Interviewer 4:** Or that was the potential out-of-state location?

**David:** Correct.

**Interviewer 4:** Is it fair to say they were also represented by Kevin Sheehan and Parker McCay?

**David:** Yes.

**Interviewer 4:** Now, is it fair to say that the application was approved on December 9th, of 2014?



**David:** Board approval? Yes.

**Interviewer 4:** We talked about this a little while ago, but that's a month and two days. Before I asked you to review this application, had you ever seen that in your entire time at the EDA?

**David:** Not that I recall.

**Interviewer 4:** Is it fair to say that the amount of money awarded with respect to Cooper Health was \$40 million over 10 years?

**David:** Yes.

**Interviewer 4:** Do you know whether or not any of that money has been paid today?

**David:** I do.

**Interviewer 4:** How much has been paid?

**David:** \$13,082,000.

**Interviewer 4:** Now, in reviewing the application did you notice a problem?

**David:** There was a question regarding **[unintelligible 03:53:09]** jobs and ultimate location to be determined.

**Interviewer 4:** Can you just turn to-- It's in tab 13, I think it's highlighted for your convenience. It's up on the screen, but God knows does anyone has better eyes than me, I can't read it. Can people read that? All right, sorry about that. We'll read it in for the record. Go ahead. Read the highlighted section in **[unintelligible 03:53:37]**.

**David:** Sure. Are any jobs listed in the application at risk of being located outside of New Jersey? The response is no. List other states New Jersey is in competition with, answer is TBD, to be determined.

**Interviewer 4:** Now, I want to pause there for one second, I now want to turn to tab **[03:54:00]** 15 in the binder. Is it fair to say this is part of the application? Mr. Lawyer?

**David:** 15?

**Interviewer 4:** No, I'm sorry. I'm asking you a question about this first.

**David:** Yes.

**Interviewer 4:** This is on the application itself?

**David:** It is, yes.



**Interviewer 4:** Essentially, this is what the CEO certified to?

**David:** Correct.

**Interviewer 4:** Now, turn to tab 15 of the binder if you will. Do you see that there is highlighted language there for your convenience?

**David:** Yes.

**Interviewer 4:** Before you get to the highlighted language, can you tell everyone what this is?

**David:** This is our confidential memorandum of analysis.

**Interviewer 4:** Is this something that is written by EDA staff, based on information that's provided by the applicant?

**David:** That is correct.

**Interviewer 4:** Do I understand correctly that it was the general practice that this is the information to which the CEO has certified?

**David:** Yes.

**Interviewer 4:** This is essentially information that's been sworn?

**David:** Correct.

**Interviewer 4:** Again, to be clear, the CEO certification that you reviewed was for November, not December.

**David:** Okay.

**Interviewer 4:** Did you in any way, find either an amended application or an amended CEO certification?

**David:** No.

**Interviewer 4:** Can you just read the language that's highlighted in the record, please?

**David:** Sure. Cooper Health System is planning a consolidation of back-office operations from several locations in Cherry Hill and Mount Laurel, New Jersey.

**Speaker 3:** What was the second one?

**Interviewer 4:** Mount Laurel.



**David:** Mount Laurel, New Jersey, and to one location in Camden. Specifically, 123,578 square feet in the L3 building.

**Speaker 3:** Say what's [unintelligible 03:55:43]?

**David:** L3. The alternative is to relocate these jobs to Philadelphia, PA.

**Interviewer 4:** Can you read the second highlighted portion?

**David:** Overall, when factoring in both the upfront [03:56:00] and ongoing annual cost to operate the project, it is estimated that the New Jersey location will be \$555,154 more expensive over 10 years on a net present value basis. As a result, the company has applied for [unintelligible 03:56:17] Jersey tax credits to offset these costs and make New Jersey more competitive. Management has indicated that the award is a material factor in the company's decision to locate the project in New Jersey.

**Interviewer 4:** Now, if you will-- Hold on one second. Let me show you then, the real estate proposal that you found in the file. If you can go to tab 16. Again, the approval was on December 9th, can you tell us the date of the LOI that Cooper Health submitted in support its application?

**David:** December 5th, 2014.

**Interviewer 4:** Is it the same or a different broker than the broker on the TMI, NFI and counter strong LOIs?

**David:** It's the same.

**Interviewer 4:** It's the same broker, okay. If you turn to the second page of the document, what is the location, the street location that they are considering a move to according to this submission?

**David:** 1500 Market Street, Philadelphia, PA.

**Interviewer 4:** Do you remember in the file whether you found that there was a cover email that submitted this document? Why don't you turn to tab 17 and see if things that you don't remember, if that refreshes your recollection.

**David:** Yes.

**Interviewer 4:** Okay. What is the date of tab 17?

**David:** [03:58:00] December 5th, 2014.

**Interviewer 4:** It was submitted to EDA on the very day of the letter being issued by the real estate broker?



**David:** Right.

**Interviewer 4:** What's the name of the individual who sent this email?

**David:** Andrew Bush.

**Interviewer 4:** Now, can you just read the highlighted language of the cover email into the record?

**David:** Please find attached a letter of intent from a prospective Philadelphia landlord. The terms are slightly more aggressive than those presented in the cost benefit analysis, meaning that there is more of a burden to Cooper to remain in New Jersey.

**Interviewer 4:** Can I ask you a question?

**David:** Yes.

**Interviewer 4:** My colleagues have told me that there's a live feed. Meaning, it's being streamed by someone, I'm not sure who, and they can't hear you, so can you just pull the mic a little bit closer or get closer to it? Thank you. I'm sorry, did you read the highlighted language into the record? [silence] -because you've explained it to me before and I'm still not sure that I understand it. CEO signs a certification on day one. On day whatever, one through five months from now, other things are happening. There may be Chenes. It's not uncommon at all for, in that process, for things to Chene. Right?

**David:** Right.

**Interviewer 4:** Spaces might be different on different locations. A lot of different things happen. Is it usually the case where there are material Chenes in an application, that there's an amended application or an amended CEO certification saying, "At the end of the process, I've now familiarized myself with everything [04:00:00] and it's accurate."

**David:** I don't recall specific events where that took place, but I would imagine that if there were really material Chenes to an application and the materials that were provided, yes, there was a revised CEO certification that was provided and even a revised application.

**Interviewer 4:** Is it fair to say that for small Chenes that don't really affect anything, would EDA generally go through that trouble?

**David:** Yes.

**Interviewer 4:** If there were, again, if you know because you're talking about a period of time that you didn't have the underwriting pen, you didn't have the department as its leader. Do you know whether or not as a general matter  
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underwriters were told the CEO certification is backward and forward looking, it's certifying that it's in the process and if there are Chenes that the CEO is aware of it and they've got to call out if the CEO is exempted somehow from the certification?

**David:** I'm not familiar with that kind of thing.

**Interviewer 4:** Do you know of cases where there was a Chene that was material enough that the CEO actually did another certification? Do you know of a circumstance where that happened sitting here today?

**David:** No, I don't know if there's specific circumstance, but I can imagine that it likely has happened.

**Interviewer 4:** Remember when we were talking about reforms?

**David:** Yes.

**Interviewer 4:** Would this be another kind of policy that would make sense to tie down, that when there were material Chenes to an application that might actually affect whether they qualify for their award at all, that the CEO recertifies to whatever the new state of facts is?

**David:** One would probably need to define what is meant by a significant Chene. Any Chene because that's your interpretation, but yes, I think that there's value in that.

**Interviewer 4:** Hold on one second. **[04:02:00]** I just want to unpack this a little bit. We get from November to the approval in December. Is it fair to say that with respect to this issue and the Philadelphia location that was eventually **[unintelligible 04:02:24]** four days before the approval, there were some relevant emails that talked about the back and forth?

**David:** Yes.

**Interviewer 4:** Turn to tab 18 if you will. **[inaudible 04:02:38]** emails from **[inaudible 04:02:49]**. You see that?

**David:** Yes.

**Interviewer 4:** You see that there's a difference in the color of the writing between the black and the blue?

**David:** Yes.

**Interviewer 4:** Do you see in **[unintelligible 04:03:00]** saying **[unintelligible 04:03:07]** below.

**David:** Yes.



**Interviewer 4:** Based on that you understand that she asked questions and then he provided the answers.

**David:** Correct.

**Interviewer 4:** [unintelligible 04:03:17].

**David:** December first, 2015.

**Interviewer 4:** Can you then go down to the body of her email that has her question and his answers and read both of them into the record for us, please.

**David:** Number one?

**Interviewer 4:** Correct.

**David:** Please provide the back up on the proposed terms for each of the locations, [audio cuts] term sheets, letters of intent and/or draft [unintelligible 04:03:44], the response I am touring [unintelligible 04:03:49] locations in PA, on Wednesday and hope to have term sheets by the end of the week.

**Interviewer 4:** [04:04:00] In your experience is it unusual that an applicant would be looking for locations after an application is already filed?

**David:** In this context, yes.

**Interviewer 4:** Again, you don't know the back--

**Ronald:** May I just ask, Teresa Wells, have we identified who she is?

**Interviewer 4:** I'm sorry, who is Teresa Wells?

**David:** I wasn't sure you've actually meant to say the name.

**Interviewer 4:** I didn't mean to say the name, I was was going to repeat it, but sorry. Do you mind, chairman, if we just skip over that question?

**Ronald:** Okay, sure.

**Interviewer 4:** Okay, thanks. Now, did you see any indication in the file that the underwriter, in this case, asked any questions about the fact that the application was submitted saying, "No jobs were at risk?"

**David:** No.

**Interviewer 4:** Did you see any indication in the file underwriter asked any questions concerning what the company meant when it said, "The competitor state location is TBD or to be determined?"



**David:** No.

**Interviewer 4:** Did you find any indications in the file that the underwriter asked any questions about why Andrew Bush of Cooper Health, was doing a sight tour after the application had already been filed?

**David:** No.

**Interviewer 4:** All right. If there was an explanation for this, what the underwriter could have done as we talked about before is to ask for some underlying documents and ask the company to explain these things, and if the explanations weren't enough to provide documents to back it up, correct?

**David:** Yes, or a phone call.

**Interviewer 4:** Or a phone call, meaning for example, the company may have had a location in Philadelphia that was subject to a natural disaster and suddenly found itself without a place to [04:06:00] stay, right?

**David:** Right.

**Interviewer 4:** There are a million other explanations that might answer some of these questions, correct?

**David:** Correct.

**Interviewer 4:** The point of this exercise is not, again, what happened with the company, but what the underwriter did. Would you say that the underwriter in this circumstance should've asked more questions than the ones you found in the file?

**David:** In writing, what I found on the file, yes. I don't know if any phone calls were made.

**Interviewer 4:** Fair point. Fair point. You know now as you sit there that we actually have obtained documents from Cooper Health, right?

**David:** Yes.

**Interviewer 4:** All right. Again, I just want to remind you that this building that they're talking about in Camden, was a building called L3, right?

**David:** Yes.

**Interviewer 4:** I'd like you to look first, if you will, at tab 19. I know that these aren't your documents, but again, I just want to explore the point of the kinds of things that an underwriter could find if they asked. Do you understand that tab 19 is an email between John Sheridan and Doug Shirley?



**David:** Yes.

**Interviewer 4:** It's forwarding, Shirley is forwarding to John Sheridan an email from Dave Foster?

**David:** Yes.

**Interviewer 4:** Was Dave Foster at the time an individual that worked at an organization called Cooper's Ferry?

**David:** Yes.

**Interviewer 4:** Was Doug Shirley at the time the CFO of Cooper Health?

**David:** You mean John Shirley?

**Interviewer 4:** I'm sorry. Unless I have it confused. I thought Doug Shirley was the CFO--

**David:** Doug Shirley, I'm sorry, yes.

**Interviewer 4:** Doug Shirley was the CFO, and John Sheridan was the CEO.

**David:** Yes, that's correct.

**Interviewer 4:** To summarize, the earliest chain, which I know you've read, is this essentially an offer from Dave Foster to lease space in the L3 building to [04:08:00] Cooper's Health?

**David:** Correct.

**Interviewer 4:** What's the date of that offer?

**David:** March 28th, 2014.

**Interviewer 4:** No, the one below.

**David:** March 27th, 2014.

**Interviewer 4:** We're talking roughly seven months before the grow application.

**David:** Right.

**Interviewer 4:** Do you see that in the top email, Shirley is reacting to the terms of the proposal that Foster made?

**David:** Correct.



**Interviewer 4:** Again, maybe other people's eyes are better than mine, I can't read that. Can you just read the language that Shirley used into the record?

**David:** Sure. "I have the proposal from [unintelligible 04:08:42] and it is very rich! From a cash flow and balance sheet, the L3 is the best deal by a long shot. No other option can touch it, so you need to be okay with this option before we go out with it."

**Interviewer 4:** Again, in fairness, we don't know what the CEO said, based on the documents I put in front of you. The CEO may have said, "No way, we're not going there," for whatever reason. Fair to say that CFO's focused on the money. Other business people are focusing on other things as well.

**David:** Correct.

**Interviewer 4:** Is it also fair to say that we showed you a document that was dated a little bit less than a month later where Cooper Health was laying out the options that it was considering?

**David:** Yes.

**Interviewer 4:** Turn to tab 20. Again, for people that have bad eyes like me, what is the top text say above the black bar?

**David:** Potential Cooper office options.

**Interviewer 4:** Whats the date of the document?

**David:** April first, 2014.

**Interviewer 4:** The other email that we just saw was on March 27th, just a couple of days earlier?

**David:** Correct.

**Interviewer 4:** You reviewed this document before [04:10:00] today?

**David:** Yes.

**Interviewer 4:** Is it fair to say each of the three options that are listed are options in Camden?

**David:** Yes.

**Interviewer 4:** None of them are 1500 Market Street in Philadelphia?

**David:** No.



**Interviewer 4:** Is it fair to say that this document reflects in each instance, that at this time Cooper Health was hoping for tax incentives in each of the instances for each of these buildings?

**David:** Yes.

**Interviewer 4:** Now, [unintelligible 04:10:36]. Focusing on the this application, again, from the perspective of an underwriter, based on the totality of circumstances, do you think these documents impact your assessment of whether or not the Philadelphia location was bona fide, suitable and available?

**David:** It does.

**Interviewer 4:** As an underwriter, if you could have concerns on a scale from one to ten, ten being the worst, based on the totality of the circumstances, where is your concern as an underwriter as you look at this file?

**David:** I was looking at between a seven and eight [inaudible 04:11:20].

**Interviewer 4:** Is it fair to say that if you were the underwriter-- Again, the company may have had plenty of explanations for all this stuff, but a lot more questions should be asked about this particular file?

**David:** Yes, I would have asked more questions, but I wouldn't anticipate to receive the email that we just discussed.

**Interviewer 4:** Right. You wouldn't expect that email to be volunteered?

**David:** No.

**Interviewer 4:** Well, can I ask you this? If the company actually had a document that showed that they need a decision before they ever applied for grow to stay in Camden, what would that do to their application? I'm not saying that occurred in this circumstance, [04:12:00] but what significance would that be for that application?

**David:** That would be a problem.

**Interviewer 4:** Professor Chen, do you have any other questions for Mr. Lawyer?

**Ronald:** I just want to understand how EDA, the process might work. It was noted that in the original LOIs by NFI and the Michaels Organization, the LOIs specified the same space, part of the same space, 1500 Market Street, which [inaudible 04:12:32] presents an issue. Is it possible that was notarized because those two applications were assigned to different underwriters?

**David:** I believe they were signed by the same underwriter.

**Ronald:** Thanks.

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**Interviewer 4:** That's actually a great question, chairman. Was the same BDO in both cases?

**David:** I'm not sure about the BDO, but it was the same underwriter.

**Ronald:** Thanks.

**Interviewer 4:** Thank you. Can we have a short break for few minutes?

**Ronald:** I think that would fine. In class when I say five-minute it's like, "Quick, getting back in 10." Is 10 minutes--

**Interviewer 4:** 5 minutes.

**Ronald:** 5 minutes? 5-minute break.

**[silence 04:13:13-04:21:04]**

**Chairman:** Are we ready to resume?

**Jim:** Yes.

**Chairman:** Give everyone a second to on their seats. Next, we have the testimony of Mr. Tim Lizura, welcome.

**Timothy:** Sorry.

**Chairman:** Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth?

**Timothy:** I do.

**Chairman:** Thank you.

**Jim:** I think my colleague told you that this is being live streamed and the acoustics on the live stream are apparently challenging, and do in order to accommodate the people that couldn't physically be here-- At the last hearing there were people all over the state they were listening. **[04:22:00]** You got to keep your mouth a little bit close to the microphone. I know that some of the time you may be looking at documents, sometimes you may be looking at the screen, but if you could try to, and I'll remind you if I think of it to return and give your answer to the microphone, that will be great. Thank you very much. Can you please say and spell your name for the record.

**Timothy:** Sure. My name is Timothy Lizura, L-I-Z-U-R-A.

**Jim:** In preparation for your testimony today, Mr. Lizura, is it fair to say that we've met before?



**Timothy:** We have.

**Jim:** We had a nice couple of hours together to explore scenarios.

**Timothy:** We did.

**Jim:** Do you understand that today I'm going to ask you about a subset of those areas?

**Timothy:** Yes.

**Jim:** Do you know you have a right to an attorney here?

**Timothy:** I do.

**Jim:** Your attorney is with you in the room?

**Timothy:** He's here.

**Jim:** You're appearing here voluntarily.

**Timothy:** Voluntary.

**Jim:** Then we appreciate that. Thank you very much and thank you for all the information that you gave us when we were together.

**Timothy:** Happy to.

**Jim:** First of all, why don't you start us off by telling us a little bit about your career?

**Timothy:** I have a short opening statement.

**Jim:** I apologize.

**Timothy:** That's okay.

**Jim:** Actually, she told me that and I totally forgot. I apologize. Go ahead, please.

**Timothy:** Some of it might be covered in that, but you feel free to ask again.

**Jim:** I'll shorten my questions perhaps.

**Timothy:** Prof. Chen and task force, thank you for having me here today. My name is Timothy Lizura. For 22 years I devoted my work to the New Jersey Economic Development Authority because I believed in and I still believe in its mission to create, retain jobs for the people of New Jersey and to support positive economic development in our state. I joined the EDA in 1995 as an analyst in the real estate



development department and I worked my way up to the position of president and chief operating officer. The EDA is a non-partisan organization.

Our work **[04:24:00]** was not to benefit any one governor, any one individual or one entity. Our priority and purpose always was to best serve and benefit the people of the State of New Jersey in accordance with the existing laws enacted by the legislature. I served at the EDA under every governor from Christie Todd Whitman to the first few months of Governor Murphy's term. Three of these governors were Republicans and four were Democrats. Since 1974, the EDA's grants and financing have benefited communities throughout New Jersey and the laws that have evolved over those 45 years address the changing needs and priorities.

My 22 years at the EDA spanned from 1995 till 2018, with a brief time away post 9/11 when I was leading the World Trade Center's redevelopment efforts. During that tenure, regardless of who was at the helm of the state government our purpose and mission at the EDA did not change. The laws that the EDA was tasked to administer have included special focus on and incentives for the development of some of the poorest cities in our state. For example, Governor McGreevey signed the municipal rehabilitation and Economic Recovery Act of 2012 to help the city of Camden.

Governor Corzine signed the urban transit hub tax credit law in 2007, and Governor Christie signed the Economic Opportunity Act of 2013, targeting cities such as Camden, Passaic Paterson, Trenton, and Atlantic City for redevelopment. As recently in October and 2018, Governor Murphy expanded the Economic Opportunity Act to benefit **[04:26:00]** the city of Paterson and to areas around the Atlantic City airport. Although the EDA was consulted on proposed legislation, the laws were approved and enacted by the legislature and signed by the governor. These laws were highly complex and constantly in flux. The EDA was tasked with the day-to-day implementation of these laws.

Here's how the grant approval process worked. Applicant businesses were required to submit a detailed application, the EDA staff verified certain information and the CEOs of those applicants were required to certify to the truthfulness of the application, which was a formal certification modeled after that required by Sarbanes-Oxley for public companies. Applications were reviewed and revised to ensure compliance with laws and regulations, and if ultimately they did not comply, the applications were not advanced and were not submitted for approval by the EDA's board. Throughout this entire process, we were guided by the attorney general's office to ensure that each individual project conformed with the law and policy.

At the EDA we work within the parameters of the laws enacted by the legislature to get to a yes in order to encourage new jobs and businesses investment and growth into areas of our state that sometimes face the greatest challenges. Every project was vetted by the EDA staff, committee members, the attorney general's office, before it reached the board's level for approval. To ensure adequate oversight, members of the attorney general's office were specifically designated to the EDA  
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working closely with us to review and approve projects and transactions. The attorney general's office was included in all board [04:28:00] committee meetings where we discussed in detail all the projects and all the policies and was present at every EDA board meeting where projects were approved.

Were we successful? The numbers show that yes, we were. According to the controls report, as of February of 2018, the \$11 billion in approved tax credits were based on 1000 approved projects that the EDA expects will generate more than \$33 billion in new capital investments and result in a total of approximately 240,000 new and retained jobs. Those tax credits are only provided if the employers complete the projects as approved and maintain the jobs throughout the grantor.

**Jim:** Grant term.

**Timothy:** Throughout the grant term, excuse me. There are different ways to count these numbers and discuss these numbers, but the simple and accurate conclusion is the same. EDA expected these projects will generate far more revenue to the state of New Jersey than the total cost of the credits. These programs were especially helpful for New Jersey distressed communities. While New Jersey is one of the wealthiest states in the country, we were also home to a number of struggling communities which face an infrastructure of urban blight.

We're not a large state, but our economic disparity is enormous. Over time, the legislature has tried to address that disparity. Camden has long been one of the poorest, if not the poorest city in the entire nation. To bring businesses and jobs to Camden and other depressed communities, policymakers determined that significant investments were needed to attract large scale meaningful investments in these regions, these regions that lacked [04:30:00] viable commercial buildings and infrastructure.

We ran the EDA in a responsible and professional manner to bring together the interests of New Jersey and business. I am proud of the work that we did. During my tenure, we worked hard to bring jobs and investments throughout New Jersey within the parameters of an ever-Chening and complicated legal landscape. We were successful in our efforts to strengthen our state's economy and to help improve the lives and communities throughout New Jersey. I thank you, Professor Chen, for the opportunity to come here today and I welcome whatever questions you might have. Thank you.

**Jim:** Thank you very much, Mr. Lizura. Again, if you could just speak into the microphone, I'd appreciate it. I'll try to remind you if it seems like one of my colleagues raises their hand. I just want to ask you about a couple of things. You're right, your opening statement did resolve some of my questions, and just as a point of amusement, I refer to you as the CEO so I gave you a promotion.

**Timothy:** Thank you. You seem to be the only one who has, so thank you.



[laughter]

**Jim:** In any event, let me just first ask you, again, this was not a question I asked you before, but when you were at the EDA, was there a woman there named Erin Gold?

**Timothy:** Surely.

**Jim:** What position was she in?

**Timothy:** Prior to my departure, she was the director, I believe, of governance and communications or director of communications.

**Jim:** She served under you?

**Timothy:** She reported generally to either the CEO directly or to a senior vice president.

**Jim:** While you were there, how many different CEOs were there?

**Timothy:** In my tenure, we had three CEOs, Caren Franzini, Michele Brown and Melissa Orsen. Orsen. O-R-S-E-N.

**Jim:** Are you still in touch with Ms. Gold today?

**Timothy:** Not recently.

**Jim:** In the [04:32:00] last six months or so, have you text messaged with her at all?

**Timothy:** The last six months, I don't recall that I did, really. Certainly not on a frequent basis. If it was a "Merry Christmas," or "Happy holidays," that would be social, or "Crazy times," something like that.

**Jim:** Okay, thank you. I just need to ask this for a different reason. I appreciated the fact that you started with an explanation of this, but I wanted just first kind of help for listeners and people in the audience that may not be policy wonks, do you consider yourself a policy wonk?

**Timothy:** I consider myself a good government guy.

**Jim:** Okay, all right. For those people that may not be so steeped in the drivers of different kinds of incentive programs, can you just help us understand at a very high level why tax incentives? What are tax incentives intended to do?

**Timothy:** It's a great question and there is a couple of things I'd like to say generally about tax incentives. Tax incentives are a tool that municipalities and instrumentalities, whether the states, counties, governments, local and national, use in order to try to influence behavior of corporations. What's interesting is in the field



of competing for these jobs, every state does this a little different. States like Texas have no corporate business tax at all. That's a way to do tax incentives, not charge taxes. [chuckles] The State of Florida charges no gross income tax to its employees, to people who work in that state.

There's a couple of levels of taxes and how it interplays with the success or [04:34:00] lack of success your community will have. Then on top, or after the large 10,000-foot level of tax policy and tax tax incentives, is how does it shape a decision to make an investment in a particular location? If you're a company, all things being equal, would you have an inclination to invest in a stable, well-run, thriving community, or would you want to invest in a community with blight, poorly managed, and lack of infrastructure? Your choice would be obvious, you'd rather invest in the former.

The way you get a company to think about investing in the latter, is you say, "Well, if you do this, we will incent that decision through a tax incentive. There's macro tax policy which is embedded in the code, and not to go too far astray, but the code has all kinds of tax credits in it. New higher tax credits, investment tax credits, energy efficiency tax credits, all of which people file on their tax returns, and check the box, and they submit it in, they get the benefit of the tax credit. Then there's tax credit laws that we manage at a program level. There's tax credits in the code, there's tax credits that are a particular program, and there's tax policy. All those things affect and shape how a company might choose to locate someplace.

**Jim:** The opening line, which sounds familiar to me because I've heard it many times, but the point of the tax incentives at a very high level is just to Chene corporate behavior and to Chene corporate decisions. It's not in the short-term, it's in the long-term, there's a sustainable economy.

**Timothy:** [04:36:00] [inaudible 04:36:02].

**Jim:** He's got the hardest job in the room, so be kind to him.

**Timothy:** [inaudible 04:36:18] that particular project [inaudible 04:36:39] a local economy rather than a systemic Chene over time. I think regular tax policy is a little bit more [unintelligible 04:36:51].

**Speaker 3:** [unintelligible 04:36:54].

**Timothy:** [inaudible 04:36:56].

**Jim:** Try to keep your voice up, if you don't mind. With the Grow Program in particular, is it fair to say that the Grow Program is, given its focus on job retention, job creation, a long-term vision and that's why the incentives are spread out over a long time?



**Timothy:** Yes. The incentives being spread over a long time is both in order to ensure that people maintain their jobs at the location that [inaudible 04:37:30]. That is an important piece to this, because if you [inaudible 04:37:34] those jobs in an ordinary or [inaudible 04:37:36] a higher compensation for the program than [inaudible 04:37:40] you can't get it approved [inaudible 04:37:44] and then move [inaudible 04:37:46] jobs in the state to acknowledge right there and expect that you still have the same economic impact that we are expecting.

It is a long-term commitment, but it also [04:38:00] aligns the risk of state appropriately in that sense you're not writing a check up front. Some states can do this. Some states will write you a check at approval, and then try to get it back if you don't do [inaudible 04:38:15] that way with the programs. Our program, I think, [inaudible 04:38:22] marries the risk and reward appropriately because it allows the cost of the program to be spread over 10 years and to make sure that we're not paying for jobs having [inaudible 04:38:36].

**Jim:** It's a very long answer. [chuckles]

**Timothy:** I'm sorry. [chuckles]

**Jim:** We're going to be here for a long time, but that's fine. Let's give everyone an example of the kind of thing that tax incentive could do immediately. If there was a specific problem in a specific area, a tax incentive could, if designed appropriately, have the potential to solve that problem, right?

**Timothy:** I suppose. [inaudible 04:39:11] problems. If it works well, it does that well.

**Jim:** Well, let's unpack it a little bit. One of the things that you mentioned in your opening [inaudible 04:39:20], which I certainly appreciate and I'm sure everyone does, is that Camden is one of the poorest cities, if it's not the poorest city in the nation. Correct?

**Timothy:** Yes.

**Jim:** Camden, as I've heard from many, many, many people, was a food desert, right?

**Timothy:** That's right.

**Jim:** When I say a food desert, I mean that for many years, one of the problems that Camden residents faced is that they don't have a grocery store that they can get to, that is anywhere close.

**Timothy:** That's right.



**Jim:** Is it fair to say that that is a particularly acute problem in the poorest communities in Camden?

**Timothy:** Yes.

**Jim:** A well-designed tax incentive program [00:40:00] could give incentives to companies to swoop in and open that grocery store.

**Timothy:** That's true.

**Jim:** Okay. We're going to talk about that today. I assume that from a policy perspective now-- We're going to talk policy, policy, policy, today, right? I'm not talking about what the legislature intended. You know I'm going to ask you about the act and the bill, the Chenes to the bill, but one thing that from a policy perspective tax incentives are not a prescription for-- they're not supposed to simply be a boon to developers, is that fair?

**Timothy:** A boon, I would say [inaudible 04:40:40] suggests [inaudible 04:40:41]?

**Jim:** Yes.

**Timothy:** I would say yes.

**Jim:** The first thing I want to do just to set the stage is, I want people to understand the way that the Economic Opportunity Act was marketed, because I think that a lot of people in the broader states don't really understand that there was marketing around it. That was not EDA. The document I'm going to show you is not an EDA document, correct?

**Timothy:** Yes.

**Jim:** Is it fair that it's a document that was created by a developer?

**Timothy:** Yes.

**Jim:** Is it fair that we say it was created by a developer called Brandywine?

**Timothy:** Yes.

**Jim:** Okay. Why don't we look at tab one of the binder. Can people actually read that?

**Speaker 3:** No.

**Jim:** No? Okay, so I'm not wrong. It's not just me. I want you to see that-- I think it's on slide six. I think we highlighted some language for you. It does say 2013 Economic Opportunity Act, and just for everyone's context, whether it highlighted or not, that little box there--

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**Timothy:** [inaudible 04:41:52]?

**Jim:** Yes, just read. I'm going back to the microphone, sorry. Just read that language [04:42:00] into the record, please. Wait, I'm sorry, Tim, can you hold for a second until - I'm sorry, your name is?

**Edgar:** Edgar.

**Jim:** Edgar, until Edgar has done his work? Thank you, Edgar.

**Timothy:** Do you want me to start over?

**Jim:** Just from tab one of your binder, can you just read that whole bubble into the record where it says 2013 Economic Opportunity Act.

**Timothy:** The Economic Opportunity Act of 2013 provides tax incentives for companies relocating to Camden. The amount of the incentives are based on the greater of the tax credit per new job or a credit against the capital investment made by an owner. The result is that the occupants may be able to obtain tax credits: one, greater than their least cost or two, equal to or greater than the cost of newly constructed building over 10 years.

**Jim:** Can I ask you a couple of questions about that?

**Timothy:** Sure.

**Jim:** First of all, did you know if that is true? Is it actually true that the way the program works, a developer could basically get a free building or even [04:44:00] make money above the construction process?

**Timothy:** The tenant could. The credit didn't go to the developer, the tenant always went to the business, so under the right circumstances, the tenant could pay less in rent than they received in tax credit.

**Jim:** I'm sorry, you may not understand this because we all know this is not your document, but could you just help me understand what this [inaudible 04:44:30] over 10

days. I take it that that is a situation where its an occupant constructed building?

**Timothy:** Yes.

**Jim:** Okay, so in the circumstance of an occupant constructed building, is it accurate that that individual or that company could make

an amount in tax credits that exceeds the cost of the building?



**Timothy:** I would think it's unlikely. I would say I guess it would depend on how you're defining the cost of the building. Is it just the construction cost or the full development cost? Is it land cost? What I believe they're speaking to there is what's called the Camden alternative, which is really a legacy of the Urban Transit Hub Tax Credit program which used to be marketed as the free building program across those eight cities. The tax credit award could be sized to the total eligible cost of the construction project when you're building it for a single tenant. Even a multi-tenant building potentially, but generally speaking, a single occupied building.

**Jim:** I'm sorry, I'm not sure I understand the question. [04:46:00] Do you see the header that says the 2013 Economic Opportunity Act?

**Timothy:** Yes.

**Jim:** Were you saying that you thought that this was in reference to another?

**Timothy:** No, I'm sorry. As the Economic Opportunity Act folded five legacy programs into its bones, if you will, one of those programs was the Urban Transit Hub Tax Credit program. The remnants of that program were embedded in this law only for the City of Camden. We for a show of hand, we called it the Camden alternative because every place else in the state there was a fairly straightforward, I say fairly straight forward in the context of a 70-page law, a base award, depending on where you were, and bonuses depending on the characters of the project, and it came out to a per job award based on those characteristics.

In Camden, an applicant could self select and apply for a award per job that was based on the amount of capital investment their project had rather than the calculated base and bonus structure. I think we had both in Camden, the greater awards were often and I'd say almost exclusively the Camden alternative award, and you would get very high per job award calculation using that model. A company would build an entire building and the cost of that building would be allocated over 10 years, and it would be divided by the number of employees.

The company was still obligated to keep those employees there every year for 10 years, so if a calculation came out to be \$200,000 per employee as an award and there was a hundred jobs at approval, they would have to keep a hundred jobs throughout the year [04:48:00] to enjoy the full benefit of the full capital allocation. If they had 190 jobs in any year, the award would be reduced for that year. It was a capital award program that was then reduced to a per head rent.

**Jim:** My question I think that you've clarified it is, although you find it unlikely, it is possible, under the Economic Opportunity Act of 2013, at least in a city of Camden that a tax incentive award could exceed the cost of a building.

**Timothy:** I would say that would equal the cost of the building. Equal the cost. They say exceed, I don't know how they come to exceed the cost of the building. It might



be how they're defining the cost of the building. We would have an eligible cost and we wouldn't exceed that amount.

**Jim:** Okay, fair enough.

**Ronald:** Can I just ask one quick question just to clarify something on my mind?

**Jim:** You're the boss.

**Ronald:** [chuckles] No. Mr. Lazzara, are you saying that that program, the Urban Transit Hub-

**Timothy:** Tax Credit.

**Ronald:** - Tax Credit literally applied to Camden only or not just Camden because it was part of what I think as known as the Garden Estate Growth Cell?

**Timothy:** Camden alone. The remnants of that program found its way into the Economic Opportunity Act was solely for the city of Camden.

**Ronald:** Okay, thanks.

**Timothy:** You had to be an ER in Garden State Growth Zone and ER bay. Garden Growth Zone, which is a municipal economic recovery for the city.

**Jim:** Now, this is no surprise you, you realize that today I'm going to ask you questions about a version of the Economic Opportunity Act 2013 that was emailed to you.

**Timothy:** Yes.

**Jim:** We're going to have a discussion about that, but before we do it, I just want to ask you some questions. Are you familiar with a firm Parker McCay?

**Timothy:** I am.

**Jim:** Did they represent the EDA in any capacity as far as you know at any time for any purpose? **[04:50:00]**

**Timothy:** Since '74 is a long time, so I would say I don't recall them doing that. Bon Council and other transactional councils along the way, I wasn't aware of every council that the authority would handle.

**Jim:** Can I make a suggestion? I would get really close like this.

**Timothy:** Okay.



**Jim:** I know it sounds like Darth Vader, but I think it would just be easier even for people on the live stream as awkward as I'm sure it is. To be clear, the EDA didn't retain Parker McCay for the purpose of helping advice it in connection with any changes or policy that it was implementing or advising on when it came to modifications to the draft of the bill.

**Timothy:** We did not.

**Jim:** When I say the draft of the bill, just to try to save some time, is it fair that we both agree that the draft that we're going to be looking at is a draft that that was sent to you after the version had already passed the House and wallet was under consideration by the Senate?

**Timothy:** I understand that's the one we're looking at.

**Ronald:** I'm sorry, I assume you mean the General Assembly?

**Jim:** I'm sorry, the Assembly. Leave it to the federal guy, right?

**Timothy:** That's right.

**Jim:** I'm sorry about that. Mr. Lazzara, again, this should be super, super clear because there's lots of different reason that this is important. We are not going to talk about any people that are in the legislature. We're not going to talk about their staff, we're not asking questions about any of that. All we're doing is focusing on the bill and the language, and then some changes that were made by an individual named Kevin Sheehan. Do you know who Kevin Sheehan is?

**Timothy:** I do.

**Jim:** Who is he?

**Timothy:** He is a lawyer for the firm at Parker McCay.

**Jim:** As you sit there today, I know I asked this question in the interview, it's fair to say you didn't remember that he was editing the bill?

**Timothy:** I did not remember that.

**Jim:** You've now seen a document [04:52:00] where we showed you the metadata?

**Timothy:** That's right.

**Jim:** Now I ask you the question because I haven't spoken to you since then, did the metadata refresh your recollection that Sheehan was making edits to the bill?

**Timothy:** The metadata reflected him making changes to the bill.



**Jim:** Yes, I'm sorry, but my question is different, so lawyers questions, sorry. When you saw it, did you say, "Yes, I remembered now"?

**Timothy:** I don't recall whether or not I knew at the time he was making changes to the bill.

**Jim:** Okay, fair enough. Listen, we're going to go through some changes and we're going to try to keep this as high level as possible. Just in the interest of time, if you could try to really focus on the specific questions I'm asking. We're going to take a pause for a second.

**Timothy:** You're wearing out the batteries is what you're doing.

**Ronald:** Let me take this opportunity to thank all my colleagues at Rutgers Law School for helping in arranging this hearing today. You are my colleagues and have been for many years. I'm just very, very grateful. Edgar, starting with Edgar and others in the room.

**Jim:** Again, I just want to clarify to the record, when you say that you don't have a recollection of Sheehan editing the bill, I just want to ask you just a couple of follow-up questions. Do you have any recollection, for example, of attending telephone conferences on which Mr. Sheehan was a participant?

**Timothy:** I don't in regard to that.

**Jim:** I'm sorry, it's a very fair qualification that I meant. In the context of any work you did on EOA 2013, do you have any recollections of phone calls that involved Mr. Sheehan talking about changes to the bill?

**Timothy:** I don't recall that.

**Jim:** As you sit here today, do you have any recollection of **[04:54:00]** having phone calls or meetings about the content of EOA 2013 with anyone that you knew to be a lawyer at Parker Mackay?

**Timothy:** I don't recall that.

**Jim:** No telephone calls or meetings?

**Timothy:** I don't recall that.

**Jim:** All right. Okay, no problem. I first want to ask you to look at tab two of the binder. Do you see that that is a cover email to you and someone else at EDA from another individual?

**Timothy:** I do.

**Jim:** Who is the other individual?

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**Timothy:** Colin Newman.

**Jim:** Can you tell us who Colin Newman was?

**Timothy:** Was.

**Jim:** Was.

**Timothy:** He was senior counsel in the governor's councils office.

**Jim:** Just to be clear to set the stage, is this the only draft of EOA 2013 that you received or did you receive several drafts throughout the process?

**Timothy:** I don't recall that. I didn't recall receiving this one until we saw it, so I don't know that I didn't. I wouldn't be surprised if we did work with Colin along the way, but I don't know that.

**Jim:** What was Colin's role in this process as you understood it?

**Timothy:** Colin was charged with negotiating with the legislature to arrive at a piece of legislation that, as I understand it, would be passable by both chambers and that was

satisfactory to the governor for signature. He effectively was negotiating [04:56:00] the lease for the governor's office. A legislation, sorry.

**Jim:** Now, you know based on our prior conversation that I'm going to ask you about a number of changes that were made to this.

**Timothy:** Yes.

**Jim:** Okay, and just so you understand, behind you on the screen what we have is a version of what you're looking at but an electronic version. On some of these depending on where the change exists, you can't see the metadata showing who made the change unless you put your mouse over, literally put the mouse over it, and so we've got a screenshot of who made the change. You may not remember who made certain changes. If you said, "I don't remember," I'm just going to say, "Let the record reflect as displayed on the screen it is whoever made the change," okay?

**Timothy:** Yes.

**Jim:** I'm going to try to keep this high level to try not to get too granular on the policy aspects, but I think that some of these changes are important for people to understand. You see that in the binder we've now flagged a bunch of changes in order. There's number one, number two, number three are right there.

**Timothy:** I do.



**Jim:** I'm going to go through those in order, so can you first look at what's marked as number one.

**Timothy:** Yes.

**Jim:** First of all, people probably can't see on the screen if they're like me, so why don't we first give some background and context to what is being added here?

**Timothy:** Sure.

**Jim:** I'm just going to read the provision in the record, so you don't have to. In addition to the foregoing, in a Garden State Growth Zone, all of the following may qualify as capital investment.

Any and all redevelopment and relocation cost including but not limiting to engineering, legal accounting or professional services. That's the change to this version, correct?

**Timothy:** Yes.

**Jim:** Then it goes on to say, we require. [04:58:00] I'm sorry, to finish that, and other professional services required. Then it goes on to say, relocation, environmental remediation, and infrastructure improvements for the project area, including but not limited to on and offsite utility road, peer work bulkhead or side-walk construction or repair. Do you see that?

**Timothy:** Yes.

**Jim:** In this version, the part that's changed, the second part that's changed in this provision is the addition of the words peer, work, and bulkhead. Do you see that?

**Timothy:** I do.

**Jim:** First of all, in as high level as you can, can you just help people understand why this provision matters in the context of the bill?

**Timothy:** Sure. Actually, we can build off of some of what we just talked about, which is helpful. We can build off of some of the stuff we just talked about. What's going on in this provision is an expansion of eligible capital investments. When a company or an applicant is utilizing the Camden alternative method of calculating the award, an expansion of the capital investments would allow them to claim a higher basis of eligible costs.

**Jim:** Thank you for the remedy, but let's just make sure that we understand that people understand a higher basis of capital cost, that means more money.

**Timothy:** It does. Prior to this, a qualified capital investment would be cost that were directly attributable to the project that we approved, reeks, sticks, design, cost and



things to that nature. We would allow companies to put up to 20% of their hard costs. Hard costs are defined or an industry term that would suggest direct [05:00:00] construction costs. 20% costs we would allow as soft cost, soft cost being things like architects, engineers, permit fees, things that are not directly hard costs as an eligible capital investment for the purposes of our previous definitions.

This particular provision gives some specificity to what costs are actually eligible so we don't catch what's in soft costs and would allow us to include those in direct eligible, not soft cost.

**Jim:** Okay, but, again, my question was just to be clear, so that one makes sense.

**Timothy:** It would increase the basis.

**Jim:** I'm sorry, it means more money for the applicant if they qualify and-

**Timothy:** That's true.

**Jim:** - they do what they're supposed to do for the requirements.

**Timothy:** That's what this provision would do.

**Jim:** Okay, good. I just want to ask you, I see that there's provisions for lawyers fees, but this one provision that's added says professional services. What kinds of things would be captured by professional services?

**Timothy:** That's a great question. Off the top of my head, we have legal, and accounting and engineering already defined, right?

**Jim:** Yes.

**Timothy:** It would be other consulting services that are not otherwise enumerated. It would be kind of a catch off.

**Jim:** Based on your experience, what are the common examples that you can think of?

**Timothy:** Traffic study potentially, I don't know, but you're right, it's pretty broad.

**Jim:** Would it include, for example, insurance?

**Timothy:** It could include insurance for the construction, so not ongoing insurance costs. A project has to have a start and a finish, when it gets completed, the costs stop [05:02:00] counting and a CPA will certify to us through EDA what costs were eligible. The CPA would line up the project's costs, they would line up the definition, and the costs for insurance could be a professional service in that category.

**Jim:** If, for example, related to the construction of a building.

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**Timothy:** Yes.

**Jim:** All right, fair enough. Do you remember who added this provision?

**Timothy:** I don't. Until recently you showed it. Is this--

**Jim:** Okay, go ahead. Speak to me. Hold on a second. Is it okay to you?

**Ronald:** It's fine.

**Jim:** Pretty quick.

**Ronald:** Yes. Okay, go ahead.

[background conversation]

**Jim:** Mr. Lazzara, just to clarify based on your lawyer's concern. Apparently, I don't know the answer to this, but apparently, what's up on the screen, the line numbers are different in the book.

**Timothy:** Okay.

**Jim:** Regardless of the line numbers, are the changes the same?

**Timothy:** They're not highlighted and they're not bubbled. Do you want to take a look at it?

**Speaker:**[inaudible 05:03:52]

**Timothy:** [05:04:00] Yes, 354. The pure wall works in bulkhead is clearly a different color. Their professional services, it looks just like the other one, to me at least. I'm color blind, but it looks the same together.

**Jim:** I think that's just a printing error. I'll represent to you that I looked at the document in electronic format and they were the same, but do you have a recollection that these changes were made?

**Timothy:** What do you mean made? Enacted into law or put into a document like this?

**Jim:** I mean that during the drafting process, someone, you can't remember who, but someone added professional services to soft costs and someone added your work in bulkhead to the hard cost.

**Timothy:** With the documents, you showed me earlier?

**Jim:** Yes.



**Timothy:** Sure, but I wouldn't have known that without seeing the documents.

**Jim:** Yes, understood. All right, so can we just now just talk about the policy implications a little bit. I know this may require a little bit more explanation, but what I'm really interested in is, did you agree with the policy implications of these changes?

**Timothy:** When you say me, you mean EDA or me personally? What we would have done is we would have taken this document, and when we got it, we would have huddled as our senior leadership team, members of the senior staff, and maybe portfolio staff, and we would have looked at all the things and we would've come to some sort of agency opinion, which would have been communicated back to Collin. I do not remember what our communication was on this particular item, whether we [05:06:00] said it was fine, whether we had a problem with it. Or if it made into the bill, clearly Colin kept it in and it became law.

**Jim:** Again, I'm not asking whether it's good law or bad law, I'm talking about the policy implications. Knowing human memory as I do, I'm really asking you for, based on your professional experience and your incredible legacy with tax incentive programs whether you remember thinking anything about the policy behind these, so I'll break them down. At the point in time that you saw that someone added professional services into the draft, did you agree or disagree with the policy, if you remember?

**Timothy:** I don't remember.

**Jim:** You don't remember, okay. When somebody added pure work and bulkhead to the hard cost, do you remember whether or not you agreed or disagreed with the policy implications of that provision?

**Timothy:** I don't remember.

**Jim:** Do you know whether or not either of those provisions were added to benefit a specific client of Parker McCay?

**Timothy:** I do not.

**Jim:** I'm not saying that they were. Obviously, I don't know yet, but if that was happening here, does that cause you any concern from a policy perspective in terms of your good government guide?

**Timothy:** I don't know that that's what happened, so I don't have a particular opinion on if.

**Jim:** I'll come back to that later with one that you do remember. Why do we go to a different provision and it's to do with Protective Act and that is earlier in the paragraph? Again, I'm going to read the change into the record, I'm going to do the



exact same thing that I did before, which is have you help our audience understand why the provision **[05:08:00]** is relevant or important if you think that it is, and then talk to you about your perspectives on the policy behind it.

**Timothy:** Okay.

**Jim:** Hold on one second. This changes the definition of a capital investment to include site acquisition if purchased within 24 months prior to the project application. Do you see that?

**Timothy:** I do.

**Jim:** Did I read the language accurately?

**Timothy:** You missed site. You missed the last site, site preparation. It was added back I guess.

**Jim:** Okay, thank you for that clarification.

**Timothy:** Is it true?

**Jim:** You read it from a document.

**Speaker:** **[inaudible 05:08:41]**

**Jim:** Right, it's already there.

**Speaker:** **[inaudible 05:08:57]**

**Jim:** In addition to the word site to preparation, okay?

**Timothy:** Yes.

**Jim:** First of all, help us understand why this change in capital investments is relevant.

**Timothy:** My recollection prior to this change, acquisition costs were not eligible. This increased the defined term of capital investment. Again, similar to the previous provision, it would allow the applicant to ask for a greater level of award.

**Jim:** My colleague said you have to keep your voice up, so can you put it even closer? Sorry. I want to just unpack this a little bit because, again, is it fair to say that this provision, the real impact of it is that there was this thing that didn't use to be added to capital investments that now could be under **[05:10:00]** certain conditions?

**Timothy:** Yes.



**Jim:** That would have the potential of increasing the size of the award for the applicant in this circumstance.

**Timothy:** Yes.

**Jim:** The circumstance here is site acquisition, do you understand that to mean buying or obtaining a property or a building or a qualified facility for your project?

**Timothy:** Yes.

**Jim:** Would you agree that that's a fairly significant increase in an award?

**Timothy:** It could be, yes.

**Jim:** Now, there's a limitation on here. I want to talk to you a little bit about the policy implications of this limitation in two different ways. First of all, it says site acquisition if purchased within 24 months prior to project application, but isn't the whole, and you said this before, isn't the whole purpose of the tax incentive program to change behavior?

**Timothy:** Yes.

**Jim:** If this allows someone to significantly increase an award when they are already in Camden or wherever they are, they've already gotten a site, they've acquired it prior to their application, does that make sense from a policy perspective?

**Timothy:** You're asking about material factor, does it affect material factor? Is that what you're basically asking? I think there's two things. One, if you are aware of the program and you have good advice, somebody might advise you that you can acquire the site and still count it as an eligible cost when you file your application 24 months later. It's not 24 months before the law was enacted, it's 24 months perspective from the law. Somebody might see this law, acquire a site, and think that they can still count that acquisition or can then count that acquisition in an application that they [05:12:00] would send to us.

**Jim:** I'm sorry, let me ask you a crisper question because everyone has just heard from another person at EDA that really explains the issue with respect to the significance of the decision. Is it fair to say that under any program for any city, it doesn't matter if it's Jersey City, Marlton or Camden that if someone's already decided to locate their project in a place, that decision is a disqualifying decision, correct?

**Timothy:** Yes.

**Jim:** Because under either certification, whether it's material factor part four, they have to have been choosing between alternatives at the time.



**Timothy:** I agree. As I said to you last week, this was always a challenge to administer to because it doesn't seem likely that we would be able to find somebody having material factor or part four, however you want to describe it, after they've acquired the site.

**Jim:** Again, I don't want to misquote you, but my recollection of what you said about this provision is you never really understood the policy behind it.

**Timothy:** That's right.

**Jim:** Okay.

**Timothy:** I don't think we've ever used it. I don't think we've ever approved anybody under it.

**Jim:** Are you sure about that?

**Timothy:** I don't know. Maybe I'm not.

**Jim:** Maybe we can revisit that another day.

**Timothy:** Sure.

**Jim:** I want to unpack the other side of this. There's a policy that says, "Okay, we know that you acquired this property two years before this application, so at some level, you initiated an actual business decision to locate here." Let's not figure out how that impacts their qualification. What I'm trying to figure out is if I acquired the site, let's say, [05:14:00] I was a long term Camden property owner. I've owned property for 20 years and I look at this Economic Opportunity Act of 2013, then I say to myself, "Wow, I want to double down in Camden.

I want to tear down my warehouse that I've had for 20 years and I now want build a beautiful structure that is a multi-use facility, et cetera." Can I count my site acquisition costs in my grow application?

**Timothy:** I believe no.

**Jim:** Again, we all understand these were not your changes. I'm not asking you to defend them or to disagree with them, I'm just trying to figure out, understand, unpack the policy. From a policy perspective, is there a reason that you can think of to essentially discriminate between newer owners of property and older owners of property if in either case there's a question about material factor? Do you understand my question?

**Timothy:** The second part confused me a bit.

**Jim:** I think everybody understands that for any business that wanted to avail themselves of these tax incentive programs, they have to be evaluating a business



decision, but if they already made the business decision, then they couldn't qualify for the tax credits. If someone already decided I'm going to be Camden, then they couldn't qualify, right?

**Timothy:** Correct.

**Jim:** The same thing for Jersey City, the same thing for Atlantic City.

**Timothy:** Correct.

**Jim:** In this circumstance, this provision adds, for me, it's unclear how it intersects with that because before the application, this envisions that two years prior if they [05:16:00] acquired the site two years ago. They literally closed the transaction 24 months ago that they can include those costs despite the fact that they obviously already made a decision, right?

**Timothy:** Right.

**Jim:** That's what I'm trying to ask about. Let's take two hypothetical applicants. One person closed their transaction on their building two years ago, one closed five years ago, what is the policy reason to discriminate between those two owners in terms of their site acquisition cost being allowed to increase their work?

**Timothy:** I don't know of one.

**Jim:** I didn't know where I put my glasses, but now I do, so why don't we then move on? Hold on, let me just make sure I see this. Do you have any reason to believe as you sit here today that this was added to benefit a specific company?

**Timothy:** I don't.

**Jim:** As you said before, you can't say for sure whether it did or didn't?

**Timothy:** Correct.

**Jim:** Why don't we now go to the third change?

**Speaker:** I believe it's on page 52 section 7.

**Jim:** I'm going to describe it to save time. The definition of a full-time employee is modified to provide that in Camden and Atlantic City, any project that will include a retail facility of at least 150,000 square feet of which at least 50% is occupied by either a whole service supermarket or a grocery store, those jobs count toward the net benefit, correct?

**Timothy:** No, towards I think eligible. They can be an eligible [05:18:00]

full-time employee.

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**Jim:** They can qualify as a full-time employee.

**Timothy:** Yes.

**Jim:** Let's try to set the stage in a simple way, is it generally true that in most prior versions of this retail employees are not within the kinds of jobs that will count for purposes of the tax incentive award?

**Timothy:** Yes, I was just looking for it, but there's a restriction on point of sale retail jobs as not being eligible.

**Jim:** Just to help us from a policy perspective. In your experience, why, generally, do tax incentive provision dis-weighted or prohibit counting of retail jobs as full-time jobs within the meaning of the statute?

**Timothy:** The way I've described that in the past is that, generally speaking, retailers don't make decisions the same way corporate headquarters or business do, they make decisions on the viability of the retail opportunity. Meaning is there a market to sell their goods and wares to at that location. Tax policy and tax incentives don't shape that decision in a material way, in the way that these laws support it. That was your question?

**Jim:** You did answer my question, thank you very much. In other words, because retail locations are more driven by market forces than tax incentives, that's why they're excluded.

**Timothy:** Correct.

**Jim:** Okay, and is it fair to understand this as an exception to the rule for a certain kind of project?

**Timothy:** Given as an exception and an expansion of the program.

**Jim:** An expansion of the program, okay, but with all expansions of the program, there are choices to be made, right?

**Timothy:** Yes.

**Jim:** Now, one choice that could have been made that's not reflected in this change, and by the way, do you recall who it was that made this change?

**Timothy:** I don't.

**Jim:** All right. Just note for the record that, again, it was Kevin Sheehan at Parker McKay. One version of this change could be, for Camden, [05:20:00] any grocery store counts even one that's smaller than 75,000 square feet, right?

**Timothy:** True.



**Jim:** Based on the needs of the low-income population in Camden, would it have been sensible tax policy to include a provision that allowed a stand-alone grocery store of 5,000 square feet or 20,000 square feet or 60,000 square feet to enjoy benefits from the tax incentives?

**Timothy:** You could make an argument for that.

**Jim:** Let me just make sure I impact this. First of all, again, just in terms of what you remember, do you remember that this change was made to the bill as you were reviewing it?

**Timothy:** I do.

**Jim:** Did you agree with it or disagree with it?

**Timothy:** We thought it was fine. We thought it was a fine idea. My recollection was. We thought it was an okay idea. An okay policy.

**Jim:** Okay, but it's really specific. You have to have a retail, it's not just supermarkets, right? I want to make sure that I read this correctly. A retail facility of at least 150,000 square feet, of which 50% is a full-service supermarket or grocery.

**Timothy:** That's right.

**Jim:** In an area because this is applied to Camden, right?

**Timothy:** And Atlantic City.

**Jim:** And Atlantic City. Why is there a policy incentive to limit, in a place where it needs food, to limit it to a retail facility [05:22:00] where only 50% of it is grocery store as opposed to something else? What's the policy reason for that?

**Timothy:** I don't know necessarily when whoever put it in what their policy was, but when I looked at it, and when we look at it now, a full-service grocery store is in that range of a size. Anywhere from a 60,000 to 100,000 square feet is the size of a full-service grocery store. I think we wanted a full-service grocery store in Camden and Atlantic City, so it didn't offend us that that was the provision at these areas. We weren't necessarily negotiating this provision, so my recollection is we didn't take umbrage to it. We didn't take exception to it.

**Jim:** Do you remember, Mr. Lazzara, whether there was a discussion in the EDA when this provision was added, where anyone took the view that maybe we should just be allowing a grocery store for Camden and Atlantic City regardless of whether it was 50% of a larger retail project?

**Timothy:** I don't recall that.



**Jim:** You don't recall, okay. I'm sorry if I asked you this before, did you know whether or not this provision was intended to benefit a specific project that you were aware of?

**Timothy:** Not that I recall.

**Jim:** For this one, do you recall that there had been a proposal by another company in an earlier program that had sunset that was still in the works at the time of this change, where they were proposing a 75,000 foot stand-alone ShopRite? Were you aware of that at the time?

**Timothy:** I don't recall being aware of that. This is the Randy Chuckers project you were mentioning to me last week?

**Jim:** I wasn't going to mention his name, but that's fine.

**Timothy:** I'm sorry. [05:24:00]

**Jim:** At the time that this provision came in, did you know that Mr. Chuckers was still working on a proposal for a standalone grocery store in Camden?

**Timothy:** I don't recall that. I'm not aware.

**Jim:** Okay, but if that grocery store was not part of a retail facility of 150,000 square feet, this provision would effectively kill that deal.

**Timothy:** This provision wouldn't apply to that deal. This provision wouldn't take it at each other.

**Jim:** Again, from a tax incentive perspective, that sort of project, a 75,000-foot standalone grocery store, which is all you're getting from this plus the retail, but that sort of project would not be allowed to count its jobs as full-time employees within the meaning of the act.

**Timothy:** Correct.

**Jim:** If tax incentives were a material part of the incentive to go with that project, the 75,000-foot standalone grocery store, this provision would kill that project.

**Timothy:** We would not be able to advance that project for approval.

**Jim:** Okay, why don't we go to number four? Again, this edge language [inaudible 05:25:36]. Hold on one second. This is also a modification to full-time employee?

**Timothy:** In this the automobile headquarters?

**Jim:** Yes.



**Timothy:** No, it's called mega project. I think it's a mega project definition. **[05:26:00]**  
Mega, a mega.

**Ronald:** Mega?

**Jim:** Megaproject.

**Ronald:** Okay.

**Timothy:** Mega. Not my terminology.

**Ronald:** I apologize.

**Jim:** I'm going to ask you this in a second, but what we're about to read modifies the definition of something that's called the mega project. Is it fair to say that the Economic Opportunity Act of 2013 provided additional incentives to what was a mega project?

**Timothy:** It provided a different set, an increase set of incentives to projects that were not otherwise in a Garden State Growth Zone or another eligible community that would make it look like that same level of benefit.

**Jim:** Do you need him to repeat the answer?

**Speaker:** **[inaudible 05:26:52]**

**Jim:** That you repeat your answers real quick.

**Timothy:** I think we'll just lead with that it would make it like a Garden State Growth Zone.

**Ronald:** A Garden State Growth Zone?

**Jim:** Okay, so the language that's added here is, "We are a qualified business facility located in a priority area housing the United States headquarters and related facilities of an automobile manufacturer."

**Timothy:** Yes.

**Jim:** Do you remember that this change was made?

**Timothy:** Yes.

**Jim:** Do you recall who made it?

**Timothy:** I do not.



**Jim:** For the record, according to the metadata, it was Kevin Sheehan at Parker McCay. What is your understanding of this change? Why was it added?

**Timothy:** It would provide a business that meets the standard of a US headquarters [05:28:00] of an automobile manufacturer to get a treatment like a Garden State Growth Zone if it was going to apply to a priority zone. Priority zones had caps, had different levels of benefits and a mega-project increased those so that a company would be able to get a bigger award if they were still in a priority area and a meta-definition.

**Jim:** At the time that you saw this provision, were you aware of the fact that there was a specific company that some folks were trying to get to relocate to New Jersey?

**Timothy:** I don't know that I aware of that.

**Jim:** You don't remember that.

**Timothy:** I don't recall that I was aware of that

**Jim:** Do you recall that there was an opportunity to attract a company called Subaru?

**Timothy:** To retain Subaru, yes, I just don't know when that process started.

**Jim:** Do you know whether or not this provision was added for a specific company?

**Timothy:** I do not.

**Jim:** During the course of the time that you were discussing this, was there any discussion within EDA about the propriety of what I'm going to call special purpose legislation? Do you know what I mean by special purpose legislation?

**Timothy:** I do.

**Jim:** Explain for us what it is.

**Timothy:** It's a colloquial term that's used from time to time, that lawyers would use, as you know I'm not a lawyer. It's a colloquial term that lawyers would use that would describe a certain kind of legislation.

**Jim:** Is it the kind of legislation that benefits a single person or a company?

**Timothy:** That's what I'm to understand.

**Jim:** Do you know whether or not that is constitutionally permissible or not?

**Timothy:** I believe it's not.



**Jim:** It's not, okay. All right, so I'm going to go to number five. [05:30:00] Again, just for the sake of time, the definition of transit-oriented development was modified to include for projects located in the Garden State Growth Zone qualified business facilities "Located within a one mile radius surrounding the meet point of a New Jersey transit cooperation, port authority transit cooperation where port authority trans-Hudson Corporation railbus or ferry station platform area including all light rail stations.

**Timothy:** Yes.

**Jim:** That's quite a specific change.

**Timothy:** This mimic what was in the Urban Transit Hub.

**Jim:** It did, okay. Do you remember who it was that added this?

**Timothy:** I do not.

**Jim:** Just for the record, it was Kelvin. Hold on. It was Colin Newman. Sorry, my apologies. Did you agree with this from Colin Newman's perspective?

**Timothy:** Yes.

**Jim:** Why? You can explain to us, and if you don't mind, try to break it down simply because the language, even for a lawyer like me, is a bit impenetrable. It's basically if you're located in a particular area that has certain transit.

**Timothy:** Train stations. As a good policy, we were try to incent development in and around train stations to build walkable communities, get cars off the road, use our mass trans airlines, and this would support that, train stations.

**Jim:** This would support that. Are you aware of whether or not there was a specific company that needed this change?

**Timothy:** I was not.

**Jim:** I wanted to just call out the change because in the prior version of the bill, [05:32:00] the other language about the transit-oriented hub, et cetera was there. The only change in this bill, I'll put out the bill if you give me one second. Prior to this addition, do you agree that the language said transit-oriented development means a qualified business facility located within a half-mile radius surrounding train stations?

**Timothy:** Yes.

**Jim:** This provision changed that because it said transit-oriented development means a qualified business facility located within a half-mile radius, new language, or one-mile radius for projects located in a Garden State Growth Zone.



**Timothy:** Yes.

**Jim:** Again, what would be the policy reasons for expanding from a half mile to a mile for Garden State Growth Zones?

**Timothy:** What I would say is that the Garden State Growth Zone being the most depressed cities in those categories, throughout this bill, things were targeted to expand the eligibility and expand the qualifications and requirements for those locations and this would be a benefit to a Garden State Growth Zone. More sites would become developable.

**Jim:** In other words, there is a bigger area where a locale that's struggling economically, even if it's a mile away, you want to incent that development.

**Timothy:** Well said.

**Jim:** Okay, thanks. Can we go to number six? This provision, if you look at number six, added an increase in tax credits. If the number of new [05:34:00] full-time jobs is in excess of 1,000, it increases their award to \$1,500 per year.

**Timothy:** Correct.

**Jim:** That's \$1,500 per year, per job.

**Timothy:** Correct.

**Jim:** Can you just please explain for us the policy implications behind this change.

**Timothy:** There is a belief, as you can see through this whole thing that larger job projects have more economic impact to the region, so it's better to attract the company with a thousand and one jobs that 500 jobs. The bill allowed for bonuses on top of the base award that would increase the total award based on the number of new jobs in them.

**Jim:** Now, were there provisions, as far as you knew, in the Economic Opportunity Act of 2013 that allowed, for example, companies moving into the same building or companies that were all part of the same building project? Were they allowed to aggregate their jobs for the purposes of achieving the a thousand dollar threshold?

**Timothy:** I don't believe so.

**Jim:** I think I said this already, just for the record, Kevin Sheehan made this change. Let's go to number seven. Actually, you know what, I'm sorry. Yes, okay, so the language was added. [05:36:00] [inaudible 05:36:00] the modification of the definition of qualified projects?

**Timothy:** It's bonuses. I think it's additional bonuses.



**Jim:** Okay, so the bonuses added here if I can just read it. "For a project located within a half mile of any light rail station constructed after the effective date of this act an increase of \$2,000 per year. Is that correct?"

**Timothy:** That is correct.

**Jim:** Is that a bonus of \$2,000.00 per year per job?

**Timothy:** Correct.

**Jim:** Okay, so would you agree with me that this is one of the biggest bonuses in the Economic Opportunity Act of 2013?

**Timothy:** It's a big one.

**Jim:** Okay, what is the policy behind only including companies that are located-- I'm sorry, within a half mile of any light rail station to be constructed in the future?

**Timothy:** I'm not sure.

**Jim:** Okay. Did you understand the policy behind this change when you read it?

**Timothy:** I don't recall.

**Jim:** Okay, do you remember who added this?

**Timothy:** I do not.

**Jim:** The record reflect it was Kevin Sheehan. Now, let me just ask you this, as you sit there now, do you know whether or not any company was able to take advantage of this provision?

**Timothy:** I don't recall one.

**Jim:** You don't recall one?

**Timothy:** I don't recall one.

**Jim:** Do you recall whether Holtec was able to take advantage of this provision?

**Timothy:** They were not.

**Jim:** They were not?

**Timothy:** They were not. Holtec used the capital investment alternative. Holtec used the capital investment alternative, so none of the bonuses would apply to a company like Holtec or any company using-- **[05:38:00]** Holtec used the capital investment alternative. Which meant no bonuses applied.



**Jim:** Okay, so we may have to revisit that with you, but I know we're not prepared for Holtec for another day.

**Timothy:** Sure.

**Jim:** Could you go to eight now, please?

**Timothy:** Yes.

**Jim:** This is also another modification of bonus and it says, "For a marine terminal project with a municipality located outside the Garden State growth zone, but within the geographical boundaries of the port-- I'm sorry, the South Jersey Port District, an increase of \$1,500 per year.

**Timothy:** Correct.

**Jim:** That's \$1,500 per year per job?

**Timothy:** Correct.

**Jim:** Do you recall what the policy was behind this project?

**Timothy:** I do not.

**Jim:** Do you agree with it?

**Timothy:** I don't have a feeling about it one way another.

**Jim:** Doesn't it seem like an oddly specific thing to add to a tax incentive though? In your experience?

**Timothy:** Not necessarily. It's clearly targeted geographically so there is targeted just like what it said at the beginning that took incent people to invest in a particular location. I don't know where that is per se. It doesn't surprise me.

**Jim:** All right. Listen I'm going to ask you about another change that is reflected in a different document. If you can you just go to tab three of your binder? Do you see the document?

**Timothy:** I do.

**Jim:** Do you see that this is a back and forth between among other people you and Colin Newman?

**Timothy:** Yes.

**Jim:** Does that refresh your [05:40:00] recollection that there was lots of correspondence around this time concerning different provisions?



**Timothy:** Sure.

**Jim:** Okay. Now, I'm going to read the language into the record because I'm not really sure that you can see it on the screen. Is it on the screen?

**Timothy:** No.

**Jim:** Okay, it doesn't matter. Let me just read it in the record. This particular email is from an individual EDA to Colin Newman and you copied to another person on September 9th of 2014. The language says, "No, I believe it follows the intent of the Act to include the quote phantom tax notion for the NBT that Phil and another person that I won't name laid out in the original bill draft." Do you see that?

**Timothy:** I do.

**Jim:** As you sit there now do you know who Phil is?

**Timothy:** I assume that it's Phil Norcross but I don't know that for sure. Norcross.

**Jim:** In any event. Do you remember whether or not Phil Norcross was having input into the bill draft that we were just reviewing a couple of minutes ago?

**Timothy:** I don't recall that.

**Jim:** You don't recall?

**Timothy:** I didn't. No.

**Jim:** Okay. Do you know as you sit there today what role if any Phil Norcross played in, "The original bill draft"?

**Timothy:** No.

**Jim:** Can you do me a favor and explain to us. I don't want to go through the documents. It's going to take too long and I'd love to get you off stand by 4:15. Can you explain to us, do you have a recollection of this whole phantom tax issue?

**Timothy:** I do.

**Jim:** Can you explain it to us?

**Timothy:** I can and I apologize to my court reporter because it's not the easiest thing to explain. [05:42:00]

NBT stands for Net Benefit Test. Net Benefit Test is an economic input-output model which we designed in conjunction with Jones Lang LaSalle and it was the test that we used to satisfy the provision in the law that every project must have at least 110% net benefit test except in the city of Camden where it's 100%. What it does, it's

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designed to project the economic activity from a particular investment in a project and that will be different depending on the location in the state, the industry, the types of jobs, the salaries and a bunch of different inputs.

We use a federally produced system called rims, R-I-M-S, to calculate economic output.

**Jim:** I'm sorry, I completely understand everything you're saying but will it be okay just if I asked you some leading questions and if I'm wrong, correct me just so that I can try in the interest of time.

**Timothy:** Getting close.

**Jim:** Okay, no problem. It's not that you're taking too long. It's that it's really complicated. There's a simpler way to explain it but if you want to keep going, I don't want to cut you off.

**Timothy:** With that output, we would project the amount of revenue the state would get in a form of taxes. At the end of the day, that model was used to try to line up the benefits of a project versus the cost of the tax **[unintelligible 05:43:36]**.

**Jim:** NBT is just a way to determine whether the state is getting a good deal.

**Timothy:** Correct.

**Jim:** Good deal in Camden is defined as paying for itself?

**Timothy:** Yes.

**Jim:** A good deal everywhere else in the state is defined as a 10% profit.

**Timothy:** At least.

**Jim:** How do you phantom taxes, well first of all what is a phantom tax?

**Timothy:** It's a made-up term **[05:44:00]** that we used to describe any economic opportunity act. There was a provision that exempted projects from property taxes and other taxes and other laws in **[unintelligible 05:44:16]** and other laws that exempted projects from paying taxes. The connection was working closely with the attorney generals office which is a reference here is that the law allowed that we could tilt back those taxes that were otherwise exempted in the calculation of the net benefit test so that companies could get the benefit from the program to send their investment in the city.

**Jim:** Okay, can I explain-- I asked you earlier a question. Is it therefore-- Again, what I'm concerned about or curious about is tax policy.



That's what I care about. My question to you from a tax policy perspective is, do I understand this, that this essentially allows the program applicant to count cost that they really don't pay?

**Timothy:** That they can count in the benefit of the project that they don't pay.

**Jim:** In other words, it is a way in a sense, to artificially inflate the benefit to the states so that they pass or surpass the net benefit that's required depending on where you are?

**Timothy:** Yes.

**Jim:** Who's idea was that?

**Timothy:** I don't recall.

**Jim:** Do you remember whether or not that was proposed by someone from [unintelligible 05:45:45] ?

**Timothy:** I don't recall that.

**Jim:** I understand that the Attorney General signed off-- The Attorney General is the lawyer for the EDA, right?

**Timothy:** Yes, that's right.

**Jim:** I'm not asking you and I didn't [05:46:00] mean to elicit that you sort legal advice on this. I'm asking you a different question. Did this one concern you that enough that you wanted to seek legal advice on it?

**Timothy:** We did seek legal advice. I don't know whether that was a concern. We sought legal advice on lot's of things, it was certainly not standard fair. it isn't standard fair to do that, because we wanted to make sure we ware in legal footing, we asked the Attorney General.

**Jim:** I'm going to ask you the question again, just because I'm not sure that you answered it, I'm sure you are trying. I'm talking about you, Tim Lizura, reading this provision, you remember this provision, right?

**Timothy:** I do.

**Jim:** Okay. My question is when you read it, did it seem to you that this stepped over a line?

**Timothy:** No, I understand the underpinning behind it. The intent of the law was to get people to invest in the city of Camden. If you have a provision of the law which undercuts the ability to get people to do that by inadvertently having this disconnect,



that why you could get to a place where phantom tax makes sense. I understand the notion of it, I understand why in the context of Camden, you would do that.

**Jim:** In the context of Camden essentially, do I understand is to be an exception to the net benefit test. This essentially allowed projects to get through even though they weren't paying for themselves.

**Timothy:** I would say that's a pretty accurate statement.

**Jim:** Do you know how many different companies advantaged themselves by the phantom tax provisions of the law?

**Timothy:** I don't know how many.

**Jim:** Do you of any as you sit there now?

**Timothy:** I recall that we have some for sure. **[05:48:00]**

**Jim:** You remember any of them?

**Timothy:** I recall that we had projects that took advantage of it.

**Jim:** Do you recall any of the projects as you sit there now?

**Timothy:** I would expect that the projects that use the capital investment alternative would be the ones that would have used that because were the larger awards.

**Jim:** Do you remember any of those as you sit here?

**Timothy:** Yes, sure.

**Jim:** Who?

**Timothy:** Altec, the Sixers, Subaru. Altec, the Sixers, the basketball team. The Sixers.

**Jim:** The basketball team.

**Timothy:** Headquarters project. American Water, Subaru, Conner Strong, Michaels. Conner Strong, Michaels, NFI. I might be missing a couple.

**Jim:** Okay. I'm going to ask you a different question. Do you know whether or not Parker McKay represents all those companies?

**Timothy:** I recall they had some role in most of those.

**Jim:** Some role in most of those?



**Timothy:** Yes.

**Jim:** Okay. What does it say to you about-- Again, we're talking about this material factor requirement, meaning, I'm actually making a choice. I'm making a choice to either go to Camden or go somewhere else. We're going to get to this in a minute, but what does it say to you about material factor if in fact, a law firm-- I'm not saying this happened, but a law firm was putting in changes for specific companies into the bill. Would that be an indicator? You're a very experienced guy, you supervise the underwriting department. If you knew that information when you were venting an application, like, "By the way, I just want to be honest with you. Our lawyer put this provision in for us." Would that have an impact on your view of whether or not the business decision [05:50:00] had been made by the time the act was passed by the legislature?

**Timothy:** No.

**Jim:** All right. I have two more subjects to talk to you about and I'm going to do you a huge favor, which is, you know that there's one issue with respect to material factor where your perspective is different than what we've heard from other people. I want to try and tease that out in a nonleading way if you don't mind. I will be faithful to what you told me, just we have one more witness and I don't want to keep people past five o'clock if we can get around it. I do have one other subject. We heard testimony today that as the EDA was administering the program for businesses relocating in state to Camden. They're going from Jersey City or wherever they're going to Camden. We heard testimony

today that the EDA required that they show that the jobs were at risk and that they submit proof that an out-of-state location was bonafide, suitable, and available. I think that's, Chairman, a fair summary of the testimony? Okay. We looked back at every Camden application since this bill came into law till today. There were 32, no sorry, 31. Sorry, thanks. Correct me. I'm sometimes wrong, believe it or not.

**Timothy:** Hard to believe.

**Jim:** There were 31 applications, and of those 31 applications there were 30 of them, I'm talking about applications where there was an in-state move to Camden, so Marlton to wherever, 30 of them, they actually said [05:52:00] that their jobs were at risk and they were considering an out-of-state location. One of them said that it was going to eliminate jobs in Camden, which is a completely different thing. It qualifies under a different part of the statute, right?

**Timothy:** That is correct.

**Jim:** Okay. The testimony that we heard today aligns with the reality that all projects moving to Camden actually did say jobs are at risk. Now, you have a perspective on why that happened, is that true?



**Timothy:** I do.

**Jim:** Okay. Am I correct in saying that in your interpretation, the statute itself does not require for those kinds of projects that they actually show an out-of-state location?

**Timothy:** Mine and guidance from the attorney general's office, yes. My interpretation, and guidance from the attorney general's office.

**Jim:** Okay. Again, you're not at the EDA anymore, so you can't waive the privilege. Please stop saying what the attorney general advised on. We'll talk to the EDA about whether or not they will waive the privilege and allow us some fact-finding around that.

**Timothy:** Okay.

**Jim:** Put that aside. I'm talking about your interpretation. I'm going to try to figure out why there seems to be two different interpretations of this within the EDA. Even though it was not a requirement, in your view of the statute, whether the attorney general agreed or not, you offered a practical reason why companies would have a motivation to consider out-of-state alternatives and include that in the application anyway.

**Timothy:** Yes.

**Jim:** Now, I've done my leading. Can you explain that to us?

**Timothy:** I can.

**Jim:** Thank you.

**Timothy:** My recollection of the way we read the net benefit test is that the net benefit test was a statewide test, and that would then require that the jobs [05:54:00]

will be at Risk of leaving New Jersey in order to include the economic impact of those jobs at a net benefit test. If they were not at risk of the state, we would include all the other drivers of a net benefit test except the economic activity from the employees, which is the largest driver of the net benefit test with the largest driver of the economic output.

**Jim:** I just want to pause there for a second. You just said something that's important. I'll tell you why in a second. From your experience, the job credit that one gets is the largest part of an award on the net benefit test. Go ahead and continue.

**Timothy:** From a practical purpose, if you needed to maximize the award in order to make a decision to move into the city of Camden, you would have to show the out-of-state location and that would then allow you to satisfy the net benefit test provision.

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**Jim:** Is this another way of saying, in your view? If you're moving jobs in state to Camden, you get no credit on the net benefit test for the jobs [crosstalk].

**Timothy:** Without an at-risk finding.

**Jim:** When you say at-risk finding meaning the jobs are at risk of leaving the state.

**Timothy:** Right.

**Jim:** Regardless of the motivation that caused these applicants to put on the application, that there was an at-risk finding, and they were considering location. What are the consequences if there was a company that was making it up? They really did not evaluate another location. **[05:56:00]** They just found another place to put it on the application. They did no diligence to determine whether it was bonafide, whether suitable, whether it was available in reality. What's the consequences of that?

**Timothy:** My impression of that would be that they were filing false documentation with a government entity, which is a bad thing.

**Jim:** I appreciate your perspective. I guess I asked a poor question. I'm sorry. I'll rephrase it. From the perspective of the award, right. If someone was applying for tax instead of an award and an underwriter uncovered this in the context of vetting the application. What are the consequences for the applicant in the hypothetical that I described?

**Timothy:** If we in the board couldn't make a finding of that risk. Then the net benefit test would be dramatically reduced and the award that will be qualified will be dramatically reduced

and the award that it would qualify would be dramatically reduced. Would be dramatically reduced and the award would be dramatically reduced. I think that's the question you're asking.

**Jim:** Yes. Again, I apologize if it's getting late and my questions are getting less crisp, but what I think I was asking was if an underwriter actually discovered evidence of fraud, would that just reduce the award? Or would that disqualify the applicant?

**Timothy:** It would disqualify the applicant and we would refer that to the appropriate channels.

**Jim:** All right, and from your recollection during your time there, did that ever happen?

**Timothy:** It did.



**Jim:** Okay. That was a new question that I didn't ask you before so I may follow up with you afterwards on that hypothetical.

**Timothy:** Sure.

**Jim:** Just for the last question on this I'm going to ask you the unfair question. You don't even know who it was that probably testified. Can you help us understand why there appears to be two different interpretations within the [05:58:00] EDA? One that suggests that an at-risk designation is required for every single applicant no matter where in the state they are. Your interpretation, which is, the net benefit test requires it or at least strongly motivates it but it's not a requirement?

**Timothy:** Sure. My assessment of that is it's an extraordinarily complicated program and there are a lot of shorthand shortcuts to describe how things work. Whether they be colloquialisms to describe big things or practical answers to questions. From a staff level, I mean if I was a staff person working in the field, I would not get into that level of detail. Because why make it more complicated? Why make an extraordinarily complicated program more difficult to understand?

**Jim:** As the prior COO, let me just ask you this question from an administrative perspective. The EDA had authority to administer the program, correct?

**Timothy:** Sure.

**Jim:** If the EDA was telling people it's required, you have to show that the jobs are at risk, you have to show that you're considering an ultimate location. That's important, right? Whether or not the statute required it or not, my question is did the EDA have authority in order to interpret the statute to make this a requirement?

**Timothy:** No, we could not change the law to do that. I think you're aware that there was one company that we did approve, not in Camden, that availed themselves of that provision for a different Garden State growth zone that didn't make that assertion. In the world of 1,000 approvals, 30 for Camden, one for Atlantic City. This

[06:00:00] topic doesn't come up that much and I would not take Umbridge to my colleagues taking a shortcut in the way describing that.

**Jim:** Okay, thank you. That was very clear, thank you very much, I appreciate it. I just have one more topic for you and then we'll see if the chairman has any questions for you. Again I'm going to try to streamline this if I can. While you were there do you recall that there was an employee who [inaudible 06:00:27] who filed an EEOC complaint?

**Timothy:** I do.

**Jim:** Do you recall that that complaint alleged discrimination?



**Timothy:** I do.

**Jim:** Is it fair to say that [unintelligible 06:00:39] was eventually terminated?

**Timothy:** Yes, fair to say.

**Jim:** Okay and fair to say that the person that investigated the discrimination allegations found that there was no nexus between the conduct that he was alleging and his termination.

**Timothy:** I believe it too.

**Jim:** Okay. Did you also become aware while you were there that subsequent to his termination Mr. [unintelligible 06:01:04] filed a complaint that made new allegations.

**Timothy:** I was.

**Jim:** Did you read his complaint?

**Timothy:** I don't recall reading his complaint.

**Jim:** Okay. Do you recall whether or not the complaint made new allegations about specific instances of potential fraud and misconduct at the EDA?

**Timothy:** I'm aware of that now.

**Jim:** You weren't aware of that at the time?

**Timothy:** I don't recall, I suspect that I was like I don't recall.

**Jim:** During the time that you were there, were you aware that your boss Michelle Brown was deposed?

**Timothy:** Yes.

**Jim:** Were you aware that others at the EDA were deposed?

**Timothy:** Yes.

**Jim:** It was an active litigation that was going on including the trial-- No you [unintelligible 06:01:54] time but during the controllers--

**Timothy:** I was there the whole time.

**Jim:** I'm sorry then. During an audit that the controller was doing. [06:02:00]

**Timothy:** Ask the question again.



**Jim:** The litigation was active and ongoing even during 2018 when the controller was doing an audit?

**Timothy:** At the beginning of the audit, yes.

**Jim:** Now, my question to you is this. Do you recall a conversation among anyone in the senior leadership team with red call about whether or not Mr. Cole should disclose the existence of this litigation to the controller during the audit?

**Timothy:** I don't recall a conversation.

**Jim:** You don't recall a conversation at all?

**Jim:** Yes.

**Timothy:** Do you recall knowing that the controller asked during a kick-off meeting whether or not there was any pending or settled litigation that involved the former employee making allegations of fraud.

**Timothy:** I remember the kick-off meeting. I don't necessarily remember that specific request.

**Jim:** Okay, just I don't usually

pick at your answers but what do you mean when you say you don't necessarily?

**Timothy:** I don't recall that specific request.

**Jim:** Do you remember a question like it?

**Timothy:** No, I don't recall the particulars of the litany of the things that may have been asked for in that meeting at this time.

**Jim:** Are you aware as you sit here now that that complaint was never disclosed to the Comptroller during the audit? Do you know that to be true?

**Timothy:** I know that now. I've heard that. I've heard that reported, I don't know that from staff.

**Jim:** I'm going to ask you again the unfair question. Do you know how that happened? Do you have any insight having been there in a senior-level position with a litigation that is unique that executives are getting literally deposed? There's a trial going on and somehow that information is requested by the Comptroller and not disclosed.

**Timothy:** I'm not sure the beginning the question anymore, but I do not know how it happened. I think the question is how that happened. To be very specific, while I was



there at the beginning of the audit, I was not there when the audit kicked into full gear or when it ended.

**Jim:** I'm sorry. That was my understanding before, but you said you were there the whole time.

**Timothy:** I'm sorry, for the Cisco's lawsuit, I was there for the whole time. Cisco's lawsuit was settled-- What's the term? Verdict? There was a verdict on the Cisco's lawsuit while I was there. The lawsuit was ended and the judge ruled in our favor, I don't know if the judge or jury ruled in our favor. That was the end of that lawsuit.

**Jim:** Just slow down a little bit you may be having trouble.

**Timothy:** My last day was in the middle of July. I announced my retirement in June. I had become less [06:04:00] engaged in those sorts of things. The audit kicked in further and I was not there through the most of that audit.

**Jim:** Then I wouldn't even ask you that if I couldn't remember your termination day, so I apologize for that but I thought you were saying that you were there the whole time. Let me change the subject then and then to be done unless the chairman has any questions. Here's my question. You were there for the whole verdict. Do you remember that the jury actually returned a verdict, saying that Suck Sue's had a reasonable basis to believe that EDA personnel had violated the law? Were you aware of that?

**Timothy:** I was not aware of that.

**Jim:** Help us understand this. We heard testimony earlier today from someone who does remember the allegations, reviewed the complaint, took notes of it all, and his statement was that to this day, there's never been an investigation

[06:06:00] within EDA to determine whether or not those specific allegations are true or not.

**Timothy:** I believe that to be true.

**Jim:** Why?

**Timothy:** My assessment of why, maybe that's bad on me having been the COO but there was no, through the entire student leadership team top to bottom, we gave no credibility to the representations that Mr. [unintelligible 06:06:28] made. Our opinion was that it was allowed complete merit and that we didn't feel like there was a need to investigate.

**Jim:** Here's the part, I understood that in your interview but here's the part that I don't understand, if you take that perspective and you say, this guy is a liar, everything he says is untrue, knowing that the case is going to have to be tried,



wouldn't you want to do an internal investigation so that you could show that all of the specific, because he mentioned specific companies and very specific issues, but to demonstrate that the specific allegations were untrue and then you could impeach him when you testified?

**Timothy:** We clearly didn't think that was important to do, we didn't do it.

**Jim:** I hope I was understanding this. Was there actually a decision where this issue was considered? Like senior leadership team said, "Hey, listen, we've got a crisis on our hand, we got this lawsuit that's now accusing us of fraud, we need a crisis manager, we need to figure out if we're going to do an internal investigation." I don't want to go on too long. Is this the only time in your 22-year career anything like this ever happened?

**Timothy:** It is.

**Jim:** Was there a crisis management meeting after it was filed and it was reported in the press?

**Timothy:** I don't want to completely minimize this, but we talked about it at senior leadership team [06:08:00] meetings the status of the lawsuit, we considered his various proposals for payment options and we discounted any of those options. We discussed the lawsuit and that was to the extent of my recollection. I say that with the fact that I know our senior vice president of operations, Brad Cole, he was charged with running point on this lawsuit. I don't know what he did necessarily outside of the conversation that we had.

**Jim:** In the conversation that you had, do you remember anyone raising the issue of maybe we should investigate this so that we can prove that it's not true?

**Timothy:** No, we did not. I don't recall that conversation.

**Jim:** You don't have a recollection of a specific person saying, no, don't do an investigation?

**Timothy:** Correct.

**Ronald:** I just have a question of more of terminology in my mind that I want to clarify.

You referred to several pipes of the programs that are Camden specific. There are other parts of the program, such as Grow New Jersey. Parts of the Grow New Jersey program that applies special rules and requirements to any of the cities that are within the Garden State Grow cell.

**Timothy:** Correct.



**Ronald:** Then that, correct me if I'm wrong, would include Camden, Trinton, Paterson and [crosstalk] I think for another reason, Atlantic city is also including another piece of legislation.

**Timothy:** Correct.

**Ronald:** When you were talking about the urban transit hub tax credit, and when you were talking a moment ago with Mr. Walden about what you've termed the Phantom Tax issue, those were Camden specific.

**Timothy:** It was, yes. Correct.

**Ronald:** The other cities who are part of [06:10:00] Garden Growth zone would not be eligible for load-- Okay.

**Timothy:** Chairman, I don't want to say that I don't know. I can't particularly sure it was all that Camden that have an impact, because the property tax exemption portion of the bill was all the Garden Growth zone were eligible for and they could opt into and I'm not sure that the Phantom tax provision were embedded in that section of the law. I don't want a mistake, that's all.

**Ronald:** I'm looking at part of the statute, that limits a program. The one that I'm looking at is the material factor requirement, which you were talking with Mr. Walden before earlier, that refers to projects in the Garden State Growth Zone that qualified in as MRERA That's an acronym they initialed, M-R-E-R-A.

**Timothy:** Correct.

**Ronald:** Do you know what MRERA with that--

**Timothy:** I do.

**Ronald:** What is that?

**Timothy:** I mentioned it in my opening remarks, it's the Municipal Economic Recovery Act.

**Ronald:** It's a specific act passed by the legislature. Do you have an understanding of to which city or cities that act applies?

**Timothy:** The only city that I'm aware that implied to was the city Camden.

**Ronald:** Would it be fair to say that when the legislation uses the term Garden State Growth Zone that qualifies as MRERA that that is generally understood only to refer to the city of Camden?

**Timothy:** Yes.



**Ronald:** That would be the end of the standing with an EDA that that sort of a terminal art were shorthand term for Camden?

**Timothy:** That's true.

**Ronald:** Thank you.

**Jim:** First of all, thank you very much for all the time we spent beforehand and for today. Judy, thank you too.

**Ronald:** Thank you very much, Mr. Lizur.

**[06:12:00]**

[background conversation]

**Ronald:** We have one more witness who's been waiting very patiently and I thanked him very much. If we could have Brandon McCoy.

[background noise]

We can wrap around and you eventually get off where you just come out from the **[inaudible 06:13:02]**

[background conversation]

Can you solemnly swear or affirm that the testimony you are about to give include the whole truth, nothing but the truth?

**Brandon McCoy:** Yes.

**Ronald:** Thank you very much. Ms. Batel.

**Ms. Batel:** Thank you, Mr. Chairman. Good afternoon, Mr. McCoy.

**Brandon:** How are you?

**Ms. Batel:** Like Mr. Chairman, I thank you for your patience and also for being here with us today. As Professor Chen and Mr. Walden explained before, one of the things that we're trying to better understand is the influence and the involvement of the many stakeholders and policy experts that were involved in the design passage of the Economic Opportunity Act of 2013. We're hoping that your policy background and your experience at New Jersey Policy Perspective can help **[06:14:00]** and witness a little bit about that process. Can you please describe your educational and policy background for us?

**Brandon:** Sure. I have a bachelors degree from Nichilson, New Jersey in sociology. A masters degree from Edward J. Bloustein School of Planning and Public Policy at



Rutgers in Urban Planning and Public policy. I've worked as a public policy. I've worked as a public policy analyst at New Jersey Policy Perspective for almost five years now.

**Ms. Batel:** In what capacity do you work at New Jersey Policy Perspective?

**Brandon:** I started as an economic security policy analyst focusing on things like minimum wage. Sorry, yes. Yes, I know. I feel sorry [inaudible 06:14:44] I started as a economic policy analyst focusing on economic security issues. Things like minimum wage and [unintelligible 06:14:55] Then I became the director of government and public affairs. As of March 1st, I'm now the president

**Ms. Batel:** Mr. McCoy what exactly is New Jersey policy perspective? More specifically, what kinds of research project do you and your team conduct?

**Brandon:** We are a public policy big tank and we do policy analysis issues in a variety of policy areas including economic security, tax and budget policy, health care and immigration, sometimes education as well.

**Ms. Batel:** Are you familiar with the Economic Opportunity Act of 2013?

**Brandon:** Yes.

**Ms. Batel:** Does New Jersey policy perspective conduct policy research or analysis on that end?

**Brandon:** Yes.

**Ms. Batel:** I'm going to refer to that act as EOA 13. What kinds of research have you conducted on the EOA 13?

**Brandon:** A lot of the research from our organization has focused on the ways that EOA 2013 removed some of the protections that we believe were important for the states EDA Economic Development Authority programs, co per subsidy programs and keeping track and monitoring the amount of corporate tax subsidies that the state has awarded over the years which have increased significantly in size and scale.

**Ms. Batel:** I want to talk specifically about- picking up from what Mr. Walden lefty off - about exactly from your perspective, the policy perspective, the impact of having certain stakeholders involved in the draft language of the bill. To add a little bit of context to the timing, are you familiar with the timing of the passage of the Economic Opportunity Act?

**Brandon:** Yes I've seen the base of which the Legislation moved through legislators.

**Ms. Batel:** Just to confirm is it correct that on May 20th, 2013 the EOA 13 was passed by the assembly and passed to the Senate.

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**Brandon:** I believe yes.

**Ms. Batel:** On June 27th, 2013 the EOA 13 was passed by the Senate and confirmed by the assembly.

**Brandon:** Yes.

**Ms. Batel:** Some of the changes to the draft bill that Mr. Walden had just walked Mr. Bezorus through, I don't know if you have accepted the testimony but the dates on those changes that were made by the person that was making those changes were on June 14th, June 19 and June 21st, 2013. They felt within that period between the assembly passing and the Senate passing the bill. From a policy perspective, I wanted to ask for your reaction of, what is your reaction of a private law firm having access to the actual draft language of the bill right before it's passed and the impact that that would have on the resulting legislation.

**Brandon:** I don't think it's uncommon for legislators to ask for outside expertise in help when crafting bills. Legislators are not experts in everything, seeking that assistance and input is

**[06:18:00]** perfectly normal and improper for an individual or entity to directly edit, and write a bill particularly when that individual or entity has significant or sufficient opportunity to benefit financially. Otherwise, the edits that they made, I would consider that improper.

**Ms. Batel:** Do you believe that having interested parties and subject matter experts is generally important in creating a bill that meets the policy goals?

**Brandon:** Yes, we definitely want subject matter experts weighing in. You want to have a variety of experts, particularly on something as broad reaching as the EOA 2013 which is dealing with economic development which requires a whole host of experts from urban planners, to housing experts, to environmental experts, transportation experts, to finance development and welding experts. That's a very large undertaking. You want to have input from a variety of those sorts of people.

**Ms. Batel:** Going back to what Mr. Lizura had testified to previously, would you consider it bad policy to allow a individual law firm to make those changes right before it was passed without broader access to any stakeholders, to have access to amend that language?

**Brandon:** Yes, to have those changes made in a manner-- If I remember correctly the size of the bill grew from about 40-something pages to 83 pages if I remember correctly. To add that much content to the bill, and to not get sufficient input from other experts and other stakeholders in due time is just not proper practice. I would say that it's not typically normal. I would say it's probably more normal than people are comfortable with, but it's not **[06:20:00]** a normal process.



**Ms. Batel:** What is the timing in that? You just mentioned that if you recall correctly the bill went from 40 to 83 pages. From when to when did the bill expand?

**Brandon:** If I remember properly looking at the state website, I believe the Senate voted on the changes. The changes were implemented June 24th. Then the Senate actually voted on those changes June 27th.

**Ms. Batel:** Within the span of three days?

**Brandon:** Yes. I was not in, jury perspective at the time. I happen to be familiar with this issue and looking back at journalistic reports and articles, you could see several legislators and stakeholders commenting on the fact that they didn't really have the time necessary to really look through the changes that were made.

**Ms. Batel:** What are some of the policy concerns of having this specific type of involvement alleged?

**Brandon:** The concerns would be that it was privatization

of legislative process. When you look at the changes that were implemented they really opened up the amount of spending that the state could pursue with regards to corporate tax subsidies it would award. Previously there have been caps on spending. This removes those caps completely so it's technically an unlimited amount of spending that could occur in these programs. It did not include important stipulations around reports or opportunities to review spending that had occurred and didn't have a bunch of best practices that are commonly understood across the country and at the national level.

**Ms. Batel:** You had mentioned that you have a background in economic development policy. Some of the requirements under the tax incentive programs are requiring companies to prove that but for the Tax Incentive they would move outside of New Jersey. It begs the question how seriously could a company have been considering leaving New [06:22:00] Jersey but for the Tax Incentives if they directly are or have counsel on their behalf adding direct language or provisions into the Tax Incentive. In your expert opinion, how seriously could companies such as the ones that were potentially benefiting from the provisions we saw earlier have been considering leaving New Jersey?

**Brandon:** If a company has knowledge and awareness that the stipulations and language of the bill have been structured in such a way that they would benefit, I would find it hard to believe that they would forgo those benefits unless the deal that they would get from other states were significantly better by considering the size and the scale New Jersey's corporate tax subsidy program we pay out on average are significantly more than other states do. I would find that unlikely.



**Ms. Batel:** Historically and generally, does the New Jersey Policy Perspective kick all the time to offer an expert opinion or policy research during bill drafting in various bills that have to deal with the research that you do?

**Brandon:** Yes. We've provided comments and helped legislators think through the structuring of bills with regards to the minimum wage, progressive health care, immigration like I mentioned and tax and budget policy. Also whenever we do research on these issues and publish that research we make sure that we are making legislators and stakeholders aware of what our findings have been and make sure that we are saying that these are the things that we think are proper and proper for you to pursue and construction of your bill.

**Ms. Batel:** Is the substance of the EOA 13 the bill in substance that your team in New Jersey policy perspective would have the expert knowledge to be able to offer substantial information and assistance in the bill drafting?

**Brandon:** Yes. My predecessor John Weigh is largely considered by many to be one [06:24:00] of the foremost experts on this topic in the State of New Jersey.

**Ms. Batel:** Understanding that you weren't at New Jersey Policy Perspective in 2013 when the bill was passed, do you know New Jersey Policy Perspective was called upon to assist in that process of contributing information and opinions as to the EOA 13 and making it a good bill to reach its broad incentives?

**Brandon:** I'd say again I was not employed at the [unintelligible 06:24:24] at the time but in asking my predecessors had our expertise been sorts, the answer was no.

**Ms. Batel:** There's been a lot of statements that of the contributions to the EOA 13 made it a better bill and it was a step up from what existed before. Based on your expertise in your experience in New Jersey Policy Perspective and your study into this subject matter can you open and whether you believe that the bill that was actually passed. Is it good policy to reach its goals?

**Brandon:** I think there are many portions of the bill that are considerably poor policy and in the sort of journey that the bill took, the legislature and then adding Governor Christy at the time, he actually conditionally vetoed the bill. I remember reading my predecessor General White in saying he removed one good part about that bill which was workforce protections.

That was a negative and as I said previously there are many things that could be in that bill that would lead to better oversight, better opportunities for review by both the State Government and outside stakeholders and more chances to reign in and be more targeted with the goals of the programs themselves that were not included but stakeholders were making those points at that time in the media. [06:26:00] He conditionally vetoed it.



**Ms. Batel:** Mr. McCoy, I have no further questions for you. It was very important for us to [unintelligible 06:26:07] today to get a policy perspective on exactly the meaning of that influence and the frustration of the stakeholders but I'll open it up to Mr. Chairman or other members of the task force, I have no other questions.

**Ronald:** [unintelligible 06:26:20] one thing that [unintelligible 06:26:23] whether that was a [unintelligible 06:26:35]

**Brandon:** Considering the State of New Jersey's fiscal standing and the main challenges that we have as a State with regards to the obligations that we continue to underfund and sort of not meet, no I don't believe that that was a proper decision to make to have a program where the State is unable to determine what it's spending on their program will be familiar to your basis is not to squeeze sound or this week is over.

**Ronald:** I don't have [unintelligible 06:27:09] further, thank you very much. That is I'm sure you will now be relieved [unintelligible 06:27:15] and therefore [unintelligible 06:27:21] you've had a long day. A transcript of today will be available and I promise but a section of the last year and I will repeat we are still determined to explore ways in which will be are very conveniently available hopefully through the use of technology. [inaudible 06:27:48]

We do plan a conventionally one more hearing before the beginning of June so that we may have as much information to the issue in our first report. In the later hearing [06:28:00] we will have members of the public to offer any relevant testimony about the [unintelligible 06:28:06] we gathered to further inform us about the direct impact in these programs taxpayers and companies around the state. We will make public announcements about this hearing using the same process we've used this one. Thank you very much for attending, we wish you a good evening and this hearing is adjourned.

[06:28:36] [END OF AUDIO]

# EXHIBIT J

May 6, 2019

**By Hand Delivery and Email**

Jim Walden, Esq.  
Walden Macht & Haran LLP  
One Battery Park Plaza  
New York, NY 10004

**Re: Task Force on EDA's Tax Incentives**

Dear Mr. Walden:

On behalf of our respective clients, we write to object to the unlawful process you are conducting on behalf of the Task Force on the Economic Development Agency's Tax Incentives ("Task Force"). For the reasons set forth herein, the Task Force's chair, Mr. Chen, lacks statutory authority over the Economic Development Agency ("EDA"), which is an independent authority not subject to the gubernatorial powers set forth in N.J.S.A. 52:15-7. Moreover, the arbitrary restrictions you imposed on our clients' rights to respond to false accusations against them denies each of them the opportunity to exercise their First Amendment rights as well as their right to publicly confront accusers within the same public forum. Given your stated intention to publicly adduce "adverse" evidence against our clients, these restrictions are particularly noxious. We therefore demand an opportunity to submit a public presentation to the Task Force at its next scheduled hearing.

**Background**

This process has been tainted from the outset. Practicing without a valid law license in New Jersey, on or about April 18, 2019, you issued document subpoenas to our clients on behalf of Professor Chen. Those subpoenas exceeded the delegated statutory authority under N.J.S.A. 52:15-7, as well as the express terms of the Executive Order No. 52, which authorized the Task Force to seek voluntary witness cooperation only. After being advised of the lawlessness of your

subpoenas, you orally represented that Professor Chen had withdrawn them. We continue to await written confirmation.

At the opening of the May 2, 2019 public hearing, Professor Chen cryptically but nonetheless specifically referred to “entities of concern.” It is plain that he has targeted our clients but has refused to disclose anything further about this dubious designation. Soon thereafter, Task Force attorney Pablo Quiñones stated that such entities may face “real criminal exposure” for federal “mail and wire fraud,” even though the United States Attorneys’ office has already investigated these matters and found no wrongdoing. Statements such as these, coupled with the manner of the questioning of witnesses at the May 2, 2019 hearing, suggests you are operating under explicit instructions to develop “adverse facts” against particular individuals and entities, including our clients. This one-sided investigation smacks of political retribution and undermines the credibility of your exercise. We reserve all rights to seek full remedies to the extent any of these false and defamatory accusations were directed at our clients.

**There Is No Statutory Authority Over the EDA.**

Through a delegation letter dated March 22, 2019, Governor Murphy purportedly conferred on Mr. Chen an investigatory power set forth in N.J.S.A. 52:15-7. That statute empowers the Governor, or persons appointed by him, “to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State . . .” *Id.* (emphasis added). It does not extend to independent authorities like the EDA.

The EDA was created by statute in 1974 as an independent authority “in, but *not of*, the Department of the Treasury.” N.J.S.A. 34:1B-4(a) (emphasis added). For this reason, the EDA is not “of the State” executive branch. It is expressly made “in, but not of,” any executive branch department. N.J.S.A. 34:1B-4(a). This “in but not of” designation is a special term of art in state

government, used to “signify an agency’s independence” and to “insulate the agency from complete Executive Branch control.” In re Plan for Abolition of Counsel on Affordable Housing, 214 N.J. 444, 448, 464 (2013). Governor Murphy recognized this designation in his letter appointing Professor Chen, which acknowledged: “The EDA is a public body corporate and politic established in, but *not of*, the Department of Treasury . . .” (emphasis added). Because of this independence from the executive branch, the EDA is beyond the reach of N.J.S.A. 52:15-7.

The Governor’s March 22 letter revealed a second, independent defect in the Task Force’s authority: notably absent from the list of governmental entities subject to investigation under N.J.S.A. 52:15-7 are independent “public bod[ies] corporate” such as the EDA. Indeed, the Governor’s subpoena authority is limited to any “department, board, bureau or commission of the State.” While the notion of “public corporations” long predated the enactment of N.J.S.A. 52:15-7 in 1941, see, e.g., N.J. Turnpike Auth v. Parsons, 3 N.J. 235, 243 (1949) (relying on the longstanding existence of the Port of New York Authority); L. 1921, c. 151, p. 417 (“The Port Authority shall constitute a body, both corporate and politic . . .”), the Legislature conspicuously omitted such entities from the list of those subject to gubernatorial investigation under this statute.

**The Task Force’s Attempts to Limit the Ability of its Targets to Respond is Unlawful.**

In the May 1 letters you served on our clients, you advised that anyone seeking to respond to adverse facts “will be afforded the opportunity to submit a sworn, written statement to be incorporated into the record of the Task Force’s investigatory Public Hearing . . . This statement of facts **must relate solely to matters relevant to any testimony or evidence the Company believes to be adverse to its interests . . .**” (emphasis added) (See **Exhibit A**). This limitation implies that the Task Force may reject any affidavit that it believes exceeds the bounds of these arbitrary limitations. Moreover, there is no provision made to protect the rights of our clients, the

obvious targets of your “inquiry,” to present live testimony and documents, and to refute any accuser or accusation. In addition, the stated limitations of your directive are designed to prevent us from adducing evidence of the bias and unlawfulness of the proceedings themselves. Under these circumstances and in light of applicable law, such restrictions are unlawful.

As an initial matter, by arrogating the right to accept or reject a respondent’s affidavit based upon a unilateral determination as to relevance, the Task Force has imposed an unlawful prior restraint. See Alexander v. United States, 509 U.S. 544, 550 (1993) (the term “prior restraint” refers to administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur”) (internal citation and quotation marks omitted).

The Task Force’s inquiry, self-described as a “public hearing,” is a limited public forum for First Amendment purposes. See Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 225 (3d Cir. 2003) (internal citation and quotation marks omitted). For the state to enforce a content-based exclusion in such a forum, “it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” State v. DeAngelo, 197 N.J. 478, 486 (2009), quoting Perry Local Educators’ Ass’n, 460 U.S. 37, 45 (1983).

Speech on public issues and political matters lies at the heart of protected speech. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 422 (1992). Where such speech is involved, “courts insist that government ‘allow the widest room for discussion, the narrowest range for its restriction.’” D’Angelo, 197 N.J. at 485, quoting Thomas v. Collins, 323 U.S. 516, 530 (1945). Even in a limited public forum, the government may never “regulat[e] speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the

restriction.” Rosenberger v. Rector and Visitors of the Univ. of Va., 515 U.S. 819, 829 (1995); see also Monteiro v. City of Elizabeth, 436 F.3d 397, 404 (3d Cir. 2006) (“viewpoint-based restrictions violate the First Amendment regardless of whether they also serve some valid time, place, manner interest”).

The Task Force may not limit our clients’ participation on the basis of their anticipated speech. Nor can our clients be prevented from telling their side of the story through testimony and their counsel. Through the restrictions communicated in your May 1, 2019 letter, however, such content and viewpoint discrimination is exactly what the Task Force seeks to impose. Limiting parties to respond to live testimony and evidence through affidavits alone is not reasonably related to “the mission of the Task Force . . . to conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and ERG . . .” *See* EO-52 at para. 1. Moreover, your restrictions privilege the evidence offered by some speakers over others, on the sole basis of the anticipated views to be offered. By drawing this distinction among speakers, the Task Force has engaged in unlawful discrimination. And limiting responses to “any testimony or evidence . . . believed to be adverse . . .” likewise restricts speakers in a way not rationally related to the purpose of this limited public forum.

\* \* \*

Each of our clients is proud of its investment in Camden’s future. Those investments were made in reliance on grants approved and issued lawfully by the EDA. As some of us have communicated to you previously, our clients enthusiastically support government transparency and demand the opportunity to set the record straight with respect to their contracts with the EDA.

While we believe the Task Force has been unlawfully constituted and is operating outside of any recognized statutory authority, it is evident that you intend to continue. Thus, while we

reject the authority of the Task Force, and dispute that its participants are cloaked with any immunity from liability for their defamatory conduct, the Task Force's application of public monies to fund its investigation demands that the accused be afforded an opportunity to respond fully to allegations made against them. We therefore request that you advise of the next public hearing date and assure us that we will have an opportunity to present evidence to the Task Force on behalf of our clients, including live witness testimony and documentary evidence, as appropriate. Should you refuse to do so, we intend to seek legal relief.

Very truly yours,

*s/Christopher S. Porrino*

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*Attorneys for Parker McCay, P.A.*

cc: Professor Ronald Chen (by hand and email)

# EXHIBIT K

# Walden Macht & Haran LLP

---

W | M | H

One Battery Park Plaza, 34th Floor  
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212 335 2030

May 9, 2019

**VIA EMAIL AND FIRST-CLASS MAIL**

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Re: **Your letter of May 6, 2019**

Dear all:

I write as Special Counsel to the New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") in response to your letter of May 6, 2019. Six points bear mention.

First, if you wish to have a dialogue with us, have a dialogue. Please do not write a letter and then immediately leak it to the press. I am surprised that such an august group would rely on this kind of stunt. It is beneath you. Especially since—although we were not obligated to—we advised you in advance that our hearing might include potentially adverse information about your

clients. I did not receive a single response to my offer to read a statement from any of your clients into the record.

Second, we provided subpoenas for the production of documents in advance of the hearing so that—if there was another “side” to the facts—we had the opportunity to present those facts. Your clients produced nothing by the deadline. Instead, at the 11<sup>th</sup> hour, you requested that your clients have the opportunity to cooperate voluntarily. As an accommodation, Professor Chen withdrew the subpoenas to permit such cooperation. Your letter of May 6<sup>th</sup> is hardly cooperation and, at bottom, you have produced not a single document—before or after the hearing—supporting any conclusions or assertions that your clients’ out-of-state locations were bona fide, suitable, and available. We await word from you on when you will voluntarily produce the documents we requested, assuming it is still your clients’ intention to do so.

Third, you have raised the specter of litigation over the Task Force’s authority. Feel free to file a challenge to Executive Order No. 52. We are certainly prepared to defend it.

Fourth, you also include the following language in your letter: “[W]e . . . dispute that [the Task Force’s] participants are cloaked with any immunity from liability for their defamatory conduct.” You are members of the Bar. As such, you cannot make bad faith threats to attempt to dissuade us from our work. You should carefully review the transcript of the proceeding—during which we carefully explained that the public should draw no conclusions about the companies’ intents and, further, that the questions reflected our concerns about EDA’s oversight of these applications. Whether or not we enjoy immunity, which I will not address herein, you have no basis for a suit.

Fifth, you request the opportunity “to be heard” at the next proceeding. Professor Chen will accommodate that request by permitting fact witnesses from each of your client’s companies to testify at the next hearing, which would not have otherwise focused on these projects. Please confirm by May 23, 2019, whether the following individuals will voluntarily provide sworn testimony:

Conner Strong & Buckelew

- George E. Norcross
- John F. Muscella
- Matthew Tiagwad

NFI

- Troy Adams
- Jeffrey Brown
- Sidney R. Brown
- Scott Brucker
- Michael J. Landsburg
- Steven Grabell

The Michaels Organization

- Michael J. Levitt
- Joseph Purcell

The Cooper Health System

- Andrew Bush
- Adrienne Kirby
- Douglas E. Shirley

Parker McCay

- Philip A. Norcross
- Kevin D. Sheehan

Please review the applicable statutes in Article 52, as counsel's role in this hearing will be strictly limited. However, as a further accommodation, we will permit each witness to make introductory remarks of no more than 5 minutes. Once you confirm these witnesses will voluntarily appear to provide testimony, we will confirm available dates for the proceeding.

Finally, we disagree with, but decline to address, the remaining points of your letter. Should you have any questions, please contact me.

Sincerely,

/s/ Jim Walden

Jim Walden  
Walden Macht & Haran LLP  
(212) 335-2031  
jwalden@wmhlaw.com

# EXHIBIT L

**PENDING INVOICE(S) FROM WALDEN MACHT & HARAN LLP**

<b>Matter ID</b>	<b>Matter Title</b>	<b>Invoice Submitted Date</b>	<b>Pending Invoice Amount</b>
19-60608	Economic Development Authority Incentives Task Force	3/6/2019	21,051.50
19-60608	Economic Development Authority Incentives Task Force	3/31/2019	420,297.01
19-60608	Economic Development Authority Incentives Task Force	4/19/2019	855,382.02

# EXHIBIT M

# SENATE RESOLUTION No. 139

## STATE OF NEW JERSEY

### 218th LEGISLATURE

INTRODUCED MAY 13, 2019

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Constitutes special committee of Senate entitled "Senate Select Committee on Economic Growth Strategies."

**CURRENT VERSION OF TEXT**

As introduced.



**SR139 SWEENEY**

2

1 **A SENATE RESOLUTION** constituting a special committee of the  
2 Senate entitled the “Senate Select Committee on Economic  
3 Growth Strategies.”  
4

5 **WHEREAS**, The State’s economic vitality depends on economic  
6 development programs that incentivize qualified businesses to  
7 invest in the State’s communities through job creation and capital  
8 investment; and

9 **WHEREAS**, The New Jersey Economic Development Authority  
10 (authority), established in 1974, has provided financing to  
11 businesses that has led to the creation of nearly 400,000 jobs in this  
12 State and spurred nearly \$60 billion in private investment from \$30  
13 billion in State assistance; and

14 **WHEREAS**, Two of the State’s most important economic development  
15 programs, both administered by the authority, will begin to expire  
16 June 30, 2019; and

17 **WHEREAS**, If existing or new economic development programs are not  
18 extended or authorized, business incentives offered by other states  
19 will place New Jersey at a strategic disadvantage; and

20 **WHEREAS**, Businesses that would have otherwise stayed in, or moved  
21 to, New Jersey will instead locate in other states, which will have a  
22 negative impact on the State’s economy; and

23 **WHEREAS**, The economic vitality of the State depends upon the best  
24 strategies, policies, and practices to create jobs, attract investments  
25 to distressed communities, help existing businesses thrive, and  
26 generate quality, long-term economic opportunities throughout the  
27 State; and

28 **WHEREAS**, A Senate legislative committee will be able to identify  
29 those strategies, policies, and practices and make  
30 recommendations for legislation creating targeted and effective  
31 economic development programs that will allow the State to  
32 effectively compete across the country and the world for new  
33 jobs and investment and to create a robust, world-class, 21st  
34 Century economy; and

35 **WHEREAS**, It is fitting for the Senate, through an appropriate  
36 committee, to investigate and act upon the creation of an economic  
37 development policy for the State; now, therefore,  
38

39 **BE IT RESOLVED** *by the Senate of the State of New Jersey:*

40  
41 1. There is constituted a special committee of the Senate  
42 entitled the “Senate Select Committee on Economic Growth  
43 Strategies,” comprised of seven members of the Senate. The seven  
44 members shall be appointed by the Senate President, not more than  
45 four of whom shall be of the same political party. There shall be a  
46 chair and vice-chair of the special committee appointed by the  
47 Senate President from among the appointed members, each of  
48 whom shall be of a different political party.

**SR139 SWEENEY**

3

1 2. a. The Senate Select Committee on Economic Growth  
2 Strategies shall:

3 (1) conduct a review of the State's current and previous  
4 economic development programs and determine: the aspects of each  
5 program that were successful or unsuccessful; why those aspects  
6 were successful or unsuccessful; and how these programs may be  
7 improved in the future;

8 (2) seek the input of State and regional leaders in the business  
9 community, academic experts in the area of economic development,  
10 and other qualified experts as determined by the committee to  
11 identify a holistic approach to regulating the economy of the State  
12 in a manner that will maximize private business investment and job  
13 growth;

14 (3) utilize all documentation, testimony, and any other relevant  
15 information that will assist with an analysis of the compliance with  
16 the program requirements by recipients of economic development  
17 program benefits; and

18 (4) identify the best strategies, policies, and practices to create  
19 jobs and attract capital investments to distressed communities, and  
20 generate long-term economic opportunities throughout the State.

21 b. The Senate Select Committee on Economic Growth  
22 Strategies shall issue a report of its findings and recommend  
23 legislation addressing the State's economic development policy.  
24

25 3. For the purposes of carrying out its charge under this  
26 resolution, the Senate Select Committee on Economic Growth  
27 Strategies shall have all the powers conferred under the laws and  
28 the Constitutions of the State of New Jersey and of the United  
29 States, including, but not limited to, the following powers, provided  
30 that no subpoena shall be issued by the committee without the  
31 written consent of the chair and vice chair of the committee and the  
32 President of the Senate:

33 a. the powers conferred pursuant to chapter 13 of Title 52 of  
34 the Revised Statutes, including, but not limited to, the power to  
35 issue subpoenas to compel attendance and testimony of persons and  
36 the production of books, papers, correspondence, other documents  
37 and materials, and electronic records and data;

38 b. to hold hearings, take testimony under oath, and receive  
39 documentary or physical evidence relating to the matters and  
40 questions it is authorized to investigate or study;

41 c. to use any and all reasonable means of interviewing or fact  
42 gathering, including, but not limited to, preliminary conferences or  
43 interviews;

44 d. to convene a meeting or hearing to determine the adequacy  
45 of the return and rule on the objection if a return on a subpoena or  
46 order for the production of documentary evidence is incomplete or  
47 accompanied by an objection;

## SR139 SWEENEY

4

1 e. to utilize the powers provided under R.S.52:13-3 or hold  
2 individuals or entities in contempt of the committee;

3 f. to make findings and reports to the Senate of any  
4 recommendations, including recommendations for enforcement, that  
5 the committee may consider appropriate with respect to the willful  
6 failure or refusal of any person to appear before it, to answer  
7 questions or give testimony during an appearance of that person as a  
8 witness, or to produce before the committee any books, papers,  
9 correspondence, other documents and materials, and electronic  
10 records and data that the committee may request;

11 g. to respond to any judicial or other process, or to make  
12 application to the courts of this State, or any other state, or the  
13 United States;

14 h. to report possible violations of any law, rule, regulation, or  
15 code to appropriate federal, State, or local authorities; and

16 i. to adopt additional rules or procedures not inconsistent with  
17 this resolution.

18  
19 4. a. The Senate Select Committee on Economic Growth  
20 Strategies shall be entitled to call to its assistance and avail itself of  
21 the services of the employees of the State of New Jersey, any  
22 political subdivision of the State, and any agency thereof, as may be  
23 required and as may be available for that purpose, and to employ  
24 any other services as may be deemed necessary, in order to perform  
25 the duties provided herein, and within the limits of funds  
26 appropriated or otherwise made available for that purpose.

27 b. The Senate Select Committee on Economic Growth  
28 Strategies, upon the written approval of the President of the Senate,  
29 shall be entitled to call to its assistance, employ, and avail itself of  
30 the services of one or more special counsel retained to assist the  
31 committee.

32  
33 5. This resolution shall take effect immediately.  
34  
35

## STATEMENT

36  
37  
38 This Senate resolution constitutes a special committee of the  
39 Senate entitled the "Senate Select Committee on Economic Growth  
40 Strategies" (committee). The committee is to consist of seven  
41 senators appointed by the President of the Senate, of whom no more  
42 than four members are from the same political party. There is to be  
43 a chair and vice-chair of the committee appointed by the Senate  
44 President from among the appointed members, each of whom shall  
45 be from a different political party.

46 The committee is to:

47 1) conduct a review of the State's current and previous  
48 economic development programs and determine: the aspects of each

**SR139 SWEENEY**

5

1 program that were successful or unsuccessful; why those aspects  
2 were successful or unsuccessful; and how these programs may be  
3 improved in the future;

4 2) seek the input of State and regional leaders in the  
5 community, academic experts in the area of economic development,  
6 and other qualified experts as determined by the committee to  
7 identify a holistic approach to regulating the economy of the State  
8 in a manner that will maximize private business investment and job  
9 growth; and

10 3) utilize all documentation, testimony, and any other relevant  
11 information that will assist with an analysis of the compliance with  
12 the program requirements by recipients of economic development  
13 program benefits; and

14 4) identify the best strategies, policies, and practices to create  
15 jobs and attract capital investments to distressed communities, and  
16 generate long-term economic opportunities throughout the State.

17 The committee is to issue a report of its findings and recommend  
18 legislation addressing the State's economic development policy.

19 The resolution grants the committee the power to issue  
20 subpoenas to compel the attendance and testimony of witnesses and  
21 the production of documents.

# EXHIBIT N

CRITCHLEY, KINUM & DeNOIA, LLC  
ATTORNEYS AT LAW  
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ROSELAND, NEW JERSEY 07068

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May 1, 2019

*Via E-mail to [jwalden@wmhlaw.com](mailto:jwalden@wmhlaw.com)*

Jim Walden, Esq.  
Walden Macht & Haran LLP  
One Battery Park Plaza  
New York, New York 10004

**Re: Task Force on EDA's Tax Incentives**

Dear Mr. Walden:

We represent a party with interest in the investigation currently being conducted by the Task Force on EDA's Tax Incentives ("Task Force"). It is our understanding that numerous correspondence and subpoenas have been sent by you in your capacity as special counsel for the Task Force to various companies and individuals in New Jersey. It is also in that capacity that you have served numerous litigation hold notices and have been conducting an investigation as set forth in Executive Order No. 52, which includes asking questions on behalf of the Task Force at certain public hearings in New Jersey.

It is clear by your conduct that you are rendering legal advice and counsel to the Task Force, which is a New Jersey client. Indeed, your January 24, 2019 retention letter with the New Jersey Division of Law specifically says that you were retained "to provide advice and counsel to the Task Force o[n] EDA's Tax Incentives." All of that relates to matters here in New Jersey applying New Jersey law. However, none of the attorneys from your firm who are disclosed in the announcement relating to tomorrow's hearing in New Jersey (yourself, Georgia Winston, Milton Williams, or Avni Patel) are licensed to practice law in the State of New Jersey according to your website.

I have reviewed the relevant provisions of the New Jersey Rules of Professional Conduct, as well as the applicable sections of Title 2C of the New Jersey statutes. See R.P.C. 5.5(b) (stating that attorneys not licensed in New Jersey may only practice law in New Jersey under narrow circumstances). In referencing the criminal provisions of N.J.S.A. 2C:21-22, the Supreme Court has stated "[t]he importance of our public policy assuring the lay public that only those properly

May 1, 2019

Page 2

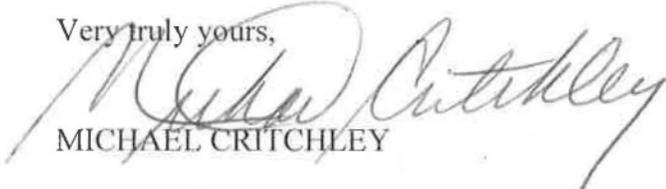
approved for bar admission in New Jersey may render legal services here is underscored by the Legislature's designation of the unauthorized practice of law as a disorderly person's offense or a crime of the fourth degree. N.J.S.A. 2C:21-22. In re Jackman, 165 N.J. 580, 588 (2000). Your representation in this matter could be construed as the unauthorized practice of law in violation of these provisions.

Given that the Task Force also retained Pablo Quinones (a New Jersey-licensed attorney according to his website), perhaps your firm believes that R.P.C. 5.5(b)(3)(iv) provides a relevant exception that would permit you to perform this ongoing work because of his engagement. To the extent that your firm holds this belief, it is mistaken. That narrow exception states that a non-New Jersey attorney "may engage in the lawful practice of law in New Jersey only if . . . the out-of-state lawyer's practice in this jurisdiction is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter." But the New Jersey Committee on the Unauthorized Practice of Law has explained that this narrow "occasional" exception is meant to encompass matters akin to an isolated real-estate negotiation. It does not apply "[i]f the out-of-state lawyer's entry into New Jersey is recurring or frequent." See N.J. Comm. on Unauth. Prac. Op. 49 (Nov. 15, 2012). The rule also does not countenance situations where a foreign attorney seeks to advise a New Jersey client on New Jersey law for months on end, in a matter that is likely taking a substantial amount of his time day to day.

It is particularly surprising that your client, Mr. Ronald Chen, is aiding you in this clear violation of New Jersey law, given that he serves as the Chair of the New Jersey Supreme Court Advisory Committee on Professional Ethics. As such, Mr. Chen should have been well aware that it is an ethical violation for a New Jersey attorney "to assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." See R.P.C. 5.5(a)(2). Mr. Quinones likewise should be aware of his own violations by aiding you in your unauthorized practice of law. Finally, the question of the authorization of your engagement by the Attorney General's Office is a matter of concern.

Kindly respond to this letter explaining the authority on which you believe that you are able to practice law in the State of New Jersey without a license, and why that conduct does not constitute a violation of applicable law.

Very truly yours,



MICHAEL CRITCHLEY

cc: Michelle Miller, Director, Division of Law (by e-mail [Michelle.Miller@law.njoag.gov](mailto:Michelle.Miller@law.njoag.gov))

# EXHIBIT O

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May 3, 2019

*Via E-mail to [jwalden@wmhlaw.com](mailto:jwalden@wmhlaw.com)*

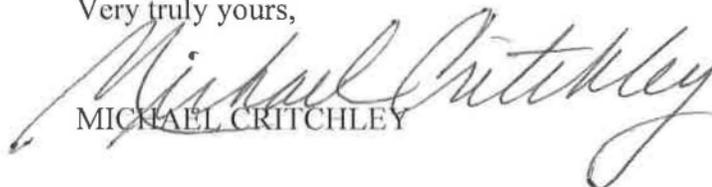
Jim Walden, Esq.  
Walden Macht & Haran LLP  
One Battery Park Plaza  
New York, New York 10004

**Re: Task Force on EDA's Tax Incentives**

Dear Mr. Walden:

I have not received a response to my May 1, 2019 letter challenging your and your firm's ability to represent the Task Force on EDA's Tax Incentives. If I do not receive a response by close of business on Monday, May 6, 2019, I will refer this matter to the New Jersey Office of Attorney Ethics for consideration.

Very truly yours,

  
MICHAEL CRITCHLEY

cc: Michelle Miller, Director, Division of Law (via e-mail [Michelle.Miller@law.njoag.gov](mailto:Michelle.Miller@law.njoag.gov))

# EXHIBIT P

**From:** Pablo Quinones [<mailto:pablo@quinoneslaw.com>]  
**Sent:** Friday, May 03, 2019 8:18 PM  
**To:** Michael Critchley <[mcritchley@critchleylaw.com](mailto:mcritchley@critchleylaw.com)>  
**Cc:** Jim Walden ([jwalden@wmhlaw.com](mailto:jwalden@wmhlaw.com)) <[jwalden@wmhlaw.com](mailto:jwalden@wmhlaw.com)>; Ronald Chen <[ronchennj@gmail.com](mailto:ronchennj@gmail.com)>  
**Subject:** Task Force on EDA's Tax Incentives

Dear Mr. Critchley,

We are responding to your May 3, 2019 letter to Jim Walden, which demands a response to your May 1, 2019 letter by the close of business on Monday, May 6th. Given the short timeline you have imposed, we will not be able to respond to your letter on Monday because we are engaged on other matters until Tuesday, May 7<sup>th</sup>. We further expect to consult with the Office of the Governor and the Office of the Attorney General about the issues raised in your letter next week.

We will make every effort to ensure that you receive a response to your letter by the close of business on Friday, May 10th.

Regards,

Pablo Quiñones, Esq.  
Quiñones Law, PLLC  
T: (212)735-8599  
C: (646) 408-0477  
E: [pablo@quinoneslaw.com](mailto:pablo@quinoneslaw.com)  
W: [www.quinoneslaw.com](http://www.quinoneslaw.com)

# EXHIBIT Q

# Walden Macht & Haran LLP

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**W M H**

One Battery Park Plaza, 34th Floor  
New York, NY 10004  
212 335 2030

May 10, 2019

**VIA EMAIL AND FIRST CLASS MAIL**

Michael Critchley, Esq.  
Critchley, Kinum & DeNoia, LLC  
75 Livingston Ave., Ste. 303  
Roseland, New Jersey 07068

Re: **New Jersey Task Force on EDA's Tax Incentives**

Dear Mr. Critchley:

I write as Special Counsel to New Jersey's Task Force on the Economic Development Authority's Tax Incentives in response to your letter dated May 1, 2019. Please be advised that we have referred your letter to the appropriate authorities.

Sincerely,



Jim Walden, Esq.  
Walden Macht & Haran LLP  
212-335-2031  
jwalden@wmblaw.com