# *Civil Suit Emphasizes Critical Role of Notifications by Tax Matters Partners in Conservation Easement Disputes*

By Hale E. Sheppard*

*Hale E. Sheppard explains the conservation easement donation process, main stages of a partnership tax dispute, specific data-sharing duties imposed on a TMP, recent challenges by the IRS, and allegations by the partners.*



## I. Introduction

As the cliché goes, communication is key. This is particularly true in the context of certain partnership tax disputes, where the tax matters partner ("TMP") is charged with keeping partners notified. The IRS has been attacking partnerships that donate conservation easements to charitable organizations for several years, and now disgruntled partners are getting in on the act. Indeed, in March 2020, various partners started a class action lawsuit in federal court, claiming, without yet proving, that they have been aggrieved. What is interesting is that the partners theorize that notifications from the TMP, about the status of the tax dispute with the IRS, damaged or impeded them in several ways. Utilizing the recent class action lawsuit as a backdrop, this article explains the conservation easement donation process, main stages of a partnership tax dispute, specific data-sharing duties imposed on a TMP, recent challenges by the IRS, and allegations by the partners. The article concludes that, given the possibility of more stone-throwing by partners in the future, TMPs should understand their communication requirements and implement them to their fullest.

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## II. Overview of Conservation Easement Donations and Deductions

Taxpayers who own undeveloped real property have several choices. For instance, they might (i) hold the property for investment purposes, selling it when it appreciates sufficiently, (ii) determine how to maximize profitability from the property and do that, regardless of the negative effects on the local environment, community, economy, *etc.*, or (iii) donate an easement on the property to a charitable organization, such that it is protected forever for the benefit of society.

*The takeaway here is that the attacks on easement donations by the IRS likely will be supplemented allegations by partners that, despite the PPM and a significant amount of other information that they received before investing, they did not appreciate the risks and they were somehow misled.*

The third option, known as donating a "conservation easement," not only achieves the goal of environmental protection, but also triggers another benefit, tax deductions for donors. Taxpayers generally must donate their entire legal interest in a particular piece of property, not just part of their interest, in order to qualify for a tax deduction.[1] This is a critical concept, as taxpayers who own all attributes of real property (*i.e.*, they own it in "fee simple," in legal terms) do not donate the property outright to a charitable organization in the easement context. Instead, they retain ownership of the property, but give an easement on such property to an independent, non-profit organization with the ability, capacity, willingness, and resources to safeguard the property forever. This is usually a land trust. Provided that the easement, which is just a partial interest in property, constitutes a "qualified conservation contribution," taxpayers are entitled to take the tax deduction.[2]

As one would expect, taxpayers cannot donate an easement on any old property; they must demonstrate that the property was worth protecting. A donation has an acceptable "conservation purpose" if it meets at least one of the following requirements: (i) It preserves land for outdoor recreation by, or the education of, the general public; (ii) It preserves a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem; (iii) It preserves open space (including farmland and forest land) for the scenic enjoyment of the general public, and it will yield a significant public benefit; (iv) It preserves open space (including farmland and forest land) pursuant to a federal, state, or local governmental conservation policy, and it will yield a significant public benefit; or (v) It preserves a historically important area or a certified historic structure.[3]

Taxpayers memorialize the donation to charity by filing a public Deed of Conservation Easement ("Deed"). In preparing the Deed, taxpayers often coordinate with the land trust to identify certain activities that can continue on the property after the donation, without interfering with the Deed, without prejudicing the conservation purposes, and without jeopardizing the tax deduction.[4] These activities are called "reserved rights." The IRS openly recognizes, in its Conservation Easement Audit Techniques Guide ("ATG"), that reserved rights are ubiquitous.[5]

The IRS will not allow the tax deduction stemming from a conservation easement unless the taxpayer provides the land trust, before making the donation, "documentation sufficient to establish the condition of the property at the time of the gift."[6] This is called the Baseline Report. It may feature several things, including, but not limited to, (i) the survey maps from the U.S. Geological Survey, showing the property line and other contiguous or nearby protected areas, (ii) a map of the area drawn to scale showing all existing man-made improvements or incursions, vegetation, flora and fauna (*e.g.*, locations of rare species, animal breeding and roosting areas, and migration routes), land use history, and distinct natural features, (iii) an aerial photograph of the property at an appropriate scale taken as close as possible to the date of the donation, and (iv) on-site photographs taken at various locations on the property.[7]

The value of the conservation easement is the fair market value ("FMV") of the property at the time of the donation.[8] The term FMV ordinarily means the price on which a willing buyer and willing seller would agree, with neither party being obligated to participate in the transaction, and with both parties having reasonable knowledge of the relevant facts.[9] The IRS explains in its ATG that the best evidence of the FMV of an easement would be the sale price of other properties encumbered by easements that are comparable in size, location, usage, *etc*. The ATG recognizes, though, that it is difficult, if not impossible, to find comparable sales.[10] Consequently, appraisers often must use the before-and-after method instead. This means that an appraiser must determine the highest and best use ("HBU") of the property *and* the corresponding FMV two times. First, the appraiser calculates the FMV if the property were put to its HBU, which generates the "before" value. Second, the appraiser identifies the FMV, taking into account the restrictions on the property imposed by the easement, which creates the "after" value.[11] The difference between the "before" value and "after" value, with certain other adjustments, produces the value of the easement donation.

As indicated above, in calculating the FMV of property, appraisers and courts consider not only the current use of the property, but also its HBU.[12] A property's HBU is the most profitable use for which it is adaptable and needed in the reasonably near future.[13] The term HBU has also been defined as the use of property that is physically possible, legally permissible, financially feasible, and maximally productive.[14] Importantly, valuation in the easement context does *not* depend on whether the owner has actually put the property to its HBU in the past.[15] The HBU can be *any* realistic potential use of the property.[16] Common HBUs are construction of a residential community, creation of a mixed-use development, or mining.

Properly claiming the tax deduction stemming from an easement donation is surprisingly complicated. It involves a significant amount of actions and documents. The main ones are as follows: The taxpayer must (i) obtain a "qualified appraisal" from a "qualified appraiser," (ii) demonstrate that the land trust is a "qualified organization," (iii) obtain a Baseline Report adequately describing the condition of the property at the time of the donation and the reasons why it is worthy of protection, (iv) complete a Form 8283 (*Noncash Charitable Contributions*) and have it executed by all relevant parties, including the taxpayer, appraiser, and land trust, (v) assuming that the taxpayer is a partnership, file a timely Form 1065, enclosing Form 8283 and the qualified appraisal, (vi) receive from the land trust a "contemporaneous written acknowledgement," both for the easement itself and for any endowment/stewardship fee donated to finance perpetual protection of the property, and (vii) send all the partners their Schedules K-1 (Partner's Share of Income, Deductions, Credits, *etc.*) and a copy of Form 8283.[17]

## III. Overview of Partnership Tax Disputes

To appreciate the significance of this article, one must first have a basic understanding of the special audit procedures applicable to many partnerships, enacted decades ago in the Tax Equity and Fiscal Responsibility Act ("TEFRA"), and in effect for Forms 1065 filed by partnerships for 2017 and earlier years.[18]

Under the TEFRA rules, instead of auditing each of the *partners* separately, the IRS audits a *partnership*, and then any adjustments (such as a reduction in the amount of the charitable contribution deduction) resulting from the audit are passed through to the partners based on their ownership percentage in the partnership. A tax dispute under the TEFRA rules generally has four main stages, each of which is described in general terms below.

### A. Audit

The audit begins when the IRS sends an audit-selection notice, which normally comes as a notice of beginning of administrative proceeding ("NBAP"). The audit is conducted by a Revenue Agent, often with assistance of valuation engineers, appraisers, environmental professionals, mining experts, foresters, and others. During the audit, the Revenue Agent sends various Information Document Requests ("IDRs") and possibly Summonses to the partnership, as well as to other persons who might have relevant information. In the IDRs and Summonses, the Revenue Agent requests documents, information, or both. The Revenue Agent might also interview the TMP and others. The Revenue Agent then analyzes all available data, issues a "Summary Report" containing proposed changes to the Form 1065, and offers to have a "Closing Conference" to discuss such changes.

### B. Administrative Appeal

After the Closing Conference, the Revenue Agent will prepare an Examination/Audit Report explaining the determinations made by the IRS during the audit. The partnership has 60 days to appeal the Examination/Audit Report by filing a Protest Letter. If the partnership submits a Protest Letter, then an Appeals Officer reviews it and conducts a conference/meeting with representatives of the partnership. The representatives attempt to settle the issues for the partnership on the most favorable terms possible.

### C. Litigation

If the partnership is unable to reach an acceptable settlement with the Appeals Officer, then the IRS will issue the Final Partnership Administrative Adjustment ("FPAA"). The TMP has 90 days to file a Petition with the proper trial court on behalf of the partnership disputing the proposed adjustments in the FPAA. Generally, this is the Tax Court. If the TMP does not file a Petition, then certain partners may file a Petition within a limited period. If the partnership disagrees with the decision reached by the Tax Court, it may appeal the decision to the appropriate federal court of appeals.

### D. Assessments

After the partnership-level proceedings have become final, the IRS will send each partner a notice explaining how the changes at the partnership level personally affect each partner. This is called a "Notice of Computational Adjustments."

The preceding four-stage process might be shortened and otherwise altered if the IRS does not issue a Summary Report or an Examination/Audit Report, and instead issues an FPAA quickly. The IRS generally does this when the assessment-period (*i.e.*, the time during which the IRS can propose adjustments to the Form 1065) is close to expiring.

## IV. Duty to Keep Partners Informed

Organizers of partnerships that invest in conservation-worthy property, including TMPs, generally do a commendable job of informing potential partners about key issues on the front end. This data often comes in the form of a Private Placement Memorandum ("PPM"), which contains enormous detail about many aspects of the investment, such as risk factors and federal income tax considerations. Among other things, a PPM normally identifies a long list of legal, tax, technical, procedural, and/or other theories that the IRS might raise in challenging the charitable donation. It also warns potential partners that IRS attacks could lead to full disallowance of tax benefits, plus large penalties and interest charges.

The data-sharing duties of a TMP do not stop there, though. The Internal Revenue Code, tax regulations, and Tax Court Rules impose on the TMP an obligation to keep certain partners informed about the tax dispute process, after the IRS comes knocking. The legislative history indicates that, to the extent provided in the regulations, "the TMP will be required to keep partners informed of all administrative and judicial proceedings," while clarifying simultaneously that "no obligation will be imposed on the TMP with respect to partners wishing to be informed about routine or minor events."[19]

The regulations contain the following list of duties for the TMP:

- The TMP generally must send to certain partners a copy of the NBAP *within 75 days* of the date on which the IRS mailed it.[20]
- The TMP generally must send to certain partners a copy of the FPAA *within 60 days* of the date on which the IRS mailed it.[21]
- The TMP generally must furnish to the partners "information with respect to" each of the following items *within 30 days* of receiving the relevant information: (i) A Closing Conference with the Revenue Agent; (ii) Proposed adjustments by the IRS (such as those in a Summary Report, Notice of Proposed Adjustment, or Examination Report), rights of appealing such adjustments, and requirements for filing a Protest Letter; (iii) Time and place of any conference with the Appeals Office; (iv) Acceptance by the IRS of any settlement offer; (v) Any extension of the assessment-period granted by the TMP; (vi) Filing of an administrative adjustment request or amended Form 1065X; (vii) Filing of a Petition with a trial court, by the TMP or any other partner; (viii) Filing of an appeal of any determination by the trial court; and (ix) Any final judicial determination.[22]

The Tax Court Rules in effect during the applicable years, like the tax regulations, contain mandates about keeping certain partners updated. For instance, the TMP was required, in some circumstances, to notify partners when it filed a Petition with the Tax Court disputing an FPAA and to provide them a copy of the Petition, any Amended Petition, any proposed settlement agreement, the relevant Tax Court Rules, and more.[23]

Partners want to be informed about the status of the tax dispute for several reasons, including to determine whether they can or should participate in administrative proceedings with the IRS, file a Petition or otherwise engage in Tax Court litigation, make a "deposit" with the IRS to stop accrual of interest during the partnership dispute, file an amended tax return, budget to pay potential future tax liabilities, accept a proposed settlement agreement, *etc*.[24]

The law leaves no doubt that the failure by the TMP to fulfill notification duties does *not* affect the TEFRA proceeding:

> The failure of the tax matters partner, a pass-thru partner, the representatives of a notice group, or any other representative of a partner to provide any notice or perform any act required under this subchapter or under regulations prescribed under this subchapter on behalf of such partner does not affect the applicability of any proceeding or adjustment under this subchapter to such partner.[25]

However, as explained below, notification missteps by the TMP might lead to problems with partners who believe, rightly or wrongly, that they have somehow been damaged by a TMP's actions or inactions.[26]

## V. Pressure from the IRS

The U.S. government has been attacking partnerships that make easement donations in several ways. For instance, it (i) identified them as "listed transactions" in Notice 2017-10, (ii) mandated the filing of Forms 8886 (*Reportable Transaction Disclosure Statement*) and Forms 8918 (*Material Advisor Disclosure Statement*) by various parties, (iii) launched a "compliance campaign" consisting of dozens of specialized Revenue Agents and other IRS personnel, (iv) filed a Complaint in District Court seeking a permanent injunction against certain organizers and appraisers, (v) featured easement transactions on the IRS's "dirty dozen" list, (vi) started an inquiry by the Senate Finance Committee on potential abuses, and (vii) initiated a widespread practice of issuing audit reports claiming that tax deductions should be $0 and imposing severe penalties, regardless of the amount of pre-donation due diligence conducted by taxpayers, the magnitude of the conservation values of the properties, the attainment of multiple independent appraisers, *etc*.

The IRS, through the Commissioner, Chief Counsel, and other high-ranking officials, began intensifying the rhetoric and warnings in late 2019. This messaging has manifested itself in the form of IRS new releases, public statements at tax conferences, and articles. The IRS has emphasized that it is (i) pursuing promoters, appraisers, return preparers, material advisors, accommodating entities, charitable organizations, and others, (ii) making referrals to the Office of Professional Responsibility, (iii) raising a long list of technical, procedural, legal and tax arguments in disputes, while constantly trying to develop more, (iv) asserting all possible civil penalties, (v) conducting simultaneous civil examinations and criminal investigations, (vi) contracting with a significant number of appraisers from the private sector to handle the workload, and (vii) litigating a large number of cases in Tax Court.[27]

## VI. Pressure from Partners—Relevance of TMP Notifications

The IRS has historically been the source of biggest concern for those involved with conservation easements, but that might change. In March 2020, certain partners filed a class action lawsuit in federal court alleging all sorts of supposed wrongdoings by organizers, attorneys, accountants, appraisers, and land trusts.[28] Whether, or to what extent, anyone did anything wrong in that case is yet to be seen; the only certainty is that there is an enormous difference between making allegations and proving them to the satisfaction of a court or jury.

The class action lawsuit is interesting for purposes of this article for one reason: The partners are attempting to use notifications by the TMP to fortify their allegations and to counter the fact that they might have raised their claims too late. This is a critical point, considering that the partnerships addressed in the lawsuit donated conservation easements nearly a decade ago, in 2010 and 2011.

The Complaint filed by the partners identifies multiple legal theories, based on federal and state law. Among them are racketeering, negligence, malpractice, misrepresentation, breach of fiduciary duty, fraud, aiding and abetting wrongful conduct, and conspiracy.[29] The statute of limitations (*i.e.*, the limited period during which the partners are entitled to initiate a lawsuit) varies depending on several factors, including the type of allegation, which state law applies, *etc*. Moreover, what starts the clock running against the partners changes based on similar considerations. It might begin when the wrongdoing took place, when the resulting damage occurred, when the partners first discovered key matters, or something else. The partners are hyperaware of the potential statute of limitations issue, as evidenced by the fact that the Complaint raises several legal theories for expanding the relevant period, including the discovery rule, equitable tolling, fraudulent concealment, and the continuing torts doctrine.[30] These are all different grounds, but the common theme underlying each is that the partners supposedly could not, and did not, discover the problems until later because of certain actions or inactions by organizers. These purportedly "delayed, deterred, or prevented" the partners from starting the lawsuit earlier.[31]

Interestingly, the actions or inactions included notifications to the partners, by the TMP or the attorneys defending the partnerships, during the lengthy tax dispute process. The partners complain, among other things, that (i) after the IRS issued a negative Examination Report, but the TMP "continued to reassure members that there was nothing to worry about," (ii) the TMP failed to inform the partners of the primary grounds on which the IRS was disallowing the tax deductions, because doing so would have obligated certain defendants to admit that they caused "technical," yet fatal, violations, (iii) the TMP did not disclose actual or potential conflicts of interest related to the defense team, and (iv) even if the TMP adequately communicated at the outset, he later suppressed "new material developments," including that one appraiser was under IRS examination or investigation, another appraiser had been suspended for misconduct, the partnerships had disavowed the original appraisals, the Tax Court had issued unfavorable rulings in several other easement cases, *etc*.[32]

## VII. Conclusion

The takeaway here is that the attacks on easement donations by the IRS likely will be supplemented by allegations by partners that, despite the PPM and a significant amount of other information that they received before investing, they did not appreciate the risks and were somehow misled. As evidenced by the recent Complaint filed in the class action lawsuit described above, partners might point to notifications, or lack thereof, by TMPs as support for their claims. Consequently, it is critical for TMPs to understand and meet (or, better yet, exceed) their data-sharing duties.

### ENDNOTES

* Hale defends businesses and individuals in tax audits, tax appeals, and Tax Court, involving both domestic and international issues. You can reach Hale by phone at (404) 658-5441 or by email at *hale.sheppard@chamberlainlaw.com*.

1 Code Sec. 170(a)(1); Reg. §1.170A-1(a); Code Sec. 170(f)(3)(A); Reg. §1.170A-7(a)(1).

2 Code Sec. 170(f)(3)(B)(iii); Reg. §1.170A-7(a)(5); Code Sec. 170(h)(1); Code Sec. 170(h)(2); Reg. §1.170A-14(a); Reg. §1.170A-14(b)(2).

3 Code Sec. 170(h)(4)(A); Reg. §1.170A-14(d)(1); S. Rept. 96-1007, at 10 (1980).

4 Reg. §1.170A-14(b)(2).

5 Internal Revenue Service. Conservation Easement Audit Techniques Guide (Rev. 11/4/2016), at 23; *see also* Reg. §1.170A-14(e)(2) and (3).

6 Reg. §1.170A-14(g)(5)(i).

7 Reg. §1.170A-14(g)(5)(i).

8 Code Sec. 170(a)(1); Reg. §1.170A-1(c)(1).

9 Reg. §1.170A-1(c)(2).

10 Internal Revenue Service. Conservation Easement Audit Techniques Guide (Rev. 11/4/2016), at 41.

11 Internal Revenue Service. Conservation Easement Audit Techniques Guide (Rev. 11/4/2016), at 41.

12 *Stanley Works & Subs.*, 87 TC 389, 400, Dec. 43,274 (1986); Reg. §1.170A-14(h)(3)(i) and (ii).

13 *Olson*, SCt, 292 US 246, 255 (1934).

14 *Esgar Corp.*, CA-10, 2014-1 USTC ¶50,207, 744 F3d 648, 659 n.10.

15 *Esgar Corp.*, 744 F3d 648, 657.

16 *J.W. Symington*, 87 TC 892, 896, Dec. 43,467 (1986).

17 *See* Internal Revenue Service. Conservation Easement Audit Techniques Guide (Rev. 11/4/2016), at 24–30; IRS Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements; IRS Publication 526, Charitable Contributions; Code Sec. 170(f)(8); Code Sec. 170(f)(11); Reg. §1.170A-13; Notice 2006-96; T.D. 9836.

18 The Bipartisan Budget Act of 2015, P.L. 114-74 ("BBA") revamped the partnership audit procedures, which generally apply to partnership tax years beginning on or after January 1, 2018. *See also* Jerald David August, *Entity-Level Audit Rules Continue to Pose Challenges for Partners—Part 2*, 17 BUSINESS ENTITIES (July/Aug. 2015) (providing a comprehensive review of TEFRA procedures, for readers craving such level of detail).

19 U.S. House of Representatives. Tax Equity and Fiscal Responsibility Act of 1982. 97th Congress, 2nd Session, Conference Report 97-760 (Aug. 17, 1982), at 602; *see also* U.S. Committee on Taxation. General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, JCS-38-82, Dec. 31, 1982, at 270.

20 Reg. §301.6223(g)-1(a)(1).

21 Reg. §301.6223(g)-1(a)(2).

22 Reg. §301.6223(g)-1(b)(1) and (3). There are few IRS pronouncements that provide any substance guidance regarding these duties. *See, e.g.*, Chief Counsel Advice 201328033 (confirming that issuance of the NBAP triggers duty of TMP to notify partners of the examination), Chief Counsel Advice 201042026 (explaining that regulations require the TMP to forward certain information to partners, but the IRS cannot force the TMP to do so), Chief Counsel 200927039 (recommending that the IRS forward reports directly to partners in the absence of a functioning TMP), Chief Counsel Advice 200913061 (indicating that the TMP must send the partners a copy of the 60-Day Letter and information about administrative appeals rights), Chief Counsel Advice 200910046 (stating that the TMP must timely notify partners of Tax Court settlement), Chief Counsel Advice 200907034 (confirming that the TMP has a regulatory duty to notify partners when the IRS issues a Notice of Proposed Adjustments).

23 *See, e.g.*, Tax Court Rules 241(f), 241(g), 248(b), and 249(a) as of July 2, 2012.

24 *See* Code Sec. 6224(a) (generally stating that "[a]ny partner has the right to participate in any administrative proceeding relating to the determination of partnership items at the partnership level."); Tax Court Rule 248(a) (indicating that a Decision Document signed by the TMP and filed with the Tax Court "shall bind all parties" and constitutes a certification that "no party objects to entry of decision"); Code Sec. 6603 (establishing the right for taxpayers to make a cash deposit with the IRS); Code Sec. 6226(b) (indicating that if the TMP does not file a Petition within 90 days of the IRS issuing the FPAA than certain other partners can do so for the next 60 days); Hale E. Sheppard, *Conservation Easements, Partners, and Qualified Amended Returns?* 166 TAX NOTES FEDERAL 373 (2020).

25 Code Sec. 6230(f); *See also* U.S. House of Representatives. Tax Equity and Fiscal Responsibility Act of 1982. 97th Congress, 2nd Session, Conference Report 97-760 (Aug. 17, 1982), at 608; *see also* U.S. Committee on Taxation. General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, JCS-38-82, Dec. 31, 1982, at 276.

26 Jerald David August, *Entity-Level Audit Rules Continue to Pose Challenges for Partners—Part 2*, 17 BUSINESS ENTITIES (July/Aug. 2015) (indicating that aggrieved partners might pursue claims against the TMP under state law for negligence or malfeasance, subject to term of the relevant partnership's operating agreement).

27 IR-2019-182, *IRS Increases Enforcement Action on Syndicated Conservation Easements*, Nov. 12, 2019; IR-2019-213, *IRS Continues Enforcement Efforts in Conservation Easement Cases Following Latest Tax Court Decision*, Dec. 20, 2019; Nathan J. Richman, *Multiple Divisions Coming for Syndicated Conservation Easements*, 2019 TAX NOTES TODAY 220-3 (Nov. 13, 2019); William Hoffman, *Conservation Easement Crackdown a Portent, Rettig Says*, 2019 TAX NOTES TODAY 221-9 (Nov. 14, 2019); Kristen A. Parillo, *IRS Is Building Up Its Easement Toolbox*, 2019 TAX NOTES TODAY 222-6 (Nov. 15, 2019); Kristen A. Parillo, *IRS Looking for Promoter Links as Easement Crackdown Grows*, TAX NOTES TODAY, Doc. 2019-47134 (Dec. 13, 2019).

28 *Lechter v. Aprio et al.*, Case No. 1:20-cv-01325-AT, D.C. Georgia, Complaint filed 3/26/2020.

29 *Lechter v. Aprio et al.*, Case No. 1:20-cv-01325-AT, D.C. Georgia, Complaint filed 3/26/2020, paragraphs 262 through 355.

30 *Lechter v. Aprio et al.*, Case No. 1:20-cv-01325-AT, D.C. Georgia, Complaint filed 3/26/2020, paragraphs 248 through 261.

31 *Lechter v. Aprio et al.*, Case No. 1:20-cv-01325-AT, D.C. Georgia, Complaint filed 3/26/2020, paragraphs 248 through 261.

32 *Lechter v. Aprio et al.*, Case No. 1:20-cv-01325-AT, D.C. Georgia, Complaint filed 3/26/2020, paragraphs 97, 123, 147, 159, 184, and 329.