

UNITED STATES DISTRICT COURT

for the

Eastern District of California



FILED
Nov 08, 2023
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SEALED

United States of America
v.

Irma Olguin, Jr.
and Jake Soberal

Case No. 1:23-mj-00136-SKO

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 2022 through May 2023 in the county of Fresno in the Eastern District of California, the defendant(s) violated:

Code Section
18 USC 1349

Offense Description
Conspiracy to commit wire fraud

Maximum penalties: Twenty years in prison
Fine of \$250,000
Three years of supervised release
Special assessment of \$100

This criminal complaint is based on these facts:

See attached Affidavit, which is incorporated by reference as though fully set forth herein.

Continued on the attached sheet.

Handwritten signature of Chet Johnston

Complainant's signature

Chet Johnston, FBI Special Agent

Printed name and title

Sworn to me under oath by telephone pursuant to FRCP 4.1:

Date: 11/8/2023

Handwritten signature of Sheila K. Oberto

Judge's signature

City and state: Fresno, California

Hon. Sheila K. Oberto, U.S. Magistrate Judge

Printed name and title

1 **AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

2 I, Chet Johnston, being duly sworn, depose and state as follows:

3 **I. INTRODUCTION**

4 1. I have been a Special Agent with the Federal Bureau of Investigation (“FBI”) since 2008.
5 I am a graduate of the FBI’s Basic Field Training Program in Quantico, Virginia. I am currently
6 assigned to the FBI’s Office in Fresno, California, where I am a member of the white-collar crime
7 squad. As such, I have been involved in several criminal investigations involving investor fraud, loan
8 fraud, and other complex financial frauds. My duties include interviewing victims and witnesses,
9 executing searches for evidence, reviewing financial records and other documentary evidence,
10 conducting research on the internet and other sources, consulting with different types of experts, making
11 arrests, and testifying in court proceedings. Prior to joining the FBI, I was a police officer in Colorado.

12 2. This Affidavit is made in support of a federal criminal complaint and arrest warrants
13 charging Irma Olguin, Jr. and Jake Soberal with conspiracy to commit wire fraud in violation of 18
14 U.S.C. § 1349. The facts in this Affidavit come from my training and experience, personal involvement
15 in this case, and information obtained from other law enforcement agents who are involved in the case.
16 This Affidavit is meant to show that there is probable cause for the requested complaint and arrest
17 warrants. It does not set forth all of my knowledge about the case.

18 **II. APPLICABLE LAW**

19 3. Title 18, United States Code, Section 1349 provides that anyone who attempts or
20 conspires to commit wire fraud in violation of 18 U.S.C. § 1343 shall be imprisoned up to twenty years,
21 fined up to \$250,000, or both.

22 4. Title 18, United States Code, Section 1343 provides that whoever, having devised or
23 intending to devise any scheme or artifice to defraud, or for obtaining money or property, by means of
24 false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by
25 means of wire, radio, or television communication in interstate commerce, any writings, signs, signals,
26 pictures, or sounds for the purpose of executing such scheme or artifice, is guilty of wire fraud.

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1 **III. STATEMENT OF PROBABLE CAUSE**

2 **A. Overview, and Olguin, Jr. and Soberal's Admissions to Wrongdoing**

3 5. Press articles, civil court records, and bankruptcy court records obtained by the
4 government showed that, in late May 2023, the Fresno, California-based technology company, Bitwise
5 Industries (“Bitwise”),¹ abruptly collapsed despite recent reports the company was worth over
6 \$500,000,000 and was financially sound. All of the company’s approximately 900 employees and
7 apprentices were immediately furloughed and later laid off, and the company’s board of directors fired
8 the founders and co-Chief Executive Officers, Irma Olguin, Jr. and Jake Soberal.

9 6. The FBI and Internal Revenue Service: Criminal Investigation (“IRS:CI”) conducted an
10 extensive investigation into Bitwise. The government has interviewed dozens of people, including
11 Olguin, Jr. and Soberal, as well as former Bitwise board members, employees, investors, and lenders.
12 The government has also obtained hundreds of thousands of pages of relevant documents, including
13 board presentations, investor pitch materials, and other financial records, as well as text messages and
14 emails, recordings, and other evidence. Finally, the government has interviewed Olguin, Jr. and
15 Soberal, and they have admitted to significant criminal misconduct. The investigation has determined
16 that their criminal misconduct caused more than \$100,000,000 in losses.

17 7. Olguin, Jr. and Soberal were interviewed by the government in September 2023 and
18 admitted to significant wrongdoing. Their admissions are discussed throughout this affidavit where
19 relevant. In sum, Olguin, Jr. and Soberal have admitted that, beginning no later than January 2022, they
20 conspired with each other to lie to board members, investors, lenders, and others about Bitwise’s
21 finances to obtain investment money and loans. They did so by fabricating financial information in
22 board presentations and investor materials, as well as altering and forging bank statements, board
23 consents, and other financial records to inflate the company’s revenues, cash balances, and property
24 holdings. They also misled the board members, investors, lenders, and others into believing Bitwise was
25 excelling when it was instead failing.

26
27 ¹ Bitwise had a parent company and several other related entities. These entities were all
28 controlled by Olguin, Jr., Soberal, and the board of directors. Therefore, the entities are being referred
to generally, and collectively, as Bitwise for purposes of this affidavit.

1 8. Olguin, Jr. and Soberal have maintained that they were the only ones at Bitwise who were
2 involved in the criminal activity and that they limited other employees' access to information to conceal
3 their scheme to defraud. As discussed below, Olguin, Jr. and Soberal conspired to carry out the scheme
4 to defraud. The government's investigation to date has not identified other conspirators.

5 **B. Bitwise's Operational Design**

6 9. In approximately 2013, Olguin Jr. and Soberal founded the startup company that
7 ultimately became Bitwise. According to them, the stated goals were to create job opportunities for
8 underserved groups of people, revitalize blighted urban areas, and show that such a project could be
9 profitable. The company grew to have three business lines. The first business line was a workforce
10 training program that prepared apprentices for technology jobs. The second business line was a
11 consulting service that developed software and websites, staffed call centers, and provided related
12 technology services to customers. The third business line was a real estate arm that bought, renovated,
13 and leased commercial properties. After the properties were fully leased, Bitwise would sell its stake in
14 the properties and remain as the property manager for a share of the revenue.

15 10. The three business lines were supposed to complement each other. That is, the training
16 program was supposed to provide employees and apprentices for the consulting service, and the real
17 estate arm was supposed to provide offices for all of the business lines.

18 11. Olguin, Jr. explained that she focused on the internal aspects of Bitwise, such as hiring,
19 organizing, and managing the company's employees and teams. Soberal explained that he was in charge
20 of the company's finances, such as presenting financial information to the board and finding investors
21 and lenders. They have maintained that they were equals at the company and close friends, and that they
22 always consulted with each other before making business decisions. They were each making
23 approximately \$600,000 per year when the company collapsed.

24 **C. Bitwise's Rapid Growth**

25 12. By 2017, Bitwise had grown to over fifty employees and apprentices, and Olguin Jr. and
26 Soberal were introduced to INVESTOR ONE. INVESTOR ONE is a pioneer in the tech industry.

27 13. INVESTOR ONE was interviewed by the government. He said that he was impressed
28 with Bitwise, and after meeting with Olguin Jr. and Soberal and touring the company, he agreed to join

1 the company's board and lead it in a Series A investment round. Based on my training and experience, a
2 Series A investment round is an investment in a startup company that has built a persuasive business
3 model and shows the potential for significant revenue growth. It often refers to the first round of
4 venture capital funding that a company receives.

5 14. INVESTOR ONE said that he was later joined on Bitwise's board by INVESTOR
6 TWO's REPRESENTATIVE, INVESTOR THREE, and INDIVIDUAL ONE, and that Olguin, Jr. and
7 Soberal held the two remaining seats. INVESTOR TWO's REPRESENTATIVE was then the managing
8 partner of INVESTOR TWO, which was a Virginia-based venture capital firm. INVESTOR THREE
9 also operated a venture capital firm. INVESTOR ONE explained that INVESTOR TWO's
10 REPRESENTATIVE and INVESTOR THREE received their seats on the board because of their
11 investments in Bitwise, and that INDIVIDUAL ONE was picked for her seat based on her experience.
12 All of the board members were interviewed by the government.

13 15. Records produced by Bitwise's board showed that the company's Series A round closed
14 in December 2019 and raised over \$20,000,000 for the company. This was the largest investment that
15 the company had received to date. The investors included INVESTOR ONE and his related entities,
16 INVESTOR TWO, and INVESTOR THREE and his related entities.

17 16. According to INVESTOR ONE, Bitwise was a relatively new company and there was not
18 much information available for due diligence. Instead, his decision to lead the Series A and invest in the
19 company was based on his conversations with Soberal. He explained that, while Bitwise's business plan
20 was complex and risky, the company's stated goals and culture of inclusiveness aligned with his own
21 values. He further explained that he trusted Soberal and believed that the company would succeed
22 because its business lines complimented each other so well.

23 17. INVESTOR ONE said that the Series A money was supposed to help Bitwise expand into
24 Bakersfield, Merced, and other cities in California. He explained, however, that most of the money
25 went towards buying out some of the company's early investors and that there was only a few million in
26 Series A funds left over.

27 18. One of Bitwise's early investors, who was bought out after the Series A, said that Olguin,
28 Jr. and Soberal were growing the company too quickly and that he preferred a slower, more conservative

1 pace. Another early investor, who kept his shares and later leased properties to Bitwise, said that the
2 company never had a business model and that it was all just a bunch of hype. He explained that he now
3 regrets not getting out while he still could.

4 19. A few months after the Series A, records produced by Bitwise's board showed that
5 Olguin, Jr. and Soberal began a Series B investment round that closed in December 2021 and raised over
6 \$48,000,000 for the company. Based on my training and experience, a Series B investment round refers
7 to an investment in a company that has become fully operational and is ready to further expand. It often
8 refers to the second round of venture capital money that a company receives. The Series B investors
9 again included INVESTOR ONE and his related entities, INVESTOR TWO, and INVESTOR THREE
10 and his related entities. INVESTOR ONE said that the money was supposed to help Bitwise expand to
11 cities outside of California.

12 **D. Olguin, Jr. and Soberal Repeatedly Submitted Materially False Financial Information to**
13 **the Bitwise Board of Directors**

14 20. By the end of 2021, Bitwise had raised more than \$70,000,000 in investment funds
15 overall, and had grown to approximately 400 to 500 employees and 100 to 300 apprentices in multiple
16 offices and states. Thereafter, as all of the board members confirmed to the government, Olguin, Jr. and
17 Soberal were responsible for the financial information that was given to the board. The information
18 provided by Olguin Jr. and Soberal made it appear as though the company was performing well in terms
19 of revenue and cash on hand. For example, in a February 2022 Board presentation and July 2022
20 investment memorandum, they represented that Bitwise's cash balance was over \$44,000,000 as of
21 December 31, 2021. They also represented that the company's revenue for the year was more than
22 \$58,000,000. Bank records, however, showed that the company's cash balance was approximately
23 \$11,700,000 at the close of 2021. And, as discussed below, the revenue was fabricated according to the
24 company's former Chief Financial Officers ("CFO") and other key finance personnel.

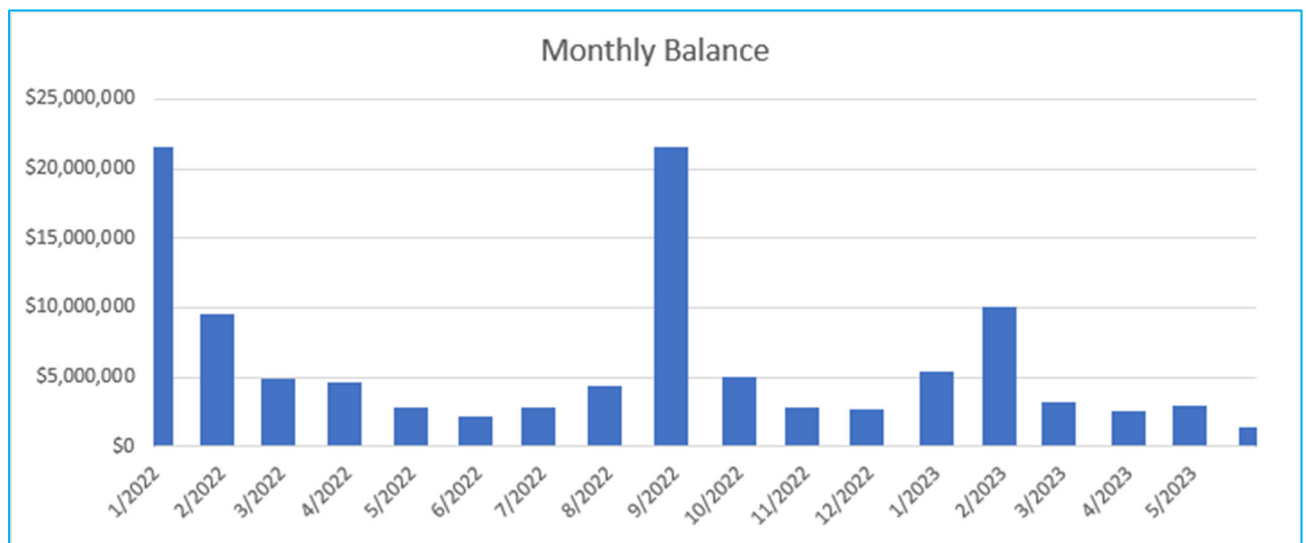
25 21. In a March 2023 Board presentation obtained by the government, Olguin, Jr. and Soberal
26 further represented that Bitwise's cash balance was over \$77,000,000 as of December 31, 2022, and that
27 the company's revenue for the year was more than \$143,000,000. Bank records, however, showed that
28

1 the company’s actual cash balance was less than \$5,000,000 at that time. And again, as discussed
 2 below, the revenue was fabricated.

3 22. Numerous Bitwise board members and employees confirmed that Olguin, Jr. and Soberal
 4 were responsible for the financial information that was presented to the board.

5 **E. Bitwise’s True Financial Condition was Concerning**

6 23. Despite Olguin, Jr. and Soberal raising tens of millions of dollars in investments and
 7 reporting that the company was in a strong financial condition, bank records showed that, by June 1,
 8 2023, Bitwise had less than \$1,500,000 left. The following chart that the FBI prepared based on the
 9 bank records depicts the company’s rapid depletion of cash from 2022 through the company’s collapse:



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19 **i. Olguin, Jr. and Soberal Knew About the Company’s Cash Problems**

20 24. As previously discussed, EMPLOYEE ONE was Bitwise’s President and third-in-
 21 command. EMPLOYEE ONE told the government that she had access to the company’s bank accounts
 22 along with Olguin, Jr. and Soberal, and that the company was constantly running low on cash and could
 23 barely keep up with its approximate \$5,000,000 per month in payroll expenses. She and other
 24 employees explained that, at times, the company would issue them paper checks instead of using direct
 25 deposit. This was because, with paper checks, the funds were only drawn from the company’s account
 26 when the checks were deposited or cashed. Whereas, with direct deposit, the funds were drawn
 27 simultaneously when the deposit was initiated. EMPLOYEE ONE further explained that she would be
 28 notified whenever an employee’s check did not clear so that she could move money around to cover it.

1 25. EMPLOYEE ONE said that she talked to Olguin, Jr. and Soberal about the company’s
2 cash problems on several occasions and they told her not to worry about it and they would take care of
3 everything. EMPLOYEE ONE explained that Olguin, Jr. and Soberal would often make short term
4 loans to the company that would be repaid with ten percent interest and that they would ask her and
5 other key personnel to do the same. They called it “passing the hat.” EMPLOYEE ONE further
6 explained that she was careful to only make one loan at a time and that the loans were generally paid
7 back until the company collapsed. She confirmed that the company did not have \$77,000,000 at any
8 point in 2022 and that the actual balances were much lower.

9 **ii. Bitwise was Losing Millions of Dollars Each Year**

10 26. CFO ONE was Bitwise’s CFO from June 2020 through September 2021, and he was
11 interviewed by the government. He was previously the senior director of finance for a major television
12 station and vice president of finance for a cloud computing company.

13 27. CFO ONE confirmed that Bitwise was always cash-negative while he worked there,
14 which meant that there was more money going out than there was money coming in. He estimated that
15 the company lost over \$20,000,000 per year.

16 28. When CFO ONE was hired, Bitwise’s financials were in disarray and the company was
17 not using Generally Accepted Accounting Principles (“GAAP”). Based on my training and experience,
18 GAAP is the accounting standard adopted by the United States Securities and Exchange Commission,
19 and it is the default accounting standard used by companies in the United States. GAAP is a
20 combination of authoritative standards and commonly accepted ways of recording financial information.
21 It aims to improve the clarity, consistency, and comparability of such information across companies so
22 that people can determine how a given company is actually performing.

23 29. Instead of GAAP, CFO ONE said that Olguin, Jr. and Soberal were using managerial
24 accounting practices to report financial information to the board and investors. Based on my training
25 and experience, managerial accounting practices are strictly for a company’s internal use because these
26 practices are based on a company’s trends, goals, and estimates rather than its true, past performance.
27 Such practices are far less exact than GAAP and can be subjective.

28

1 30. CFO ONE said that he adjusted Bitwise's financials to reflect GAAP. He explained that
2 the company's revenue for 2020 was reduced from approximately \$30,000,000 to \$9,000,000, and that
3 the company's revenue for the first quarter of 2021 was reduced from approximately \$10,000,000 to
4 \$1,000,000. CFO ONE said that Olguin, Jr. and Soberal were unhappy with the adjustments and told
5 him that he was wrong, and they asked him to double check his work. He did so and confirmed that he
6 was correct. He also advised them that they needed to use GAAP with the board members and investors
7 going forward.

8 31. CFO ONE subsequently engaged AUDIT FIRM ONE, which is an international audit,
9 tax, and advisory services firm based in the United States, to perform an audit of the company's
10 financials. The audit report, however, was not completed until April 2022 after he had left the company.
11 He explained that wanting to use managerial financials instead of GAAP became a recurring problem
12 with Olguin, Jr. and Soberal that caused him a great deal of stress, and that was why he left Bitwise.
13 CFO ONE further explained that he only attended two board meetings and that he did not talk to the
14 board members directly about the company's financials.

15 32. CFO TWO was Bitwise's CFO from January 2023 until May 2023. She was previously
16 in the corporate development department for a major aircraft manufacturer, and then was the CFO for
17 robotics and unmanned aerial vehicle startup companies.

18 33. Bitwise did not have a CFO for the fourteen months between when CFO ONE left and
19 CFO TWO started. Olguin, Jr. and Soberal maintained that they were busy and had trouble finding a
20 good candidate. However, several board members and other key finance personnel who were
21 interviewed now believe that the absence of a CFO was by design.

22 34. CFO TWO said that she decided to join Bitwise after receiving a board presentation from
23 Soberal that showed the company was performing well financially. After starting at the company,
24 however, she realized that the financial information in the presentation did not match the actual financial
25 information in the company's accounting system. She explained that the company's actual financials
26 were much worse and that no one had reconciled the books for over a year. By reconciling the books,
27 she meant reviewing financial records on a monthly basis to determine the company's profit and loss
28 and cash balance, which was a common practice for other companies in her experience.

1 35. CFO TWO asked Soberal where he had gotten the financials that were in the board
2 presentation he sent her, and Soberal said that he had a “bridge,” or roadmap, with all the details. CFO
3 TWO explained that she continually asked Soberal for this bridge until the company collapsed but never
4 received it. She does not believe that the bridge existed. She also asked the company’s Chief Revenue
5 Officer, EMPLOYEE TWO, if he knew where Soberal obtained the financials. EMPLOYEE TWO told
6 her he had no idea where the numbers came from.

7 36. In an effort to try to better understand Bitwise’s financials, CFO TWO said that she set up
8 monthly meetings with Olguin, Jr. and Soberal that CFO TWO called the “monthly brain dump.” She
9 explained that the meetings were not helpful. For example, during the first meeting, Olguin, Jr. and
10 Soberal gave her a list of contracts they claimed was worth \$40,000,000 to \$45,000,000 in revenue.
11 CFO TWO reviewed the underlying contracts and confirmed that the actual revenue was much lower
12 because Bitwise had not performed any of the work required under the contracts. She further explained
13 that the company’s revenue team met with Olguin, Jr. every other week to discuss revenue and that the
14 numbers reported in those meetings were nowhere near what Olguin, Jr. and Soberal were telling the
15 board and investors. CFO TWO confirmed that at least Soberal was aware of, and likely understood,
16 how GAAP worked and when these principles were supposed to be used.

17 37. CFO TWO said that she attended Bitwise’s board meetings. But she explained that the
18 company collapsed before she could figure out what was going on with the financials. EMPLOYEE
19 ONE told the government that Soberal had instructed Olguin, Jr. and her to keep the company’s cash
20 problems away from CFO TWO.

21 **iii. Key Finance Personnel Confirmed Bitwise’s Financial Struggles**

22 38. Bitwise’s financial struggles were further confirmed by the company’s former Controller
23 and other top finance employees who were interviewed by the government. This included EMPLOYEE
24 TWO, EMPLOYEE THREE, EMPLOYEE FOUR, and EMPLOYEE FIVE.

25 39. As discussed above, EMPLOYEE THREE was Bitwise’s longtime Controller. She held
26 that position from October 2017 through April 2022, and then she moved onto other non-finance related
27 positions within the company. She had previously been a controller for an air pollution control district.
28 EMPLOYEE FOUR was a Senior Accountant at Bitwise from January 2020 through December 2021, an

1 Assistant Controller reporting to EMPLOYEE THREE from January 2022 through July 2022, and then
2 Vice President of Finance and Accounting from August 2022 until May 2023. She had previously been
3 an accountant and controller at various businesses.

4 40. Both EMPLOYEE THREE and EMPLOYEE FOUR said that Bitwise had few actual
5 customer sales, the company's revenues were always low, and the company was not close to being
6 profitable. They also said that they always prepared GAAP-compliant financials and talked to Olguin,
7 Jr. and Soberal about the importance of doing so. Nonetheless, EMPLOYEE THREE explained that
8 Soberal routinely asked her to prepare managerial financials that included sales that had not materialized
9 and therefore did not qualify as revenue under GAAP. EMPLOYEE THREE believes that these
10 managerial financials are what Olguin, Jr. and Soberal ultimately presented to the board and investors.

11 41. EMPLOYEE THREE and EMPLOYEE FOUR also said that they talked with Olguin, Jr.
12 and Soberal about the low amount of cash that Bitwise had on hand and how the company was going to
13 pay its bills. They confirmed that the company had to resort to issuing paper checks on several
14 occasions to buy time for the company to get more money. They estimated that the company's payroll
15 had reached \$5,000,000 to \$6,000,000 monthly, or \$60,000,000 to \$72,000,000 annually, when the
16 company collapsed. Their estimates did not include insurance costs, retirement plan contributions,
17 taxes, rent, utilities, or other overhead and administrative expenses.

18 42. EMPLOYEE THREE and EMPLOYEE FOUR said that they did not attend any of the
19 Bitwise board meetings and had no contact with the board members. They also confirmed that Bitwise
20 did not have the approximately \$77,000,000 in cash at the end of 2022, \$58,000,000 in revenue for
21 2021, or \$143,000,000 in revenue for 2022 as Olguin, Jr. and Soberal reported to the board.

22 43. EMPLOYEE THREE further commented that she did not understand Bitwise's hiring
23 practices. She explained that Olguin, Jr. and Soberal seemed to hire a lot of friends, family members,
24 and acquaintances who were not qualified for their jobs, paid everyone high salaries, and gave people
25 large raises despite the company's financial struggles.

26 44. EMPLOYEE TWO was Bitwise's Chief Revenue Officer from approximately March
27 2021 through December 2022, and he is now the chief transformation officer at a major university. He
28 was previously an executive at different education companies.

1 45. EMPLOYEE TWO said that he did not know Bitwise's revenue for 2021, but he believed
2 the company's revenue for 2022 was approximately \$20,000,000. He explained that Olguin, Jr. and
3 Soberal always told him offhand about what they termed "magic deals," such as a \$50,000,000 contract
4 with the State of California or \$20,000,000 contract with the State of Colorado for which he never saw
5 any supporting paperwork. He further explained that neither Olguin, Jr. nor Soberal brought these deals
6 up at the bi-weekly revenue team meetings where revenue was discussed, which he thought was odd.
7 EMPLOYEE TWO confirmed he only attended one board meeting just to introduce himself.

8 46. EMPLOYEE FIVE was a Senior Accountant at Bitwise from April 2022 through May
9 2023. He previously owned his own mechanic shop and was an auditor for an accounting firm.

10 47. When he first started at Bitwise in April 2022, EMPLOYEE FIVE said that he asked
11 EMPLOYEE THREE for the company's "burn rate" sheet to see how fast it was spending money. He
12 explained that, in his experience, this was a common tool for a company to use for budgeting and other
13 purposes. EMPLOYEE THREE told him that Bitwise did not track its expenditures, which was the first
14 of many red flags for him. EMPLOYEE FIVE further explained that, based on his calculations,
15 Bitwise's total revenue for 2022 was only \$2,000,000 to \$3,000,000 and was maybe \$400,000 for the
16 first quarter of 2023. He did not believe that this was nearly enough to support the number of employees
17 and apprentices the company had working for it. He then emphasized that the company had fifty-three
18 executive assistants and another fifty people on its marketing team alone who were not doing much of
19 anything as far as he could tell.

20 48. With the exception of CFO TWO, EMPLOYEE FIVE said that many others in
21 management and finance at Bitwise were either incompetent or acting with malice but that he did not
22 know which one it was. He also said that nepotism was rampant at the company. For example, he
23 explained that in the months and weeks leading up to the collapse, Soberal got a new Tesla. Records
24 produced by Bitwise employees, and bank records received by the government, confirmed that the Tesla
25 was purchased with company funds.

26 49. EMPLOYEE FIVE further explained that Soberal once asked him to recognize the rent
27 Bitwise paid in a building it had previously sold as revenue and that EMPLOYEE FOUR tried to get
28 him to change financials so the numbers looked better for a board meeting. He knew that these requests

1 were inappropriate and refused to comply. EMPLOYEE FIVE was joined in his criticism of
2 EMPLOYEE FOUR by CFO TWO, who said that EMPLOYEE FOUR did not know how to read
3 financials and was probably not smart enough to know when something was unethical. Finally,
4 EMPLOYEE FIVE explained that when the paper checks Bitwise issued to its employees towards the
5 end began bouncing, Olguin, Jr. sent an email to everyone saying that it was because Bitwise had so
6 much money the banks could not keep up. He did not understand how that was possible.

7 50. None of the Bitwise board members or employees who were interviewed could explain
8 where the high cash balances and revenues that Olguin, Jr. and Soberal reported to the board came from.
9 The board members also confirmed that they did not hear about the issuance of paper checks until the
10 company collapsed.

11 **iv. Bitwise's Continued Hiring Despite Financial Struggles**

12 51. The government's investigation found that Olguin, Jr. and Soberal directed Bitwise to
13 continue hiring and promoting unqualified people who were paid exorbitant salaries despite the
14 company's financial struggles. EMPLOYEE SIX, who was interviewed by the government, is one
15 example. EMPLOYEE SIX said that she had just graduated college with a degree in business and was
16 working part-time at a coffee shop when she was hired by Bitwise to be an Executive Assistant.
17 Thereafter, EMPLOYEE SIX explained that she was quickly promoted to Vice President of Hiring
18 where she made over \$125,000 per year. This was despite her not having any professional work
19 experience let alone experience hiring people. EMPLOYEE SIX further explained that there were no
20 rules at Bitwise for how many people she hired and that she even received approval to hire multiple
21 people the week before the company collapsed.

22 52. EMPLOYEE SEVEN, who was interviewed by the government, is another example.
23 EMPLOYEE SEVEN said that she graduated college with a fine arts degree and worked as an assistant
24 at several businesses and non-profits before being hired by Bitwise in 2016 to be an evangelist.
25 According to several other employees who interviewed, however, she was really a tattoo artist before
26 starting at the company.

27 53. EMPLOYEE SEVEN explained that, as an evangelist for Bitwise, she was supposed to
28 spread the good news about the company and organize community events. She then quickly became the

1 company's Vice President of Operations, Chief Operating Officer ("COO"), and, finally, Chief Growth
2 Officer where she made \$300,000 per year.²

3 54. EMPLOYEE EIGHT, who is related to Olguin, Jr., is yet another example. The same
4 early investor who said that Bitwise was all just a bunch of hype explained that EMPLOYEE EIGHT
5 was the head of the company's real estate team despite having never worked in the industry before. He
6 emphasized that her prior job was being a maintenance worker for a community college district.

7 **F. Olguin, Jr. and Soberal Became Desperate After a Key Proposed Investment Fell Through,**
8 **and They Began Fabricating and Altering Bitwise's Financial Records to Get More Money**

9 55. When Bitwise was running out of cash in 2022, records produced by Bitwise's board
10 showed that Olguin, Jr. and Soberal tried to start a Series C investment round. Based on my training and
11 experience, a Series C investment round refers to the last round of money that a company receives
12 before an initial public offering or another liquidity event happens. The most serious potential Series C
13 investor that Olguin, Jr. and Soberal identified was POTENTIAL INVESTOR ONE, which is a London-
14 based private equity firm.

15 56. POTENTIAL INVESTOR ONE's REPRESENTATIVES who interacted with Olguin, Jr.
16 and Soberal were interviewed by the government. They said that they met with Olguin Jr. and Soberal
17 several times and that, on May 5, 2022, POTENTIAL INVESTOR ONE executed a non-binding term
18 sheet with Bitwise for a \$150,000,000 potential investment. They explained, however, that the proposed
19 investment fell through a few weeks later because Olguin, Jr. and Soberal refused to provide
20 POTENTIAL INVESTOR ONE with bank statements that showed Bitwise's cash balance. This was a
21 standard due diligence request that POTENTIAL INVESTOR ONE made before investing in a
22 company. POTENTIAL INVESTOR ONE's REPRESENTATIVES further explained that, when they
23 asked Olguin, Jr. and Soberal for an explanation, Olguin, Jr. and Soberal said that Bitwise had multiple
24 bank accounts and that it was difficult to understand the company's finances. The proposed investment
25 was subsequently terminated on May 25, 2022. POTENTIAL INVESTOR ONE produced the term
26 sheet and termination agreement to the government. Both were signed by Olguin, Jr. and Soberal.

27
28 ² At least one Bitwise employee who was interviewed told the government that, shortly after the
collapse, he/she overheard EMPLOYEE SEVEN say that she would lie to the government for Olguin, Jr.

1 57. Although POTENTIAL INVESTOR ONE terminated its proposed investment in Bitwise
2 because Olguin Jr. and Soberal would not provide the company's cash balance, Olguin, Jr. and Soberal
3 did not tell INVESTOR ONE this was one of the reasons why the investment did not go through.
4 According to INVESTOR ONE, they instead told him that Bitwise had terminated the investment
5 because POTENTIAL INVESTOR ONE did not align with the company's stated goals and culture of
6 inclusiveness, and POTENTIAL INVESTOR ONE's due diligence requests were unfair. Olguin, Jr. and
7 Soberal later admitted in their government interviews that they agreed to mislead INVESTOR ONE
8 about the reasons for the termination and concealed Bitwise's true financial condition from him.

9 58. After POTENTIAL INVESTOR ONE's proposed investment was terminated,
10 INVESTOR ONE said that Olguin, Jr. and Soberal told him Bitwise did not need the \$150,000,000 and
11 could get by with a lesser amount of money. Therefore, INVESTOR ONE agreed to lead Bitwise in a
12 Series B-2 investment round and invest another \$5,000,000 in the company himself. But he asked
13 INVESTOR TWO's REPRESENTATIVE and INVESTOR TWO to prepare a due diligence
14 memorandum that could be shared with other potential investors beforehand. The investors in the Series
15 B-2 would again include INVESTOR ONE and his related entities, INVESTOR TWO, and INVESTOR
16 THREE and his related entities, as well as several institutional investors.

17 59. INVESTOR TWO's REPRESENTATIVE was interviewed by the government and
18 confirmed that INVESTOR TWO completed the due diligence memorandum for the Series B-2. He said
19 that the memorandum came about because potential investors were having a hard time understanding
20 how Bitwise made money and the company needed something to easily explain it to them. He believed
21 that the memorandum had been shared with every investor in the Series B-2.

22 60. INVESTOR TWO produced the due diligence memorandum to the government. It was
23 dated July 6, 2022. The memorandum represented that Bitwise had approximately \$58,000,000 in
24 revenue for 2021 and \$45,000,000 in revenue for the first quarter of 2022. It also represented the
25 company had over \$40,000,000 in cash at the end of 2021 and \$29,000,000 in cash at the end of the first
26 quarter of 2022.

27 61. Records produced by INVESTOR TWO showed that it had requested and received
28 various financial information from Bitwise to prepare the due diligence memorandum. This included

1 the purported revenues and an email, dated June 30, 2022, where Olguin, Jr. sent INVESTOR TWO's
2 REPRESENTATIVE what purported to be Bitwise's bank statements. Soberal and INVESTOR ONE
3 were copied on the email. As previously discussed, Bitwise's former CFOs and other key finance
4 personnel confirmed that the revenues were not nearly as high as Olguin, Jr. and Soberal represented.

5 62. Moreover, the bank statements that Olguin, Jr. and Soberal sent INVESTOR TWO's
6 REPRESENTATIVE showed that Bitwise had cash balances of over \$40,000,000 and \$20,000,000 on
7 December 31, 2021, and March 31, 2022, respectively. The FBI and IRS:CI compared these bank
8 statements to the actual statements that Bitwise's banks produced to the government. The FBI and
9 IRS:CI confirmed that the statements had been altered and that the company's cash balances had been
10 significantly inflated. Specifically, Bitwise's true balances were approximately \$11,700,000 and
11 \$325,000 on December 31, 2021, and March 31, 2022, respectively, and were not over \$40,000,000 and
12 \$20,000,000. Below for comparison purposes are the altered bank statements that Olguin, Jr. and
13 Soberal sent INVESTOR TWO's REPRESENTATIVE and the actual bank statements that Bitwise's
14 bank produced to the government. True and correct copies of the relevant portions of the actual bank
15 statements with appropriate redactions to anonymize identities are attached to this affidavit as Exhibit 1:

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-- ALTERED BANK STATEMENTS PRESENTED BY OLGUIN, JR. AND SOBERAL --

ACCOUNT STATEMENT  **FIRST REPUBLIC BANK**
It's a privilege to serve you[®]

BUSINESS ANALYZED CHECKING

Statement Period:
December 01, 2021
December 31, 2021


Account Number:
XXX-XXX-██████

At Your Service:
24-Hour Automated Banking System
(800) 392-1407

000000-
00259-002
BW INDUSTRIES INC.
700 VAN NESS AVE
FRESNO, CA 93721-2912

Page 1 of 13

ACCOUNT SUMMARY		XXX-XXX-██████	
Beginning Balance	\$36,500,530.53	Average Daily Balance	\$38,722,660.74
Total Deposits and Credits	\$18,500,810.29	Minimum Balance	\$32,818,789.77
Total Withdrawals and Debits	\$12,410,640.66	Service Charges	\$0.00
Total Checks Paid	\$0.00	Interest Paid This Period	\$0.00
Ending Balance	\$42,590,700.16	Interest Year to Date	\$0.00

ACCOUNT STATEMENT  **FIRST REPUBLIC BANK**
It's a privilege to serve you[®]

BUSINESS ANALYZED CHECKING

Statement Period:
March 01, 2022
March 31, 2022

Account Number:
XXX-XXX-██████



At Your Service:
24-Hour Automated Banking System
(800) 392-1407

000000-
00259-002
BW INDUSTRIES INC.
700 VAN NESS AVE
FRESNO, CA 93721-2912

Page 1 of 19

ACCOUNT SUMMARY		XXX-XXX-██████	
Beginning Balance	\$21,514,112.14	Average Daily Balance	\$20,059,447.72
Total Deposits and Credits	\$14,292,041.94	Minimum Balance	\$13,429,006.64
Total Withdrawals and Debits	\$12,366,763.02	Service Charges	\$0.00
Total Checks Paid	\$0.00	Interest Paid This Period	\$0.00
Ending Balance	\$23,439,391.06	Interest Year to Date	\$0.00

-- RELEVANT PORTIONS OF ACTUAL BANK STATEMENTS --

ACCOUNT STATEMENT		 FIRST REPUBLIC BANK It's a privilege to serve you [®]	
BUSINESS ANALYZED CHECKING		Statement Period: December 01, 2021 December 31, 2021	
000000- 00259-002 BW INDUSTRIES INC. 700 VAN NESS AVE FRESNO, CA 93721-2912		Account Number: XXX-XXX8-8575	
		At Your Service: 24-Hour Automated Banking System (800) 392-1407	
		Page 1 of 3	
ACCOUNT SUMMARY		XXX-XXX8-8575	
Beginning Balance	\$1,500,530.53	Average Daily Balance	\$8,722,660.74
Total Deposits and Credits	\$18,500,000.00	Minimum Balance	\$218,789.77
Total Withdrawals and Debits	\$8,301,740.76	Service Charges	\$0.00
Total Checks Paid	\$0.00	Interest Paid This Period	\$0.00
Ending Balance	\$11,698,789.77	Interest Year to Date	\$0.00
Account Statement		 FIRST REPUBLIC BANK It's a privilege to serve you [®]	
BUSINESS ANALYZED CHECKING		Page 1 of 5	
BW INDUSTRIES INC. 700 VAN NESS AVE FRESNO CA 93721-2912		Statement Period: March 01, 2022- March 31, 2022 Account Number: XXXXXX88575	
Account Summary		XXXXXX88575	
Beginning Balance	\$150,309.25	Average Daily Balance	\$365,829.84
Total Deposits and Credits	\$6,614,230.51	Minimum Balance	\$100.00
Total Withdrawals and Debits	\$6,439,439.76	Service Charges	\$0.00
Total Checks Paid	\$0.00	Interest Paid This Period	\$0.00
Ending Balance	\$325,100.00	Interest Year to Date	\$0.00

1 63. Olguin, Jr. and Soberal later admitted in their government interviews that they agreed to
2 alter the bank statements and inflate Bitwise's cash balances. They explained that they made the
3 alterations because they believed the due diligence memorandum would be unfavorable and no one
4 would invest in the Series B-2 if people knew the company's actual condition.

5 **G. Bitwise Received Over \$38,000,000 in Investments Based Upon Olguin, Jr. and**
6 **Soberal's Misrepresentations**

7 **i. INVESTOR ONE and INVESTOR TWO's Investments**

8 64. INVESTOR ONE and INVESTOR TWO's REPRESENTATIVE confirmed that they
9 relied upon the misrepresentations Olguin, Jr. and Soberal made in the due diligence memorandum
10 regarding Bitwise's revenues and cash balances when they invested \$5,000,000 and \$250,000,
11 respectively, in the company's Series B-2 in July 2022. The investor representatives who were
12 interviewed all confirmed that they dealt exclusively with Olguin, Jr. and Soberal.

13 65. Records produced by other investors in the Series B-2 showed that the due diligence
14 memorandum, or at least the fabricated revenues and fake cash balances contained therein, were in fact
15 shared with them. These investors confirmed that they too relied upon these misrepresentations when
16 they invested in Bitwise.

17 66. EMPLOYEE ONE recalled that, in June 2022, she was copied on an email Soberal sent
18 to a lender that attached a bank statement showing Bitwise had a balance of \$13,000,000. She suspected
19 that this was wrong because there was concern the company would not make payroll at that time.
20 EMPLOYEE ONE explained that she immediately called Olguin, Jr. and told her what Soberal had
21 done. Olguin, Jr. replied saying that Soberal should not have sent the bank statement. Olguin, Jr. also
22 told her that Soberal recently had a similar conversation with INVESTOR ONE where SOBERAL
23 misrepresented to INVESTOR ONE that Bitwise had \$50,000,000 in the bank. Olguin, Jr. then assured
24 EMPLOYEE ONE that Soberal's misrepresentations would be walked back.

25 **ii. INVESTOR THREE's Investment**

26 67. INVESTOR THREE said that Bitwise appeared to be in great financial shape when he
27 made his \$5,000,000 investment in the Series B-2 in July 2022. He explained that the financial
28 information Soberal gave to the board showed the company was well-capitalized. This included a

1 February 2022 presentation that was also made available to all of the Series B-2 investors and that
2 Bitwise's board produced to the government. The presentation showed that Bitwise's cash balance at
3 the end of 2021 was \$44,329,000. Again, as previously discussed, that number was false. The
4 company's cash balance was approximately \$11,700,000 at that time. INVESTOR THREE confirmed
5 that he would not have made his investment had he known Bitwise had less than a quarter of the cash on
6 hand that Olguin, Jr. and Soberal claimed it had.

7 **iii. INVESTOR FOUR's Investment**

8 68. INVESTOR FOUR's REPRESENTATIVE, who is the vice president at INVESTOR
9 FOUR that handled its \$18,500,000 investment in Bitwise's Series B-2, was interviewed by the
10 government. INVESTOR FOUR's REPRESENTATIVE said that he started working on the Series B-2
11 due diligence with Soberal in early 2022 and that INVESTOR FOUR made its investment in September
12 2022. He explained that Soberal sent him profit and loss statements and balance sheets that showed
13 Bitwise's revenue and cash balance at the end of 2021 were approximately \$58,000,000 and
14 \$44,000,000, respectively. As previously discussed, these numbers were false. INVESTOR FOUR's
15 REPRESENTATIVE confirmed that this information was important to INVESTOR FOUR's decision to
16 invest because, if the numbers were lower, that may have meant Bitwise was not growing as expected
17 and INVESTOR FOUR may not have invested.

18 69. INVESTOR FOUR's REPRESENTATIVE also said that, after April 2022, he repeatedly
19 asked Soberal if Bitwise had completed a third-party audit of its 2020 financials and Soberal told him
20 that the audit was still in process. That was not true. As previously discussed, AUDIT FIRM ONE had
21 completed the audit report in April 2022. INVESTOR FOUR's REPRESENTATIVE explained that
22 INVESTOR FOUR would have wanted to review any audited financials that existed prior to making its
23 investment. He further explained that it was not until early 2023, when INVESTOR FOUR was
24 considering another investment in Bitwise, that Soberal finally sent him the audit report. The FBI and
25 IRS:CI compared that audit report to the actual report that AUDIT FIRM ONE produced to the
26 government. The FBI and IRS:CI confirmed that the audit report had been altered. Specifically, the
27 completion date was changed from April 2022 to December 2022.

1 70. Olguin, Jr. and Soberal later admitted in their government interviews that they agreed to
2 alter the audit report's completion date. They explained that they made the alteration so INVESTOR
3 FOUR would not figure out they withheld the audit report during the Series B-2 due diligence.

4 **iv. INVESTOR FIVE's Investment**

5 71. INVESTOR FIVE's REPRESENTATIVES, who are attorneys for INVESTOR FIVE that
6 the investor identified as the persons most knowledgeable about its \$10,000,000 investment in Bitwise's
7 Series B-2, were interviewed by the government. INVESTOR FIVE's REPRESENTATIVES' account
8 for INVESTOR FIVE was similar to INVESTOR FOUR's REPRESENTATIVE's account for
9 INVESTOR FOUR. They said that INVESTOR FIVE started working on the Series B-2 due diligence
10 with Soberal in mid-2022 and made its investment in two, equal installments of \$5,000,000 in
11 September and December 2022. They explained that Soberal sent INVESTOR FIVE profit and loss
12 statements that showed Bitwise's revenue at the end of 2021 was approximately \$58,000,000. Again, as
13 previously discussed, that number was false. Soberal also sent INVESTOR FIVE spreadsheets that
14 showed Bitwise's cash balance as of July 2022 was approximately \$21,800,000. Bank records,
15 however, showed that the company's cash balance was less than \$5,000,000 at that time. INVESTOR
16 FIVE's REPRESENTATIVES confirmed that this information was important to INVESTOR FIVE's
17 decision to invest and that INVESTOR FIVE may not have made the investment had it known that the
18 numbers were much lower.

19 72. INVESTOR FIVE's REPRESENTATIVES also said that, in August 2022, they asked
20 Soberal if Bitwise had completed a third-party audit of its 2020 financials and Soberal told him that the
21 audit was still in process just like he had done with INVESTOR FOUR's REPRESENTATIVE and
22 INVESTOR FOUR. Again, as previously discussed, that was not true. The audit report had been
23 completed months earlier. INVESTOR FIVE's REPRESENTATIVES explained that INVESTOR
24 FIVE would have wanted to review any audited financials that existed prior to making its investment.
25 They further explained that it was not until December 2022, which was after INVESTOR FIVE had
26 already invested its first \$5,000,000, that Soberal finally sent INVESTOR FIVE the audit report. The
27 FBI and IRS:CI compared that audit report to the actual report that AUDIT FIRM ONE produced to the
28 government. The FBI and IRS:CI confirmed that the audit report had been altered. The alterations

1 included the completion date being changed from April 2022 to December 2022, Bitwise’s revenue for
2 2020 being increased from approximately \$9,000,000 to \$30,000,000, and the company’s net loss for the
3 year being decreased from approximately \$26,000,000 to \$9,000,000. Below for comparison purposes
4 is a relevant page of the altered audit report that Olguin, Jr. and Soberal sent INVESTOR TWO’s
5 REPRESENTATIVE and the same page from the actual audit report that AUDIT FIRM ONE produced
6 to the government. A true and correct copy of the page from the actual audit report with appropriate
7 redactions to anonymize the identity of AUDIT FIRM ONE is attached to this affidavit as Exhibit 2.

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-- ALTERED AUDIT REPORT --

BW Industries, Inc. and Subsidiaries	
CONSOLIDATED STATEMENT OF OPERATIONS	
Year ended December 31, 2020	
Revenue	\$ 30,130,443
Costs and expenses	
Cost of sales	18,701,796
Selling, general and administrative expenses	17,202,390
Depreciation and amortization	<u>203,345</u>
Total expenses	<u>36,107,531</u>
Loss from operations	(5,977,088)
Other income (expenses)	
Loss on disposal of assets	(240,013)
Interest income (expense), net	(865,502)
Other expenses	<u>(2,056,958)</u>
Total other expenses	<u>(3,162,473)</u>
Loss before provision for income taxes	(9,139,561)
Provision for income taxes	<u>280,798</u>
Net loss including noncontrolling interests	(9,420,359)
Less: net loss attributable to noncontrolling interests	<u>(534,700)</u>
NET LOSS ATTRIBUTABLE TO BW INDUSTRIES, INC.	<u><u>\$ (8,885,659)</u></u>

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-- ACTUAL AUDIT REPORT --

BW Industries, Inc. and Subsidiaries	
CONSOLIDATED STATEMENT OF OPERATIONS	
Year ended December 31, 2020	
Revenue	\$ 9,088,992
Costs and expenses	
Cost of sales	16,158,515
Selling, general and administrative expenses	17,202,390
Depreciation and amortization	<u>203,345</u>
Total expenses	<u>33,564,250</u>
Loss from operations	(24,475,258)
Other income (expenses)	
Loss on disposal of assets	(240,013)
Interest income (expense), net	(865,502)
Other expenses	<u>(1,056,958)</u>
Total other expenses	<u>(2,162,473)</u>
Loss before provision for income taxes	(26,637,731)
Provision for income taxes	<u>84,704</u>
Net loss including noncontrolling interests	(26,722,435)
Less: net loss attributable to noncontrolling interests	<u>(534,700)</u>
NET LOSS ATTRIBUTABLE TO BW INDUSTRIES, INC.	<u><u>\$ (26,187,735)</u></u>

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1 73. Olguin, Jr. and Soberal later admitted in their government interviews that they agreed to
2 make the alterations and send the altered audit report to INVESTOR FIVE. They explained that they
3 altered the completion date so that INVESTOR FIVE would not figure out they withheld the audit report
4 during the Series B-2 due diligence. They further explained that they altered the revenue and net loss
5 numbers because they did not believe INVESTOR FIVE would have invested in Bitwise if it knew the
6 truth about the company's financial condition.

7 74. All total, Olguin, Jr. and Soberal received more than \$38,000,000 from Series B-2
8 investors by misrepresenting Bitwise's finances to them.

9 v. **Olguin, Jr. and Soberal Knew that They Were Reporting False Revenue Amounts to**
10 **the Investors**

11 75. While they admitted to inflating Bitwise's cash balances and altering audit reports,
12 Olguin, Jr. and Soberal claimed to investigating agents that the false revenues they reported were due to
13 their confusion regarding GAAP versus managerial financials. Their contention, however, is
14 contradicted by other evidence. First, Bitwise's former CFOs and other key finance personnel
15 confirmed that Olguin, Jr. and Soberal understood the difference between GAAP and managerial
16 financials, and that Olguin, Jr. and Soberal chose managerial financials when it suited them, even after
17 being repeatedly told that they should use the GAAP numbers. Second, the contract documents for the
18 Series B-2 that were prepared by Bitwise's attorneys, and given at Olguin, Jr. and Soberal's direction to
19 investors, expressly stated that the financials the company presented were GAAP-compliant. Third,
20 Olguin, Jr. and Soberal altered the AUDIT FIRM ONE audit report to increase Bitwise's revenues back
21 to what they said the revenues were before CFO ONE was hired and corrected them.

22 **H. Olguin, Jr. and Soberal also Misled a Joint Venture Partner About Bitwise's Investment**
23 **Prospects and Sent the Partner Altered Financial Records to Obtain Another \$35,000,000**

24 76. While Olguin, Jr. and Soberal were soliciting money from the Series B-2 investors,
25 Soberal misrepresented to JOINT VENTURE PARTNER ONE, a California-based investment firm, that
26 POTENTIAL INVESTOR ONE's proposed Series C investment in Bitwise was still going to happen.
27 This was done to convince JOINT VENTURE PARTNER ONE to close a joint venture agreement that
28 the companies had been negotiating for several months where Bitwise received over \$35,000,000.

1 77. JOINT VENTURE PARTNER ONE's REPRESENTATIVE was the principal at JOINT
2 VENTURE PARTNER ONE who interacted with Olguin, Jr. and Soberal, and he was interviewed by
3 the government. JOINT VENTURE PARTNER ONE's REPRESENTATIVE said that, under the joint
4 venture agreement, JOINT VENTURE PARTNER ONE purchased the majority stake in multiple
5 buildings that Bitwise owned in Fresno and Bakersfield and reimbursed Bitwise for capital
6 improvements it made to the buildings. Bitwise was then supposed to lease back the buildings from
7 JOINT VENTURE PARTNER ONE and sublease spaces therein to other tenants for a share of the rental
8 revenue. Bitwise was also required to maintain certain cash balances in dedicated accounts, called
9 Deposit Account Control Agreement ("DACA") accounts, to ensure there were sufficient funds to cover
10 eighteen months' worth of rent for each of the buildings. Finally, Bitwise was required to provide
11 various financial information to JOINT VENTURE PARTNER ONE upon request. JOINT VENTURE
12 PARTNER ONE's REPRESENTATIVE explained that POTENTIAL INVESTOR ONE's investment
13 and Bitwise's maintenance of the DACA accounts were important to JOINT VENTURE PARTNER
14 ONE, and that JOINT VENTURE PARTNER ONE would not have gone through with the joint venture
15 without these terms.

16 78. JOINT VENTURE PARTNER ONE produced financial records showing that it
17 purchased the first Bitwise building in June 2022, purchased the last Bitwise building in July 2022, and
18 reimbursed Bitwise for capital improvements in August 2022. Altogether, JOINT VENTURE
19 PARTNER ONE paid Bitwise over \$35,000,000 for a ninety-five percent ownership stake in the
20 buildings. JOINT VENTURE PARTNER ONE also produced an email, dated June 9, 2022, where
21 Soberal represented to JOINT VENTURE PARTNER ONE's REPRESENTATIVE that POTENTIAL
22 INVESTOR ONE's proposed investment was on track to close. This was two weeks after Bitwise and
23 POTENTIAL INVESTOR ONE had cancelled the investment.

24 79. According to JOINT VENTURE PARTNER ONE's REPRESENTATIVE, it was not
25 until October 2022 that Soberal told him POTENTIAL INVESTOR ONE's proposed investment had
26 been terminated and that Bitwise had instead decided to accept approximately \$60,000,000 in
27 investments from the Series B-2 investors. In an email produced by JOINT VENTURE PARTNER
28 ONE, dated early October 2022, Soberal told JOINT VENTURE PARTNER ONE's

1 REPRESENTATIVE the purported reasons why Bitwise made this decision. Just like he did with
2 INVESTOR ONE, Soberal misled JOINT VENTURE PARTNER ONE's REPRESENTATIVE by
3 telling him that the Series B-2 investors were more aligned with Bitwise's goals and culture of
4 inclusiveness. Soberal also told JOINT VENTURE PARTNER ONE's REPRESENTATIVE that this
5 decision was not a sign of diminished financial health of Bitwise and that Bitwise was in a healthier
6 financial position than ever before.

7 80. JOINT VENTURE PARTNER ONE's REPRESENTATIVE said that he was shocked
8 Soberal misled him about POTENTIAL INVESTOR ONE's proposed investment. He explained that
9 JOINT VENTURE PARTNER ONE subsequently requested bank statements and other financial records
10 from Bitwise to which it was entitled under the joint venture agreement because it no longer trusted
11 Soberal and was concerned that Bitwise was in financial trouble.

12 81. When Soberal did not respond to the requests, JOINT VENTURE PARTNER ONE sent
13 Bitwise a notice of default. In an email that JOINT VENTURE PARTNER ONE produced, dated
14 December 20, 2022, Soberal responded to the notice by sending JOINT VENTURE PARTNER ONE's
15 REPRESENTATIVE redacted bank statements for Bitwise's corporate account and the DACA accounts.

16 82. JOINT VENTURE PARTNER ONE's REPRESENTATIVE said that JOINT VENTURE
17 PARTNER ONE questioned the redactions. So, in another email that JOINT VENTURE PARTNER
18 ONE produced, dated January 9, 2023, Soberal sent JOINT VENTURE PARTNER ONE's
19 REPRESENTATIVE unredacted versions of the same bank statements through an attorney. The bank
20 statements were for the period July through December 2022. The FBI and IRS:CI compared these bank
21 statements to the actual statements that Bitwise's banks produced to the government. Just like with the
22 Series B-2 investment, the FBI and IRS:CI confirmed that the statements had been altered and that the
23 account balances had been significantly inflated. Specifically, the balance for Bitwise's corporate
24 account was inflated to make it appear as though the account had several millions of dollars when, in
25 fact, the account did not reach more than \$1,000,000 during the relevant period. And the balances for
26 the DACA accounts were inflated to make it appear as though the accounts had hundreds of thousands
27 of dollars when, in fact, the accounts did not reach more than a few thousand dollars.

1 83. While JOINT VENTURE PARTNER ONE was trying to get financial records from
2 Soberal, JOINT VENTURE PARTNER ONE's REPRESENTATIVE said that he attended Bitwise
3 board meetings where Soberal represented that the company was performing well. JOINT VENTURE
4 PARTNER ONE's REPRESENTATIVE explained that he attended the meetings as an observer, which
5 he was allowed to do pursuant to the joint venture agreement. He further explained that, at the March
6 2023 board meeting, Soberal represented Bitwise had a cash balance of approximately \$77,000,000. He
7 could not understand why Soberal was refusing to provide the requested financial records to JOINT
8 VENTURE PARTNER ONE when Bitwise was purportedly doing so well. He figured that Soberal
9 would want to tout Bitwise's success.

10 84. JOINT VENTURE PARTNER ONE's REPRESENTATIVE said that JOINT VENTURE
11 PARTNER ONE started looking for a way to end its relationship with Bitwise as soon as it learned that
12 POTENTIAL INVESTOR ONE's proposed investment had been terminated. JOINT VENTURE
13 PARTNER ONE's REPRESENTATIVE explained that Soberal proposed buying the buildings back
14 from JOINT VENTURE PARTNER ONE and he pursued that potential deal until May 2023 when he
15 learned Bitwise had simultaneously listed the buildings for sale and used them to collateralize millions
16 of dollars in loans without authorization. JOINT VENTURE PARTNER ONE's REPRESENTATIVE
17 confirmed that JOINT VENTURE PARTNER ONE did not get any of its money back from Bitwise and
18 is in litigation with the lender that collateralized the buildings over who has rights to the buildings.

19 85. Olguin, Jr. claimed to investigating agents that she did not recall misleading JOINT
20 VENTURE PARTNER ONE about the status of POTENTIAL INVESTOR ONE's proposed
21 investments, but she stated that she could not rule it out. Soberal, however, admitted to misleading
22 JOINT VENTURE PARTNER ONE in this regard because Bitwise needed the money.

23 **I. Olguin, Jr. and Soberal also Obtained an Advance on a Multi-Million-Dollar Tax Credit**
24 **and Repaid it with Funds Fraudulently Obtained from Others**

25 86. In an effort to obtain more funds, from October 2022 through April 2023, Olguin, Jr. and
26 Soberal sold Bitwise's rights to approximately \$6,000,000 in Employee Retention Credits ("ERC") that
27 Bitwise received to COMPANY ONE, which is a New York-based company, for eighty-five cents on
28 the dollar. ERCs are refundable federal tax credits that certain employers received for keeping their

1 employees on the payrolls during the COVID-19 pandemic. ERCs are worth thousands of dollars for
2 each employee retained. As discussed below in paragraphs 91 through 96 below, Olguin, Jr. and
3 Soberal then repaid COMPANY ONE with money they fraudulently obtained from others.

4 87. Records that COMPANY ONE's representative produced showed COMPANY ONE
5 entered into the ERC agreements with Bitwise in October and November 2022. Shortly thereafter, bank
6 records showed that COMPANY ONE wired over \$5,000,000 to Bitwise.

7 88. In a text message produced by EMPLOYEE FOUR, dated January 3, 2023, she told
8 Soberal that the ERC checks had been received from the IRS. She then asked Soberal if she should
9 deposit the checks into Bitwise's account to get Bitwise through the week and figure out a way to pay
10 back COMPANY ONE. Soberal replied, "Yes, do this." Bank records showed that the checks were
11 deposited into Bitwise's account that same day.

12 89. In emails produced by COMPANY ONE's representative, dated January 4, 2023, through
13 January 9, 2023, the representative asked Soberal about the status of the ERC checks and Soberal said
14 that he did not know what happened to them. Then, in an email dated March 16, 2023, the
15 representative told Soberal that he knew the checks had been deposited into Bitwise's bank account and
16 Soberal replied, "This would be news to me ..." A few weeks later, COMPANY ONE sued Bitwise for
17 breach of contract.

18 90. Records produced by COMPANY ONE's representative showed that Soberal
19 subsequently sent COMPANY ONE a signed letter, dated April 19, 2023, that was purportedly from a
20 representative at Bitwise's bank confirming Bitwise had over \$6,500,000 in its account with which to
21 pay back COMPANY ONE. Bank records, however, showed that Bitwise had far less in the account at
22 that time. Soberal later admitted in his government interview that he fabricated the bank letter, inflated
23 Bitwise's account balance, and forged the bank representative's signature to buy more time to pay back
24 COMPANY ONE.

25 91. Ultimately, Olguin, Jr. and Soberal obtained fraudulent loans from various companies to
26 payback COMPANY ONE, including the California-based private lender COMPANY TWO.
27 COMPANY TWO's REPRESENTATIVE was the principal at COMPANY TWO who interacted with
28 Olguin, Jr. and Soberal.

1 92. According to publicly available court records, COMPANY TWO's REPRESENTATIVE
2 said that Soberal called him on April 25, 2023, and asked him for a loan so that Bitwise could repay
3 COMPANY ONE. He explained that Soberal represented Bitwise had a current cash balance of over
4 \$65,000,000. Soberal told him, however, that Bitwise could not use that money because the company
5 had a minimum liquidity requirement with its investor, INVESTOR FOUR, where Bitwise agreed to
6 keep that amount of cash on hand. COMPANY TWO's REPRESENTATIVE asked Soberal to send
7 him a bank statement showing that Bitwise had the \$65,000,000 before agreeing to make the loan and
8 Soberal did so. COMPANY TWO's REPRESENTATIVE further explained that Soberal assured him
9 Bitwise was doing well financially. Among other things, Soberal told him that the company's revenues
10 in 2022 exceeded \$200,000,000. As previously discussed, that number was false.

11 93. In an email produced by COMPANY TWO, dated April 26, 2023, Soberal sent
12 COMPANY TWO's REPRESENTATIVE the requested bank statement showing Bitwise had
13 \$65,000,000 in an account. The FBI and IRS:CI compared that bank statement to the actual statement
14 that Bitwise's bank produced to the government. The FBI and IRS:CI confirmed that, just like with the
15 Series B-2 investment and JOINT VENTURE PARTNER ONE, the statement had been altered and
16 Bitwise's account balance had been significantly inflated. Specifically, the account had less than
17 \$2,000,000 at that time.

18 94. Records produced by COMPANY TWO showed that the loan was approved on April 26,
19 2023, and that COMPANY TWO wired \$1,000,000 to Bitwise that same day. The loan agreement was
20 signed by both Olguin, Jr. and Soberal. Bank records showed that two days later, on April 28, 2023,
21 Bitwise sent all of that money to COMPANY ONE.

22 95. COMPANY TWO's REPRESENTATIVE said that one month later, on May 29, 2023,
23 Soberal called to tell him that Bitwise had fallen on hard times and that the company was going to
24 furlough its employees. COMPANY TWO's REPRESENTATIVE explained that he was stunned and
25 asked Soberal what had happened to the \$65,000,000 that Bitwise supposedly had on hand. Soberal told
26 him that it had been used to repay other investors and was now mostly gone.

27 96. Olguin, Jr. and Soberal later admitted in their government interviews that they agreed to
28 send COMPANY TWO altered bank statements to get the \$1,000,000 loan and repay COMPANY ONE.

1 Bank records and other evidence showed that most of the remaining money Bitwise owed to
2 COMPANY ONE was repaid with another \$4,400,000 in loans that Olguin, Jr. and Soberal fraudulently
3 obtained from a California-based beverage company and California-based individual as set forth below.

4 **J. As the End Neared for Bitwise, Olguin, Jr. and Soberal Misled Other Businesses and**
5 **Individuals to Obtain Another \$30,000,000**

6 97. In the months and weeks leading up to Bitwise's collapse, Olguin, Jr. and Soberal
7 misrepresented the company's finances to several businesses and people to obtain millions more in loans
8 from them. This included longstanding business partners, as well as Bitwise's own board members and
9 employees and their friends and family.

10 98. For example, INVESTOR THREE said that, in April 2023, Soberal asked him to loan
11 \$10,000,000 to Bitwise because the company was having trouble with one of its lines of credit.
12 INVESTOR THREE explained that this did not surprise him because credit standards had tightened
13 during the COVID-19 pandemic. He further explained that the last financial information he received
14 from Olguin, Jr. and Soberal showed the company had approximately \$80,000,000 in cash at the end of
15 2022 and that the company appeared to be as far away from trouble as possible. INVESTOR THREE's
16 statement was corroborated by the March 2023 Bitwise board presentation prepared by Olguin, Jr. and
17 Soberal that Bitwise's board produced to the government. As previously discussed, they represented in
18 that presentation that the company had a cash balance of over \$77,000,000 on December 31, 2022. But
19 bank records showed that the company's actual balance was less than \$5,000,000 at that time.

20 99. INVESTOR THREE confirmed that he decided to make the loan because he was led to
21 believe Bitwise was doing well and he would not have done so had he known what was really going on
22 at the company.

23 100. As another example, the government interviewed LENDER ONE. LENDER ONE said
24 that he had successfully lent money to Soberal and Bitwise in the past and that, from January through
25 March 2023, Soberal provided him and his business partner with various board consents and other
26 documents that made it appear as though the company was the sole owner of several office buildings.
27 LENDER ONE produced these documents to the government. Importantly, the buildings were the same
28 ones that Bitwise previously sold to JOINT VENTURE PARTNER ONE.

1 101. Based on these documents, LENDER ONE and his business partner agreed to loan over
2 \$20,000,000 to Bitwise with the buildings serving as collateral. He explained that the loans were
3 syndicated, which meant that the loans were funded by himself, his business partner, and several other
4 people who relied upon him and his business partner to perform the due diligence.

5 102. LENDER ONE confirmed that he and his business partner would not have made the loans
6 without the buildings as the collateral. Moreover, Bitwise's board members all confirmed that their
7 signatures on the board consents Soberal sent to LENDER ONE had been forged and that they were
8 unaware of the consents.

9 103. As yet another example, EMPLOYEE NINE, who worked for Bitwise for over five years,
10 was interviewed by the government. EMPLOYEE NINE said that he had previously lent Bitwise
11 \$100,000 and was quickly paid back in 2022. Then, in March 2023, Soberal asked him if he wanted to
12 lend another \$100,000 on the same terms. EMPLOYEE NINE explained that Bitwise had just
13 announced the close of the Series B-2 and all signs from Olguin, Jr. and Soberal were the company had
14 more than enough resources to repay the loan. Therefore, he decided to go through with the loan. As
15 previously discussed, however, the company was collapsing, and Olguin, Jr. and Soberal were making
16 last-ditch efforts to keep it going.

17 104. The government's investigation identified several other businesses, and former Bitwise
18 employees and their friends and family, who altogether lent the company over \$4,500,000 near the time
19 the company collapsed because Olguin, Jr. and Soberal assured them of the company's stability. This
20 included a California-based beverage company that loaned \$3,000,000, a California-based individual
21 who loaned \$1,400,000, EMPLOYEE TWO who loaned \$100,000, and EMPLOYEE SEVEN and her
22 friend who loaned \$40,000 and \$100,000, respectively. The misrepresentations that Olguin, Jr. and
23 Soberal made to them included that the company was generating substantial revenues, had so much
24 money coming in that the banks could not handle it, and had approximately \$65,000,000 in cash on
25 hand. As discussed throughout this affidavit, these representations were false, and Olguin, Jr. and
26 Soberal admitted to misleading these people in their government interviews. The government has not
27 found any evidence that these loans have been repaid.

28

K. Interstate Wire Transfers

105. Bank records produced to the government showed that many of the above-mentioned investments and loans made to Bitwise based on Olguin, Jr. and Soberal's misrepresentations were sent by interstate wire transfers to Bitwise's bank account opened in Fresno, California. This included the following transactions:

Date	Description	Amount	Interstate Nexus	Received By
07/18/22	INVESTOR ONE B-2 investment	\$5,000,000.00	Wire transfer routed through a computer in Illinois	Bitwise account ending 738 in Fresno, CA
09/01/22	INVESTOR FOUR B-2 investment	\$18,499,999.50	Wire transfer routed through a computer in Delaware	Bitwise account ending 738 in Fresno, CA
09/09/22	INVESTOR FIVE B-2 investment	\$5,000,000.00	Wire transfer routed through a computer in New York	Bitwise account ending 738 in Fresno, CA
12/21/22	INVESTOR FIVE B-2 investment	\$5,000,000.00	Wire transfer routed through a computer in New York	Bitwise account ending 738 in Fresno, CA
01/17/23	LENDER ONE loan	\$3,500,000.00	Wire transfer routed through a computer in Connecticut	Bitwise account ending 738 in Fresno, CA
01/31/23	LENDER ONE loan	\$6,720,000.00	Wire transfer routed through a computer in Connecticut	Bitwise account ending 738 in Fresno, CA
03/16/23	LENDER ONE loan	\$3,132,172.00	Wire transfer routed through a computer in Connecticut	Bitwise account ending 738 in Fresno, CA
03/16/23	LENDER ONE loan	\$710,000.00	Wire transfer routed through a computer in New York	Bitwise account ending 738 in Fresno, CA
04/05/23	INVESTOR THREE loan	\$10,000,000.00	Wire transfer routed through a computer in Illinois	Bitwise account ending 738 in Fresno, CA

1 **L. Use of the Money**

2 106. Much of the money Olguin, Jr. and Soberal obtained by fraud went towards paying
3 Bitwise's payroll and fringe benefits, including their \$600,000 per year salaries, outfitting the
4 company's office spaces, and repaying debts owed to prior lenders.

5 **IV. SEALING REQUEST**

6 107. I request that the Court order all papers in support of the requested criminal complaint
7 and arrest warrants be sealed until further order of the Court. These documents discuss an ongoing
8 government investigation that is not yet public. Moreover, the extent of the investigation is not fully
9 known to the targets. Therefore, there is good cause to seal these documents because their premature
10 disclosure may jeopardize the investigation, including by giving the targets an opportunity to destroy or
11 tamper with evidence, change patterns of behavior, notify confederates, or flee.

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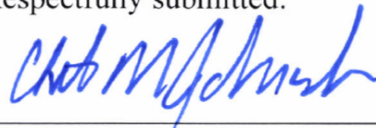
28

V. CONCLUSION

108. I submit the evidence discussed in this affidavit establishes probable cause to believe that, from at least January 2022 through May 2023, Olguin, Jr. and Soberal conspired to commit wire fraud in violation of 18 U.S.C. § 1349. Therefore, I request that a criminal complaint and arrest warrants be issued for them.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge:

Respectfully submitted:




Chet Johnston
FBI Special Agent

Approved as to form:

/s/ Joseph Barton

Joseph D. Barton
Henry Z. Carbajal III
Assistant United States Attorneys

Affidavit submitted by email and pdf and attested to me as true and accurate by telephone consistent with Fed. R. Crim. P. 4(d) and 4.1 before me this 8th day of November 2023:



Honorable Sheila K. Oberto
United States Magistrate Judge

EXHIBIT 1



BUSINESS ANALYZED CHECKING

Statement Period:
December 01, 2021
December 31, 2021

Account Number:
XXX-XXX8-8575

At Your Service:
24-Hour Automated Banking System
(800) 392-1407

000000-
00259-002

BW INDUSTRIES INC.
700 VAN NESS AVE
FRESNO, CA 93721-2912

ACCOUNT SUMMARY

XXX-XXX8-8575

Beginning Balance	\$1,500,530.53	Average Daily Balance	\$8,722,660.74
Total Deposits and Credits	\$18,500,000.00	Minimum Balance	\$218,789.77
Total Withdrawals and Debits	\$8,301,740.76-	Service Charges	\$0.00
Total Checks Paid	\$0.00	Interest Paid This Period	\$0.00
Ending Balance	\$11,698,789.77	Interest Year to Date	\$0.00

ACCOUNT ACTIVITY

DATE	DESCRIPTION	AMOUNT
Deposits and Credits		
12/08	INCOMING WIRE [REDACTED] - CASH	\$2,500,000.00
12/08	INCOMING WIRE [REDACTED]	\$1,000,000.00
12/10	INCOMING WIRE [REDACTED]	\$12,000,000.00
12/20	INCOMING WIRE [REDACTED]	\$2,000,000.00
12/29	INCOMING WIRE [REDACTED]	\$1,000,000.00
Total Deposits and Credits		\$18,500,000.00
Withdrawals and Debits		
12/01	ACH DEBIT VLL IX/VLL9 ACH ID#9162	\$140,870.38-
12/01	ACH DEBIT VLL VIII/VLL8 ACH ID#8485	\$140,870.38-
12/03	DOMESTIC ONLINE WIRE BW INDUSTRIES INC	\$1,000,000.00-
12/08	DOMESTIC ONLINE WIRE BW INDUSTRIES INC	\$1,000,000.00-
12/10	DOMESTIC ONLINE WIRE BW INDUSTRIES INC	\$1,000,000.00-
12/13	DOMESTIC ONLINE WIRE [REDACTED]	\$20,000.00-



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Account Statement

BUSINESS ANALYZED CHECKING



FIRST REPUBLIC BANK
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Page 1 of 5

Statement Period: March 01, 2022-
March 31, 2022

Account Number: XXXXXX88575

BW INDUSTRIES INC.
700 VAN NESS AVE
FRESNO CA 93721-2912

Account Summary

XXXXXX88575

Beginning Balance	\$150,309.25	Average Daily Balance	\$365,829.84
Total Deposits and Credits	\$6,614,230.51	Minimum Balance	\$100.00
Total Withdrawals and Debits	\$6,439,439.76-	Service Charges	\$0.00
Total Checks Paid	\$0.00	Interest Paid This Period	\$0.00
Ending Balance	\$325,100.00	Interest Year to Date	\$0.00

Account Activity

Date	Description	Amount
Deposits and Credits		
03/01	INTERNET TRANSFER FROM [REDACTED] ON 03/01 AT 09:20	\$150,000.00
03/01	INTERNET TRANSFER FROM [REDACTED] ON 03/01 AT 10:39	\$850,000.00

EXHIBIT 2

Consolidated Financial Statements and
Report of Independent Certified Public
Accountants

BW Industries, Inc. and Subsidiaries

December 31, 2020

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Consolidated statement of operations	6
Consolidated statement of stockholders' equity	7
Consolidated statement of cash flows	8
Notes to consolidated financial statements	9

BW Industries, Inc. and Subsidiaries

CONSOLIDATED STATEMENT OF OPERATIONS

Year ended December 31, 2020

Revenue	\$ 9,088,992
Costs and expenses	
Cost of sales	16,158,515
Selling, general and administrative expenses	17,202,390
Depreciation and amortization	<u>203,345</u>
Total expenses	<u>33,564,250</u>
Loss from operations	(24,475,258)
Other income (expenses)	
Loss on disposal of assets	(240,013)
Interest income (expense), net	(865,502)
Other expenses	<u>(1,056,958)</u>
Total other expenses	<u>(2,162,473)</u>
Loss before provision for income taxes	(26,637,731)
Provision for income taxes	<u>84,704</u>
Net loss including noncontrolling interests	(26,722,435)
Less: net loss attributable to noncontrolling interests	<u>(534,700)</u>
NET LOSS ATTRIBUTABLE TO BW INDUSTRIES, INC.	<u><u>\$ (26,187,735)</u></u>

The accompanying notes are an integral part of this consolidated financial statement.