

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PREVEZON HOLDINGS LTD., *et al.*,

Defendants,

ALL RIGHT, TITLE AND INTEREST IN THE
REAL PROPERTY AND APPURTENANCES
KNOW AS THE 20 PINE STREET
CONDOMINIUM, 20 PINE STREET, NEW
YORK, NEW YORK 10005, UNIT 1816 (“20
PINE STREET, UNIT 1816”), *et al.*,

Defendants *in Rem.*

Case No. 1:13-cv-06326 (TPG)

ECF CASE

**DECLARATION OF KIRILL
KABANOV**

I, KIRILL KABANOV, hereby declare as follows:

1. I am the Head of the National Anti-Corruption Committee (“Anti-Corruption NGO”), a Russian non-governmental organization (“NGO”) established in 1999 to assess corruption, work out countering measures, study corruption practices, and support anti-corruption activities. The Committee was founded by many people, including Sergei Vadimovich Stepashin (who later became the Chairman of the Accounts Chamber of the Russian Federation exercising financial control over state expenditures), former Deputy Chairman of the Government of the Russian Federation Boris Nemtsov and Henry Markovich Reznik, the Head of the Moscow College of Lawyers. Committee members include known Russian journalists and political figures, including deputies of the State Duma of Russia. I have been the Head of the Committee since 2005 via election, which requires the vote of at least two-thirds of all the committee members.

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2. Since 2004, the Russian Presidential Council for Civil Society and Human Rights (hereinafter "Human Rights Council") established on the basis of the Committee for Human Rights founded in the 1990s has been conducting its activities. According to the effective Statute on the Council "On the Russian Presidential Council for Civil Society and Human Rights" approved by Decree No. 120 of the President of the Russian Federation dated February 1, 2011, the Council is a consultative body under the head of the Russian state. It was established to provide assistance to the head of the state in implementing his constitutional powers in the domain of ensuring and protecting human and citizen rights and freedoms, to keep the President of the Russian Federation informed on the situation in the said domain, facilitate the development of civil society institutions, work out proposals to the head of the state regarding issues within the competence of the Council.

3. I have been a member of the Council for Human Rights since 2008 till the present time.

4. 4. Due to a massive public outcry caused by the death of Sergei Magnitsky in the medical premises of the Matrosskaya Tishina [pretrial detention facility](#) (a detention center for persons accused of offences) who was an auditor of the firm Firestone Duncan accused by the Investigative Office of the Main Department of the Ministry of Internal Affairs for the Central Federal Region of offences provided for by para 2, Article 199 of the Criminal Code of the Russian Federation (tax evasion on an especially large scale committed by a group of individuals in collusion), the Working Group of the Human Rights Council prepared the Preliminary Conclusion dated July 4, 2011 concerning the circumstances of the death of Sergei Magnitsky (hereinafter the "Working Group Preliminary Conclusion"). A copy of that preliminary report is attached hereto as Exhibit 1.

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5. The Working Group Preliminary Conclusion was signed by three members of the Human Rights Council, including myself as the Head of the Working Group on public participating in prevention of corruption and on public safety.

6. As stated in Exhibit 1, the conclusions of the Human Rights Council were preliminary. The Preliminary Conclusion states that the “comprehensive investigation by authorized agencies of all circumstances of the death of S.L. Magnitsky is not complete and that “preliminary findings” are based on reports of other NGOs.

7. Exhibit 1 includes only preliminary findings that were made by the Working Group, rather than the Human Rights Council as a constitutional body under the President of the Russian Federation. The said document does not represent a decision or an opinion made by the whole Council and it was not adopted by the Council. The Working Group is just a portion of the Human Rights Council.

8. The documents provided to the Human Rights Council that have become the main basis for the preliminary findings came from two sources: (1) Valery Borschev; and (2) William F. Browder, represented by his lawyers working on his behalf (including Jamison Firestone and **REDACTED**, who represented the interests of the Magnitsky’s family but provided documents that were duplicates of the papers submitted by Firestone) – this fact was highlighted in our document. Those were the only documents the Working Group of the Anti-Corruption NGO received to prepare the preliminary analysis.

9. Borschev is the head of a separate NGO dealing with the study of prison conditions, so the documents received from Borschev concerned the death of Magnitsky, including the prison conditions. Borschev provided no documents regarding any other issues, such as the alleged theft of funds from the Russian Treasury.

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10. The documents submitted by Browder were related to a purported investigation conducted by Sergei Magnitsky into the alleged embezzlement of funds from the Russian Treasury. It was those particular documents, which we essentially copied verbatim, which we relied upon to make some of our preliminary findings.

11. The work of the Human Rights Council as of the time we published Exhibit 1 was a preliminary statement of the Working Group and did not constitute a final conclusion of the Human Rights Council. The report was subject to later investigation and hearings with concerned parties so that the full Human Rights Council could issue a final report concerning the subject matter of the conducted investigation. No hearings were ever conducted prior to the publication of the preliminary report; on the contrary, we conducted hearings and meetings with concerned parties after the preliminary report was published. Our preliminary report was just a step to commence a more comprehensive investigation by the entire Human Rights Council.

12. Upon the publication of the Working Group's Preliminary Findings (Exhibit 1), the Human Rights Council continued its work until 2012. Among other things, the Human Rights Council started to work with Russian investigatory agencies and meet with concerned parties.

13. For example, the Working Group made an assumption in its preliminary report that Magnitsky had investigated the alleged theft of the tax refund of over 5.4 billion rubles. Thus, we stated in our preliminary findings that there had been a conflict of interests among the persons whom Magnitsky accused of being involved in the fraud since those particular persons were engaged in the investigation with regard to Magnitsky. However, from my longtime experience as the Head of the Anti-Corruption NGO, the investigation which was represented to us as allegedly conducted by Magnitsky could only be conducted by persons with relevant

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experience, skills and education in the legal domain. The documents provided by Browder indicated that Magnitsky was a lawyer. However, after our preliminary findings were published, we found out that Magnitsky had never been a lawyer and had never been authorized to conduct such an investigation. Furthermore, none of the documents provided to the Working Group had been generated by Magnitsky either as a whistleblower or an initiator of any fraud discoveries or investigations. It was lawyers of Browder who provided the information that Magnitsky had made somewhat investigations.

14. The Human Rights Council also discussed those issues with representatives of the United States Department of Justice, as Browder's representatives started to point out that some traces of the funds stolen from the Russian Treasury were noticed in the United States among the companies related to the Renaissance Group. The United States Department of Justice refused to cooperate with us and failed to provide the requested information. Later Browder's representatives refused to provide any additional explanations on the issue too.

15. Nowhere in the working group's preliminary findings it was even attempted to state who had allegedly stolen the money from the Russian Treasury. Doing so would be far beyond the jurisdiction of the working group of the Human Rights Council. Our preliminary investigation focused on the procedural aspects of how Magnitsky had been detained and on the investigation into the alleged crime, but not on whether and by whom the alleged crime had actually been committed. The determination by a Russian governmental entity of whether an alleged crime was actually committed remains solely the competence of the authorized investigatory bodies and, ultimately, the Russian courts.

16. I have reviewed a translation of Paragraph 8 of the Sergei Magnitsky Rule of Law and Accountability Act of 2012 passed by the United States, which references the Report of the

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Human Rights Council. As I already stated before, the Council has not however issued any reports, statements or conclusions in this respect. That paragraph may only be correlated with the Human Rights Council's Working Group Preliminary Conclusion attached by me as Exhibit 1.

17. I have also reviewed paragraph 66 of the Amended Complaint in this action which was translated for me. That paragraph also relies upon the working group's some preliminary descriptions and findings.

18. I have never met Andreas Gross, a Rapporteur of the Parliamentary Council of Europe ("PACE") who issued a report called "Refusing Impunity for the Killers of Sergei Magnitsky." I cannot admit the information included by him in that report because I have not seen such evidence, and his allegations in respect of the circumstances of the death of Magnitsky contradict the initially issued and non-contested orders for calling him to account as an accused dated November 25, 2008 (Exhibit 5 to hereto), court order for arresting Magnitsky dated November 26, 2008 (exhibit 6 hereto) as well as the acquitting sentence of the Tverskoy District Court of Moscow dated December 28, 2012 (exhibit 7 hereto) and the order dated March 19, 2013 of the investigator of the Investigative Committee of the Russian Federation (exhibit 8 hereto) which I became aware of already after the Working Group Preliminary Conclusion and the report of the Anti-Corruption Committee headed by me were signed. I do not know on the basis of what documents Mr. Gross stated in his report the information contradicting the evidence and findings of the investigative and judicial bodies of the Russian Federation.

19. The Human Rights Council's Working Group cited a report signed by me on behalf of the Anti-Corruption NGO as Annex 2 to its report. A copy of that report, entitled "Report of the National Anti-Corruption Committee on Analysis of the Cause-and-Effect that Led to the Death of S.L. Magnitsky in the Pre-Trial Detention Center" is attached hereto as

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Exhibit 3. My name is at the bottom of that report on behalf of the Anti-Corruption NGO.

Exhibit 3 is nothing more than the Anti-Corruption NGO's work product which is not confirmed or issued by any other Russian governmental authority.

20. Exhibit 3 relied solely upon the information received from Browder, Hermitage, and their attorneys, and the information largely relied upon the report of the Moscow Public Oversight Commission (Exhibit 2). The Anti-Corruption NGO simply relied upon those materials, conducted no other analysis or research, and prepared the report. Our report, like the remainder of the research in Exhibit 1, were preliminary. The Working Group of the Human Rights Council merely cited and acknowledged the existence of Exhibit 3 (and two other reports) as a reason to issue a preliminary conclusion. The Human Rights Council had nothing to do with preparing Exhibit 3, nor it confirmed or endorsed any findings made in it.

21. The statements in paragraphs 19 and 20 are also true for the other two documents annexed to Exhibit 1, which are attached hereto as Exhibit 2 and Exhibit 4. Exhibit 2 is a report prepared by a NGO, the Moscow Public Oversight Commission which was examining the conditions of Magnitsky's detention. At that, I do not however know anything and it has not been represented to us that during the period of the almost one year detention of Magnitsky the public body was notified of any infringements upon his rights as a detained person, nor I know anything about any checks during Magnitsky's life.

22. Exhibit 4 is an advisory legal opinion report prepared by another NGO, the Independent Legal Advisory Council that examined whether the procedural aspects of Magnitsky's prison detention were proper (but not who committed and whether there was an alleged theft of the funds from the Russian Treasury).

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23. As stated above , Exhibit 1 is a preliminary report. The Human Rights Council has since gathered additional information (beyond that which was submitted by Messrs. Browder, Firestone, and **REDACTED**) but no final report has been presented yet. At this point, the Human Rights Council cannot state what its factual findings will be after obtaining additional evidence. As the circumstances and causes of Magnitsky's death have now been ascertained, but the preliminary investigation of the law-enforcement bodies into a number of criminal cases connected with activities of the entities and persons who Magnitsky worked for has not been completed yet, I think it is a little too previous to speak about the final findings in respect of all the events connected with the name of Magnitsky and his activities.

24. The use of the working materials based on a limited number of evidence obtained from one source which is the Preliminary Conclusion under review as a proof of any fact would be a breach of the effective legislation on the rights and authority of the Human Rights Council and the criminal procedural law of Russia.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct:

Dated: November 16, 2015
City of Moscow, Russia

(signature)
Kirill Kabanov