UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.
_____/

DEFENDANT PERRY ABBONIZIO'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant Perry Abbonizio ("Abbonizio") submits this Response in Opposition to Plaintiff Securities and Exchange Commission's ("SEC['s]") Motion for Partial Summary Judgment [D.E. 817 (the "Motion")]. For the reasons explained herein, the Court should deny summary judgment as to the SEC's cause of action against Abbonizio for alleged violations of Section 5(a) and (c) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c), which are alleged in Count VII of the Amended Complaint, and allow this claim to proceed to trial.[1]

INTRODUCTION

In or around April 2016, Abbonizio started working for Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par") as a consultant. Abbonizio was tasked with certain investor relations-related responsibilities on behalf of Par. At no point, however, was he involved in decision making relating to the details or mechanics of the company's offerings, or in carrying out

[1] In accordance with Local Rule 56.1, Abbonizio is filing a Statement of Facts, which includes both a "Response to the SEC's Statement of Undisputed Facts" *and* a "Statement of Additional Facts." For the Court's ease of reference, Abbonizio refers to the SEC's Statement of Undisputed Facts [D.E. 816-1] herein as "Plaintiff's Facts" and refers to his own Statement of Facts as "Abbonizio's Facts."

the different stages of the offerings. He did not, for example, draft or help negotiate the terms of promissory notes or other offering materials, or otherwise assist in structuring the transactions. He was not a signatory for the company and did not consummate the transactions. He did not pay noteholders, finders, or Agent Fund Managers. And he was not involved in ensuring the offerings complied with applicable laws and regulations. Abbonizio's role simply did not encompass any of these activities, and the SEC does not claim or present evidence that it did. In fact, Abbonizio was not even a party to Par's decision-making process over *how to raise capital*. That is why, in March 2020, ***years*** after the company stopped using finders at the advice of attorney Philip Rutledge ("Rutledge") and transitioned to using Agent Funds, Rutledge emailed Defendant Joseph Cole Barleta ("Cole"): "*I have never heard of Abbonizio before. Is he a part of PAR?*"

And yet, through its Motion, the SEC now seeks summary judgment against Abbonizio under Section 5 of the Securities Act, asking the Court to find, *as a matter of law*, that Abbonizio's participation was so integral to the unregistered offerings of Par, A Better Financial Plan ("ABFP"), Fidelis, and other unspecified Agent Funds that the offerings would not have happened at all without him. *See* Mot. at 8–9. That finding is necessary, but not even sufficient, to satisfy the high standard for showing a defendant was a "necessary participant" and a "substantial factor" in the offer and sale of unregistered securities, which is an element of the SEC's *prima facie* case under Section 5. And that is why the SEC's Motion must fail.

Indeed, there is a genuine dispute of material fact over whether Abbonizio was a "necessary participant" and a "substantial factor" in the subject offerings. According to the SEC, Abbonizio is liable because he helped locate and solicit investors (both directly and in conjunction with Agent Funds), and also because he trained Agent Fund Managers and distributed materials and information that were used to solicit investors. Notwithstanding the SEC's emphasis on

Abbonizio's formal job title and responsibilities, the manner in which Abbonizio *actually* carried out his responsibilities in practice was highly nuanced and evolved over time given Par's model — which Abbonizio did not influence or control — and the complexities of its operations. The evidence shows, for example, that Abbonizio's role was comprised largely of relaying information, and that the process of identifying and soliciting investors often was carried out entirely without his involvement.

Viewing the evidence and all reasonable factual inferences in the light most favorable to Abbonizio, as the Court must at this stage, it simply cannot be said that the subject offerings would not have taken place without Abbonizio. The Court therefore should deny summary judgment and allow this claim to proceed to trial, where the jury will be in a position to fully evaluate the evidence relating to Abbonizio's participation in the offerings.

LEGAL STANDARD

A motion for summary judgment can be granted only when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation and quotation omitted). At the summary judgment stage, however, the court "must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party." *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997); *see also Warrior v. Tombigbee Transp. Co. v. M/V Nan Fung*, 695 F.2d 1294, 1296–97 (11th Cir. 1983) (summary judgment "may be inappropriate where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from these facts"). "[W]here the non-movant presents direct evidence that, if believed by the jury, would be sufficient to win at trial, summary

judgment is not appropriate even where the movant presents conflicting evidence. It is not the court's role to weigh conflicting evidence or to make credibility determinations; the non-movant's evidence is to be accepted for purposes of summary judgment." *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996).

ARGUMENT

I. The SEC's Motion Should Be Denied as to Count VII Against Abbonizio Because the SEC Has Failed to Show That There is No Genuine Dispute of Material Fact

In Count VII of its Amended Complaint, the SEC alleges that Abbonizio and his co-Defendants violated Sections 5(a) and (c) of the Securities Act by directly or indirectly selling or offering to sell unregistered securities using instrumentalities of interstate commerce. *See* Am. Compl. at ¶¶ 286–89. In its Motion, the SEC argues summary judgment against Abbonizio is appropriate based on his participation in the offer or sale of Par Funding, ABFP, Fidelis, and Agent Fund promissory notes. *See* Mot. at 8–9. The evidence in the record shows otherwise.

A. The Elements of a Section 5 Claim

In order to establish a *prima facie case* for a violation of Section 5 of the Securities Act, "the SEC must demonstrate that (1) the defendant directly or indirectly sold or offered to sell securities; (2) through the use of interstate transportation or communication and the mails; (3) when no registration statement was in effect." *SEC v. Calvo*, 378 F.3d 1211, 1214–15 (11th Cir. 2004). Liability under Section 5, however, is not limited to the entity or person who ultimately passes title to the security. *See SEC v. PV Enters., Inc.*, 2016 WL 8808697, *4 (S.D. Fla. June 28, 2016). Instead, courts have recognized "participant liability," under which anyone who was a "necessary participant" and a "substantial factor" in the transaction may be held liable. *Id.* This standard requires the SEC to demonstrate that a defendant was *more than* a "but for" cause of the unlawful sale. *See SEC v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1255 (9th Cir. 2013); *see also*

SEC v. Genovese, 2021 WL 1164654, *3 (S.D.N.Y. Mar. 26, 2021) (a court must do *more than* find that "but for the defendant's participation, the sale transaction would not have taken place," because "not every individual in the causal chain is a necessary participant" within the meaning of the standard) (citation and quotation omitted).

Abbonizio does not dispute the second and third elements of the SEC's Section 5 claim — that the offerings at issue were made using facilities of interstate commerce and that no registration statement was in effect. Abbonizio *does* dispute that he was a "necessary participant" and a "substantial factor" in those offerings, as necessary to satisfy the first element. Courts acknowledge that this "usually involves a question of fact for the jury," *SEC v. Jammin Java Corp.*, 2016 WL 6595133, *15 (C.D. Cal. July 18, 2016) (citation and quotation omitted), and that is the case here.

B. Abbonizio's Role at Par Funding

The SEC argues that Abbonizio participated in the offer or sale of Par, ABFP, Fidelis, and Agent Fund promissory notes by: (1) locating and soliciting investors directly; (2) training Agent Fund Managers to raise investor capital; (3) distributing Par's marketing materials and information that agents used to solicit investors; and (4) meeting with potential Agent Fund investors and soliciting them to invest in the Agent Fund notes. *See* Mot. at 8–9. This characterization of Abbonizio's role at Par is filled with inaccuracies and is otherwise incomplete and misleading.[2] The evidence shows that Abbonizio was not a decision maker and was not involved in structuring the offerings or in carrying out the different stages of the offerings. And while the SEC focuses

[2] Abbonizio considered moving to strike portions of the SEC's Motion and Statement of Undisputed Facts because the SEC frequently makes conclusory statements and legal arguments based on citations where the cited portion of the record often *does not* support the point for which it is cited. *See generally* Abbonizio's Facts at "Response to the SEC's Statement of Undisputed Facts." While Abbonizio believes a motion to strike would have been warranted here, the simpler solution is for the Court to deny the Motion against Abbonizio and allow the Section 5 claim to be adjudicated by a jury.

on Abbonizio's formal job title and responsibilities, the evidence shows that, in reality, Abbonizio had a highly nuanced role handling different aspects of investor relations, and that often what the SEC refers to as "solicitation" activities were nothing of the sort.

(a) ***Abbonizio was not involved in Par's decision making relating to the subject offerings or in carrying out the different stages of the offerings.***

As an initial matter, Abbonizio, who did not start working for Par as a consultant until 2016,[3] nearly five years after Par was founded, was not involved in Par's decision making relating to the details or mechanics of the subject offerings, or in carrying out the different stages of the offerings.[4] Abbonizio also was not involved in Par's decision making with respect to how the company raised capital.[5] His absence from the decision-making process in this respect is perhaps best illustrated by Par's then-outside counsel, Rutledge, who had helped the company respond to the Pennsylvania Department of Banking's inquiry in 2017 and 2018 and who advised the company in relation to its use of finders and Agent Funds: As of March 2020, years after Rutledge had formed an attorney-client relationship with the company and just a few months before this case was filed, Rutledge had never even *heard of* Abbonizio.[6]

Similarly, Abbonizio did not draft or negotiate the terms of promissory notes or otherwise help structure the transactions, sign on behalf of Par, or carry out the company's obligations under the notes.[7] It was not Abbonizio's role at Par to have this level of participation in the subject offerings, and the SEC does not claim otherwise.

---

[3] *See* Plaintiff's Facts at ¶ 15.
[4] *See* Abbonizio's Facts at ¶¶ 104, 108.
[5] *See id.* at ¶ 107.
[6] *See id.*
[7] *See id.* at ¶ 104.

(b) ***Given Par's heavy reliance upon finders, and then later, Agent Fund Managers, Abbonizio was several steps removed from the process of identifying and "soliciting" investors.***

Under his consulting agreement with the company, Abbonizio's formal title was "Principal."[8] The agreement listed a range of investor relations-related responsibilities that fell within the scope of his position — from identifying and communicating with potential investors and helping Par establish these relationships, to maintaining Par's relationships with *existing* investors.[9] In practice, however, from the time Abbonizio started in 2016, Par relied heavily upon finders to identify potential investors and generate interest in investing in the company.[10] Then, starting in early 2018, Par relied heavily upon Agent Fund Managers for this function.[11] Although Abbonizio served an educational role in assisting finders and Fund Managers, he did not direct or control their activities.[12] The result was that — notwithstanding Abbonizio's theoretical job responsibilities as set forth in his consulting agreement — Abbonizio was several steps removed from the process of identifying and soliciting investors for Par. Abbonizio typically met or communicated directly with potential investors to answer questions or provide clarifying information *only after they already had been identified and expressed an interest in potentially investing*.[13]

This dynamic only crystallized as time went on and Par transitioned to the Agent Fund model, a transition that, as noted, Abbonizio was not involved in from a decision-making

---

[8] *See* Plaintiff's Facts at ¶ 15; Plaintiff's Exhibit D at § 2(a).
[9] *See* Abbonizio's Facts at ¶ 99; Plaintiff's Exhibit D at § 2(a).
[10] *See* Plaintiff's Facts at ¶ 34.
[11] *See id.* at ¶ 43.
[12] *See* Abbonizio's Facts at ¶¶ 100–03, 108. Relatedly, Abbonizio believed that the Agent Funds were not established for the purpose of raising money specifically for Par, but rather to pursue opportunities in the MCA industry generally, and that the Agent Fund Managers had discretion as to which opportunities to introduce and recommend to their potential investors. *See id.* at ¶ 108.
[13] *See id.* at ¶ 105.

standpoint.[14] At that point, the number of potential investors that Abbonizio even communicated with decreased significantly — *i.e.*, by as much as 80%.[15] Abbonizio's focus was on assisting the Agent Fund Managers by answering questions and educating them and their prospects about Par — but only on an as-needed basis.[16] As such, on those occasions when Abbonizio *did* meet with prospective *Agent Fund investors*, the Agent Fund *Managers* usually would attend those meetings, as well, as they already had established a relationship with their prospects.[17] In fact, by this point Abbonizio was so far removed from direct involvement with investors that, even after meeting a prospective Agent Fund investor, he rarely would learn one way or the other whether they proceeded to make an investment.[18]

The SEC emphasizes that Abbonizio participated in 15 to 20 events hosted by Agent Fund Managers,[19] but this omits important context. The events the SEC refers to — which the SEC portrays as solicitation events even though at least some of them were merely client appreciation dinners[20] — took place over the course of Abbonizio's four- to five-year consulting relationship with Par. Moreover, only eight to ten of the almost 40 Fund Managers would even host such events.[21] Regardless, the same dynamic discussed above was true even in these group settings: Abbonizio was not the one to identify or invite the attendees, just as he was not the one they would contact to express interest or learn more about an investment opportunity.[22] Nor would Abbonizio

---

[14] *See id.* at ¶ 107.
[15] *See id.* at ¶ 109.
[16] *See id.*
[17] *See id.* at ¶ 110.
[18] *See id.*
[19] *See* Plaintiff's Facts at ¶ 16.
[20] *See* Abbonizio's Facts at ¶ 111.
[21] *See id.*
[22] *See id.* at ¶ 112.

even discuss the specifics of the offer and sale of promissory notes at these events; he would simply provide an overview of the MCA industry and information about Par's business model.[23]

(c) ***Abbonizio's role was comprised primarily of furnishing information about Par.***

Whether in group settings or one-on-one, in carrying out his job responsibilities, Abbonizio saw his role the same way: as an educational liaison and resource.[24] To this end, Abbonizio would provide finders, Agent Fund Managers, and/or potential investors with the above-referenced overview of the MCA industry and information about Par's model, and he would distribute Par's marketing materials, monthly KPI (Key Performance Indicator) reports containing operational metrics, and other relevant financial information about the company.[25] Abbonizio was not the source of any of the underlying information in these materials; the information was provided or relayed to him by others at the company.[26]

Consistent with this educational bent, Abbonizio also would give tours of Par's offices in order to provide finders, Agent Fund Managers, and/or potential investors with a visual understanding of the different departments and how Par functioned on a day-to-day basis.[27] Sometimes this would involve introducing them to different members of the company's management. Indeed, Abbonizio commonly would have Fund Managers and investors meet with Cole, as Cole was able to provide them with more details than Abbonizio could about the company's financial health.[28]

---

[23] *See id*. at ¶ 111.
[24] *See id* at ¶ 100.
[25] *See id.* at ¶ 102.
[26] *See id.*
[27] *See id.* at ¶ 101.
[28] *See id.*

The SEC submits as an "undisputed" fact that Abbonizio "solicited hundreds of investors."[29] The "hundreds" that the SEC refers to comes from Abbonizio's testimony as to the number of investors he "spoke with and/or met and/or educated" — it does not refer to the number of investors he claims to have "solicited."[30] The SEC cites to evidence of several specific, stand-alone instances in which Abbonizio communicated directly with potential investors about possible interest in an investment in Par. But given the above-described facts that illuminate and contextualize Abbonizio's role, and drawing reasonable factual inferences from that evidence in Abbonizio's favor, those instances do not come anywhere close to establishing that Abbonizio was a "necessary participant" and "substantial factor" in the subject offerings as a matter of law because they do not show the transactions would not have happened without him — and it would be insufficient even if they did, because the governing standard requires *more than* "but for" causation.[31]

C. The Existence of a Genuine Dispute of Material Fact Over Abbonizio's Role in the Subject Offerings

Together, the evidence of how potential investors typically would identify and establish relationships with Par (which often did not involve Abbonizio *at all*, given the substantial involvement of finders, Agent Fund Managers, and others), combined with the evidence that Abbonizio did not have the ability to direct or control the finders or Fund Managers, that he was not involved in decision making relating to how the company raised capital, that he had no involvement in structuring the transactions or in carrying out the different stages, and that he carried out his responsibilities as an educational liaison and resource (mostly in a purely

[29] *See* Plaintiff's Facts at ¶ 16.

[30] *See* Abbonizio's Response to Plaintiff's Facts at ¶ 16 (citing Plaintiff's Exhibit F at 150:1-11).

[31] This is especially true given that one recurring point raised by investors is that, if anything, Abbonizio would *discourage them* from investing too heavily in the company, telling them they should not "put[] all [their] eggs in one basket." *See* Abbonizio's Facts at ¶ 106.

informational capacity), a genuine dispute of material fact exists as to whether Abbonizio was a "necessary participant" and "substantial factor" in the subject offerings.

(a) ***Abbonizio's job title and responsibilities cannot determine liability under Section 5.***

In arguing summary judgment is appropriate as to Abbonizio, the SEC emphasizes repeatedly that it was "*his job* at Par" to solicit investors — implying that his participation in the offerings is self-evident from his position at the company and therefore requires little in the way of explanation. *See* Mot. at 8–9 (emphasis added). The SEC is wrong. Standing alone, a defendant's job title or responsibilities "cannot determine liability under Section 5, because the mere fact that a defendant is labeled as an issuer, a broker, a transfer agent, a CEO, a purchaser, or an attorney, does not adequately explain what role the defendant actually played in the scheme at issue." *CMKM Diamonds, Inc.*, 729 F.3d at 1259; *Genovese*, 2021 WL 1164654, at *7 (Section 5 liability is not premised on job responsibilities). "Instead, whether a defendant is a substantial factor in the distribution of unregistered securities is a question of fact requiring a case-by-case analysis of the nature of the securities scheme and the defendant's participation in it." *CMKM Diamonds, Inc.*, 729 F.3d at 1258.

(b) ***A genuine dispute of fact exists as to whether Abbonizio was a "necessary participant" and "substantial factor" in the subject offerings.***

Although a defendant's participation requires a "case-by-case analysis," certain cases provide helpful comparisons that further illustrate why the claim against Abbonizio should be left for a jury. *Securities and Exchange Commission v. Mapp*, an enforcement action brought in the United States District Court for the Eastern District of Texas, is one such case. 2017 WL 5177960 (E.D. Tex. Nov. 8, 2017). In relevant part, in that case the SEC brought a Section 5 claim against defendant William E. Mapp, III, the co-founder and former CEO of a computer hardware company called Servergy, Inc. that developed cloud-based servers. Between 2009 and 2013, Servergy had

raised approximately $26 million through four private securities offerings, which Servergy had claimed was for the development of a new server. *Id.* at *1. When the SEC moved for summary judgment on its Section 5 claim, Mapp did not dispute that the securities were unregistered and were sold using facilities of interstate commerce. *Id.* at *8. Thus, the SEC's *prima facie* case turned on whether Mapp was a "necessary participant" or a "substantial factor" in the offerings. The Court found there was a genuine dispute of fact on this issue and denied summary judgment. *Id.* at *8–9.

Just as the SEC does with respect to Abbonizio, the SEC had argued there was "no question" that Mapp was a necessary participant or substantial factor in the offerings. Evidence showed that Mapp was "responsible for the fundraising campaign and had signatory authority over Servergy's bank accounts." *Id.* at *1. It showed that Mapp "identified prospective investors through word-of-mouth referrals and offered compensation to individuals for introducing new investors to the company." *Id.* Mapp would host in-person and virtual presentations for potentially interested investors, and in some instances the presentations were recorded and made available to other broker-dealers for use in soliciting other investors. *Id.* at *3. Mapp also would provide investors with a Confidential Information Memorandum describing the offering and subscription agreement. *Id.* at *1.

Evidence also showed, however, that while Mapp may have been Servergy's "primary fundraiser," he was not its *only* fundraiser. Indeed, one of Mapp's co-defendants had formed several joint ventures — referred to as the Dominion JVs — for the purpose of allowing his own investors to acquire Servergy securities for smaller dollar amounts than would be required for a direct investment with the company. *Id.* This co-defendant solicited some of the investors, and

his efforts were responsible for over $1.4 million of the $6 million raised in the first three unregistered offerings at issue. *Id.*

In denying summary judgment on the Section 5 claim, the Court explained that "[a]lthough Mapp likely played a significant role in the distribution of the unregistered Servergy securities, he has created a fact issue with regard to whether his involvement with the Dominion JVs rose to the level of participant liability." *Id.* at *8. This was because "Mapp presented evidence that a substantial amount of investments in the Series A, B, and C offerings [*i.e.*, the first three offerings] are attributable to the efforts of [his co-defendant]." *Id.* As such, the Court found a reasonable jury could conclude that Mapp was not a substantial participant in the offerings. *Id.*

Here, the evidence of Abbonizio's participation in the subject offerings is, by comparison, far less concrete and unequivocal than it was in *Mapp*. It also reflects an involvement in far fewer aspects of the sales process than in *Mapp.* But an undeniable common thread is the evidence of the substantial involvement of *others* in Par's capital-raising initiatives, **which the SEC *admits***.[32]

On a more fundamental level, *Mapp* demonstrates that when the level of a defendant's participation in an offering is in dispute, summary judgment is only appropriate when the evidence could not possibly lead a reasonable jury to any conclusion other than that the defendant was a "necessary participant" and "substantial factor" in the offerings. That is not the case here. *See SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 435–36 (S.D.N.Y. 2007) (denying summary judgment on Section 5 claim against defendant investment advisor — even though it was *undisputed* that he had negotiated a consulting agreement pursuant to which the unregistered shares were issued — because while the SEC proffered "abundant" evidence that he had orchestrated the sale of the unregistered shares, defendant pointed to "some evidence that could

[32] *See* Plaintiff's Facts at ¶¶ 18, 33, 34, 38, 44.

support a contrary conclusion") ("[T]he uncontested evidence alone would permit a reasonable factfinder to conclude that he is liable for the sales. Yet [defendant] has successfully raised enough of an issue as to the extent of his participation to warrant deferring any such conclusion until the evidence may be more fully evaluated at trial."); *SEC v. Spartan Securities Grp., Ltd.*, 2020 WL 7695698, *16–17 (M.D. Fla. Dec. 28, 2020) (denying summary judgment on Section 5 claim against several defendants — including a broker-dealer entity, one of its principals, and a transfer agent — because "despite the presence of red flags," a reasonable jury could find their conduct was "not necessary to the overall scheme"); *SEC v. BIH Corp.*, 5 F. Supp. 3d 1342, 1346–47 (M.D. Fla. 2014) (denying summary judgment on Section 5 claim where defendant submitted a declaration in which he denied structuring the relevant transactions or approaching the individuals to issue the shares to).

One of the few Section 5 cases the SEC cites in its Motion — though not with specific reference to Abbonizio — is *SEC v. Friendly Power Co. LLC*, in which the Court explained that a defendant will be liable for *indirectly* offering or selling a security — even if he did not have individual contact with end investors — "if he [] has employed or directed others to sell or offer them, or has conceived of and planned the scheme by which the unregistered securities were offered or sold." 49 F. Supp. 2d 1363, 1371 (S.D. Fla. 1999). But with respect to Abbonizio, this elaboration of the standard does nothing for the SEC at the summary judgment stage because, as discussed above, the evidence shows that Abbonizio neither conceived nor planned of the manner in which securities were sold, *nor* did he employ or direct finders, Agent Fund Managers, or anyone else to sell or offer them.[33] The Section 5 claim against Abbonizio should be left to the jury.

[33] *See* Abbonizio's Facts at ¶¶ 104, 108.

II. The Subject Offerings Were Exempt from Registration Requirements.

Abbonizio joins in and adopts the arguments raised by Defendants Lisa McElhone, Joseph W. LaForte, and Cole in their Response to the SEC's Motion that, in any event, the subject offerings were exempt from registration requirements.

CONCLUSION

For the foregoing reasons, the Court should deny summary judgment on the SEC's cause of action against Abbonizio for alleged violations of Section 5 of the Securities Act and allow this claim to proceed to trial.

REQUEST FOR A HEARING

Abbonizio respectfully requests that the Court set a hearing on the SEC's Motion as it pertains to Abbonizio.

Date: October 28, 2021

Respectfully submitted,

/s/ Jeffrey E. Marcus
Jeffrey E. Marcus
jmarcus@mnrlawfirm.com
Fla Bar No. 310890
Jason L. Mays
jmays@mnrlawfirm.com
Fla. Bar 106495
Brandon S. Floch
bfloch@mnrlawfirm.com
Fla. Bar No. 125218

MARCUS NEIMAN RASHBAUM & PINEIRO LLP
2 South Biscayne Boulevard, Suite 1750
Miami, Florida 33131
Telephone: (305) 400-4260
jmarcus@mnrlawfirm.com

Counsel for Perry Abbonizio

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2021, a true and correct copy of the foregoing was served via CM/ECF on all counsel or parties of record.

By: /s/ Jeffrey E. Marcus
Jeffrey E. Marcus