

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

20-CV-81205-RAR

SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

**DEFENDANT DEAN VAGNOZZI'S LOCAL RULE 56.1 STATEMENT OF DISPUTED
FACTS IN OPPOSITION TO SEC'S MOTION FOR SUMMARY JUDGMENT**

Defendant Dean Vagnozzi ("Vagnozzi"), pursuant to Local Rule 56.1, respectfully submits his Statement of Disputed Facts in response to the Plaintiff's "Statement of Undisputed Facts" [D.E. 816-1] and supplements the record with his own Statement of Additional Facts.

RESPONSE TO SEC'S STATEMENT OF UNDISPUTED FACTS

1-16. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

17. Partially disputed. Vagnozzi was the sole member of ABetterFinancialPlan.Com LLC ("ABFP") and ABFP Management LLC ("ABFP Management") at all times prior to those entities being made part of the Receivership Estate in this action.

18. Partially disputed. Vagnozzi entered into a Finders Agreement with Par Funding dated April 2017 but did not solicit investors to invest in Par Funding promissory notes. Vagnozzi introduced clients to Par Funding, who then interacted with such persons and sold promissory

notes to them. *See* Declaration of Dean Vagnozzi in Opposition to SEC's Motion for Partial Summary Judgment ("Vagnozzi Decl."), filed contemporaneously herewith, ¶ 4.

19. Partially disputed. Vagnozzi did not recruit individuals to start Agent Funds for the purpose of raising money for Par Funding. Vagnozzi did occasionally give presentations to insurance agents and financial advisors regarding the possibility for them to create funds for their own clients to invest in alternative investments, which include promissory notes backed by merchant cash advances. ABFP Management provided outsourced "back office" support for some, but not all funds created by such individuals pursuant to contract and payment of a management fee that was typically calculated as 25% of the compensation received by the Agent. However, Vagnozzi never "managed" these individuals or their investment firms. *See* Vagnozzi Decl. ¶ 11.

20. First and second sentences undisputed. Third sentence partially disputed. See response to paragraph 19, incorporated herein by reference.

21. First sentence disputed, but note that the referenced support in footnote 58 does not support the fact asserted in Paragraph 21. Second sentence partially disputed; ABFP had its principal place of business in King of Prussia, Pennsylvania prior to that entity being made a part of the Receivership Estate in this action. Third sentence partially disputed; Vagnozzi was the sole member of ABFP at all times prior to that entity being made part of the Receivership Estate in this action; but ABFP was not Vagnozzi's "alter ego"; the referenced citation does not support the asserted fact. Fourth sentence partially disputed; ABFP is no longer in operation but previously operated as an insurance broker. Fifth sentence disputed; ABFP never solicited investors for Par Funding at any point in time. Sixth sentence undisputed.

22. First sentence partially disputed; ABFP Income Fund LLC ("ABFP Income Fund") was a Delaware LLC formed on January 12, 2018, at the direction of Vagnozzi, but by his counsel,

and it had its principal place of business in King of Prussia, Pennsylvania prior to such entity being made part of the Receivership Estate in this action. Second sentence disputed; the referenced factual support in footnote 65 does not support the asserted facts. Final sentence undisputed.

23. First sentence partially undisputed; ABFP Income Fund 2 LLC ("ABFP Income Fund 2") was a Delaware LLC formed in 2018 at the direction of Vagnozzi, but by his counsel, and it had its principal place of business in King of Prussia, Pennsylvania prior to such entity being made part of the Receivership Estate in this action. Second sentence partially disputed; ABFP Income Fund 2 was formed to invest 80% of its proceeds in promissory notes from merchant cash advance companies, not exclusively Par Funding, and 20% of its proceeds in unrelated securities. Third sentence undisputed. Fourth sentence disputed; the referenced factual support in footnote 67 does not support the asserted facts. Final sentence undisputed.

24-32. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

33. Partially disputed. Undisputed that at times Vagnozzi would meet or speak with clients about their interest in purchasing Par Funding promissory notes, but Vagnozzi disputes the SEC's use of the word "solicit," which the SEC improperly uses to encompass contact of any kind with potential investors.

34-35. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

36. Undisputed.

37. Partially disputed. Vagnozzi disputes the SEC's characterization of "raising [investments] for" Par Funding, "commission," and "solicited."

38-45. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

46. Disputed. Beginning in 2016, Vagnozzi proposed to Par Funding that it should consider working with Vagnozzi to pursue an idea he had to create investment funds that would pool money from Vagnozzi's clients and in turn invest that money in promissory notes issued by Par Funding or other merchant cash advance businesses. Vagnozzi did not "spearhead" any such effort, or "recruit" people for such effort. From time to time, Vagnozzi did communicate with Par Funding, including Joe LaForte, regarding interest expressed by various financial professionals to create their own investment funds that would purchase promissory notes from Par Funding. The final sentence does not relate to Vagnozzi or the SEC's summary judgment motion as to him, so no response is required.

47. Disputed. Vagnozzi did not "recruit" individuals to start agent funds, nor did he train them. *See Vagnozzi Decl.* ¶¶ 10, 12.

48. Disputed. Vagnozzi did not prepare the "Agent Guide" document referenced. Moreover, the Agent Guide is purely a guide, not a requirement. Not all agents who created funds to offer promissory notes backed by merchant cash advance companies employed the procedures described in the Agent Guide. *See Vagnozzi Decl.* ¶¶ 9, 12.

49. Disputed. Vagnozzi did not prepare the "Agent Guide" document referenced. Moreover, the Agent Guide is purely a guide, not a requirement. Not all agents who created funds to offer promissory notes backed by merchant cash advance companies employed the procedures described in the Agent Guide. *See Vagnozzi Decl.* ¶¶ 9, 12.

50. Disputed. Vagnozzi did not prepare the "Agent Guide" document referenced. Moreover, the Agent Guide is purely a guide, not a requirement. Not all agents who created funds

to offer promissory notes backed by merchant cash advance companies employed the procedures described in the Agent Guide. *See Vagnozzi Decl.* ¶¶ 9, 12.

51. Disputed. Vagnozzi did not prepare the "Agent Guide" document referenced. Moreover, the Agent Guide is purely a guide, not a requirement. Not all agents who created funds to offer promissory notes backed by merchant cash advance companies employed the procedures described in the Agent Guide. *See Vagnozzi Decl.* ¶¶ 9, 12.

52. Disputed. Vagnozzi did not "train" Agents. Vagnozzi did occasionally attend meetings at the offices of Par Funding with Agents, personnel from Par Funding, and Abbonizio in attendance, at which Par Funding's business and operations were discussed. Vagnozzi has no knowledge what meetings or trainings may have occurred without his participation, or what materials Par Funding may have given to Agents.

53. Partially disputed. See response to paragraph 19, incorporated herein by reference.

54-57. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

58. Partially disputed. The Agent Funds as to which Vagnozzi is aware raised monies from their own noteholders and used such funds to purchase promissory notes from Par Funding in the same principal amount, and such Agent Funds paid a lower rate of interest on the promissory issued notes to their noteholders than the rate paid by Par Funding to the Agent Fund on its promissory note.

59. Partially disputed. See responses to paragraph 19 and 58, incorporated herein by reference.

60. Partially disputed. Undisputed that Vagnozzi offered and sold promissory notes issued by ABFP Income Fund. Undisputed that ABFP Income Fund and ABFP Income Fund 2

each filed a Form D with the SEC, through Vagnozzi's counsel John Pauciulo, giving notice of an exempt securities offering in reliance on Rule 506(b).

61. Undisputed.

62. Undisputed.

63. Undisputed.

64. Disputed. The referenced support for this Paragraph 64 is an unsigned and unverified Declaration of Renee Meyer, which relates only to her alleged interactions with defendant Furman in which he apparently forwarded information about Vagnozzi to Ms. Meyer. The Meyer Declaration also attaches copies of documents produced by Vagnozzi on a confidential basis to the SEC in connection with the New York Regional Office investigation, which Ms. Meyer never could have had in her possession. Vagnozzi never solicited any investment from Ms. Meyer.

65. Disputed. Vagnozzi and ABFP never advertised promissory notes backed by merchant cash advance companies over the radio, television, the Internet, FaceBook or otherwise. Any advertising done by ABFP was general in nature and never mentioned specific investments. "One-on-one presentations" are by definition not "advertisements." Vagnozzi never held "dinner seminars" for the purpose of "getting potential investors to invest in the Par Funding-related promissory notes." Vagnozzi occasionally held dinner events for his existing clients, generally for the purpose of distributing the proceeds of other unrelated investments. *See Vagnozzi Decl.* ¶¶ 16, 20.

66. Partially disputed. Regarding the first sentence, Vagnozzi never conducted "dinner seminars." Vagnozzi occasionally held dinner events for his existing clients, generally for the purpose of distributing the proceeds of other unrelated investments. Regarding the second sentence, undisputed that the referenced document contains the quoted language, but disputed that

this March 2020 email bears any relevance to the SEC's summary judgment arguments as to Vagnozzi because it post-dates any alleged unregistered offering alleged in the SEC's complaint. *See Vagnozzi Decl.* ¶¶ 16, 20.

67. Partially disputed. Vagnozzi held a dinner for his existing clients on November 21, 2019. The purpose of the dinner was to make payments to existing clients on their investments in a life settlement fund completely unrelated to Par Funding. Vagnozzi extended the invitation to his existing clients, and the event was not open to the general public. *See Vagnozzi Decl.* ¶ 20. The referenced support for Paragraph 67 is a purported transcript of a partial recording surreptitiously recorded by someone who lied about his identity in an apparent attempt to infiltrate a private event. Undisputed that the document contained at page 82 of the referenced support, and referenced in Paragraph 67(a) and (b), is a document prepared by ABFP that references multiple potential investments, of which merchant cash advance promissory notes is only one out of four, but disputed that Vagnozzi gave any attendees that document. Also undisputed that the document contained at page 83 of the referenced support makes clear that the event was for existing clients only, because it asks clients what their "current" investments are, and who is their "ABFP Advisor." With regard to Paragraph 67(c), undisputed that Vagnozzi spoke at the event and that the referenced quoted statements are attributed to him in the purported transcript of that event, although Vagnozzi notes that the quotes are incomplete and out of context.

68. Partially disputed. Undisputed that Vagnozzi and Defendants Abbonizio, LaForte, and Cole spoke at the November 21, 2019, dinner. Disputed that "potential investors" attended the event; the invitees were current ABFP clients, and apparently an interloper also surreptitiously attended the event through false pretenses in order to record the event for Shane Heskins, but

Vagnozzi did not invite that person to attend. The third, fourth, and fifth sentences do not relate to Vagnozzi or the SEC's summary judgment motion as to him, so no response is required.

69. Partially disputed. The referenced support for this Paragraph 69 does not reflect any statements made by Vagnozzi to the undercover agent who made the recording. It is a purported transcript of a meeting between others that Vagnozzi did not attend. Undisputed that at some point in time Vagnozzi recorded a video that was played during the meeting recorded, but disputed that Vagnozzi "touted" anything in such video.

70. Partially disputed. The referenced support for the first part of Paragraph 70 does not contain or reference any statements made by Vagnozzi at the November 21, 2019, dinner, nor the statement allegedly attributed to him. Undisputed that in March 2020 Vagnozzi wrote to his existing clients who had previously invested in Par Funding related promissory notes and referred to approximately 600 investors since 2016; disputed that this referenced statement was in any fashion a solicitation of any further investment whatsoever.

71. Undisputed, but note that the referenced support for the first part of Paragraph 71 does not support the referenced fact.

72-79. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

80. Partially disputed. Undisputed that Exhibit I to the SEC's Local Rule 56.1 Statement purports to be a partial transcript of a phone call in which Defendant LaForte spoke about Par Funding with various existing Agents who are insurance and financial professionals. No other persons were invited to the call, and it was not open to the public. The second through final sentences of this paragraph do not relate to Vagnozzi or the SEC's summary judgment motion against him, so no further response is required.

81. Partially disputed. Undisputed that Exhibit I to the SEC's Local Rule 56.1 Statement purports to be a partial transcript of a phone call in which Vagnozzi spoke with various existing Agents who are insurance and financial professionals. No other persons were invited to the call, and it was not open to the public. Vagnozzi also disputes the SEC's characterization of his statements as "motivating" anyone to "sell the investments." Vagnozzi does not dispute that the block quoted language is attributed to him in Exhibit I, or that he said those words during the conference call.

82. Partially disputed. Undisputed that Exhibit I to the SEC's Local Rule 56.1 Statement purports to be a partial transcript of a phone call in which Defendant LaForte spoke about Par Funding with various existing Agents who are insurance and financial professionals. No other persons were invited to the call, and it was not open to the public. Moreover, despite the SEC's citation to Paragraph 82 in footnote 58 to its Summary Judgment Motion, Paragraph 82 does not in fact relate to Vagnozzi in any way, and therefore no further response is required.

83. No response required because the facts alleged in Paragraph 83 do not relate to Vagnozzi, notwithstanding the SEC's citation to Paragraph 83 in footnote 58 to its Summary Judgment Motion.

84-98. No response required because the SEC does not cite these facts in seeking summary judgment against Vagnozzi.

VAGNOZZI'S STATEMENT OF ADDITIONAL FACTS

99. The SEC alleges three distinct "phases" of alleged unregistered offerings as to Vagnozzi. First, the "Finders' Fee" phase. Second, an offering of debt securities in early 2018 by ABFP Income Fund I, which was an entity created to invest in promissory notes and other debt instruments of merchant cash advance businesses. Third, an offering of equity securities in late

2018 by ABFP Income Fund II, which was an entity created to invest 80% in promissory notes and other debt instruments of merchant cash advance businesses and 20% in common stock of FS Investment Corp. *See Vagnozzi Decl.* ¶¶ 2-7.

100. Vagnozzi never decided whether or not to register securities with the SEC. He never engaged in a scheme to evade registration. He relied exclusively on his counsel, John Pauciulo, to instruct him whether registration was required, who repeatedly instructed Vagnozzi that he did not need to register any offerings with the SEC. *See Vagnozzi Decl.* ¶¶ 2-7.

101. Beginning in early 2016 Vagnozzi started advertising his financial services firm, ABFP, on radio and occasionally on television. Before doing so, he consulted with Mr. Pauciulo, who instructed Vagnozzi about the concepts of a "general solicitation," and "accredited investors." Mr. Pauciulo told Vagnozzi that he was "on the safe side of gray." *See Vagnozzi Decl.* ¶ 13.

102. Vagnozzi's advertisements never mentioned Par Funding or merchant cash advance companies. Nor did they ever mention ABFP Income Fund I or ABFP Income Fund II. *See Vagnozzi Decl.* ¶ 14.

103. The November 21, 2019, dinner and the possible March 26, 2020, dinner referenced by the SEC in its Local Rule 56.1 Statement both post-date the conclusion of all of the three phases of securities offerings that the SEC alleges against Vagnozzi in its Amended Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October 2021, a true and correct copy of the foregoing was served via the Court's CM/ECF System upon all counsel of record.

/s/Brian P Miller

Brian P Miller