

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

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**NOTICE OF FILING DECLARATION OF DEAN VAGNOZZI IN OPPOSITION  
TO SEC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Dean Vagnozzi hereby files his Declaration in Opposition to Securities and Exchange Commission's Motion for Partial Summary Judgment [DE 817].

Respectfully submitted,

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*Attorneys for Defendant Dean Vagnozzi*

**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

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 9:20-cv-81205-RAR**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

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

**Defendants**

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**DECLARATION OF DEAN VAGNOZZI IN OPPOSITION  
TO SEC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, DEAN VAGNOZZI, hereby submit the following Declaration, and do hereby declare under the penalty of perjury as follows:

1. I am over the age of 18 and am competent to testify. I have personal knowledge of the facts and circumstances set forth in herein.

Nature of Offerings In Which I Participated.

2. According to the SEC's Amended Complaint against me, the SEC alleges that I violated Section 5 of the Securities Act of 1933 by not registering certain securities with the SEC. The SEC alleges three discrete offerings. First, the "Finder Fee" era in which Par Funding directly issued promissory notes, and in which I occasionally served as a Finder for them from August 2016 through approximately January 2018. Second, according to the Form D that my attorney John Pauciolo of Eckert Seamans filed with the SEC, and cited in the SEC's summary judgment motion, ABFP Income Fund I offered and sold approximately \$22 million in promissory notes – a debt instrument – starting February 19, 2018, to 77 accredited investors and

23 unaccredited investors. Third, according to the Form D that my attorney John Pauciulo filed with the SEC, and cited in the SEC's summary judgment motion, ABFP Income Fund II offered and sold approximately \$6.3 million in limited partnership interests – an equity instrument – from August 10, 2018, to November 8, 2018, to 37 accredited investors and 12 unaccredited investors.

3. At the outset, let me be clear that I never decided by myself whether to register securities or not with the SEC. I certainly never engaged in a scheme to evade registration. I relied exclusively on my counsel, John Pauciulo of Eckert Seamans, to instruct me whether registration was required. John was intimately familiar with my business and the nature of my offerings and promotional activities. John repeatedly instructed me that I did not need to register any offerings with the SEC. John also was aware that I acted as a "finder" for Par Funding beginning in August 2016 and instructed me what I could and could not do in that role. I always listened to and carried out his legal advice and instructions.

4. With regard to the Finders' Fee phase, I was never employed by, had an ownership interest in, or otherwise had any role whatsoever at Par Funding. As such, I participated in no discussions with them regarding whether the issuance by Par Funding of promissory notes from August 2016 until approximately January 2018 constituted securities or needed to be registered with the SEC. Those offerings, as I understand it, were direct issuance of Par Funding promissory notes to purchasers. I introduced clients to Par Funding, but those individuals purchased their promissory notes directly from Par Funding and people there, not from me.

5. With regard to the ABFP Income Fund I phase, those promissory notes were issued in a private placement pursuant to a private placement memorandum, and John Pauciulo

repeatedly instructed me that the notes did not need to be registered with the SEC. John instructed me to create the fund in that manner and drafted the private placement memorandum with flexibility in it with regard to the merchant cash advance companies the fund might work with, rather than naming Par Funding specifically. I agreed to have that flexibility.

6. With regard to the ABFP Income Fund II phase, those limited partnership interests were issued in a private placement pursuant to a private placement memorandum, and John Pauciulo instructed me that the equity did not need to be registered with the SEC. That entity was set up to, and did, invest 80% of its proceeds in promissory notes and debt instruments from merchant cash advance businesses, and 20% in public equity securities of a company called FS Investment Corp. John drafted the PPM for ABFP Income Fund II and specifically identified the name of FS Investment Corp., but not to name Par Funding. Similar to ABFP Income Fund I, John instructed me to create the second fund in that manner and drafted the private placement memorandum with that flexibility in it, rather than naming Par Funding specifically.

7. John Pauciulo specifically structured the components of ABFP Income Fund I and ABFP Income Fund II in order to avoid the offerings being "integrated" together. John instructed me that was what he was trying to accomplish.

Agent Funds.

8. At some point in 2016, I proposed to Par Funding that it should consider working with me to pursue an idea I had to create investment funds that would pool money from my clients and in turn invest that money in promissory notes issued by merchant cash advance businesses. Par Funding rejected the idea shortly after I first proposed it. In late 2017, Par Funding told me they changed their minds and were interested in selling promissory to investment funds. I then resumed working on setting up investments funds for myself with my

counsel John Pauciulo. I did not "spearhead" any such effort, or "recruit" people for such effort. From time to time, I 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.

9. The SEC refers to "Agent Funds" in its summary judgment motion. I had contact with some, but not all agents who created their own Agent Funds to invest in merchant cash advance companies. These individuals were financial advisors and insurance professionals.

10. I did not recruit individuals to start Agent Funds for the purpose of raising money for Par Funding. I have been working with other financial advisors and insurance professionals since 2008 – years prior to meeting Par Funding.

11. It is true that my then-company, ABFP Management provided back-office support for certain Agent Funds, pursuant to management agreements. However, we did not do this for every Agent Fund. When we did enter into an agreement with a financial professional to have ABFP Management provide such back-office services for an Agent Fund, the compensation typically was set to be 25% of whatever amount of compensation was received by the Agent. For example, after the Par Funding restructuring in the Spring of 2020, Par Funding paid 5% interest to the Agent Funds and the Agent Funds ABFP Management provided services to typically paid 4% interest to their noteholders. As such, at that time, ABFP Management was paid 25 basis points (0.25%) for its contractual services. Many financial advisors and insurance professionals are solo or small practitioners who do not have the accounting and other resources that I had at ABFP Management. That is why they contracted with ABFP Management for these services. I never managed these individuals or their firms.

12. I disagree that I "trained" Agents. The "Agent Guide" document cited by the SEC is not a document that I recall ever creating. I never forced any Agents to give their back-office function to ABFP Management, or to work with the banks and law firm referenced in the "Agent Guide."

Radio Advertisements.

13. Beginning in early 2016 (before I ever worked as a finder for Par Funding) I started advertising my financial services firm, ABFP, on radio and occasionally on television. Before doing so, I consulted with John Pauciulo about what I could or could not do legally in that regard. John told me about the concepts of a "general solicitation," and "accredited investors." He explained that I could not offer securities publicly and that if I had clients who were not accredited investors, I could not engage in a "general solicitation" about the investment. John heard my commercials. John instructed me that I could advertise my services generally and provide a general description of alternative investments that clients could purchase, so long as I did not discuss the specific terms of any securities offered. I complied with his instructions. John specifically told me that I was "on the safe side of gray."

14. My advertisements never mentioned Par Funding or merchant cash advance companies. Nor did they ever mention ABFP Income Fund I or ABFP Income Fund II. They never mentioned any of my funds by name.

15. My radio commercials were generic in nature based on the guidance that John Pauciulo provided me. They promoted the fact that ABFP had several alternative investments that were not tied to the stock market. Over the 4 years I ran my advertisements, I changed the message every few weeks. The wording was different but the "theme" was the same...if you wanted an investment that had nothing to do with the stock market, ABFP could help.



16. I never advertised promissory notes backed by Par Funding over the radio, television, the Internet, FaceBook or otherwise. Any advertising done by ABFP was general in nature and never mentioned specific investments. I do not recall ever holding "dinner seminars" for the purpose of "getting potential investors to invest in the Par Funding-related promissory notes."

17. When people heard my commercials, they were prompted to call a toll free 800 number and listen to a recorded message. The message they listened to told people about what would happen when they came to our office. They did not learn about the investments at all on the recording. The recorded message clearly told people that we would get to know each other when they came in. The recording finished by telling people to leave their contact information if they wanted to be called to set up an appointment.

18. When new clients came into my office, I would learn about what they were happy with, and not happy with pertaining to their finances. I would then tell them about the offerings we had. I clearly told people that there was nothing to buy or sign up for during the first meeting, and that was true. I told people that after the first meeting they would only come back a second time if they were ready to move forward or if they had questions. This way of interacting with new clients was based on the legal advice the John Pauciulo gave to me.

November 2019 Dinner.

19. One of the other things that the SEC complains about in its summary judgment motion is a dinner that I hosted for existing clients on November 21, 2019. In each telling of the story, the SEC tends to exaggerate more and more the number of people in attendance, etc.

20. To the best of my recollection, the invitation for this dinner event was only sent to existing clients. In fact, I prepared a video recording to my clients about this event, in which I

explicitly stated that the invitation was being sent to two discrete sets of people: (1) investors in the ABFP Multi-Strategy Fund and (2) individuals who had previously expressed an interest in investing in a potential new investment in a bank for accredited investors only. My counsel will file this video with the Court.

21. The purpose of the November 2019 dinner was to hand out checks to investors in one of my life insurance funds (completely unrelated to Par Funding or the allegations in this lawsuit) because we had just had a large payout. I also discussed Par Funding at that dinner, and I also told my clients that they would learn about a possible purchase of a bank and that they could get involved only if they were accredited investors.

22. Nobody purchased any securities at that November 2019 dinner. Not in promissory notes backed by Par Funding nor anything else. My staff did ask people interested in potential other investments to indicate whether they wanted to follow up with us later. I note that the Declaration of Ed Horner filed by the SEC contains, at page 83, a form that Mr. Horner obtained at that dinner, which was clearly intended for existing clients. The form asks for the name of the "ABFP Advisor" already working with the client. It also asks which investments the client "currently own[s]." Clearly this was an event for existing clients and not for the general public. I do not know how Mr. Horner infiltrated the private event, but obviously it was done through false pretenses because he filled out the form using an alias.

23. I also will note that this November 2019 dinner obviously post-dates all of the three phases of securities offerings that the SEC alleges in its Amended Complaint, so I fail to see how anything I did or did not do at that dinner could possibly relate to whether I conducted a general solicitation for offerings that occurred in 2016, 2017, and 2018.

Renee Meyer Declaration.

24. The SEC also cites an unsigned and unsworn Declaration from Renee Meyer in its summary judgment papers. I understand that Ms. Meyer and her husband are accredited investors who were pre-existing long-term clients of Michael Furman that were introduced to ABFP by Mr. Furman. I do not recall ever speaking with Ms. Meyer or her husband (and she does not claim that I did). I certainly did not engage in any solicitation of her to invest in anything.

March 2020 Dinner.

25. The SEC also gripes in their summary judgment motion about an email that I sent to five individuals on March 6, 2020. That discussed a similar dinner event I was intending to hold for existing clients on March 26, 2020. As everyone knows, the pandemic shut things down in the U.S. in mid-March. The March 26 dinner event never happened. In any event, in that email I clearly indicated to those five individuals that they should invite people they "know." In my understanding, that is not a general solicitation because I was asking those financial professionals to invite their existing clients.

26. I also will note that this proposed March 2020 dinner (which never happened) obviously post-dates the conclusion of all of the three phases of securities offerings that the SEC alleges in its Amended Complaint, so I fail to see how anything I did or did not do trying to set up that dinner could possibly relate to whether I conducted a general solicitation for offerings that occurred in 2016, 2017, and 2018.

SEC Settlement.

27. Finally, I was investigated by the SEC previously, by the New York office, and reached a settlement with them, without admitting or denying anything, that was announced in July 2020. In that investigation I was represented by John Pauciulo and others at Eckert

Seamans. They produced over 90,000 pages of documents to the SEC. The SEC subpoenaed all of my personal bank accounts and the accounts of my teenage children. The SEC took my testimony on two different occasions. During that investigation, the SEC investigated my radio advertisements, dinners I held with clients, events that I conducted prior to 2016, and many other things. The SEC did not bring any case against me with respect to Par Funding as a result of that investigation, and did not bring any registration case at all against me under Section 5 of the Securities Act.

28. I declare under penalty of perjury pursuant to 28 USC 1746 that the foregoing is true and correct.

Executed on this 28th day of October 2021.

  
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Dean Vagnozzi