UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

THE LME 2017 FAMILY TRUST, a/k/a
LME 2017 FAMILY TRUST,

Relief Defendant.
_______________________________________/

DEFENDANT, MICHAEL C. FURMAN'S, RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, Michael C. Furman, by and through the undersigned counsel, hereby files this Response in Opposition to the Plaintiff, Securities and Exchange Commission's ("***SEC***"), Motion for Partial Summary Judgment [DE 817] (the "***Motion***") and in support thereof states:

ARGUMENT

The SEC relies on the facts set forth in paragraph 24-26, 38-40, 72-79, and 83 of the Statement of Material and Undisputed Facts [DE 816-1], and Exhibits 13, 25, 41, 61, 62, 64, 68, 103, 113, 127, 129 and 132 of its Motion for a Preliminary Injunction to claim that it has established the following undisputed facts, and is entitled to judgment as a matter of law:

6. Michael Furman

Defendant Michael Furman participated in the offer or sale of securities by:

- Creating Fidelis and managing it through his company United Fidelis, for the purpose of soliciting numerous investors to invest in Fidelis' securities for the ultimate purpose of funneling that investor money to Par Funding in exchange for Par Funding promissory notes, and then doing just that[60]

Notwithstanding the SEC's contention, the evidence submitted by the SEC in support of its Motion do not support entry of summary judgment, because the SEC failed to provide any evidence showing that the exemption of Rule 506(c) does not apply. While the burden is on the Defendants to demonstrate that an exemption applies at trial, on a motion for summary judgment, the SEC must still demonstrate that there are no genuine issues of material fact that an exemption does not apply. *See SEC v. Tuchinsky*, No. 89-6488, 1992 WL 226302, at *5 (S.D. Fla. June 29, 1992) (finding "the Commission has not demonstrated the presence of facts in the record which would indisputably establish the unavailability of an exemption"); *SEC v. N. Am. Acceptance Corp.*, No. C75-230A, 1978 WL 1130, at *6 (N.D. Ga. Nov. 7, 1978) (finding that the SEC failed to demonstrate that there were no triable issues of material fact as to whether the defendants' affirmative defenses applied to Section 5(a) and 5(c)).

The SEC's blanket statement that "there is no evidence in the record to demonstrate that any exemption applies," *see* SEC Motion at 10, is woefully insufficient to prevail on a motion for summary judgment when such facts exist in the record that would demonstrate otherwise. *See SEC v. Webb*, No. 11-C-7152, 2019 WL 1454532, at *6 (N.D. Ill. Apr. 2, 2019) (denying SEC's motion for summary judgment as to Section 5 because genuine issues of material fact existed as to "whether regulation D's exemption from registration applied to the issuer's offer and sale of securities"). The SEC's failure to conduct an analysis on this point is fatal, and, in fact the evidence that it submitted as to Furman, establishes that there are material issues of disputed fact preventing

entry of summary judgment. *See Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991) ("[e]ven after *Celotex* it is never enough simply to state that the non-moving party cannot meet its burden at trial.").

Under Rule 506(c) of Regulation D, securities are exempt from the registration requirement where the issuer takes reasonable care to ensure that investors are accredited investors and that they are not underwriters, and the issuer files Form D with the SEC. 17 C.F.R. §§ 230.502, 230.506. And the SEC has attached evidence to the Motion, showing substantial compliance with Rule 506(c). The SEC has attached the Private Placement Memorandum of Fidelis (Exhibit 61), which provides, in relevant part that the "Units are being offered to a limited number of **accredited investors** who meet the suitability requirements set forth below" and mandates that any investor "complete an Accredited Investor Questionnaire and Verification Letter" as a condition precedent to purchase securities. Similarly, the SEC has attached the Form D that Fidelis filed to confirm the offering was exempt pursuant to 506(c). *See* Exhibit 64. Similarly, Exhibit 133, reveals that Furman stated that the investments in Fidelis were for "accredited [investors] only." The Declaration of Marc Reikes (Exhibit 103) also reveals that the luncheons, which the SEC claims was the general solicitation of investment was only available to accredited investors, as set forth below:

*ATTENTION ACCREDITED INVESTORS
ALTERNATIVE INVESTMENT
LUNCH EVENT
Educational Event to Learn How To EARN
9%-15% FIXED RATE
Interest Paid Monthly - 1 Year Term
WED. MARCH 6th @ 1:00 PM
-LIMITED SEATING
-OPEN DISCUSSION
-MEET THE OWNER
THE REGIONAL
KITCHEN & PUBLIC HOUSE
• NO STOCK MARKET RISKS
• LOW $50K Minimum
• IRA or Non- Qualified
• Guest Speakers
THE REGIONAL RESTAURANT
651 Okeechobee Blvd, West Palm Beach, FL 33401
CALL TODAY
RESERVE YOUR SEAT
561-223-1717
The United Fidelis Group
www.FidelisPlanning.com
*ONLY Accredited Investors are Eligible
(Generally a Minimum Net Worth Test of $1 Million or an Annual Income of $200k per year)

This evidence, which was put forth by the SEC itself in support of its own motion, establishes that Furman had in fact complied with Section 506(c) preventing entry of summary judgment.

In addition to the evidence that the SEC submitted, which in and of itself justifies denial of the motion, Furman has submitted significant evidence showing that he has complied with the requirements of Section 506(c). As set forth in Furman's Declaration, attached to the Statement of Disputed Facts as Exhibit 1, Section 506(c) has been complied with in its entirety, as all the investors in Fidelis, were accredited investors, Furman took reasonable steps to ensure that they were accredited, and filed Form D with the SEC. As a result, Furman was not engaged in any violation of Section 5(b), and summary judgment cannot be entered in the SEC's favor. *See Faye L. Roth Revocable Trust v. UBS Painewebber, Inc.*, 323 F. Supp. 2d 1279, 1301 (S.D. Fla. March 30, 2004); *Supernova Sys., Inc. v. Great Am. Broadband, Inc.,* 2012 WL 425552, at *5 (N.D. Ind. Feb. 9, 2012); *Premier Capital Mgmt., LLC v. Cohen*, 2008 WL 4378300, at *5 (N.D. Ill. Mar. 24, 2008); *Goodwin Properties, LLC v. Acadia Grp., Inc.*, 2001 WL 800064 at *1 (D. Me. July 17, 2001) (determining issue at Fed. R. Civ. P. 12(b)(6) stage and dismissing Section 5 claim based on plaintiff's representation of accreditor status in a private offering memorandum); *Noz v. Value Investing Partners, Inc.*, 1999 WL 387400, at *1 (S.D.N.Y. June 14, 1999) (same); *Goodwin Properties, LLC v. Acadia Grp., Inc.*, 2001 WL 800064 at *1 (D. Me. July 17, 2001) (determining issue at Fed. R. Civ. P. 12(b)(6) stage and dismissing Section 5 claim based on plaintiff's representation of accreditor status in a private offering memorandum); *Noz v. Value Investing Partners, Inc.*, 1999 WL 387400, at *1 (S.D.N.Y. June 14, 1999) (same).

Because there is no material issue of disputed fact as to Furman's compliance with Rule 506(c), Furman also requests that the Court, pursuant to Fed. R. Civ. P. 56(f) that the Court enter summary judgment in his favor with respect to any claims premised on his alleged solicitation of

unregistered securities. *See Faye L. Roth Revocable Trust v. UBS Painewebber, Inc.*, 323 F. Supp. 2d 1279, 1301 (S.D. Fla. March 30, 2004) (noting that section 5 claims can be disposed of at the motion to dismiss claim where investors sign form confirming that they are accredited).

It also appears as though the SEC is attempting to claim that Furman's efforts to raise funds through Fidelis should be considered as one integrated offering with Par Funding. However, the SEC simply referred to investments in Fidelis as investments in Par funding, without actually presenting any evidence to support the position. *See APA Excelsior III, L.P. v. Premiere Techs., Inc.*, 03-15552, 2004 WL 6064402, at *4 (11th Cir. Sept. 23, 2004) (noting that courts may consider an offering as integrated based on an assessment of "whether (1) the different offerings are part of a single plan of financing, (2) the offerings involve issuance of the same class of security, (3) the offerings are made at or about the same time, (4) the same type of consideration is to be received, (5) the offerings are made for the same general purpose.") (citing Non–Public Offering Exemption, SEC Release No. 33–4552, 27 Fed.Reg. 11316, 11317 (Nov. 6, 1962)). The only evidence that the SEC has presented to support that theory is its unsubstantiated allegation that because Fidelis invested in Par Funding, that it was involved in Par Funding's offerings. This constitutes an impermissible stacking of inferences, to the extent it could properly be considered at this juncture. *Berbridge v. Sam's East, Inc.*, 728 F. App'x 929, 932 (11th Cir. 2018) (noting that on summary judgment the Court is only required to consider *reasonable* inferences, which must be based on evidence); *Rli Ins. Co. v. Alfonso*, 19-60432-CIV, 2021 WL 430720, at *21 (S.D. Fla. Feb. 8, 2021).

In any case, the SEC is not entitled to Summary Judgment and the Motion must be denied.

WHEREFORE, Defendant, Michael C. Furman, respectfully requests that the Court enter an Order: (i) Denying the Motion; (ii) Requiring the SEC, pursuant to Fed. R. Civ. P. 56(f) to show

why summary judgment should not be entered in his favor; (iii) Entering Summary Judgment, pursuant to Fed. R. Civ. P. 56(f) in Furman's favor; and (iv) Granting such further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **28th** day of October, 2021, the foregoing was filed using the Court's CM/ECF Filing system which will transmit Notices of Electronic Filing generated by CM/ECF to all counsel of record.

By: *s/ Zachary P. Hyman*
Zachary P. Hyman