**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.,**

_____/

# PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S REPLY IN SUPPORT OF SUMMARY JUDGMENT

## I. INTRODUCTION

Each Defendant fails to counter the relatively simple issues before the Court – namely, whether they were a necessary participant or substantial factor in any one of the many unregistered offers and/or sales the Securities and Exchange Commission established occurred in its Summary Judgment Motion, any one of which would give rise to a finding that Defendants violated Section 5 of the Securities Act of 1933. The undisputed evidence, including investor declarations detailing how they were solicited and by whom, and indisputable video of the solicitations occurring establishes clearly that Defendants Perry Abbonizio, Joseph LaForte, Joseph Cole Barleta, Michael Furman, and Dean Vagnozzi directly offered a security to at least one potential investor in connection with either the unregistered Par Funding offering or the unregistered ABFP Income Fund offerings. Which is all that is required. As for Defendants Lisa McElhone and Joseph LaForte, they fail to counter the evidence that they were control persons of Par Funding.

Instead, Defendants make myriad absurd claims. Furman focuses his entire argument on the fact that his own fund only sold to accredited investors. This is not the issue, and the summary judgment motion does not assert or argue this – rather, the violative conduct is in connection with

the unregistered Par Funding offering. As set forth in the Complaint and Summary Judgment Motion, Furman participated in the unregistered Par Funding securities offering by drawing numerous prospective investors in to invest in Fidelis Planning for the ultimate purpose of raising money for Par Funding through his fund's purchase of notes from Par Funding using the investor funds he had raised. Incredibly, Furman admits this in his Response. Furman is a necessary participant and substantial factor in each one of those purchases because he is the single person doing it – he created a fund to raise the investor funds, he solicits the investors, and he sends the investor money to Par Funding to purchase notes in Par Funding's unregistered offering. He admits to all of this conduct, and therefore the Court should enter summary judgment against him.

As to Abbonizio, he ignores the video evidence of him directly soliciting investors and does nothing more than attempt to argue that he gave tours of Par Funding's office and shared information with investors because he likes educating people generally. This ignores the evidence showing him personally and directly soliciting investors – both individual investors and agent fund managers (the latter of which participate in the unregistered Par Funding offering as discussed above with respect to Furman). Abbonizio's self-serving declaration merely denying or trying to reframe the evidence cannot suffice to overcome summary judgment against him. The evidence literally shows him telling potential investors that his job is to "raise principal capital," his contract with Par Funding was to raise investor funds, he was paid based on the funds he raised, and he directly solicits and recommends the investment to investments on undercover videos that were transcribed. Because he directly offered the investment to those potential investors, he violated Section 5 each time.

Even if the evidence did not exist showing his direct solicitation of investors, Abbonizio's arguments would still fail. In *Mattera*, the defendant made the same argument Abbonizio makes

here, and the Southern District of New York rejected it and entered summary judgment against the defendant. There, the defendant asserted that the following conduct could not meet the necessary/substantial element: (1) introducing broker-dealers; (2) acting as a liaison between the broker-dealers and issuer; and (3) assisting his friends in the creation of an LLC with the purpose of purchasing the securities. *SEC v. Mattera*, 2013 WL 6485949, at *10-11 (S.D.N.Y. 2013) (Exhibit A). The Court rejected defendant's argument that he was not the party selling securities and that his involvement did not meet the element, finding that "Though Howard was not the party selling securities, he was actively involved in the process and compensated for his role. As such, there is no material dispute that Howard was a substantial factor in the sale of unregistered securities. Therefore, the SEC has made a prima facie showing of Howard's liability." *Id.* at 11.

Here, Abbonizio was actively involved in the process the same way as the *Mattera* defendant – and more so. The undisputed facts show he introduced agent fund manager, acted as the liaison between the agent fud managers and Par Funding, and assisted in the creation of the agent funds. On top of that, it is undisputed that he personally met with potential investors to solicit them – thus, without him soliciting and offering to those investors, that same solicitation and offer would not have occurred. It is that simple.

As for Vagnozzi, he argues that the SEC is required to prove Vagnozzi does not have an affirmative defense or exemption argument in order to prevail. This is not true. As set forth in the Motion, the party bearing the burden at trial bears the burden on summary judgment. And the parties with the burden to prove an exemption and any affirmative defense is clearly with the Defendants, as the Motion sets forth. As for his argument that an exemption applies, Vagnozzi fails to present evidence supporting any exemption. He ignores the evidence of his general solicitations and merely tries to reframe them as something they are not. He argues that he invited

his existing investors to events, while failing to demonstrate he did not also open the events to the public. On the latter point and the video he filed, the SEC has easily extinguished his false characterization by showing the invitation, which invites people to bring a friend [Exhibits E & R to the SEC Response to Additional Facts] and by the fact that a member of the public who was not an investor attended and recorded the event [TRO Exhibit 20].

A general solicitation to the public is not a complex or mystical concept that is open to interpretation, as Vagnozzi and the co-Defendants would ask this Court to believe. A general solicitation includes "(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and (2) Any seminar or meeting whose attendees have been invited by any **general solicitation** or general advertising." *Id.* "As a general rule, an offering tends to become public 'when the promoters begin to bring in a diverse group of uninformed friends, neighbors and associates.' " *S.E.C. v. Mattera*, No. 11 Civ. 8323(PKC), 2013 WL 6485949, at *11 (S.D.N.Y. Dec. 9, 2013) (quoting *Nonpublic Offering Exemption,* 1933 Act Release No. 33–4552, 27 Fed.Reg. 11316 (Nov. 6, 1962)). It is undisputed that this is *precisely* what happened here.

Further, Vagnozzi does not even address his participation in the unregistered Par Funding offering by raising money from investors to purchase Par Funding promissory notes, as discussed further above with respect to Furman.

Nor does Vagnozzi or any Defendant prove any exemption exists as to the unregistered ABFP Income Fund Offerings or the Par Funding Offerings, and instead tries to put that burden on the SEC – citing no case law about this particular situation and relying instead on myriad other cases involving burden-shifting provisions under the law. Here, the law is clear that if a securities offering occurs it must be registered, period. If the Defendants believe an exemption applies, they

must prove it. The law is not, as Vagnozzi would have it, that registration is only necessary if the SEC cannot prove an issuer is not entitled to any of the exemptions under the law. "Once participation in an unregistered sale has been shown, the petitioners have the burden of proving an exemption to the registration requirements." *Zacharias v. SEC,* 569 F.3d 458, 464 (D.C.Cir.2009) (citing *SEC v. Ralston Purina,* 346 U.S. 119, 126, 73 S.Ct. 981, 97 L.Ed. 1494 (1953)).

Further, Defendants' arguments about counsel being present fail. First, as set forth in the Motion, reliance on advice of counsel is not a defense to a Section 5 claim. It is so well-established, it is in the pattern jury instruction for the Eleventh Circuit. Defendants admit that they only sought legal advice after the Par Offering was well underway, and their counsel Phil Rutledge testified that they did not take his advice and he advised them only about registration issues in Pennsylvania and only regarding sales that had *already* occurred. Defendants do not dispute this. They cannot claim good faith reliance on advice they received after they engaged in the conduct.

As for McElhone, Cole, and LaForte, they not only fail to prove an exemption applies, but fail to even dispute the evidence presented against them showing that Cole and LaForte directly solicited investors and thus were necessary participants and substantial factors in those offers (if they had not engaged in the conduct with those particular investors, the conduct – an offer – would not have occurred). Nor do McElhone and Cole address the undisputed evidence that they *signed the promissory notes* – without which there is no sale. Further, they ignore completely the fraud claims alleged against McElhone and LaForte and the summary judgment sought against them.

The Section 5 claims are simple and the relevant conduct undisputed, the fraud claims on summary judgment are narrow and undisputed. The self-serving declarations filed by Defendants merely denying the conduct is insufficient to counter the testimony, transcripts of videos of the

offers, and authenticated evidence showing they engaged in the violations. The Court can and should take an adverse inference against what McElhone and LaForte in connection with their Response because as set forth in the Response to their Additional Facts, they asserted the Fifth Amendment as to every question about their conduct and McElhone has admitted it through the Request for Admissions issued to her – which she ignored and which are deemed admitted as a matter of law. The SEC sought summary judgment on narrow, undisputed facts so the case could be narrowed for trial, and the Defendants have utterly failed to demonstrate any genuine issue of *material* fact in opposition.

WHEREFORE, the Court should grant the SEC partial summary judgment, and proceed to trial on the remaining counts.

November 16, 2021

Respectfully submitted,

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