

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, MOTION IN LIMINE

Defendant, Michael C. Furman ("*Furman*"), by and through the undersigned counsel, hereby requests that the Court enter an Order Precluding the Plaintiff, Securities and Exchange Commission (the "*SEC*"), from introducing evidence of misrepresentations that do not apply to Furman.

ARGUMENT

1. On or about August 20, 2020, Plaintiff, the SEC, filed its Amended Complaint [ECF No. 119], accusing Furman and more than ten other defendants of engaging in the unregistered sale of securities, and for making material misrepresentations of material fact in connection with the sale of securities.

2. The only factual allegations pertaining to Furman in the Amended Complaint, are set forth in Paragraphs 7, 29, 30, 31, 38, 58, 59, 60, 108, 109, 110, 111, 112, 113, 114, 126, 132,

133, 140, 141, 142, 143, 144, 154, 158, 168, 191, 192, 195, 196, 233, and 234. The remaining factual allegations of the Amended Complaint pertain to the other Defendants in this matter, and not Furman or any of the investment vehicles he was operating. Excerpts of the foregoing allegations are attached hereto as **Exhibit A**.

3. In the foregoing factual allegations, the SEC has claimed that Furman made material misrepresentations by (i) failing to disclose the true nature of the New Jersey Order; (ii) misrepresenting default rate of Par Funding; and (iii) making misrepresentations concerning Par Funding's underwriting process. The SEC has not made any other substantive factual allegations concerning any other alleged misrepresentations of Furman, and its conclusory allegations should not be considered. *Associated Builders, Inc. v. Ala. Power Co.*, 505 F.2d 97, 100 (5th Cir.1974) ("Conclusory allegations and unwarranted deductions of fact are not admitted as true.").

4. Pursuant Fed. R. Civ. P. 9(b) the SEC is required to make all allegations of fraud with particularity, the remaining general allegations of misrepresentations in the Complaint should not be considered as to Furman, and the general allegations pertaining to all defendants cannot and should not be considered. *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279–80 (11th Cir. 2006) ("The lack of connection between the substantive count and the factual predicates is the central problem with each of the enumerated counts in the complaint, because courts cannot perform their gatekeeping function with regard to the averments of fraud.").

5. Because the SEC also cannot seek to introduce evidence that is not alleged or charged in the Complaint, it cannot and should not be allowed to introduce evidence of the misconduct that is asserted against other Defendants in this cause, which includes, without limitation, the alleged failure to disclose Defendant, Joseph W. LaForte's, criminal history, the

failure to disclose regulatory actions in Pennsylvania, and Texas, and any other alleged misrepresentations in the Complaint.

6. Nonetheless, the SEC has indicated that it intends to introduce substantial evidence concerning the other former defendants in this matter, the misconduct that they engaged in and other material misrepresentations of material fact. Allowing such unpled evidence to be introduced to the jury would unduly prejudice Furman and would also result in significant confusion to and for the Jury.

7. Because the other Defendants in this case have settled with the SEC, and the SEC cannot introduce evidence as to Furman, that was not alleged in the Amended Complaint, the SEC cannot and should not be permitted to introduce other evidence of the alleged misconduct of the other defendants.

8. Similarly, the SEC cannot and should not be allowed to seek to introduce evidence of the consent judgments of other Defendants to the Jury. The Consent Judgments and settlements do not contain any admission of liability, and as a result have no probative value. And their existence would unduly prejudice Furman and lead to confusion with the Jury.

9. Allowing the SEC to introduce unpled fraud claims would be tantamount to an unauthorized amendment and would unreasonably prejudice Furman.

WHEREFORE, Defendant, Michael C. Furman, respectfully requests that the Court enter an Order: (i) Granting the Motion; (ii) Limiting the evidence that the SEC can present at trial to only those allegations pertaining to Furman and funds associated with him, as alleged in the Amended Complaint; and (iii) Granting such further relief as the Court deems just and proper.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

I **HEREBY CERTIFY** that counsel for the Movant has conferred with all parties or non-parties who may be affected by the relief sought in this Motion in a good faith effort to resolve the issue. As of the filing of the instant Motion, the Plaintiff has not taken a position as to whether it consents to the relief sought.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this **1st** day of December, 2021, the foregoing was filed using the Court's CM/ECF system which will send notice of electronic filing to all counsel of record.

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

EXHIBIT A –
EXCEPRTS OF ALLEGATIONS
CONTAINED IN PLAINTIFF’S
AMENDED COMPLAINT
[ECF NO. 119]
RELATING TO DEFENDANT
MICHAEL C. FURMAN

7. Vagnozzi, Michael C. Furman, and John Gissas each operate Agent Funds that raise money for Par Funding through unregistered securities offerings. Vagnozzi operates ABFP Income Fund, LLC and ABFP Income Fund 2, L.P., which issue, offer, and sell promissory notes and limited partnership interests to investors. Furman, through his company United Fidelis Group Corp., operates and manages Fidelis Financial Planning LLC, which issues, offers, and sells promissory notes to investors; and Gissas, through his company Retirement Evolution Group, LLC, operates Retirement Evolution Income Fund LLC and RE Income Fund 2, LLC, both of which issue, offer and sell promissory notes to investors.

29. Furman is a resident of West Palm Beach, Florida. He is the President of Fidelis Planning, which he manages through his company United Fidelis Group. He is a certified public accountant licensed in Pennsylvania.

30. United Fidelis Group is a Florida corporation Furman incorporated in May 2014 and its principal address is in West Palm Beach, Florida. Furman owns and operates United Fidelis Group.

31. Fidelis Planning is a Delaware limited liability company formed in April 2018 and its principal address is in West Palm Beach, Florida. Michael Furman is the President of Fidelis Planning and United Fidelis Group is the sole manager of Fidelis Planning. ABFP Management provides management services to Fidelis. Fidelis is a pooled financial fund created for the purpose of raising investor funds for Par Funding. Since no later than August 9, 2018, Furman, through Fidelis Planning, has raised more than \$5.8 million from investors for Par Funding through the offer and sale of promissory notes.

38. Vagnozzi has solicited investors in the Southern District of Florida, both directly and through his ABFP companies and investment funds. Furman resides in the Southern District of Florida and United Fidelis and Fidelis Planning are located in the Southern District of Florida. Investors residing in the Southern District of Florida have invested in Gissas' Retirement Evolution funds.

58. Defendant Furman also solicited investors to purchase Par Funding Notes. For example, in November 2017 Furman met with potential investors at his firm, United Fidelis, in West Palm Beach, Florida, and recommended the Par Funding investment.

59. Furman told the potential investors that Par Funding made loans to small businesses and charged 36% interest on the loans. Furman distributed Par Funding marketing materials, including a brochure, and touted Par Funding's management expertise and its thorough due diligence in selecting borrowers. Furman also emphasized to the investors that their money would be safe and secure because the default rates on the Loans were 1% or less.

60. Furman told the potential investors that the percentage of interest Par Funding would pay on its Notes would depend on the amount invested. He told them the higher the investment amount, the higher the interest rate and thus the return. He explained to the potential investors that if they invested \$300,000-\$400,000, Par Funding promised to pay the investors an annual return of 12.5% in monthly installments over one year. Furman provided the potential investors with offering materials, including the Par Funding Note.

108. Since no later than August 2018, Furman, through his companies Fidelis Planning and United Fidelis, has raised at least \$5.8 million for Par Funding through investments in Furman's Agent Fund, Fidelis Planning.

109. Fidelis Planning enters into promissory notes with investors, promising annual returns as high as 15%, with monthly interest payments and full return of principal at the end of the typical 12-month term.

110. The Fidelis Planning PPM tells investors that Fidelis will invest their funds with a MCA business.

111. Furman and United Fidelis advertise the Fidelis Planning investment through newspaper advertisements.

112. Furman solicits investors via telephone and puts potential investors in contact with Abbonizio, Cole, and LaForte, who continue the solicitation efforts. He also invites potential investors to the solicitation dinners Vagnozzi and ABFP host, where Abbonizio and Vagnozzi help Furman solicit investors.

113. After raising investor funds, Furman wires the money to Par Funding and receives a Par Funding Note issued to Fidelis Planning.

114. According to its May 2019 filing with the Commission, Furman and Fidelis Planning raised \$5,838,000 for Par Funding from August 2018 through May 2019. According to bank records, it appears that Furman and Fidelis Planning raised more than \$11 million as of December 2019.

126. A mere two weeks later, Vagnozzi and Furman forwarded investors a dramatically different message purporting to be from Par Funding that states “Over the past several months, Par Funding, like many other companies across the globe, has been severely impacted by the Coronavirus pandemic.” Par Funding goes on to say it has “been forced to close our physical offices” and that “virtually all of [Par Funding’s Loan borrowers] have called seeking a moratorium on payments and other restructured payment terms.”

132. In April 2020, Furman emailed investors an email message he claimed was from Par Funding indicating that if investors do not accept an offering to replace their current promissory notes with “Exchange Notes” offering significantly less interest and over a longer period of time, then Par Funding would file for bankruptcy.

133. In April 2020, Vagnozzi and Furman emailed investors a video created on about April 18, 2020, in which Vagnozzi and his attorney – the same attorney who created the turnkey Agent Funds – tell investors that the attorney reviewed Par Funding’s financials and Par Funding is insolvent. Vagnozzi reassures investors he believes Par Funding will rebound, and then Vagnozzi and the attorney recommend that investors not to file lawsuits against Par Funding for defaulting on the promissory notes but to instead accept Exchange Notes through which the investors would receive lower investment returns than they were promised in the promissory notes they had purchased from ABFP and the Agent Funds.

140. Based on the representations made to them, investors felt they had no choice but to agree to the Exchange Offering and to replace their existing notes in the ABFP Funds and Fidelis Planning Fund with new notes that offered less interest and thus a lower rate of return.

141. All or nearly all of the investors accepted an Exchange Note that replaced the ABFP Funds and Fidelis Planning promissory notes they had previously purchased.

142. The Defendants are continuing to offer securities to investors through the Agent Funds and Par Funding.

143. For example, Furman is currently soliciting investors to purchase Par Funding Notes. Unbeknownst to Furman, the individuals are posing as investors.¹

144. Furman coordinated a meeting between these two individuals posing as investors, and LaForte. The meeting occurred in the Southern District of Florida in late June 2020 to solicit the individuals to invest.

G. Material Misrepresentations and Omissions in Connection with The Par Funding, ABFP, United Fidelis, and Retirement Evolution Offerings

154. Because investor returns are purportedly generated by the interest small businesses pay on the Loans Par Funding makes, the success and profitability of the investment turns on Par Funding lending money to small businesses who pay back Loans with interest and do not default on the Loans.

158. In a Par Funding brochure that Furman, Abbonizio, and Vagnozzi distribute to potential investors, Par Funding details its supposedly rigorous underwriting process to approve merchant loans, calling it “Exceptional Underwriting Rigor.”

165. The representations about Par Funding’s underwriting process are false.

2. False and Misleading Claims about Par Funding’s Loan Default Rate

191. Likewise, on the United Fidelis website, Furman and United Fidelis tout a 1.2% default rate for the “MCA investment” they offer.

192. These representations are false and misleading.

195. In Fall 2017, Furman gave a Florida investor a Par Funding brochure claiming that Par Funding had provided “more than \$220 million in business funding” since its inception in 2012.

196. However, by August 2017, Par Funding had filed more than 240 lawsuits against small businesses for defaulting on their Loans, seeking more than \$20 million in missed Loan payments.

233. Furman has misrepresented the New Jersey Order to at least one potential investor while soliciting her for the Par Funding investment through Fidelis. For example, on June 16, 2019, Furman told an undercover individual posing as an investor that the state of New Jersey had “retracted” its action against Par Funding and had said Par Funding was “good” and did not need to pay a fine or have any penalties.

234. This is false. New Jersey did not retract its Order.