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

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

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**MICHAEL FURMAN et al.,**

**Defendants.**
_____/

COURT'S INSTRUCTIONS TO THE JURY

**General Pre-Trial Preliminary Instruction**

Members of the Jury: now that you've been sworn, I need to explain some basic principles about a civil trial and your duty as jurors. These are preliminary instructions. I'll give you more detailed instructions at the end of the trial.

It's your duty to listen to the evidence, decide what happened, and apply the law to the facts. It's my job to provide you with the law you must apply – and you must follow the law even if you disagree with it.

What is evidence:

You must decide the case on only the evidence presented in the courtroom. Evidence comes in many forms. It can be testimony about what someone saw, heard, or smelled. It can be an exhibit or a photograph. It can be someone's opinion. Some evidence may prove a fact indirectly. Let's say a witness saw wet grass outside and people walking into the courthouse carrying wet umbrellas. This may be indirect evidence that it rained, even though the witness didn't personally see it rain. Indirect evidence like this is also called "circumstantial evidence" – simply a chain of circumstances that likely proves a fact. As far as the law is concerned, it makes no

difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Your job is to give each piece of evidence whatever weight you think it deserves.

What is not evidence:

During the trial, you'll hear certain things that are not evidence and you must not consider them. First, the lawyers' statements and arguments aren't evidence. In their opening statements and closing arguments, the lawyers will discuss the case. Their remarks may help you follow each side's arguments and presentation of evidence. But the remarks themselves aren't evidence and shouldn't play a role in your deliberations.

Second, the lawyers' questions and objections aren't evidence. Only the witnesses' answers are evidence. Don't decide that something is true just because a lawyer's question suggests that it is. For example, a lawyer may ask a witness, "You saw Mr. Jones hit his sister, didn't you?" That question is not evidence of what the witness saw or what Mr. Jones did – unless the witness agrees with it.

There are rules of evidence that control what the court can receive into evidence. When a lawyer asks a witness a question or presents an exhibit, the opposing lawyer may object if he or she thinks the rules of evidence don't permit it. If I overrule the objection, then the witness may answer the question or the court may receive the exhibit. If I sustain the objection, then the witness cannot answer the question, and the court cannot receive the exhibit. When I sustain an objection to a question, you must ignore the question and not guess what the answer might have been. Sometimes I may disallow evidence – this is also called "striking" evidence – and order you to disregard or ignore it. That means that you must not consider that evidence when you are deciding the case. I may allow some evidence for only a limited purpose. When I instruct you that I have

admitted an item of evidence for a limited purpose, you must consider it for only that purpose and no other.

Credibility of witnesses:

To reach a verdict, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. When considering a witness's testimony, you may take into account:

· the witness's opportunity and ability to see, hear, or know the things the witness is testifying about;

· the witness's memory;

· the witness's manner while testifying;

· any interest the witness has in the outcome of the case;

· any bias or prejudice the witness may have;

· any other evidence that contradicts the witness's testimony;

· the reasonableness of the witness's testimony in light of all the evidence; and

· any other factors affecting believability.

At the end of the trial, I'll give you additional guidelines for determining a witness's credibility.

Description of the case:

This is a civil case. To help you follow the evidence, I'll summarize the parties' positions. The Plaintiff, the Securities and Exchange Commission, claims Defendant Michael Furman violated the federal securities laws by: (1) offering and selling promissory notes to investors without registering the transactions with the Commission or qualifying for an exemption from registration; and (2) making material misrepresentations and omissions to investors about the finances of the company offering and selling the notes, the features of the notes themselves, state

regulatory actions

Michael Furman denies these claims and claim that he acted in good faith and committed no securities laws violations. Furman also contends that he was not under an obligation to disclose the alleged omissions, and that he had any knowledge of the omissions.

Burden of proof:

The Commission has the burden of proving its case by what the law calls a "preponderance of the evidence." That means the Commission must prove that, in light of all the evidence, what it claims is more likely true than not. So, if you could put the evidence favoring the Commission and the evidence favoring the Defendant on opposite sides of balancing scales, the Commission needs to make the scales tip to its side. If the Commission fails to meet this burden, you must find in favor of the Defendant. To decide whether any fact has been proved by a preponderance of the evidence, you may – unless I instruct you otherwise – consider the testimony of all witnesses, regardless of who called them, and all exhibits that the court allowed, regardless of who produced them. After considering all the evidence, if you decide a claim or fact is more likely true than not, then the claim or fact has been proved by a preponderance of the evidence.

On certain issues, called "affirmative defenses," the Defendant has the burden of proving the elements of a defense by a preponderance of the evidence. I'll instruct you on the facts any Defendant must prove for any affirmative defense. After considering all the evidence, if you decide that any Defendant has proven that the required facts are more likely true than not, the affirmative defense is proved.

Conduct of the jury:

While serving on the jury, you may not talk with anyone about anything related to the case. You may tell people that you're a juror and give them information about when you must be in

court. But you must not discuss anything about the case itself with anyone. You shouldn't even talk about the case with each other until you begin your deliberations. You want to make sure you've heard everything – all the evidence, the lawyers' closing arguments, and my instructions on the law – before you begin deliberating. You should keep an open mind until the end of the trial. Premature discussions may lead to a premature decision.

In this age of technology, I want to emphasize that in addition to not talking face-to-face with anyone about the case, you must not communicate with anyone about the case by any other means. This includes e-mails, text messages, phone calls, and the Internet, including social-networking websites and apps such as Facebook, Instagram, Snapchat, YouTube, and Twitter. You may not use any similar technology of social media, even if I have not specifically mentioned it here. You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also shouldn't Google or search online or offline for any information about the case, the parties, or the law. Don't read or listen to the news about this case, visit any places related to this case, or research any fact, issue, or law related to this case. The law forbids the jurors to talk with anyone else about the case and forbids anyone else to talk to the jurors about it. It's very important that you understand why these rules exist and why they're so important. You must base your decision only on the testimony and other evidence presented in the courtroom. It is not fair to the parties if you base your decision in any way on information you acquire outside the courtroom. For example, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me and not from any other source. Only you jurors

can decide a verdict in this case. The law sees only you as fair, and only you have promised to be fair – no one else is so qualified.

Taking notes:

If you wish, you may take notes to help you remember what the witnesses said. If you do take notes, please don't share them with anyone until you go to the jury room to decide the case. Don't let note-taking distract you from carefully listening to and observing the witnesses. When you leave the courtroom, you should leave your notes hidden from view in the jury room. Whether or not you take notes, you should rely on your own memory of the testimony. Your notes are there only to help your memory. They're not entitled to greater weight than your memory or impression about the testimony.

Course of the trial:

Let's walk through the trial. First, each side may make an opening statement, although they don't have to. Remember, an opening statement isn't evidence, and it's not supposed to be argumentative; it's just an outline of what that party intends to prove. Next, the Commission will present its witnesses and ask them questions. After the Commission questions the witness, the Defendant may ask the witness questions – this is called "cross-examining" the witness. Then the Defendant will present his witnesses, and the Commission may cross-examine them. You should base your decision on all the evidence, regardless of which party presented it. After all the evidence is in, the parties' lawyers will present their closing arguments to summarize and interpret the evidence for you, and then I'll give you instructions on the law. You'll then go to the jury room to deliberate.

**Eleventh Circuit Pattern Jury Instruction 1.1**

**Post-Trial Instructions**

**Introduction**

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case.

When I have finished you will go to the jury room and begin your discussions, sometimes called deliberations.

**Eleventh Circuit Pattern Jury Instruction 3.1**

**The Duty to Follow Instructions – Government Entity or Agency Involved**

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

The Plaintiff in this case is the Securities and Exchange Commission. The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice.

When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.

**Eleventh Circuit Pattern Jury Instruction 3.2.3**

**Consideration of Direct and Circumstantial Evidence;**
**Argument of Counsel; Comments by the Court**

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law including whether to consider evidence for only a limited purpose, you should disregard anything else I may have said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

**Eleventh Circuit Pattern Jury Instruction 3.3**

**Credibility of Witnesses**

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

1. Did the witness impress you as one who was telling the truth?
2. Did the witness have any particular reason not to tell the truth?
3. Did the witness have a personal interest in the outcome of the case?
4. Did the witness seem to have a good memory?
5. Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
6. Did the witness appear to understand the questions clearly and answer them directly?
7. Did the witness's testimony differ from other testimony or other evidence?
8. Did the witness have any bias or motive which may affect their credibility?

**Eleventh Circuit Pattern Jury Instruction 3.4**

**Impeachment of Witnesses Because of Inconsistent Statements or Felony Conviction**

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement.

**Eleventh Circuit Pattern Jury Instruction 3.5.2**

**Expert Witness**

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter. But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

**Eleventh Circuit Pattern Jury Instruction 3.6.1**

**Responsibility for Proof – Plaintiff's Claims, Preponderance of the Evidence**

In this case it is the responsibility of the Commission to prove every essential part of its claims by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that the Commission's claim is more likely true than not true. If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the Commission on that claim.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of the Commission's claim by a preponderance of the evidence, you should find that the Defendant is not liable as to that claim or claims.

**Eleventh Circuit Pattern Jury Instruction 3.7.1**

**Responsibility for Proof – Affirmative Defense; Preponderance of the Evidence**

In this case, Defendant asserts the affirmative defense[s] of reliance on the advice of counsel and that he acted in good faith in relying on counsel. Even if the Commission proves its claims by a preponderance of the evidence, Defendant can prevail on the applicable claims if he proves an affirmative defense by a preponderance of the evidence. When more than one affirmative defense is involved, you should consider each one separately.

I caution you that the Defendant does not have to disprove the Commission's claims, but if a Defendant raises an affirmative defense, the Defendant must establish that defense by a preponderance of the evidence to prevail and be found not liable on that the Commission's claim.

**Eleventh Circuit Pattern Jury Instruction 3.7.2**

**Stipulations**

Sometimes the parties have agreed that certain facts are true. This agreement is called a stipulation. You must treat these facts as proved for this case.

The parties have stipulated to the following facts:

**Eleventh Circuit Pattern Jury Instruction 2.1**

**Use of Depositions**

A deposition is a witness's sworn testimony that is taken before the trial. During a deposition, the witness is under oath and swears to tell the truth, and the lawyers for each party may ask the questions. A court reporter is present and records the questions and answers.

During the trial, portions of certain depositions were presented to you by reading the transcript. Deposition testimony is entitled to the same consideration as live testimony, and you must judge it in the same way as if the witness was testifying in court.

Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

**Eleventh Circuit Pattern Jury Instruction 2.2**

**Use of Recorded and Video Conversations**

During the course of the trial, you heard and saw videos and recordings of conversations. This is proper evidence for you to consider. You also were given transcripts of the recordings and videos to help you identify speakers and guide you through the recordings and videos. But remember that it is the recording or the video that is evidence, not the transcript. If you believe at any point that the transcript said something different from what you saw or heard on the recording or the video, disregard that portion of the transcript and rely instead on what you saw or heard.

**Eleventh Circuit Pattern Jury Instruction 2.3**

**Assertion of the Fifth Amendment**

You heard testimony and deposition testimony during the course of the trial in which Michael Furman exercised his privilege under the Fifth Amendment to the U.S. Constitution. With respect to Mr. Furman, you are permitted, but not required, to draw an adverse inference against him that had he answered the questions to which he asserted his Fifth Amendment privilege, the answers may have been adverse to his interests. Any inference you draw should be based on all of the facts and circumstances in this case as you find them.

**Defendant objects to the Proposed Jury Instruction**

***Coquina Investments v. TD Bank, N.A.*, 760 F.3d 1300, 1309-11 & n.8 (11th Cir. 2014) (rejecting challenge to instructions regarding inferences which may be drawn against a defendant from a third-party's invocation of Fifth Amendment); O'Malley, Grenig and Lee, *3 Federal Jury Practice and Instructions-Civil*, § 104.28 (6th ed.); *SEC v. Jasper*, 678 F.3d 1116, 1125-27 (9th Cir. 2012) (approving district court's instructions to jury regarding Fifth Amendment); *SEC v. Burmaster, et al.,* Case No. 2:10-cv-577, Court's Instructions To The Jury (DE 225) (M.D. Fla. Aug. 7, 2014).**

**The Commission's Claims**

In this case, the SEC brings seven claims, or counts. The first, second, and third counts are brought under Section 10(b) and Rule 10b-5 of the Exchange Act. The fourth, fifth, and sixth counts are brought under Section 17(a) of the Securities Act. The seventh count is brought under Sections 5(a) and (c) of the Securities Act. I will now give you additional instructions on each count.

**Count I - Section 10(b) and Rule 10b-5(a) of the Exchange Act**

In Counts I, II, and III, the Commission asserts claims under the Securities Exchange Act of 1934. The Exchange Act is a federal statute that allows the SEC to enact rules and regulations prohibiting certain conduct in the purchase or sale of securities.

In Count I, the Commission alleges that Defendant Michael Furman violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(a). Rule 10b-5(a) makes it unlawful for anyone to employ any device, scheme, or artifice to defraud someone else in connection with the purchase or sale of any security.

A "security" is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types of securities are stocks, bonds, debentures, warrants, and investment contracts.

**Plaintiff's proposed language:** The promissory notes at issue in this case are securities.

**Defendant's proposed language:** *The Commission has the burden of proving by a preponderance of the evidence that the loans evidenced by the promissory notes with note-holders, security agreements, and UCC filings at issue in this case constitute a security.*

To prove a claim under Section 10(b) and Rule 10b-5(a) against Mr. Furman, the Commission must prove each of the following facts by a preponderance of the evidence:

**Defendant's proposed language**: *First, you must find by a preponderance of the evidence that the promissory notes were securities as defined above.*

Second, you must find the Defendant used an instrumentality of interstate commerce in connection with the purchase or sale of a security;

Third, you must find that the Defendant: used a device, scheme, or artifice to defraud someone in connection with the purchase or sale of a security; and

Fourth, you must find the Defendant acted knowingly or with severe recklessness.

**Defendant's proposed language:** *For the first element you must find the promissory notes are securities as defined above. If you find that the promissory notes were not securities you need not deliberate any further as Count One and you must find the Defendant not liable of Count One.*

*For the second element – that an instrumentality of interstate commerce was used in connection with the purchase or sale of a security – you must use these definitions. "Instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, or an interstate delivery system such as Federal Express or UPS. It's not necessary that the misrepresentation or omission of material fact was transmitted using an instrumentality of interstate-commerce. It is enough if the interstate commerce instrumentality was used in some phase of the transaction.*

The terms "sale" or "sell" mean the transfer of a security for value. This includes the contract for sale for value or any other disposition for value of a security or interest in a security.

For the third element, the Commission must prove that a Defendant used a device, scheme, or artifice to defraud in connection with the purchase or sale of a security. The Commission does not need to identify any particular purchase or sale of securities by a specific person, including the Defendant. Rather, it is enough for the Commission to prove that the device, scheme, or artifice to defraud that a Defendant used involved in the purchase or sale of securities.

A "scheme" is a design or plan formed to accomplish some improper purpose. The terms "device, scheme, or artifice to defraud" refer to any improper plan or course of action that involves (1) false or fraudulent pretenses, (2) untrue statements of material facts, (3) omissions of material facts, or (4) representations, promises, and patterns of conduct calculated to deceive. A fraudulent device or scheme is the knowing use of a deceitful practice or willful device with the intent to

obtain an unjust advantage or cause a loss to another. An untrue statement of material fact or the omission of a material fact is a fact which would tend to mislead the prospective buyer or seller of a security. The alleged misrepresentation must relate to the purchase or sale of a security.[1]

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his or her course of action. Put another way, there must be a substantial likelihood that a reasonable investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information.

For the fourth element, the Commission must prove that a Defendant acted knowingly or with severe recklessness. The term "knowingly" means that a Defendant acted with an intent to deceive, manipulate, or defraud. But a Defendant does not act knowingly if he or she acted inadvertently, carelessly, or by mistake.

To act with "severe recklessness" means to engage in conduct that involves an extreme departure from the standard of ordinary care. A person acts with reckless disregard if it's obvious that an ordinary person under the circumstances would have realized the danger and taken care to avoid the harm likely to follow.

All of these elements must be proved by the Commission by a preponderance of the evidence for a finding of liability as to any Defendant. A failure by the Commission to prove any element must result in a finding of no liability.

[1] SEC v. Goble, 2012 WL 1918819 (11th Cir. 2012).

**Modified 11th Circuit Pattern Jury Instruction 6.1**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction**

**Defendant's proposed language:** *Defendant object to Plaintiff's addition of the sentence, "The promissory notes at issue in this case are securities." Plaintiff must prove that the offerings at issue involved securities, and this language directs the jury to make this finding*.

**Count II – Section 10(b) and Rule 10b-5(b) of the Exchange Act**

In Count II, the Commission alleges that Michael Furman violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(b). Rule 10b-5(b) makes it unlawful for a person to misrepresent a material fact, or omit to state a material fact, in connection with the purchase or sale of a security. The definition of the term "security" is the same as the definition I gave you in Count I.

**Defendant's proposed language:** *If you find that the promissory notes were not securities you need not deliberate any further as to Count Two and you must find Michael Furman is not liable of Count Two.*

To prove a claim under Section 10(b) and Rule 10b-5(b), the Commission must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in connection with the purchase or sale of a security;

Second, you must find that the Defendant made a misrepresentation of a material fact, or omitted to state a material fact, in connection with the purchase or sale of a security; and

Third, you must find the Defendant acted knowingly or with severe recklessness.

For the first element, the definitions of the terms "sale" and "instrumentality of interstate commerce" are the same as I gave you in Count I.

For the second element, the Commission must prove that the Defendant made an untrue statement of material fact or omitted a material fact, either of which would tend to mislead the prospective buyer or seller of a security.

A "misrepresentation" is a statement that is not true. An "omission" is the failure to state facts that would be necessary to make a statement not misleading.

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his or her course of action. Put another way, there must be a substantial likelihood that a reasonable investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information. A minor or trivial detail is not a "material fact."

To find for the Commission on the second element, you need find that the Defendant made or was responsible for one misrepresentation or omission.

**Defendant's proposed language**: *The alleged material misrepresentation or omission must relate to the purchase or sale of a security.*[2] *Predictions, opinions, and other projections (if they aren't expressed as guarantees) are not representations of material facts, and do not require revision or amendment– unless the person or entity communicating them doesn't believe, or doesn't have a reasonable basis for believing, they're true. If the person or entity making the predictions, opinions, or projections actually believed them at the time or had a reasonable basis for making them, then the statements are not materially misleading statements of fact. The focus is on whether the statements were false or misleading when they were made. Later events proving that the predictions, opinions, or projections were wrong do not create a violation of Rule 10b-5.*

For the third element, the definitions of the terms "knowingly" and "severe recklessness" are the same as I gave you in Count I. ***Defendant's proposed language:*** *All of these elements must be proved by the Commission by a preponderance of the evidence for a finding of liability as to any Defendant. A failure by the Commission to prove any element must result in a finding of no liability.*

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[2] *SEC v. Goble*, 2012 WL 1918819 (11th Cir. 2012).

**Eleventh Circuit Pattern Jury Instruction 6.2**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.**

**Count III – Exchange Act Section 10(b) and Rule 10b-5(c)**

In Count III, the Commission alleges that Michael Furman violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(c). Rule 10b-5(c) makes it unlawful for a person to engage in any practice or course of dealing that would operate as a fraud in connection with the purchase or sale of any security.

The definition of the term "security" is the same as the definition I gave you in Count I.

***Defendant's proposed language**: If you find that the promissory notes were not securities, you need not deliberate any further as to Count Three and must find the Defendant not liable of Count Three.*

To prove a claim under Section 10(b) and Rule 10b-5(c), the Commission must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in connection with the purchase or sale of a security;

Second, you must find that the Defendant engaged in an act, practice, or course of business in connection with the purchase or sale of a security that operated or would operate as a fraud or deceit on any person; and

Third, you must find the Defendant acted knowingly or with severe recklessness.

For the first element, the definitions of the terms "sale" and "instrumentality of interstate commerce" are the same as I gave you in Count I.

For the second element, the Commission must prove that the Defendant engaged in any act, practice, or course of business, in connection with the purchase or sale of a security, that operated or would operate as a fraud or deceit on any person. The Commission does not need to identify any particular purchase or sale of securities by a specific person, including the Defendant. Rather, it is enough if the Commission proves that the act, practice, or course of business that a

Defendant engaged in involved, or touched in any way, the purchase or sale of securities.

***Defendant's proposed language**: The Commission must prove that the act, practice, or course of deceitful or fraudulent business that a Defendant engaged in involved the purchase or sale of securities.* [3]

**Plaintiff's proposed language**: A "fraud or deceit" means a lie or a trick. A fraud or deceit doesn't have to relate to an investment's quality or actually result in the purchase or sale of any security. It's not necessary that a Defendant who was allegedly involved in the fraud or deceit, sold or purchased securities personally if the fraudulent or deceitful conduct defrauded some person.

***Defendant's proposed language** As noted before, a fraudulent device is the knowing use of a deceitful practice or willful device with the intent to obtain an unjust advantage or cause a loss to another. A fraud or deceit doesn't have to actually result in the purchase or sale of any security.*

The term "would" in the phrase "would operate as a fraud or deceit" means that the act, practice, or course of business had the capacity to defraud a purchaser or seller.

***Defendant's proposed language:** This means that the allegedly improper practice or course of dealing must have been sufficiently material to have the capacity to defraud a purchaser or seller. I have defined "materiality" above.*

It's not necessary that the act, practice, or course of business actually defrauded someone.

For the third element, the definition of the terms "knowingly" and "severe recklessness" are the same as I gave you in Count I.

***Defendant's proposed language:** A failure by the Commission to prove any element must*

[3] See *SEC v. Goble*, 2012 WL 1918819 (11th Cir. 2012).

*result in a finding of no liability as to Count Three.*

**Eleventh Circuit Pattern Jury Instruction 6.4**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.**

**Defendant objects to Plaintiff's suggested changes to the Pattern Jury Instruction.**

**Count IV - Section 17(a)(1) of the Securities Act**

In Counts IV, V, and VI, the Commission asserts claims under the Securities Act of 1933. The Securities Act is a federal statute that allows the SEC to enact rules and regulations prohibiting certain conduct in the offer or sale of securities.

**Defendant's proposed language:** *If you find that the promissory notes were not securities you need not deliberate any further as the Count Four and must find no liability as to Count Four.*

In Count IV, the Commission alleges that Michael Furman violated Section 17(a)(1) of the Securities Act, which makes it unlawful for a person to employ any device, scheme, or artifice to defraud in the offer or sale of any security.

The definition of the terms "security" and "sale" are the same as I gave you in Count I. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

To prove a claim under Section 17(a)(1) of the Securities Act, the Commission must prove each of the following facts by a preponderance of the evidence:

First, you must find that the Defendant used an instrumentality of interstate commerce in the offer to sell or sale of a security;

Second, you must find that the Defendant used a device, scheme, or artifice to defraud someone in the offer to sell or sale of a security; and

Third, you must find that the Defendant acted knowingly or with severe recklessness.

For the first element, the definition of the term "instrumentality of interstate commerce" is the same as the definition as I gave you in Count I.

For the second element, the Commission must prove that the Defendant used a device, scheme, or artifice to defraud in the offer to sell or sale of a security. The definitions of the terms

"device," "scheme," and "artifice to defraud" are the same as those I previously gave you. The Commission does not need to identify any particular offer to sell or sale of securities by a specific person, including the Defendant. Rather, it is enough if the Commission proves that the device, scheme, or artifice to defraud that the Defendant used or employed involved the offer to sell or sale of securities.

For the third element, the definition of the terms "knowingly" and "severe recklessness" are the same as I gave you in Count I.

**Defendant's proposed language** *A failure by the Commission to prove any element must result in a finding of no liability as to Count Four.*

**Eleventh Circuit Pattern Jury Instruction 6.8**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.**

**Count V - Section 17(a)(2) of the Securities Act**

In Count V, the Commission alleges that Michael Furman violated Section 17(a)(2) of the Securities Act. Section 17(a)(2) makes it unlawful for a person to obtain money or property using any untrue statement of a material fact or by omitting any material fact necessary to make statements, in light of the circumstances under which they were made, not misleading in the offer to sell or sale of a security.

The definition of the term "security" is the same as I gave you in Count I.

**Defendant's proposed language***: If you find that the promissory notes were not securities you need not deliberate any further as to Count Five.*

To prove a claim under Securities Act Section 17(a)(2) of the Securities Act, the Commission must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in connection with the offer to sell or sale of a security.

Second, you must find the Defendant directly or indirectly made one or more misrepresentations of material fact or omissions of material fact in the offer to sell or sale of a security; and

Third, you must find the Defendant was negligent in making the representation or omission.

For the first element, the definitions of the terms "instrumentality of interstate commerce," "sale," and "offer to sell" are the same as those I previously gave you.

For the second element, to prove its claim under Section 17(a)(2), the Commission must prove that the Defendant made a misrepresentation of material fact or an omission of material fact, and obtained money or property by means of any misrepresentation or omission.

The same definitions of the terms "misrepresentation," "omission," and "material" are the same as I previously gave you.

For the third element, the Commission must prove the Defendant was negligent in either making materially false or misleading statements or omissions in connection with the offer to sell or sale of a security. "Negligence" is the failure to exercise the due diligence, care, or competence that a reasonable person would when making representations. Ask yourself: Would a reasonable person have omitted or made the statements?

***Defendant's proposed language:*** *A failure by the Commission to prove any element must result in a finding of no liability as to Count Five.*

**Eleventh Circuit Pattern Jury Instruction 6.9**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.**

**Count VI - Section 17(a)(3) of the Securities Act**

In Count VI, the Commission alleges that the Defendant's violated Section 17(a)(3) of the Securities Act. Section 17(a)(3) makes it unlawful for a person, in the offer or sale of a security, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

You should use the definition of the term "security" that I gave you in Count I.

**Defendant'' proposed language:** If you find that the promissory notes were not securities you need not deliberate any further as to Count Six.

To prove a claim under Securities Act Section 17(a)(3), the Commission must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in the offer to sell or sale of a security;

Second, you must find the Defendant engaged in a transaction, practice, or course of business, in connection with the offer to sell or sale of a security, that operated or would operate as a fraud or deceit upon a purchaser; and

Third, you must find the Defendant was negligent in engaging in the transaction, practice, or course of business.

For the first element, you should use the definitions of "instrumentality of interstate commerce," "sale," and "offer to sell" that I previously gave you.

For the second element, the Commission must prove the Defendant engaged in any act, practice, or course of business, in the offer to sell or sale of a security, that operated or would operate as a fraud or deceit upon the purchaser. The Commission must prove that the act, practice, or course of business that the Defendant engaged in involved the offer to sell or sale of securities.

You should use the same definitions of the terms "fraud or deceit," "sale," "offer to sell," and "would" that I previously gave you.

For the third element, you should use the same definition of "negligence" that I gave you in Count V.

***Defendant's proposed language:*** *A failure by the Commission to prove any element must result in a finding of no liability as to Count Six.*

**Eleventh Circuit Pattern Jury Instruction 6.9; Eleventh Circuit Pattern Jury Instruction 6.4; *SEC v. Burmaster, et al.*, Case No. 2:10-cv-577, Court's Instructions To The Jury (DE 225) (M.D. Fla. Aug. 7, 2014); *SEC v. City of Miami and Michael Boudreax*, Case No. 13-cv-22600, Court's Instructions To The Jury (DE 238) (S.D. Fla. Sept. 13, 2016).**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.**

**Count VII – Sections 5(a) and 5(c) of the Securities Act**

Sections 5(a) and 5(c) of the Securities Act require the offer or sale of certain securities to be registered. Registering securities ensures that companies file essential facts with the Commission which then makes these facts public. It's unlawful, without an exemption from the Securities Act's registration requirements, for any person to use an instrumentality of interstate commerce to buy or sell, offer to buy or sell, or transport or deliver after sale, an unregistered security.

To prevail on its claim that Michael Furman violated Securities Act Sections 5(a) and 5(c), the Commission must prove each of the following three elements by a preponderance of the evidence:

First, you must find that Furman directly or indirectly sold, or offered to sell, securities.

**Defendant'' proposed language:** *If you find that the promissory notes were not securities you need not deliberate any further as to Count Seven.*

Second, you must find that Furman used an instrument of transportation or communication in interstate commerce in connection with the offer to sell or sale of securities.

And third, you must find that a registration statement for the securities was not in effect.

Fourth, you must find that there was no applicable exemption from the Securities Act's registration requirements.

You should use the definition of the term "security" that I gave you in Count I.

The terms "sale" or "sell" mean the transfer of a security for value. This includes contracts for the sale for value or any other disposition for value of a security or interest in a security. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

To "directly or indirectly" sell securities means Furman was a necessary participant, or substantial factor, in the sale or offer to sell that the Commission claims is in violation of Securities Act Sections 5(a) and 5(c).

A Defendant may be a "necessary participant" or "substantial factor" in the sale of securities if, for example, he or she employs or directs others to sell or offer to sell securities, or plans the process by which unregistered securities are offered or sold. To satisfy this element, the Commission isn't required to show that a Defendant had direct contact with any of the investors who were offered or purchased the securities at issue.

***Defendant's proposed language:*** *The Commission is required to show, however, that the sale transaction would not have taken place without the Defendant's participation.*

"Instrument of transportation or communication in interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, [or] an interstate delivery system such as Federal Express or UPS.

A person who sells unregistered securities violates Securities Act Section 5 regardless of whether the violation was committed knowingly, intentionally, recklessly, or negligently.

**Plantiff's proposed language:** A Defendant's good-faith belief that the sale or offer to sell was legal, and his or her reliance on the advice of counsel, aren't defenses to a violation of Securities Act § 5.

***Defendant's proposed language:*** *A Defendant's reliance on the advice of counsel is not a defense to a violation of Securities Act § 5.*

If you find that the Commission has proved these three elements by a preponderance of the evidence, the burden shifts to the Defendant to prove, by a preponderance of the evidence, that the offer to sell or sale of the securities was exempt from the Securities Act's registration requirements.

***Defendant's proposed language:*** *A failure by the Commission to prove any element must result in a finding of no liability as to Count Seven.*

**Modified Eleventh Circuit Pattern Jury Instruction 6.7; *SEC v. Murphy*, 626 F.2d 633, 651–52 (9th Cir. 1980), *cited with approval by*, *Scheck Inv., LP v. Kensington Mgmt., Inc.*, 2009 WL 10668565 (S.D. Fla. June 17, 2009); *SEC v. PV Enters.*, 2016 WL 8808697, *4 (S.D. Fla. June 28, 2016).**

**Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.**

**Defendant objects to Plaintiff's suggested changes to the Pattern Jury Instruction.**

***Defendant's Proposed instruction:*** *Defendant's Defense of Exemption*

*As I previously explained, if you find that the Commission has proven by a preponderance of the evidence that the Defendant sold securities for which no registration was in effect, you must decide whether the Defendant has met his or her burden to prove, by a preponderance of the evidence, that the offer to sell or sale of the securities was exempt from the Securities Act's registration requirements.*

*Section 4(a)(2) of the Securities Act exempts from the registration requirements "transactions by an issuer not involving any public offering." Pursuant to its authority under Section 4(a)(2), the SEC adopted Rule 506 as a safe harbor provision for limited private placements. The Defendant's have asserted exemptions from registration under Sections 4(a)(2) and Rules 506(b) and 506(c).*

*Rule 506(b) requires that: (a) excluding "accredited investors," the issuer reasonably believes there are no more than 35 purchasers of the securities in any 90-day calendar period; and (b): each purchaser who is not an accredited investor either alone or with his purchaser*

*representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.*

*In order to comply with the Rule 506(b) exemption, an issuer may not sell the security by any form of general solicitation or general advertising. An offering under Rule 506(c), however, does not include a prohibition against general solicitation to investors if all purchasers are "accredited investors" and the issuer takes reasonable measures to verify that purchasers are accredited investors.*

*Even if the Commission is able to show there were some deviations in compliance with Rule 506, the Defendant is still entitled to the Rule 506 exemption if he makes a good faith effort to comply with all the pertinent conditions. Rule 508 provides a safeguard for insignificant deviations from the terms of Regulation D if the error was made in good faith.*

*The Rule 506 exemptions, however, are inapplicable if a person covered by Rule 506(d) has a relevant criminal conviction, regulatory or court order or other disqualifying event that occurred on or after September 23, 2013. The disqualifying events include: (1) felonies or misdemeanors "in connection with the purchase or sale of any security" or "[i]nvolving the making of any false filing with the [SEC]" within ten years of the sale; (2) court orders or judgments "entered within five years before such sale, that, at the time of such sale, restrain or enjoin such person from engaging or continuing to engage in any conduct" relating to securities; (3) final orders by a state securities commission barring association with an entity regulated by the commission or a final order from such a commission based on fraudulent, manipulative, or deceptive conduct entered within ten years before such sale; (4) orders issued by the SEC prior to such sale suspending or revoking the person's registration as a broker or dealer; and SEC orders*

*entered within five years before such sale that order the person to cease and desist from a violation of any scienter-based anti-fraud provision of the federal securities laws or Section of the Securities Act of 1933.*

*Persons covered by the Rule 506(d) disqualification include the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor.*

**SOURCES; 17 C.F.R. 501, 502, 506, 508; *see also SEC v. Levin*, 849 F.3d 995, 1001 (11th Cir. 2017); *Faye L. Roth Revocable Trust v. UBS PaineWebber, Inc.*, 323 F. Supp. 2d 1279, 1300 (S.D. Fla. 2004).**

**Plaintiff objects to this jury instruction. The exemptions are currently the subject of the summary judgment motion. Plaintiff reserves the right to make further objections or to supplement this instruction based on the anticipated ruling on the motion for summary judgment.**

***Defendant's Proposed Instruction: Fraud—Good Faith Defense***

*Because an essential element of the Commission's case under Counts I, II, III, IV, V, VI and VIII is intent to defraud or severe recklessness, and in Count VI it is negligence, it follows that good faith on the part of any Defendant is a complete defense to a charge of securities fraud against that Defendant. This is because the Commission must prove that the Defendant acted with an intent to defraud or with severe recklessness, or with negligence. Evidence that the Defendant in good faith followed the advice of counsel would be inconsistent with such a fraudulent intent or acting with severe recklessness, or with negligence. A Defendant is not required to prove good faith. A Defendant has no burden to establish a defense of good faith. Rather, the burden is on the Commission to prove fraudulent intent, severe recklessness, or negligence, and a consequent lack of good faith by a preponderance of the evidence. An honestly held opinion or an honestly formed belief cannot be fraudulent intent-even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management, or carelessness cannot establish fraudulent intent. Evidence that a defendant in good-faith followed the advice of counsel also would be inconsistent with an intent to defraud. If you find that a Defendant acted in good faith, then you must find the Defendant not liable.*

**K. O'Malley, J. Grenig and Hon. William C. Lee, 3B Federal Jury Practice and Instructions § 19:06 (6th ed.) (August 2021 update).**

**Plaintiff's object to this instruction as it is not a correct statement of applicable law in a civil matter such as this one**.

Plaintiff's Proposed Instruction:

Reliance on Attorneys[4]

Mr. Furman asserts the affirmative defense that he relied on lawyers' advice. I caution you that Mr. Furman does not have to disprove the SEC's claims, but he can only prevail on the defense of reliance on counsel if he proves it by a preponderance of the evidence. To prove the affirmative defense of reliance on their counsel, Mr. Furman must prove he: (1) completely disclosed the facts about the conduct at issue; (2) sought advice as to whether the specific course of conduct was appropriate; (3) received advice that the specific course of conduct was appropriate; and (4) relied on and followed the advice in good faith.

If the proof fails to establish any of these elements by a preponderance of the evidence, you should find against Mr. Furman on the defense of reliance on advice of counsel. However, even if these elements are satisfied, such reliance is not a complete defense, but only one factor for consideration in determining liability.

**Source: Jury Instruction Given in *SEC v. City of Miami*, Case No. 13-22600-CIV-Altonaga (D.E. 238). *United States v. Greene*, 239 Fed. Appx. 431, 446 (10th Cir. 2007) (defendant must "show that he had made full disclosure to the professional."); *United States v. Duncan*, 850 F.2d 1104, 1116 (6th Cir. 1988) ("the elements of a reliance defense [are] (1) full disclosure of all pertinent facts, and (2) good faith reliance on the accountant's advice"); *SEC v. Caserta*, 75 F. Supp. 2d 79, 94 (E.D.N.Y. 1999) (reliance on counsel or accountants requires a showing of full disclosure, seeking opinion, obtaining opinion, and reliance on it in good faith). *United States v. Erickson*, 601 F.2d 296, 305 (7th Cir. 1979), quoted with approval in, *SEC v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459, 467 (9th Cir. 1985) ("If a company officer knows**

[4] The "reliance on professional" instruction should not be given unless the Defendant produces evidence he consulted with an accountant or attorney, disclosed all pertinent facts, and acted strictly in reliance on the advice. *See United States v. Greene,* 239 Fed. Appx. 431, 446 (10th Cir. 2007) ("To be entitled to the instructions, Defendant would have had to show that he had made full disclosure to the professional"); *United States. v. Langston*, 590 F.3d 1226, 1235- 36 (11th Cir. 2009) (failure to give advice of professionals instruction on defense proper absent evidence suggesting that defendant actually relied on any legal opinion).

**that the financial statements are false or misleading and yet proceeds to file them, the willingness of an accountant to give an unqualified opinion with respect to them does not negate the existence of the requisite intent or establish good faith reliance").** ***Platten v. United States*****, No. 12-cv-80949, 2014 WL 46523, *28 (S.D. Fla. Jan. 2, 2014); ("[E]ven where the[] prerequisites [for the advice of professionals defense] are satisfied, such reliance is not a complete defense, but only one factor for consideration."); *SEC v. BankAtlantic Bancorp., Inc.,* Case No. 12-cv-60082, 2013 WL 5588139 at *20-23 (S.D. Fla. Oct. 10, 2013); *SEC v. Huff,* 758 F. Supp. 2d 1288, 1349 (S.D. Fla. 2010).**

*Defendant's Proposed Instruction*

**Reliance on Attorneys**

*Although a Defendant's reliance on an attorney's advice is not a defense to securities fraud, such reliance may constitute evidence of the Defendant's good faith, which may represent the absence of an intent to defraud.*

*To decide whether such reliance was in good faith, you may consider whether any Defendant relied on a competent attorney concerning a material fact allegedly omitted or misrepresented, whether the attorney had all of the relevant facts known to the Defendant at the time, whether the Defendant received an opinion from the attorney, whether the Defendant believed that the advice was given in good faith, and whether the Defendant reasonably followed the advice. If you find that Mr. Furman acted in good faith, then you must find Mr. Furman is not liable.*

***United States v. Peterson,*** **101 F.3d 375, 381 (5th Cir. 1996),** ***cited with approval in*****, *In re Zonagen, Inc. Sec. Litig.*****, 332 F. Supp. 2d 764, 775 (S.D. Tex. 2003);** ***In re John Alden Fin. Corp. Sec. Litig.*****, 249 F. Supp. 2d 1273, 1279 (S.D. Fla. 2003).**

**Court's Duty to Decide Remedies**

If you determine that the Commission has proved any Defendant liable on any of the Counts, then I alone will determine the remedy or remedies to impose at a later date.

**Eleventh Circuit Pattern Jury Instructions 6.1, 6.2, 6.4, 6.7, 6.8, and 6.9 (each including instruction that " If you find that the SEC has proved one or more of its claims against [name of defendant], I alone will determine the remedy or remedies to impose at a later date.]")**

**Duty to Deliberate When Damages are not an Issue**

Your verdict must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

**Eleventh Circuit Pattern Jury Instruction 3.8.2**

**Election of Foreperson Explanation of Verdict Form**

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

**Eleventh Circuit Pattern Jury Instruction 3.9**

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

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

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**MICHAEL FURMAN et al,,**

**Defendants.**
_____/

# JURY VERDICT

## Count I – Securities Exchange Act of 1934 Section 10(b) and Rule 10b-5(a)

Did Michael Furman violate Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) thereunder?

Yes_____ No_____

## Count II – Securities Exchange Act of 1934 Section 10(b) and Rule 10b-5(b)

Did Michael Furman violate Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(b) thereunder?

Yes_____ No_____

**Count III – Securities Exchange Act of 1934 Section 10(b) and Rule 10b-5(c)**

Did Michael Furman violate Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(c) thereunder?

Yes_____ No_____

**Count IV – Securities Act of 1933 Section 17(a)(1)**

Did Michael Furman violate Section 17(a)(1) of the Securities Act of 1933?

Yes_____ No_____

**Count V – Securities Act of 1933 Section 17(a)(2)**

Did Michael Furman violate Section 17(a)(2) of the Securities Act of 1933?

Yes_____ No_____

**Count VI – Securities Act of 1933 Section 17(a)(3)**

Did Michael Furman violate Section 17(a)(3) of the Securities Act of 1933?

Yes_____ No_____

***Defendants proposed language: Only if your answer to any of the preceding questions was yes, did Michael Furman make a material misrepresentation or omission regarding the following subject matters?***

***(a) Regarding Par Funding's underwriting process?***

***Yes*_____ *No*_____**

***(b) Regarding Par Funding's default rate?***

***Yes*_____ *No*_____**

***(c) Regarding Par Funding's insurance coverage?***

***Yes*_____ *No*_____**

***(d) Regarding LaForte's criminal background?***

***Yes*_____ *No*_____**

***(e) Regarding Par Funding's regulatory proceedings settled with Pennsylvania and New Jersey?***

***Yes*_____ *No*_____**

**Count VII – Securities Act of 1933 Sections 5(a) and 5(c)**

Did Michael Furman violate Sections 5(a) and 5(c) of the Securities Act of 1933?

Yes_____ No_____

**Only if your answer to the preceding question was yes,** did the securities qualify for an exemption to registration?

Yes_____ No_____

SO SAY WE ALL

Foreperson's Signature_____

Date_____