UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

_____/

REPLY OF DEFENDANT DEAN VAGNOZZI IN SUPPORT OF MOTION FOR LEAVE TO FILE A DECLARATORY JUDGMENT ACTION AGAINST INSURERS OF ECKERT SEAMANS AND JOHN W. PAUCIULO, ESQUIRE

Defendant, Dean Vagnozzi ("Vagnozzi"), by and through his undersigned counsel, hereby submits this Reply in Support of Motion for Leave to file Declaratory Judgment Action Against Insurers of Eckert Seamans and John W. Pauciulo, Esquire ("Pauciulo").

SUMMARY

The Receiver has filed an opposition to Vagnozzi's Motion, in which Vagnozzi seeks leave to file a declaratory judgment action against the insurers of Eckert Seamans and Pauciulo. The Receiver curiously makes arguments on behalf of Eckert Seamans' insurers, apparently seeking to shield them from having to litigate whether the insurers are exposed to an additional $50 million in liability stemming from Vagnozzi's malpractice claims that are separate and apart from claims related to Par Funding. The Receivers' efforts in this regard are curious because Vagnozzi's

counsel has implored counsel for the Receiver to discuss the additional $50 million in insurance coverage, which may not only benefit Vagnozzi, but also the Receiver's estate as well.[1]

Instead of engaging with Vagnozzi's counsel on the insurance coverage issue, the Receiver has chosen to oppose Vagnozzi's declaratory judgment action, attempting to erect blockades around Vagnozzi's efforts to increase the amount of available insurance coverage. The Receiver raises two issues in his opposition, both of which, as set forth fully herein, are unfounded.

The Court should grant Vagnozzi leave to proceed with his proposed declaratory judgment action, the resolution of which will ultimately assist the Court in deciding whether the terms of the Receiver's settlement with Eckert Seamans is "fair and equitable." It is important to note in this regard that the Receiver's proposed settlement will seek to "bar" Vagnozzi's malpractice claims – even those completely *unrelated* to Par Funding. To determine whether such a "bar order" is "fair and equitable" the Court should decide if the claims for which the Receiver is seeking a "bar order" constitute separate claims that are covered by an additional $50 million of insurance.

I. The Receiver's Reliance on Florida *State* Law for the Procedural Question of Standing is Wrong; Vagnozzi Has Standing to Pursue a *Federal* Declaratory Judgment under *Federal* Common Law.

The Receiver erroneously argues that Florida's "nonjoinder statute" controls whether Vagnozzi has standing to pursue a declaratory judgment action against Eckert Seamans' insurers. The Receiver argues that, under that Florida state statute, Vagnozzi's requested declaratory relief is not justiciable and he does not have standing until a judgment against Eckert Seamans and Pauciulo, the insured-tortfeasors, is obtained. (ECF # 1665 at p. 6) (citing Fla. Stat. § 627.4136.) The Receiver's standing argument is entirely off base.

[1] A copy of a July 21, 2023 letter to counsel for the Receiver is attached hereto as Exhibit "A." To date, counsel for the Receiver has made no effort to follow-up with Vagnozzi's counsel on the issue. In this regard, Vagnozzi is prepared to discuss a sharing arrangement with the Receiver with respect to the additional insurance coverages his proposed declaratory judgment action seeks to create.

Florida state law does ***not*** apply to the question of standing in the proposed *federal* declaratory judgment action. It is well-settled that issues of "standing" under the federal Declaratory Judgment Act are controlled by federal common law since "[t]he Declaratory Judgment Act is procedural in nature." *Everest Reinsurance Co. v. Am. Guard Servs., Inc.*, 2015 WL 9258098 *4 n. 1, Civil Action No. 1:15-cv-22404-KMM (S.D. Fla. Dec. 18, 2015) (quoting *Townhouses of Highland Beach Condo. Ass'n, Inc. v. QBE Ins. Corp.*, 504 F.Supp.2d 1307, 1310-1311 (S.D. Fla. 2007). Thus, "federal law determines whether a federal court can and may properly render a declaratory judgment." *Id.*; *see also Federal Kemper Ins. Co. v. Rauscher*, 807 F.2d 345, 352 (3d Cir. 1986) ("the question of justiciability is a federal issue to be determined only by federal law. 'Thus a federal court decides for itself whether a party has standing to raise a particular issue, or that a particular matter is justiciable or that it is not.'") (quoting 6A J. Moore, *Moore's Federal Practice* ¶ 57.02[5].)[2, 3]

The 11th Circuit has concluded that, under federal common law, a party injured by insured-tortfeasors does have standing to obtain a declaratory judgment against the tortfeasors' insurers to resolve a disputed coverage issue, even at a pre-judgment stage. *See Edwards v. Sharkey*, 747 F.2d 684, 685 (11th Cir. 1984) (noting "a 'case or controversy exists to support declaratory relief

[2] In any event, even if standing was a substantive issue that was controlled by state law, Florida state law would not control. The relevant insurance policy, attached to the proposed Complaint as Exhibit "A," does not contain a "choice of law" provision. Thus, under traditional "choice of law" principles, Pennsylvania law (not Florida) would control substantive questions concerning the policies. The insurance policies at issue insured a Pennsylvania based law firm (Eckert Seamans). The underlying claims involve legal services rendered in Pennsylvania which were provided to a Pennsylvania client (Vagnozzi). It is thus beyond debate that Pennsylvania substantive law will apply to resolve this insurance dispute. It is equally clear that, under Pennsylvania law, injured parties have standing under these circumstances. As the Third Circuit noted in *Federal Kemper*, "the Pennsylvania Supreme Court held that 'the rights of the appellants Manko [the injured parties], as plaintiffs against the insured Stinger, are affected by the policy, that they are interested persons, and that they are therefore entitled to have their rights declared.'" *Federal Kempler*, 807 F.2d at 353 (quoting *Allstate Insurance Company v. Stinger*, 400 Pa. 533, 163 A.2d 74 (1960)).

[3] The only reason the proposed declaratory judgment action is filed in Florida is because of the Litigation Stay recently reimposed by this Court as to any actions against Eckert. But for that stay, Vagnozzi would have filed his declaratory judgment directly action in Pennsylvania, either in state or federal court.

between an injured third party and an insurance company *even in the absence of a judgment in favor of the third party against the insured*.") (Emphasis added) (citing *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270 (1941)). The Third Circuit has similarly held that a third-party, injured by an insured-tortfeasor, has standing to have rights under the tortfeasor's insurance policy declared under the federal Declaratory Judgment Act. *See Federal Kemper Ins. Co.*¸ 807 F.2d at 352 ("Both federal and Pennsylvania law addressing the issue of an injured party's standing in a declaratory judgment action have reached the conclusion that an injured party does have standing."); *see also Alit Limited v. Brooks Insurance Agency*, 2007 WL 3170116 *5, Civil Action No. 06-cv-04500 (D.N.J. Oct. 26, 2007) ("Therefore, this Court concludes that under federal common law, Alit [the injured third-party] has proper standing to assert its claims [under the federal declaratory judgment act] against AEIC [the tortfeasor's insurer].")

Because Vagnozzi's claims have not yet been reduced to judgment, the Receiver wrongly asserts that Vagnozzi is seeking a purely "advisory opinion" without a "legally enforceable right." That is not the law in this Circuit. The 11th Circuit in *Edwards v. Sharkey*, 747 F.2d 684 (11th Cir. 1984) addressed this very issue. There, in a car accident case, the injured plaintiff – Edwards – filed a declaratory judgment complaint against both the tortfeasor (Sharkey) and his carriers (Travelers and Reliance), "seeking a determination of the relative liabilities of Travelers and Reliance." *Id.* at 686. As an initial jurisdictional question, the 11th Circuit addressed whether there was a "case or controversy" since the matter was filed before a judgment was obtained in the underlying matter. *Id.* While the Court acknowledged 5th Circuit law cautioning against declaratory judgments on the question of apportionment of insurance coverage before judgment, the 11th Circuit noted that such "caution" did ***not*** preclude declaratory relief and was predicated "on the traditional discretion of federal courts exercising jurisdiction over declaratory judgment

actions." *Id.* The Court also noted, "[m]oreover, the Supreme Court of the United States has held that a 'case or controversy' exists to support declaratory relief between an injured third party and an insurance company even in the absence of a judgment in favor of the third party against the insured." *Id.* at 687 (citing *Maryland Casualty*, 312 U.S. 270.)

Indeed, the 11th Circuit has held that just because "liability may be contingent does not necessarily defeat jurisdiction of a declaratory judgment action. Rather, the practical likelihood that the contingencies will occur, and that the controversy is a real one should be decisive in determining whether an actual controversy exists." *GTE Directories Pub. Corp. v. Trimen Am., Inc.*, 67 F.3d 1563, 1569 (11th Cir. 1995); *see also Hardware Mut. Cas. Co. v. Schantz,* 178 F.2d 779, 780 (5th Cir. 1949) ("It is settled that where there is an actual controversy over rights, whether contingent or liquidated, a declaratory judgment may be rendered i [sic] the Federal Court.") There thus is no blanket rule under federal common law prohibiting declaratory judgments on insurance coverage issues until liability is established or a judgment is entered in the underlying matter. Rather, federal law provides the district court with discretion to exercise jurisdiction in such matters, guided by "practical considerations."

Remarkably, the Receiver advances the notion that "[i]f Vagnozzi obtains a judgment in the future against Eckert," he would then have standing, while at the same time the Receiver knows full well that it is his intention to forever "bar" Vagnozzi from ever proceeding further with the Pennsylvania malpractice litigation and from obtaining any such judgment. Thus, the Receiver wants it both ways, arguing on one hand, without a judgment Vagnozzi cannot have standing, while arguing on the other hand, Vagnozzi should be prevented from obtaining judgment. Respectfully, that is not a "practical consideration." What is practical is that the Court has jurisdiction to determine the "fairness and equity" of the Receiver's proposed "bar order" against

Vagnozzi's claims, and as part of that decision-making, it makes good practical sense for the Court to first determine whether Vagnozzi's malpractice action gives rise to another "claim" that triggers another potential $50 million of insurance proceeds. It certainly makes no practical sense for the Court to decide the "fairness and equity" of the bar order without also determining this $50 million question.[4]

The Receiver's standing argument is ultimately unreliable and should not guide the Court's decision making. The Receiver erroneously assumes that Florida state law controls the question. It clearly does not. The Receiver also wrongly cites Florida statutes and case law such as *S. Owners Ins. Co.* and *Dollar Systems*, while ignoring the 11th Circuit's decision in *Edwards* and the 3rd Circuit's decision in *Federal Kemper*, both of which hold that, under federal common law, an injured third-party like Vagnozzi has standing to obtain a declaration concerning disputed issues involving a tortfeasors' insurance policies.

In the end, Vagnozzi has standing to pursue the proposed declaratory judgment action. Further, given the rather unique factual and procedural posture of this Court's Receivership and the "bar order" that is being requested by the Receiver, the Court should exercise discretion by determining the insurance coverage questions raised by Vagnozzi's declaratory judgment action. Not doing so unnecessarily creates additional appellate issues down the road that the Court can easily avoid by declaring the parties' rights now. The requested declaration is also to the benefit

[4] The very idea of a "bar order" precluding claims by non-parties is a very controversial issue which is subject to intense debate amongst the Circuits and the Supreme Court of the United States. Indeed, this very issue arose in the *Purdue Pharma* bankruptcy, wherein the Sackler Family, owners of Purdue Pharma, have sought approval of a settlement agreement which includes a similar "bar order" that would operate as an involuntarily release barring injured third-parties from pursuing personal liability claims against the Sackler Family as part of a proposed $6 billion settlement of claims arising out of Purdue Pharma's now infamous OxyContin opiate drug. Recently, the U.S. Department of Justice, citing the Circuit split on a bankruptcy court's authority to enter such "bar orders," petitioned the Supreme Court for a stay of the Circuit Court's approval of that settlement and "bar order." (A copy of the government's petition for stay is attached as Exhibit "B.") The Supreme Court granted that stay, pending further briefing on the issue. https://www.nytimes.com/2023/08/11/us/supreme-court-purdue-case.html

of the Receiver's estate. These are "practical considerations" that should guide the Court's analysis.

II. Vagnozzi's Proposed Declaratory Judgment Action Is Not an Attempt to Circumvent the Court's Litigation Stay.

Aside from erroneously attacking Vagnozzi's standing, the Receiver resorts to accusing Vagnozzi of circumventing the Court's Orders and Litigation Stay. It is difficult to understand how Vagnozzi's *request* for leave to file an action designed to resolve an issue directly relevant to the Court's jurisdiction over the Receiver's proposed settlement with Eckert Seamans translates to "circumventing" the Court's Orders. This accusation appears to be more about muddying the waters and unnecessarily casting aspersions against Vagnozzi and his counsel than any merits analysis.

There is no basis for the Receiver's accusations. While the Court did stay Vagnozzi's claims as an "Ancillary Action" because Vagnozzi's claims include allegations of malpractice related to Par Funding (ECF # 788), the Court has *never* addressed whether parts of Vagnozzi's claims are unrelated to Par Funding. That issue is now directly relevant to the unresolved insurance coverage question that is at the heart of Vagnozzi's proposed declaratory judgment action.

Contrary to the Receiver's arguments, Vagnozzi's declaratory judgment action does not seek to relitigate whether Vagnozzi's state malpractice complaint implicates "Receivership Property" as it, in part, concerns Vagnozzi investing client money with Par Funding. Vagnozzi agrees the Court addressed those issues in its prior Orders.

Focusing on the irrelevant fact that Vagnozzi's malpractice claims are, in part, related to Par Funding, the Receiver ignores – and apparently does not dispute – the significant predicate facts underlying Vagnozzi's declaratory judgment action. That is, the Receiver fails to address the fact that Eckert Seamans' and Pauciulo's acts of malpractice in connection with Vagnozzi

investing client money with Fallcatcher, Inc. – a New York based company that developed proprietary methods to detect insurance fraud – had ***nothing*** to do with Par Funding. The Receiver also does not contest that the malpractice related to Vagnozzi's Pillar Life Settlement Funds 1-8 involved ***no money*** invested with Par Funding. These acts of malpractice clearly constitute separate "claims" under the insurance policies at issue in Vagnozzi's proposed declaratory judgment action.

Rather than focusing his opposition on these *relevant* facts, the Receiver chooses to make baseless arguments suggesting Vagnozzi was not personally damaged by Eckert Seamans and Pauciulo's malpractice, but rather, the Receiver states "all of Vagnozzi's claimed damages" are damages incurred by the "Receivership Entities." These statements are not supported – indeed, they are contradicted – by the facts.

For one, the Receiver overlooks that Vagnozzi was a personal client of Eckert Seamans and Pauciulo. The fee agreement establishes this fact.[5] There is no factual dispute that Vagnozzi was first and foremost always a personal client of Eckert Seamans and Pauciulo. In fact, both Eckert and Pauciulo admitted Vagnozzi was their client in the underlying malpractice action, and Pauciulo further admitted Vagnozzi individually was his client in his deposition testimony given in this matter.[6]

There is also no dispute over Pauciulo's reckless malpractice, which completely misled Vagnozzi into believing that his fundraising and investment activities were fully compliant with the law, and in fact victimized Vagnozzi personally beyond measure. In this regard, Vagnozzi

[5] A copy of the September 19, 2010 fee agreement between Dean Vagnozzi and Eckert Seamans is attached as Exhibit "C."

[6] The Answer of Eckert Seamans and Pauciulo, where they admitted Vagnozzi was their client in paragraph 9, is attached as Exhibit "D." The relevant excerpt of Pauciulo's deposition testimony is attached as Exhibit "E", at deposition pages 49-50, 61, 71-72 and 78-79.

provides the Court with a hyperlink containing a sampling of the videos Pauciulo recorded for Vagnozzi from 2010-2020, in which Pauciulo repeatedly assures the investing public that he performed the required "diligence" and that Vagnozzi's funds were fully compliant with all "state and federal securities laws"– the same misrepresentations he recklessly made to Vagnozzi.[7]

The Receiver's assertion that "all of Vagnozzi's claimed damages" are damages of the Receivership Entities is borderline frivolous. In this regard, Vagnozzi has prepared a set of slides demonstrating the immense personal damages – financial, reputational, and emotional – he has suffered because of the egregious acts of malpractice committed by Eckert Seamans and Pauciulo.[8]

As shown in the slides, Vagnozzi has incurred enormous personal financial harm. From 2008-2016, Vagnozzi's personal income ranged from a low of $263,089 to a high of $716,043, an average of $426,000 per year. *See* Ex. F, Vagnozzi Slides 1-2. During this period, Vagnozzi primarily sold various forms of life insurance, including creating the Pillar Life Insurance Funds 1-8, which gives rise to part of Vagnozzi's *non*-Par Funding malpractice claims. Vagnozzi received numerous accolades and national awards for his life insurance sales. *See* Vagnozzi Slide 3. In 2021, due directly to the malpractice, Vagnozzi's personal income plummeted to $9,843, and only increased to $50,721 in 2022 because Vagnozzi finally found employment as a driver for FED EX. *See* Vagnozzi Slides 4, 11.

Vagnozzi's ability to continue his work in the insurance field has also been destroyed. He has been forced to surrender his Pennsylvania insurance license, and despite retaking the state insurance exam and reapplying for his license, the Pennsylvania Department of Insurance denied

[7] https://vimeo.com/showcase/8409185 [password: Johnp]

[8] A copy of the slides demonstrating Vagnozzi's personal damages are attached hereto as Exhibit "F."

his application to be relicensed in May 2023. *See* Vagnozzi Slide 5. Vagnozzi may never be able to work in the insurance field again.

Vagnozzi's personal finances have likewise been destroyed. Vagnozzi's banks and credit card companies – Chase, Capital One, Citizens Bank, Wells Fargo – have all cancelled his credit and loan accounts, citing the "possible reputational risk" to the bank by continuing the relationship and a "material change" to Vagnozzi's "financial circumstances." *See* Vagnozzi Slide 6-8. Vagnozzi has lost access to his home's line of credit and has had vehicles repossessed. *See* Vagnozzi Slide 12.

Although the damage to his professional life and ability to earn a living has been devastating, the emotional distress that Vagnozzi (and his immediate family) endured is even more compelling. Vagnozzi has received implied death threats from anonymous sources. *See* Vagnozzi Slide 9. His children have also received threats online, calling them "bastards" and "whores," while describing Vagnozzi as a "disgrace to humanity" and "fraudulent piece of sh*#." *See* Vagnozzi Slide 10. Vagnozzi's youngest son had to withdraw from college because the family could no longer afford the tuition. *See* Vagnozzi Slide 13.

All the foregoing has taken a tremendous emotional toll on Vagnozzi. He battles depression and anxiety daily. He now fully appreciates the cause of suicidal ideations (though he assures his family that he will not act on them). He was, since 2010, a lector at his church charged with reading the scripture during Sunday services but felt compelled to resign the position for fear of retribution by members of the congregation. *See* Vagnozzi Slide 12.

In light of these purely personal damages, it is difficult to understand how the Receiver can credibly argue that Vagnozzi's claims are really just harm to the Receivership Entities. That, respectfully, is an entirely false narrative that the Court should reject out-of-hand. Vagnozzi's

professional and personal life has been forever altered. The personal consequences of Pauciulo and Eckert Seamans' alleged legal malpractice are not mere damages to the "Receivership Entities," but rather have ruined Vagnozzi's professional, personal and family life.

CONCLUSION

The Receiver's opposition to Vagnozzi's motion is unfortunate. Vagnozzi is asking this Court to determine a crucial issue of insurance coverage that directly relates to the Court's jurisdiction and decision to approve the Receiver's proposed settlement with Eckert Seamans and Pauciulo. That decision involves the availability of an *additional* $50 million of insurance coverage to satisfy Vagnozzi's malpractice claims related to non-Par Funding investments. Vagnozzi's counsel has offered to discuss a sharing arrangement with the Receiver with respect to these potential additional insurance proceeds.[9] There is no good basis to deny Vagnozzi's request to have the Court determine these critical insurance coverage issues. Vagnozzi respectfully requests the Court to grant his motion and give him leave to file the proposed declaratory judgment action.

REQUEST FOR HEARING

Pursuant to Local Rule 7.1(b)(2), Vagnozzi requests the Court to hold a hearing on his Motion. Vagnozzi believes, given the legal issues and the factual arguments raised, the Court would benefit from hearing from the parties, particularly concerning Vagnozzi's personal damages.

[9] It also should not be lost on this Court that the Receiver's proposed settlement does *not* seek to recover any funds from the Eckert firm itself, but rather limits itself to what the Receiver perceives to be Eckert's insurance coverage. The Eckert firm, consisting of more than 300 lawyers, with over 100 equity members, grosses over $140 million a year, with many of its members earning seven figures annually. That this enormous asset and earnings base is being completely ignored by the Receiver (who admits the many victims of Eckert's wrongdoing will still not be fully compensated under its proposed settlement agreement) is difficult to understand. (Even 10% of one-year's revenue would net the victims an additional $14 million. A 30% tax over three years would net the victims $126 million.)

Respectfully submitted,

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By: *s/William G. Wolk*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was electronically filed on August 23, 2023 with the CM/ECF filing portal, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted, this 23rd day of August, 2023.

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Exhibit “A”

Bochetto / Lentz P.C.

George Bochetto†^
Gavin P. Lentz*
Jeffrey W. Ogren*
David P. Heim*
Vincent van Laar*
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PRACTICE DEDICATED TO LITIGATION AND NEGOTIATION MATTERS

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July 21, 2023

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Re: **Proposed Settlement with Eckert Seamans Law Firm**

Dear Tim:

I write as a follow-up to my receipt of the Receiver's proposed Settlement with the Eckert firm and each of its principals including John Pauciulo and our conversation earlier today.

You should be aware that the proposed 45M settlement figure is NOT policy limits (less 5M in diminishing costs of defense), since there unquestionably is more than one claim. Putting aside the inquiry as to whether all the "Par Claims" constitute but "one claim," the malpractice action brought by Dean Vagnozzi contains significant claims TOTALLY UNRELATED to Par, i.e., claims related to the "Pillar" and "multi-strategy" entities and claims related to the "Fallcatcher" entity. There are significant independent damages related to each of these other claims and implicate at a minimum another 50M in available Eckert coverage. (Dean Vagnozzi has been named in three class action lawsuits related to these separate claims, and was fined $500,000 in the Fallcatcher investigation by the New York office of the SEC.) In my discovery including the deposition of Tim Coon (the Chief Legal Officer for Eckert) he acknowledged that Eckert itself put its carrier on notice of the existence of these separate claims and the fact that there is another 50M in coverage.

Further still, the Eckert firm consists of more than 100 partners, each (or most) of whom are millionaires. The Eckert Firm also has annual revenues of over 140M, and some of its partners are routinely paid more than $1M per year in salary and bonuses. It was these principals who chose to under-insure the firm (to save on premiums) and who chose to COMPLETELY OVERLOOK Pauciulo's rogue activities. Why are they getting a free pass?

The Receiver's proposed settlement is far short of what it could and should be, and I would like to further review with you the manner in which this injustice can be addressed before we get to a court hearing in front of Judge Ruiz.

BOCHETTO & LENTZ, P.C.

By: *George Bochetto*
George Bochetto

GB/jb
cc: Gaetan Alfano, Esq. (via email: GJA@Pietragallo.com)

Exhibit “B”

No. 23A___

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2,
APPLICANT

v.

PURDUE PHARMA L.P., ET AL.

APPLICATION FOR A STAY OF THE MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

ELIZABETH B. PRELOGAR
Solicitor General
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PARTIES TO THE PROCEEDING

Applicant (appellee in the court of appeals) is William K. Harrington, United States Trustee, Region 2.

Respondents (appellants and cross-appellees below) are Purdue Pharma, L.P., Purdue Pharma Inc., Purdue Transdermal Technologies L.P., Purdue Pharma Manufacturing L.P., Purdue Pharmaceuticals L.P., Imbrium Therapeutics L.P., Adlon Therapeutics L.P., Greenfield BioVentures L.P., Seven Seas Hill Corp., Ophir Green Corp., Purdue Pharma of Puerto Rico, Avrio Health L.P., Purdue Pharmaceutical Products L.P., Purdue Neuroscience Company, Nayatt Cove Lifescience Inc., Button Land L.P., Rhodes Associates L.P., Paul Land Inc., Quidnick Land L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies, UDF LP, SVC Pharma LP, SVC Pharma Inc, the Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al., the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants, the Raymond Sackler Family, the Ad Hoc Group of Individual Victims of Purdue Pharma, L.P., the Multi-State Governmental Entities Group, and the Mortimer-Side Initial Covered Sackler Persons.

Respondents (appellees and cross-appellants below) also include the City of Grande Prairie, as representative plaintiff for a class consisting of all Canadian municipalities, the Cities of Brantford, Grand Prairie, Lethbridge, and Wetaskiwin, the Peter Ballantyne Cree Nation, on behalf of all Canadian First Nations

and Metis People, the Peter Ballantyne Cree Nation on behalf of itself, and the Lac La Ronge Indian Band.

Respondents (appellees below) further include the State of Washington, State of Maryland, District of Columbia, State of Connecticut, Ronald Bass, State of California, People of the State of California, by and through Attorney General Rob Bonta, State of Oregon, State of Delaware, by and through Attorney General Jennings, State of Rhode Island, State of Vermont, Ellen Isaacs, on behalf of Patrick Ryan Wroblewski, Maria Ecke, Andrew Ecke, and Richard Ecke.

RELATED PROCEEDINGS

United States Bankruptcy Court (S.D.N.Y.):

In re Purdue Pharma L.P., et al., No. 19-23649 (Sept. 17, 2021) (confirming plan of reorganization)

United States District Court (S.D.N.Y.):

In re Purdue Pharma L.P., et al., No. 21-cv-7532 (Dec. 16, 2021) (vacating confirmation order)

United States Court of Appeals (2d Cir.):

In re Purdue Pharma L.P., et al., No. 22-110 (May 30, 2023) (reversing district court judgment)

In re Purdue Pharma L.P., et al., No. 22-110 (July 24, 2023) (denying petition for rehearing and rehearing en banc)

In re Purdue Pharma L.P., et al., No. 22-110 (July 25, 2023) (denying motion for stay of mandate)

IN THE SUPREME COURT OF THE UNITED STATES

No. 23A___

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2, APPLICANT

v.

PURDUE PHARMA L.P., ET AL.

APPLICATION FOR A STAY OF THE MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicant William K. Harrington, United States Trustee for Region 2, respectfully applies for a stay of the mandate of the United States Court of Appeals for the Second Circuit associated with its May 30, 2023 judgment (App., infra, 3a-99a), pending the consideration and disposition of the government's forthcoming petition for a writ of certiorari and any further proceedings in this Court.

This case concerns the reorganization in bankruptcy of Purdue Pharma L.P. and its affiliates, stemming from their role in fueling the opioid epidemic that has plagued and continues to plague this country. In approving Purdue's Chapter 11 reorganization plan, the decision below validated a sweeping nonconsensual release of

nondebtors' claims against nondebtor third parties. By holding that the bankruptcy court had authority to approve that release, the court of appeals pinned itself firmly on one side of a widely acknowledged circuit split about an important and recurring question of bankruptcy law that "would benefit from nationwide resolution by [this] Court." App., infra, 87a-88a (Wesley, J., concurring). A stay is necessary for two reasons: (1) to prevent piecemeal implementation of Purdue's massive reorganization plan, which involves billions of dollars and affects a vast number of claimants; and (2) to avoid potential disputes about the equitable-mootness doctrine that could complicate this Court's resolution of the important question whether the Bankruptcy Code authorizes non-consensual third-party releases.

Until recently, Purdue was controlled by members of the Raymond and Mortimer Sackler families. Members of those families, who withdrew approximately $11 billion from Purdue in the eleven years before the company filed for bankruptcy, App., infra, 19a, have now agreed to contribute up to $6 billion to fund Purdue's reorganization plan, id. at 40a, but only on the condition that the Sacklers and a host of other individuals and entities -- who have not themselves sought bankruptcy protection -- receive a release from liability that is of exceptional and unprecedented breadth. The plan's release "absolutely, unconditionally, irrevocably, fully, finally, forever[,] and permanently release[s]" the Sacklers from every conceivable type of opioid-related civil claim

-- even claims based on fraud and other forms of willful misconduct that could not be discharged if the Sacklers filed for bankruptcy in their individual capacities. Id. at 25a (quoting C.A. SPA 920). The Sackler release extinguishes the claims of all opioid claimants except the United States, and therefore applies to an untold number of claimants who did not specifically consent to the release's terms.

The Sackler release is not authorized by the Bankruptcy Code, constitutes an abuse of the bankruptcy system, and raises serious constitutional questions by extinguishing without consent the property rights of nondebtors against individuals or entities not themselves debtors in bankruptcy. The Bankruptcy Code grants courts unusual powers specifically authorized by the Constitution for addressing true financial distress. Allowing the court of appeals' decision to stand would leave in place a roadmap for wealthy corporations and individuals to misuse the bankruptcy system to avoid mass tort liability. That is not what Congress enacted the Bankruptcy Code to accomplish. And if such abuses are permitted, the gamesmanship that is sure to follow will only amplify the harms to victims by redistributing bargaining power to tortfeasors. Given the substantial legal problems and serious threat to the public interest posed by nonconsensual third-party releases, the Solicitor General has determined to seek review of the court of appeals' decision in this Court and will file a certiorari petition by August 28, 2023 -- nearly two months before

the petition's due date and, if no extensions are granted for the filing of responses to the petition, in time for the Court to consider the petition at its October 27 conference.

This case is a clear-cut candidate for this Court's review. The courts of appeals are sharply and intractably divided on the question whether nonconsensual third-party releases are lawful. Likewise, the practical and legal importance of the question both in this case and for the bankruptcy system cannot seriously be disputed. Indeed, Judge Wesley's concurrence below specifically recognized that the question presented here "would benefit from nationwide resolution by the Supreme Court." App., infra, 87a-88a. The result reached by the court of appeals is also incorrect. No provision of the Code authorizes the sweeping power of releasing nonconsenting third parties' claims against nondebtors, and this Court has repeatedly rejected the premise at the heart of the court of appeals' reasoning: that courts sitting in bankruptcy may take virtually any action not expressly forbidden by the Bankruptcy Code. In addition, that interpretation of the Code would raise serious constitutional questions by extinguishing private property rights without providing an opportunity for the rights holders to opt in or out of the release.

Although the bankruptcy court confirmed the reorganization plan on September 17, 2021, no steps have been taken to implement that plan since the district court vacated the confirmation order on December 16, 2021. The court of appeals issued its decision

reversing the district court's judgment on May 30, 2023, thirteen months after hearing oral argument. But, on July 25, 2023, the court of appeals denied the government's motion to stay the issuance of its mandate pending this Court's disposition of the government's forthcoming petition for a writ of certiorari. In light of that ruling, the mandate will issue on August 1, 2023, which necessitates stay relief from this Court. See Fed. R. App. P. 41(b).

Maintaining the status quo is necessary to prevent piecemeal implementation of a massive reorganization plan that will impose obligations involving billions of dollars, lasting for more than a decade, and directly affecting a vast number of claimants, including all fifty States and the District of Columbia. The plan's proponents have continually represented that the nonconsensual third-party Sackler release is a key component of the plan, and there should be certainty about its legal viability before the plan is permitted to take effect. A stay would, at a minimum, avoid potentially wasteful implementation steps that would siphon resources from the estate in the event that this Court ultimately upholds the district court's order vacating the plan.

A stay of the court of appeals' mandate would also preserve this Court's ability to review the government's forthcoming petition for a writ of certiorari without needing to address any threshold questions about the validity and applicability of the equitable-mootness doctrine, a bankruptcy-specific practice ap-

plied by some lower courts, under which a court may dismiss an appeal from an unstayed order confirming a reorganization plan because the plan has already been substantially consummated. If the court of appeals' mandate in this case is not stayed, the plan proponents may act swiftly to consummate the plan before this Court can issue a merits decision and thereby (in their view) render equitably moot the government's appeal of the Sackler release. Indeed, although the proponents have taken varying positions about what actions might constitute substantial consummation of the plan, there is no dispute that, absent a stay, the plan is likely to be substantially consummated before this Court would have an opportunity to issue a merits decision in this case. The government would dispute the applicability of the equitable-mootness doctrine, which this Court has not endorsed. But a stay would ensure that this Court's review would be unencumbered by any need to consider equitable mootness. And if the Court were ultimately to deem the doctrine applicable here, a stay would prevent the validity of the Sackler release from evading this Court's review.

Because substantial consummation cannot occur in a matter of days, the Court need not resolve this stay application by the August 1 issuance of the court of appeals' mandate. But recalling and staying the mandate relatively soon after that date would ensure that no substantial steps occur and would further serve the public interest by providing legal certainty before piecemeal and potentially wasteful implementation steps proceed. See, e.g.,

Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 5 (2018) (recalling and staying court of appeals' mandate pending the timely filing and disposition of a petition for a writ of certiorari).

In light of the benefits of prompt resolution of this case, the Court may wish to construe this application as a petition for a writ of certiorari presenting the question whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by nondebtors against nondebtor third parties, without the claimants' consent. Cf. Nken v. Mukasey, 555 U.S. 1042 (2008). Granting review of that question while also granting a stay would facilitate expedited review that would either confirm the legal viability of the Sackler release or restore third parties' property rights and pave the way for the negotiation and confirmation of a lawful plan without a nonconsensual release. Otherwise, the Solicitor General will file a petition for a writ of certiorari -- which is due on October 23, 2023 -- on or before August 28, 2023.

STATEMENT

A. Background

Purdue Pharma L.P. manufactured, sold, and distributed OxyContin and other medications that contributed to the opioid epidemic. See App., infra, 17a. Until recently, Purdue was controlled by members of the Raymond and Mortimer Sackler families. Id. at 16a-17a. Under the Sacklers' leadership, Purdue aggres-

sively marketed OxyContin to doctors and pain patients while downplaying the risks of addiction. Id. at 17a. But many patients who had been prescribed OxyContin became addicted to the drug. C.A. SPA 16. Many other people began using OxyContin recreationally. Ibid. Nearly 247,000 people in the United States died from prescription-opioid overdoses between 1999 and 2019. C.A. SPA 18.

The opioid crisis spawned a flood of litigation against both Purdue and the Sacklers. To protect themselves from potential money judgments, the Sacklers withdrew approximately $11 billion from Purdue and transferred a significant portion of their wealth overseas. App., infra, 19a, 28a. Purdue then filed for bankruptcy relief. The Sacklers did not. Instead, the Sacklers negotiated a separate settlement with Purdue and a subset of plaintiffs, which Purdue implemented in its proposed plan of reorganization. Under the plan, Purdue would reinvent itself as a public-benefit company dedicated to abating the opioid crisis. The estate's remaining funds would be used to pay administrative expenses before being distributed to various creditor trusts, with the bulk of the distributions to be used for abatement. Under that distribution scheme, an opioid victim -- even one who suffered catastrophic injuries -- is likely to receive between $3,500 and $48,000, with payments to some victims to be spread out over ten years. See C.A. J.A. 1695, 1697, 1800, 1805, 1812; see also C.A. SPA 640 ("[I]t may take years before you receive all of your Award.").

The bankruptcy estate does not hold sufficient assets to fund the plan, in part because the Sacklers "drained Purdue's total assets by 75%" and reduced Purdue's "'solvency cushion' by 82%." App., infra, 19a (citation omitted). The Sacklers -- who were worth approximately $11 billion as of June 2021, C.A. J.A. 1852 -- initially agreed to fund the plan by contributing $4.325 billion through payments spread over nearly a decade. App., infra, 24a. In exchange, the plan would extinguish virtually all opioid-related claims against the Sacklers and against hundreds if not thousands of associated nondebtors without the consent of all affected claimants. Although the plan attracted overwhelming support from those creditors who voted, several States and more than 2,600 personal-injury claimants who voted opposed confirmation. See C.A. J.A. 6258, 6260. And hundreds of thousands of claimants failed to vote at all; fewer than 20% of 618,194 claimants entitled to vote -- and fewer than 50% of the subset of claimants with personal-injury claims -- ended up voting on the plan. C.A. J.A. 6253, 6258.

B. Proceedings Below

1. The bankruptcy court confirmed the plan over the objections of, among others, the United States Trustee, eight States, and the District of Columbia. See 633 B.R. 53, 53-115; see also 11 U.S.C. 307 (authorizing the United States Trustee to "raise" and "appear and be heard on any issue in any case or proceeding under" the Bankruptcy Code). On appeal, the district court vacated

the confirmation order, concluding that the Bankruptcy Code does not authorize courts to extinguish direct claims held by nondebtors against nondebtors. See 635 B.R. 26, 26-118. Debtors and several plan proponents appealed.

While the appeals were pending before the court of appeals, the objecting States and the District of Columbia reached an additional deal with debtors and the Sacklers. App., infra, 40a-41a. Under that deal, the Sacklers again increased their proposed contribution, agreeing to pay a further "$1.175 billion in guaranteed payments" and "up to $500 million in contingent payments." C.A. J.A. 1542, 1565-1570. The States and the District of Columbia agreed "not [to] oppose" the pending appeals, C.A. J.A. 1543, but reserved their right to file "amicus briefs only at the merits stage in the Supreme Court should the Supreme Court grant certiorari," C.A. J.A. 1551. The State of Connecticut (which was one of the objecting States) has already indicated that it "will firmly stand behind" the district court if certiorari is granted because "[n]on-consensual third-party releases are wrong, and * * * the law should not[] and does not permit them." Office of the Attorney General, Conn., Attorney General Tong Statement on Appeals Court Decision Enabling Purdue Settlement to Proceed (May 30, 2023), https://perma.cc/52MQ-BM3D.

2. a. On May 30, 2023, a divided panel of the court of appeals reversed the district court's order. At the threshold, the majority held that the bankruptcy court had subject-matter

jurisdiction over third-party direct claims against nondebtors. App., infra, 49a. It further held that the claims encompassed by the third-party release are non-core under Stern v. Marshall, 564 U.S. 462, 471 (2011), meaning that the district court, rather than the bankruptcy court, must enter final judgment. App., infra, 41a-42a. On the merits, the majority held that two provisions of the Bankruptcy Code, read together, authorize courts sitting in bankruptcy to approve nonconsensual third-party releases. Id. at 52a-58a. The first provision states that "[t]he [bankruptcy] court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Code. 11 U.S.C. 105(a). The second provision states that "a plan may[] * * * include any other appropriate provision not inconsistent with the applicable provisions of" the Code. 11 U.S.C. 1123(b)(6).

The majority acknowledged that Section 105(a) does not confer any independent authority on bankruptcy courts; any invocation of Section 105(a) must instead be "tied to another Bankruptcy Code section." App., infra, 54a (citation omitted). But the majority interpreted Section 1123(b)(6) to permit courts sitting in bankruptcy to take any action not "expressly forbid[den]" by the Code. Id. at 55a. The majority concluded that, because the Code does not expressly prohibit the approval of nonconsensual third-party releases in bankruptcy, such releases are authorized by both Section 105(a) and Section 1123(b)(6). That conclusion, the majority explained, was consistent with prior decisions of the court of

appeals approving such releases in other contexts. Id. at 58a-64a.

As to the government's constitutional arguments, the majority acknowledged that the extinguished claims were a species of property interest. App., infra, 78a. But the majority held that affected claimants had been afforded constitutionally sufficient notice. Id. at 79a-80a. The majority also held that the bankruptcy court did not violate due process by terminating nondebtors' opioid claims against other nondebtors without consent. Id. at 80a-81a.

The majority then adopted a seven-factor balancing test to govern the approval of such releases. These factors are: (1) whether there is an identity of interests between debtors and released parties; (2) whether the released claims are factually and legally intertwined with claims against the debtor; (3) whether the breadth of release is necessary to the plan; (4) whether the releases are essential to the reorganization; (5) whether the released nondebtors contributed substantial assets to the reorganization; (6) whether the impacted claimants expressed overwhelming support for the plan; and (7) whether the plan provides for the fair payment of enjoined claims. App., infra, 66a-69a. Concluding that the Sackler release satisfies this test, the majority affirmed "the bankruptcy court's approval of the Plan" and remanded the case to district court for further proceedings. Id. at 85a.

b. Concurring in the judgment, Judge Wesley "reluctantly" agreed with the majority's conclusion that a bankruptcy court has authority to approve nonconsensual third-party releases in light of "binding" Second Circuit precedent. App., infra, 86a. But he expressed considerable skepticism of the court's reasoning in its earlier cases, which he viewed as being "without any basis in the Code." Id. at 87a. He urged this Court to resolve the question, which, he observed, "has divided the courts of appeals for decades." Ibid.

3. The government filed a motion to stay the court of appeals' mandate, explaining that the Solicitor General had decided to seek certiorari. On July 24, 2023, the court of appeals denied a petition for rehearing filed by a creditor. On July 25, the court denied the government's motion for a stay of the mandate. App., infra, 1a-2a. Without a stay from this Court or the Circuit Justice, the court of appeals' mandate will issue on August 1.

ARGUMENT

An applicant for a stay pending certiorari must establish (1) "a reasonable probability that this Court would eventually grant review," (2) "a fair prospect that the Court would reverse," and (3) that the applicant "would likely suffer irreparable harm absent the stay" and "the equities" otherwise support relief. Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Those requirements are satisfied here.

I. THIS COURT IS LIKELY TO GRANT THE GOVERNMENT'S PETITION FOR CERTIORARI

A. The court of appeals in this case upheld a sweeping nonconsensual third-party release protecting the Sacklers, who significantly contributed to the Nation's opioid crisis, in one of the highest-profile bankruptcies in recent years. As both the panel majority and Judge Wesley's concurrence acknowledged, the decision below squarely conflicts with the decisions of several other courts of appeals. See App., infra, 57a (recognizing that the Fifth, Ninth, and Tenth Circuits have interpreted the Code as "bar[ring] * * * third-party releases"); id. at 98a ("[T]he majority's [decision] pins this Circuit firmly on one side of a weighty issue that, for too long, has split the courts of appeals.").

The decision below directly conflicts with decisions by three other courts of appeals that have held that the Bankruptcy Code does not authorize courts to approve nonconsensual third-party releases. See In re Pacific Lumber Co., 584 F.3d 229, 252 (5th Cir. 2009) (holding that the Code "only releases the debtor" and citing prior cases that "seem broadly to foreclose non-consensual non-debtor releases"); In re Lowenschuss, 67 F.3d 1394, 1401-1402 (9th Cir. 1995) (holding that "the bankruptcy court lacked the power to approve the provision which released claims against non-debtors" without consent, and "reject[ing] the argument * * * that the general equitable powers bestowed upon the bankruptcy court by

11 U.S.C. § 105(a) permit the bankruptcy court to discharge the liabilities of non-debtors"); In re Western Real Estate Fund, Inc., 922 F.2d 592, 600 (10th Cir. 1990) (per curiam) (rejecting a non-consensual release because "[o]bviously, it is the debtor, who has invoked and submitted to the bankruptcy process, that is entitled to its protections; Congress did not intend to extend such benefits to third-party bystanders"), modified sub nom. Abel v. West, 932 F.2d 898 (10th Cir. 1991). Had Purdue sought bankruptcy protection in one of those circuits, the Sackler release would not have been approved.

On the other side of the ledger, six circuits, including the court of appeals in this case, have held that nonconsensual third-party releases are permissible in at least some circumstances. See App., infra, 52a-70a (2d Cir.); In re Millennium Lab Holdings II, LLC, 945 F.3d 126, 139 (3d Cir. 2019); In re A.H. Robins Co., 880 F.2d 694, 701-702 (4th Cir. 1989); In re Dow Corning Corp., 280 F.3d 648, 656-660 (6th Cir. 2002); In re Airadigm Commc'ns, Inc., 519 F.3d 640, 655-657 (7th Cir. 2008); In re Seaside Eng'g & Surveying, Inc., 780 F.3d 1070, 1075-1079 (11th Cir. 2015).

That conflict is as entrenched as it is deep, and therefore requires this Court's review. The decision below recognized the conflict in the circuits yet expressly rejected the reasoning of the Fifth, Ninth, and Tenth Circuits. App., infra, 56a-58a. On the other side of the split, the Fifth Circuit has observed that its "firm[] * * * opposition to such releases" "is not universally

shared by our sister circuits." In re Vitro S.A.B. de CV, 701 F.3d 1031, 1061, 1062 (2012). Other circuits have acknowledged the split before choosing to follow one side or the other. See, e.g., Seaside Eng'g & Surveying, 780 F.3d at 1077 ("Other circuits are split as to whether a bankruptcy court has the authority to issue a non-debtor release."); Dow Corning, 280 F.3d at 657 ("[S]ome courts have found that the Bankruptcy Code does not permit enjoining a non-consenting creditor's claims against a non-debtor."). As Judge Wesley recognized in his concurrence, "a nondebtor's ability to be released through bankruptcy turns on where a debtor files," and that intractable and practically significant circuit conflict would "benefit from nationwide resolution by the Supreme Court." App., infra, 87a-88a, 98a.

B. Certiorari is also warranted because this case concerns an important and recurring issue of nationwide significance. The question whether nonconsensual third-party releases are lawful arises with some regularity. See, e.g., In re Boy Scouts of America & Delaware BSA, 650 B.R. 87, 135-143, 185 (D. Del. 2023) (approving release of sexual abuse claims against third parties in case with more than 80,000 claimants); In re Aegean Marine Petroleum Network Inc., 599 B.R. 717, 726 (Bankr. S.D.N.Y. 2019) (observing that "[a]lmost every proposed Chapter 11 Plan that [the court] receive[s] includes proposed releases"); Patterson v. Mahwah Bergen Retail Grp., 636 B.R. 641, 654 (E.D. Va. 2022) (noting that a bankruptcy court in that district "regularly approves third-

party releases"). But the question of the validity of nonconsensual third-party releases is rarely presented cleanly for this Court's review either because of factual complications or because of complications like equitable mootness, which can allow the validity of a confirmed plan to evade effective appellate review. Suitable vehicles presenting the question will become even more rare if the decision below is permitted to stand: In light of the flexible venue rules applicable to bankruptcy cases, most large debtors who seek to confirm a plan with such a release will be able to file their petitions within the Second Circuit. See 28 U.S.C. 1408. Particularly given the Second Circuit's expansive application of equitable mootness, the clear circuit precedent authorizing such releases would make it difficult to obtain appellate review. See In re BGI, Inc., 772 F.3d 102, 108 (2d Cir. 2014).

Moreover, the question has great practical significance in this case. The underlying bankruptcy stems from Purdue's role in fueling the opioid epidemic that has plagued and continues to plague this country. The plan of reorganization confirmed by the bankruptcy court purports to resolve hundreds of thousands of claimants' claims against Purdue, including those held by individual victims of the opioid crisis and by governmental entities. Those claims are worth an estimated $40 trillion. App., infra, 22a. By its terms, however, the plan does not compensate claimants for the value of their separate claims against the Sacklers or

against other released nondebtors. At the confirmation hearing, debtors did not analyze those claims and disclaimed any need to value them, stating that they did not "feel that it was possible to adequately or accurately estimate" the claims' value. C.A. J.A. 1199; see C.A. J.A. 806, 1197-1199. Yet the Sackler release extinguishes all those separate claims in their entirety, including those belonging to the tens of thousands of personal-injury claimants who did not consent to the release's terms. In light of the deep and acknowledged circuit conflict and vast legal and practical significance of this question, there is a strong likelihood -- far more than the required "reasonable probability" -- that this Court will grant review. Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring).

II. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. There is also more than a "fair prospect that the Court would reverse" if it granted review. Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring). The traditional tools of statutory interpretation confirm that the Sackler release cannot be reconciled with the Bankruptcy Code. Congress enacted the Bankruptcy Code under the Bankruptcy Clause of the U.S. Constitution, which vests Congress with power to "adjust[] * * * a failing debtor's obligations." Railway Labor Execs.' Ass'n v. Gibbons, 455 U.S. 457, 466 (1982) (citation omitted). Bankruptcy is the "subject of the relations between a[] * * * debtor[] and his creditors, extending to his and their relief." Wright v. Union Cent. Life Ins.

Co., 304 U.S. 502, 513-514 (1938) (citation omitted). To balance those relations, the Code establishes a basic quid pro quo. A debtor seeking bankruptcy relief must shoulder a host of obligations -- such as the obligation to disclose all its creditors, its assets and liabilities, its current income and expenditures, and matters relating to its financial affairs. 11 U.S.C. 521(a). Absent the consent of individual creditors, 11 U.S.C. 1129(a)(7), the debtor must then apply all its assets (with certain narrow exemptions, see 11 U.S.C. 522) to the satisfaction of its creditors' claims. In exchange, the debtor receives a discharge of its debts, except for those that Congress deemed nondischargeable as a matter of public policy, such as an individual debtor's debts "for money * * * to the extent obtained by[] * * * fraud." 11 U.S.C. 523(a)(2)(A).

In light of that basic structure, the Bankruptcy Code authorizes discharging the debtor from personal liability for any debts. 11 U.S.C. 524(a). But, with a narrow exception for bankruptcies arising from the manufacture or sale of asbestos, 11 U.S.C. 524(g), the Code provides no express authority to release nondebtors from personal liability. Illustrating the Code's focus on the debtor, Section 524(e) states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. 524(e). That makes sense: A nondebtor has not assumed the many duties and obligations

specified by the Code, so it should not be permitted to reap the Code's rewards.

The structure of the Code underscores that point. The Code contains hundreds of provisions addressing the relationship between a debtor and its creditors. By contrast, just one Code provision, Section 524(g), authorizes the discharge of claims against nondebtors. That specific and carefully circumscribed authorization applies solely to bankruptcies arising from the manufacture and sale of asbestos, authorizes the release only of a subset of asbestos-related claims against nondebtors who are in one of four specified types of legal relationships with the debtor, and does so only if the release satisfies stringent requirements. 11 U.S.C. 524(g). Section 524(g) expressly states that such releases are permitted "[n]otwithstanding the provisions of section 524(e)." 11 U.S.C. 524(g)(4)(A)(ii). The overwhelming number of Code provisions relating to the discharge of a debtor's liabilities, combined with the absence of any applicable Code provision relating to the discharge of a nondebtor's liabilities outside the asbestos context, confirms that Congress intended to authorize nondebtor releases in asbestos bankruptcies alone.

The Sackler release conflicts with the Code in other ways as well. When Purdue filed for bankruptcy, the Sacklers and other released individuals were defendants in hundreds of civil actions alleging causes of action such as fraud. None of those individual defendants would have been able to discharge such claims had they

filed for bankruptcy themselves. See 11 U.S.C. 523(a)(2), (4), (6) (forbidding the discharge of debts for fraud, breach of fiduciary duty, and willful and malicious injury in individual bankruptcies when creditors have timely objected); Archer v. Warner, 538 U.S. 314, 321 (2003) ("[The Code] ensure[s] that all debts arising out of fraud are excepted from discharge[] no matter what their form." (citation omitted)).

The Sacklers also would not have been able to shield billions of dollars from their creditors because, absent individual creditor consent, debtors must devote substantially all assets to the payment of creditors and may be held to account for any fraudulent or constructively fraudulent transfers they may have made. Yet the Sacklers obtained a discharge of virtually all opioid-related causes of action -- including claims for fraud -- not by declaring bankruptcy, but by stripping billions of dollars from Purdue in the years before its bankruptcy and then offering to reinfuse only a portion of their assets into the estate. See Bankr. Ct. Doc. 3469, at 6 (Aug. 6, 2021) (opining that the Sacklers' net worth, estimated at $10.707 billion in 2019 and 2020, was expected to rise to $14.574 billion by 2030, even after accounting for proposed plan payments).

To take another example, Congress has provided that "[the Bankruptcy Code] do[es] not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C.

1411(a). But, while the plan allows claimants with personal-injury or wrongful-death claims against Purdue to pursue their claims before a jury, C.A. SPA 633, 657-662, the release extinguishes claimants' personal-injury and wrongful-death claims against the Sacklers and other nondebtors without preserving their jury right, see C.A. SPA 922-924.

B. The court of appeals grounded its decision approving the release in two generic Code provisions, 11 U.S.C. 105(a) and 1123(b)(6). App., infra, 52a-55a. Those provisions embody the "traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." United States v. Energy Res. Co., 495 U.S. 545, 549 (1990) (emphasis added). The court interpreted those provisions to mean that the equitable power of a court sitting in bankruptcy "is limited only by what the Code expressly forbids, not what the Code explicitly allows." App., infra, 55a. That interpretation would permit the approval of bankruptcy plans containing all manner of other provisions that are not expressly forbidden by the Code -- granting habeas relief to corporate officers in prison, for example, or granting easements to the real property of the debtor's neighbors -- so long as the court found such actions to be "appropriate" in ensuring the successful reorganization of the debtor. See 11 U.S.C. 1123(b)(6).

The court of appeals erred in deriving such a vast power -- one that, in many respects, dwarfs the powers specifically given

courts under the Code -- from general provisions preserving bankruptcy courts' residual equitable authority. This Court has recently emphasized that "were [Congress] to intend a major departure" from a fundamental principle of bankruptcy, "more than simple statutory silence" is required. Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 465 (2017). There is no principle more fundamental than that bankruptcy provides for restructuring "the relations between a[] * * * debtor[] and his creditors," Wright, 304 U.S. at 513-514 (citation omitted), rather than forcibly restructuring the relations between third parties and nondebtors. And by approving a release that goes far beyond what would be permitted if the Sacklers themselves underwent bankruptcy, the court of appeals impermissibly read the Code's general authorization to approve "appropriate provision[s]" to swallow its "more limited, specific authorization[s]." RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645-646, 649 (2012).

This Court has repeatedly rejected efforts to give general provisions of the Code such sweeping reach, holding instead that a bankruptcy court may not rely on general grants of residual equitable authority to reach outcomes incompatible with the structure and purposes of the Code. See Czyzewski, 580 U.S. at 465; Law v. Siegel, 571 U.S. 415, 423-424 (2014); RadLAX, 566 U.S. at 645. And the error of the court of appeals' approach is well illustrated by the court's decision to craft a seven-factor test, entirely unmoored from the Code's text, to determine which non-

consensual third-party releases are permissible. See App., infra, 66a-69a. Where Congress specifically authorized the discharge of claims against nondebtors, it provided specific limits on that power. The court of appeals' judicial freewheeling to place ostensible limits on the "extraordinar[y]" power, id. at 87a (Wesley, J. concurring), that it inferred from the Code's residual provisions is no substitute for Congress's reticulated judgments.

C. Even if the Code's residual-authority provisions were susceptible to the court of appeals' interpretation (and they are not), they do not provide a sufficiently clear authorization for nonconsensual third-party releases in light of the serious constitutional questions that interpretation raises. "[A] cause of action is a species of property." Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). And if Congress "wishes to significantly alter * * * the power of the Government over private property," it must "enact exceedingly clear language." U.S. Forest Serv. v. Cowpasture River Pres. Ass'n, 140 S. Ct. 1837, 1849-1850 (2020). The bankruptcy court's approval of the Sackler release extinguishing nondebtors' rights against other nondebtors unquestionably effectuates such an alteration. But neither Section 105(a) nor Section 1123(b)(6) contains the "exceedingly clear language" required to sustain that result. Ibid.

More generally, this Court will not "construe the [Code] in a manner that could in turn call upon the Court to resolve" "difficult and sensitive" constitutional questions if a contrary con-

struction is "fairly possible." United States v. Security Indus. Bank, 459 U.S. 70, 78, 82 (1982) (citations omitted). Yet the Sackler release permanently extinguishes virtually all opioid-related claims against the Sacklers and other nondebtors without the consent of every affected claimant and without an opportunity for an objecting claimant to opt in or opt out of the release. Even in the context of class actions, which are specifically designed to facilitate the mass resolution of claims, "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class." Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812-813 (1985). For that reason, there is "substantial doubt" whether the Sackler release comports with due process. Security Indus. Bank, 459 U.S. at 78 (citations omitted). Because neither Section 105(a) nor Section 1123(b)(6) "must necessarily be applied in that manner," the court of appeals' construction must be rejected. Ibid.

III. THE EQUITIES FAVOR A STAY

Once the court of appeals' mandate issues, the district court will be required to enter final judgment consistent with the court of appeals' analysis.* At that point, debtors will be free to

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* The court of appeals correctly held that the Sackler release encompassed non-core claims that an Article III court must approve under Stern v. Marshall, 564 U.S. 462 (2011), and the court then proceeded to "decide all pertinent issues necessary to confirm the [p]lan." App., infra, 44a. Although the court indicated that it was affirming the bankruptcy court's approval of the plan, id. at 85a, the resolution required under Stern was a remand to the

take steps to substantially consummate the plan. The plan proponents have made clear that, once the plan is substantially consummated, they will seek dismissal of any challenge to the plan confirmation order under the judge-made doctrine of equitable mootness. See C.A. J.A. 2000 ("[A]bsent a stay pending appeal, * * * the Plan may be substantially consummated during the pendency of the appeal. Upon substantial consummation of the Plan, any appeal of the Confirmation Order may become equitably moot."); see also, e.g., No. 21-7532 D. Ct. Dkt. No. 66, at 7 n.3 (declining to "waive the right to argue * * * equitabl[e] moot[ness]"). This Court has never endorsed the equitable-mootness doctrine, but it has often been invoked by lower courts to dismiss appeals from confirmation orders, even when aspects of the underlying reorganization plans are, or may be, found to be unlawful. An exception may be made when "the appellant pursued with diligence all available remedies to obtain a stay of execution of the objectionable order." BGI, 772 F.3d at 108 (citation omitted).

The government would dispute the applicability of equitable mootness in this case. But any assertion of equitable mootness would require this Court to address questions about the validity and applicability of that doctrine alongside the important merits question presented here. Although the reorganization plan's proponents have taken varying positions as to what actions might

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district court with instructions to enter final judgment approving the plan. See 564 U.S. at 502-503.

constitute substantial consummation of the plan, it is undisputed that, absent a stay of the court of appeals' mandate, the plan is likely to be substantially consummated before this Court would have an opportunity to issue a merits decision in this case. See, e.g., Purdue C.A. Opp'n to Stay Mot. 4, 11 (July 17, 2023) (contending that the earliest the plan is likely to be substantially consummated is December of this year, while appearing to recognize that a stay may be necessary to prevent substantial consummation if this Court grants review); Official Committee of Unsecured Creditors C.A. Opp'n to Stay Mot. 19-20 (suggesting that substantial consummation could occur seven days after Purdue's sentencing, i.e., potentially by late November). A stay is necessary to remove any question of the doctrine's potential application and to ensure this Court's ability to review the exceptionally important question at issue here.

The government and the public interest would be harmed if the panel's decision were to evade this Court's review. As this case reveals, nonconsensual third-party releases enable wealthy and powerful tortfeasors to obtain legal immunity from tort victims -- and to do so for a far broader array of claims than could be discharged by declaring bankruptcy themselves, without ever having to subject themselves to scrutiny under the procedures set forth by the Bankruptcy Code. Such releases permit tortfeasors to choose what portion of their non-exempt assets to give up in exchange for full repose (including for claims based on fraud), defying the

basic quid pro quo at the heart of the Code. Those releases deprive tort victims of their day in court without consent. And they erode public confidence in the bankruptcy system, which Congress established to restructure a debtor's relationship with its creditors -- not to resolve mass-tort liability against nondebtors by terminating claims belonging to other nondebtors who wish to proceed outside of bankruptcy.

Indeed, the Second Circuit's endorsement of the legality of the Sackler release threatens to make subsequent releases even less favorable to tort victims by further redistributing bargaining power to tortfeasors. To insulate themselves from the risk of an adverse decision in the Second Circuit, the Sacklers agreed to pay up to an additional $1.675 billion to obtain the consent of the objecting States and the District of Columbia. App., infra, 40a-41a. If nonconsensual releases are unavailable, tortfeasors will have to continue to provide substantial compensation for claimants in exchange for their consent. By contrast, if the claims of some claimants could be extinguished by a vote of other claimants, the amounts paid by nondebtor tortfeasors in future bankruptcies will likely be lower -- with a commensurate reduction in benefits to future estates.

The decision below further threatens the public interest because it permits courts to extinguish private property rights over a claimant's objection. And the power to terminate claims without consent goes beyond claims belonging to private citizens to those

held by sovereigns, including States, Indian Tribes, and the federal government. One bankruptcy court has relied on similar reasoning to confirm -- over the United States' objection -- a plan of reorganization purporting to exculpate nondebtors from future civil and even criminal claims belonging to the United States. See In re Voyager Digital Holdings, Inc., 649 B.R. 111 (Bankr. S.D.N.Y. 2023), appeal pending, No. 23-cv-2171 (S.D.N.Y. June 8, 2023). The plan proponents in that case have already invoked the court of appeals' decision in the appeal to the district court. See Debtors' Citation of Supplemental Authority, In re Voyager Digital Holdings, Inc., No. 23-cv-2171 (S.D.N.Y. June 8, 2023).

The government is sensitive to the fact that continuing to litigate this important and recurring question could delay the implementation of the reorganization plan, with its concomitant benefits to States, municipalities, and individual opioid victims. But that delay is of the Sacklers' own making. Faced with numerous opportunities to allow opioid claimants to decide whether to be bound by the third-party release, the Sacklers instead insisted on pursuing a nonconsensual release that violates the Bankruptcy Code. Although that proposal obtained the support of the Official Committee of Unsecured Creditors and other plan proponents, it was the Sacklers who chose to condition their contributions on a nonconsensual release. See, e.g., C.A. J.A. 665 (declaration by David Sackler that the Sacklers were "only willing to support and fund

this Shareholder Settlement as part of a resolution in which we receive the broad releases contemplated by the proposed Plan").

It is also important to put the cost of delay in context. The current plan provides for payments to be made over many years. See, e.g., C.A. SPA 640. And while some of the funding would come from Purdue, the plan allows the Sacklers to stagger their initial $4.325 billion contribution over ten years, with only $300 million (less than 7% of that total) required to be paid upon the effective date of the plan. See C.A. J.A. 3490 (establishing schedule for required minimum payments by the Sacklers). The additional contribution that the Sacklers negotiated with the eight objecting States and the District of Columbia will not commence until June 2031 and will be spread over time through June 2039. C.A. J.A. 1570. And those timelines will already have to be renegotiated due to the time that these appeals have been pending in the Second Circuit -- meaning that Purdue and the Sacklers could compensate for any additional period of this Court's review by agreeing to an accelerated payment schedule. See Bankr. Ct. Doc. 3711, at 4 (Aug. 31, 2021) (representing that the shareholder settlement agreement "may be amended, modified[,] or supplemented from time to time by the Debtors in accordance with the Plan").

For those reasons -- and in light of the serious harm to the public interest, nonconsenting claimants in this case, and future mass tort victims of forgoing review -- the Court should not deny review simply because it will create limited additional delay.

And because this case so readily meets the criteria for certiorari, denying the stay would harm the public interest by creating uncertainty about the plan's current status, leading the plan proponents to incur costs in implementing a plan that this Court is likely to vacate, serving only to reduce the amount of estate resources available to pay creditors and other victims of the opioid crisis. In these circumstances, the equities strongly support a stay.

CONCLUSION

The Court should grant a stay of the court of appeals' mandate (and recall that mandate, if necessary), pending the consideration and disposition of the forthcoming petition for a writ of certiorari and any further proceedings in this Court. In addition to granting the stay, the Court may wish to construe this application as a petition for a writ of certiorari and grant certiorari.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

JULY 2023

Exhibit “C”

ECKERT SEAMANS

Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 South 16th Street
22nd Floor
Philadelphia, PA 19102

TEL 215 851 8400
FAX 215 851 8383
www.eckertseamans.com

John W. Pauciulo
215.851.8480
jpauciulo@eckertseamans.com

September 19, 2010

Via Regular Mail

Dean Vagnozzi
114 Ithan Lane
Collegeville, PA 19426

Re: Legal Representation

Dean:

We are pleased that you have asked our firm to represent you in connection with general business matters, the Pillar Life Settlement Fund and such other matters as you may request from time to time. The purpose of this engagement letter is to set forth our mutual understanding of the basis on which we have agreed to undertake such representation. Under the Pennsylvania Rules of Professional Conduct, we are required to inform you in writing of the basis of the fee and expense reimbursement arrangement that will be applicable to our representation of the Company.

The charges for our services will be based upon our regular hourly rates in effect at the time the services are rendered. My rate currently is $425 per hour. If other members in the firm work on this matter, their time will be billed on the basis of their regular hourly rate. If associate attorneys in the firm work on this matter, their time will be billed on the basis of their regular hourly rate. Associate hourly rates currently range from $155 to $320 per hour depending on their experience. If firm paralegals perform services, their time will be billed on the basis of their hourly rate which is in the $110 to $190 range. All of our current rates will be in effect for the calendar year 2010 but are subject to change thereafter. Unless otherwise specified, any additional services requested to be provided by our firm beyond the scope of the above matter also will be billed in accordance with our hourly rates in effect at the time those services are rendered.

Our firm normally requires an advance retainer before undertaking the representation of a new client, however, due to our existing relationship, we are not requiring an advance retainer. Should our estimate of the resources required materially increase, we may require an advance retainer. In addition, we will not enter our appearance in any arbitration, litigation or other proceeding without obtaining an advance retainer. If we are unable to agree upon the terms of an advance retainer in these circumstances, you authorize us to withdraw as counsel.

ECKERT SEAMANS

Bills will be submitted on a monthly basis and will be itemized showing all time expended by each lawyer or paralegal involved as well as a description of all expenditures incurred on its behalf. We reserve the right to terminate our representation of you and any entity which we organize for you if such bills are not paid in a timely manner. Similarly, we will promptly respond to any questions which you may have concerning any item on a bill submitted to you. We also reserve the right to charge interest on the amount of any bill remaining unpaid after expiration of a thirty day period at a rate of one per cent (1%) a month.

Some of our clients use electronic mail ("E-Mail") to conduct communications between them and the firm. During 1999 the ethics committee of the American Bar Association issued a Formal Opinion in which it concluded that an attorney could transmit information relating to the representation of a client by use of unencrypted E-Mail sent over the Internet without violating the attorney's responsibilities under the Rules of Professional Conduct because such a mode of information transmission afforded a reasonable expectation of privacy from a technological and legal standpoint. For greater protection of client information, our firm has the capability to encrypt E-Mail. If you would like to request the use of encrypted E-Mail, please contact me so I can notify the appropriate personnel in our Information Systems department. However, no system of encryption provides absolute protection of the confidentiality of information communicated by E-Mail. If you do not want the firm to use E-Mail for some, or all, of its communication with you, please advise us promptly to that effect. We will follow your instructions as to the manner in which you want to communicate with the firm.

Clients are entitled to request and receive client-owned files unless the firm asserts a legally cognizable right to retain all or a portion of the files. No client files can be removed from the firm and transmitted to any person or entity without the client's written authorization. After a legal representation has ended, client-owned files will either be returned to the client or kept in the possession of the firm in accordance with its client file retention policy. Under that policy, client files are retained by the firm for a fixed time period after which the files may be destroyed. No client files will be destroyed unless approved by the responsible firm attorney on that legal representation or by the firm's Executive Director. Files released to a client are no longer subject to the firm's client file retention policy.

While we will not disclose privileged or confidential information regarding our representation of your interests, you authorize us to disclose your identity or name to persons outside this firm and the fact that we represent you as legal counsel.

If this letter accurately sets forth our agreement, kindly execute a copy and return it to me at your earliest opportunity.

ECKERT SEAMANS

We appreciate the opportunity to be of service to you and look forward to working with you. Should you have any questions concerning this letter, please do not hesitate to let me know.

Very truly yours,

ECKERT SEAMANS CHERIN & MELLOTT, LLC

By: John W. Pauciulo
John W. Pauciulo

JWP/mzg

Acknowledged, agreed to and accepted this 15 day of Oct, 2010:

Dean Vagnozzi

Exhibit “D”

NOTICE TO PLEAD:

TO PLAINTIFF: YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER WITHIN 20 (TWENTY) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

/s/ Jay A. Dubow
ATTORNEY FOR DEFENDANTS JOHN W. PAUCIULO AND ECKERT SEAMANS CHERIN & MELLOTT, LLC

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ATTORNEYS FOR DEFENDANTS JOHN W. PAUCIULO AND ECKERT SEAMANS CHERIN & MELLOTT, LLC

PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION

DEAN VAGNOZZI Plaintiff, v. JOHN W. PAUCIULO, ESQUIRE and ECKERT SEAMANS CHERIN & MELLOTT, LLC Defendants	COURT OF COMMON PLEAS PHILADELPHIA COUNTY APRIL TERM, 2021 NO. 002115 **JURY TRIAL DEMANDED**

ANSWER AND NEW MATTER OF DEFENDANTS JOHN W. PAUCIULO AND ECKERT SEAMANS CHERIN & MELLOTT, LLC'S TO PLAINTIFF DEAN VAGNOZZI'S COMPLAINT

Defendants John W. Pauciulo ("Pauciulo") and Eckert Seamans Cherin & Mellott, LLC ("Eckert") (collectively, "Defendants") answer Plaintiff Dean Vagnozzi's ("Vagnozzi") Complaint and assert New Matter as follows:

INTRODUCTION[1]

The Complaint's Introduction violates Pennsylvania Rule of Civil Procedure 1022, which requires that one material allegation be pled per paragraph, rendering it difficult to respond. Moreover, the Complaint's Introduction contains self-serving conclusions of law to which no response is required. To the extent that a response is required, the averments set forth in the Complaint's Introduction are admitted in part and denied in part. It is admitted that Vagnozzi purports to bring a legal malpractice action arising out of the representation of Vagnozzi by Defendants in connection with the creation of investment funds for investments in alternative income-producing opportunities. It is admitted that Pauciulo is a lawyer who has experience in corporate and securities law. To the extent the Complaint's Introduction relies on Defendants' website, Defendants' website is a writing that speaks for itself, and Defendants refer to such writing for its content and deny any characterization thereof. It is also admitted that Vagnozzi engaged Defendants to provide legal services and that Pauciulo performed due diligence relating to some investment opportunities and funds and created investment vehicles that complied with all applicable laws, assuming that Vagnozzi followed the legal advice relating to those investment vehicles that was provided by Defendants. As part of the services provided to Vagnozzi,

[1] Defendants Pauciulo and Eckert hereby include each of the headings from Plaintiffs' Complaint for ease of reference but deny any averment of fact or characterization contained in each heading.

Defendants also prepared Private Placement Memoranda ("PPMs") which are writings that speak for themselves. Defendants refer to such writings for their contents and deny any characterization of such writings.

It is also admitted that the SEC filed an action in the United States District Court for the Southern District of Florida on July 24, 2020 captioned, *Securities & Exchange Commission v. Complete Business Solutions Group, Inc et al.,* Civil Docket No. 9:20-cv-81205-RAR. To the extent the averments in Vagnozzi's Introduction refer to or rely on writings, such writings speak for themselves, and Pauciulo and Eckert refer to such writings for their terms and deny any characterization of such writings. To the extent the averments in Vagnozzi's Introduction are inconsistent with such writings and/or attempt to characterize such writings, the averments and/or characterizations are denied.

To the extent the averments in Vagnozzi's Introduction refer to or rely on recordings of Pauciulo, such recordings and any related transcripts speak for themselves, and Defendants refer to such recordings and/or writings for their content and terms and deny any characterization thereof. To the extent the averments in Vagnozzi's Introduction are inconsistent with such recordings and/or writings, the averments and characterizations are denied. By way of further response, after reasonable investigation, Defendants are without sufficient information or knowledge as to what Vagnozzi did with recordings of Pauciulo or to whom Vagnozzi showed recordings of Pauciulo and therefore deny the same.

The remaining averments in Vagnozzi's Introduction consist of legal conclusions to which no response is required. They are therefore denied. It is specifically denied that Defendants' actions or inactions caused any losses allegedly suffered by Vagnozzi.

I. PARTIES

1. Plaintiff Dean Vagnozzi ("Vagnozzi") is an individual citizen and resident of the Commonwealth of Pennsylvania, who, at all relevant times, resided in Collegeville, Pennsylvania.

ANSWER: Admitted upon information and belief.

2. Vagnozzi did business both individually and through a variety of entities, the umbrella of which was known as "abetterfinancialplan.com, LLC." ("ABFP.") Vagnozzi also established various "funds" with differing descriptive names. This is an action brought only by Vagnozzi personally for the damages he has suffered.

ANSWER: To the extent Paragraph 2 consists of legal conclusions, no response is required. To the extent a response is required, it is admitted only that Vagnozzi did business both individually and through different entities, including abetterfinancialplan.com, LLC ("ABFP"), and the remaining averments set forth in Paragraph 2 are denied.

3. Defendant Pauciulo is an individual citizen of the Commonwealth of Pennsylvania who is licensed to practice law in the Commonwealth of Pennsylvania, and a "Member" of the law firm Eckert Firm, with offices located at 50 S. 16th Street, 22nd Floor, Philadelphia, PA 19102.

ANSWER: Admitted.

4. Defendant Eckert Firm is a limited liability company organized for the purpose of providing legal services to the public including, but not limited to, the aforementioned Plaintiff, with offices located at 50 S. 16th Street, 22nd Floor, Philadelphia, PA 19102.

ANSWER: Admitted with the clarification that Eckert has multiple offices, including an office at 50 S. 16th Street, 22nd Floor, Philadelphia, PA 19102.

5. At all relevant times, Defendant Eckert acted by and through its authorized agents, servants, partners, members, associates, and employees, including Pauciulo, all of whom were

acting in the course and scope of their relationship with Eckert and the professional services it provides.

ANSWER: To the extent Paragraph 5 consists of legal conclusions, no response is required. To the extent a response is required, it is admitted only that Pauciulo is a member of Eckert and that Eckert has members, associates, and employees. The remaining averments set forth in Paragraph 5 are denied. By way of further response, it is denied that Eckert has any partners or servants.

II. JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendants because the principal place of business of Pauciulo and Eckert is located in Philadelphia County.

ANSWER: Paragraph 6 consists of legal conclusions to which no response is required. It is denied that Eckert's principal place of business is located in Philadelphia County. However, Defendants do not contest jurisdiction.

7. Venue is proper in Philadelphia since the vast majority of Defendants' conduct giving rise to these claims occurred in Philadelphia County, the legal services provided to Plaintiffs was performed in Philadelphia County, and Defendant Eckert regularly conducts business in Philadelphia County.

ANSWER: Paragraph 7 consists of legal conclusions to which no response is required. However, Defendants do not contest venue.

III. FACTS COMMON TO ALL COUNTS

A. The beginning of the Attorney-Client Relationship

8. Plaintiff first met Pauciulo in or around 2004, when he was looking for an attorney who could represent him in connection with joining other investors to buy real estate.

ANSWER: Admitted.

9. Pauciulo, then an attorney at the Philadelphia law firm of White & Williams, held himself out as a specialist in corporate and securities law, and touted the fact that he was formerly an "enforcement lawyer" with the Securities and Exchange Commission.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo told Vagnozzi that he formerly worked for the Securities and Exchange Commission as a staff attorney in the Division of Enforcement. It is denied that Pauciulo "held himself out as a specialist in corporate and securities law."

10. Thus began a long series of representations by Pauciulo of Vagnozzi.

ANSWER: The averments in Paragraph 10 are vague and ambiguous. It is admitted only that Pauciulo represented Vagnozzi until their attorney-client relationship ended in 2020.

11. As time progressed, Pauciulo became intimately familiar with and advisory towards all of Vagnozzi's personal and business affairs.

ANSWER: Denied as stated. The averments in Paragraph 11 are vague and ambiguous as to what is meant by "intimately familiar with and advisory towards all of Vagnozzi's personal and business affairs." It is denied that Pauciulo was familiar with and advised Vagnozzi as to his personal and business affairs.

12. Plaintiff was never provided (either individually or as part of any entity or fund created) with an engagement letter, either by Pauciulo or the law firm of White & Williams, or later the Eckert Firm, in violation of their own procedures and contrary to the requirements of the Rules of Professional Conduct.

ANSWER: Denied. To the extent the averments of Paragraph 12 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is

required, Vagnozzi was provided with engagement letters by Pauciulo, Eckert, and White & Williams and signed such engagement letters.

13. During the first ten years of this representation (2004-2014), Vagnozzi experienced more and more success, and fundamentally relied upon Pauciulo's (and the respective law firms he worked for) advice and guidance regarding every aspect of his business operations.

ANSWER: Denied. The averments in Paragraph 13 are vague and ambiguous as to what is meant by "Vagnozzi experienced more and more success, and fundamentally relied upon Pauciulo's (and the respective law firms he worked for) advice and guidance regarding every aspect of his business operations." By way of further response, it is denied that Pauciulo provided advice and guidance regarding every aspect of Vagnozzi's "business operations," the full scope of which were and are unknown to Pauciulo.

14. Pauciulo's first "investment vehicle" representation of Plaintiff was in connection with the formation of an entity to invest in real estate and to comply with all state and federal laws.

ANSWER: Denied as stated. It is admitted that Pauciulo first represented Vagnozzi in connection with the formation of an entity to invest in real estate that complied with all state and federal laws.

15. Later, Pauciulo represented Vagnozzi in connection with creating other entities for purposes of investments in real estate and various life settlement funds (for purposes of investing in life insurance policies), which included ensuring such funds complied with securities laws.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo represented Vagnozzi in connection with creating other entities for investments in real estate and life settlement funds and that Pauciulo prepared documents relating to these entities in compliance with securities laws and provided advice about compliance with securities laws. It is denied that Pauciulo

controlled whether Vagnozzi complied with securities laws and followed any legal advice provided.

B. Vagnozzi meets "Joe Mack."

16. In the Spring of 2016, Vagnozzi first met an individual going by the name of "Joe Mack" at a Philadelphia area golf course.

ANSWER: After reasonable investigation, Defendants are without sufficient information or knowledge as to when or where Vagnozzi met Joe Mack, and the averments of Paragraph 16 are therefore denied.

17. During that first encounter, Joe Mack explained he was in the "merchant cash advance" business, and that, essentially, his business would make "advances" to small and mid-sized businesses which need fast funding. Because of delays involved in securing conventional loans at banks, Mack explained, an entire market for such rapid funding was underserviced and ripe for investment opportunity. In exchange for such rapid advances, the merchants would assign the right to receive a portion of their accounts receivable.

ANSWER: After reasonable investigation, Defendants are without sufficient information or knowledge as to what Joe Mack said to Vagnozzi, and the averments of Paragraph 17 are therefore denied.

18. Mack explained that his company "Complete Business Solutions Group, LLC" (doing business as "PAR Funding") was expert at deciding which merchants to make advances to, and was regularly collecting lucrative interest payments.

ANSWER: After reasonable investigation, Defendants are without sufficient information or knowledge as to what Joe Mack said to Vagnozzi, and the averments of Paragraph 18 are therefore denied.

19. During this golf-course encounter, and a subsequent meeting at Mack's Old City Philadelphia office, Mack was also interested to learn that Vagnozzi was in the business of looking for investment opportunities for his clients, and was impressed with Vagnozzi's track record and superb reputation in the community.

ANSWER: After reasonable investigation, Defendants are without sufficient information or knowledge as to Joe Mack's thoughts and perceptions of Vagnozzi, and the averments of Paragraph 19 are therefore denied.

20. Following the initial encounters, Vagnozzi wanted to be very careful about conducting any business with PAR Funding, which he had never heard of before.

ANSWER: After reasonable investigation, Defendants are without sufficient information or knowledge as to what Vagnozzi wanted, and the averments of Paragraph 20 are therefore denied.

21. Vagnozzi thus contacted his (by then) long-time trusted counsel, Pauciulo, to conduct a deep dive, due diligence background check on PAR Funding, including the personal background history of all of its principals, its financial condition and performance, its reputation for integrity, and all of its business operations and cash advance practices.

ANSWER: Denied as stated. It is admitted that Pauciulo sent a list of due diligence items to Complete Business Solutions Group, LLC d/b/a PAR Funding ("PAR"), which Pauciulo also showed to Vagnozzi. The requested due diligence list is a writing that speaks for itself, and Defendants refer to such writing for its content and deny any characterization of such writing. By way of further response, it is denied that Vagnozzi asked Pauciulo to conduct a background check on all of PAR's principals or that Vagnozzi engaged Pauciulo to do a "deep dive" background check on PAR.

22. Pauciulo, by then a member at the Eckert Firm in its Philadelphia headquarters, eagerly took on the assignment, assuring Vagnozzi he was an expert at conducting such due diligence, and assured Vagnozzi he would do a thorough job.

ANSWER: Denied as stated. It is admitted only that Pauciulo sent a list of due diligence items to PAR, which Pauciulo also showed to Vagnozzi. The remaining averments in Paragraph 22 are denied.

23. Thereafter, Pauciulo billed Vagnozzi personally tens of thousands of dollars to conduct such due diligence on PAR Funding and its principals, and Vagnozzi paid such fees with the understanding that Defendants performed a thorough and professional due diligence.

ANSWER: Denied. Pauciulo did not bill Vagnozzi "tens of thousands of dollars" to conduct due diligence on PAR. Paragraph 23 is further denied to the extent it suggests that Defendants did not perform thorough and professional due diligence.

24. Unbeknownst to Vagnozzi, Pauciulo and Eckert engaged in an amateurish, lazy, incomplete, and dangerously inadequate due diligence.

ANSWER: Denied. Pauciulo and Eckert did not engage in "amateurish, lazy, incomplete, and dangerously inadequate due diligence." Vagnozzi was apprised as to what due diligence Pauciulo and Eckert were doing.

25. For example, some of the many issues clearly apparent, or that should have been clearly apparent, to Pauciulo and Eckert during such due diligence were the following:

a. Pauciulo reviewed no audited financial statements of PAR Funding, but rather only looked at internal compilations.

ANSWER: Admitted. By way of further response, PAR stated that it did not have any audited financial statements, and Vagnozzi was aware that PAR stated that it did not have audited financial statements.

b. Pauciulo reviewed no verified or audited documents of PAR Funding concerning the default rates on the merchant cash advances, and conducted no testing of any kind regarding default rates.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo did not review verified or audited documents of PAR concerning the default rates on merchant cash advances, that he was not provided any such documents by PAR, and that he did not conduct testing regarding default rates. It is denied that Pauciulo was engaged to or otherwise had an obligation to do either, or could have conducted testing regarding default rates. By way of further response, Pauciulo sent a list of due diligence items to PAR, which Pauciulo also showed to Vagnozzi. Pauciulo also told Vagnozzi that PAR did not provide all documents and information that Pauciulo requested.

c. The name "Joe Mack" was an alias for the real name Joseph LaForte.

ANSWER: Admitted upon information and belief. By way of further response, it is denied that Vagnozzi asked Pauciulo to conduct a background check on any of PAR's principals.

d. Joe Laforte a/k/a Joe Mack, was involved in the business for PAR Funding.

ANSWER: Admitted. By way of further response, Vagnozzi by his own admission in Paragraphs 16-19 knew that Joe Mack was involved in the business for PAR and that this information was not shared by Vagnozzi with Pauciulo.

e. Pauciulo reviewed no expert or audited analysis of any PAR Funding underwriting policies, and undertook no efforts to determine the actual practices of PAR Funding in implementing underwriting policies.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo did not review an expert or audited analysis of PAR's underwriting policies or determine the actual practices of PAR in implementing underwriting policies and that he was not provided such documents by PAR. It is denied that Pauciulo was engaged to or otherwise had an obligation to do so. By way of further response, Pauciulo sent a list of due diligence items to PAR, which Pauciulo also showed to Vagnozzi. Pauciulo also told Vagnozzi that PAR did not provide all documents and information that Pauciulo requested.

26. As part of their so-called "due diligence," neither Pauciulo nor Eckert ever:

a. Examined actual books of original entry of PAR Funding.

ANSWER: Admitted in part, denied in part. Paragraph 26(a) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

b. Engaged any accountants to test the accuracy of the financial presentations given to him by PAR.

ANSWER: Admitted in part, denied in part. Paragraph 26(b) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

c. Examined or tested any lending, advance or underwriting policies implemented by PAR.

ANSWER: Admitted in part, denied in part. Paragraph 26(c) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

d. Interviewed the outside accountants for PAR Funding.

ANSWER: Admitted in part, denied in part. Paragraph 26(d) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

e. Interviewed any customers or merchants doing business with Par Funding.

ANSWER: Admitted in part, denied in part. Paragraph 26(e) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

f. Verified whether the underwriting policies of PAR were being consistently implemented regarding decisions to make cash advances.

ANSWER: Admitted in part, denied in part. Paragraph 26(f) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

g. Verified who at Par Funding was being paid what compensations.

ANSWER: Admitted in part, denied in part. Paragraph 26(g) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

h. Determined whether there was any concentrations of cash advances to merchants who may have had any connections to or control by any of the principals of PAR Funding or "Joe Mack."

ANSWER: Admitted in part, denied in part. Paragraph 26(h) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

i. Conducted an adequate lien search, the amount of such liens, or the reason the liens existed.

ANSWER: Denied. By way of further response, Pauciulo conducted a lien search and asked PAR who its other creditors were and the amounts that PAR had loaned. PAR refused to provide such information. Pauciulo told Vagnozzi of PAR's refusal.

j. Determined or tested the accuracy of the default rates reported by PAR Funding.

ANSWER: Admitted in part, denied in part. Paragraph 26(j) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

k. Determined or tested who were the "control" person(s) at PAR Funding as defined by state and federal securities law.

ANSWER: Admitted in part, denied in part. Paragraph 26(k) is denied to the extent it suggests that Pauciulo or Eckert were asked by Vagnozzi to do so or were obligated to do so, or that the due diligence that was performed was inadequate.

27. Pauciulo, when advising Vagnozzi, gave PAR Funding a "clean bill of health" and advised Vagnozzi that PAR was a credible, viable, and a highly successful operation. To quote Pauciulo, he told Vagnozzi: "there are no red flags," "they are very organized," "they gave me everything I asked for."

ANSWER: Denied. By way of further response, Pauciulo did not make the statements in Paragraph 27 but rather told Vagnozzi that PAR did not provide all documents and information that Pauciulo requested. Pauciulo thought that PAR's failure to provide all requested documents and information raised red flags, and Pauciulo told Vagnozzi this. In addition, Vagnozzi was

directly communicating with PAR's management at the same time Pauciulo was conducting due diligence.

28. Defendants were well aware that at no time ever was Vagnozzi:

a. Employed in any way, shape, or form by PAR Funding.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 28(a), and the averments are therefore denied.

b. A member of the Board of Directors of PAR Funding.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 28(b), and the averments are therefore denied.

c. Any kind of consultant to or agent of PAR Funding.

ANSWER: Denied. By way of further response, Vagnozzi was an agent of PAR because he acted as a finder.

d. A shareholder or owner in any form of PAR Funding.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 28(d), and the averments are therefore denied.

e. Provided any direct access to internal documents, records, or proprietary information by PAR Funding.

ANSWER: Denied. By way of further response, Vagnozzi was directly communicating with PAR's management and receiving information from PAR.

29. As such, Defendants were completely aware that Vagnozzi was relying on them to perform a thorough due diligence on PAR Funding and relying on the Defendants' approval of the representations made by PAR Funding as to its business operations, financial condition, default rates, and underwriting policies.

ANSWER: Denied as stated. It is admitted only that Pauciulo sent a list of due diligence items to PAR, which Pauciulo also showed to Vagnozzi. Pauciulo also told Vagnozzi that PAR did not provide all documents and information that Pauciulo requested. By way of further response, Vagnozzi was directly communicating with PAR's management at the same time Pauciulo was conducting due diligence.

30. Vagnozzi's reliance on Defendants in this regard was reasonable, especially since he specifically engaged Defendants to advise him on such issues.

ANSWER: Denied. To the extent the averments of Paragraph 30 consist of legal conclusions, no response is required, and they are therefore denied.

C. Vagnozzi Begins Doing Business with PAR Funding

31. Relying on Pauciulo's advice, Vagnozzi then in August 2016 embarked upon structuring an arrangement with PAR to do business with it.

ANSWER: Denied. By way of further response, Vagnozzi did not advise Pauciulo and Pauciulo did not know at the time that Vagnozzi began structuring an arrangement with PAR to do business with it in August 2016.

32. Initially, the form of that arrangement was as a "Finder," by which Vagnozzi would be compensated by PAR based on amounts invested in PAR by investors found by Vagnozzi. Vagnozzi was provided with a "Finders Agreement" by PAR, which Pauciulo reviewed and advised Vagnozzi to sign. Pauciulo specifically advised Vagnozzi that he would not need to be a

licensed "Broker" as or when serving as a Finder for PAR, and that the Finders Agreement was in compliance with all securities laws.

ANSWER: Admitted in part, denied in part. To the extent the averments of Paragraph 32 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 32 are admitted in part, denied in part. It is admitted only that Pauciulo reviewed a Finders Agreement provided to him by Vagnozzi. Upon information and belief, Vagnozzi entered into the Finders Agreement and/or started acted as a finder before asking Pauciulo to review any agreement with PAR. It is denied that Pauciulo gave Vagnozzi advice about signing any finders agreement. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as the initial form of any arrangement between Vagnozzi and PAR, and the remaining averments of Paragraph 32 are therefore denied.

33. From August 2016 until late December 2017, Vagnozzi worked with PAR Funding as a Finder and referred many investors to it. During that period, PAR Funding:

a. Treated each of Vagnozzi's investors with professionalism and respect.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 33(a), and they are therefore denied.

b. Answered any questions any such investors had.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 33(b), and they are therefore denied.

c. Allowed investors to tour its facilities, witness its operations, and speak to its personnel.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 33(c), and they are therefore denied.

d. Made every payment promised, on time, and in full.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 33(d), and they are therefore denied.

D. A Change in Approach

34. With this initial success in mind, Vagnozzi then consulted with Pauciulo in 2017 about altering the arrangement with PAR from a "Finder" to a "Fund" model.

ANSWER: Admitted in part, denied in part. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to what was in Vagnozzi's mind, and those averments are therefore denied. It is admitted that in 2017, Vagnozzi contacted Pauciulo about creating an investment vehicle to invest with PAR, the mechanics of which were not developed at that time but subsequently evolved and reflected Pauciulo's advice that investments should be made in other merchant cash advance companies and not only PAR.

35. A Fund model would be for Vagnozzi to create an investment vehicle by which numerous investors could pool their monies, have that vehicle invest in PAR in larger amounts and on more favorable terms than could be accomplished in the Finders Model, and by which the Fund could earn as a management fee the spread between the amount of interest PAR Funding paid the Fund and the lesser amount of interest the Fund would pay the investor.

ANSWER: Denied in part, admitted in part. The averments in Paragraph 35 are vague and ambiguous because it is unclear what is meant "by which numerous investors could pool their monies" or "Finders Model" and those averments are therefore denied. It is admitted only that Vagnozzi contacted Pauciulo about creating an investment vehicle controlled by Vagnozzi, ABFP Income Fund I ("ABFP Fund I"), that investors could invest in and that Vagnozzi would subsequently use to invest in merchant cash advance companies.

36. Pauciulo was enthusiastic in assuring Vagnozzi that this Fund model was a sound, legal, and advisable way of proceeding, and that he could and would make sure that all necessary legal compliance would be strictly obtained.

ANSWER: Denied as stated. It is admitted that Vagnozzi contacted Pauciulo about creating an investment vehicle controlled by Vagnozzi, ABFP Fund I, that investors could invest in and that Vagnozzi would subsequently use to invest in merchant cash advance companies. By way of further response, Pauciulo had multiple communications with Vagnozzi in which Pauciulo advised that the creation of such an investment fund would be legally compliant if Vagnozzi followed Pauciulo's advice in operating that entity.

37. Creating the Fund model necessarily included creating an entity that Vagnozzi's investors could invest in, which in turn would invest in PAR Funding by lending PAR money pursuant to promissory notes bearing very favorable interest rates. This structure necessarily included paying the investors a lesser amount of interest than the Fund was to receive from PAR Funding, and was specifically endorsed and approved by Defendants.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo drafted PPMs for the creation of entities which would in turn invest in PAR and other merchant cash advance companies and lend money pursuant to promissory notes with certain interest rates, and such structure was disclosed in the PPMs. By way of further response, the PPMs drafted by Pauciulo are written documents which speak for themselves and any characterization thereof is denied.

38. As part of having Vagnozzi's clients invest in such a fund entity, various state and federal securities laws come into play, which are extremely complicated and important, and which carry stern penalties if violated.

ANSWER: Denied. To the extent the averments of Paragraph 38 consist of legal conclusions, no response is required, and they are therefore denied.

39. Two key questions in the creating the Fund model were:

a. Would the investment vehicles constitute "securities," and if so, what state and federal registration requirements would apply; and

ANSWER: Denied. To the extent the averments of Paragraph 39(a) consist of legal conclusions, no response is required, and they are therefore denied.

b. Regardless of the answer to the foregoing question, what "disclosures" about the nature of the investments and the attendant risk factors need to be made to the investors prior to making their investment in order to be in compliance with applicable laws, rules, and regulations.

ANSWER: Denied. To the extent the averments of Paragraph 39(b) consist of legal conclusions, no response is required, and they are therefore denied.

40. These are extremely complex questions, and the consequences of failing to be in full compliance are generally understood within the securities-law community to be severe.

ANSWER: Denied. To the extent the averments of Paragraph 40 consist of legal conclusions, no response is required, and they are therefore denied.

41. Even sophisticated investors and promoters (e.g., those with MBA's or JD degrees) must rely on "specialty-lawyers" with a high level of training and experience in securities law matters, since "registration" and "disclosure of risk factors" are highly defined terms within the law of securities.

ANSWER: Denied. To the extent the averments of Paragraph 41 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 41 are denied.

42. This was the position Vagnozzi was in when deciding whether to convert from a Finder model to a Fund model under the careful guidance and advice of Defendants.

ANSWER: The averments in Paragraph 42 are vague and ambiguous because it is unclear what is meant by "the position Vagnozzi was in when deciding whether to convert from a Finder model to a Fund model" and they are therefore denied. By way of further response, Vagnozzi communicated to Pauciulo that he wanted to create a fund, but it is denied that Pauciulo advised Vagnozzi that he should "convert from a Finder model to a Fund model."

43. Defendants assured Vagnozzi of their expertise in such representation.

ANSWER: Denied as stated. By way of further response, Pauciulo had worked with Vagnozzi for more than ten years in prior similar matters and had provided advice regarding other funds created for other alternative investments.

44. Defendants knew what Vagnozzi didn't know, and knew Vagnozzi had no training or competence in these complex areas of law. Defendants knew they were in a position of far superior knowledge than Vagnozzi, and assured Vagnozzi he and his clients could rely upon them for advice.

ANSWER: Denied. By way of further response, Pauciulo and Eckert did not know what Vagnozzi did not know. In fact, Pauciulo knew that Vagnozzi had an undergraduate degree in accounting, had been employed as an accountant with an accounting firm and as a sale person with SAP, Deloitte Consulting and Anderson, was an experienced and sophisticated business person who personally purchased and sold real estate as an investment, who had authored a book on

investing strategies and held himself out to the public as an expert in investing, had previously been a registered representative affiliated with a broker-dealer, had been licensed to sell both insurance and securities, and had previously been involved with and managed over a dozen investment funds which raised and invested millions of dollars. Pauciulo gave Vagnozzi advice regarding securities laws many times over the course of his representation of Vagnozzi.

45. Vagnozzi, too, knew he had no training in or understanding of the complex web of state and federal securities law, and repeatedly explained to Defendants he was relying on their guidance.

ANSWER: Denied. By way of further response, Pauciulo and Eckert did not know what Vagnozzi did not know. In fact, Pauciulo knew that Vagnozzi had an undergraduate degree in accounting, had been employed as an accountant with an accounting firm and as a sale person with SAP, Deloitte Consulting and Anderson, was an experienced and sophisticated business person who personally purchased and sold real estate as an investment, who had authored a book on investing strategies and held himself out to the public as an expert in investing, had previously been a registered representative affiliated with a broker-dealer, had been licensed to sell both insurance and securities, and had previously been involved with and managed over a dozen investment funds which raised and invested millions of dollars. Pauciulo gave Vagnozzi advice regarding securities laws many times over the course of his representation of Vagnozzi.

46. Thus, Vagnozzi was completely reliant on the advice of Defendants in how to proceed when converting to the "Fund" model for purposes of doing further business with PAR Funding.

ANSWER: Denied. By way of further response, Vagnozzi did not ask Pauciulo for, and Pauciulo did not provide, advice about converting to a fund model when creating ABFP Fund I. Upon information and belief, Vagnozzi also relied on advice and information provided by PAR.

47. At no time would Vagnozzi have ever began using the Fund model without the express advice by Defendants that doing so would be in complete compliance with all state and federal laws and regulations.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to what Vagnozzi would have done, and the averments in Paragraph 47 are therefore denied.

48. At or about this time frame, Vagnozzi first learned that Joe Mack's real name was Joe LaForte, and that he had a criminal background.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to when Vagnozzi learned Joe Mack's real name or that he had a criminal background, and the averments in Paragraph 48 are therefore denied.

49. When Vagnozzi raised this with Pauciulo, Pauciulo said he already knew of it, but explicitly told Vagnozzi that LaForte's conviction was so long ago, that it did not represent any kind of barrier to do business with him, and that "everyone deserves a second chance." Pauciulo emphasized to Vagnozzi that LaForte's criminal conviction was "not material," and neither was the fact that he used an alias, and need not ever be disclosed to investors.

ANSWER: Denied. The averments in Paragraph 49 are vague and ambiguous because it is unclear which time period is being referenced, and they are therefore denied. By way of further response, Pauciulo told Vagnozzi about LaForte's criminal conviction the same day that Pauciulo learned that information and told Vagnozzi that the conviction did not disqualify LaForte from

operating a merchant cash advance business. Vagnozzi chose to continue doing business with LaForte and PAR after Pauciulo shared this information with Vagnozzi.

50. On the strength of this advice, in or about December 2017 and January 2018, Vagnozzi accepted Defendants' advice to create a "Private Placement Memorandum" ("PPM"), to create a fund for investment in PAR Funding, and to prepare accompanying "Subscription Agreements."

ANSWER: Denied as stated. The averments in Paragraph 50 are vague and ambiguous because it is unclear what "[o]n the strength of this advice" means, and they are therefore denied. By way of further response, after reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to what Vagnozzi was relying on when he engaged Defendants to create the PPM. It is admitted only that Vagnozzi asked Pauciulo to create a PPM for investments in merchant cash advance companies, including PAR.

51. That initial fund was known as "ABFP Income Fund 1." (The PPM for this Fund 1 is attached hereto as Exhibit "B," while the Subscription Agreement is attached hereto as Exhibit "C").

ANSWER: Admitted in part, denied in part. It is admitted that the initial fund was known as ABFP Fund I. The PPM and Subscription Agreement for ABFP Fund I are writings that speak for themselves, and Defendants refer to these writings for their content and deny any characterization thereof.

52. Notably absent from the PPM or the Subscription Agreement for Fund 1 was any discussion of or disclosure about:

a. PAR Funding as an entity.

b. The actual past financial history or performance of PAR Funding.

c. Any operating history of PAR Funding.

d. Any information about Joe Mack, Joe LaForte, his criminal convictions, or about any other principal or control person of PAR.

e. Any information about PAR's corporate structure or related entities.

f. Any information or background history of any of PAR's officers and directors, or their ownership structure.

g. Any information about PAR's interest rates charged, collection methods, or loss ratios.

h. Whether the funds raised were intended for investing in PAR Funding.

ANSWER: Denied. The PPM and Subscription Agreement for ABFP Fund I are writings that speak for themselves, and Defendants refer to these writings for their content and deny any characterization thereof. To the extent the averments in Paragraph 52(a)-(h) suggest that the PPM and Subscription Agreement were required to include any of the items listed in Paragraph 52(a)-(h), such averments consist of legal conclusions to which no response is required.

E. Creation of an Investment Fund

53. In January, 2018, the ABFP Income Fund 1 ("Fund 1") was created, and over the next eight months took in over $19,000,000 from 73 clients, all utilizing the PPMs and Subscription Agreements prepared by the Defendants.

ANSWER: Admitted in part, denied in part. It is admitted only that ABFP Fund I was created in or around January 2018. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether all clients utilized the PPMs or Subscription Agreements prepared by Defendants, and the remaining averments of Paragraph 53 are therefore denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or

knowledge as to whether ABFP Fund I took in over $19,000,000 from 73 clients over eight months, and the remaining averments of Paragraph 53 are therefore denied

54. The entirety of the funds raised in Fund 1 were used for investment with PAR Funding.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether the entirety of the funds raised in ABFP Fund I were used for investment with PAR, and the averments of Paragraph 54 are therefore denied. By way of further response, Pauciulo's advice to Vagnozzi was to invest in more than one merchant cash advance company and not solely PAR.

55. Defendants were intimately aware of all aspects of Fund 1, and the fact that all the monies raised from investors in Fund 1 were to be invested with PAR Funding.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether the entirety of the funds raised in ABFP Fund I were used for investment with PAR, and the averments of Paragraph 55 are therefore denied. By way of further response, Pauciulo's advice to Vagnozzi was to invest in more than one merchant cash advance company and not solely PAR. It is further specifically denied that Defendants "were intimately aware of all respects of Fund 1."

56. Defendants were also aware that every investor found by Vagnozzi during his services as a "Finder" only invested in PAR and not any other merchant cash business.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether every investor found by Vagnozzi during his services as a finder only invested in PAR, and the averments of Paragraph 56 are therefore denied.

57. When Defendants drafted the PPM and Subscription Agreement, such disclosures were not made to the investors in Fund 1.

ANSWER: Denied. The averments in Paragraph 57 are vague and ambiguous because it is unclear what disclosures are being referenced, and the averments are therefore denied. By way of further response, the PPM and Subscription Agreement are written documents that speak for themselves, and Defendants refer to these writings for their content and deny any characterization thereof.

58. Fund 1 was successful, and all of Vagnozzi's clients who invested in Fund 1 received all agreed-upon payments.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether all of Vagnozzi's clients who invested in ABFP Fund I received all agreed-upon payments, and the averments of Paragraph 58 are therefore denied.

59. Defendants also specifically advised Plaintiff that the promissory notes issued by Fund 1 need not be registered with the SEC, because of the exemption under "Regulation D" involving offerings to private investors, not members of the public.

ANSWER: To the extent Paragraph 59 consists of legal conclusions, no response is required. To the extent a response is required, the averments set forth in Paragraph 59 are denied. By way of further response, Pauciulo provided Vagnozzi with legal advice, that if followed, would comply with all securities laws.

F. Vagnozzi Radio Advertisements

60. Defendants were at all times thoroughly familiar with the manner in which Vagnozzi located members of the general public to become his clients.

ANSWER: Admitted in part, denied in part. The averments in Paragraph 60 are vague and ambiguous because no time period is specified, and they are therefore denied. It is admitted only that at certain times, Pauciulo became aware that Vagnozzi used certain methods to reach potential clients. By way of further response, Vagnozzi often did not discuss such methods with Pauciulo before employing such methods.

61. Defendants were at all times aware of the frequent radio advertisements sponsored by Vagnozzi, the content of which were repeatedly reviewed in advance with Defendants.

ANSWER: Denied. Pauciulo was not aware at all times of the frequent radio advertisements sponsored by Vagnozzi. By way of further response, Pauciulo was generally aware that Vagnozzi was using radio advertisements, but it is denied that Defendants were advised by Vagnozzi about the frequency of any radio advertisements and that Defendants reviewed such advertisements in advance.

62. The radio advertisements clearly solicit members of the general public to contact Vagnozzi and his companies regarding a variety of investment opportunities.

ANSWER: Denied. To the extent Paragraph 62 consists of legal conclusions, no response is required. To the extent a response is required, the averments set forth in Paragraph 62 are denied. By way of further response, the radio advertisements are recordings which speak for themselves, and Pauciulo and Eckert refer to such recordings for their content and deny any characterization of such recordings.

63. Pauciulo also attended many meetings, dinners, and promotional events sponsored by Vagnozzi to attract members of the general public as potential clients.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo attended limited portions of some events organized by Vagnozzi at which clients and potential clients were also in

attendance. The characterization that Pauciulo attended many meetings, dinners, and promotional events is denied.

64. Indeed, Pauciulo appeared on numerous videos and recordings that were played to and for the benefit of potential clients, personally assured potential clients that Vagnozzi and his entities were in full compliance with all securities laws, and that all required disclosures were contained within the PPMs.

ANSWER: Admitted in part, denied in part. It is admitted only that Pauciulo appeared in some videos and recordings speaking generally about investments. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to who Vagnozzi showed such videos and recordings to and therefore deny the same. By way of further response, the videos and recordings speak for themselves, and Pauciulo and Eckert refer to such videos and recordings for their contents and deny any characterization thereof. It is specifically denied that Pauciulo discussed disclosures in specific PPMs in any video or recording.

65. Consider, for example, Pauciulo's video recorded comments as follows:

a. *"Question posed on video screen* - "What is Your History with Dean?"

> "Dean and I have worked together now for many years. I think since 2004. And we've created funds to invest in a pretty wide variety of industries and businesses. One of the things I really like about my job is I get to look into all different kinds of business and see how they run, see how they work, see how and why they're profitable. There's a lot of ways to make money out there. There's a lot of different kinds of businesses, a lot of different kinds of investments. Everybody's familiar with the public markets and the stock market and mutual funds and those kinds of things. But there's another world outside the public markets that maybe a lot of retail investors maybe aren't familiar with, and they're not familiar with it because a stock broker can't and won't sell them to you. What Dean has done is to identify different types of investments whether it be real estate, whether it be life settlements or other alternative investment classes and together Dean and I have created a model where a retail investor can get involved in a kind of asset class that on his own, may or may not have the financial wherewithal to do. Or maybe has the wherewithal but doesn't want to put sort of all his eggs in one basket, so to speak. But as part of the diversified portfolio, it's an opportunity to

put money in a lot of alternative asset classes separate and apart from public and traded securities on the stock market or stock exchange."

b. Question posed on video screen "What's Unique About a Better Financial Plan?

"I work with clients to identify market opportunities and investment opportunities, and we do that in a couple different ways. The first step is usually due diligence and just looking at an opportunity and trying to determine whether it's worthwhile. Once we identify them, we prepare documents that allow the promoter - the principal behind the fund to create a fund and bring in investment dollars and that's done also in a couple steps but a big part of that the drafting or creation of a what's called a Private Placement Memorandum, sometimes you'll hear people refer to it as a PPM or and offering book or a circular book.. .different words for the same thing. The private placement is the tool through which an investor can invest into a company. So every time you sell a security, it either has to be registered with the SEC or there's got to be an exemption, and we operate under exemptions from the registration requirements. And when you look at those rules and they're kind of long and they're complicated but they...we are all about Placement Memorandum is the disclosure document. It's the instrument through which the investor makes an informed decision and makes a decision about whether they want to get involved with something. And that document's intended to provide a prospective investor with all the information that a reasonable person would want to know, or information they want to have in order to make an informed investment decision. So ideally an investor can pick up the Private Placement Memorandum, read it, understand the risks involved in the investment, understand the nature of the investment, and understand the industry or the business that's involved in the investment. It really should be a comprehensive document that somebody can use to inform themselves and make an investment decision."

c. Question posed on video screen - "Can I Be Sure This is Legal? "

"Frankly Dean spent a lot of money with me and my law firm. This kind of legal compliance is complicated. And because it's complicated, we spend a lot of time on it and that time results in expense. And Dean has spent, and continues to spend a lot of money to make sure things are done the right way."

ANSWER: Denied. The videos speak for themselves, and Pauciulo and Eckert refer to such videos for their contents and deny any characterization thereof.

66. Time after time, Defendants advised Vagnozzi that he and each of the Funds were in complete compliance with all state and federal securities laws and regulations.

ANSWER: Denied as stated. The PPMs and related documents that Pauciulo drafted and the advice provided to Vagnozzi complied with all state and federal securities laws and regulations. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether Vagnozzi followed Pauciulo's advice and complied with all state and federal securities laws and regulations and therefore deny the same.

67. At no time ever did Defendants tell, advise, or in any way warn Vagnozzi that he should cease any such advertisements or discontinue any such meetings, dinners, or promotional events, nor did Defendants ever tell, advise, or counsel Vagnozzi that, in view of such advertisements and events, the Funds needed to be publicly registered with the Securities and Exchange Commission and the various state securities commissions. In fact, Pauciulo regularly told Vagnozzi that the language of the radio advertisement was "good" because it was "generic," and thus was not a general solicitation of the public "in the eyes of the law."

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo did not advise Vagnozzi that the Funds needed to be publicly registered. It is admitted that Pauciulo advised Vagnozzi that radio advertisements were acceptable so long as such advertisements were generic. It is denied that, at no time did Pauciulo warn Vagnozzi to cease or discontinue advertisements and events sponsored by Vagnozzi.

68. Further, Defendants were specifically aware that PAR Funding had represented to them as well as to Vagnozzi that it had "the best default rate" in the merchant cash advance industry, that it had "the best underwriting policies," and had provided documentation purporting a 1% -2% default rate.

ANSWER: Denied. After reasonable investigation, Defendants are without sufficient information or knowledge as to what PAR represented to Vagnozzi and those averments are

therefore denied. The averments in Paragraph 68 are also denied to the extent they are vague and ambiguous as to who was allegedly provided documentation purporting a 1%-2% default rate, and such averments are therefore denied. It is denied that PAR represented to Defendants that PAR had "the best default rate" in the merchant cash advance industry, or that it had "the best underwriting policies."

69. Defendants were specifically aware of and approved that Vagnozzi, when asked by potential clients and investors, about default rates and underwriting policies, Vagnozzi would repeat what PAR Funding represented in this regard.

ANSWER: Denied as stated. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to what Vagnozzi said to potential clients and investors, and those averments are therefore denied. Upon information and belief, what Vagnozzi said to potential investors was not based on advice from Defendants but on Vagnozzi's own discussions with PAR.

70. Indeed, Pauciulo was present at various meetings, dinners, and events where Vagnozzi stated what Par Funding had represented its underwriting policies and default rates to be, and at no time ever advised or suggested to Vagnozzi not to make such statements or to alter his statements in any way.

ANSWER: Denied. Pauciulo was not present when Vagnozzi talked about PAR's default rate and underwriting policies and did not advise Vagnozzi as to such statements.

71. Though engaged to do so, Defendants never undertook any efforts to test the accuracy of PAR Funding underwriting policies or default rates. At the same time, Defendants were misrepresenting to Vagnozzi that Defendants had conducted all due diligence necessary so

that Vagnozzi, in making such representations about PAR Funding, was in full compliance with all state and federal securities laws.

ANSWER: Admitted in part, denied in part. It is admitted that Defendants never tested the accuracy of PAR's underwriting policies or default rates. It is denied that Defendants were engaged to or otherwise had an obligation to do so. By way of further response, Pauciulo sent a list of due diligence items to PAR, which Pauciulo also showed to Vagnozzi . Pauciulo also told Vagnozzi that PAR did not provide all documents and information that Pauciulo requested. By way of further response, Vagnozzi was directly communicating with PAR's management at the same time Pauciulo was conducting due diligence.

G. Creation of Additional Investment Funds

72. In or about August, 2018, Vagnozzi consulted with Pauciulo and Defendants about creating a second fund for investment in PAR, ABFP Income Fund 2 ("Fund 2").

ANSWER: Admitted.

73. In connection with Fund 2, Vagnozzi specifically asked Pauciulo whether it should be disclosed that, like the proceeds of Fund 1, the proceeds of Fund 2 would be used primarily for investment in PAR Funding (with a small amount intended for non "cash-advance" investment), and whether any details about PAR or Joe LaForte should be disclosed in the Fund 2 PPM.

ANSWER: Denied. The Fund 2 PPM is a writing that speaks for itself, and Defendants refer to such writing for its contents and deny any characterization of such writing. By way of further response, Pauciulo advised Vagnozzi that he should invest in multiple cash advance companies and not solely PAR.

74. Pauciulo specifically advised Vagnozzi:

a. There was no need whatsoever to disclose that the proceeds of Fund 2 would be invested with PAR Funding, only that it would be invested in the "merchant cash advance" industry, so as to maintain flexibility to be able to invest the funds with any other "cash advance" lender.

ANSWER: Denied as stated. Pauciulo advised Vagnozzi that he should invest in multiple cash advance companies and not solely PAR.

b. There was no need to refer to Joseph LaForte, for the same reason cited in (a), above, and no reasons to ever disclose LaForte's criminal conviction "because it was more than 10 years old."

ANSWER: Denied as stated. Pauciulo advised Vagnozzi that he should invest in multiple cash advance companies and not solely PAR and that LaForte's criminal conviction for mortgage fraud did not need to be disclosed because it was more than ten years old and did not disqualify him from operating a merchant cash advance company.

c. There was no need to disclose any of the inherent business risks of PAR Funding's operations or financial condition, since there was no need to ever refer to PAR Funding.

ANSWER: Denied as stated. Pauciulo advised Vagnozzi that he should invest in multiple cash advance companies and not solely PAR, and the PPMs included an extensive description of potential risk factors when investing in merchant cash advance companies in general.

75. All told, Defendants represented Vagnozzi in the creation of the following funds, each with a separate PPM and Subscription Agreement, each with a distinct and different group of investors, and as to each Defendants charged distinct legal fees and rendered "registration" and "disclosure" advice:

Date	**Fund**	**Amount Raised**	**Percentage Invested in PAR**
Jan. 2018	ABFP Fund 1	$19 million	100%

Aug. 2018	ABFP Fund 2	$8 million	80% (20% non-MCA)
Mar. 2019	ABFP Fund 3	$28 million	100%
Aug, 2019	ABFP Fund 4	$21 million	100%
Nov. 2019	ABFP Fund 6	$17 million	100%

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo and Eckert represented Vagnozzi in the creation of those funds. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether the funds each had a distinct and different group of investors, and the amount raised and the percentage invested in PAR for each fund, and such averments are therefore denied.

H. Other Investment Vehicles

76. Separately, Defendants also represented Vagnozzi in the creation of additional "multi-purpose" Funds, each with a distinct and separate group of investors, for which Defendants charged distinct legal fees, each with a separate PPM, as follows:

March 2018	Multi-Strategy Investment Fund 1	$17 million	Approx. 65% life ins. 35% PAR
Fall 2019	Multi-Strategy Investment Fund 2	$15 million	Approx. 80% life ins. 20% PAR

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo and Eckert represented Vagnozzi in the creation of those funds. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether the funds each had a distinct and different group of investors, and the amount raised and the percentage invested in PAR for each fund, and such averments are therefore denied.

77. Separate and aside from the foregoing, Defendants also represented Vagnozzi in non-PAR-Funding funds for investment in life-insurance policies, each with distinct and separate

group of investors, for which Defendants charged distinct legal fees, each with a separate PPM, as follows:

Date	Fund	Amount Raised	What
March 2010	Pillar Fund 1	$4 million	Life Settlement
May 2011	Pillar Fund 2	$3.3 million	Life Settlement
March 2012	Pillar Fund 3	$3 million	Life Settlement
April 2013	Pillar Fund 4	$4.2 million	Life Settlement
March 2014	Pillar Fund 5	$4.9 million	Life Settlement
Aug. 2015	Pillar Fund 6	$6.2 million	Life Settlement
May 2016	Pillar Fund 7	$11 million	Life Settlement
February 2017	Pillar Fund 8	$11.1 million	Life Settlement

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo and Eckert represented Vagnozzi in the creation of those funds. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether the funds each had a distinct and different group of investors, and the amount raised and the percentage invested in PAR for each fund, and such averments are therefore denied.

78. Over the span of all these years, Defendants also represented Vagnozzi in the creation of Funds separate and apart from merchant cash advance or life insurance, each with a distinct and separate group of investors, for which Defendants charged distinct legal fees, each with a PPM as follows:

July 2017	Atrium Capital 1	$7 million	Litigation Funding
June 2018	Atrium Capital 2	$6 million	Litigation Funding
Jan. 2020	Atrium Capital 3	$10 million	Litigation Funding
Early 2020	Atrium Capital 4	$5 million	Litigation Funding

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo and Eckert represented Vagnozzi in the creation of those funds. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to whether the funds each had a distinct

and different group of investors, and the amount raised and the percentage invested in PAR for each fund, and such averments are therefore denied.

I. Defendants' Complete Immersion in Plaintiff's Businesses

79. With each new fund, Pauciulo became more deeply involved with the totality of Vagnozzi's business, including:

ANSWER: Denied. Pauciulo was not "deeply involved with the totality of Vagnozzi's businesses."

a. Interacting with members of Vagnozzi's business management team and employees.

ANSWER: Admitted.

b. Interacting with potential clients and investors sourced by Vagnozzi personally and through radio advertisements.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo interacted with clients and investors on occasion at the request of Vagnozzi. It is denied that Pauciulo knew how such clients and investors were sourced by Vagnozzi.

c. Sometimes attending weekly "team meetings" with Vagnozzi and his staff at Vagnozzi's offices.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo sometimes attended meetings at ABFP with Vagnozzi and his staff. It is denied that Pauciulo attended such weekly "team meetings" on a regular basis.

d. Reviewing and approving written communications with clients and potential clients and investors in the Funds.

ANSWER: Denied as stated. Pauciulo reviewed some written communications that Vagnozzi intended to send to clients and investors in the Funds, but upon information and belief, Vagnozzi sent written communications to his clients and investors without sending them to Pauciulo for review in advance.

e. Attending and speaking at dinners and meetings sponsored by Vagnozzi with potential clients and investors, and approving Vagnozzi's statements and representations at such dinners and meetings.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo attended portions of and spoke at some dinners and meetings with clients and investors. It is denied that Pauciulo approved Vagnozzi's statements and representations at such dinners and meetings.

f. Appearing with Vagnozzi on various video recordings touting his (Pauciulo's) expertise in securities law and the viability and integrity of the PPMs he was creating in furtherance of investment in PAR Funding, and approving of all of Vagnozzi's statements and presentations on such videos.

ANSWER: Admitted in part, denied in part. It is admitted only that Pauciulo appeared on some video recordings discussing PPM's and private securities offering mechanics. It is denied that Pauciulo discussed the viability and integrity of PPMs created in furtherance of investment in PAR and other merchant cash advance companies and denied that Pauciulo approved all of Vagnozzi's statements.

g. Providing guidelines to follow with radio advertisements undertaken by Vagnozzi to solicit potential clients and investors from the general public.

ANSWER: Denied as stated. Pauciulo provided guidelines to Vagnozzi regarding radio advertisements, but Vagnozzi did not follow the advice provided by Pauciulo.

80. Separately, Defendants also represented Vagnozzi in establishing funds for investment of life settlement policies.

ANSWER: Admitted.

81. Again, Pauciulo and Eckert were intricately involved in all aspects of creating the entities and drafting the PPMs and Subscription Agreements used as investment vehicles in the life insurance investments.

ANSWER: Denied as stated. Pauciulo and Eckert represented Vagnozzi and created entities and drafted related documents including PPMs and Subscription Agreements used as investment vehicles in life insurance investments.

82. Defendants were well aware of the business structure of Vagnozzi's businesses, and the fact that certain management fees (whether from PAR Funds, Life Settlement Funds, Multi-Strategy Funds, etc.) were paid into the accounts of ABFP Management Co., which is solely owned by Vagnozzi.

ANSWER: Denied as stated. Pauciulo and Eckert represented Vagnozzi and certain of his businesses and were only aware that ABFP Management Co. received management fees and/or fees earned as serving as general partner in certain entities.

83. Vagnozzi never withheld information from Defendants, answered every question ever posed by Defendants, and shared all internal and proprietary information and documents with Defendants at all times.

ANSWER: Denied. By way of further response, Vagnozzi did not provide Defendants with full and complete information and/or documents on a number of occasions.

84. Vagnozzi was at all times scrupulously careful to make sure:

a. All investor funds were maintained in segregated banks accounts and never comingled, whether for MCA Funds, Life Settlement Funds or Mixed Use Funds.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 84(a) and therefore deny the same.

b. All investor funds were invested exactly as Defendants advised, and all payments received, whether from PAR Funding or other investment vehicles, were distributed to investors exactly as required.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 84(b) and therefore deny the same.

c. All substantive communications with potential clients and investors were reviewed by Defendants.

ANSWER: Denied. Vagnozzi did not share all written and oral communications with potential clients and investors for review by Pauciulo and Eckert.

85. During this process, Defendants were charging Vagnozzi and his businesses in excess of one million dollars in legal fees, which they shared amongst themselves.

ANSWER: Admitted in part, denied in part. It is admitted that Vagnozzi paid legal fees for the services that Defendants provided. It is denied that the amount of legal fees paid was in excess of one million dollars.

86. Significantly, Defendants also began representing other individuals referred to them by Vagnozzi - for example, his brother, Albert Vagnozzi - to create funds for investments with PAR, also charging many more hundreds of thousands of dollars in legal fees.

ANSWER: Denied as stated. Vagnozzi did refer clients to Pauciulo and Eckert but did not refer Albert Vagnozzi.

87. All told, Defendants authored more than 25 PPMs for Vagnozzi, another 30 or so PPMs for third parties, and raised more than $100 million dollars, every penny of which was invested in PAR Funding, and another $100 million dollars in life settlements and real estate.

ANSWER: Denied as stated. Defendants drafted PPMs and created investment vehicles through which clients raised money. It is further denied that $100 million were raised in life settlements and real estate.

88. Throughout the entire process, upon the specific advice of Defendants, no PPM nor Subscription Agreement was ever registered with the SEC, and none ever disclosed:

a. That the investor monies would be solely invested in PAR.

ANSWER: To the extent Paragraph 88(a) consists of legal conclusions, no response is required. To the extent a response is required, the averments set forth in Paragraph 88(a) are denied. The PPM and Subscription Agreement are writings that speak for themselves, and Defendants refer to these writings for their content and deny any characterization thereof. By way of further response, Paragraph 88(a) is further denied to the extent it suggests that there was a legal requirement to register with the SEC or disclose the information in Paragraph 88(a).

b. The names, backgrounds, or criminal convictions of any of PAR's principals.

ANSWER: To the extent Paragraph 88(b) consists of legal conclusions, no response is required. To the extent a response is required, the averments set forth in Paragraph 88(b) are denied. The PPM and Subscription Agreement are writings that speak for themselves, and Defendants refer to these writings for their content and deny any characterization thereof. By way of further response, Paragraph 88(b) is further denied to the extent it suggests that there was a legal requirement to register with the SEC or disclose the information in Paragraph 88(b).

c. Any of the risk factors attendant to investing funds in PAR Funding.

ANSWER: To the extent Paragraph 88(c) consists of legal conclusions, no response is required. To the extent a response is required, the averments set forth in Paragraph 88(c) are denied. The PPM and Subscription Agreement are writings that speak for themselves, and Defendants refer to these writings for their content and deny any characterization thereof. By way of further response, Paragraph 88(c) is further denied to the extent it suggests that there was a legal requirement to register with the SEC or disclose the information in Paragraph 88(c).

89. Throughout this time period, Defendants had ample access and opportunity to conduct further due diligence as to PAR Funding and its principals, but never did so.

ANSWER: Denied as stated. Defendants performed legal services as requested and at the direction of Vagnozzi. By way of further response, Vagnozzi never directed Defendants to conduct further or ongoing due diligence until March 2020 when PAR stopped making payments to its creditors, including Vagnozzi's funds.

J. Things Begin to Go Sideways

90. In March 2020, with the onset of the Covid 19 pandemic, PAR Funding initially announced to Vagnozzi it was in a good position. But then shortly thereafter PAR Funding announced for the first time it would be unable to continue to make all payments in full to the investors who invested in the various Funds created by Vagnozzi and by the various third parties.

ANSWER: Admitted in part, denied in part. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to what PAR told Vagnozzi and therefore deny the same. It is admitted that Pauciulo became aware that PAR sent an email to Vagnozzi and other PAR creditors in which PAR said it would be unable to continue making payments in full to its creditors, which included the funds created by Vagnozzi.

91. Vagnozzi carefully consulted with Defendants on how to handle the differing announcements that Par Funding had issued in March 2020, and what communications he should have with PAR, the many investors he sourced, and with third parties.

ANSWER: Denied as stated. Vagnozzi consulted with Pauciulo about how to respond after PAR informed Vagnozzi that it was suspending payments to investors in or around March 2020.

92. In this regard, Vagnozzi specifically asked Defendants to:

a. Review PAR's financial position and ability to continue to make payments to the various Funds as and when due.

ANSWER: Admitted.

(i) Review PAR's ongoing operations and past and present lending practices.

ANSWER: Denied. Pauciulo was not asked by Vagnozzi to review PAR's ongoing operations and past and present lending practices.

b. Review the number and scope of defaults by merchants in the payments due PAR Funding.

ANSWER: Denied. Pauciulo was not asked by Vagnozzi to review the number and scope of defaults by merchants in the payments due to PAR.

c. Review whether PAR Funding was involved in any litigation with its merchants, and if so, to what extent and with how many merchants.

ANSWER: Denied. Pauciulo was not asked by Vagnozzi to review whether PAR was involved in litigation with its merchants.

d. Review whether the principals of PAR Funding were taking excess compensation so as to prevent PAR from meeting its obligations to investors.

ANSWER: Denied. Pauciulo was not asked by Vagnozzi to review whether PAR's principals were taking excess compensation so as to prevent PAR from meeting its obligations to investors.

e. Determine prospects for future resumption of payments in full.

ANSWER: Denied as stated. Pauciulo was asked by Vagnozzi to help him assess prospects for future resumption of payments.

f. Determine whether any new risk factors emerged, whether any underwriting or collection policies changed, and whether the receivables from merchants were adversely affected.

ANSWER: Denied. Pauciulo was not asked by Vagnozzi to determine whether any new risk factors emerged, whether any underwriting or collection policies changed, and whether the receivables from merchants were adversely affected.

93. Once again, Pauciulo and Eckert performed only the shallowest of due diligence, and failed to conduct any meaningful investigation or analysis of the foregoing issues.

ANSWER: Denied. Pauciulo and Eckert did not perform "shallow" due diligence and did not fail to conduct any meaningful investigation or analysis of the foregoing issues. By way of further response, Pauciulo discussed with Vagnozzi what due diligence would be conducted and Vagnozzi agreed to the scope of such due diligence.

94. Instead, unbeknownst to Vagnozzi, Pauciulo and Eckert only reviewed PAR's internally prepared financial statements, and a PAR document about the impact of Covid 19. Neither Pauciulo nor anyone else at Eckert performed any other review or analysis.

ANSWER: Denied. To the extent the averments of Paragraph 94 suggest that Pauciulo and Eckert's due diligence was deficient, the averments are denied. By way of further response, Pauciulo discussed with Vagnozzi what due diligence materials would be requested and Vagnozzi agreed to the scope of such due diligence, which would be limited to documents received from PAR's attorneys.

95. Here again, Defendants were specifically aware that Vagnozzi had no access to any inside or proprietary information of PAR Funding, and that Vagnozzi was relying on Defendants to perform a competent due diligence and provide Vagnozzi reliable results from such due diligence.

ANSWER: Denied. To the extent the averments of Paragraph 95 suggest that Pauciulo and Eckert's due diligence was deficient, the averments are denied. By way of further response, Vagnozzi told Pauciulo multiple times that Vagnozzi was having telephone calls and meetings with individuals at PAR on a regular basis. Vagnozzi asked Pauciulo to review documents provided by PAR, and Vagnozzi was aware of the limited scope of what PAR agreed to provide Pauciulo.

96. Significantly, by early 2020, PAR Funding had been the subject of numerous regulatory investigations by both the SEC and various state regulatory bodies.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to when PAR became the subject of regulatory investigations by the SEC and therefore deny the same. By way of further response, Pauciulo was aware of regulatory investigations in Texas, New Jersey and Pennsylvania, but did not become aware of an investigation of PAR by the SEC until the SEC filed its Complaint against PAR.

97. Likewise, Vagnozzi and his various funds became the subject of regulatory investigations.

ANSWER: Admitted.

98. Both the securities regulators in the New York office of the SEC and the Commonwealth of Pennsylvania conducted investigations, the primary focus of which were whether Vagnozzi was working as a "broker" when working with PAR as a Finder, and if so, was Vagnozzi licensed as such, whether the Vagnozzi various and diverse PPMs were properly registered, and whether sufficient disclosures about PAR and its risks were made. The State of Texas also opened an investigation of Vagnozzi for the same reasons.

ANSWER: Admitted in part, denied in part. It is admitted that the securities regulators in the New York office of the SEC and the Commonwealth of Pennsylvania and the State of Texas conducted investigations, but any characterization of such investigations is denied.

99. Defendants all along repeatedly assured Vagnozzi he was not acting as a "broker," that there was no need to become licensed as such, that his PPMs need not be registered, and that all required risk disclosures were made.

ANSWER: Denied. Pauciulo and Eckert provided advice to Vagnozzi regarding compliance with securities laws, and had Vagnozzi followed that advice then he would not need to be licensed as a broker and the PPMs would not need to be registered. However, it is denied that Vagnozzi followed the advice provided by Pauciulo and Eckert.

100. Because of the enormous expense and stress involved in defending the regulatory investigations, Vagnozzi was forced to settle the same on a "no admit/no deny" basis in July 2020, and forced to pay hundreds of thousands of dollars in fines and disgorgement.

ANSWER: Admitted in part, denied in part. It is admitted that Vagnozzi paid hundreds of thousands of dollars as part of settling the regulatory investigations in July 2020. The characterizations in Paragraph 100 are denied, including that Vagnozzi "was forced to settle."

101. Here again, Defendants, when preparing yet additional "Supplements" to the original PPMs, and when making additional written disclosures made no reference to or disclosure about any of Vagnozzi's regulatory investigations or settlements.

ANSWER: The averments in Paragraph 101 are vague and ambiguous, and without additional information, Pauciulo and Eckert are unable to form an opinion as to their truth. To the extent Paragraph 101 consists of legal conclusions, no response is required. To the extent a response is required, the averments set forth in Paragraph 101 are denied.

102. In this regard, in April of 2020, following PAR's announcement that it was suspending payments on the notes owned by the various Funds, Pauciulo then began drafting "Exchange Offers" between PAR Funding and the many investors in Vagnozzi's funds, by which PAR would pay and the investors would accept lesser payments of interest over a longer period of time.

ANSWER: Denied as stated. There were no exchange offers between PAR and the investors in Vagnozzi's funds.

103. It was Pauciulo and Eckert that determined the entire process, terms of, and disclosures concerning the Exchange Offers, and advised Vagnozzi how to proceed in all respects.

ANSWER: Admitted in part, denied in part. It is admitted only that Pauciulo provided certain advice regarding the Exchange Offers. It is denied that Pauciulo and Eckert determined the entire process, terms of, and disclosures concerning the Exchange Offers, which were business terms.

104. Indeed, Pauciulo appeared in April 2020 in another two videos distributed to investors, touting that the "Exchange Offers" were the best alternative for Vagnozzi and the investors to recover their previous investments in PAR, and that engaging in any litigation with PAR Funding would lead to adverse consequences including potentially a PAR bankruptcy.

ANSWER: Denied as stated. The videos described in Paragraph 104 are videos which speak for themselves. Pauciulo and Eckert refer to such videos for their content and deny any characterization of such videos.

105. In connection with negotiating with and having investors accept the "Exchange Offers," Defendants represented Vagnozzi in the creation of ABFP Parallel Funds 1, 2, 3, 4 and 6, each with a separate PPM, and prepared "Supplements" to the original PPMs, which were also distributed to all the affected investors and which purported to make full disclosures.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo and Eckert represented Vagnozzi in the creation of ABFP Parallel Funds and that they prepared supplements to the original PPMs. It is denied that there were separate PPMs prepared. By way of further response, the supplements to the original PPMs are written documents that speak for themselves. Pauciulo and Eckert refer to such writings for their contents and deny any characterization thereof.

106. Here again, the SEC has alleged the Supplements were completely inadequate and not in compliance with state and federal law, and that the Parallel Funds were not properly registered.

ANSWER: Denied as stated. It is admitted that the SEC initiated an action against several defendants including Vagnozzi and PAR in late July 2020 in the U.S. District Court for the Southern District of Florida. The Complaint filed by the SEC against Vagnozzi and PAR and other

pleadings filed by the SEC are written documents which speak for themselves. Pauciulo and Eckert refer to such writings for their contents and deny any characterization thereof.

K. The Fall-Catcher Scenario

107. Separate and aside from anything having to do with the PPMs relating to PAR Funding or merchant cash advances, Vagnozzi had preliminary discussions in May 2018 with an entity known as "Fall-Catcher," which was itself an investment vehicle.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to Vagnozzi's discussions with Fall-Catcher, and therefore deny the same.

108. In June of 2018, Vagnozzi met with Pauciulo and reviewed with him whether Vagnozzi could set up a PPM purely for investment by Vagnozzi's existing wealth management clients, and in turn have the Fund invest in Fall-Catcher.

ANSWER: Admitted.

109. After reviewing the matter, Pauciulo explicitly advised Vagnozzi not to use the PPM model, but rather to enter into a "Finders Agreement" with Fall-Catcher, by which Vagnozzi could directly refer his clients to Fall-Catcher for investment, and earn a finder's fee.

ANSWER: Denied as stated. Pauciulo did not explicitly advise Vagnozzi not to use the PPM model but provided general advice to Vagnozzi, who decided to enter into a Finders Agreement with Fall-Catcher.

110. Vagnozzi carefully and explicitly followed Pauciulo's advice, and entered into a Finders Agreement with Fall Catcher, which was drafted by Pauciulo.

ANSWER: Admitted in part, denied in part. It is admitted that Pauciulo drafted the Finders Agreement. The Finders Agreement is a written document that speaks for itself. Pauciulo

and Eckert refer to the Finders Agreement for its contents and deny any characterization thereof. By way of further response, after reasonable investigation, Pauciulo and Eckert are without sufficient as to whether Vagnozzi followed Pauciulo's advice, and those allegations are therefore denied.

111. Pauciulo advised Vagnozzi that such a finders arrangement was in complete compliance with all state and federal securities laws, and that he need not register as a broker.

ANSWER: Denied as stated. Pauciulo provided Vagnozzi legal advice, that if followed, would mean that Vagnozzi did not need to register as a broker.

112. Unfortunately, the New York office of the SEC opened an investigation of Vagnozzi for acting as an unregistered broker in connection with the $5 million dollars his clients directly invested in Fall-Catcher.

ANSWER: Admitted in part, denied in part. It is admitted that the New York office of the SEC investigated Vagnozzi in relation to Fall Catcher. The characterizations in Paragraph 112 are denied.

113. Vagnozzi was thus forced to agree to the disgorgement of $500,000 in commissions earned as a finder with Fall Catcher.

ANSWER: Admitted in part, denied in part. It is admitted that Vagnozzi paid $500,000 to settle. The characterizations in Paragraph 113 are denied.

114. This complete mishandling by Defendants of the advice and services related to Fall Catcher itself brought about widespread adverse publicity.

ANSWER: Denied. Pauciulo and Eckert did not "mishandle" advice or services relating to Fall Catcher.

115. Pauciulo easily could have correctly advised Vagnozzi to become a licensed broker, or easily could have set up a compliant Fund with a compliant PPM for Vagnozzi.

ANSWER: Denied. Pauciulo provided legal advice that was not followed by Vagnozzi.

116. Had Pauciulo given Vagnozzi correct advice and competent service regarding Fall-Catcher, Vagnozzi personally would have been able to earn and retain the $500,000 in commissions, and would have avoided public embarrassment.

ANSWER: Denied. Pauciulo provided legal advice that was not followed by Vagnozzi.

L. The Securities & Exchange Commission Litigation

117. The SEC scrutiny of PAR Funding resulted in the filing of an action, brought by the SEC on July 24, 2020 in the United States District Court for the Southern District of Florida, captioned, *Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al.,* Civil Docket No. 9:20-cv-81205-RAR (the "SEC Florida Action"). The SEC Florida Action was brought against PAR Funding and its principals, Lisa McElhone and Joseph W. La Forte, as well as other third-parties including Dean Vagnozzi.

ANSWER: Denied as stated. It is admitted that the SEC initiated an action against several defendants including Vagnozzi and PAR in late July 2020 in the U.S. District Court for the Southern District of Florida. The Complaint filed by the SEC against Vagnozzi and PAR and other pleadings filed by the SEC are written documents which speak for themselves. Pauciulo and Eckert refer to such writings for their contents and deny any characterization thereof.

118. Within days of the initiation of the SEC Florida Action, the Honorable Rodolfo A. Ruiz, II appointed a Receiver to immediately take over and operate PAR Funding.

ANSWER: It is admitted that the Honorable Rodolfo A. Ruiz, II issued an order appointing a receiver to oversee PAR.

119. In connection with the PPMs, Subscription Agreements, and Supplements prepared by Defendants, the SEC sued Vagnozzi and various of his funds and business entities alleging, among other things, that:

a. None of the PPMs or funds created by Defendants were ever properly registered with the SEC.

b. The PPMs - and later, the Supplements - prepared by Defendants contained woefully inadequate disclosures, including on such issues as:

(i) Joe Mack's true name.

(ii) The criminal background of Joe LaForte.

(iii) The default rates on cash merchant advances experienced by PAR Funding.

(iv) The management of the PAR Funding business operations.

(v) The existence of prior regulatory actions and investigations against PAR Funding.

(vi) The existence of prior regulatory action and investigations of Dean Vagnozzi and various of the funds established through the PPMs.

(vii) The underwriting procedures employed by PAR Funding when making cash advances.

ANSWER: The Complaint filed by the SEC against Vagnozzi and PAR and other pleadings filed by the SEC are written documents which speak for themselves. Pauciulo and Eckert refer to such writings for their contents and deny any characterization thereof.

120. The following entities associated with Vagnozzi were named as Defendants by the SEC in its initial Florida action along with Vagnozzi:

a. A Better Financial Plan.Com LLC

b. ABFP Management Co., LLC

c. ABFP Income Fund, LLC

d. ABFP Income Fund 2, L.P.

ANSWER: The Complaint filed by the SEC against Vagnozzi and PAR and other pleadings filed by the SEC are written documents which speak for themselves. Pauciulo and Eckert refer to such writings for their contents and deny any characterization thereof.

121. Thereafter, additional Vagnozzi Funds and entities were added to the Florida Action, including various Pillar, Atrium, and ABFP Parallel entities.

ANSWER: The Complaint filed by the SEC against Vagnozzi and PAR and other pleadings filed by the SEC are written documents which speak for themselves. Pauciulo and Eckert refer to such writings for their contents and deny any characterization thereof.

122. As a result, an asset freeze was imposed upon Vagnozzi and all his related Funds and management entities.

ANSWER: The Order appointing a Receiver and ordering an asset freeze is a written document which speaks for itself. Pauciulo and Eckert refer to such writings for its contents and deny any characterization thereof

123. At no time has any regulatory agency of the SEC ever alleged that Vagnozzi ever misappropriated any funds of any clients or investors or that he had any control over PAR Funding on the information they provided to Vagnozzi.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 123 and therefore deny the same.

124. The only basis as alleged by the state regulators and in the litigation brought by the SEC were about matters that Defendants had specifically advised and represented Vagnozzi as to, and for which they were solely responsible in bringing about.

ANSWER: The averments in Paragraph 124 are vague and ambiguous, and without additional information, Pauciulo and Eckert are unable to form an opinion as to their truth, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

IV. DAMAGES

125. The damages sustained by Vagnozzi directly and proximately related to the malpractice, breach of fiduciary duty, and breach of contract by Defendants cannot be overstated, and includes at least the following:

a. Vagnozzi has been named to, and forced to defend, at great expense:

(i) The Florida Action, brought by the United States Securities and Exchange Commission;

(ii) Three class-action lawsuits: one in Florida, another in Delaware, and the third in Pennsylvania.

(iii) Numerous other regulatory investigative proceedings by the SEC and various State regulatory commissions.

ANSWER: Denied. To the extent the averments of Paragraph 125 consist of legal conclusions, no response is required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

126. Vagnozzi's professional reputation in the wealth management, insurance, and income-investment industries has been destroyed.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 126, and they are therefore denied. To the extent the averments of Paragraph 126 consist of legal conclusions, no response is required, and they are therefore denied.

127. Vagnozzi has had hundreds of thousands of dollars frozen from business and personal bank and stock accounts.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 127, and they are therefore denied.

128. Vagnozzi has had imposed upon him various "Cease and Desist Orders" by various state and federal regulatory agencies, preventing him from conducting any of his businesses, and having to pay fines in the hundreds of thousands of dollars (now at least $700,000).

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 128, and they are therefore denied.

129. Vagnozzi's business operations - especially in the life insurance/life settlement and litigation funding areas - have been shut down and its assets seized, and he has personally lost the value of his ownership interests in such businesses.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 129, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

130. Indeed, until the time Vagnozzi was subjected to the SEC litigation, he was widely considered one of the best and most effective life insurance salespersons in the Country. He was invited to speak, and did so, at countless conventions and industry seminars around the Country, was coveted by virtually every life insurance carrier looking to engage him as a representative, and had authored an inspirational book.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 130, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

131. Because of Defendants' misconduct and profound negligence as described herein, Vagnozzi's ability to carry on any life insurance/settlement business has been destroyed. Vagnozzi went from earning seven figures a year in this regard to earning nothing.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 131, and they are therefore denied. To the extent the averments of Paragraph 131 consist of legal conclusions, no response is required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

132. The entirety of Vagnozzi's potential disgorgement liability and related fines and penalties to the SEC is now alleged to be in the many millions of dollars.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 132, and they are therefore denied. To the extent the averments of Paragraph 132 consist of legal conclusions, no response is

required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

133. Vagnozzi and his family have been subjected to unrelenting, scathing media and permanent internet coverage in connection with the PAR Funding controversy and his role (orchestrated by Defendants) in bringing millions of dollars of public investment dollars to it.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 133, and they are therefore denied. To the extent the averments of Paragraph 133 consist of legal conclusions, no response is required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi and that Pauciulo and Eckert "orchestrated" anything.

134. Vagnozzi has suffered and will continue to suffer enormous and ongoing personal humiliation, stress, and shame, and the widespread shunning of Vagnozzi and his family by virtue of all the adverse press coverage.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 134, and they are therefore denied. To the extent the averments of Paragraph 134 consist of legal conclusions, no response is required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

135. Vagnozzi has suffered substantial loss of money invested by him personally in the Funds and will, in the future, suffer a loss of his ability to raise funds and earn income in the future in any of the industries he previously operated within.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 135, and they are therefore

denied. To the extent the averments of Paragraph 135 consist of legal conclusions, no response is required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

136. Vagnozzi was caused to waste monies paid to Defendants as legal fees for services that were illegal, inept, far below minimally acceptable standards within his, or any, field of law, and not in accordance with any contractual or fiduciary obligations, including hundreds of thousands of dollars in legal fees to defend the regulatory actions brought about solely by Defendants' conduct.

ANSWER: Denied. After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to the averments in Paragraph 136, and they are therefore denied. To the extent the averments of Paragraph 136 consist of legal conclusions, no response is required, and they are therefore denied. It is specifically denied that Pauciulo and Eckert's actions or inactions caused harm to Vagnozzi.

RELIEF REQUESTED

COUNT I - Negligence/Professional Malpractice

Plaintiff v. Both Defendants

137. Plaintiff hereby incorporates all other paragraphs of the Complaint as if set forth fully herein.

ANSWER: Pauciulo and Eckert incorporate all other paragraphs of the Answer as if fully set forth herein.

138. As more fully set forth above, Plaintiff, individually sought legal advice and services from Defendants.

ANSWER: It is admitted only that Plaintiff sought legal advice and services from Defendants.

139. Plaintiff personally paid Defendants huge amounts of legal fees.

ANSWER: It is admitted only that Vagnozzi paid legal fees to Defendants.

140. The legal advice and services Plaintiff sought were within what Defendants professed to be in their professional competence and expertise.

ANSWER: It is admitted that Defendants provided legal advice and services that were professionally competent.

141. Defendants expressly agreed to provide legal advice and services to Plaintiff.

ANSWER: It is admitted that Defendants agreed to provide legal advice and services to Vagnozzi, including as set forth in engagement letters. The engagement letters are writings that speaks for themselves, and Defendants refer to such writings for their contents and deny any characterization thereof.

142. Plaintiff reasonably believed that Defendants were competently representing him in connection with providing the aforementioned legal advice and services.

ANSWER: After reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as to what Vagnozzi believed, and such averments are therefore denied. By way of further response, Defendants were competently providing legal advice and services to Vagnozzi.

143. By virtue of the above, an express attorney-client relationship existed between Plaintiff and Defendants, though clearly in violation of the rules of Professional Conduct because of the non-existence of any engagement letters.

ANSWER: Admitted in part, denied in part. It is admitted that an attorney-client relationship existed between Vagnozzi and Defendants. To the extent the averments of Paragraph 143 consist of legal conclusions, no response is required, and they are therefore denied. To the

extent a response is required, the averments of Paragraph 143 are denied. By way of further response, Defendants provided engagement letters to Vagnozzi. The engagement letters are writings that speaks for themselves, and Defendants refer to such writings for their contents and deny any characterization thereof.

144. In addition, and in the alternative, an implied attorney-client relationship existed between Plaintiff and Defendants.

ANSWER: Admitted in part, denied in part. It is admitted that an attorney-client relationship existed between Vagnozzi and Defendants. To the extent the averments of Paragraph 144 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 144 are denied. By way of further response, Defendants provided engagement letters to Vagnozzi. The engagement letters are writings that speaks for themselves, and Defendants refer to such writings for their contents and deny any characterization thereof.

145. The acts and omissions of Pauciulo described herein occurred while Pauciulo was a partner, member, or authorized agent of Defendant Eckert, and within the scope of his authority with Eckert.

ANSWER: Denied. To the extent the averments of Paragraph 145 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, it is admitted only that Pauciulo is a member of Eckert who acted within the scope of his authority with Eckert, and the remaining the averments of Paragraph 145 are denied.

146. Defendant Eckert is also directly liable for its own negligent, reckless, or otherwise unlawful conduct, including but not limited to, an abject failure to properly supervise Pauciulo (and other firm attorneys) in connection with the legal advice and services provided to Plaintiff.

ANSWER: Denied. To the extent the averments of Paragraph 146 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 146 are denied.

147. By virtue of the attorney-client relationship, each of the Defendants had a duty to Plaintiff to exercise ordinary skill and knowledge consistent with the applicable standard of care for attorneys licensed in Pennsylvania and practicing in the securities and corporate fields of law.

ANSWER: Denied. To the extent the averments of Paragraph 147 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 147 are denied.

148. As more fully set forth above, each of the Defendants breached the duty to Plaintiff to exercise ordinary skill and knowledge consistent with the applicable standard of care for attorneys licensed in Pennsylvania, and in fact provided incompetent, illegal, and reckless advice and services.

ANSWER: Denied. To the extent the averments of Paragraph 148 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 148 are denied.

149. As a direct and proximate result of the Defendants' conduct, Plaintiff has suffered and continues to suffer damages as fully set forth herein for which Defendants are liable, jointly and severally.

ANSWER: Denied. To the extent the averments of Paragraph 149 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 149 are denied.

150. As a direct and proximate result of the Defendants' conduct, Plaintiff has incurred substantial legal fees and expenses that he wouldn't have otherwise had to incur or expend.

ANSWER: Denied. To the extent the averments of Paragraph 150 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 150 are denied.

151. Defendants' conduct was outrageous and demonstrated a reckless indifference to the rights of Plaintiff, and Plaintiff is therefore entitled to punitive damages against each of the Defendants.

ANSWER: Denied. To the extent the averments of Paragraph 151 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 151 are denied.

COUNT II—Information Negligently Supplied for Others'
Guidance Restatement (Second) of Torts § 552

Plaintiff v. Both Defendants

152. Plaintiff hereby incorporates all other paragraphs of the Complaint as if fully set forth herein.

ANSWER: Pauciulo and Eckert incorporate all other paragraphs of the Answer as if fully set forth herein.

153. In the course of their business, profession, and employment, Defendants provided false, incorrect, and misleading information to Plaintiff, including false information about the Defendants' original due diligence into PAR Funding, false information about whether Plaintiff was permitted to advertise on the radio to the general public, and conduct meetings and events with such general public, without Plaintiff's funds being publicly registered with the state and

federal securities regulators, about what disclosures to investors were and were not required, and about Defendants' subsequent due diligence about the Exchange Offers.

ANSWER: Denied. To the extent the averments of Paragraph 153 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 153 are denied.

154. Defendants failed to exercise reasonable care and competence in obtaining or communicating correct information to Plaintiff about each of these foregoing matters, and the Eckert Firm failed to review in any meaningful way the correctness or falsity of the information Pauciulo was providing to the Plaintiff.

ANSWER: Denied. To the extent the averments of Paragraph 154 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 154 are denied.

155. Defendants intended to supply such information for Plaintiff's guidance.

ANSWER: The averments of Paragraph 155 are vague and ambiguous, and Defendants are unable to answer such averments.

156. Plaintiff justifiably relied on such information in creating and advertising the various investment funds, and in conducting his various business activities in the manner advised by Defendants.

ANSWER: Denied. To the extent the averments of Paragraph 156 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 156 are denied. By way of further response, after reasonable investigation, Pauciulo and Eckert are without sufficient information or knowledge as what Vagnozzi relied on or how he conducted his business activities, and they are therefore denied.

157. As a direct and proximate result of such false, incorrect, and misleading information and Plaintiff's justifiable reliance on it, Plaintiff has suffered and continues to suffer damages described herein for which Defendants are liable, jointly and severally.

ANSWER: Denied. To the extent the averments of Paragraph 157 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 157 are denied.

158. Defendants' conduct was outrageous and demonstrated a reckless indifference to the rights of Plaintiff and Plaintiff is therefore entitled to punitive damages against each of them.

ANSWER: Denied. To the extent the averments of Paragraph 158 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 158 are denied.

COUNT III - Breach of Fiduciary Duty

Plaintiff v. Both Defendants

159. Plaintiff hereby incorporates all other paragraphs of the Complaint as if set forth herein.

ANSWER: Pauciulo and Eckert incorporate all other paragraphs of the Answer as if fully set forth herein.

160. By virtue of the attorney-client relationship, each of the Defendants owed Plaintiff a fiduciary duty.

ANSWER: Denied. To the extent the averments of Paragraph 160 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 160 are denied.

161. Further, by way of their (purported) superior knowledge regarding securities law, and their knowledge that Plaintiff lacked such knowledge and was relying on Defendants' advice, Defendants took on a position of trust and special trust with Plaintiff.

ANSWER: Denied. To the extent the averments of Paragraph 161 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 161 are denied.

162. As more fully set forth above, Defendants breached such fiduciary duties, exposing Vagnozzi to the SEC's allegations regarding failing to properly register the various funds under state and federal securities laws, failing to properly disclose the necessary and required risk factors in the various PPMs associated with the various investment funds, failing to properly disclose the numerous material risks associated with investments in PAR Funding, misrepresenting to Plaintiffs they performed at least two separate, meaningful due diligence, investigations into PAR Funding when they did not, and failing to properly advise Plaintiff concerning his efforts to advertise his business to the general public.

ANSWER: Denied. To the extent the averments of Paragraph 162 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 162 are denied.

163. As a direct and proximate result of such breaches of fiduciary duties, Plaintiff has suffered and continues to suffer damages for which Defendants are liable, jointly and severally.

ANSWER: Denied. To the extent the averments of Paragraph 163 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 163 are denied.

164. Defendants' conduct was outrageous and demonstrated a reckless indifference to the rights of Plaintiff, and Plaintiff is therefore entitled to punitive damages against each of them.

ANSWER: Denied. To the extent the averments of Paragraph 164 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 164 are denied.

COUNT IV - Breach of Contract

Plaintiff v. Both Defendants

165. Plaintiff hereby incorporates all other paragraphs of the Complaint as if set forth herein.

ANSWER: Pauciulo and Eckert incorporate all other paragraphs of the Answer as if fully set forth herein.

166. As more fully set forth above, Plaintiff had an express and/or implied contract with Defendants to provide competent legal advice and services in connection with Plaintiff's rights, obligations, and liabilities in raising the various investment funds and investing money in such funds, including in PAR Funding, performing due diligence, investigations into PAR Funding, properly registering and/or obtaining exemptions from registering the investment funds with state and federal regulators, creating adequate PPMs under existing state and federal securities laws, and properly advising Plaintiff concerning advertising his business to the general public.

ANSWER: Denied. To the extent the averments of Paragraph 166 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 166 are denied. By way of further response, Defendants provided engagement letters to Vagnozzi. The engagement letters are a writings that speak for themselves, and Defendants refer to such writings for their contents and deny any characterization thereof.

167. Defendants expressly or impliedly promised they were qualified to and would provide competent (and, indeed, expert) such legal advice and services.

ANSWER: Denied. To the extent the averments of Paragraph 167 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 167 are denied. By way of further response, Defendants provided engagement letters to Vagnozzi. The engagement letters are writings that speaks for themselves, and Defendants refer to such writings for their contents and deny any characterization thereof.

168. As more fully set forth above, Defendants breached such contract by, among other things, failing to carry out its minimally required contractual responsibilities to Plaintiff in the providing of such legal advice and services.

ANSWER: Denied. To the extent the averments of Paragraph 168 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 168 are denied.

169. Directly as a result of such breaches, Plaintiff has suffered and continues to suffer the consequent and foreseeable damages for which Defendants are liable, jointly and severally.

ANSWER: Denied. To the extent the averments of Paragraph 169 consist of legal conclusions, no response is required, and they are therefore denied. To the extent a response is required, the averments of Paragraph 169 are denied.

WHEREFORE, Defendants Pauciulo and Eckert request that judgment be entered in their favor and against Vagnozzi, dismissing the Complaint with prejudice, together with costs, attorneys' fees, and such other and further relief as the Court deems just and proper.

NEW MATTER

170. Defendants Pauciulo and Eckert hereby incorporate the preceding Paragraphs of the within Answer by reference as if set forth fully herein.

171. Pauciulo first met Vagnozzi in or around 2004 when Pauciulo was an attorney with the firm White & Williams.

172. Pauciulo first provided legal services to Vagnozzi and a group of other investors in connection with the formation of an entity to invest in real estate.

173. Following that initial engagement, Pauciulo provided legal services to Vagnozzi in connection with the formation of other entities that invested in real estate and life settlement funds.

174. Sometime after meeting individuals from PAR, Vagnozzi engaged Pauciulo to perform due diligence on PAR.

175. Pauciulo sent a list of due diligence items to PAR, which Pauciulo also showed to Vagnozzi.

176. PAR did not provide all of the information and documents that Pauciulo requested, and Pauciulo informed Vagnozzi of the same.

177. Vagnozzi communicated directly with PAR's management and principals, often times without Pauciulo's knowledge.

178. Vagnozzi contacted Pauciulo about creating an investment vehicle controlled by Vagnozzi, ABFP Income Fund I, that investors could invest in and that Vagnozzi would subsequently use to invest in merchant cash advance companies.

179. Pauciulo had multiple communications with Vagnozzi in which Pauciulo advised that the creation of such an investment company would be legally compliant if Vagnozzi followed Pauciulo's advice in operating that entity.

180. Pauciulo also advised Vagnozzi that he should invest in multiple merchant cash advance companies and not solely PAR, which was reflected in the PPM that Pauciulo drafted for Vagnozzi.

181. Pauciulo also drafted PPMs for investment fund owners introduced to him by Vagnozzi.

182. The PPMs for the investment funds contemplated investments in merchant advance companies and stated that "[t]he proceeds from the sales of the Notes will be used to purchase promissory notes and other similar debt instruments offered and sold by companies which provide 'Merchant Cash Advance' financing."

183. It was also understood that the investment funds' investments included promissory notes issued by PAR.

184. In addition, the PPMs disclosed numerous risk factors, such as that "[u]nderwriting and risk management efforts may not be effective" and "[o]ther regulatory risks."

185. The PPMs also warned that "[i]nvestment in the notes involves a high degree of risk and is suitable only for persons of substantial financial resources who have no need for liquidity in their investment."

186. Moreover, the PPMs stated that "[n]o persons have been authorized to make representations or to give any information with respect to the offering of the notes or the operations of the fund, except the information contained in this memorandum or provided as set forth below. This memorandum supersedes all prior oral or written information, if any, provided to investors with respect to the offering of the securities or the operations of the fund."

187. At least one individual ABFP employee who was also an investment fund owner, Michael Tierney, was designated by Vagnozzi as the individual responsible for overseeing the

relationship between Vagnozzi, his entity, and the investment funds and responsible for interacting with all other investors in connection with advice concerning PAR.

188. Vagnozzi acted inconsistent with the legal advice provided by Pauciulo and/or beyond the scope of the legal advice provided by Pauciulo on numerous occasions.

189. For example, on more than one occasion, Vagnozzi ignored the legal advice provided by Pauciulo and exceeded the number of investors in certain funds that he was counseled to have.

190. As another example, Vagnozzi ignored the legal advice by Pauciulo and acted outside the scope of a finder.

191. Pauciulo also provided legal advice to Vagnozzi about how to communicate with persons who responded to radio advertisements and mailers and how to comply with securities laws. Upon information and belief, Vagnozzi did not follow such advice.

192. Vagnozzi also distributed Pauciulo's biography page on Eckert's website to third parties without the permission of Pauciulo and Eckert.

193. Pauciulo and Eckert have lost business as a result of Vagnozzi's failure to follow Defendants' legal advice.

194. The SEC initiated an action against several defendants including Vagnozzi and PAR in late July 2020 in the U.S. District Court for the Southern District of Florida.

195. The Complaint fails to state a claim upon which relief can be granted.

196. Vagnozzi's claims are barred, in whole or in part, by the doctrine of in pari delicto.

197. Vagnozzi's claims are barred, in whole or in part, by the doctrine of unclean hands.

198. Vagnozzi's claims are barred, in whole or in part, by the gist of the action doctrine.

199. Vagnozzi's claims are barred, in whole or in part, by waiver, acquiescence, ratification, and/or estoppel.

200. Vagnozzi's claims are barred, in whole or in part, because Pauciulo and Eckert were not the proximate cause, cause-in-fact, or but-for cause of Vagnozzi's alleged injuries or harm.

201. Vagnozzi's claims are barred, in whole or in part, by Vagnozzi's failure to mitigate damages.

202. Vagnozzi's claims are barred, in whole or in part, by Vagnozzi's contributory negligence.

203. Vagnozzi's claims are barred, in whole or in part, because it would be inequitable to award damages to the extent they occurred or continued as a result of Vagnozzi's own actions and/or omissions, or those of Vagnozzi's agents or representatives.

204. Pauciulo and Eckert reserve the right to add one or more affirmative defenses if facts are discovered to support an additional affirmative defense.

WHEREFORE, Defendants Pauciulo and Eckert request that judgment be entered in their favor and against Vagnozzi, dismissing the Complaint with prejudice, together with costs, attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: June 1, 2021

Respectfully submitted,

/s/ Jay A. Dubow
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Attorneys for Defendants John W. Pauciulo and Eckert Seamans Cherin & Mellott, LLC

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Jay A. Dubow
Jay A. Dubow (PA Bar No. 41741)

CERTIFICATE OF SERVICE

I, Jay A. Dubow, Esquire, hereby certify that on or about June 1, 2021, a true and correct copy of the foregoing Answer and New Matter of Defendants John W. Pauciulo and Eckert Seamans Cherin & Mellott, LLC to Plaintiff Dean Vagnozzi's Complaint was served upon the following via the Court's electronic filing system and email:

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Jay A. Dubow (PA Bar No. 41741)

VERIFICATION

I, John W. Pauciulo, hereby verify that the facts set forth in the foregoing Answer to Complaint and New Matter of Defendant John W. Pauciulo are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: June 1, 2021

John W. Pauciulo

VERIFICATION

I, Timothy S. Coon, hereby verify that I am authorized to make this Verification on behalf of Defendant Eckert Seamans Cherin & Mellott, LLC ("Eckert Seamans") and that the facts set forth in the foregoing Answer to Complaint and New Matter of Defendant Eckert Seamans are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: June 1, 2021

Timothy S. Coon

Timothy S. Coon

Exhibit “E”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
vs.
COMPLETE BUSINESS SOLUTIONS GROUP, INC. D/B/A PAR FUNDING FULL SPECTRUM PROCESSING, INC., ABETTERFINANCIALPLAN.COM LLC D/B/A A BETTER FINANCIAL PLAN, ABFP MANAGEMENT COMPANY, LLC F/K/A PILLAR LIFE SETTLEMENT MANAGEMENT COMPANY, LLC, ABFP INCOME FUND, LLC, ABFP INCOME FUND 2, L.P., UNITED FIDELIS GROUP CORP., FIDELIS FINANCIAL PLANNING LLC, RETIREMENT EVOLUTION GROUP, LLC, RETIREMENT EVOLUTION INCOME FUND, LLC F/K/A RE INCOME FUND, LLC, RE INCOME FUND 2 LLC, LISA MCELHONE, JOSEPH COLE BARLETA A/K/A JOE COLE, JOSEPH W. LAFORTE A/K/A JOE MACK A/K/A JOE MACKI A/K/A JOE MCELHONE, PERRY S. ABBONIZIO, DEAN J. VAGNOZZI, MICHAEL C. FURMAN, and JOHN GISSAS,
Defendants, and
L.M.E. 2017 FAMILY TRUST,
Relief Defendant.

Civil Action No.: 20-cv-81205-RAR

VIDEOCONFERENCE DEPOSITION OF JOHN PAUCIULO
Friday April 9, 2021
Reported by:
Denise Sankary, RPR, RMR, CRR
Job No. 210409DSA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
vs.
COMPLETE BUSINESS SOLUTIONS GROUP, INC. D/B/A PAR FUNDING, et al.,
Defendants, and
L.M.E. 2017 FAMILY TRUST,
Relief Defendant.)

Civil Action No.: 20-cv-81205-RAR

Deposition of JOHN PAUCIULO taken via videoconference on behalf of Plaintiff, all parties appearing remotely, commencing at 10:15 a.m. and ending at 7:07 p.m., on Friday, April 9, 2021, before Denise Sankary, RPR, RMR, CRR, and Notary Public of the State of Florida, pursuant to notice.

APPEARANCES (All appearing remotely):

For the Plaintiff:

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
BY: AMIE RIGGLE BERLIN, ESQUIRE
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: 305-982-6300
Email: berlina@sec.gov

On behalf of Ryan Stumphauzer, Court-Appointed Receiver:
STUMPHAUZER FOSLID SLOMAN ROSS & KOLAYA
BY: TIMOTHY A. KOLAYA, ESQUIRE
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2550
Miami, Florida 33131
Telephone: 305-614-1400
Email: tkolaya@sfslaw.com

On behalf of Ryan Stumphauzer, Court-Appointed Receiver:
PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
BY: DOUGLAS K. ROSENBLUM, ESQUIRE
1818 Market Street, Suite 3402
Philadelphia, Pennsylvania 19103
Telephone: 215-754-5179
Email: dkr@pietragallo.com

On behalf of Eckert Seamans and John Pauciulo:

TROUTMAN PEPPER
BY: ERICA HALL DRESSLER, ESQUIRE
BY: JAY A. DUBOW, ESQUIRE
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, Pennsylvania 19103
Telephone: 215-981-4691
Email: erica.dressler@troutman.com
Email: jay.dubow@troutman.com

APPEARANCES (All appearing remotely):

On behalf of Eckert Seamans and John Pauciulo:
WELSH RECKER, P.C.
BY: CATHERINE M. RECKER, ESQUIRE
BY: AMY CARVER, ESQUIRE
BY: RICHARD D. WALK, III, ESQUIRE
306 Walnut Street
Philadelphia, Pennsylvania 19106
Telephone: 215-972-6430
Email: cmrecker@welshrecker.com
Email: abcarver@welshrecker.com
Email: rwalk@welshrecker.com

On behalf of Dean Vagnozzi:
AKERMAN, LLP
BY: BRIAN P. MILLER, ESQUIRE
98 Southeast Seventh Street, Suite 1100
Miami, Florida 33131
Telephone: 305-982-5626
Email: brian.miller@akerman.com

On behalf of Perry Abbonizio:
MARCUS NEIMAN RASHBAUM & PINEIRO, LLP
BY: JEFFREY MARCUS, ESQUIRE
BY: JASON MAYS, ESQUIRE
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2530
Miami, Florida 33131
Telephone: 305-400-4260
Email: jmarcus@mnrlawfirm.com
Email: jmays@mnrlawfirm.com

On behalf of Michael Furman:

SALLAH ASTARITA & COX, LLC
BY: JEFFREY COX, ESQUIRE
3010 North Military Trail, Suite 310
Boca Raton, Florida 33431
Telephone: 561-989-9080
Email: jlc@sallahlaw.com

not done in connection with anticipation of litigation.
BY MS. BERLIN:
Q. Have you ever invested in Complete Business Solutions Group?
A. I'm sorry. You broke up.
Can you please repeat the question?
Q. Sure. Have you ever invested money into Complete Business Solutions Group?
A. No, I have not.
Q. Have you ever invested money in any fund that invests in Complete Business Solutions Group?
A. No, I have not.
Q. Do you have any family members or close friends who invest in Complete Business Solutions Group or a fund that invests in Complete Business Solutions Group?
A. Not to my knowledge, no.
Q. Do you know a man named Dean Vagnozzi?
A. Yes, I do.
Q. And when did you meet Dean Vagnozzi?
A. I don't recall the specific date on which I met Dean Vagnozzi, but sometime in the year 2004.
Q. And did Mr. Vagnozzi at a certain point retain you as his lawyer in his personal capacity?

A. Yes.
Q. And when did Mr. Vagnozzi retain you in his personal capacity to be his lawyer?
A. I think 2004.
Q. You also represented some of Mr. Vagnozzi's companies, correct?
A. Yes, that's correct.
Q. And some of those companies are now in a receivership under the court order in the SEC case that you're testifying in today.
Do you understand that?
MS. RECKER: Object to the form.
BY MS. BERLIN:
Q. Mr. Pauciulo, are you aware that some of the companies that you used to represent for Mr. Vagnozzi are now in a receivership?
A. Yes, I am aware of that.
Q. And is it your understanding that the receiver has waived the attorney-client privilege with respect to the entities that are in the receivership that you used to represent?
A. I've been told that.
Q. And we have counsel for the receiver here --
MR. KOLAYA: Ms. Berlin, I can confirm

that the receiver has, in fact, waived the privilege as to any of the A Better Financial Plan-related entities that are within the scope of the receivership. And if you would like, I can list them if necessary.
MS. BERLIN: That would be helpful, thank you, just so Mr. Pauciulo can hear that.
MR. KOLAYA: Sure. Give me one second. I'll pull up the list, and I'll be right back with you.
MS. BERLIN: Thank you.
MR. KOLAYA: Okay. For purposes of the record, the companies I'm referring to are: ABetterFinancialPlan.com, LLC, doing business as A Better Financial Plan; ABFP Management Company, LLC, formerly known as Hiller Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund II, LP; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel, LLC; ABFP Income Fund II Parallel, LLC; ABFP Income Fund 3 Parallel, LLC; ABFP Income Fund 4 Parallel, LLC; ABFP Income Fund 6 Parallel, LLC; ABFP Multi-strategy Investment Fund, LP, ABFP Multi-strategy Investment Fund 2, LP; and

MK Corporate Debt Investment Company, LLC.
That was M as in Michael, K as in Kenneth.
BY MS. BERLIN:
Q. And Mr. Pauciulo, for purposes of your deposition, I might refer to the receivership clients or the receivership entities that have waived their attorney-client privilege with you, and if I do, do you understand that I'm referring to the list of your former clients that Mr. Kolaya just read to you?
A. Yes, I understand.
Q. Okay. Do you continue to represent Dean Vagnozzi today?
A. No, I do not.
Q. When did your representation of him end?
A. I don't recall the specific date on which our representation ended.
Q. Was it within the last year?
A. Yes, it was within the last year.
Q. Was it after the SEC filed the case that you're testifying in today?
A. Yes.
Q. And do you know of a woman named Shannon Westhead?
A. Yes.

MS. BERLIN: Thank you, Natalie.
BY MS. BERLIN:
Q. Do you see up at the top it says "justification"?
A. Yes, I see the word "justification."
Q. Okay. And I just wanted to turn your attention, please, to the second full paragraph on, this is PDF page 3 of Exhibit 3. And do you see where the Pennsylvania securities regulators are stating that one of the justifications for issuing the subpoena to Complete Business Solutions Group is that it received a customer complaint --
(Technical interruption.)
BY MS. BERLIN:
Q. I'll back up just for a minute. Mr. Pauciulo, you were representing Dean Vagnozzi in January 2018, correct?
A. Yes, that's correct.
Q. And do you see the second full paragraph on page 3 of Exhibit 3 where the Pennsylvania securities regulators are providing the justification for the subpoena to CBSG and stating that they had received a complaint in March of 2017 concerning Mr. Vagnozzi and his advertisement of investments concerning Par Funding or Complete

Business Solutions Group? Do you see that?
A. Yes, I do see that.
Q. Did there come a time when you became aware of the fact that the Pennsylvania securities regulators had issued a subpoena to Par Funding based in part on complaints about Mr. Vagnozzi?
MS. RECKER: Objection, and to the extent that your answer would reveal attorney-client privileged information, I would instruct you not to answer.
MR. MILLER: This is Brian Miller. I object to the form.
BY MS. BERLIN:
Q. So Mr. Pauciulo?
A. I'm unaware of any subpoena issued by the Pennsylvania securities regulators to CBSG and/or Par.
Q. So is this the first time that you've seen any document in connection with the subpoena issued to Par Funding?
A. Yes, that's correct.
Q. And you had no knowledge that the -- that the securities -- the Pennsylvania securities regulators had issued a subpoena to them?
A. Yes --

MS. RECKER: Object to the form.
A. Yes, that's correct.
BY MS. BERLIN:
Q. Did there come a time when you became aware that the Pennsylvania securities regulators were investigating Par Funding?
MS. RECKER: Objection to the form. And to the extent that your answer would reveal attorney-client privileged information, I would instruct you not to answer.
A. Can you restate the question, please?
BY MS. BERLIN:
Q. Sure.
Did there come a time when you became aware that the Pennsylvania securities regulators were investigating Par Funding?
MS. RECKER: Objection to the form and assert privilege to the extent your answer would reveal attorney-client privileged information.
A. I became aware that there had been an investigation after reading articles in the press regarding a settlement between CBSG and Pennsylvania state regulators.

BY MS. BERLIN:
Q. And so you -- you were unaware of anything about an investigation until a settlement became public?
MS. RECKER: Object to the form.
A. I became aware of a settlement that was publicly announced and I recall reading an article about the settlement.
BY MS. BERLIN:
Q. And approximately when did you -- and we're talking about the settlement, but just for clarity, are you referring to an order to show cause that the Pennsylvania securities regulators had issued concerning Par Funding?
MS. RECKER: Object to the form.
A. No, I'm -- I'm referring to a document that evidenced some sort of settlement between the Pennsylvania securities regulators and CBSG.
BY MS. BERLIN:
Q. And did you become aware of that, was it in approximately November 2018?
MS. RECKER: Object to the form. And to the extent that your answer would reveal attorney-client privileged information, I would instruct you not to answer.

announcement was sometime in December of 2018. I don't recall the specific date on which I learned about it. To the best of my recollection, it was probably some number of days or weeks after the public announcement.

Q. And did you learn about the New Jersey securities regulatory action against Par Funding before it became public?

A. No.

MS. RECKER: Object to the form.

BY MS. BERLIN:

Q. And did you -- do you have an understanding that the Pennsylvania and New Jersey securities regulatory actions against Par Funding concerned violations of the state securities rules and regulations?

MS. RECKER: Object to the form.

A. I'm not sure I understood your question.

BY MS. BERLIN:

Q. Okay. We'll break it down. The Pennsylvania securities regulatory action of November 2018, let's talk about that one first.

Did you read -- did you read the -- the papers in that case?

MS. RECKER: Object to the form.

A. I don't recall whether I read the actual filings or what. You used the term "papers." I'm not sure what you mean by "papers." I recall reading, you know, published media account of the matter. I don't recall whether I read the actual documents related to the case.

BY MS. BERLIN:

Q. And -- and what was your understanding of what the findings were or the settlement was in the Pennsylvania regulatory action against Par Funding?

A. In the Pennsylvania action, my understanding was that the Pennsylvania regulators asserted the position that Par Funding had sold securities without registering them and without satisfactorily complying with an exemption for registration, and that the case was settled on a no admit/no deny basis.

Q. And that the -- with respect to the New Jersey action, did you understand that that also involved a state securities regulator and Par Funding's alleged violation of the New Jersey state securities rules and regulations?

MS. RECKER: Object to the form.

A. Yes, my understanding was that the gist of the New Jersey regulatory action was very similar

to, if not the same as the gist of the Pennsylvania regulatory action.

BY MS. BERLIN:

Q. And are you aware of the May 2019 settlement between Dean Vagnozzi doing business as A Better Financial Plan and the Pennsylvania securities regulators for violations of state securities rules and regulations?

A. I'm aware that the Pennsylvania state regulators asserted claims against Dean Vagnozzi with regard to potential violations of the Pennsylvania securities laws, and I'm generally aware that that matter was settled on a no admit/no deny basis.

Q. And prior to the settlement, did you become aware of the Pennsylvania securities regulators investigation of Mr. Vagnozzi?

MS. RECKER: Objection. To the extent that that answer would reveal attorney-client privileged information, I would instruct you not to answer it and I object to the form.

A. I cannot answer that question.

BY MS. BERLIN:

Q. Did you represent Mr. Vagnozzi in connection with the Pennsylvania securities

regulators action that manifested in a settlement in May 2019?

A. Yes, I did.

Q. And the communication that you're claiming is privileged, was that from Mr. Vagnozzi?

A. Yes, that's correct.

Q. And with respect to -- that investigation also concerned A Better Financial Plan; is that correct?

MS. RECKER: Object to the form.

A. I don't recall whether it also involved the entity known as abetterfinancialplan.com, LLC.

BY MS. BERLIN:

Q. Well, you were A Better Financial Plan's counsel during the Pennsylvania securities regulators investigation --

MS. RECKER: Object to the form.

BY MS. BERLIN:

Q. -- of Mr. Vagnozzi doing business as A Better Financial Plan, correct?

MS. RECKER: Object to the form.

A. I represented abetterfinancialplan.com, LLC, from time to time in various matters. I simply don't recall whether that entity was a party to the Pennsylvania action.

there's another party to that case named Gary Beasley.
Are you familiar with them?
A. I'm familiar with an individual named Gary Beasley.
Q. And he's also -- he's a respondent in that Texas action of the cease and desist order in February 2020?
A. Yes. Gary Beasley is a named party in that action.
Q. And are you his counsel as well?
A. Not in connection with the Texas action.
Q. Were you his attorney in connection with the fund he had to raise money that he was then using to purchase promissory notes from Complete Business Solutions Group?
MS. RECKER: Object to the form.
A. I represented Gary Beasley in connection with the formation of an entity and preparation of a private placement memorandum and other offering materials.
BY MS. BERLIN:
Q. And -- and that private placement memorandum was used to raise money from investors to then invest into Complete Business Solutions Group

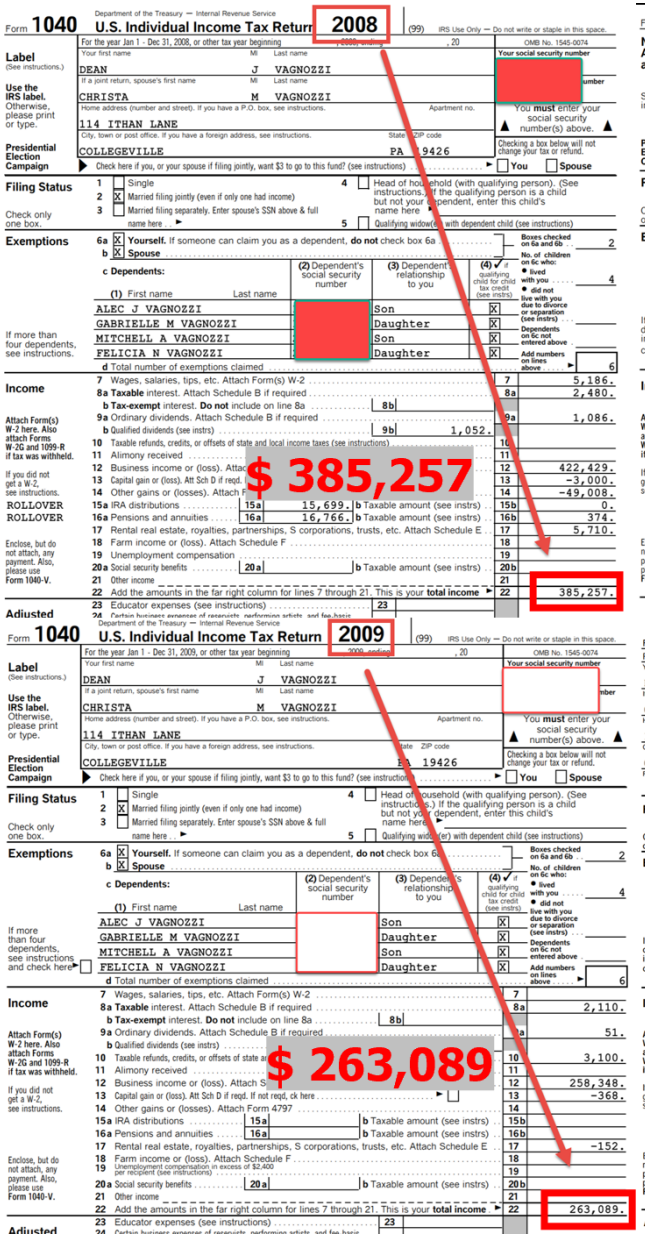
in exchange for promissory notes, correct?
MS. RECKER: Object to the form.
A. Yeah, I don't know that I can answer that based on attorney-client privilege. To my knowledge, Mr. Beasley hasn't waived privilege. I don't think I could talk about what work I did or didn't do for him.
BY MS. BERLIN:
Q. Okay. So are you raising an attorney work product privilege?
A. I -- I think both with regard communications and work product.
Q. Okay. With respect to work product, the question I asked about whether or not he was raising money from investors to invest in Par Funding, is your attorney work product based on work that you did in anticipation of litigation? And if so, what litigation?
MS. RECKER: Object to the form.
A. The work that I did on behalf of Mr. Beasley with regard to fund formation was not done in anticipation of any litigation.
BY MS. BERLIN:
Q. Okay. Now, you also represented Mr. Vagnozzi in connection with the Securities and

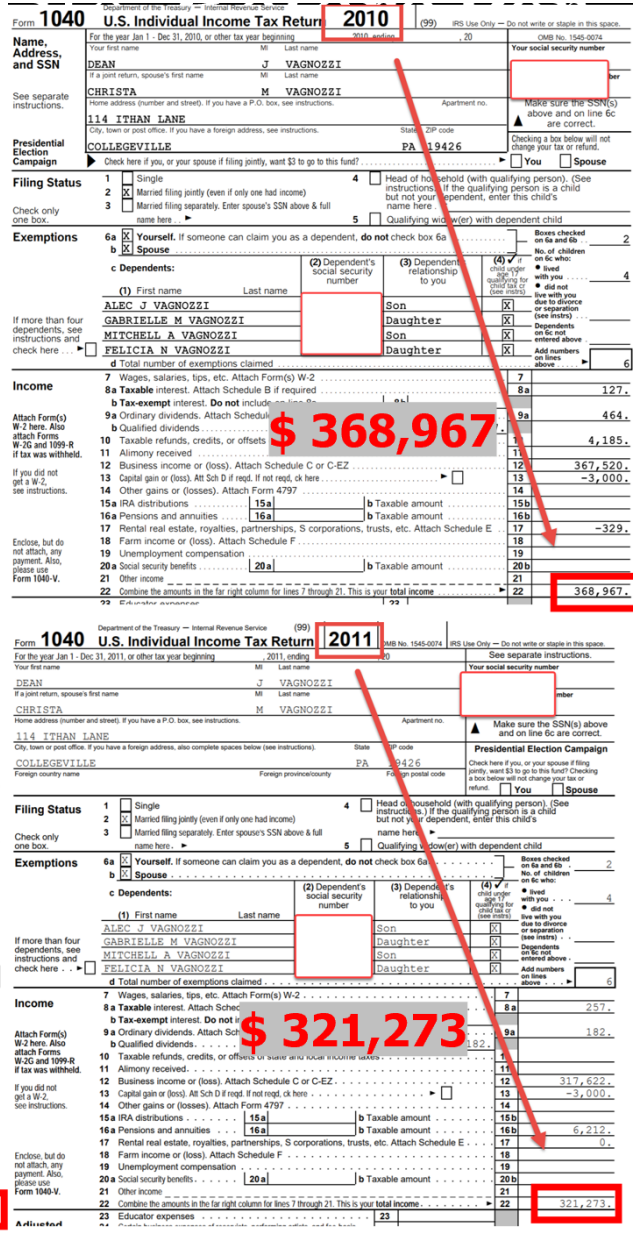
Exchange Commission's investigation of Dean Vagnozzi concerning Fallcatcher; is that correct?
MS. RECKER: Object to the form.
A. Yes, I represented Mr. Vagnozzi in connection with the SEC investigation with respect to Dean Vagnozzi's involvement with a company called Fallcatcher.
BY MS. BERLIN:
Q. And during the -- during the SEC's investigation of Mr. Vagnozzi in Fallcatcher, you responded to subpoenas issued by the SEC to Mr. Vagnozzi, correct?
MS. RECKER: Object to the form and object to the extent that it requires you to reveal attorney-client information and work product, I would instruct you not to answer.
MR. MILLER: I join.
A. On advice of counsel, I cannot answer that question.
BY MS. BERLIN:
Q. Mr. Pauciulo, do you understand that I'm asking you if you responded to the SEC in response to subpoenas issued to your client? I just want to -- do you -- do you understand my question?
MS. RECKER: Same objection.

MS. BERLIN: Ms. Recker, are you claiming that me asking if he understands that question is attorney-client privilege?
MS. RECKER: Well, you're asking if he understands a question, and the question has substance to it, and that's what I'm objecting to.
BY MS. BERLIN:
Q. Okay. So just let's go back to the question I just asked, and I'm asking this in isolation. Mr. Pauciulo, do you understand that my question concerns is simple. Did you respond to the SEC in response to subpoenas issued to your client, Dean Vagnozzi?
MS. RECKER: I object to the form. And to the extent that your answer implicates attorney-client privileged and/or work product, I would instruct you not to answer.
A. Yeah, on advice of counsel, I can't answer that question. You're asking what services we provided to Mr. Vagnozzi, and my understanding is that's privileged.
BY MS. BERLIN:
Q. That's not -- that wasn't my question.
My question was whether you responded to

Exhibit “F”

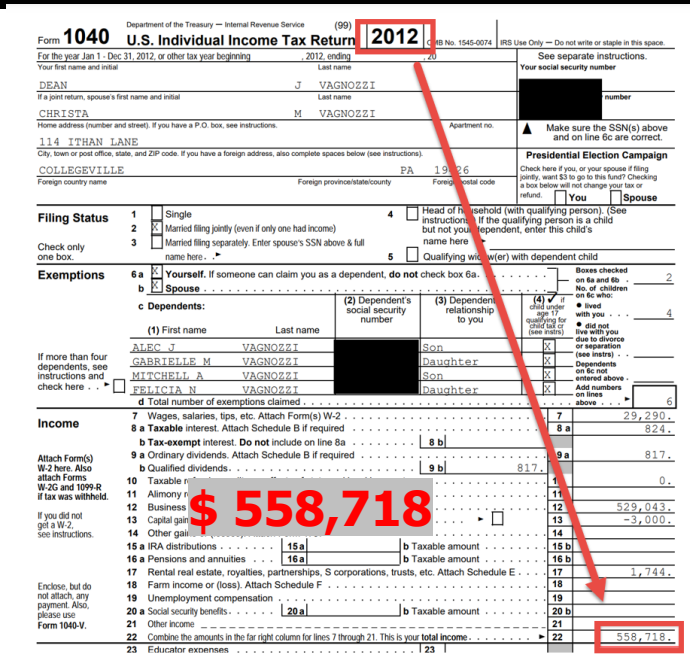
Dean's Personal Income 2008-2011





Dean's Personal Income 2012-2015

$ 426,092
Average Income
2008-2015



Form 1040 — U.S. Individual Income Tax Return — 2012

DEAN J VAGNOZZI
CHRISTA M VAGNOZZI
114 ITHAN LANE
COLLEGEVILLE PA 19426

Filing Status: 2 Married filing jointly

Exemptions: 6a Yourself. 6b Spouse. 6c Dependents:

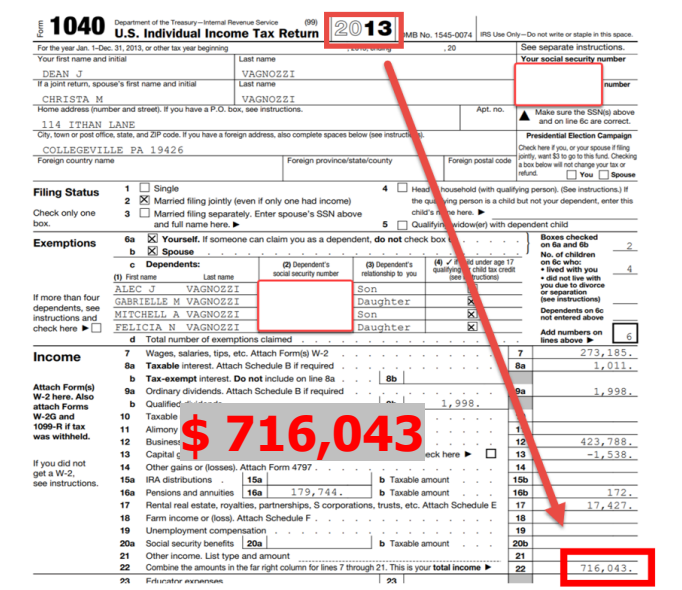
(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax credit (see instrs)
ALEC J	VAGNOZZI	[redacted]	Son	X
GABRIELLE M	VAGNOZZI		Daughter	X
MITCHELL A	VAGNOZZI		Son	X
FELICIA N	VAGNOZZI		Daughter	X

d Total number of exemptions claimed: 6

Income:

7	Wages, salaries, tips, etc. Attach Form(s) W-2	29,290.
8a	Taxable interest. Attach Schedule B if required	824.
8b	Tax-exempt interest. Do not include on line 8a	
9a	Ordinary dividends. Attach Schedule B if required	817.
9b	Qualified dividends	817.
10	Taxable refunds, credits, or offsets of state and local income taxes	0.
11	Alimony received	
12	Business income or (loss). Attach Schedule C or C-EZ	529,043.
13	Capital gain or (loss). Attach Schedule D if required	-3,000.
14	Other gains or (losses). Attach Form 4797	
15a	IRA distributions	
16a	Pensions and annuities	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	1,744.
18	Farm income or (loss). Attach Schedule F	
19	Unemployment compensation	
20a	Social security benefits	
21	Other income. List type and amount	
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income	558,718.
23	Educator expenses	

$ 558,718



Form 1040 — U.S. Individual Income Tax Return — 2013

DEAN J VAGNOZZI
CHRISTA M VAGNOZZI
114 ITHAN LANE
COLLEGEVILLE PA 19426

Filing Status: 2 Married filing jointly

Exemptions: 6a Yourself. 6b Spouse. 6c Dependents:

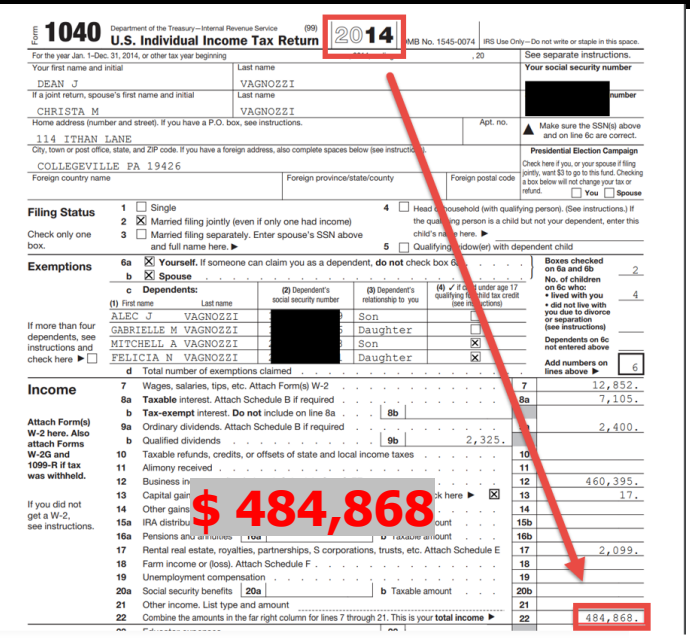
(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax credit (see instructions)
ALEC J	VAGNOZZI	[redacted]	Son	
GABRIELLE M	VAGNOZZI		Daughter	X
MITCHELL A	VAGNOZZI		Son	X
FELICIA N	VAGNOZZI		Daughter	X

d Total number of exemptions claimed: 6

Income:

7	Wages, salaries, tips, etc. Attach Form(s) W-2	273,185.
8a	Taxable interest. Attach Schedule B if required	1,011.
8b	Tax-exempt interest. Do not include on line 8a	
9a	Ordinary dividends. Attach Schedule B if required	1,998.
9b	Qualified dividends	1,998.
10	Taxable refunds, credits, or offsets of state and local income taxes	
11	Alimony received	
12	Business income or (loss). Attach Schedule C or C-EZ	423,788.
13	Capital gain or (loss). Attach Schedule D if required	-1,538.
14	Other gains or (losses). Attach Form 4797	
15a	IRA distributions	
16a	Pensions and annuities 179,744.	172.
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17,427.
18	Farm income or (loss). Attach Schedule F	
19	Unemployment compensation	
20a	Social security benefits	
21	Other income. List type and amount	
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income	716,043.
23	Educator expenses	

$ 716,043



Form 1040 — U.S. Individual Income Tax Return — 2014

DEAN J VAGNOZZI
CHRISTA M VAGNOZZI
114 ITHAN LANE
COLLEGEVILLE PA 19426

Filing Status: 2 Married filing jointly

Exemptions: 6a Yourself. 6b Spouse. 6c Dependents:

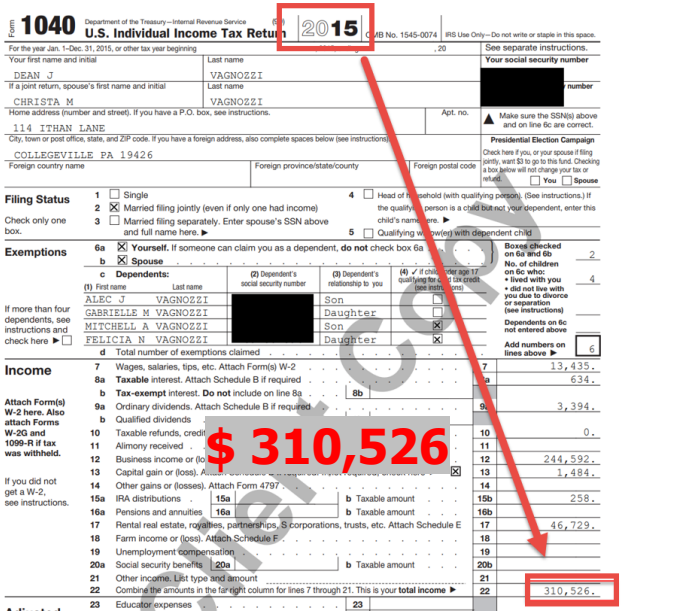
(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax credit (see instructions)
ALEC J	VAGNOZZI	[redacted]	Son	
GABRIELLE M	VAGNOZZI		Daughter	
MITCHELL A	VAGNOZZI		Son	X
FELICIA N	VAGNOZZI		Daughter	X

d Total number of exemptions claimed: 6

Income:

7	Wages, salaries, tips, etc. Attach Form(s) W-2	12,852.
8a	Taxable interest. Attach Schedule B if required	7,105.
8b	Tax-exempt interest. Do not include on line 8a	
9a	Ordinary dividends. Attach Schedule B if required	2,400.
9b	Qualified dividends 2,325.	
10	Taxable refunds, credits, or offsets of state and local income taxes	
11	Alimony received	
12	Business income or (loss). Attach Schedule C or C-EZ	460,395.
13	Capital gain or (loss). Attach Schedule D if required	17.
14	Other gains or (losses). Attach Form 4797	
15a	IRA distributions	
16a	Pensions and annuities	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	2,099.
18	Farm income or (loss). Attach Schedule F	
19	Unemployment compensation	
20a	Social security benefits	
21	Other income. List type and amount	
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income	484,868.

$ 484,868



Form 1040 — U.S. Individual Income Tax Return — 2015

DEAN J VAGNOZZI
CHRISTA M VAGNOZZI
114 ITHAN LANE
COLLEGEVILLE PA 19426

Filing Status: 2 Married filing jointly

Exemptions: 6a Yourself. 6b Spouse. 6c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax credit (see instructions)
ALEC J	VAGNOZZI	[redacted]	Son	
GABRIELLE M	VAGNOZZI		Daughter	
MITCHELL A	VAGNOZZI		Son	X
FELICIA N	VAGNOZZI		Daughter	X

d Total number of exemptions claimed: 6

Income:

7	Wages, salaries, tips, etc. Attach Form(s) W-2	13,435.
8a	Taxable interest. Attach Schedule B if required	634.
8b	Tax-exempt interest. Do not include on line 8a	
9a	Ordinary dividends. Attach Schedule B if required	3,394.
9b	Qualified dividends	
10	Taxable refunds, credits, or offsets of state and local income taxes	0.
11	Alimony received	
12	Business income or (loss). Attach Schedule C or C-EZ	244,592.
13	Capital gain or (loss). Attach Schedule D if required	1,484.
14	Other gains or (losses). Attach Form 4797	
15a	IRA distributions	
16a	Pensions and annuities	258.
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	46,729.
18	Farm income or (loss). Attach Schedule F	
19	Unemployment compensation	
20a	Social security benefits	
21	Other income. List type and amount	
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income	310,526.
23	Educator expenses	

$ 310,526

Dean's Accomplishments

Dean was One of the Top Life Insurance Agents in the Country!

- Ohio National Pacesetter Award 2004
- Allianz Life Top 50 Life Producer 2007, 2008
- UNIFI Companies (Union Central) Inner Circle Award 2010
- Allianz Life Platinum Club 2011, 2012
- Allianz Life Gold Club 2014
- Kansas City Life Top Life Insurance Producer Nationally 2018
- Fidelity & Guaranty Life Power Producer Award 2013, 2017, 2018, 2019, 2020

Dean's Personal Income 2021-2022

Form 1040 — U.S. Individual Income Tax Return — 2021

Department of the Treasury—Internal Revenue Service (99) | OMB No. 1545-0074 | IRS Use Only–Do not write or staple in this space.

Filing Status (Check only one box.): [ ] Single [X] Married filing jointly [ ] Married filing separately (MFS) [ ] Head of household (HOH) [ ] Qualifying widow(er) (QW)
If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QW box, enter the child's name if the qualifying person is a child but not your dependent. ▶

Your first name and middle initial	Last name	Your social security number
DEAN J.	VAGNOZZI	[redacted]
If joint return, spouse's first name and middle initial	Last name	
CHRISTA M.	VAGNOZZI	[redacted]

Home address (number and street). If you have a P.O box, see instructions. | Apt. no.
114 ITHAN LANE

City, town or post office. If you have a foreign address, also complete spaces below. | State | ZIP code
COLLEGEVILLE | PA | 19426

Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign: Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. [ ] You [ ] Spouse

At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency? [ ] Yes [X] No

Standard Deduction — **Someone can claim:** [ ] You as a dependent [ ] Your spouse as a dependent
[ ] Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness — **You:** Were born before January 2, 1957 [ ] Are blind **Spouse:** Was born before January 2, 1957 [ ] Is blind

Dependents (see instructions):

If more than four dependents, see instr. and check here ▶	(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) ✓ if qualifies for (see instructions): Child tax credit	Credit for other dependents
	MITCHELL A	VAGNOZZI	[redacted]	SON		
	FELICIA N	VAGNOZZI		DAUGHTER	X	

Attach Sch. B if required.

1	Wages, salaries, tips, etc. Attach Form(s) W-2			1	9,843
2a	Tax-exempt interest	2a	b Taxable interest	2b	8,360
3a	Qualified dividends	3a 1,528	b Ordinary dividends	3b	44,975
4a	IRA distributions	4a	b Taxable amount	4b	
5a	Pensions and annuities	5a 110	b Taxable amount	5b	110
6a	Soc. sec. ben.	6a	b Taxable amount	6b	
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ [ ]			7	-3,000
8	Other income from Schedule 1, line 10			8	-291,555
9	Add lines 1, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income** ▶			9	-231,267
10	Adjustments to income from Schedule 1, line 26			10	87
11	Subtract line 10 from line 9. This is your **adjusted gross income** ▶			11	-231,354
12a	**Standard deduction or itemized deductions** (from Schedule A)		12a		25,100
b	Charitable contributions if you take the standard deduction (see instructions)		12b		
c	Add lines 12a and 12b			12c	25,100
13	Qualified business income deduction from Form 8995 or Form 8995-A			13	
14	Add lines 12c and 13 ▶			14	25,100
15	**Taxable income.** Subtract line 14 from line 11. If zero or less, enter -0-			15	0

Standard Deduction for –
- Single or Married filing separately, $12,550
- Married filing jointly or Qualifying widow(er), $25,100
- Head of household, $18,800
- If you checked any box under *Standard Deduction*, see instructions.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form **1040** (2021)

Form 1040 — U.S. Individual Income Tax Return — 2022

Department of the Treasury—Internal Revenue Service | OMB No. 1545-0074 | IRS Use Only–Do not write or staple in this space.

Filing Status (Check only one box.): [ ] Single [X] Married filing jointly [ ] Married filing separately (MFS) [ ] Head of household (HOH) [ ] Qualifying surviving spouse (QSS)
If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent:

Your first name and middle initial	Last name	Your social security number
DEAN J.	VAGNOZZI	[redacted]
If joint return, spouse's first name and middle initial	Last name	
CHRISTA M.	VAGNOZZI	[redacted]

Home address (number and street). If you have a P.O box, see instructions. | Apt. no.
114 ITHAN LANE

City, town or post office. If you have a foreign address, also complete spaces below. | State | ZIP code
COLLEGEVILLE | PA | 19426

Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign: Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. [ ] You [ ] Spouse

Digital Assets — At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) [ ] Yes [X] No

Standard Deduction — **Someone can claim:** [ ] You as a dependent [ ] Your spouse as a dependent
[ ] Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness — **You:** [ ] Were born before January 2, 1958 [ ] Are blind **Spouse:** [ ] Was born before January 2, 1958 [ ] Is blind

Dependents (see instructions):

If more than four dependents, see instr. and check here [ ]	(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents
	FELICIA N	VAGNOZZI	[redacted]	DAUGHTER		

Income

1a	Total amount from Form(s) W-2, box 1 (see instructions)		1a	50,721
b	Household employee wages not reported on Form(s) W-2		1b	
c	Tip income not reported on line 1a (see instructions)		1c	
d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)		1d	
e	Taxable dependent care benefits from Form 2441, line 26		1e	
f	Employer-provided adoption benefits from Form 8839, line 29		1f	
g	Wages from Form 8919, line 6		1g	
h	Other earned income (see instructions)		1h	
i	Nontaxable combat pay election (see instructions) 1i			
z	Add lines 1a through 1h		1z	50,721
2a	Tax-exempt interest 2a	b Taxable interest	2b	2,457
3a	Qualified dividends 3a	b Ordinary dividends	3b	
4a	IRA distributions 4a	b Taxable amount	4b	
5a	Pensions and annuities 5a	b Taxable amount	5b	
6a	Soc. sec. ben. 6a	b Taxable amount	6b	
c	If you elect to use the lump-sum election method, check here (see instructions) [ ]			
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here		7	51,397
8	Other income from Schedule 1, line 10		8	-548,740
9	Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income**		9	-444,165
10	Adjustments to income from Schedule 1, line 26		10	0
11	Subtract line 10 from line 9. This is your **adjusted gross income**		11	-444,165
12	**Standard deduction or itemized deductions** (from Schedule A)		12	25,900
13	Qualified business income deduction from Form 8995 or Form 8995-A		13	
14	Add lines 12 and 13		14	25,900
15	Subtract line 14 from line 11. If zero or less, enter -0-. This is your **taxable income**		15	0

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a Form W-2, see instructions.

Attach Sch. B if required.

Standard Deduction for –
- Single or Married filing separately, $12,950
- Married filing jointly or Qualifying surviving spouse, $25,900
- Head of household, $19,400
- If you checked any box under *Standard Deduction*, see instructions.

Denial and Loss of PA Insurance License

State of PA denied my application to reinstate my insurance license

pennsylvania
INSURANCE DEPARTMENT

July 26, 2023

Certified & First Class Mail

Dean James Vagnozzi
114 Ithan Lane
Collegeville, PA 19426

Re: Application for a Resident Producer license

Dear Mr. Vagnozzi:

The Pennsylvania Insurance Department has received and thoroughly reviewed your application for a Resident Producer License to engage in the business of insurance. Your application was carefully examined, and the decision was made to deny your application pursuant to violation sections 40 P.S. § 310.6 (a)(6), 40 P.S. § 310.11(1), (2), (8), (19), (20) and 40 P.S. § 310.78(a).

The denial is based on the nature and recency of your March 16, 2022 Pennsylvania Insurance Department revocation and your administrative actions from the Delaware Department of Insurance, the Florida Department of Financial Services, the Pennsylvania Banking and Securities Commission, and the U.S. Security and Exchange Commission, ranging from financial penalties to revocations. These actions call into question your ability to act and perform the duties of a Resident Producer, and demonstrate a lack of general fitness, competence and/or reliability sufficient to satisfy the Department that you are worthy of licensure.

Issuing licenses to individuals to act as a Resident Producer is a critical function of the Pennsylvania Insurance Department. It is our duty to protect the insurance consuming public. Your revocation and administrative actions call into question your ability to act and perform the duties of an insurance producer on a professional level that is consistent with the expectations of the Department regarding how insurance producers act as well as our duty to protect consumers.

You may request a formal administrative hearing on the matter pursuant to 40 P.S. § 310.13 and 1 Pa. Code §§ 33.34 and 35.20. Pursuant to 1 Pa. Code § 33.34, the date of service of this action is the date of mailing by the Department. While 1 Pa. Code § 35.20 provides a ten-day time frame in which to appeal, the Department will allow a request for a hearing to be recieved, in writing, within fifteen (15) days from the date of this letter. In your request you must indicate the reason(s) you believe your application should not be denied. Failure to request a hearing within the timeline prescribed could result in dismissal of your request for a hearing. You should address any request for a hearing to the Pennsylvania Insurance Department, Bureau of Licensing and Enforcement, via email at ra-in-enforce@pa.gov or by mail to the following address:

Pennsylvania Insurance Department
Bureau of Licensing and Enforcement
1227 Strawberry Square
Harrisburg, PA 17120

Bureau of Licensing & Enforcement
1227 Strawberry Square | Harrisburg, Pennsylvania 17120 | Phone: 717.783.2627 | Fax: 717.772.4334 | www.insurance.pa.gov

Financial Hardship

Chase Bank closed credit card account

Cardmember Services
PO Box 15298
Wilmington, DE 19850-5298

CHASE

Questions?
1-877-225-0851
We accept operator relay calls

DEAN VAGNOZZI
114 ITHAN LN
COLLEGEVILLE, PA 19426

January 07, 2021

Update: **We are closing your credit card**

Dear DEAN VAGNOZZI:

After careful consideration, we decided to close your credit card on March 07, 2021 because continuing the relationship creates possible reputational risk to our company.

You may receive additional account closing notifications if you have other accounts under a different name or address.

We are closing the account below (last four digits)
9230

Here's what you need to do

- Destroy all cards and access checks.
- Contact merchants that automatically bill the account and make other payment arrangements.
- Notify all authorized users on the account.
- Make payments for any remaining balance on the account. We will continue to send monthly statements until the balance is paid in full as outlined in your Cardmember Agreement.
- Make other arrangements if you use this credit card account for overdraft protection.

If your account earns rewards, check your rewards activity

- If you redeem rewards through Chase, you have at least 30 days from the date the account is closed to use them or you'll lose them.
- If you redeem rewards through a partner loyalty program, we'll transfer them to the partner.
- Before your rewards are used or transferred, you can lose them for program misuse, fraudulent activities, failure to pay, bankruptcy, or other reasons described in the terms of your rewards program.
- See the terms of your rewards program for details.

If you have any questions, please call us at 1-877-225-0851. We're available Monday through Sunday from 7:00 a.m. to 1:00 a.m. Eastern Time at 1-877-225-0851. If you're outside the United States, call us collect at 1-302-594-8200.

Sincerely,

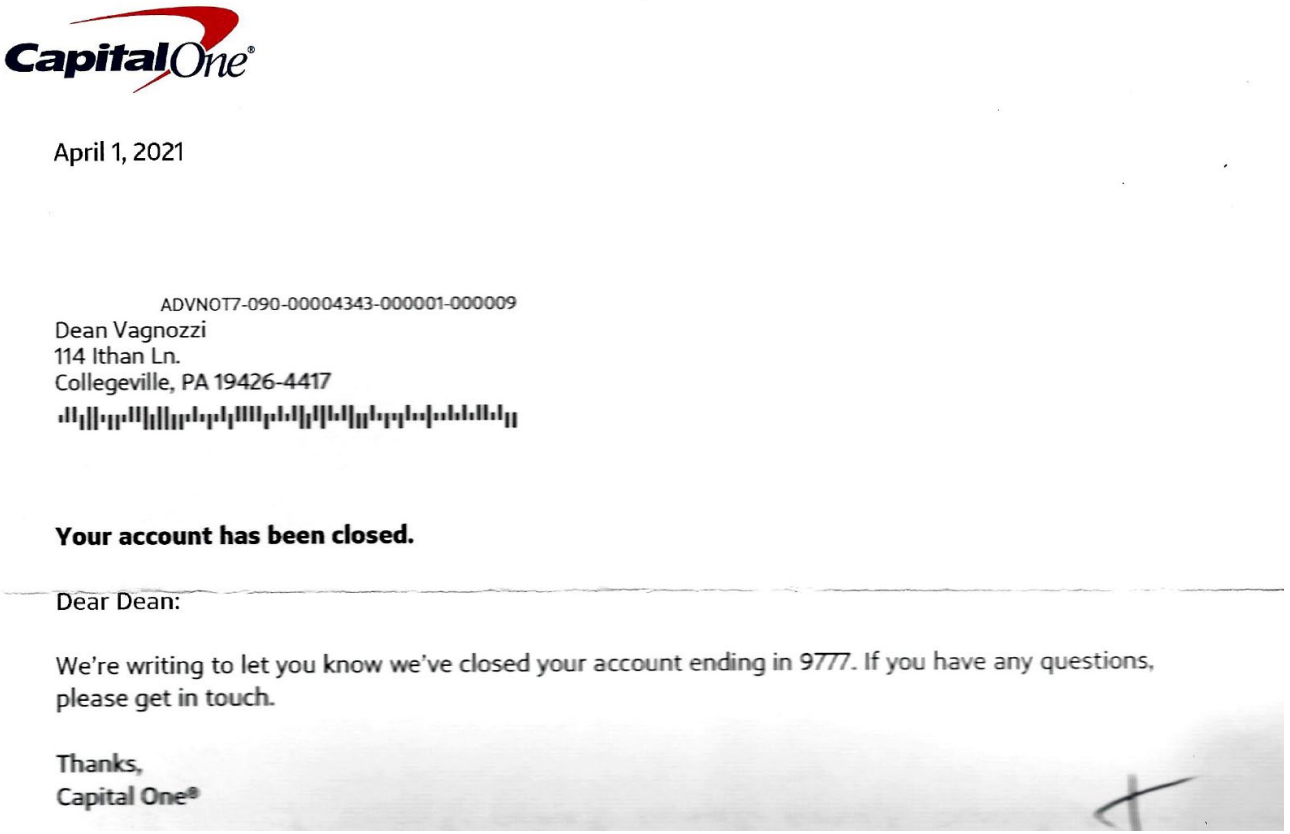
Customer Service

Please see the end of this letter for important information

LTR-115CCNM

Financial Hardship

Capital One closed bank account



Capital One

April 1, 2021

ADVNOT7-090-00004343-000001-000009
Dean Vagnozzi
114 Ithan Ln.
Collegeville, PA 19426-4417

Your account has been closed.

Dear Dean:

We're writing to let you know we've closed your account ending in 9777. If you have any questions, please get in touch.

Thanks,
Capital One®

Financial Hardship

Citizens Bank closed HELOC account

Citizens™

CITIZENS
Loan Servicing/Account Management Department
JCB212
One Citizens Bank Way
Johnston, RI 02919

February 21, 2023

SP 01 000068 78588 H 1 BSNGLP
DEAN VAGNOZZI
114 ITHAN LN
COLLEGEVILLE, PA 19426-4417

Important Information Regarding Your Home Equity Line of Credit Account Ending in 3982

Dear DEAN VAGNOZZI,

We want to thank you for choosing Citizens for your Home Equity Line of Credit. As part of our commitment to help customers sustain homeownership and in keeping with responsible lending practices, Citizens is suspending further draws on your line of credit account. This suspension is based on our determination that there has been a material change in your financial circumstances affecting your ability to fulfill the payment obligations on your line of credit.

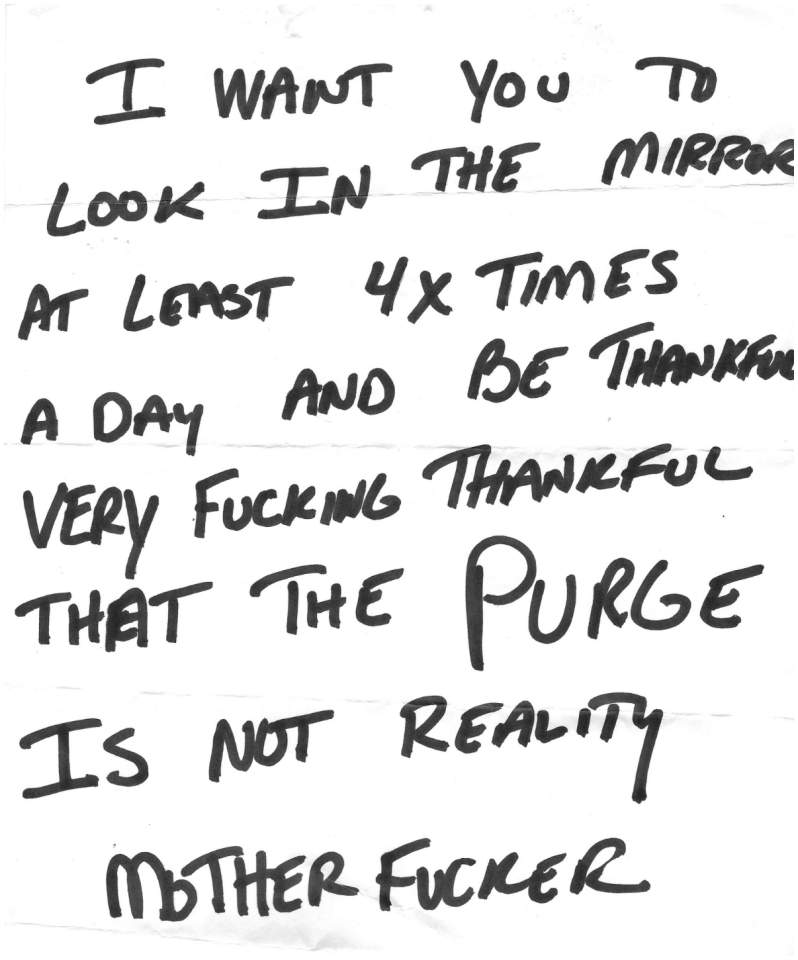
We recently obtained your credit information from a consumer reporting agency. That information indicates that you have significant delinquencies, defaults, foreclosures or bankruptcy. Based on the credit information provided and in accordance with the terms of your agreement, we have decided to suspend further draws against your account as of February 21, 2023.

If you believe this is inaccurate, please contact the consumer reporting agency Equifax at 800-685-1111 to request a free copy of your credit report. You should review your credit report carefully, and work with the consumer reporting agency to correct any inaccurate information.

What this means to you:

- You will no longer be able to draw on the line of credit. You will be unable to use checks that you may have previously received. You will also be unable to use your access card, if applicable.
- As long as you have not filed for bankruptcy protection, you will continue to receive a monthly statement, which will include current payment information, and you must continue to make payments on your line of credit in accordance with your agreement.
- If you have automatic deductions for the monthly payment on your line of credit and have not filed for bankruptcy protection, this service will continue.
- If you have filed for bankruptcy protection and wish to continue receiving monthly statements and/or have automatic debit payments made to your account you must submit a written request to Citizens, Loan Servicing/Account Management Department, JCB212, One Citizens Way, Johnston, RI 02919.
- If you use your line of credit to automatically pay other bills, you should advise the payee(s) and provide an alternate method of payment as automatic payments will no longer be paid from your line of credit.
- You will not incur an annual fee or utilization fee while your line of credit is suspended because of the material change in your financial circumstances.
- Loss mitigation options may be available to you. Please contact us at (877) 745-7364 Monday through Friday from 8 a.m. to 5 p.m. EST for additional information.

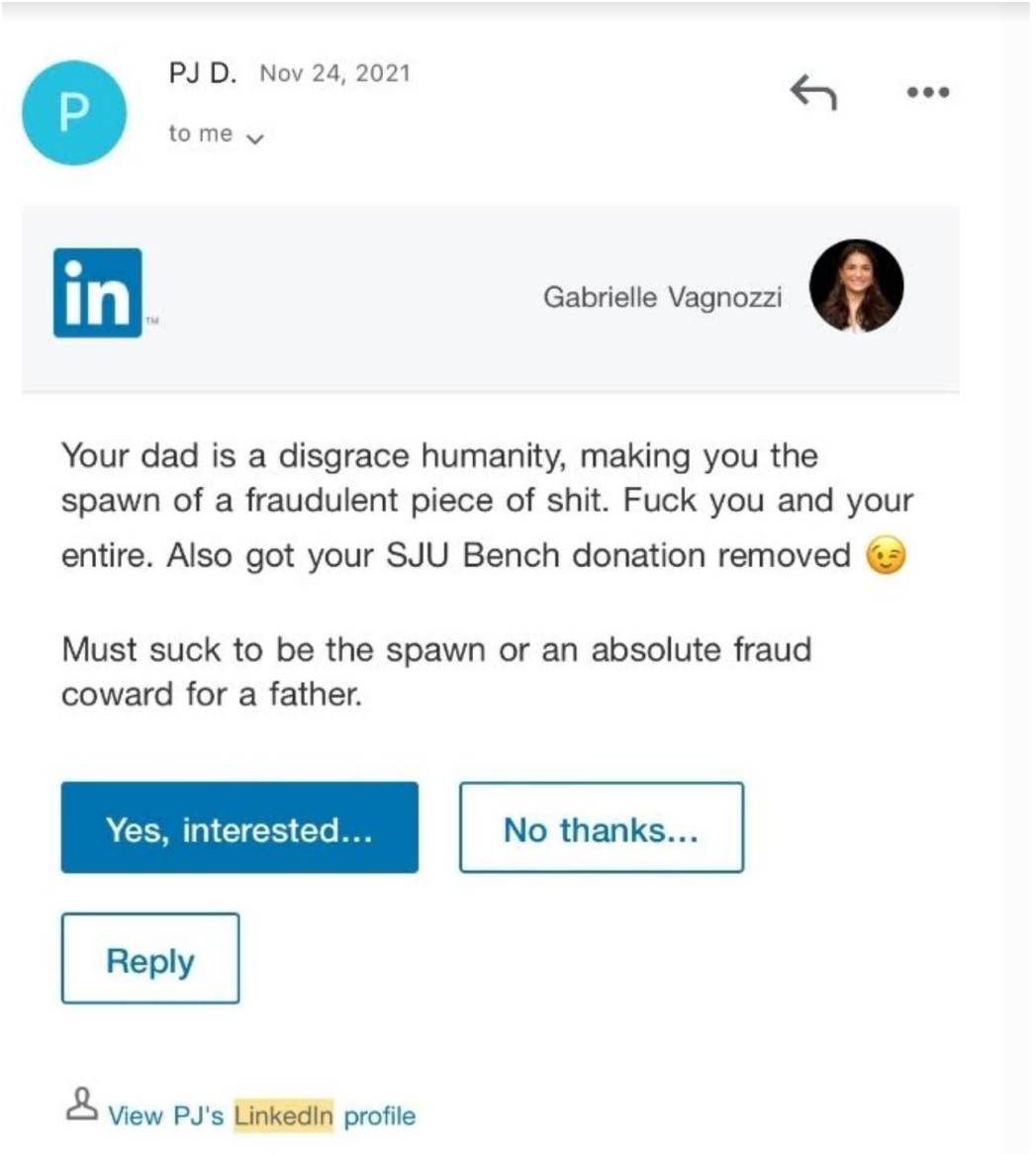
Personal Threats Received



This note was place in my mailbox on June 19, 2022. A police report was filed.

Threats Received by Dean's Children

Paul J Davis Jr, son of one of my investors sent this to my son and daughter



Current Employment at FedEx

Working with FedEx Ground

Personal and Emotional Hardships

- Dean has received death threats in his mailbox.
- Dean's son and daughter received vulgar and hateful emails.
- Dean battles depression and anxiety **every day**. He goes to bed early and struggles to get out of bed. He tries to stay strong for his family but is often at a breaking point. In his own words, Dean expresses his feelings as follows: "When you are in so much pain inside and you just want it to go away but do not know how, that's why people take their own lives. I love my family too much to hurt myself, but I understand it completely. When people have nightmares, they feel relieved when they wake up. For me, just the opposite is true. When I wake up, the nightmare starts."
- Since 2010, Dean has been a Lector at his church. Every Sunday, Dean would stand in front of 1000 parishioners and read scriptures. In 2020, Dean resigned because he felt that everyone listening to him thinks he did something wrong due to the number of articles written about him.
- Dean seldom leave the house. Everywhere Dean goes, he assumes people look at him as if he is a fraudster, even though he tried to do everything right by retaining legal counsel to comply with all laws.
- Two cars were repossessed because Dean couldn't make the payments, further damaging his credit.

Personal, Familial and Reputational Hardships

- The strain this created on the relationship with my oldest son Alec might be the biggest hardship because I convinced him to leave JP Morgan to take a job at ABFP. After the SEC complaint, it took him 18 months to find a job due to all the negative publicity.

- My 3rd child, Mitchell has also been impacted. He was entering his Junior year at the University of Delaware. When our assets were frozen, my credit was instantly destroyed. I was unable to continue to pay for his college. I had no cash, and no ability to take out a loan. Mitchell was forced to leave school. He has struggled dealing with the situation our family is in.

- My oldest, Gabrielle received a full scholarship to play soccer at Saint Joseph's University. During her senior year, my wife and I donated 27k to purchase new soccer benches for the players to use during games. Saint Joe's recognized us by including our names on the benches. When we were sued by the SEC, Saint Joe's removed our names from the benches.

- I always planned to financially contribute to Gabrielle's wedding in the foreseeable future, but I am not sure now if I will be able to do so.