

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOSEPH and JOAN CAPUTO, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

DEAN VAGNOZZI;
ABetterFinancialPlan.com d/b/a A BETTER
FINANCIAL PLAN;
JOHN W. PAUCIULO;
ECKERT SEAMANS CHERIN &
MELLOTT, LLC;
ABFP MANAGEMENT COMPANY, LLC;
ABFP INCOME FUND, LLC;
ABFP INCOME FUND 2, L.P.;
ABFP INCOME FUND 3, LLC;
ABFP INCOME FUND 4, LLC;
ABFP INCOME FUND 5, LLC;
ABFP INCOME FUND 6, LLC;
ABFP INCOME FUND 7, LLC;
ABFP INCOME FUND PARALLEL LLC;
ABFP INCOME FUND 2 PARALLEL LLC;
ABFP INCOME FUND 3 PARALLEL LLC;
ABFP INCOME FUND 4 PARALLEL LLC;
ABFP INCOME FUND 6 PARALLEL LLC;
and ABFP INCOME FUND 7 PARALLEL
LLC,

Defendants.

CASE NO.:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Joseph Caputo and Joan Caputo (“Plaintiffs”) bring this Complaint individually and on behalf of all others similarly situated, against Dean Vagnozzi; ABetterFinancialPlan.com d/b/a A Better Financial Plan; John W. Pauciulo; Eckert Seamans Cherin & Mellott, LLC; ABFP Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; ABFP

Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 5, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund 7, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel LLC; ABFP Income Fund 3 Parallel LLC; ABFP Income Fund 4 Parallel LLC; ABFP Income Fund 6 Parallel LLC; ABFP Income Fund 7 Parallel LLC (collectively the “Defendants”)¹ and allege as follows upon personal knowledge as to themselves and their own acts and experience, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

PRELIMINARY STATEMENT

1. Plaintiffs bring this action pursuant to the federal Racketeer Influenced and Corruption Organizations Act, 18 U.S.C. §§ 1961-68 (“RICO”), and state law claims for negligent misrepresentation, breach of fiduciary duties, conspiracy, fraud, unjust enrichment, aiding and abetting fraud, and aiding and abetting breach of fiduciary duties, to recover millions of dollars’ worth of investments by individuals who were fraudulently induced by Defendants to use their hard-earned savings to purchase unsecured securities backed by risky merchant cash advance loans to small businesses.

2. Defendants Dean J. Vagnozzi (“Vagnozzi”), ABetterFinancialPlan.com LLC d/b/a/ A Better Financial Plan (“ABFP”), John W. Pauciulo, and Eckert Seamans Cherin & Mellott, LLC (“Eckert Seamans”), through the numerous pass-through shell companies that are dominated and controlled by Vagnozzi (and are named as Defendants herein), have conspired to advertise, market and sell ABFP merchant cash advance investments, which are unregistered

¹ Pursuant to one or more orders entered by the U.S. District Court for the Southern District of Florida in the case styled *Securities and Exchange Commission v. Complete Business Solutions Group, Inc., et al.*, Case Nos. 9:20-cv-81205 and 1:20-cv-23071, litigation against certain of Defendants named herein may be stayed. To the extent a stay has been entered by any court of competent jurisdiction, the instant Complaint is not intended to violate the terms of such stay, but rather, is brought for purposes of satisfying and/or tolling the applicable statutes of limitations for Plaintiffs’ and the proposed Class’ claims against any such individuals or entities.

securities, as a purportedly safer and more profitable alternative to registered securities like stock and bonds.

3. Vagnozzi is well known in the Greater Philadelphia region for his ubiquitous AM radio advertisements promoting ABFP. However, Vagnozzi's radio advertisements never mention that in May 2019, he agreed to pay a state-record \$490,000 to settle charges by the Pennsylvania Department of Banking and Securities that he was selling securities without a license. At the time, Dulcey Antonucci, spokesman for the Pennsylvania Department of Banking and Securities and Secretary Robin L. Wiessmann, reported: "This is the largest settlement with an individual in department history."² The investments that the Pennsylvania Bureau of Securities Compliance and Examinations charged Vagnozzi for selling through ABFP without proper registration consist of high-interest notes issued by a Philadelphia-based small-business lending company, Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding.")³

4. Vagnozzi and ABFP also fail to disclose to prospective investors the fact that in February 2020, the Texas Securities Board issued an Emergency Cease-And-Desist Order against ABFP for fraud violations in connection with its offer and sale of ABFP merchant cash advance investments.

5. Nor do Vagnozzi's ABFP radio ads and other marketing to potential investors disclose the nearly \$500,000 settlement he entered into with the SEC on July 14, 2020, "for his offering and selling unregistered securities in violation of Section 5 of the Securities Act and acting as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act, in

² Joseph N. DiStefano, "Record Pa. fines against broker Vagnozzi, Philly's Par Funding," Philadelphia Inquirer (July 27, 2019), <https://www.inquirer.com/business/par-funding-20190727.html>

³ *Id.*

connection with the sale of securities....”⁴ These penalties arose from Vagnozzi’s and ABFP’s promotion and sales of millions of dollars of illegal unregistered investment funds, named Pillar 1 through 8, comprised of ownership interests in life settlement contracts during the period from April 2013 through August 2017. In addition, from May 2018 through September 2018, Vagnozzi (through ABFP) acted as an unregistered broker and earned transaction-based compensation by raising funds for a separate entity, Fallcatcher, Inc., without being associated with a registered broker-dealer in violation of Section 15(a) of the Exchange Act.⁵ Vagnozzi’s and ABFP’s prior violations of state and federal securities laws are unrelated to the SEC action filed on July 24, 2020.

6. Non-party Par Funding offers fast money to small-business owners like truckers or restaurateurs at rates as high as 400% interest. They get around lending regulations by claiming they are not making loans, but instead are buying the revenue a business will generate in the future at a discount. According to a Bloomberg News article, this “new industry is in some ways a reincarnation of the loan-sharking rackets of a bygone era. Cash-advance companies use a legal document called a confession of judgment to stack the deck against borrowers, just as payday lenders did a century ago. Small-business lending was once infiltrated by the mob. Today it’s again a magnet for crooks, including some with alleged ties to organized crime.”⁶ The boss at Par Funding goes by the alias “Joe Mack,” but his real name is Joseph LaForte. “LaForte founded Par [Funding] with his wife [Lisa McElhone] in 2011, after serving more than two years

⁴ See Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act Of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, And Imposing Remedial Sanctions and a Cease-And-Desist Order (SEC).

⁵ *Id.*

⁶ Zachary R. Mider and Zeke Faux, “Fall Behind on These Loans? You Might Get a Visit From Gino,” Bloomberg News, December 20, 2018, <https://www.bloomberg.com/graphics/2018-confessions-of-judgment-visit-from-gino/>

in prison for stealing \$14 million in a real estate scam and running an illegal gambling operation.”⁷

7. According to a Complaint filed in the U.S. District Court for the Southern District of Florida by the U.S. Securities and Exchange Commission on July 24, 2020⁸ (the “SEC Complaint”), Par Funding, LaForte and McElhone “operate a scheme wherein they raise investor money through unregistered securities offerings. From August 2012 until approximately December 2017, Par Funding primarily issued promissory notes and offered them to the investing public directly and through a network of sales agents.”⁹ “This changed in early January 2018, when Par Funding learned it was under investigation by the Pennsylvania Department of Banking and Securities for violating state securities laws through its use of unregistered agents.”¹⁰

8. In September 2018, Par Funding falsely claimed that it had terminated its agreements with its unregistered sales agents. In truth, Par Funding found a new way to fuel its loans by using so-called “Agent Funds” that were created for the purpose of selling their own promissory notes to the investing public through unregistered securities offerings. Par Funding compensates the Agent Funds by issuing Par Funding promissory notes to the Agent Funds offering higher rates of return than the rates that Agent Funds are obligated to pay investors under the Agent Funds’ notes.¹¹

9. Vagnozzi, through his alter ego company ABFP, recruits individuals to create the Agent Funds, offering them the opportunity to open a “turnkey” Agent Fund that issues and sells

⁷ *Id.*

⁸ The case is *SEC v. Complete Business Solutions Group, Inc., et al.*, No. 1:20-cv-23071 (S.D. Fla. July 24, 2020) (the “SEC Action”).

⁹ See SEC Complaint.

¹⁰ *Id.*

¹¹ *Id.*

securities, complete with training, marketing materials, and an “Agent Guide,” as well as a Private Placement Memorandum, corporate registration, and offering materials created by Vagnozzi’s attorney John W. Pauciulo (“Pauciulo”), who is a Partner of the firm Eckert Seamans Cherin & Mellott, LLC (“Eckert Seamans”). Vagnozzi manages the Agent Funds through his company ABFP Management Company, LLC, and his associate, Perry S. Abbonizio, who oversees and coordinates the Agent Funds. Vagnozzi operates, among other entities, ABFP Income Fund, LLC and ABFP Income Fund 2, L.P., which issue, offer, and sell unregistered securities in the form of purported promissory notes and limited partnership interests to investors.¹²

10. In order to carry out their fraudulent scheme, Defendants created and disseminated false and misleading radio advertisements and engaged in deceptive in-person solicitations in order to persuade individuals, including retirees on others on fixed incomes, to purchase merchant cash investments pursuant to false and misleading Private Placement Memoranda and Subscription Agreements with a series of Delaware limited liability companies that were formed, promoted and syndicated by Defendants.

11. Defendant Vagnozzi falsely represented to the investing public that the ABFP merchant cash advance investments are safer than anything available on Wall Street, claiming:

I make ZERO guarantees. Never have. But the 4 investments we have offer higher returns with *less risk than anything you can find on wall-street* and without using annuities. It is that simple.... We have a few investments that traditionally require a lot of capital to get involved with...which is why you won’t find them at Vanguard....or any other traditional cookie cutter advisor.¹³

¹² *Id.*

¹³ Post by Defendant Vanozzi on “White Coat Investor,” on April 8, 2019, <https://www.whitecoatinvestor.com/forum/personal-finance-and-budgeting/4957-has-anyone-experience-with-dean-vagnozzi-039-s-financial-plan/page5>

Emphasis added, grammatical errors in original. Defendant Pauciulo, in his capacity as a Partner of Eckert Seamans and as longtime counsel to Vagnozzi and ABFP, has attended ABFP investment seminars and participated in investor conference calls and other communications with ABFP investors, and thus, would have been aware of this and similar statements concerning risks and expected returns of the ABFP investments, however, given the persistence of such advertisements, it is apparent that Pauciulo and Eckert Seamans took no steps to correct, clarify or repudiate such statements.

12. Vagnozzi has made countless similar statements concerning the purported low-risk and relative safety of investments in ABFP notes through radio advertisements, investing seminars with free steak dinners, and even in interviews with reporters. For instance, Vagnozzi's radio ads for ABFP merchant cash investments state: "Every single one of those investors earns a 10 percent annual return with their interest check deposited into their bank account on the same day every month and all of their principal is return to them after just one year."¹⁴ It is likely that Defendants Pauciulo and Eckert Seamans, as longtime counsel to Vagnozzi and ABFP, and Paucilo's attendance at ABFP investment seminars and participation in investor conference calls and other communications with ABFP investors, would have been aware of this and many other advertisements for ABFP's investment offerings, however, given the persistence of such advertisements, it is apparent that Pauciulo and Eckert Seamans took no steps to correct, clarify or repudiate such statements.

13. Defendant Vagnozzi would not have been unable to carry out his fraudulent scheme without the advice and assistance of long-time co-conspirators Pauciulo and Eckert Seamans, who have advised Vagnozzi and the ABFP entities for more than 15 years. Pauciulo

¹⁴ Joseph N. DiStefano, "Record Pa. fines against broker Vagnozzi, Philly's Par Funding," Philadelphia Inquirer (July 27, 2019), <https://www.inquirer.com/business/par-funding-20190727.html>

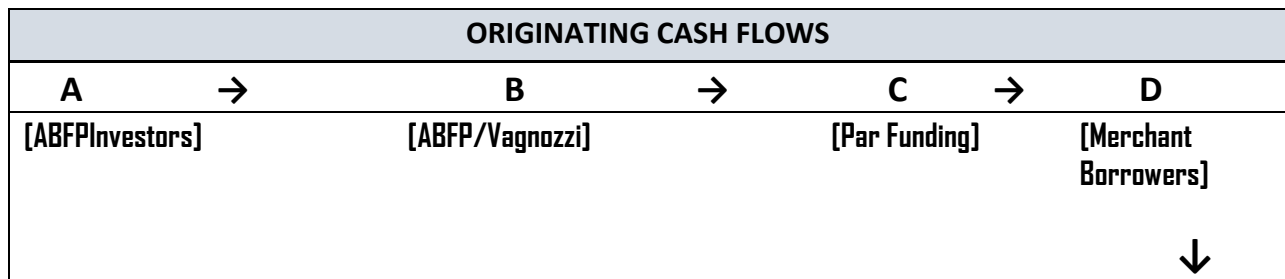
and Eckert Seamans have given Vagnozzi and ABFP the veneer of trustworthiness, low risk, and financial stability by creating, preparing and disseminating sophisticated Private Placement Memoranda for the ABFP investments, the Subscription Agreements signed by Plaintiffs and the Class, and the underlying promissory notes.

14. In ABFP’s advertising, seminars, and other public forums, Vagnozzi relentlessly touts his long-time affiliation with Eckert Seamans, and the firm’s key role in creating the ABFP investments, which lends credibility to these high risk, unregistered investment vehicles, stating:

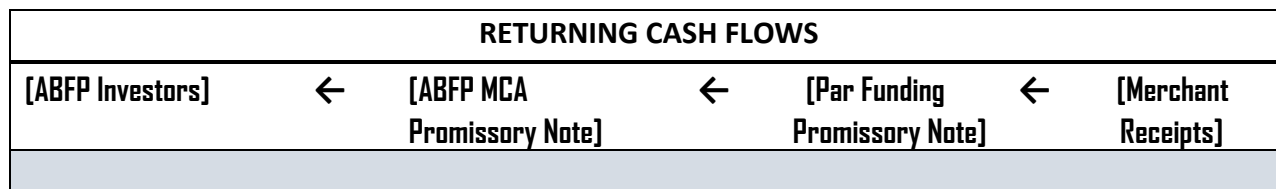
*We worked with one of Philadelphia’s largest law-firms to put an infrastructure together to allow like minded investors the opportunity to pool their money to take advantage of these **proven investments that have historically delivered much better returns with a lot less risk.** Simple. Traditional advisors are restricted by a broker dealer telling them what they can offer their clients. I am not restricted. I am NOT a stock broker.¹⁵*

Emphasis added, grammatical errors in original. For his part, Defendant Pauciulo, in his capacity as a Partner at Eckert Seamans, has publicly admitted to his role in creating the ABFP investments, Private Placement Memoranda, and Subscription Agreements. However, these trappings of financial establishment are nothing more than a sham. In reality, the underlying merchant cash advance agreements were the lowest grade paper imaginable.

15. The financial structure of the unsecured and unregistered ABFP merchant cash advance Investments is illustrated in the following diagram:



¹⁵ Post by Defendant Vanozzi on “White Coat Investor,” on April 8, 2019, <https://www.whitecoatinvestor.com/forum/personal-finance-and-budgeting/4957-has-anyone-experience-with-dean-vagnozzi-039-s-financial-plan/page5>



16. Defendants' scam began to unravel when the Coronavirus shutdown began in March 2020, and the Merchants (D in the diagram, above) stopped generating revenue and defaulted on their Merchant Cash Advance Agreements. This cut off the cash flow to Par Funding (C in the diagram), which in turn, caused Par Funding (C in the diagram) to default on promissory notes to ABFP (B in the diagram), and like falling dominos, caused ABFP to stop making monthly interest payments to investors like Plaintiffs and the Class (A in the diagram).

17. By March 2020, Par Funding's merchant cash advance business was in a freefall, with thousands of small businesses defaulting on their loans. In response, Par Funding has filed thousands of confessions of judgment against the merchant borrowers in a largely futile attempt to recoup its merchant cash loans. Par Funding's confession of judgment filings typically force these small businesses to seek bankruptcy protection, rendering Par Funding's merchant cash advance loans uncollectible.

18. Panic among ABFP investors ensued when the interest payments stopped in March 2020. Vagnozzi released a video to ABFP investors in March 2020, falsely assuring that they had nothing to worry about and that he would receive money from Par Funding to make reduced monthly interest payments. Then, in late March 2020, Vagnozzi admitted to these same investors that Par Funding was insolvent, but he was trying to restructure ABFP's deal with Par Funding. By the end of April 2020, Vagnozzi had succeeded in fraudulently inducing numerous investors to enter into a so-called Exchange Notes Offering pursuant to a restructuring of ABFP's agreements with Par Funding – despite Par Funding's known illiquidity. Under the

Exchange Notes Offering ABFP Merchant Cash Advance investors would receive 4% interest payments, instead of the promised 10% interest, and the repayment of principal would be delayed from the promised 1-year term to 7 years. This deal is an unmitigated disaster for ABFP investors, who include elderly persons and others on fixed incomes.

19. While ABFP investors have been left out in the cold, Defendant Vagnozzi has profited handsomely from his sales of ABFP investments and as an agent raising funds for Par Funding. According to Defendant Pauciulo of Eckert Seamans, Vagnozzi-related sales were “by far the largest” of Par’s agents in Pennsylvania, Arizona, Delaware, Florida, New Jersey, Texas and Virginia, who were listed in Par’s SEC filing earlier this year.¹⁶ The filing says the agents, including Vagnozzi, were paid a total of \$3.6 million in “finder’s fees” for locating buyers of securities for Par Funding. However, Defendant Pauciulo says Vagnozzi’s share of those fees are just “a fraction of what he has made” from the sale of other investments.¹⁷

JURISDICTION AND VENUE

20. This Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 based on Plaintiffs’ claims for violations of the Racketeer Influenced and Corruption Organizations Act, 18 U.S.C. §§ 1961-68. The Court has subject-matter jurisdiction over Plaintiffs’ state-law claims because they are so related to Plaintiffs’ federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

21. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred here. In addition, Plaintiffs’ original Subscription Agreement with ABFP contains a forum selection provision providing for disputes to be adjudicated in this District.

¹⁶ Joseph N. DiStefano, “Record Pa. fines against broker Vagnozzi, Philly’s Par Funding,” Philadelphia Inquirer (July 27, 2019), <https://www.inquirer.com/business/par-funding-20190727.html>

¹⁷ *Id.*

22. Each Defendant is subject to the personal jurisdiction of this Court because each Defendant has voluntarily subjected himself/himself/herself to the jurisdiction of this Court; regularly transacts business within this District, and/or has purposefully availed himself of the jurisdiction of this Court for the specific transactions at issue.

PARTIES

Plaintiffs

23. Plaintiff Joseph Caputo, an adult individual who is a resident and domiciliary of the Commonwealth of Pennsylvania and who maintains his principal residence in Warminster, Bucks County, through a Subscription Agreement purchased securities in the form of limited partner interests in ABFP Income Fund 2, L.P.

24. Plaintiff Joan Caputo, an adult individual who is a resident and domiciliary of the Commonwealth of Pennsylvania and who maintains her principal residence in Warminster, Bucks County, through a Subscription Agreement purchased securities in the form of limited partner interests in ABFP Income Fund 2, L.P.

Defendants

25. Defendant Dean J. Vagnozzi (“Vagnozzi”) is an adult individual who has a background as an insurance agent but is better known for doing business through the entity ABetterFinancialPlan.com d/b/a A Better Financial Plan, which Vagnozzi owns, controls, and/or exercises dominion over making it his corporate alter ego. Vagnozzi maintains his principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406.

26. Defendant Eckert Seamans Cherin & Mellott, LLC (“Eckert Seamans”) is a national law firm with approximately 350 attorneys, that maintains offices in 15 cities, including Wilmington, Delaware.

27. Defendant John W. Pauciulo (“Pauciulo”) is a Partner in the law firm of Eckert Seamans Cherin & Mellott, LLC, who maintains his professional office at 50 South 16th St., 22nd Floor, Philadelphia, PA 19102.

28. Defendant abetterfinancialplan.com LLC d/b/a A Better Financial Plan (“ABFP”) is a Pennsylvania limited liability company formed by Defendant Vagnozzi on November 12, 2010, which is engaged in the business of marketing, selling, and issuing unregistered securities. ABFP maintains its principal place of business at 114 Ithan Lane, Collegeville, PA 19426. Vagnozzi owns and manages ABFP, and he claims it is his corporate alter ego. On information and belief, Defendant Pauciulo drafted all documents pertaining to the formation of this entity.

29. Defendant ABFP Management Company, LLC (“ABFP Management”), formed on March 11, 2010, is a limited liability company organized and existing under the laws of Delaware, with a principal place of business located at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. ABFP Management is wholly owned by Vagnozzi, and is engaged in the business of providing management services related to organizing and operating companies formed for the purpose of raising funds from investors and using the investor funds to invest in alternative investments. ABFP Management provides these and other management services for Par Funding Agent Funds in exchange for a portion of the investment returns. On information and belief, Defendant Pauciulo drafted all documents pertaining to the formation of this entity.

30. Defendant ABFP Income Fund, LLC, a Delaware limited liability company formed on January 12, 2018, is engaged in the business of issuing unregistered merchant cash advance investments, and maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Defendant Vagnozzi serves as promoter and seller of unregistered securities offered through this entity and Defendants Pauciulo and Eckert Seamans

drafted all documents pertaining to the formation of this entity and the offering of merchant cash advance investments through this entity. According to documents filed with the SEC and the ABFP Income Fund, LLC Subscription Agreements, the minimum investment accepted from an outside investor is \$75,000. According to the SEC Complaint, beginning no later than February 2, 2019, Vagnozzi, through ABFP Income Fund, LLC raised at least \$22 million for Par Funding through the offer and sale of unregistered merchant cash investments to at least 99 investors.

31. Defendant ABFP Income Fund 2, L.P., is a Delaware limited liability partnership formed in July 2018, that maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Vagnozzi, through ABFP Management, formed ABFP Income Fund 2 for the purpose of raising investor money to pool and invest in the unregistered partnership interests that are invested in Par Funding merchant cash advance loans. Vagnozzi serves as promoter and seller of unregistered securities offered by this entity and Defendants Pauciulo and Eckert Seamans drafted all documents pertaining to the formation of this entity and the offering of unregistered merchant cash advance investments. According to documents filed with the SEC and the ABFP Income Fund 2, L.P. Subscription Agreements, the minimum investment accepted from an outside investor is \$75,000. According to the SEC Complaint, beginning no later than August 8, 2018, Vagnozzi, through ABFP Income Fund 2, has raised at least \$6 million for Par Funding, through the offer and sale of limited partnership interests in ABFP Income Fund 2 to at least 49 investors.

32. Defendant ABFP Income Fund 3, LLC, a Delaware limited liability company formed in January 2019, is engaged in the business of issuing unregistered securities backed by merchant cash advance notes, that maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Defendant Vagnozzi serves as promoter and

seller of unregistered securities offered through this entity. Defendants Pauciulo and Eckert Seamans drafted all documents pertaining to the formation of this entity and the offering of unregistered merchant cash advance investments issued by this entity, including Private Placement Memoranda and Subscription Agreements. According to documents filed with the SEC and the Subscription Agreements, the minimum investment accepted from an outside investor is \$50,000.

33. Defendant ABFP Income Fund 4, LLC, a Delaware Limited-Liability Company formed on April 8, 2019, is engaged in the business of issuing unregistered debt securities, and maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Defendant Vagnozzi serves as promoter and seller of securities issued by this entity and Defendants Pauciulo and Eckert Seamans drafted all documents pertaining to the formation of this entity and the offering of unregistered merchant cash advance investments issued by this entity, including Private Placement Memoranda and Subscription Agreements. According to documents filed with the SEC and the subscription agreements, the minimum investment accepted from an outside investor is \$50,000.

34. Defendant ABFP Income Fund 5, LLC, a Delaware limited liability company formed on August 7, 2019, is engaged in the business of issuing unregistered securities backed by merchant cash advance loans, and maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Defendant Vagnozzi serves as promoter and seller of securities offered by this entity and Defendants Pauciulo and Eckert Seamans drafted all documents pertaining to the formation of this entity and the offering of unregistered merchant cash advance investments issued by this entity, including Private Placement Memoranda and Subscription Agreements.

35. ABFP Income Fund 6 LLC, a Delaware limited liability company formed on November 4, 2019, is engaged in the business of issuing unregistered securities backed by merchant cash advance notes, and maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Defendant Vagnozzi serves as Promoter of securities offered by this entity and Defendants Pauciulo and Eckert Seamans drafted all documents pertaining to the formation of this entity and the offering and sales of unregistered merchant cash advance investments issued by this entity, including Private Placement Memoranda and Subscription Agreements.

36. ABFP Income Fund 7 LLC is a Delaware limited liability company formed on February 25, 2019, that is engaged in the business of issuing unregistered merchant cash advance investments, and maintains its principal place of business at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406. Defendant Vagnozzi serves as Promoter of securities offered by this entity and Defendants Pauciulo and Eckert Seamans drafted all documents pertaining to the formation of this entity and the offering and sale of merchant cash advance investments issued by this entity, including Private Placement Memoranda and Subscription Agreements.

37. Defendants ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel LLC; ABFP Income Fund 3 Parallel LLC; ABFP Income Fund 4 Parallel LLC; ABFP Income Fund 6 Parallel LLC; and ABFP Income Fund 7 Parallel LLC are Delaware limited liability companies that were formed by Defendants Vagnozzi, Pauciulo and Eckert Seamans on or about April 22, 2020, for the purpose of restructuring ABFP's unregistered merchant cash advance investments.

38. At all times relevant to this action, Vagnozzi owned, controlled, and/or exercised dominion over each of the ABFP entities named herein including, without limitation, ABFP,

ABFP Management Company, LLC, ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., ABFP Income Fund 3, LLC, ABFP Income Fund 4, LLC, ABFP Income Fund 5, LLC, ABFP Income Fund 6, LLC, ABFP Income Fund 7, LLC, ABFP Income Fund Parallel LLC, ABFP Income Fund 2 Parallel LLC, ABFP Income Fund 3 Parallel LLC, ABFP Income Fund 4 Parallel LLC, ABFP Income Fund 6 Parallel LLC, and ABFP Income Fund 7 Parallel LLC, (collectively the “ABFP Defendants”) which he has operated from the ABFP offices located at 234 Mall Boulevard, Suite 270, King of Prussia, PA 19406, making these companies his de facto corporate alter egos.

39. Defendant Vagnozzi’s control over each of the ABFP entities named herein included, without limitation, control over each entity’s brokerage and bank accounts, signatory authority over all contractual agreements entered into or on behalf of such entities, and every other aspect of these businesses.

FACTS

The Unsecured ABFP Merchant Cash Advance Investments

40. ABFP sells unregistered securities to individuals who invest their hard-earned retirement savings in unregistered securities that are backed by merchant cash advance loans to small businesses that lack sufficient creditworthiness to obtain conventional business loans and lines of credit from banks.

41. Individual mom and pop investors typically learn about Defendant Vagnozzi’s A Better Financial Plan through his ubiquitous advertisements that aired on KYW News Radio 1060 and Talk Radio 1210 WPHT (at least until Vagnozzi and ABFP were sued by the SEC on July 24, 2020), in which Vagnozzi claims: “Every single one of [his] investors earns a 10% annual return, with their interest check deposited into their bank account on the same day every

month, and all of their principal is returned to them after just one year.”¹⁸ Vagnozzi also promoted ABFP on Facebook and other social media platforms. Although these ads do not explain the actual nature of the investments Vagnozzi and ABFP offer, he claims that A Better Financial Plan is a “recession proof investment.”¹⁹ The economic events since March 2020 have proven this statement to be false.

42. During his investing seminars, which are really just in-person infomercials for ABFP’s investment products, Vagnozzi represents that the ABFP merchant cash investments provide 10% monthly interest payments and a 100% return of principal after one year (*i.e.*, when the underlying Merchant Cash Advance loans comes due).

43. Vagnozzi also promotes his investing schemes through a book he self-published in 2016, titled: “A Better Financial Plan: Significantly Improve Your Finances Without the Help of Wall Street.”

44. Vagnozzi’s ads routinely tout the assistance of his attorneys and co-conspirators, Defendants Pauciulo and Eckert Seamans, who approve his ad copy. During these ads, Vagnozzi falsely claims that ABFP is safer than conventional investments:

After sixteen years of testing creative investment strategies, A Better Financial Plan, LLC now boasts five unconventional investment offerings in five different industries *that offer lower risk than investing in Wall Street* with a much more predictable upside. None of them are available through traditional brokerage firms. *The firm provides safe investments* that deliver outstanding returns and fixed future payouts *by sidestepping the volatility of the stock market*, unimpressive returns offered by indexed annuities, and unreliable prices of gold and silver. *These investment opportunities* are backed by two of the largest international companies in the world and *were created with the help of one of the nation’s largest law firms.*²⁰

¹⁸ DiStefano, Philadelphia Inquirer, *KOP firm’s ad offers a ‘10% annual return.’ Is that legit?* (Aug. 6, 2019), <https://www.inquirer.com/business/vagnozzi-better-financial-plan-investor-risk-20190806.html>

¹⁹ *Id.*

²⁰ Vagnozzi paid press release, “Dean Vagnozzi Offers Successful 401(k)-Alternative Retirement Planning Strategies for Savvy Investors,” (Mar. 9, 2020), <https://apnews.com/930402a35432e59d92bfc3239372dc03>

Emphasis added Defendant Pauciulo, in his capacity as a Partner of Eckert Seamans and as longtime counsel to Vagnozzi and ABFP, has attended ABFP investment seminars, and participated in conference calls and other communications with ABFP investors, and thus, was aware of each of Defendant Vagnozzi's statements but took no steps to correct, clarify or repudiate such statements.

45. Additional examples of Defendant Vagnozzi's materially false and misleading radio advertisements²¹ include the following:

Advertisement A.

Dean Vagnozzi, president of A Better Financial Plan. And without ever leaving your house, we can introduce you to two alternative investments that were put together *with the help of one of Philadelphia's largest law firms*. They are the *perfect combination of safety and high yields* and they absolutely need to be a piece of your portfolio today. *They have fixed future pay outs*, they don't change value every day like the stock market, and they are not annuities. *One investment pays a 10 percent return with interest paid quarterly and all of your original investment is returned after just two years. The other investment has a 14 percent targeted return* and is backed by some of the largest most financially secure companies in the world. These two investments are better than anything in your portfolio, anything. You can invest with cash or IRA dollars with no taxes or penalties, so grab your cell phone and listen to a free recorded message for more information. Call 855 999 1346. That's 855 999 1346. Call now.

Emphasis added. In order to falsely convey trustworthiness and financial stability, Defendant Vagnozzi touts ABFP's intimate working relationship with Defendant Eckert Seamans, which is involved in every offering of ABFP securities, then Defendant Vagnozzi claims that ABFP's investments have a promised payout of 10 percent and 14 percent, depending upon which alternative asset investment is selected.

46. **Advertisement B.**

Dean Vagnozzi of A Better Financial Plan and we're excited to tell you about a new investment for our credit investors that's going to be big, really big. *This*

²¹ Radio advertisements A-G were recorded from on-air broadcasts on KYW 1060 and WPHT 1210, and transcribed by a certified court reporter.

investment was put together with one of Philadelphia's largest law firms. It will pay you a 10 percent rate of return with your interest paid to you monthly and 100 percent of your principal is returned to you after just one year. And here is the best part: It's insured. Yep. It's insured. What that means is in the slim event we don't pay you, one of the largest insurance companies in the world will. There's no catch. This investment is that good. So get ready to dump that lousy annuity you bought from the other guy and *kiss the market's volatility goodbye* and come get your hands on what we feel is the best investment in the existence. Join the financial movement that we're creating in this city. Grab your cell phone and listen to a free recorded message to learn more. Call 855 999 1346. That's 855 999 1346. Call now.

Emphasis added. In order to falsely convey trustworthiness and financial stability, Defendant Vagnozzi's radio ad touts ABFP's intimate working relationship with Defendant Eckert Seamans, which is involved in every offering of ABFP securities, then Vagnozzi claims that ABFP's investments have a promised payout of 10 percent, and he falsely represents that the entire principal investment is insured. Finally, Vagnozzi falsely represents that ABFP's investments are immune to trends and volatility of the financial markets, which is untrue, as demonstrated by the failure of the ABFP investments when the market crashed in March 2020.

47. Advertisement C.

Dean Vagnozzi, president of A Better Financial Plan, and without ever leaving your house we can introduce you to *four alternative investments that were put together with the help of one of Philadelphia's largest law firms. They are secure, they deliver 10 to 14 percent annual returns, they have fixed future pay outs, they have absolutely nothing to do with Wall Street* and they are not annuities. We can introduce you to over 1,000 clients that have invested over \$200 million with us the past few years and they can vouch for everything I just said and not one of them lost a penny in any of our investments during this crisis. *And the best thing is, we can safely deliver 10 to 14 percent annual returns for you, too.* You can invest with cash or IRA dollars with no taxes or penalties. So grab your cell phone and listen to a free recorded message for more information. Call 855 371 1346. That's 855 371 1346. Call now.

Emphasis added. In order to falsely convey trustworthiness and financial stability, Defendant Vagnozzi's radio ad touts ABFP's intimate working relationship with Defendant Eckert Seamans, which is involved in every offering of ABFP securities. Vagnozzi also claims that the

ABFP investments are “secure” and that they will payout 10 percent to 14 percent annually—a guarantee he reiterates at the end of the commercial when he claims “we can safely deliver 10 to 14 percent annual returns for you, too.” Defendant Vagnozzi also claims that the ABFP investments are immune to economic trends and volatility of the financial markets, which is untrue, as demonstrated by the failure of the ABFP investments when the stock market crashed in March 2020.

48. **Advertisement D.**

Dean Vagnozzi, president of A Better Financial Plan. Do you realize that just 3 percent of the public is financially independent? Just 3 percent. Do you think any of them got rich by putting money into a 401(k) or IRA? Of course not. They're financial vehicles for the masses. Think about it. Why would you put money every week into a financial vehicle that's locked up for 20 to 30 years, provides limited investment choices and defers your taxes until a time in the future when everyone thinks taxes will be higher? *That's what a 401(k) or an IRA does and it makes zero financial sense.* You can do better. A lot better. Let me show you how I save my money every week. It's liquid, it's tax free, it's safe, and this past year I earned 21 percent and it's not an annuity. Grab your cell phone and listen to a free recorded message for more information. Call 855 999 1346. That's 855 999 1346. Call now.

Emphasis added. This advertisement irresponsibly advises prospective investors that they would be better off financially if they entrust their hard-earned savings to Vagnozzi and ABFP’s high risk investments rather than contributing pre-tax dollars to their 401(k) or IRA accounts and investing in conventional mutual funds, despite the tax advantages and relative safety of such accounts.

49. **Advertisement E.**

This is the commercial that your financial advisor doesn't want you to hear. And the same thing goes for the guy that sold you that annuity after you went to one of his free dinner seminars. Dean Vagnozzi, president of A Better Financial Plan, and if you're a credit investor than listen up. *We worked with one of Philadelphia's largest law firms to put together an investment that will pay you a 10 percent return with an interest check sent to you monthly and 100 percent of your principal will be returned to you after just one year.* And this best part is

this investment is fully insured. *That's right, it's insured.* That means in the slim event my company doesn't pay you back your money, one of the largest insurance companies in the world will. This investment is better than anything in your portfolio. Anything. Grab your cell phone and listen to a free recorded message to learn more. Call 855 999 1346. That's 855 999 1346. Call now.

Emphasis added. Defendant Vagnozzi emphasizes again ABFP's intimate working relationship with Defendant Eckert Seamans, which is involved in every offering of ABFP securities, in a bid to make himself sound trustworthy and to make the high risk ABFP investments sound like a safe investment, which he promises "will pay" investors "a 10 percent return" and repayment of 100 percent of principal after one year. Although Vagnozzi does not identify the particular investment vehicle to which he is referring in this radio ad, the payment terms described above are identical to the terms of the ABFP merchant cash advance investments purchased by Plaintiffs and the members of the Class. Additionally, the advertisement above claims falsely that "this investment is fully insured." Contrary to this assertion, no investor in ABFP merchant cash investments have been provided a copy of any policy of insurance covering their investment. In actuality, there is no insurance that provides meaningful coverage for investors in ABFP investments, and their principal remains 100 percent at-risk from the time of purchase until the time of redemption.

50. **Advertisement F.**

Dean Vagnozzi, President of A Better Financial Plan. And if you're somebody that's looking for your investments to generate a monthly income, then listen up. The absolute last thing that you want to buy today is an index annuity. Sure, your money is safe from loss but it's locked up from seven to ten years, you have limited access to your money along the way, and the returns are pathetic. In fact, you will be lucky to earn 3 percent over ten years. And if you do take income from those annuities, you are simultaneously eating up your principal. You can do better. Much better. *We work with one of Philadelphia's largest law firms to put together an investment that's designed to beat the pants off any annuity you can find.* In fact, we're calling it the anti annuity. *You'll receive between 8 to 12 percent returns that are paid out monthly with 100 percent of your principal*

returned in one year. Grab your cell phone and listen to a free recorded message for more information. Call 855 999 1346. That's 855 999 1346. Call now.

Emphasis added. Defendant Vagnozzi emphasizes again ABFP's intimate working relationship with Defendant Eckert Seamans, which is involved in every aspect of ABFP's operations, in a bid to make himself sound trustworthy and to make the high risk ABFP investments sound like a safe investment, which he promises "will pay" investors "a 10 percent return" and repayment of 100 percent of principal after one year. Although Vagnozzi does not identify the particular investment vehicle to which he is referring in this radio ad, the payment terms described above are identical to the terms of the ABFP merchant cash advance investments that were purchased by Plaintiffs and the members of the Class.

51. **Advertisement G.**

Dean Vagnozzi, president of A Better Financial Plan, and I hope you and your family stay safe during these trying times. I obviously can't protect you from this virus, but I can with absolute certainty introduce you to *two alternative investments that are delivering 10 percent returns or better and they've not been impacted by the Corona virus or the stock market whatsoever and they are not annuities.* You can learn about these investments without ever leaving your home. One investment pays a 10 percent annual return with your interest paid quarterly and your principal investment is returned after two years. The other investment has a 13 percent targeted return and is backed by some of the most financially secure companies in the world. Invest with cash or IRA dollars. These investments are awesome. Grab your cell phone and listen to a free recorded message for more information. Call 855 999 1346. That's 855 999 1346. Call now.

Emphasis added. The advertisement quoted above is Defendant Vagnozzi's latest pitch, and it is notable for now offering only two alternative investments rather than the four alternative investments he offered before the stock market crash in March 2020. This is because Defendants are now unable to offer ABFP merchant cash advance investments because the merchant cash advance market collapsed at the same time as other financial markets in early 2020. This about

face on merchant cash advance investments belies Defendants' false and misleading statements that such investments were recession proof and immune to market forces.

52. Defendants used radio advertisements, like the ones quoted above, to entice individuals to call ABFP's toll free number and arrange to attend an ABFP investing seminar—which is little more than in-person informercials featuring Defendant Vagnozzi and his associates—or to come to ABFP's offices in King of Prussia, Pennsylvania or Marlton, New Jersey for an in-person meeting with Vagnozzi and his staff.

53. The SEC Complaint describes an ABFP dinner seminar on November 21, 2019, where Vagnozzi and ABFP hosted more than 300 investors and solicited them to invest in Par Funding through Vagnozzi's ABFP funds. According to the SEC Complaint:

Attendees were given a one-page flyer describing four investment opportunities, one of which was MCAs. *The flyer described the MCA investment opportunity as having a 2% default rate* and offering between 10-14% returns with principal returned in 1, 2, or 3 years.

Vagnozzi spoke first at the November 2019 event and touted Par Funding's financial success. He explained that Par Funding was buying a bank and was looking for investors to help – not because Par Funding couldn't write a check to buy the bank itself, but because bank regulations only let Par Funding be a 5% owner.

Vagnozzi told the attendees that “[w]e have stock market alternative investments that are secure...” and that an investment in Par Funding does not have “too much risk” and the investment is “knocking it out of the park.”

Vagnozzi then introduced Abbonizio, who told the audience that *Par Funding has a default rate of 1%*, compared to an industry average default rate of 18.5%. Abbonizio also told the audience to focus on the default rate because that is the most important part of the investment.

Abbonizio then introduced LaForte, to whom he referred as the President.

LaForte told the audience that Par Funding is probably the most profitable cash advance company in the United States and maybe in the world.

LaForte also told the audience that he started the company about eight years ago with \$500,000 of his own capital.

LaForte then introduced Cole, *who touted the financial health of Par Funding*.

During the November 21, 2019 solicitation dinner event, Vagnozzi told potential investors that he has taken more than 500 investors into an investment with Par Funding.

SEC Complaint, at paras. 95-104 (emphasis added).

54. Vagnozzi's and the ABFP Defendants' representations to investors at the November 21, 2019 dinner were typical of the well-rehearsed sales pitch that Vagnozzi and his business associates have made to thousands of potential investors at numerous similar events and in-person investor meetings at ABFP's offices.

55. Vagnozzi and the ABFP Defendants lied to investors at the November 21, 2019 dinner and at numerous similar events, at in-person investor meetings at ABFP's offices, and in ABFP advertisements, in order to conceal material adverse facts concerning Par Funding, ABFP, and Vagnozzi, including: (i) the high risk nature of Par Funding's lending practices; (ii) the true default rates of Par Funding's merchant cash advance loans, which were far greater than the 1% - 2% default rate claimed by Defendants; (iii) the extremely high risk of investing in unregistered ABFP securities backed by Par Funding's merchant cash advance loans; (iv) LaForte's criminal record and de facto control of Par Funding; (v) the three Cease-and-Desist Orders state securities regulators entered against Par Funding for violating state securities laws; (vi) the true result of the New Jersey Division of Securities' investigation of Par Funding; (vii) the fact that Par Funding was diverting investor funds to LaForte's wife, McElhone, and to L.M.E. 2017 Family Trust, which is McElhone's family trust; (viii) the SEC Cease-and-Desist Order and sanctions issued against Vagnozzi for violating state securities laws in connection with the Par Funding offering; (ix) a Cease-and-Desist Order and sanctions issued against ABFP for violating state

securities laws in connection with the Par Funding offering; and (x) a Cease-and-Desist Order and sanctions issued against Vagnozzi associate Abbonizio for violating state securities laws in connection with the Par Funding offering.

56. After attending these in-person sales seminars, Plaintiffs and the members of the Class purchased securities backed by unsecured merchant cash advance loans that are issued by a series of ABFP Funds pursuant to Private Placement Memoranda, Subscription Agreements and related offering documents created by Defendants Pauciulo and Eckert Seamans, and offered by ABFP, Vagnozzi, and his associates.

57. The ABFP Funds' Private Placement Memoranda reflect that the ABFP Funds either sell unregistered securities, promising annual returns as high as 15%, with monthly interest payments and full return of principal at the end of the typical 12-month term or they sell investors purported interests in a limited partnership for \$5,000 per single interest.

58. The ABFP Private Placement Memoranda state that investor funds will be used to invest in promissory notes with unidentified merchant cash advance companies.

59. Investors purchase ABFP merchant cash advance investments either through transfers of funds directly to one of the ABFP entities or through a self-directed IRA account at a Pennsylvania-based IRA administrator company, CamaPlan, in which Vagnozzi instructs investors to open an account, and investors contribute funds and receive their investment funds through this IRA account.

60. During seminars, radio commercials, and in other communications, Defendants Vagnozzi and ABFP falsely represent that the entire principal investment is insured. However, Vagnozzi has steadfastly refused to show any applicable policies of insurance to ABFP investors, and he has falsely represented that he is not permitted to disclose such policies to investors. The

truth is that there is no policy of insurance that provides any meaningful coverage for investors in ABFP investments, and thus, their principal remains 100 percent at-risk from the time of purchase until the time of redemption.

61. Vagnozzi's and ABFP's false and misleading statements and material omissions, which were facilitated by Pauciulo and Eckert Seamans, had the desired result – separating investors from their hard-earned savings through the sales of ABFP merchant cash advance investments. For example, Vagnozzi boasted to the Philadelphia Inquirer that in 2019 he was selling \$1.5 million worth of ABFP merchant cash advance investments each week.²²

62. According to the SEC Complaint, by March 2020 Vagnozzi claimed 600 investors had invested in Par Funding through him. Through investments offerings, ABFP Income Fund has raised at least \$22,309,000 from investors since February 19, 2018, and ABFP Income Fund 2 has raised at least \$6,322,500 from investors since August 8, 2018.

63. Vagnozzi has admitted in emails with investors that he would receive a commission or so-called finder's fee from Par Funding for every dollar he raised for them. ABFP takes substantial commissions up-front then transmits the remaining funds to Par Funding. Par Funding then loans the funds to small merchant borrowers pursuant to a Merchant Cash Advance Agreement, which are small loans to businesses that lack credit worthiness and bear usurious interest rates that are as high as 400%. Owners of the business must personally guarantee these loans.

64. Vagnozzi also sells Par Funding merchant cash investments through a network of more than 40 Agent Funds, which he manages through ABFP Management in exchange for 25%

²² DiStefano, Philadelphia Inquirer, KOP firm's ad offers a '10% annual return.' Is that legit? (Aug. 6, 2019), <https://www.inquirer.com/business/vagnozzi-better-financial-plan-investor-risk-20190806.html>

of the Agent Funds' profits.²³ Vagnozzi is instrumental in recruiting people to start Agent Funds. Vagnozzi purports to instruct these people how they can serve as "finders" rather than unregistered broker-dealers so that they would not get into trouble. He provides them with an "Agent Guide" that instructs them how to create an Agent Fund, telling Agents they merely need to choose a name for an Agent Fund and send that name together with \$5,000 to Vagnozzi's attorney, Pauciulo, who will then set up a fund, get the corporate paperwork filed, draft a Private Placement Memorandum for the fund, and get a tax identification number. The Agent Guide tells the Agents which banks to use to set up bank accounts and directs them to add an ABFP employee as an authorized signer on the account.²⁴

Unbeknownst to Investors in Risky ABFP Merchant Cash Advance Investments, Their Money Is Placed in the Hands of a Convicted Fraudster

65. The underlying merchant cash advances are entered into between small businesses and non-party Complete Business Solutions Group, Inc. d/b/a Par Funding, which is currently a defendant in a RICO action, *Fleetwood Serives v. Complete Business Solutions Inc d/b/a Par Funding & Joseph LaForte*, Dkt. No. 18-cv-268 (E.D. Pa.), which preys upon small, financially distressed businesses throughout the United States and fraudulently induce them into cash advances pursuant to so-called future account receivable purchase agreements or merchant case advance agreements.

66. Par Funding deceives the small businesses into believing the merchant cash advance agreements do not constitute a loan transaction so that they do not trigger the criminal usury laws of various states. When small businesses cannot meet their obligations under these agreements, Par Funding offers new advances under even more unconscionable terms. Par

²³ See SEC Complaint at 71-78.

²⁴ *Id.*

Funding aggressively pursue the small businesses and their owners for repayment of the amounts due under the agreements, often employing threatening, deceptive and illegal collection tactics.

67. Par Funding, like other companies engaged in merchant cash advance schemes, tries to avoid being regulated as lender because they purport to purchase a small business's future revenue. As a result, Par Funding claims that its lending activities are not regulated by any government agency or self-regulating entity like FINRA, and their fees, penalties and interest rates are not subject to any regulatory oversight. This is false.

68. As Bloomberg News has reported, the merchant cash advance industry in which the Defendants operate is "essentially payday lending for businesses. It's a high-risk market, and interest rates can exceed 500 percent a year, or 50 to 100 times higher than a bank's [rates]." The industry has increasingly come under national scrutiny for its devastating impact upon small businesses. In June of 2017, Congressman Emanuel Cleaver, II launched an investigation of small business financial technology ("FinTech"). He expressed concern that "some FinTech lenders may be trapping small business owners in cycles of debt..."

69. The National Consumer Law Center came to the same conclusion: "Merchant cash advances operate very similarly to payday loans and have similar problems. A lump sum of cash is taken out as an advance on a borrower's future sales. The merchant then pays back this balance in addition to an expensive premium through automatic deductions from the merchant's daily credit card or debit card sales or from its bank account."

70. As reported by CNN, "[m]any business owners take out new advances in order to pay off outstanding balances on previous advances, plunging them into a cycle of debt."

71. Small businesses who fall behind on their loans may receive a personal visit from Par Funding's debt collectors. According to a December 20, 2018 Bloomberg article, "Fall

Behind on These Loans? You Might Get a Visit From Gino,” Par Funding and LaForte have employed the services of a convicted felon named Renato “Gino” Gioe, who for six years traveled the country collecting debts for Par Funding. According to the Bloomberg article:

Ten of Gioe’s unannounced visits to borrowers, from Chicago to small-town Alabama, were described in court papers and interviews with Bloomberg News. He made “threats of violence and physical harm” to employees of a California rehab center, according to one court complaint. A tire-shop owner near Boston said in another court filing he “felt that physical harm would come to me and my family” when Gioe walked into his shop in 2016 demanding immediate payment.

A third borrower, recounting Gioe’s visit to his Maryland trucking company last year, described him in an affidavit as resembling “an aging but still formidable character ripped from the World Wrestling Federation” who had been sent not to negotiate but to “intimidate me into making a lump-sum payment.”

Defendants Failed to Disclose the True Risks of the ABFP Merchant Cash Notes

72. Defendants, as promoters, syndicators, underwriters, issuers and sellers of ABFP merchant cash investments, and as Fiduciaries had a duty to truthfully and completely disclose to Plaintiffs and the Class all information that would be material to the purchase of the ABFP merchant cash advance investments, including the risks inherent in such investments, but Defendants failed to provide such disclosures.

73. All of the misrepresentations and omissions set forth herein, individually and in the aggregate, are material. There is a substantial likelihood that a reasonable investor would consider the misrepresented facts and omitted information regarding how their money would be invested, how the investments performed, the value of those investments, the liquidity (or lack thereof) of those investments, and the ability to repay those investments important, and/or that disclosure of the omitted facts or accurate information would alter the “total mix” of information available to investors.

74. In connection with the conduct described herein, Defendants acted knowingly and/or recklessly. Among other things, Defendants knew or were reckless in not knowing that they were making material misrepresentations and omitting material facts in connection with selling or offering of ABFP merchant cash advance investments.

75. The ABFP merchant cash advance investments sold by Vignozzi, and the ABFP Defendants named herein, are invested indirectly in merchant cash advances provided to small businesses by Par Funding. The riskiness of these notes, which are the sole source of income behind ABFP's investments, cannot be overstated. This is because the merchant cash advances are unsecured and are provided to small businesses that lack the creditworthiness to get conventional bank loans. Moreover, the merchant cash advances are extended to these small businesses without any documentation or underwriting to determine the risk of repayment/default by these merchants.

76. FINRA states that alternative asset investments, like those sold by ABFP, are in fact riskier than conventional investments:

These products are sometimes referred to as structured products or non-conventional investments. ***They tend to be both more complex—and more risky—than traditional investments***, and often tempt investors with special features and higher returns than offered by basic investments.²⁵

Emphasis added.

77. FINRA points out that these alternative investments, particularly structured notes with principal protection, are only as sound as the creditworthiness of the issuer of the note, and that investors can lose their entire principal even in situations where (as here) the issuer of the note does not go bankrupt:

²⁵ FINRA, *Alternative and Complex Products*, <https://www.finra.org/investors/learn-to-invest/types-investments/alternative-and-complex-products>

The retail market for structured notes with principal protection has been growing in recent years. While these products often have reassuring names that include some variant of “principal protection,” “capital guarantee,” “absolute return,” “minimum return” or similar terms, they are not risk-free. ***Any promise to repay some or all of the money you invest will depend on the creditworthiness of the issuer of the note—meaning you could lose all of your money if the issuer of your note goes bankrupt.*** Also, some of these products have conditions to the protection or offer only partial protection, ***so you could lose principal even if the issuer does not go bankrupt.*** And you typically will receive principal protection from the issuer only if you hold your note until maturity.²⁶

Emphasis added.

78. FINRA warns that these types of alternative investments are highly illiquid, so if an investor needs to access all or even a portion of their principal before the note’s maturity date, in most cases they would be unable to do so:

If you need to cash out your note before maturity, you should be aware that this might not be possible if no secondary market to sell your note exists and the issuer refuses to redeem it. Even where a secondary market exists, the note may be quite illiquid and you could receive substantially less than your purchase price.²⁷

Emphasis added.

79. In the case of ABFP, the risks of the investment in alternative asset-backed securities identified by FINRA are magnified by the small businesses that lack creditworthiness and are forced to seek funding, at usurious rates, from Par Funding merchant cash advances – a company that is run by a convicted felon and fraudster, Joseph LaForte.²⁸

80. In addition to the material investment risks identified above, Defendants failed to disclose many other risks for purchasers of ABFP merchant cash investments, including the following:

²⁶ FINRA, Structured Notes With Principal Protection: Note the Terms of Your Investment, <https://www.finra.org/investors/alerts/structured-notes-principal-protection-note-terms-your-investment>

²⁷ *Id.*

²⁸ Zachary R. Mider and Zeke Faux, “Fall Behind on These Loans? You Might Get a Visit From Gino,” Bloomberg News, December 20, 2018, <https://www.bloomberg.com/graphics/2018-confessions-of-judgment-visit-from-gino/>

a. Alternatives Risks — Alternative investments like the ABFP merchant cash investments, tend to use leverage, which can serve to magnify potential losses. Additionally, they can be subject to increased illiquidity, volatility and counterparty risks, among other risks.

b. Below Investment Grade Risks — Lower-rated securities, like the ABFP merchant cash investments which have *no rating*, have a significantly greater risk of default in payments of interest and/or principal than the risk of default for investment-grade securities. The secondary market for lower-rated securities is typically much less liquid than the market for investment-grade securities, frequently with significantly more volatile prices and larger spreads between bid and asked price in trading. In the case of the ABFP merchant cash investments, there is no secondary market and no liquidity—the ABFP merchant cash investments are unmarketable.

c. Capital Risk — Investment markets are subject to economic, regulatory, market sentiment, and political risks, which may cause an investment to become worth less than at the time of the original investment. Here, contrary to Defendants' false representations that these investments "offer lower risk than investing in Wall Street" and that they would be "sidestepping the volatility of the stock market," the ABFP merchant cash investments were susceptible to the same general economic, market and political risks of any conventional investment in stock or bonds—indeed these risks were greater because the small merchants who needed the merchant cash advances to stay afloat were far more likely to go under when the economy headed into a recession than well-established public companies. Defendants falsely minimized such risks when they sold investments to Plaintiffs and the Class.

d. Credit Risk — The value of fixed income security may decline, or the issuer or guarantor of that security may fail to pay interest or principal when due, as a result of adverse changes to the issuer's or guarantor's financial status and/or business. In general, lower-rated securities carry a greater degree of credit risk than higher-rated securities. Here, the underlying merchant cash advances were provided by Par Funding to small businesses that lacked sufficient creditworthiness to obtain any kind of bank financing and instead, were forced to pay usurious interest rates to obtain small infusions of cash to keep their businesses afloat, and thus, were incredibly bad credit risks.

e. Issuer-Specific Risk — A security issued by a particular issuer may be impacted by factors that are unique to that issuer and thus may cause that security's return to differ from that of the market. In the case of the ABFP merchant cash investments, the issuer is subject to numerous unique and extreme risks that differ greatly from the market for conventional investments like stocks issued by public companies and investment grade fixed income securities. Indeed, ABFP is the alter ego of Defendant Vagnozzi, who is an unlicensed, uninsured, and unregulated pitchman, who has operated an investment scheme through a series of shell companies, including the ABFP entities named as Defendants herein, and has enlisted the assistance of Pauciulo and other attorneys at Eckert Seamans, who have aided and abetted Vagnozzi and ABFP in creating the facade of a reputable enterprise in order to separate individuals from their hard-earned savings.

f. Liquidity Risk — Investments with low liquidity can have significant changes in market value, and there is no guarantee that these securities could be sold at fair value. There is no secondary market for the ABFP merchant cash investments, and

they are completely illiquid, which poses a huge risk for investors who may want to move their money into safer investment vehicles or need cash.

g. Manager Risk — Investment performance depends on the portfolio management team and the team's investment strategies. If the investment strategies do not perform as expected, if opportunities to implement those strategies do not arise, or if the team does not implement its investment strategies successfully, an investment portfolio may underperform or suffer significant losses. In the case of ABFP merchant cash investments, the management team is headed by promoter and salesman Vagnozzi, who, in May 2019, paid a record fine of nearly \$500,000 for selling securities without a license.²⁹ On July 14, 2020, Vagnozzi was fined another \$500,000 when the SEC instituted settled administrative proceedings against him for offering and selling unregistered securities in violation of Section 5 of the Securities Act and acting as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act, in connection with the sale of securities unrelated to the instant case.

h. Moreover, Vagnozzi and ABFP have just one investment strategy with respect to the ABFP merchant cash investments, which depended entirely upon the ability of the merchant cash borrowers to repay their cash advances—there is no backup plan.

81. Each of the undisclosed risks described above would have been material to Plaintiffs and the Class in deciding whether to purchase ABFP merchant cash investments, and Defendants' failure to truthfully and completely disclose the material risks of investing in ABFP

²⁹ Joseph N. DiStefano, "Record Pa. fines against broker Vagnozzi, Philly's Par Funding," Philadelphia Inquirer (July 27, 2019), <https://www.inquirer.com/business/par-funding-20190727.html>

merchant cash investments caused or contributed to the economic losses sustained by Plaintiffs and the Class.

82. In addition to the foregoing, in order to further their fraudulent and deceptive scheme, according to the SEC Complaint, Defendants concealed from investors the truth about Par Funding's business and its affiliates, including: (i) the fact that there is no meaningful underwriting of the merchant cash advance loans to determine whether the borrowers have the ability to repay their loans; (ii) Par Funding often approved loans in less than 48 hours, without conducting an on-site inspection of the business; (iii) Par Funding would fund loans without obtaining information showing the business' profit margins, debt schedules, accounts receivable, or expenses; (iii) Vagnozzi and his associates make false claims to prospective investors that Par Funding has a 1% - 2% default rate, when in reality, Par Funding's loan default rate is as high as 10%; (iv) by August 2019, Par Funding had filed more than 800 lawsuits against small businesses for defaulted Loans seeking more than \$100 million; (v) by November 2019, Par Funding had filed more than 1,000 lawsuits seeking more than \$145 million in missed payments; (vi) by January 2020, Par Funding had filed more than 1,200 lawsuits seeking \$150 million in delinquent payments; (vii) Defendants represented to investors that Par Funding borrowers have insurance to cover defaults, but in truth Par Funding did not offer small businesses insurance on their loans; (viii) that LaForte is a twice-convicted felon and prior to founding Par Funding and that he was imprisoned and ordered to pay \$14.1 million in restitution for grand larceny and money laundering; and (ix) Par Funding's history of regulatory violations and fines, including: (a) the \$499,000 penalty from Pennsylvania Securities Regulators in November 2018; (b) the New Jersey Bureau of Securities' Cease-and-Desist Order against Par Funding based on its offer and sale of unregistered securities in December 2018; and (c) the Texas State Securities Board

issued an Emergency Cease-and-Desist Order against Par Funding and others, alleging fraud and registration violations in connection with its securities offering through an Agent Fund in Texas, in February 2020.

The Truth Begins to Emerge

83. On March 12, 2020, Vagnozzi forwarded to investors a message he received from Par Funding, in which Par Funding claimed that Coronavirus will have “no long term effects to [Par Funding’s] projected growth and revenue,” and that “There has been no noticeable effect to our client payments or default rates.”³⁰

84. On March 16, 2020, Vagnozzi emailed a video to investors, which he has since taken down. However, in the email Vagnozzi summarized the video’s message that their investments were safe:

Many companies in the MCA space have indeed stopped advancing money. Why? Because many of these MCA companies are backed by institutional funds and the people that run these institutions DO NOT understand the MCA business like PAR does! The fact that so many of their competitors have ceased advancing, and because *Par Funding is in such strong financial shape with significant cash on the balance sheet and retained earnings* (as you will hear about), they can cherry pick the best opportunities...and there are a lot of them on the street.

The management team at CBSG/Par is extremely confident that their financial position and funding strategies will enable them to weather this storm. They want you to remain confident that your investment with them is solid.

(Emphasis added). The statements in the above-quoted email were false—Par Funding was already on the brink of financial ruin.

85. On March 26, 2020, Vagnozzi, emailed investors a message from Par Funding concerning the purported financial impact the COVID-19 pandemic had on Par Funding’s revenues, in which Par Funding revealed: “Over the past several months, Par Funding, like many other companies across the globe, has been severely impacted by the Coronavirus pandemic,”

³⁰ SEC Complaint at para. 124-25.

and that “virtually all of [Par Funding’s Loan borrowers] have called seeking a moratorium on payments and other restructured payment terms.”³¹

86. Vagnozzi added his own message to the March 26 email, stating: “Par Funding has defaulted on a note with the fund that you each invested in, and they will continue to default for the next few months.” In this same email message Vagnozzi goes on to discourage investors from filing a lawsuit against Par Funding and tells investors his attorneys, Defendants Pauciulo and Eckert Seamans, were working to restructure the investments so payments to investors can resume.

87. In an April 17, 2020 email addressed to “MCA Investors,” Defendant Vagnozzi revealed that “PAR Funding appears to be insolvent.” Vagnozzi advised Plaintiffs and the Class that only the alternatives were that “Par either declares bankruptcy...or they rebuild.” But Vagnozzi claimed that “*Par wants to rebuild.*” (Emphasis in original).

88. Vagnozzi then proposed a restructuring of the ABFP MCA notes: “**So, here is the plan that Par Funding is offering...** You, the investor, will earn 4% interest over a period of 7 years. The principal your [*sic*] receive back, in addition to the 4% interest will increase after the 1st year.” (Emphasis in original). Vagnozzi claimed that “this is Par’s final offer,” and that “[t]hese payout terms are not negotiable.”

89. As part of his high-pressure tactics, Vagnozzi advised investors that they needed to accept the proposal by April 21, 2020 – *i.e.*, a mere four (4) days later. This cramped timeframe made it virtually impossible for investors to seek out legal advice concerning their rights under the circumstances, let alone undertake an investigation to determine the veracity of Hobson’s choice presented by Vagnozzi. Vagnozzi further implored: “**I STRONGLY advise**

³¹ SEC Complaint at para. 126.

you to take this deal. The consequences if you do not, I feel are FARWORSE than taking a 4% interest rate for 7 years.” (Emphasis in original).

90. Finally, Vagnozzi passed on to Plaintiffs and the Class the dubious advice of his own attorneys, Defendants Pauciulo and Eckert Seamans, in an attempt to persuade ABFP investors that they would be better off not filing suit and agreeing to the proposed restructuring with a company that he admitted to be illiquid—Par Funding. Specifically, Vagnozzi stated:

For those of you who are still not sure if you want to take the deal, I leave for you a paragraph from my attorney, John Pauciulo with the law firm of Eckert Seamans in Philadelphia:

While we expect that all investors will elect to modify the terms of their notes, those who do not will be left with limited options. If all investors do not elect to modify their notes, a new fund will be established which will issue the new notes with the modified terms. The existing fund will remain but its sole assets will be notes issued by PAR with the modified terms (4% interest with principal paid out over 7 years). The existing fund will pay out those amounts it receives from PAR. Investors who do not elect to modify their notes will have to choose whether to accept those payments or file suit against the existing fund and attempt to collect the difference between the amounts they are owed under the existing notes and the 4% payout. Any such lawsuit is likely to take one to two years, at a minimum, and cost tens of thousands of dollars in legal fees.

(Emphasis in original).

91. Besides the fact that Defendants, including Pauciulo and Eckert Seamans, were purporting to provide legal advice to unrepresented individuals concerning their six-figure investments, and despite glaring conflicts of interest, the statements attributed to Pauciulo and Eckert Seamans were materially false and misleading for numerous reasons, including the fact that ABFP investors would not be limited to filing “suit against the existing fund” only, nor would bringing suit cost investors “tens of thousands of dollars in legal fees.”

92. Also in mid-April 2020, Defendants released a video created on about April 18, 2020, to Plaintiffs and the Class in which Defendant Pauciulo stated that he had been working

with Vagnozzi since 2003 or 2004, that they had created approximately 25 private placement memoranda for investments sold by Vagnozzi and ABFP, including numerous alternative asset investment offerings – indeed, Defendant Pauciulo has been a key player in every ABFP alternative asset investment offering.

93. During the April 18 video, Defendants admit that the ABFP income fund LLCs are nothing more than shell companies, and Defendant Pauciulo stated that if investors sue ABFP, the only assets of ABFP income funds are the notes with Par Funding, and thus, he recommended that investors not sue because they would only recover what Par Funding ultimately agrees to pay.

94. Also during the April 18 video, Defendants Vagnozzi and Pauciulo acknowledged that they had received requests from investors to review Par Funding’s financial statements so that they could determine whether they would be able to recoup their investments. Defendants refused this request, claiming that it would be harmful to disclose the financial statements of a private company like Par Funding. However, Defendant Pauciulo stated that he was given an opportunity to review Par Funding’s financial statements pursuant to a Non-Disclosure Agreement, and he admitted that “we know the kind of companies they expend cash advances to...”

95. Defendant Pauciulo then stated that he personally received confidential financial information from Par Funding so that he could advise Defendant Vagnozzi and ABFP on the notes that ABFP had entered into with Par Funding. Contrary to the terms of the NDA, Defendant Vagnozzi disclosed that Par Funding was now “insolvent,” and that its revenue was now 1/10th of what it was before pandemic. But, in order to falsely assure Plaintiffs and the Class about the likelihood of recouping their principal, Vagnozzi claimed that “confidence is

extremely high that their business is going to be resurrected...,” and that the merchant cash industry would be poised for growth after the Coronavirus pandemic. Defendant Pauciulo agreed with and ratified Vagnozzi’s baseless assessment of Par Funding’s prospects.

96. In this same video message to investors, Defendant Pauciulo also tells investors that because Par Funding has not paid investors their returns in March, he obtained a UCC lien report against Par Funding and was “first in line” to collect for the investors. As noted in the SEC Complaint, Public records do not reflect any such lien against Par Funding, but do reflect a number of other liens against Par Funding that would preclude Defendant Pauciulo’s purported lien from being first in line.

97. On April 26, 2020, Vagnozzi, through ABFP, emailed investors another video of Vagnozzi and Pauciulo discussing the Exchange Offering, in which Pauciulo recommended that Plaintiffs and the Class accept the Exchange Offering, and Pauciulo walked the investors through the offering documents, page by page, reminding investors to review the disclosures and risks in the Exchange Offering materials. However, Pauciulo skipped the section of the Exchange Offering documents that contain broad releases of claims as to many of the Defendants named herein, including Vagnozzi and each of the ABFP entities, as well as a waiver of the right to a jury trial and a waiver of the right to bring claims as a Class Action.

98. The Exchange Offering materials and Private Placement Memoranda include a risk section that purports to disclose to investors the risks associated with the Exchange Offering. In it, ABFP tells investors, “The nature of the Company’s business subjects the Company to litigation. The Company is in the business of providing MCAs to small and mid-size businesses. In connection with its collection efforts against MCA customers and in other similar contexts

involving its MCA customers, the Company has been subject to a substantial number of lawsuits.”

99. While ABFP disclosed lawsuits small businesses might file, Defendants failed to disclose the Texas Securities Regulators’ action against ABFP, Par Funding, and Abbonizio that was filed just months prior to the Exchange Offering, of the Emergency Cease-and-Desist Order filed entered against ABFP, Par Funding, and Abbonizio in Texas, or that the Texas securities enforcement action is ongoing. Nor was there any disclosure that the Texas securities regulators had entered an emergency Cease-and-Desist Order finding that ABFP, Par Funding, and Abbonizio made material misrepresentations and omissions to investors in connection with the Par Funding and Agent Fund offering about the Par Funding offering, Par Funding’s regulatory history, and Par Funding’s management, and that this litigation was continuing at the time of the Exchange Offering.

100. Based on representations by Par Funding and Defendant Pauciulo that Par Funding would otherwise default on payments altogether or enter bankruptcy, and based on Defendant Pauciulo’s recommendation, as a lawyer, that they accept the offering, ABFP investors believed that they had no choice and many opted to accept the Exchange Offering with new investments that offered less interest and thus a lower rate of return.

101. Defendants’ dissemination of materially false and misleading information had the desired effect—many of the investors accepted an Exchange Note offering that replaced the ABFP merchant cash investments.

102. Par Funding began paying investors pursuant to the restructured agreements on or about June 1, 2020. Although Vagnozzi and the ABFP Defendants have not disclosed the sources of funds to make the interest payments for the Exchange Notes, given Par Funding’s insolvency

and extremely limited cash flow, it is difficult to imagine that the funds used to make such payments would have come from revenue generated by Par Funding's merchant cash advance loans. The actual purpose of making the interest payments, which Defendants knew would not continue, was to create a legal fiction that the restructure note agreements were supported by valuable consideration in an attempt to bar ABFP investors from bringing lawsuits to recover their principal.

103. As for Vagnozzi, three days after the SEC entered a July 14, 2020 Consent Order against him and ABFP for engaging in unregistered securities offerings and acting as an unregistered broker-dealer in connection with five offerings not at issue in this case, Vagnozzi, emailed investors about the Order and announced that he was expanding his business claiming: "My staff and I feel that the results of this [SEC] investigation are the absolute best reason someone should invest with us...." Vagnozzi added, "[The SEC] [a]lso determined that all investments offered by ABFP were carried out in a manner consistent with the information provided to investors." Finally, Vagnozzi asserted: "Three years of investigation, \$300k spent on my end, and all they can say is they don't like my advertising methods and the fact that I served steak dinners in 2013 as a way for people to hear about our investments."

104. Each of Vagnozzi's statements was materially false and misleading when made for numerous reasons, including that the SEC Order makes no such findings. Rather, Vagnozzi mischaracterized the SEC Order to investors as a selling point for investing with him and ABFP, and in the same email message announced that he is forming a new public company that he will soon advertise.

105. Vagnozzi and ABFP also issued a press release about the SEC Order, claiming that "the findings of these proceedings have also paved the way for the company to restructure as

a public company, which will alleviate advertising restrictions in the future.” This was also untrue.

106. To the contrary, on July 24, 2020, the SEC commenced an enforcement action against Par Funding, ABFP, ABFP Management, the ABFP Funds, LaForte, McElhone, Vagnozzi and others for numerous violations of the federal securities laws and seeking temporary and permanent injunctions of Defendants’ business operations, freezing their assets, and appointing a receiver.

CLASS ALLEGATIONS

107. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who purchased ABFP merchant cash advance investments from any ABFP entity, including but not limited to ABFP, ABFP Management Company, LLC, ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., ABFP Income Fund 3, LLC, ABFP Income Fund 4, LLC, ABFP Income Fund 5, LLC, ABFP Income Fund 6, LLC, ABFP Income Fund 7, LLC, ABFP Income Fund Parallel LLC, ABFP Income Fund 2 Parallel LLC, ABFP Income Fund 3 Parallel LLC, ABFP Income Fund 4 Parallel LLC, ABFP Income Fund 6 Parallel LLC, ABFP Income Fund 7 Parallel LLC, and any Agent Funds affiliated with and/or related to Par Funding or Dean Vagnozzi during the Class Period and who were damaged thereby.

108. Excluded from the Class are Defendants, the current and former officers and directors of the limited liability company Defendants, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

109. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, ABFP merchant cash advance investments were sold by Defendants to hundreds, if not thousands, of individual investors. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery. Plaintiffs believe that there are at least hundreds of members in the proposed Class. Members of the Class may be identified from records maintained by Defendants and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

110. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by the defendants' wrongful conduct in violation of laws that is complained of herein.

111. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class litigation.

112. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendants' acts violated RICO as alleged herein;
- b. whether the misstatements and omissions alleged herein were material to ABFP merchant cash advance investors;
- c. whether statements made by the Defendants to investors in ABFP merchant cash advance investments during the Class Period misrepresented and/or omitted material facts about the risks, prospects, and potential rates of returns of ABFP merchant cash investments; and

d. to what extent the members of the Class have sustained damages and the proper measure of damages.

113. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively modest, the expense and burden of individual litigation make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

CLAIMS FOR RELIEF

COUNT I Violation of 18 U.S.C. § 1962(c) (Against All Defendants)

114. Plaintiffs reallege and incorporate the allegations set forth herein as if fully stated herein.

A. Culpable Persons

115. Defendant Vagnozzi is a "person" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

116. Defendant ABFP is a limited liability company capable of holding a legal interest in property and are thus "persons" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

117. Defendant Pauciulo, is a "person" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

118. Defendant Eckert Seamans, is a limited liability company capable of holding a legal interest in property and are thus "persons" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

119. Defendant ABFP Management Company, LLC, is a limited liability company capable of holding a legal interest in property and are thus "persons" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

120. Defendants ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., ABFP Income Fund 3, LLC, ABFP Income Fund 4, LLC, ABFP Income Fund 5, LLC, ABFP Income Fund 6, LLC, ABFP Income Fund 7, LLC, ABFP Income Fund Parallel LLC, ABFP Income Fund 2 Parallel LLC, ABFP Income Fund 3 Parallel LLC, ABFP Income Fund 4 Parallel LLC, ABFP Income Fund 6 Parallel LLC, and ABFP Income Fund 7 Parallel LLC (collectively, the "Delaware LLCs") are Delaware limited liability companies capable of holding a legal interest in property and are thus "persons" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

B. The Association-in-Fact Enterprise

121. Defendants Vagnozzi, ABFP, Pauciulo, Eckert Seamans, ABFP Management Company, LLC and the Delaware LLCs are separate individuals or entities associated with each other by shared personal and/or one or more contracts or agreements for the purpose of originating, underwriting, marketing, selling and servicing ABFP merchant cash advance investments to Plaintiffs the Class, who reside in Pennsylvania, New Jersey, and other states.

122. This association of the Defendants Vagnozzi, ABFP, Pauciulo, Eckert Seamans, ABFP Management Company, LLC and the Delaware LLCs constitute a single association-in-

fact enterprise (the "ABFP Enterprise") within the meaning of 18 U.S.C. §1962(c), as the term is defined in 18 U.S.C. §1961(4).

123. The ABFP Enterprise has an existence separate and apart from the illegal activity alleged herein.

C. Each Defendants' Distinct Roles in The Enterprise.

124. Each of the Defendants has a distinct role in the ABFP Enterprise.

125. Defendant Vagnozzi is the ringleader of the ABFP Enterprise and acts as the primary marketer and salesperson of the ABFP merchant cash advance investments, and he recruited Defendants Pauciulo and Eckert Seamans to assist in the fraudulent scheme perpetrated by the ABFP Enterprise. Through the sale of ABFP merchant cash investments, Vagnozzi obtains the funds needed for his role as an agent for Par Funding, from whom Vagnozzi receives substantial compensation for providing substantial capital that is used to by Par Funding to extend merchant cash advances to merchants who cannot obtain conventional bank financing.

126. Defendants Pauciulo and Eckert Seamans have facilitated the ABFP Enterprise's fraudulent scheme by providing a wide range of legal services to the ABFP Enterprise, which allowed Defendant Vagnozzi to represent in radio advertisements and other media that ABFP's alternative asset investments "were put together with the help of one of Philadelphia's largest law firms."

127. Defendants Pauciulo's and Eckert Seamans' role in the ABFP Enterprise has included reviewing and approving advertising copy, drafting Private Placement Memoranda and Subscription Agreements for the ABFP investment offerings, and preparing and filing business organization documents for the numerous ABFP Enterprise's shell limited liability companies, including, but not limited to, the ABFP Management Company, LLC and the Delaware LLCs.

D. Engagement in Interstate Commerce

128. The ABFP Enterprise is engaged in interstate commerce and uses instrumentalities of interstate commerce in its daily business activities.

129. Specifically, the Vagnozzi and ABFP maintain offices in Pennsylvania and New Jersey, and use personnel in these offices to originate, underwrite, fund, market, sell, and service ABFP merchant cash advance investments. Such ABFP merchant cash advance investments are marketed and sold to individual investors in the Pennsylvania, New Jersey and other states via the extensive use of interstate emails, telephone calls, wire transfers and bank withdrawals processed electronically.

130. Communications between Defendants and Plaintiffs and the Class were conducted through by AM radio broadcasts, interstate email, telephone calls, wire transfers or other interstate wire communications. Specifically, Defendants used AM radio broadcasts, interstate emails and telephone calls to originate, underwrite, market and sell the ABFP Merchant Cash Advance Investments, fund the ABFP Merchant Cash Advance Investments, and collect the funds payable from merchants who entered into Merchant Cash Advance Agreements, and Collect on notes payments from Par Funding, via electronic interstate transfers processed through an automated clearing house.

E. Conducting Affairs through a Pattern of Racketeering.

131. Defendants conducted the affairs of the ABFP Enterprise or participated in the affairs of the ABFP Enterprise, directly or indirectly, though a pattern of racketeering activity (wire fraud, mail fraud and financial institution fraud) in violation of 18 U.S.C. § 1962(b) and (c).

132. At all relevant times, Defendants devised and carried out a scheme to conduct the affairs of the ABFP Enterprise to intentionally defraud investors in Pennsylvania and throughout the United States, including the Plaintiffs and the Class, to enter into Subscription Agreements and make payments for the purchase of ABFP merchant cash investments for which Defendants received upfront commissions and fees, and then entrusted the remaining funds—*i.e.*, Plaintiffs’ and the Class’ principal investment—to Par Funding, which in turn made cash advances cash to hundreds if not thousands of small businesses that lacked any creditworthiness and would have been unable to obtain any form of conventional bank funding. Par Funding made such cash advances without obtaining any documentation from such merchants concerning their ability to repay such cash advances. Par Funding engaged in these practices for the purpose of trapping such merchants in a repetitive cycle of taking out new cash advances to repay the prior advances when they came due.

133. As alleged herein, Defendant Vagnozzi and ABFP promote the sale of ABFP merchant cash advance investments through AM radio advertising, which direct potential investors to contact ABFP using a toll-free telephone number, as well as communications through the internet, email, U.S. mail and other interstate delivery services, and wire transfers, and therefore, it was reasonably foreseeable that interstate emails, telephone calls, and wire transfers would be used in furtherance of the scheme, and, in fact, interstate emails, telephone calls and wire transfers are used in furtherance of the scheme.

134. Specifically, the ABFP Enterprise directed, approved or ratified ABFP’s use of AM radio advertising, the internet, interstate email, telephone calls, and other communications to intentionally defraud investors in Pennsylvania, New Jersey and other states, including Plaintiffs and the Class, to enter into Subscription Agreements for the purchase of ABFP merchant cash

advance investments that were extraordinarily risky and were highly vulnerable to market forces, including recession, and the stock market.

135. As part of this scheme, by the use of AM radio, interstate emails and telephone calls, the ABFP Enterprise targets and solicits unsophisticated individual investors to participate in private placement offerings of ABFP investments. Defendants' use of AM radio commercials, interstate emails and telephone calls intentionally create the false impression that the ABFP merchant cash advance investments are safe, low-risk investments in fixed income debt instruments by:

(i) misrepresenting the creditworthiness of the merchants who enter into merchant cash advance agreements with Par Financial, and hence, the risk that such merchants will default on their cash advances;

(ii) representing that the ABFP merchant cash advance investments are safe and stable investments because Vagnozzi and ABFP "worked with one of Philadelphia's largest law firms to put together [the] investment," when, in fact, Defendants Pauciulo and Eckert Seamans were intimately involved in every aspect of the ABFP Enterprise's fraudulent scheme;

(iii) falsely promising that the ABFP merchant cash advance investments would pay Plaintiffs and the Class "a 10 percent return with an interest check sent to you monthly and 100 percent of your principal will be returned to you after just one year;"

(iv) falsely representing that ABFP merchant cash advance investments are "fully insured" by "one of the largest insurance companies in the world," when in fact, Plaintiffs' and the Class' investments were, at all times, entirely at risk; and

(v) Defendants Pauciulo and Eckert Seamans, who were deeply conflicted, advising Plaintiffs and the Class, who were unrepresented by counsel, that their only means of recovering their investments in ABFP merchant cash advance loans was to agree to enter into a restructuring agreement with an illiquid entity, Par Funding, and claiming falsely that any legal action against the Defendants would be futile.

136. Once the ABFP merchant cash advance investments are sold to investors, the ABFP Enterprise furthers the scheme by using interstate wires to fund the merchant cash advances and electronic interstate bank withdrawals to repay the amounts owed to Par Funding under the Merchant Cash Advance Agreements, which, in turn, were transferred from Par Funding to ABFP pursuant to separate promissory notes and ultimately distributed to investors – all using interest wires and electronic bank withdraws. This continued until March 2020, when the previously undisclosed risks of the ABFP merchant cash advance investments were realized as the merchants defaulted on their notes and triggered a collapsed of the ABFP merchant cash investments and leaving ABFP investors without monthly interest payments and facing the prospects of a complete loss of their principal investment.

137. Thereafter, the ABFP Enterprise against used interstate e-mails, video transmitted over the internet and telephone calls to fraudulently induce ABFP merchant cash investors to enter into one or more restructuring agreements with Par Fund, which they knew was then illiquid and likely to seek bankruptcy protection, and Defendant Vagnozzi caused Defendants Pauciulo and Eckert Seamans to provided false and misleading legal advice (despite obvious conflicts of interest) to Plaintiffs and the Class, who were not represented by legal counsel, about their rights with respect to the ABFP merchant cash investments and prospects of obtaining a

monetary recovery from Defendants through litigation, in a misguided bid to avoid being sued by ABFP investors.

138. Upon information and belief, Plaintiffs and the Class relied upon Defendants' false and misleading statements and material omissions concerning the ABFP merchant cash investments in making their decisions to purchase such investments.

139. Defendants' conduct constitutes "fraud by wire" within the meaning of 18 U.S.C. § 1343 and "fraud by mail" and "investment fraud," which are "racketeering activit[ies]" as defined by 18 U.S.C. 1961(1). Its repeated and continuous use of such conduct to participate in the affairs of the ABFP Enterprise constitutes a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

F. Injury

140. As a direct and proximate cause of Defendants' violation of 18 U.S.C. § 1962(c), Plaintiffs and the Class suffered, and continue to suffer, substantial losses of their savings and investments and/or property as Plaintiffs and the Class are no longer receiving monthly interest payments (or greatly diminished payments) and cannot and likely will not receive the repayment of their principal as promised by the ABFP Enterprise, and they will continue to suffer such financial and economic injury for the foreseeable future.

COUNT II

NEGLIGENT MISREPRESENTATION AS TO ALL DEFENDANTS

141. Plaintiffs repeat and re-allege each of the allegations set forth herein as if fully stated herein.

142. For purposes of this count, in the alternative, Plaintiffs specifically disclaim any allegations of fraud, and allege only negligence.

143. As set forth herein, each of the Defendants had a duty, as a result of a special relationship, *i.e.*, the offering of securities to investors across the country in the form of subscription agreements for unregistered securities, to give accurate information.

144. Defendant Vagnozzi is the owner and a control person of ABFP, ABFP Management Company, LLC; and the Delaware LLCs, and in that capacity, orchestrated the offerings and sales of unregistered securities by through these entities, to Plaintiffs and the Class. As such, Vagnozzi owed Plaintiffs a duty of candor.

145. The Delaware LLCs were each issuers that offered and sold unregistered securities to investors including Plaintiffs. As such, each of these Defendants owed Plaintiffs and the Class a duty of candor.

146. Defendants Pauciulo and Eckert Seamans, legal counsel to Defendants Vagnozzi, ABFP, ABFP Management, because of their key role in structuring the ABFP merchant cash advance investments, which included preparing the offering materials distributed to investors, and overseeing the distribution of such offering materials to investors, served as *de facto* underwriters of each of the merchant cash advance investments, and orchestrated and facilitated each of these unregistered securities offerings. Moreover, Defendants Pauciulo and Eckert Seamans exercised control and oversight of the information that was disseminated to Plaintiffs and the Class concerning their investments. As such, each of these Defendants owed Plaintiffs and the Class a duty of candor.

147. Because of their positions with ABFP and its affiliates, Defendants had access to material non-public information concerning ABFP and Par Funding, and they knew the adverse facts specified herein.

148. Defendants Pauciulo and Eckert Seamans, because of their positions as legal counsel to Vagnozzi, ABFP, ABFP Management, and their role as the de facto underwriter of each of the merchant cash advance investments offerings, possessed unique and specialized expertise and information concerning ABFP, including unfettered access to the material non-public information specified herein. Such information was available to Plaintiffs only when Defendants chose to reveal it.

149. Defendants occupied a special position of confidence and trust such that Plaintiffs' reliance on their statements in the ABFP merchant cash advance investments, including Private Placement Memoranda, Subscription Agreements, periodic reports, and other materials provided to investors was reasonable. Put another way, Defendants had a duty to speak truthfully and with care in these circumstances, where the relationship is such that in morals and good conscience, Plaintiffs had the right to rely on Defendants for accurate and correct information and their reliance was reasonable.

150. As alleged herein, Defendants made multiple false and misleading representations and omissions of material fact that they should have known were incorrect. Defendants' false and misleading statements.

151. Defendants knew that Plaintiffs desired the information supplied in the representations for a serious purpose, *i.e.*, to decide whether to invest in the in the ABFP merchant cash advance investments offerings.

152. All investors in the ABFP merchant cash advance investments offerings received a Private Placement Memoranda and Subscription Agreements that were substantially similar in all material respects. Each investor in an ABFP merchant cash advance investments offering was required to represent, and did in fact represent, that he or she "has received, read and fully

understands the [Private Placement] Memorandum. Investor further acknowledges that Investor is basing Investor's decision to invest in the LP Interests solely on the [Private Placement] Memorandum and Investor has relied only on the information contained therein and has not relied upon any representations made by any other person."

153. Plaintiffs' specific reliance on Defendants' misrepresentations and omissions, as reflected in the Private Placement Memoranda and Subscription Agreements required in order to invest in a ABFP merchant cash advance investments offerings, was justifiable in that Defendants were issuers of securities under strict legal obligations to be truthful in their statements made to induce investors to rely on such statements and invest in the ABFP funds.

154. Because of the Defendants' exclusive control over information relating to the operations, financial condition and controlling persons of the ABFP funds, Plaintiffs were required to rely, and certify their reliance, only on the offering documents and information provided by Defendants. Plaintiffs would have been unable to discover the truth, regardless of any level of due diligence or independent research they might have conducted. There were no independent means of verification available to Plaintiffs and the Class of the true facts regarding the operations, financial condition and controlling persons of the ABFP funds.

155. Plaintiffs intended to rely and act upon the information provided by Defendants. Plaintiffs reasonably relied on Defendants' misrepresentations and omissions to their detriment, namely, they decided to invest in the ABFP funds, and as a result of their reliance, suffered damages.

COUNT III
BREACH OF FIDUCIARY DUTY AS TO DEFENDANTS VAGNOZZI, ABFP, and
ABFP MANAGEMENT

156. Plaintiffs re-allege and incorporate the allegations set forth herein as if fully stated herein.

157. Defendant Vagnozzi and his corporate alter egos, ABFP and ABFP Management, were, at all relevant times, control persons, managers, general managers, and majority owners of the Delaware LLCs and owed a fiduciary duty to Plaintiffs and the Class.

158. Plaintiffs and the Class were fully dependent upon Defendants Vagnozzi's ABFP's, and ABFP Management's, ability, skill, knowledge, and goodwill to invest their money appropriately and thereafter diligently oversee and manage that money and certified by signing the Subscription Agreements that they recognized these Defendants as their fiduciaries.

159. Moreover, by virtue of their superior skill and knowledge, their discretion on how to invest the investors' money, their exclusive oversight over the investors' money, the fact that they had been entrusted by Plaintiffs and the Class with their money, Defendants Vagnozzi ABFP, and ABFP Management were the investors' fiduciaries.

160. Defendants Vagnozzi ABFP, and ABFP Management breached their fiduciary duties to Plaintiffs and the Class by failing to truthfully, accurately, and completely disclose: (i) the nature of their investment in ABFP funds, (ii) failing to disclose the true risks of investing in ABFP funds, as set forth at length above, (iii) failing to truthfully disclose the alternatives to accepting the Exchange Notes offerings, including pursuing litigation, (iv) failing to disclose the prospects of recouping their principal by agreeing to accept the Exchange Notes offering, (v) failing to properly oversee, manage safeguard the Plaintiffs' and the Class's money and diligently invest it, and (v) failing to disclose to investors that distributions were not paid from partnership operations, but instead from other investors' funds.

161. As a direct and proximate consequence of Defendants Vagnozzi's ABFP's, and ABFP Management's, conduct as described in the foregoing and throughout this Complaint, Plaintiffs and the Class have lost a significant portion of the money they invested in the ABFP funds. As a result of Defendants Vagnozzi's ABFP's, and ABFP Management's breaches of fiduciary duty, Plaintiffs and the Class have suffered damages in an amount to be determined at trial.

**COUNT IV
CIVIL CONSPIRACY AGAINST ALL DEFENDANTS**

162. Plaintiff re-alleges and incorporates the allegations set forth in Paragraphs 1-64 as if fully stated herein.

163. Defendants combined to accomplish an unlawful purpose and/or to accomplish a lawful purpose by unlawful means. Defendants acted maliciously, without legal justification, and with the intent of injuring Plaintiffs. As such, Defendants have engaged in a civil conspiracy. In the course of their civil conspiracy, Defendants committed one or more unlawful, overt acts. Such unlawful, overt acts include Defendants' conduct described above. Such actions by Defendants subject such Defendants to joint and several liability.

**COUNT V
COMMON LAW FRAUD**

164. Plaintiff re-alleges and incorporates the allegations set forth herein as if fully stated herein.

165. Plaintiffs and the Class were defrauded by Defendants, as that cause of action is delineated by the common law in the State of Delaware.

166. Plaintiffs were the recipients of multiple misrepresentations and omissions of material fact, as set forth herein.

167. Defendants knew that their statements to Plaintiffs and the Class were materially false when made. Defendants concealed from investors the truth about Par Funding's business and its affiliates, including:

- the fact that there is no meaningful underwriting of the merchant cash advance loans to determine whether the borrowers have the ability to repay their loans;
- Par Funding often approved loans in less than 48 hours, without conducting an on-site inspection of the business;
- Par Funding would fund loans without obtaining information showing the business' profit margins, debt schedules, accounts receivable, or expenses;
- Vagnozzi and his associates make false claims to prospective investors that Par Funding has a 1% - 2% default rate, when in reality, Par Funding's loan default rate is as high as 10%;
- By August 2019, Par Funding had filed more than 800 lawsuits against small businesses for defaulted Loans seeking more than \$100 million;
- By November 2019, Par Funding had filed more than 1,000 lawsuits seeking more than \$145 million in missed payments;
- By January 2020, Par Funding had filed more than 1,200 lawsuits seeking \$150 million in delinquent payments;
- Defendants represented to investors that Par Funding borrowers have insurance to cover defaults, but in truth Par Funding did not offer small businesses insurance on their loans;

- That LaForte is a twice-convicted felon and prior to founding Par Funding and that he was imprisoned and ordered to pay \$14.1 million in restitution for grand larceny and money laundering; and
- Par Funding's history of regulatory violations and fines, including; (a) the \$499,000 penalty from Pennsylvania Securities Regulators in November 2018; (b) the New Jersey Bureau of Securities' Cease-and-Desist Order against Par Funding based on its offer and sale of unregistered securities in December 2018; and (c) the Texas State Securities Board issued an Emergency Cease-and-Desist Order against Par Funding and others, alleging fraud and registration violations in connection with its securities offering through an Agent Fund in Texas, in February 2020.

168. Additionally, Defendants misrepresented and concealed Vagnozzi's history regulatory violations and penalties, including: (i) the Pennsylvania Securities regulatory Order that required him to pay a \$490,000 fine based on his sales of the Par Funding investment in violation of state law, in May 2019; (ii) in February 2020 the Texas Securities Regulators filed a claim against ABFP for fraud in connection with the Par Funding offering, which remains pending; (iii) the SEC filed a Consent Order against Vagnozzi for his violation of the federal securities laws on July 14, 2020; and (iv) the SEC Action seeking temporary and permanent injunctions of ABFP and Vagnozzi's operations, appointment of a receiver, and freezing assets.

169. Based on their positions as control persons, officers, directors, managers, majority owners, attorneys, and/or underwriters, each of whom offered and sold unregistered securities in the form of promissory notes and partnership units to investors including Plaintiffs and the Class, Defendants were uniquely knowledgeable about Par Funding, LaForte, Vagnozzi, ABFP, ABFP

Management, and the Delaware LLCs true practices and procedures, and the risks inherent in investing in unregistered securities issued by the Delaware LLCs, as described at length herein.

170. Armed with such knowledge, Defendants had a full understanding of the truth, yet they disseminated material falsehoods to create a misleading and false picture of investing in unregistered securities issued by the Delaware LLCs with the intention to induce Plaintiffs and the Class to rely on such statements and invest in the ABFP funds.

171. In addition, as alleged herein, a fiduciary relationship exists between Defendants Vagnozzi, ABFP, ABFP Management, Pauciulo, and Eckert Seamans and Plaintiffs and the Class. Based on such special, fiduciary relationship, Defendants Vagnozzi, ABFP, ABFP Management, Pauciulo, and Eckert Seamans also defrauded Plaintiffs and the Class by omitting the material information alleged herein which was necessary to make their statements not misleading.

172. Defendants made those materially false statements and omissions for the purpose of inducing Plaintiffs to rely on such statements and invest in the ABFP funds, which they in fact did.

173. Defendants also made the materially false statements and omissions alleged herein for the purpose of inducing Plaintiffs and the Class to accept the Exchange Note offerings, which include broad releases of claims and waivers of the right to bring a class action, to rely on such materially false statements and omissions and to accept the Exchange Note offerings, which they in fact did.

174. All investors in the ABFP funds received a Private Placement Memorandum and Subscription Agreement that were substantially similar in all material respects. In the Subscription Agreements, each investor in an ABFP fund was required to represent, and did in

fact represent, that he or she “has received, read and fully understands the [Private Placement] Memorandum. Investor further acknowledges that Investor is basing Investor’s decision to invest in the LP Interests solely on the [Private Placement] Memorandum and Investor has relied only on the information contained therein and has not relied upon any representations made by any other person.”

175. Plaintiffs’ specific reliance on Defendants’ misrepresentations and omissions, as reflected in the Private Placement Memorandum requirements and signed Subscription Agreements required in order to invest in a ABFP funds, was justifiable in that Defendants were issuers of securities under strict legal obligations to be truthful in their statements made to induce investors to rely on such statements and invest in the ABFP funds.

176. Because of the Defendants’ exclusive control over information relating to the operations, financial condition and controlling persons of the ABFP funds, Plaintiffs were required to rely, and certify their reliance, only on the offering documents and information provided by Defendants. Plaintiffs would have been unable to discover the truth, regardless of any level of due diligence or independent research they might have conducted. There were no independent means of verification available to Plaintiffs and the Class of the true facts regarding the operations, financial condition and controlling persons of the ABFP funds.

177. As a direct result of Defendants’ false and misleading statements and omissions, their intent to induce Plaintiffs and the Class to rely on such statements and omissions and invest in the ABFP funds, and Plaintiffs’ justifiable reliance thereon, Plaintiffs and the Class suffered damages in an amount to be determined at trial and punitive damages because the conduct of the Defendants alleged herein was not in good faith or in the best interests of the partnerships and constituted gross negligence , fraud and willful and wanton conduct.

COUNT VI

UNJUST ENRICHMENT AGAINST ALL DEFENDANTS

178. Plaintiffs reallege and incorporate the allegations set forth herein as if fully stated herein.

179. All Defendants were enriched at the expense of Plaintiffs and the Class in that they received benefits, commissions, fees and other monetary benefits from the invalid sale of unregistered securities in the ABFP funds to investors, used investor funds for their own personal purposes, as alleged herein, and engaged in improper related party transactions and conflicts of interests to the detriment of investors, as alleged herein.

180. It is against equity and good conscience to permit Defendants to retain such benefits, commissions, fees and personal benefits resulting from the sale of unregistered securities to investors without a valid exemption from registration. Securities may only be sold if they are registered or exempt from registration pursuant to a valid exemption from registration. Defendants sold invalid unregistered securities to investors and received money and benefits at the expense of the investors in the ABFP funds. Defendants' receipt of such benefits as a result of inducing Plaintiffs and the Class to invest in the fraudulent and unregistered ABFP funds and subsequent use of investors' funds for personal purposes are not governed by any contract between investors and Defendants.

181. Plaintiffs and the Class were damaged by Defendants' unjust enrichment and seek disgorgement, restitution and return of the funds they invested in the invalid unregistered securities offerings and the commissions, fees and other benefits retained by the Defendants which equity and good conscience make it improper for Defendants to retain.

COUNT VII

AIDING AND ABETTING FRAUD BY ALL DEFENDANTS

182. Plaintiffs reallege and incorporate the allegations set forth herein as if fully stated herein.

183. As alleged herein, all Defendants have committed fraud with respect to the offering and management of the invalid unregistered securities offerings of the ABFP funds.

184. As alleged herein, all Defendants had knowledge of the fraud and substantially assisted in the achievement of the fraud.

185. Each Defendant, with knowledge of the fraud, aided and abetted the other Defendants in perpetrating the fraud.

186. As a direct result of each Defendant's aiding and abetting the fraud of the other Defendants, Plaintiffs and the Class suffered damages in an amount to be determined at trial and seek punitive damages.

COUNT VIII

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY BY ALL DEFENDANTS

187. Plaintiffs reallege and incorporate the allegations set forth herein as if fully stated herein.

188. As alleged herein, Defendants Vagnozzi, ABFP, and ABFP Management breached their fiduciary duties to Plaintiffs and the Class.

189. By orchestrating the offering and sale of unregistered securities without a valid exemption from registration, all Defendants knowingly assisted and participated in the breaches of fiduciary duty by Defendants Vagnozzi, ABFP, and ABFP Management.

190. As a direct result of each Defendant aiding and abetting the other Defendants' breaches of fiduciary duty, Plaintiffs and the Class suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- a) Determining that Defendants are jointly and severally liable;
- b) Ordering Defendants to repay Plaintiffs all principal, interest and fees previously paid to Defendants in connection with the ABFP Merchant Cash Investments;
- c) Awarding Plaintiffs direct and consequential damages, including prejudgment interest;
- d) Awarding Plaintiffs treble damages;
- e) Awarding Plaintiffs their attorney's fees and costs incurred in this action; and
- f) Granting further relief, in law or equity, as this Court may deem appropriate and just.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for all claims that may be so tried.

Dated: August 5, 2020.

Respectfully submitted,

/s/ Scott M. Tucker

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