

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. **36** DB 2025  
v. :  
: Atty. Reg. No. 60474  
JOHN W. PAUCIULO, :  
Respondent : (Chester County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Amelia C. Kittredge, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, John W. Pauciulo, with professional misconduct in violation of the Rules of Professional Conduct as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

**FILED**  
**03/31/2025**  
**The Disciplinary Board of the**  
**Supreme Court of Pennsylvania**

2. Respondent, John W. Pauciulo, was born in 1965, was admitted to practice law in the Commonwealth on December 17, 1990, maintains his office at 1055 Westlakes Drive, Suite 300, Berwyn, Chester County, Pennsylvania 19312, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

CHARGE: THE PAR FUNDING MATTER

I. **Background: The Fraudulent Securities Scheme.**

3. This matter concerns a nationwide, extensively publicized securities fraud scheme involving a company called Complete Business Solutions Group, Inc. (CBSG), doing business as “Par Funding.” ( “Par Funding, A Better Financial Plan Offices Taken Over by Receiver, Locks Changed,” Philadelphia Inquirer 8/4/2020 (ODC-2); “Eckert Seamans Partner Accused of Defrauding Investors,” The Legal Intelligencer 8/17/2020) (ODC-3)).

4. A Judge of the United States District Court for the Eastern District of Pennsylvania has found that investors who were victimized by the scheme suffered monetary losses of over \$404,000,000. ***United States v. Joseph La Forte, Joseph Cole Barleta, James LaForte***, Nos. 23-198-1, 4, 5 (E.D.P.A.) (Memorandum with Findings of Fact & Conclusions of Law, 1/21/25 at 11) (Carney, J.) (ODC-1).

5. In July, 2020, the United States Securities and Exchange Commission (SEC), which had detected the fraud, intervened and obtained the appointment of a Receiver, who has gathered collateral assets (bank accounts and

accounts receivable), and offset the investor losses such that at this point, the losses remain in excess of \$288,000,000. (ODC-1 at 16-17).

6. The scheme involved securities, promissory notes, that were not registered with the SEC, but should have been, and thus were not subjected to the safeguards and oversight of public offerings.

7. Par, founded in 2011, advertised that it was in the “merchant cash advance business,” providing small businesses with short-term cash advances which the small businesses were required to pay back with substantial interest.

8. In 2016, when Respondent became involved with the scheme, Par raised the funds to make the loans through the offer and sale of Par-issued promissory notes that were not registered with the SEC, so-called “private placements.”

9. In or about 2016, Respondent’s longstanding client, Dean Vagnozzi, who did business through his company, ABetterFinancialPlan,LLC (ABFP), using a website at [abetterfinancialplan.com](http://abetterfinancialplan.com), became a seller of the promissory notes.

10. In or about 2018 after attracting regulatory scrutiny, Respondent, Par and Vagnozzi set up a web of companies that created a more complex structure, but aimed at the same goal: the sale of unregistered securities, promissory notes, for investment in Par’s merchant cash advance business.

11. Respondent played a pivotal role in the scheme through his dishonest, reckless, conflicted and self-serving conduct.

12. In his role as counsel for Vagnozzi and his businesses, Respondent

exploited his status as a lawyer, a partner with a large, prestigious law firm, and a professional with superior expertise in the securities field, to expose his own clients and innocent retail investors to the fraudulent scheme.

13. At all times relevant to this matter, 2016 through 2020, Respondent was a partner at the law firm of Eckert Seamans Cherin & Mellott (“Eckert Seamans”), and was the chair of the financial transactions practice group.

14. The principals of Par, Joseph LaForte, James LaForte, and Joseph Cole Barleta, and others, have entered pleas of guilty to securities and wire fraud. James LaForte was sentenced to 137 months in federal prison followed by three years of supervised release; Joseph LaForte was sentenced to 186 months in prison, three years of supervised release, forfeiture of a private jet, an investment account totaling approximately \$20 million, and additional financial penalties, including restitution; at the date of this Petition, the remaining defendants are scheduled to be sentenced in the near future.

15. The wife of Joseph LaForte, Lisa McElhone, who had the title of CEO of Par, has entered a plea of guilty to felony wire fraud and is also awaiting sentencing.

16. The SEC charged Respondent civilly with securities fraud and in 2022, without admitting or denying the charges, by way of an Offer of Settlement, he agreed to a five-year suspension from practice before the Commission and a fine of \$125,000. ***In the Matter of John W. Pauciulo, Esq.***, Order Instituting Public Administrative Cease and Desist Proceedings, SEC File No. 3-20926. (ODC-4).

## II. SEC Regulation of Private Placements.

17. Under the federal securities laws, a company may not offer or sell securities unless the offering has been registered with the SEC or an exemption from registration is available, as provided by Section 4(a)(2) of the Securities Act of 1933 (the “Act”).

18. As relates to this matter, offerings exempt from the SEC’s registration requirements pursuant to the Act are detailed in the “safe harbor” provisions set forth under Regulation D of the Securities Act, and are referred to as “private placements.”

19. Under Rule 506(b) of Regulation D, the exemption from registration under which the securities in this matter were allegedly lawfully sold, the securities are not required to be registered if they comport with the following:

- a. the company “**cannot use general solicitation or advertising**” to market the securities;
- b. the company may sell its securities to an unlimited number of “**accredited investors**” and up to 35 non-accredited investors;
- c. companies making a private offering are subject to the antifraud prohibitions of the federal securities laws, and any information a company provides to investors must be free from false or misleading statements; likewise, a company should not exclude any information if the omission makes

what is provided to investors false or misleading.

(SEC website, Investor.gov, “Rule 506 of Regulation D”

(ODC-16) (emphasis added).

20. “Accredited investors” must have earned income that exceeds \$200,000 (or \$300,000 together with a spouse) in each of the prior two years, and reasonably expect the same for the current year *or* must have a net worth over \$1 million (either alone or with a spouse) *exclusive of the value of the primary residence* and any loans secured by the residence, *or* are a broker or other financial professional holding certain certifications, designations or credentials in good standing, including a Series 7 license. Non-accredited investors, either alone or with a purchaser representative, must be sophisticated—that is, they must have sufficient knowledge in business and financial matters to make them capable of evaluating the merits and risks of the prospective investment. (SEC website, Investor.gov, “Private Placements Under Regulation D-Updated Investor Bulletin” 9/24/14) (ODC-14).

21. One of the important reasons the SEC limits offerings to “accredited investors” is to ensure “that all participating investors are financially sophisticated and able to fend for themselves or sustain the risk of loss, thus rendering less necessary the protections that come from a registered offering.” (ODC-14 at 1).

22. Section 502(c) (“Limitation on Manner of Offering”) of Regulation D defines “**general solicitation or general advertising**” as:

a. (1) “Any advertisement, article, notice or other communication

published in any newspaper, magazine, or similar media or broadcast over television or radio; and

- b. (2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising....”

23. An offering in unregistered securities can be accompanied by a “Private Placement Memorandum” (PPM), or “offering memorandum.”

24. According to the SEC, the purpose of the PPM is to introduce the investment and disclose information about “the securities offering and the issuer,” and although a PPM is not required, the SEC cautions that “*private placement memoranda and other offering documents typically are not reviewed by any regulator and may not present the investment and related risks in a balanced light.*” (emphasis in original).(ODC-14 at 6).

25. The SEC explains that “Fraudsters may use unregistered offerings to conduct investment scams,” and points out some of the earmarks of such scams, including “Claims of High Returns with Little or No Risk,” which are “classic warning signs of fraud”; Unregistered Investment Professionals; Aggressive Sales Tactics; No Net Worth Requirements; and Suspicious or Unverifiable Biographies of Mangers or Promoters. ((ODC-14); SEC website, Investor.gov, “Investor Alert: 10 Red Flags That an Unregistered Offering May Be a Scam” (August 4, 2014) (ODC-15)).

26. Companies which claim an exemption from registration under Rule 506(b), must file Form D with the SEC. Form D is a brief notice that includes the

names and addresses of the company's promoters, executive officers and directors, and some details about the offering, but contains little other information about the company; it should be noted that in cautioning investors about unregistered securities being an opportunity for investment scams, the SEC advises that "Form D does not represent SEC approval or registration." (ODC-14 at 6).

### III. Respondent's Client Markets "Alternative Investments" to the Public

27. In or about 2004, even before he began his tenure at Eckert Seamans, Respondent began representing Dean Vagnozzi, a self-styled "Financial Advisor," who operated a King of Prussia, PA business called "A Better Financial Plan" (ABFP), using a website at "abetterfinancialplan.com."

28. Vagnozzi had held Series 6 and Series 63 licenses to sell securities registered with the SEC, but they had long expired by the time he and Respondent became involved with Par Funding.

29. Vagnozzi advertised that his investment offerings, which were not registered with the SEC, were "alternatives" to the stock market which provide "safe investments" and "deliver outstanding returns."

30. Vagnozzi aggressively marketed his investments in various media outlets, including:

- a. on his website, where he boasted in bold typeface, "With Vagnozzi, Bad Investments Don't Exist." (ABFP website, ODC-5);

- b. on the radio on stations KYW News Radio and 1210 WPHT (“Talk Radio”), which were the primary sources of Vagnozzi’s investors (**SEC v. CBSG, et al.** 20-CV—81205-RAR, Deposition of Dean Vagnozzi 8/6/20 at 156-57 (ODC-7); and
- c. at free “dinner seminars” at various restaurants in the Philadelphia area. (ODC-6).

31. In unorthodox fashion, Respondent’s license to practice law and his position at a major law firm were part of Vagnozzi’s “pitch” to investors, and the ABFP website touted Respondent’s involvement in Vagnozzi’s alternative investments strategy, in that:

- a. Vagnozzi called Respondent “pivotal to this story,” as Respondent helped Vagnozzi “put together ‘corporations,’ utilizing Private Placement Memorandums....”;
- b. Vagnozzi trumpeted that “[w]ith the help of Dean Vagnozzi’s attorney, John Pauciulo, and one of the largest law firms in the Philadelphia region, clients at ABFP are able to ‘invest like the big boys’”; and
- c. through the combined efforts of Vagnozzi and Respondent, clients were able to “invest in opportunities that they otherwise may not have access to.” (ODC-5).

32. Respondent appeared on at least one radio show with Vagnozzi. (Answer to DB-7 at para. 39).

33. Respondent recorded videos that Respondent knew Vagnozzi intended to use “from time to time” in connection with meetings with “prospective investors...in [a]ny investment opportunity that Dean Vagnozzi or A Better Financial Plan was involved with.” (***SEC v. Complete Business Solutions Group, Inc. d/b/a/ Par Funding, et al.***, 20-CV-81205-RAR, Respondent’s Deposition 4/14/21 at 145-49) (the three volumes of Respondent’s depositions are marked as ODC-8, 9, and 12, and are hereinafter cited as “Respondent’s Deposition [date] at [page]).

34. A video Vagnozzi asked Respondent to make was obtained by the SEC in its investigation, showing Respondent on screen, stating as follows:

“ My name is John Pauciulo. I’ve been practicing law for about 24 years. My practice focuses on corporate and securities matters, and I represent clients in a wide range of industries. A large part of my practice concerns capital raising, private placements, mergers and acquisitions, and corporate finance transactions. I am a partner with the law firm of Eckert Seamans Cherin & Mellott, and I chair our corporate transactions practice group. Eckert Seamans is a law firm with about 375 lawyers in 14 offices throughout the Mid-Atlantic region. I was introduced to Dean [Vagnozzi] about 10, 11 years ago from a mutual referral source...later, Dean approached me about setting up ...[a] structure to invest in an alternative asset class.

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Under the federal securities laws, to sell a security the security must either be

registered or there needs to be an exemption from registration.

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... [T]here is a whole world of investing that can be done through private placements.

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**A private placement can be done so long as you comply with certain regulations under the securities laws, and those regulations really have to do with disclosure, disclosure of all material information that an investor would want to know in making a decision about whether to invest.**

And when I began working with Dean when we talked about investing in this asset class, my job was to make sure that I created a document for an investor that they could pick up, read, and understand, and get comfortable with the asset class knowing that they had full and fair disclosure about the benefits and potential risks of the asset class.

We've devoted a lot of time and energy to putting together the documentation to comply with the securities laws and to give investors all the information they need." (Respondent's Deposition 4/9/21, Exhibit 37) (ODC-10) (emphasis added).

35. Respondent used his title of chair of the financial transactions group in the video to bolster his expertise in the eyes of investors, but he told the SEC that it was merely a "designation for marketing purposes," never mentioning to investors that his title was a marketing ploy. (Respondent's Deposition 7/27/21 at 350).

36. Respondent testified that he had an understanding that the above video would be shown to “prospective investors,” that included individuals that “might be purchasing...promissory notes ...in one of Mr. Vagnozzi’s funds.” (Respondent’s Deposition 4/9/21 at 290-93).

37. Vagnozzi requested that Respondent make another, lengthier (over 5 minutes) video in 2017 or 2018 at the time that Vagnozzi was marketing the Par-related promissory notes, in which Respondent:

- a. describes the size of his law firm, the cities that the firm has offices in, and states that he practices in “a relatively small niche” within the legal profession;
- b. states that he acts in a “compliance role,” working with “Dean” “to make sure that we’re in compliance with federal and state securities laws, that the documents are done the right way....”;
- c. responds to the question on screen, “**What Is Your History with Dean?**” by stating that he and “Dean” have worked together now for many years...we’ve created funds [for] invest[ment] in a [p]retty wide variety of...businesses”; and
- d. states that “What Dean has done is to identify ...alternative investment classes [a]nd **together Dean and I have created a model** where a retail investor can get involved in a kind of asset class that [he] ...may not have the financial wherewithal to do....” (ODC-11) (emphasis added).

38. In the same video, Respondent next answers a bolded question on the screen, **“What’s Unique About a Better Financial Plan?”**, by telling the listener that:

- a. the “first step is usually due diligence” to determine if an investment is worthwhile;
- b. next, “we prepare documents” and “bring in investment dollars”; and
- c. a “big part of that” is drafting the Private Placement Memorandum. (ODC-11).

39. Respondent further explains that:

- a. “[s]o every time you sell a security it’s got to be either registered with the SEC or there’s got to be an exemption. We operate [under] exemptions from the registration requirements...when you look at those [SEC] rules, ...they’re really all about disclosure. Disclosure of risk, disclosure of the nature of the investment. So the private placement memorandum is...**intended to provide a prospective investor with all the information that a reasonable person would want to know or information they want to have in order to make an informed investment decision**”; and
- b. after a screen reads, **“Can I Be Sure This is Legal?”**, Respondent states that “[f]rankly, Dean spent a lot of money

with me and my law firm. This kind of legal compliance is complicated. Because it's complicated we spend a lot of time on it...Dean has spent and continues to spend a lot of money to **make sure things are done the right way.**" (Respondent's Deposition 4/9/21, Exhibit 32) (ODC-11) (emphasis added).

40. Respondent also:

- a. appeared in "programs and events" conducted by Vagnozzi or ABetterFinancialPlan; and
- b. knew that Vagnozzi referenced "a large law firm" in his radio ads, but Respondent never told him to stop making such references. (Respondent's Deposition 7/27/21 at 286, 290).

#### **IV. Respondent and Vagnozzi Begin Involvement with Par Funding.**

41. In 2016, Vagnozzi retained Respondent to assist him in developing a business relationship with a Delaware corporation named "Complete Business Solutions Group" (CBSG), which was doing business as "Par Funding" and was in the "merchant cash advance business."

42. An advertising piece titled, Par's "Corporate Overview" states that:

- a. Par was founded in 2012 and is headquartered in Philadelphia;
- b. is in the business of providing small businesses with loans they could not obtain from banks because of the financial crisis of 2008, when banks put in place stricter underwriting

guidelines; and

- c. it had provided over \$220 million in loans, had a diversified pool of qualified merchants, and a multi-step process to ensure that each small business was sound and the loan would be repaid. (SEC bates numbers PL000950-000965) (ODC-13).

43. In 2016, when Respondent and Vagnozzi became involved:

- a. Par raised investor money to fund the loans to small businesses through the offer and sale of Par-issued promissory notes;
- b. the notes were not registered with the SEC; and
- c. the notes were sold by salesmen (“Finders”) who, like Vagnozzi, were not registered with the SEC.

44. Respondent knew that Vagnozzi was engaged in a general solicitation through radio ads, dinner seminars and his website and videos, and thus the securities he was offering had no exemption from registration.

**V. Respondent’s Reckless Vetting of Par Funding.**

45. From the outset of Respondent’s Par-related representation of Vagnozzi in 2016, Respondent dealt with what he termed the “management team” of Par Funding.

46. Respondent testified that the “management team” of Par included Joseph Cole Barleta, Joseph LaForte, Perry Abbonizio and Lisa McElhone.

(Respondent's Deposition 4/14/21 at 96).

47. Respondent claimed in his deposition to have gone through a "due diligence" process with respect to Par on behalf of Vagnozzi, but he:

- a. allowed Par management to "spoon feed" him information about the company;
- b. did not press for the information he sought but did not receive; and
- c. conducted such a superficial inquiry of the company and its personnel as to amount to willful blindness and recklessness.

48. On April 19, 2016, Respondent sent an email to "Joe Cole," Joseph Cole Barleta, Par's Chief Financial Officer (CFO), attaching a lengthy list of due diligence items that he wanted to review. (Respondent's Deposition 4/9/21, Exhibit 7) (ODC-17), including:

- a. audited financial statements;
- b. the "[n]ames and addresses of each director and officer"; and
- c. a list and brief description of threatened or pending claims and lawsuits. (Respondent's deposition of 4/9/21 at 169-76).

49. In response to his email, Respondent was told that Par had no audited financial statements and throughout the approximately four-year Vagnozzi representation in connection with Par, he never received any. (Respondent's Deposition 4/9/21 at 169-70).

50. In April, 2016, Respondent went to Par's Philadelphia office and "met

with individuals who held themselves out to be management of Par Funding,” including Joseph Cole Barleta, Joseph LaForte, who was at times referred to as “Joe Mack,” and “Joe McElhone,” and his wife, Lisa McElhone, who had the title CEO.

51. On April 28, 2016, Respondent again asked for the names of the officers with their titles, but at no time obtained such documents from Par. (Respondent’s Deposition 4/9/21 at 182-84).

52. Respondent acknowledged in his SEC deposition that the identities of “officers and directors,” who were “controlling the company,” was “information you would want to have,” because “to some extent” a purpose of due diligence is to find out “who you’re doing business with and to find out what the potential liabilities and risks are with the company,” as well as “who has power and authority to speak and act on behalf of the entity.” (Respondent’s Deposition 4/9/21 at 171-75, 182).

53. Although Respondent knew the management of Par and emailed with them, he did not recall doing “any background searches” on anyone at Par Funding, including Joe Mack or McElhone, who Respondent testified “appeared to be a decision-maker” in 2016. (Respondent’s Deposition 4/9/21 at 176-77, 183-84, 208-09).

54. Respondent learned in 2017, at the latest, that “Joe Mack,” aka Joe McElhone, was Joseph LaForte, and later flew on LaForte’s private plane on two occasions. (Respondent’s Deposition 4/9/21 at 143, 147).

55. In a 2016 email with Respondent, LaForte referred to Par as “my company.” (Email of May 17, 2016 , ODC-56).

56. Had Respondent obtained the information he requested during the due diligence process in 2016, or conducted his own internet search, he would have found that Joseph LaForte a/k/a “Joe Mack” a/k/a “Joe Macki” a/k/a “Joe Mackie” a/k/a “Joe McElhone”, who was running Par Funding along with Cole:

- a. was a convicted felon;
- b. in 2006, LaForte pleaded guilty in New York State court to multiple counts of Grand Larceny, one count of Money Laundering and one count of Conspiracy, and was sentenced in November, 2007 to a term of imprisonment and ordered to pay \$14,145,045 in restitution. (*People v. Joseph LaForte 00928-N-2006*) (ODCC-18);
- c. in 2009, La Forte pleaded guilty to federal criminal charges in the District of New Jersey for Conspiracy to operate an illegal gambling business, and was sentenced to 10 months in federal prison, with a period of three years’ supervised release. (*U.S. v. Joseph LaForte 3:09-CR-941-1*) (ODC-18);  
and
- d. had been released from federal prison in February, 2011.  
(Inmate Locator, ODC-19).

57. While LaForte was on supervised release from federal prison, on

October 21, 2011, his wife, Lisa McElhone, incorporated Complete Business Solution Group, Inc., which did business as Par Funding. (ODC-20).

58. Perry Abbonizio, who claimed to be an owner and managing partner of Par, and who Respondent worked with during the Vagnozzi representation, was sanctioned by the Financial Industry Regulatory Authority (FINRA) in 2015, had his license suspended for four months and was fined \$10,000, based on allegations that without providing notice to his FINRA member firm, he solicited firm clients to purchase \$625,000 in outside private placements and received compensation without his firm's knowledge or permission. (ODC-22).

59. Lisa McElhone, identified as the CEO of Par, owned a nail salon in Philadelphia called "Lacquer Lounge" at the time of the Vagnozzi-Par association, however:

- a. earlier, in 2012, the Oregon Department of Consumer and Business Services issued a "Final Order to Cease and Desist," consented to by McElhone, for unregistered "debt management services" (loan modification) while employed by a Philadelphia firm that was not licensed by Oregon;
- b. the Oregon authorities found that McElhone took funds from an Oregon consumer in the form of personal money orders and cashed the money orders at a Philadelphia check cashing store; and
- c. McElhone returned the money to the consumer in settlement

of the charge. (*In the Matter of Marack Industries, Inc. and Lisa McElhone*, Case M-12-0057, Final Order to Cease and Desist 10/3/2013) (ODC-21).

60. During the due diligence period, if Respondent had done a simple docket search for the Philadelphia court system, he would have found that:

- a. from 2013, shortly after its inception, through 2020, Par had filed at least 1,656 lawsuits against small businesses for default;
- b. sought a total of \$240,020,697.47 in unpaid loan payments;
- c. by 2017, Par had filed lawsuits seeking over \$20 million in missed loan payments; and
- d. in 2018, that figure rose to more than \$50 million in missed payments. (ODC-23).

61. Similarly, a docket search would have revealed a July, 2017 Texas state lawsuit (promptly removed to federal court in Texas and transferred to the Eastern District of Pennsylvania), against Par and an associated company alleging predatory lending practices and fraud, *Fleetwood Services LLC v. Complete Business Solutions Group, et al.*, 374 F.Supp.3d 361 (E.D.Pa. 2019). (*In the Matter of Senior Asset Protection, et al., Texas State Securities Board, Order ENF-CDO-20-1798, at para. 46*) (ODC-24).

62. On the contrary, Respondent admitted that he did no “Westlaw searches...or any other research about litigation” in which Par was involved.

(Respondent's Deposition 4/9/21 at 177).

63. Respondent also was not provided with any "transaction documents and accounting statements or anything else where [he] could ascertain what the actual default rate was," which would have been a key metric in determining how sound the business was, but instead relied on Par's oral representations about the "default rate generally." (Respondent's Deposition 4/9/21 at 184-85).

64. Emails between Respondent and Par reflect that the only materials about the Par business that Respondent was given were exemplars of promissory notes and other agreements, incorporation documents, internally prepared financial information, and an "Investor Presentation," which Joseph Cole Barleta said, "should prove useful in developing materials for Dean's pitch." (ODC-25); (Respondent's Deposition 4/9/21 at 180-82, Exhibit 8).

65. At his SEC deposition, Respondent did not recall "ever" getting any documents concerning the names of the officers and directors or ownership of Par Funding. (Respondent's Deposition 4/9/21 at 184) (ODC-25).

66. After the initial alleged "due diligence" of Par in April, 2016, Respondent did no other fact-finding on Par until March or April of 2020. (Answer to DB-7 at para. 11).

67. In or about September, 2016, Vagnozzi became an investor "Finder" providing "the service of introducing Creditors to [Par] and assisting in the consummation of loans from Creditors to [Par]." (CBSG Finder's Agreement with Dean Vagnozzi dated 4/14/17) (ODC-26).

68. In May, 2016, Respondent had begun drafting a Private Placement Memorandum (PPM) for Vagnozzi to use to sell the Par promissory notes to investors. (ODC-27).

69. Despite Respondent's meager "due diligence," Vagnozzi "pitched" the Par notes with his usual zeal, stating on a video for prospective investors that they should "reach out to us" using the website or telephone number for [abetterfinancialplan.com](http://abetterfinancialplan.com), because:

- a. the merchant cash advance notes were "an investment opportunity like no other" yielding "double digit investment growth";
- b. "[p]rofits are massive";
- c. loans are given to "financially sound companies" which "can pay investors 'like you'...between 8 and 14% interest"; and
- d. "we'd like to introduce you to one of the best merchant cash advance lenders that you can find" [referring to Par]" with an impressive default rate of less than 1%." (ODC-28).

70. Reflecting how central Respondent was to the effort to market the Par notes (referred to as "merchant cash" on the video), on a video of a dinner for prospective investors, Vagnozzi introduced Respondent, touting his involvement by explaining:

- a. "I want you to understand, why we are able to do what we're doing and nobody else can? – **because I don't have a**

**securities license”;**

- b. “...John’s job is to put a document together...to make sure you know of every pro and every con and every risk associated with the investment...that complies with the securities laws” ; and
- c. “I just want you to see...I paid a very expensive large law firm...I have a big firm behind me.” (ACE Dining Event) (ODC-29) (emphasis added).

71. At the same dinner Respondent:

- a. explained that “...we’re not doing a registered offer...because ...it’s a big process, very expensive and time-consuming...and costly...[p]robably about a million bucks in professional fees, legal fees;
- b. “...there is (sic) a whole bunch of exemptions...[t]he most well-known exemption is something called Regulation D....”
- c. “...the securities laws aren’t so much about substantive review of the quality of an investment...[t]hey’re about disclosing the nature of the investment”;
- d. “...everybody who has invested in Dean have (sic) seen” the private placement memoranda;
- e. “[s]o the idea of disclosure is that you as a prospective investor are given all the information that you need to make

an informed investment decision...so if you read the [private placement memorandum]...everything is in there...[t]here's a section on risk factors...[w]e talk about the nature of the investment..."; and

- f. "...it's my job to make sure that you are informed for two reasons: [o]ne is, it's to comply with the securities laws; but also, **that you go into this with your eyes open. You know exactly what you're getting into.**" (emphasis added).

72. Continuing at this dinner, Respondent:

- a. states that he is "...a partner with...Eckert Seamans...[w]e have about 400 lawyers in 15 cities...I chair our financial transactions practice...So I lead a group of about 15 lawyers...."; and
- b. closed with, "I've been doing this for 29 years. My first job out of law school was with the Securities and Exchange Commission in New York where I investigated cases involving insider trading and financial fraud...Did catch some insider trading folks which was fun. And then I went off and been in private practice ever since." (ODC-29).

73. Despite the emphasis on disclosure during the Vagnozzi representation, at his SEC deposition, Respondent attempted to explain away his failure to confirm and disclose LaForte's criminal background by stating:

- a. that “the conviction was not material in the sense that it didn’t disqualify Mr. LaForte from being involved in or operating a business...it seemed to me that he had...done his time and he has every right to own and operate a business,” which ignores the aim of disclosure; and
- b. as to his clients who sold Par-related investments, Respondent testified that he didn’t recall any specific conversations with them about LaForte’s criminal convictions, which he brushed aside by commenting that he “understood and was aware that they had met with..LaForte and had an opportunity to conduct their own due diligence,” which begs the question of what fiduciary duty Respondent thought he had to his clients if he thought they should be doing their own due diligence. (Respondent’s Deposition 4/14/21 at 123, 154).

**VI. State Regulatory Action Against Par and Vagnozzi**

74. In March, 2017, the Pennsylvania Department of Banking and Securities (PADOBS), Bureau of Securities Compliance and Examinations, received an online customer complaint from a Pennsylvania resident and registered Investment Advisor concerning an advertisement by Vagnozzi and his company, ABetterFinancialPlan, regarding the offering of the Par notes. (PADOBS investigative subpoena dated January 4, 2018, issued to Par Funding, Docket No.

2017-7-12-4) (ODC-30).

75. The complaint, which had been made to the Investment Advisor by a client of his who was an attorney, raised questions about the advertised rate of return and method of offering for an investment opportunity in Par through Vagnozzi and ABFP.

76. The Pennsylvania Department of Banking's review of the advertisement noted:

- a. that Vagnozzi referenced his own personal investment in Par, the high rate of return on the investment, the large number of investors, and advice to review and consider an "investment opportunity" in the Par notes; and
- b. the Department further observed that its research did not indicate that the Par promissory notes had been registered with the Department, nor had any exemptions been filed with the Department.

77. As a consequence of the above complaint, in January, 2018, the Pennsylvania Department served Par with a subpoena at its Philadelphia address for, among other things, all its documents used in connection with the offer and sale of its investments. (PADOBS investigative subpoena dated January 4, 2018 issued to Par Funding, Docket No. 2017-7-12-4) (ODC-30).

78. Par engaged counsel knowledgeable in securities regulation in Pennsylvania, who found that Par was using unregistered agents, who were selling

to non-accredited investors, and he advised Par that the Pennsylvania authorities were interested in knowing whether there was, in fact, a valid registration exemption.

79. In early 2018, counsel advised Par to stop using agents in connection with the offer and sale of promissory notes issued by Par, because the sales agents, “finders,” were not registered under the Pennsylvania Securities Act.

80. Relying on representations from Par, the securities counsel advised the Pennsylvania Department that Par had stopped compensating finders in connection with the Par promissory notes, after which:

- a. in settlement of the matter, and with the understanding that it was selling its notes only to accredited investors, Par was required to cease using unregistered agents, and pay a fine of \$499,000; and
- b. the lawyer counseled Par that in the future, investment vehicles such as the ABFP Fund which was offering the notes, must be independent from Par and Par could not be involved in creating, marketing or facilitating the investment vehicles, specifying that there must be complete separation between Par and ABFP, because if Par did become involved in such funds, Par could be deemed to be an unregistered broker/dealer. (**SEC v. CBSG, et al.**, No. 20-CV-81205-RAR, Deposition of George Philip Rutledge, Esq. 7/16/21 at 18-19,

22-23, 32,41, 45, Exhibits 124, 132) (ODC-31); (Consent Agreement and Order 11/27/18, ODC-32).

81. While the above regulatory activity was ongoing, the Pennsylvania Department was conducting an investigation of Vagnozzi's activities as a "Finder" from August 2016 to December, 2017, after which:

- a. the Department concluded that while unregistered, he sold promissory notes issued by Par to at least one Pennsylvania resident, for which Vagnozzi received compensation from Par; and
- b. Vagnozzi, represented by Respondent, agreed to a fine of \$490,000 for, as alleged by the Pennsylvania securities regulators, receiving compensation from Par for the sale of Par promissory notes while neither registered under the Commonwealth's securities laws nor exempt from registration. (***Commonwealth of PA Department of Banking and Securities, Bureau of Securities Compliance and Examinations v. Vagnozzi***, Docket No. 190016, Final Order dated May 30, 2019 (ODC-33); Respondent's Deposition 4/9/21 at 71-73).

82. On December 27, 2018, the New Jersey Bureau of Securities issued a Cease and Desist Order against Par Funding based on Par's sale of unregistered securities in New Jersey and the use of unregistered agents, "Finders," in violation

of the state's securities laws.

83. The New Jersey Bureau found in its Findings of Fact and Conclusions of Law, that Par, a “purported small business funding company”:

- a. sold more than \$90 million of unregistered securities to hundreds of investors, including more than \$8 million of unregistered securities to New Jersey investors between April 12, 2016 and December 20, 2017; and
- b. that the Par securities were “not registered” with the New Jersey securities agency, were “not ‘federally covered,’ and not exempt from registration” in violation of New Jersey law. ***(In the Matter of Complete Business Solutions Group, Inc., and Complete Business Solutions Group, Inc., d/b/a PAR Funding, Summary Cease and Desist Order, dated 12/27/2018) (ODC-34).***

84. In his SEC deposition, Respondent testified that:

- a. the public announcement of the New Jersey regulatory action against Par was in December, 2018, and that he recalled learning about it “probably some number of days or weeks after the public announcement.” (Respondent’s deposition 4/9/21 at 68-69); and
- b. he knew that the Pennsylvania regulatory action against Par and the New Jersey regulatory sanction of December, 2018

resulted in a sanction against Par from reading it in the media.  
(Respondent's Deposition 4/9/21 at 72-74).

**VII. Par and Vagnozzi Pivot to a "Fund Model" with Respondent as a Central Player**

85. Instead of complying with the Pennsylvania Department's Cease and Desist Order to stop using unregistered agents and sell only to accredited investors, in early 2018, Par changed its strategy to a "fund" model, creating a more complex structure that was essentially the same use of unregistered agents to solicit retail investors in a general solicitation.

86. At this point, despite the regulatory activity, Respondent's association and involvement with Par Funding went into overdrive in that:

- a. Vagnozzi would recruit unregistered investment agents and Respondent would establish their own investment funds for them;
- b. the investment funds would issue their own promissory notes to the investor, and funnel that money to Par in return for Par notes issued to the Agent Funds; and
- c. as Respondent explained it in his SEC deposition, the funds "were being compensated on the difference between the interest paid on the notes issued by Par Funding and the interest on the notes issued by" the fund, which Respondent labeled "the spread." (Deposition of 4/9/21 at 234).

87. In fact, the new fund structure used by Par, Vagnozzi and

Respondent continued to compensate unregistered agents for sales to accredited and non-accredited investors in a general solicitation, just adding another layer of complexity for a regulator to unpack, and provided no exemption from the requirement to register the securities with the SEC and trigger the investor protections that are mandated for a public offering.

88. Not only did Vagnozzi have his own Agent Funds (e.g., ABFP Income Fund, LLC, ABFP Income Fund 2, L.P), he and Respondent created a “turnkey” operation whereby Vagnozzi solicited unregistered agents, including from outside Pennsylvania, to start their own Agent Funds (“Agent Fund Operation”).

89. The Agent Fund Operation was of mutual benefit to Vagnozzi and Respondent in that:

- a. Vagnozzi established a company to manage the Agent Funds he recruited;
- b. Respondent was counsel to Vagnozzi, his Funds and the Agent Funds; and
- c. Vagnozzi earned a hefty management fee from the Agent Fund owners through his new company, ABFP Management.

90. Each of Vagnozzi’s Agent Fund owners was given an “Agent Guide” that commenced with a section titled “Getting Started,” in which the Guide instructed the Agent to:

- 1) “Contact John Pauciulo to get your MCA [merchant cash advance] Income fund started. He can be reached at (215)-851-8480 or via email, [jpauciulo@eckertseamans.com](mailto:jpauciulo@eckertseamans.com).
- 2) You will need to sign an engagement letter with him and pay him \$5,000 before any work will be completed.
- 3) You will need to sign a non-compete with me prior to receiving your fund. The document is designed to protect me from anyone that tries to circumvent this process.” (ODC-35).

91. Continuing, the Guide states that:

- a. It will take “about 3 weeks or so to complete your PPM,” and the “total investment on your end will be between 9-12k”;
- b. “[t]he more questions you ask, and changes you make, the more it will cost”;
- c. “[y]ou’ll need to give John a name for your fund; “ and
- d. “[o]nce John is finished setting up the fund, you will need to open a bank account at PNC Bank, TD Bank or Wells Fargo.” (ODC-35).

92. Under the arrangement:

- a. once the Agent Fund had at least \$200,000 in its bank account from investors, the Fund signed a note and security agreement with “the MCA company (i.e., Par), we invest with”;
- b. Vagnozzi’s office then wired the funds to Par from the Agent

Fund's bank account;

- c. Par, in turn, would pay the Fund 20% annually in 12 equal payments, ABFP Management would pay investors their "cut" from the 20% in the Agent Funds' account, ABFP Management would get 25% as a management fee; and
- d. the 75% would remain in the Agent Funds' accounts. (ODC-35).

93. In the "Agent Fund Operation," Respondent did the following:

- a. drafted offering documents for the issuance of securities, including PPMs, subscription agreements, and promissory notes for the Vagnozzi Funds and the Agent Funds Vagnozzi managed;
- b. drafted and filed securities compliance forms, such as Notices of Exempt Offering of Securities on Form D with the SEC; and
- c. provided any additional counseling necessary to conduct the offering of the Vagnozzi Agent Funds' securities.

94. In an email from Vagnozzi to Respondent on March 30, 2018

Vagnozzi states that:

- a. he "[n]eeds" Respondent at a meeting for newly-recruited Agents to take place at Par;
- b. "[w]e have 10 agents (5 local) that have the 10k for a fund and we have thoroughly vetted them; and

c. Vagnozzi [n]eed[s] [Respondent] at perry's office [*i.e.*, Par] to talk about the process. This will lead to at least 5 ppm's I assure you." (ODC-36).

95. Questioned about this email at his deposition, Respondent acknowledged that "that could be like five new clients" for him. (Respondent deposition 4/9/21 at 244-45; Exhibit 16).

96. Vagnozzi raised more than \$100,000,000 from investors for Par. (Respondent's Answer to DB-7 at 17(b)).

97. Respondent testified that he represented "[a]pproximately 35" Agent Funds. (Respondent's Deposition 4/14/21 at 37).

98. Under this arrangement, Respondent was receiving two income streams from the representation, one from Vagnozzi and his funds, and a second from the Agent Funds.

99. It is manifest that as between ABFP Management and the Agent Funds, there was a significant risk that their interests could become adverse, as they later did, and Respondent should never have represented parties on both sides of the deal between Vagnozzi and the Agent Funds.

100. The entire Vagnozzi representation, including representation of the Agent Funds, was extremely lucrative for Respondent in that, as one example, the entities that were the subject of the Receivership alone, which were a minority of the total of thirty-five funds, paid Respondent's firm \$1.4 million in legal fees for their representation. (*see also*, SEC estimate, ODC-37).

### **VIII. The Fraudulent Private Placement Memoranda**

101. In drafting the PPMs, Respondent worked closely with Par as shown by a May 16, 2018 email to Perry Abbonizio at Par wherein Respondent reports that a PPM for an Agent named Gassman “[s]hould be final or very close to final,” to which Abbonizio replies, “Thank you my friend, doing a great job.” (ODC-38).

102. Respondent agreed in his SEC deposition that Abbonizio and Par would have an interest in how many PPMs Respondent was creating, because the “PPMs... raise money from investors that get[s] funneled” to Par. (Respondent’s Deposition 4/9/21 at 249).

103. All of the PPMs “for the agent funds were substantially similar or the same.” (Respondent’s deposition 4/9/21 at 262).

104. None of the PPMs mentioned the firm Par Funding or CBSG, referring only generically to “companies which provide ‘Merchant Cash Advance’ financing.” (ODC-39); (Respondent’s Deposition 4/9/21 at 29).

105. Thus, if a Vagnozzi investor saw an online report of the Pennsylvania securities regulatory proceeding against Par, they would not have known they had an investment in that business. (See, e.g., “Confidential Private Placement Offering Memorandum” for ABFP Income Fund, LLC., at 1) (ODC-39).

106. Respondent had no knowledge that Vagnozzi and his other Agent Fund clients were doing work with any merchant cash advance company other than Par, and had no contact with representatives of any other merchant cash advance company during the representation. (Respondent’s Deposition 4/9/21. at

29-30).

107. The PPMs and other documents Respondent prepared for the Agent Funds were false and misleading in that they told investors that the securities offered by the Agent Funds did not need to be registered and complied with the securities laws.

108. The representation that the securities were covered by a registration exemption under Regulation D, Section 506(b):

- a. was manifestly incorrect because the securities were the subject of a general solicitation;
- b. were sold by unregistered agents like Vagnozzi.; and
- c. two regulatory agencies, Pennsylvania and New Jersey, had found that the securities were sold unlawfully by unregistered agents.

109. The PPMs were further false and misleading and failed to provide the “disclosure” that Respondent promised in the videos in that:

- a. Respondent learned at the latest in 2017, and could have or may have learned sooner, that Joseph LaForte, a control person at Par, had a criminal record, but at no time did he include this critical fact in the PPMs. (Respondent’s Deposition 4/9/21 at 143-44, 262);
- b. the PPMs failed to disclose that Par had no audited financial statements. (Respondent’s Deposition 4/9/21 at at 170);

- c. the PPMs do not disclose the Pennsylvania and New Jersey securities regulatory orders against Vagnozzi or Par. (Respondent's Deposition 4/9/21 at 254, 262); and
- d. Respondent failed to disclose that during the course of the due diligence process, Par controlled and limited the information it provided to Respondent, including information about the number of lawsuits against small businesses for defaulting on loans and tax returns. (Respondent's Deposition 4/9/21 at 175-77).

110. Further, the PPMs did not disclose to investors:

- a. the specific amount of the "spread" between notes the Agent Funds were acquiring from Par and the interest rate on the notes that the Funds were issuing, although this would have disclosed the precise economic incentive the Agent Funds and Vagnozzi had to aggressively sell the Funds' Notes. (Respondent's Deposition 7/27/21 at 388);
- b. that, as Vagnozzi told Respondent, Par paid him 20%, but Vagnozzi was issuing notes from his Funds to investors with a return of from 8 to 12%, thus returning to Vagnozzi a substantial sum, simply for funneling money to Par. (Respondent's Deposition 7/27/21 at 390); and
- c. although Respondent was aware of the financial arrangement

between Par and the Agent Funds, he told Vagnozzi he did not need to disclose “the specific amount of the spread between the notes his funds were acquiring and the interest rate on the notes that his funds were issuing,” even taking into consideration that the Par notes were paying 20% to Vagnozzi’s funds. (Respondent’s Deposition 7/27/21 at 388).

111. The SEC cautions that in evaluating a private placement, an investor should pay “particular attention” to any conflicts of interest a representative may have, such as having a financial interest in the offering or being separately compensated by the issuer, both of which were present in the Agent Funds’ arrangement with Par. (ODC-14 at 3).

112. During the Par-related representation of Vagnozzi, Respondent continued to allow Vagnozzi to use the standing and prestige of his position as a lawyer in a major law firm as a “selling point,” as reflected in a power point presentation in which:

- a. Vagnozzi touted the merchant cash advance industry, including a Wall Street Journal article about a J.P. Morgan investment with merchant cash advance business “On Deck Capital” ; and
- b. the presentation included a screen that read, “**Don’t Take Our Word For It...**,” followed by a screen shot of Respondent from his firm’s website that said: “**Eckert Seamans: John**

**Pauciulo.** Respondent's Deposition 4/9/21, Exhibit 22)  
(ODC-40) (emphasis in original).

113. Respondent also spoke to investors in Vagnozzi's Funds, including the Par-related Funds, either on the phone or face-to-face. (Respondent's Depositions 4/9/21 at 268-73).

**IX. The Par-Vagnozzi Fund Scheme Heads For Collapse.**

114. On February 25, 2020, the Texas State Securities Board (Texas Board) issued an "Emergency Cease and Desist Order" against Par, ABFP and two Texas-based Agent Funds managed by Vagnozzi, Senior Asset Protection and Merchant Growth & Income Funding, in which the Texas Board found:

- a. that Par, ABFP and the Texas Agent Funds failed to disclose the Pennsylvania Department of Banking and Securities Consent Agreement with Par and the fine for using unregistered agents in connection with the offer and sale of promissory notes;
- b. that the parties failed to disclose the New Jersey Bureau of Securities investigation and "Summary Cease and Desist Order" for using unregistered agents in the sale of securities;
- c. that the parties failed to disclose litigation filed on or about July 28, 2017 in Texas against Par Funding in which the plaintiffs, small businesses that obtained loans from Par, alleged fraud and conspiracy in that they were "victimized by

- a predatory merchant cash advance lender [which] ‘intentionally and systematically took advantage’ of them when they were ‘experiencing cash flow issues’”;
- d. that the securities were not covered by the safe harbor in Regulation D, Rule 506(b), permitting exemption from registration, and should have been registered because they were being sold by means of a “general solicitation to recruit investors” and because the parties were not complying with accreditation requirements; and
- e. additional findings of fraud, including, notably, not disclosing the identity of all principals and managers of Par, and not disclosing their business repute, qualifications and experience. (*In the Matter of Senior Asset Protection, Inc., ABetterFinancialPlan.com, Par Funding, et al.*, Order No. ENF-CDO-20-1798 (2/25/20) (ODC-24));

115. Respondent was aware of this action from its very inception, since he referred Vagnozzi to a Texas law firm to defend him in the Texas securities action. (Respondent’s Deposition 4/14/21 at 197-98).

116. None of the PPMs Respondent drafted for investors in the 25-30 Agent Funds Respondent represented disclosed any regulatory history, including the above regulatory action, *nor were they ever amended* to include this information. (Respondent’s Deposition 4/9/21 at 262-63).

117. A Texas Board investigator conducted a sworn interview with one of the Texas Agent Fund owners, Gary Beasley, who stated:

- a. that an ABFP employee told Beasley that investors did not need to be accredited (high net worth, sophisticated) investors, and the promissory notes his Agent Fund was offering did not need to be registered;
- b. that Respondent helped him set up his fund; and
- c. speaking of Respondent's involvement, "these documents that I'm signing people up with, and sending the money in, and all this from a 400 attorney law firm. The attorney heads up the Securities Division of that law firm...if the attorney hadn't been in the picture...I don't know that I would have had the confidence to get in....Without the big law firm drafting...all these documents and everything, and Dean's long-term experience, I wouldn't have – it would have been very difficult for me to be – participate in it. I probably...would not have."  
*(In the Matter of Senior Asset Protection, sworn interview with Gary Beasley, 6/28/20, at 31, 39, 40, 93, 94). (ODC-41).*

**X. Respondent Takes a Central Role in the Fraudulent "Exchange Offer."**

118. In March, 2020, Vagnozzi forwarded an email to "600+ merchant cash investors" with an attached email from Joseph Cole Barleta, CFO of Par, in which Cole stated that:

- a. over the last few months, Par Funding had been “severely impacted by the Coronavirus pandemic”;
- b. small business owners had been hit particularly hard;
- c. “[m]ost importantly, we need to maintain our liquidity and cash reserves to protect the Company as a going concern and your capital with us”;
- d. “...we will need to make corresponding modifications to our current loan terms”; and
- e. “[t]hereafter, based upon the ability of our client base to recover, we will start to incorporate interest into our debt structure and...once business has returned to historic levels, we look forward to re-instituting amortization of principal and interest payments to each of our loyal lenders.”

119. Vagnozzi attached his own comments to the above-mentioned Cole Barleta email, stating that:

- a. “Par has defaulted on a note with the fund you each invested in,” and was not dispersing money to any investors “for the time being”;
- b. many investors had been asking “if we should take legal action against Par”;
- c. “[w]e absolutely can...[b]ut... my attorney John” (earlier in the email he had identified “John Pauciulo with Eckert Seamans”)

said it will take 1-2 years to win a judgment against Par” and “they definitely will not be paying us if we are in a legal fight with them, we will incur legal fees....”; and

- d. “...I believe that the better course of action is to develop a workout plan with Par.” (Vagnozzi email dated March 26, 2020, attached to Beebe Declaration) (ODC-42).

120. Vagnozzi’s message to the investors and Respondent’s advice as conveyed by Vagnozzi:

- a. was extremely misleading in that just because Par would be paying less to the Funds under the restructured Par notes, the Funds were still *obligated to pay* under their *own* notes that they issued to investors; and
- b. created a conflict of interest for Respondent, since he was advising the investors, who were *not* his clients, as to what recourse they had against Par.

121. Respondent baselessly concluded that Par was insolvent due to the pandemic after Respondent’s review of a Par “internally prepared financial statement,” a revised note that Par proposed to issue to the Funds, and a “package” Par “put together” regarding the impact of the pandemic on Par’s business, and did not verify Par’s financial situation from an independent source, such as insisting on audited financial statements. (Respondent’s Deposition 4/14/21 at71-73).

122. Since Par was restructuring the Fund notes, which would mean reduced payments to the Funds, in April, 2020, Respondent and Vagnozzi recorded two videos that were sent to investors in which they pressured investors in the Funds to restructure the payment terms of *their* Fund notes to provide for a reduced interest rate paid over a longer period of time, a transaction that would be beneficial for the Funds, not the investors in the Funds.

123. Prior to the videos, Par required that Respondent sign a non-disclosure agreement (NDA), pledging not to disclose Par's financial data and financial status.

124. The first of these video messages to investors proceeded as follows:

“Vagnozzi: John, talk – tell everybody who you are, how long we're working together, your background, just give everybody an update that you're not some attorney that I just found in the phonebook last week.”

“ [Respondent]: Sure, thank you. Hey, um for those of you that don't know me, my name is John Pauciulo. I'm a partner at the law firm of Eckert Seamans Cherin & Mellott. We're a law firm of about 375 lawyers, with offices in 14 cities....I have been practicing law for 30 years. The focus of my practice is on corporate transactions and securities. I have done that for my entire career. My first position after I graduated from law school was as a staff attorney with the United States Securities and Exchange Commission, where I investigated cases involving financial fraud, accounting fraud and insider trading. My academic background, I have taken a bunch of accounting courses in college, and then working with, very

closely with staff accountants at the SEC. I have gained, you know, a reasonable degree of familiarity with accounting concepts, certainly, reading financial statements...and then certainly over the course of my practice in representing clients...I have been involved in due diligence of all sorts....”

“ Vagnozzi: Not just small companies, John, right? You have dealt with some very large, international transactions, fair to say?

[Respondent]: Yeah, absolutely. I have represented many clients in global, cross-border...corporate financing transactions valued in the tens and hundreds of millions of dollars, including representing household name public companies in the United States.” (Video Transcript, ODC-43).

125. Continuing, Vagnozzi and Respondent then review their history together, during which they “created investment funds across a pretty wide scope of businesses.” “Most importantly,” Vagnozzi observes, “there is (sic) deals that we haven’t done, right?” Respondent agrees, adding that “I think we have been...pretty disciplined in our approach and have sought out, you know, business opportunities that most people wouldn’t be aware of and probably wouldn’t have an opportunity to invest in...through these fund structures.” Respondent says to Vagnozzi that “it’s been fun to work with you over these years and to see...your business grow dramatically...building a portfolio of alternative investments.”

126. Vagnozzi seeks to bolster his standing through Respondent, asking him, “only positive things to say about myself and my staff, is that a fair statement?”, to which Respondent answers, “Yeah, it is....” (ODC-43 at 3-7).

127. Vagnozzi tells the investors that Respondent can't be specific about Par's finances because Respondent has signed a Non-Disclosure Agreement (NDA) with Par, and although investors "want to get [Par's] financials and they want to send them to their attorney," "we can't send them out."

128. Respondent makes excuses for Par's failure to supply financial information to investors, explaining that if the information were released, it might encourage customers (i.e., merchants) not to pay Par.

129. Thus, Respondent was the only one who had reviewed Par's internally generated financial information that allegedly supported its claim that Par was in financial straits because of the pandemic.

130. Next, Vagnozzi prompts Respondent, saying, "John, Par Funding...their liabilities exceed their assets, [t]hey've gone from significant net income to significant losses very quickly," to which Respondent answers, "Yes, that's correct." (ODC-43 at 7-11).

131. Respondent's assessment, conveyed to the investors on the video, was highly misleading, as he had no hard evidence of Par's true financial status in that:

- a. he had never looked at audited financial statements;
- b. he admits he didn't ask Par about reserves;
- c. Par's lawyer represented they were "looking into" making an insurance claim;
- d. Respondent didn't take into account that since September,

2019, Par reported that it had taken in large amounts of receivables (September, \$13 million; November, \$8.7 million; December, \$6 million; February, 2020, \$9.4 million);

- e. he didn't look at the average term of the advances and didn't take into consideration or ask to see information on the automatic withdrawals the merchant borrowers paid to Par from their bank accounts, although he was "generally aware" that loan repayments to Par occurred through automatic withdrawals from the merchant borrowers' accounts; and
- f. although Respondent worked at the SEC for two years after law school, he has no degree in any finance area and never showed the Par financial information to an independent accountant or someone with a finance background.  
(Respondent's Deposition 7/27/21 at 330- 50).

132. Despite no independent confirmation that Par was in financial trouble, *and* that the cause was the pandemic, Respondent told the investors that Par was "insolvent by a significant margin," and explained that the investors had "three options," which were:

- a. filing a lawsuit, which Respondent discouraged because it would take too long, be too expensive and Par would stop paying on the notes and declare bankruptcy;
- b. three or more creditors, *ie.*, the Funds, could force Par into an

involuntary bankruptcy, also time consuming and expensive with anemic payments at the end; and

- c. restructuring of the debt that allegedly allowed for Par to “turn it around,” which Respondent saw as the “better choice.” (ODC-43 at 11-18).

133. Respondent advised the investors that:

- a. “...our fund owns promissory notes issued by Par Funding”;
- b. “[s]o each investor has the choice of whether, you know, the same choices that ABFP income fund has vis-à-vis Par Funding;
- c. “[e]ach Investor has the same choice with regard to [the Agent Funds, including Vagnozzi’s]. You could sue. You could put us into involuntary bankruptcy I think, or you can agree to restructure; and
- d. “... the proposal is to restructure the notes between the Investors and the ABF[P] income fund in the same way that they’re being restructured on the other side of the deal.[with Par].” (ODC-43 at 21-23).

134. Since Respondent’s clients in the matter were the Agent Funds, in advising the unrepresented investors (or advising represented investors without obtaining permission from their lawyers) to forbear from suing his client, the Agent Funds, Respondent had a serious undisclosed conflict of interest and he should

have never been advising investors: on the contrary, Respondent's message was loud and clear, do not sue my Agent Fund clients.

135. Toward the end of the video, Respondent uses more coercive language, telling the investors:

- a. "Do you want to accept the five percent (*i.e.*, the reduced interest rate for the restructured Fund notes), or do you want to file a lawsuit and try to pursue more? ...I assure you...there is not a big chunk of money sitting in the income funds...the bank accounts have zero in them because the money was basically given to Par....";
- b. that they have "unsecured" notes, and if the Agent Funds default as a result of the investors suing the Agent Funds, "[y]our remedy is not to go grab collateral because you don't have a lien in any of the collateral" ;
- c. Par has agreed to move the Agent Funds' Par notes to "a secured status," so "[w]e can skip that whole lawsuit phase and go right to...go collect assets";
- d. that he had done a search for liens and that Par Funding did not have any liens on its assets; thus, he represented, "[s]o, not only are we getting a lien," the Agent Funds would have a "first position lien...we'll be first in line if there is a default, we'll be first among all creditors...."; and

- e. he would send a Supplement to the original PPM with “further disclosures...so that there is full disclosure,” and “a Notice of Acceptance” that “indicates... your willingness” to restructure, and “an amended and restated note.” (ODC-43 at 23-32).

136. Vagnozzi closed with “...we need to hear from you as soon as possible. Some people said, oh, you need time. This shouldn’t take you candidly three weeks to think about. This is a, **we** feel, a pretty cut and dry decision. So let us know ASAP.” (ODC-43 at 33) (emphasis added).

137. Approximately one week later, Respondent and Vagnozzi recorded another video, which was sent to investors via an email from ABFP that stated, “Dear MCA Investors: Please watch the video with **our** attorney explaining the attached paperwork **requiring your signature** for the MCA Exchange Offering.” (emphasis added). (ODC-44).

138. The second video attached the restructured note, a Supplement to the PPM and a consent form, comprising 30 pages.

139. In the video, Respondent:

- a. agreed with Vagnozzi that the note restructuring was “the best chance to get the most money back”;
- b. once again reiterated the “three options,” after which Vagnozzi assured the investors that they were going to have “liens” and could “always seize assets”;
- c. stated that the Supplement included “everything that’s

transpired over the last six weeks, you know, the Covid pandemic, and the effect of that pandemic on the merchant cash advance business, the fact that Par Funding gave notice to all of its creditors that it was initially placing a complete moratorium on payments to creditors, and then the negotiations with Par Funding to restructure the debt held by - -held by the funds themselves.” (Respondent’s Deposition 4/9/21, Exhibit 33) (ODC-45); and

- d. told the investors that they needed to return the consent to the restructuring by April 30, 2020, and that it was the “best case scenario.” (Respondent’s Deposition 4/9/21, Exhibit 33); (ODC-45 at 2-17).

140. Vagnozzi, without any basis, represented that:

- a. “all your principal is coming back to you at the end of seven years”;
- b. Par would pay the Agent Funds the first installment on the restructured notes on June 1, “and then by the time we take the money, turn it around and distribute it to you guys, it’s by the 5<sup>th</sup> of June, if not sooner....”; and
- c. closed by saying, “like John said, it’s been a few weeks already...we’ve got to get going and execute all these documents.” (ODC-44 at 11, 16).

141. Both videos and the Supplemental to the PPM that Respondent drafted on behalf of the Vagnozzi and Agent Funds, were false, misleading and contained material misrepresentations, in that:

- a. the Supplement included a section purporting to discuss risks related to the investments, but failed to mention that no more than two months earlier, in February, 2020, the Texas Securities Board had issued its Emergency Cease and Desist Order against Par, ABFP and other Agent Funds, alleging fraud and registration violations (ODC-46 at 6-8);
- b. Par had been sanctioned by regulatory authorities in Pennsylvania and New Jersey;
- c. Vagnozzi had been sanctioned by regulatory authorities in Pennsylvania;
- d. LaForte was a control person of Par; and LaForte had a criminal record including convictions for state and federal charges of grand larceny, money laundering and conspiracy;
- e. although Respondent testified that he learned from Par's outside litigation counsel in "March or April of 2020" that Par had "hundreds of actions against individuals...and entities who Par Funding claimed were in default, that they had hundreds of such actions pending," this specific information was not included in the Supplement to the PPM;.

(Respondent's Deposition 4/9/21 at 179);

- f. in the videos, Respondent made representations about being privy to Par's financial data as evidence that Par was insolvent because of the pandemic, but he only looked at financial statements that Par itself had prepared, and he didn't know who prepared them, agreeing at his deposition that prior to the videos, he did not review any of the "financial records themselves," such as "audited financial statements or tax returns or bank account statements or speak with their accountant," relying wholly on what Par gave him.

(Respondent's Deposition 4/9/21 at 296-98);

- g. the revised notes Respondent prepared for investors contained a provision that released Vagnozzi and the other Agent Funds from liability, however, Respondent never mentioned this in the video, and told the SEC that he "did not recall" why he skipped over that. (Id. at 298-99);

- h. the "Restated Note" also contains a "Waiver of Class Action" and "Waiver of Jury Trial," both of which are not mentioned in the videos. (*E.g.*, ABFP "Supplement to Confidential Private Placement Offering," Sections 4.02(a) and (b) (ODC-46); and

- i. with respect to the representations about securing liens against Par, Respondent never filed a lien against Par.

(Respondent's Deposition 4/14/21 at 60).

142. Respondent represented that the Funds would have a first position lien, but he:

- a. searched for prior liens against "Comprehensive Business Solutions," instead of the correct corporate name, "Complete Business Solutions Group, Inc.," thus concluding that there were no prior liens;
- b. knew it could not have been correct that Par had no liens, since in 2016, Par had told Respondent that "certain individuals held liens in some of the assets of Par Funding"; and
- c. Respondent admitted in his deposition that at no time did he ever conduct a lien search for Complete Business Solutions Group, the correct corporate name. (Respondent's Deposition 4/14/21 at 56-60).

143. An examination of an attachment to the Supplement sets forth the lengthy list of investors in the ABFP Income Fund, LLC and the amounts invested, which are high for an average investor, for example, \$301,000; \$601,000; \$275,000; \$430,000. (ODC-46, Schedules 1 and 2).

144. The overwhelming majority of the investors chose to participate in the Exchange Offer and accepted the restructured notes.

145. However, contrary to Respondent's representations:

- a. those who did not exchange their promissory notes for the restructured notes and filed suits against Vagnozzi and the Agent Funds, received a monetary settlement;
- b. the money to pay investors who sued came from a transfer of \$4 million from Par Funding to Vagnozzi's bank account, which Par made in June, 2020; and
- c. thus, the option that Respondent and Vagnozzi advised investors was the "best option," did not prove to be true. (Respondent's Deposition of 7/27/21 at 297; (**SEC v. CBSG, et al.**, SEC Motion for Full Sworn Accounting From Defendant Dean M. Vagnozzi at 1-2) (ODC-47).

#### **XI. The SEC Intervenes**

146. On July 24, 2020, the SEC filed an "Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief" against Par, ABFP, certain of the Agent Funds, Vagnozzi, Joseph LaForte, Lisa McElhone and the other Par executives, Perry Abbonizio and Joseph Cole Barleta, charging the defendants with violations of federal securities laws. (ODC-48). By Order dated July 27, 2020, the United States District Court for the Southern District of Florida appointed a receiver to take control of Par, ABFP and multiple Agent Funds.

147. Throughout all of the foregoing events, until the SEC intervened and Par was put into receivership, Par was being operated as a fraudulent securities scam, as found by the United States District Court for the Eastern District of

Pennsylvania presiding over the criminal cases of Par's principals, including Joseph and James LaForte, McElhone and Barleta, and as admitted by the principals during their guilty plea proceedings.

148. *Inter alia*, the Court concluded that:

- a. Par Funding had not returned a profit since 2016; and
- b. the insiders at Par, including the LaFortes, McElhone and Barleta, "did not tell their investors of enriching themselves by more than \$150 million in internal distributions while losing money on their merchant cash advance business and using the investor funds to pay distributions and make more merchant cash advances." (***United States v. Joseph LaForte, Joseph Cole Barleta, James LaForte*** No. 23-198-1,4,5 (E.D.P.A.) ("Memorandum with Findings of Fact and Conclusions of Law, 1/21/25 at 1-3) (Kearney, J.).

149. A Certified Public Accountant and Fraud Examiner for the SEC who performed an exhaustive forensic accounting of Par Funding's financial and business records found that Par:

- a. had a net cash shortfall in every year from 2016 through 2020;
- b. in 2017 alone, Par Funding had a net cash shortfall of more than \$19 million;
- c. had a shortfall of more than \$50 million in 2018, more than \$73 million in 2019 and more than \$115.5 million during the

first six months of 2020; and

- d. as a result, Par was “increasingly relying on new investor money to pay the interest and principal that it owed to existing investors...the hallmark of a classic Ponzi scheme.” (***U.S. v. LaForte***, Criminal No. 23-198, Government’s Fraud Loss Memorandum, at 4-5) (ODC- 55).

150. In truth, what was happening was that the Par principals, LaForte, McElhone, Joseph Cole Barleta, Perry Abbonizio and others, were looting the company by setting up outside “consulting companies” and taking enormous fees from Par; a Receiver’s efforts “resulted in the seizure and disposition of tens of millions of dollars’ worth of personal property and assets purchased by the defendants (the Par executives charged with crimes) with the proceeds of their scheme.” (ODC-55 at 6).

151. Sworn Declarations of investors in the Vagnozzi and Agent Funds show that Respondent played a central role in the scheme in that:

- a. an investor explained that when he watched the Vagnozzi-Respondent video on the proposal to restructure the notes, “Based on...what the lawyer said in the video, I felt I had no choice but to agree to the seven-year investment term with a 4% annual return,” and had he known of the various regulatory actions or that LaForte was a convicted felon, he never would have invested. (Declaration of Brad Beebe, SEC

Exhibit 109) (ODC-49);

- b. another investor stated that had he known Par was “the subject of orders against them (sic) by the states of Pennsylvania and New Jersey for violations of state securities laws,” he would have never invested. (Declaration of Steven Weinkranz, SEC Document 30-3) (ODC-50).
- c. yet another individual who invested a total of \$1.1 million stated that she would have never invested if she had known Par was being investigated by the Commonwealth, or that LaForte was a convicted felon, and states she saw a slideshow presentation by Par’s Perry Abbonizio in which investors were told that “an investment in Par Funding would give us great returns with low risk.” (Declaration of Renee Meyer, Exhibit 25) (ODC-51); and
- d. Richard Muldawer, another investor, states that he heard Vagnozzi’s radio ad in 2019 and on a subsequent call to ABFP, an employee praised Par’s “managerial expertise” and “careful underwriting.” At about the time he was considering an investment in Par, Mr. Muldawer became aware of the Pennsylvania investigation of Vagnozzi and the ABFP employee suggested Mr. Muldawer speak with Respondent. An email with Respondent from his law firm evidences

Muldawer's request to speak to Respondent. Mr. Muldawer's Declaration states: "When I spoke with Pauciulo, he reassured me that my investment with Par Funding was safe and secure, and he suggested I ask for a copy of the private placement memorandum....Speaking with Pauciulo reassured me of the legitimacy of this investment offering." (Declaration of Richard Muldawer, SEC Exhibit 206) (ODC-52, attaching email with Respondent).

152. Joseph LaForte was charged in the United States District Court for the Eastern District of Pennsylvania in three indictments beginning in August, 2020, and agreed to plead guilty to being a Felon in Possession of a Firearm, Racketeering Conspiracy with the predicate crimes being Securities Fraud, Filing a False Income Tax Return, Failure to Collect and Pay Tax, Perjury, Obstruction of Justice, Wire Fraud and Conspiracy to defraud the IRS, all arising out of the operation of Par Funding. LaForte has entered a guilty plea to the charges and will be sentenced in March, 2025. LaForte has agreed to forfeit, among other things, a private plane and an investment account. (Docket, *United States v. LaForte*, 2:23-cr-00198-MAK-1) (ODC-53).

153. Others in Par Funding management, including McElhone and Barleta, have also entered guilty pleas.

154. Vagnozzi was fined in excess of \$4 million, a penalty of \$400,000, his business is in receivership, and he has been barred from ever again offering

unregistered securities. (**SEC v. CBSG, et al.**, “Amended Judgment as to Defendant Dean J. Vagnozzi,” 20-CV-81205-RAR (ODC-54)).

155. By his conduct as alleged in Paragraphs 1 through 154 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.1 (“Competence”), which states that “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”;
- b. RPC 1.3 (“Diligence”), which states that “A lawyer shall act with reasonable diligence and promptness in representing a client”;
- c. RPC 1.7(a)(1) (“Conflict of Interest: Current Clients”), which provides that, “Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict exists if:  
1) the representation of one client will be directly adverse to another client”;
- d. RPC 1.7(a)(2), (“Conflict of Interest: Current Clients”), which provides that “Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict exists if:

- 2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer";
- e. RPC 4.3(a) ("Dealing with Unrepresented Person"), which states that "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested";
  - f. RPC 4.3(b) ("Dealing with Unrepresented Person"), which states that "During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than advice to secure counsel, if the lawyer knows or reasonably should know the interests of such person are or have a reasonable possibility of being in conflict with the interests of a lawyer's client";
  - g. RPC 4.3(c) ("Dealing with Unrepresented Person"), which states that "When a lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer should make reasonable efforts to correct the misunderstanding";
  - h. RPC 8.4(a) ("Misconduct"), which provides that "It is professional misconduct for a lawyer to: violate or attempt to

violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another”; and

- i. RPC 8.4(c) (“Misconduct”), which provides that “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities.”

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charges and upon completion of said hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell  
Chief Disciplinary Counsel



By \_\_\_\_\_  
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VERIFICATION

The statements contained in the foregoing Petition for Discipline are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



3/31/25

Date

\_\_\_\_\_  
Amelia C. Kittredge  
Disciplinary Counsel