IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 50-2021-CA-008718-XXXX-MB

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

NATIONAL SENIOR INSURANCE, INC.
(d/b/a Seeman Holtz); *et al*,

Defendants.
_____/

REPLY OF DEFENDANTS TO PLAINTIFF'S RESPONSE TO MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW

Defendants, MARSHAL SEEMAN, NATIONAL SENIOR INSURANCE, INC. D/B/A SEEMAN HOLTZ, EMERALD ASSETS 2018, LLC, INTEGRITY ASSETS 2016, LLC, INTEGRITY ASSETS, LLC, PARA LONGEVITY 2014-5, LLC, PARA LONGEVITY 2015-3, LLC, PARA LONGEVITY 2015-5, LLC, PARA LONGEVITY 2016-3, LLC, PARA LONGEVITY 2016-5, LLC, PARA LONGEVITY 2018-3, LLC, PARA LONGEVITY 2018-5, LLC, PARA LONGEVITY 2019-3, LLC, PARA LONGEVITY 2019-5, LLC, PARA LONGEVITY 2019-6, LLC, PARA LONGEVITY VI, LLC, SH GLOBAL, LLC N/K/A PARA LONGEVITY V, LLC, VALENTINO GLOBAL HOLDINGS, LLC, SEEMAN-HOLTZ CONSULTING CORP., CENTURION INSURANCE SERVICES GROUP, LLC, CENTURION ISG HOLDINGS, LLC, CENTURION ISG HOLDINGS II, LLC, CENTURION ISG (Europe) LIMITED, CENTURION ISG SERVICES, LLC, CENTURION ISG FINANCE GROUP LLC,

CENTURION FUNDING SPV I LLC, and CENTURION FUNDING SPV II LLC, by and through undersigned counsel, hereby reply to the response of plaintiff to defendants' motion to dismiss the Complaint and, in support thereof, state the following:

I. Plaintiff's response to defendant's motion to dismiss contains facts that should be stated in a complaint and nonspecific conclusions of law indicating the need for an amended complaint.

In this case, the Florida Office of Financial Regulation ("OFR") responds that defendants have advanced a "false narrative" in response the witch-hunt being waged against local businessmen and many of their affiliated entities. Not content with the vitriol of the complaint, OFR now belatedly[1] and improperly advances new facts -- like having too many entities and bank accounts are indicators of securities fraud. Response, p. 1. It seems utterly logical that the 27 defendants involved in the motion to dismiss might each have a bank account. OFR points to no specimen of business formation in which businesses cannot exceed a certain number of bank accounts or face regulatory attack. It's just more of the impertinent and scandalous statements defendants complained about in the motion to dismiss.

Since the OFR has chosen to introduce its own conclusions about "Corporate Monitor's Reports" as facts (Response, p. 2), it indicates that **OFR has used its Response as an element of an amended complaint.** The OFR should know better about that and simply offers more impertinent and scandalous statements about a document outside the pleadings. The OFR has full knowledge that everything it files becomes a public document and fodder for hyperbole and more serious ancillary damage to Mr. Seeman.[2]

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[1] Pursuant to this Court's order of March 4, 2022, responses were due 10 business days before the hearing scheduled in this case. OFR, flexing the State's muscle, decided to file on May 5. This Court could strike the response on that ground alone.

[2] Not satisfied that the destruction of their good names led to the death of Eric Holtz, Mr. Seeman

What does the following language mean: "a thousand retail investors face the prospect of substantial losses (or possible total losses) . . . ." What is "substantial" and how does that fit into the statutory cause of action? To what degree of probability do we ascribe the word "possible" and how does that fit into the statutory scheme? The rules of procedure do not contemplate placing these pleading burdens – trying to respond to amorphous allegations -- on litigants. Complaints like this should state the relevant facts without any aid from nonspecific adjectives.

Despite the dozens of paragraphs in the complaint, **OFR discloses in its response a new theory** that its complaint includes "oral and written representations in conflict with offering materials" "*by defendants."* Response, p. 3. Which defendant? Not once does the complaint identify an instance when, for example, Marshal Seeman personally made actionable oral and written representations. It does not identify with particularity **his** agents or the essential facts that demonstrate the legal status of agency of third parties not included in this lawsuit. Nevertheless, OFR says it has pleaded fraud with particularity as required by Fla. R. Civ. P. 1.120(b).

The response continues its accusation that Mr. Marshal Seeman is the architect of a "Ponzi-like scheme." Response p. 4. By including a copy of the applicable statute in its Response, OFR has demonstrated that the legislature made no reference to "Ponzi scheme;" and certainly it is not possible for defendants to discern the meaning or applicability of "Ponzi-like." Neither of these terms appeared in Black's Law Dictionary (6th ed. 1987). OFR gave us its definition (Response, p.4). Surely, OFR would know whether there was a Ponzi-scheme (and a fraudulent intent to continue it) or there wasn't, and OFR should be required to say it directly in a complaint of this girth and seriousness. In the process, OFR would have the court declare that

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suffers what normal litigants do not – death threats.

"rolling over" a promissory note is a statutory violation, even when the lender agrees and gives its own assurances about the lender's understanding and tolerance for risk.

OFR then goes on to state another new fact based upon its assumed expertise in accounting – the life settlement business was not profitable. Response, p. 5. "Profit" depends on the method of accounting for the arrangement. The complaint has an obvious purpose to enflame by making outrageous accusations and mixing conclusions of law with a few facts. OFR's position also stands on its intentional refusal to recognize the existence of permission in offering documents that granted the borrower broad discretion to use funds in the fashion it did which resulted in the creation of an underlying and large capital asset. The accusations of "ponzi-like" are scandalous, impertinent, fundamentally inappropriate, and ultimately untrue.

Further to the non-specificity of the complaint as why members of LLCs should not be shielded from liability for acts attributable to LLCs, OFR basically responded that Mr. Seeman participated in the activities of which OFR complains. Page 7 of the Response advances another clarification which should have been well pleaded in the complaint, that "Seeman and Holtz" were direct participants and **indirect participants through agents** in securities transactions. Without citation to authority OFR, seems to claim that it has no responsibility in pleading statutory violations of chapter 517, Florida Statutes to delineate who did what to whom and how. OFR offers no authority why chapter 517 cases are not subject to Section 608.4227(1), Florida Statutes.

II. The Florida standard for disgorgement, based only on profits, should accord with the federal standard in securities cases declared by the U.S. Supreme Court.

OFR asserts that, despite the legislative enunciation of specific monetary remedies, it is entitled to any remedy. OFR relies on section 517.191(1), Florida Statutes ("in addition to any

other remedies"). OFR relies on an old federal case involving the Federal Trade Commission. *FTC v. Bronson Partners, LLC*, 654 F. 3d 359, 365 (2d Cir. 2011), apparently because OFR believes there is an unqualified grant of statutory authority. OFR tells us nothing more, especially the relevance of a case under the FTC act in a matter involving remedies in Florida securities matters.

The persuasive value of *Bronson Partners* fails in light of the U.S. Supreme Court's decision on *Liu v. SEC,* 591 U.S. ___, 140 S. Ct. 1936 (2020). In *Liu,* the Supreme Court confirmed in a securities case that equitable disgorgement is limited to the net profits (receipts less payments) of each particular wrongdoer, not the amount of revenue generated. *Id*., 140 S. Ct. 1945 -46; 1948; 1950. After *Liu,* federal courts must deduct legitimate expenses before awarding disgorgement under the federal securities acts. Furthermore, the Supreme Court remarked that the attempt to impose disgorgement liability on affiliates (sometimes through a joint-and-several liability theory) "could transform any equitable profits-focused remedy into a penalty." Id., at 1949. Equitable remedies do not include penalties. *Id.*

In sum, the Court's interpretation of §517.191, Fla. Stat. with respect to federal securities statute should follow the analysis set forth in *Liu.* OFR obviously agrees that it is content with uniformity with a federal standard in its citation to *Bronson Partners.*

CONCLUSION

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss the Complaint as to all Defendants, and particularly Mr. Seeman, and grant such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been filed, served and furnished to

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via the Florida Courts e-Filing Portal this 11th day of May, 2022.

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