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

State of Florida
Office of Financial Regulation, et. al.
Plaintiffs,

vs.

National Senior Insurance, Inc. et. al., including

Daniel Cucuiat
Defendants.
_____/

CIRCUIT CIVIL DIVISION: AO

Case No.:50-2021-CA-008718-XXXX-MB

MOTION TO DISMISS PLAINTIFF'S ORIGINAL COMPLAINT AND AMENDED COMPLAINT AGAINST DANIEL CUCUIAT

Defendant, Daniel Cucuiat ("Cucuiat" or "Defendant"), by and through his undersigned counsel, hereby brings this Motion to Dismiss the Original Complaint and Amended Complaint ("AC") of The Office of Financial Regulation (the "OFR") et al., (hereinafter referred to as "Plaintiff") and in furtherance thereof, states as follows:

INTRODUCTION

1. Plaintiff alleges that Defendant participated in and/or aided and abetted fraud under Section 517 Florida Statutes purportedly perpetrated by the insurance companies affiliated with or owned by National Senior Insurance Inc. ("NSI") and/or Eric Holtz ("Holtz") and Marshall Seeman ("Seeman") in connection with the sale of certain pools of life insurance policies. It is further alleged that Defendant aided and abetted breaches of the fiduciary duties of loyalty and due care owed by corporate officers to a corporate entity and that Defendant was unjustly enriched.
2. Fundamentally, the Original Complaint and the AC (collectively, the "Complaints") fail to sufficiently plead the requisite elements of Chapter 517 and/or common law fraud, aiding and

abetting breaches of fraud and fiduciary duty, as well as unjust enrichment, with respect to Cucuiat. The Complaints are also fatally deficient in many other respects, including that they: make conclusory assertions without any factual basis, fail to state a cause of action, fail to attach necessary documents to the pleadings, fail to set forth facts pertaining specifically to Cucuiat, fail to adhere to the heightened pleading standards for fraud, violate the applicable statutes of limitation, and are made in bad faith. Moreover, the AC does not relate back to the "Original Complaint" filed on July 12, 2021. As such, Defendant, Daniel Cucuiat, respectfully requests that the Original Complaint and the Amended Complaint be dismissed in their entirety.

STANDARD FOR MOTION TO DISMISS

3. The sufficiency of a complaint in a civil action is a question of law. See *McKinney Green, Inc. v. Davis*, 606 So. 2d 393 (Fla. 1st DCA 1992); see also *Cintron v. Osmose Wood Preserving, Inc.*, 681 So. 2d 859, 860-861 (Fla. 5th DCA 1996). Where determining the merits of a motion to dismiss, the trial court's consideration is limited to the four corners of the complaint, the allegations of which must be accepted as true and considered in the light most favorable to the non-moving party. *Bell v. Indian River Memorial Hospital*, 778 So. 2d 1030 (Fla. 4th DCA 2001); see also *Rohatynsky v. Kalogiannis*, 763 So. 2d. 1270, 1272 (Fla. 4th DCA 2000). The purpose of a motion to dismiss is to determine whether the plaintiff has alleged a good cause of action, and for purposes of deciding a motion to dismiss a complaint, the court must assume that all facts alleged in the complaint are true. *Hammonds v. Buckeye Cellulose Corp.*, 285 So. 2d 7 (Fla. 1973).

4. The Plaintiff is in error alleging that Defendant had any obligation or duty to Plaintiff or anyone else. There is no contractual relationship between Defendant and any investor, no allegation that Defendant had made any untrue material statements or one which needs to be corrected, there is no alleged verbal or written statement upon which any investor justifiable relied. There is no evidence that Defendant solicited any investment at issue in this case, nor is there any evidentiary support for the proposition that any reasonable investor has relied on any purported misrepresentation by Defendant.

5. "To state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief." *W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999) (quoting *Perry v. Cosgrove*, 464 So. 2d 664, 665 (Fla. 2d DCA 1985)). Every fact essential to the cause of action must be stated distinctively, definitely, and

clearly. *Loving v. Viecelli*, 164 So. 2d 560 (Fla. 3rd DCA 1964) (citing *Ocala Loan Company v. Smith*, 155 So. 2d 711 (Fla. 1st DCA 1963)) ("Our examination of the record convinces us that the complaint was properly dismissed for failure to state a cause of action in that it was so vague and indefinite that it is difficult to determine whether the essential allegations were made. *Mere legal conclusions are not sufficient unless substantiated by allegations of ultimate fact.* Every fact essential to the cause of action must be stated distinctively, definitely and clearly.") (emphasis stated). Id.

6. The Court need not accept all allegations as true; as explained in Guo v. Rosen, 2021 WL 5168297 (S.D.F. 2021):

> However, the court need not take allegations as true if they are merely "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." Iqbal, 556 U.S. at 663. "Mere labels and conclusions or a formulaic recitation of the elements of a cause of action will not do, and a plaintiff cannot rely on naked assertions devoid of further factual enhancement." Franklin v. Curry, 738 F.3d 1246, 1251 911th Cir. 2012).

Further, as set forth in Taubenfeld v. Lasko 324 So. 3d 529, S41 (4th DCA 2021),

> Each claim founded upon a separate transaction or occurrence shall be stated in a separate count Fla R. CivP. 1.110(f). Commingling various claims against all defendants together may warrant dismissal of a complaint. (Cite omitted).

THE NOTE SECURITIES WERE EXEMPT FROM REGISTRATION

7. The underpinning of Plaintiff's Original Complaint is that pooled insurance policies referred to as Note Securities, Para Longevity Companies, or non-Receivership Para Longevity Companies, (hereinafter referred to as "Note Securities" or "PLC's") were sold to investors without being registered with the State of Florida.

8. In Paragraph 6 of the Original Complaint (p.4), Plaintiff alleges that:

> The note securities were not registered with the OFR, exempt from registration, or federally covered securities.

9. Both state and federal securities laws are, at times, a complex and interwoven series of rules.

One's understanding is often predicated upon grasping the meaning of a referenced rule, which, in turn, can only be understood through the interpretation of yet another rule.

10. Notwithstanding, the immutable flaw with Plaintiff's Complaints, which permeates and taints both pleadings, is the erroneous assertion that the Note Securities were required to be registered with the State of Florida, through the OFR. The Note Securities were, in fact, exempt from registration under Florida and federal law. The Plaintiff's omission of this fact is fatal to the Complaints.11.

11. Chapter 517.0611, Florida Statutes, essentially provides that the sale of securities in Florida are exempt from registration if they are exempt from registration under the federal securities laws. The Note Securities were exempt from registration under federal securities law, specifically, Regulation D of the Exchange Act of 1933. Although Florida and federal law are not in conflict, if they were, federal law would prevail pursuant to the Supremacy Clause of the Constitution of the United States.

12. The use of exemptions to obviate registering a security under federal and state securities laws is extensively relied upon by issuers raising capital in the United States. For context, according to the "Report to Congress on Regulation A/Regulation D Performance as Directed by the House Committee on Appropriation, in H.R. Rept No. 116-122," the amount of capital raised through the exemptions provided by Regulation D for the period 2009-2019 was Thirteen Trillion, Five Hundred and Seventy-Six Billion Dollars ($13,576,000,000,000).

13. As alleged in the Complaint, the Note Securities raised to $400,000,000 from 2011 through 2021. To presume that the OFR was incapable of distinguishing between unregistered and exempt securities over that period of time is either preposterous or disingenuous. Surely, the OFR did not mischaracterize the Note Securities by oversight. Moreover, the notion that esteemed New York law firms prepared Private Placement Memorandum ("PPM's") for approximately a decade, misunderstanding that the Private Placement's ("PP's") were not exempt from registration or that sophisticated, accredited investors purchased unregistered securities for the better part of a decade, where the offerings should have been registered, is absurd.

14. The particular exemption utilized to raise capital by the Note Security Entities was Rule 506(b) of Regulation D, which, in turn, operated in tandem with Rule 4 (a)(1) of the Exchange Act of 1933. The Note Securities offered pursuant to Rule 506 (b) were "federally covered securities." See 17 CFR § 230.506. Rule 506 (b). Rule 506 (b) permits an issuer to raise an unlimited amount

of capital through the sale to an unlimited number of accredited investors, as well as no more than 35 unaccredited investors. Based on knowledge and belief, all sales of the Note Securities were limited to accredited investors. Such offerings do have restrictions for advertising and solicitation.

15. The Complaints make sparse mention of the PPM's. Each of the Note Securities had a corresponding PPM. These PPM's set forth the salient features and risks of each respective pooled investment. The PPM's were prepared by well-established law firms and contain all of the requisite disclosures.

16. Fundamentally, the U.S. securities laws are predicated at their core on the concept of disclosure. Simply stated, if an offering document accurately discloses a material fact, it can not be said to be misleading or a misrepresentation. A proper analysis of the PPM's for the Note Securities proves that the PPM's contained the necessary disclosures such that the alleged misrepresentations in the Complaints are all unfounded.

FAILURE TO ATTACH NECESSARY EXHIBITS TO PLEADINGS

17. That the PPM's obviate Plaintiff's alleged misrepresentations fact would have been apparent had Plaintiff attached the PPM's to the pleadings, as required pursuant to Rule 1.130 Fla R. Civ. P. That rule specifies that all contracts, documents, and accounts must be incorporated or attached to the pleading. Moreover, "When a party brings an action based upon a contract and fails to attach a necessary exhibit under rule 1.130(a), the opposing party may attack the failure to attach the necessary exhibit through a motion to dismiss" *Samuels v. King Motor o. of Ft. Lauderdale*, 782 So2d489,500 (Fla 4th DCA 2001). Indeed, without the written instrument the Complaint "does not state a cause of action." Id. p. 500. Exhibit A includes a sample PPM with relevant pages attached.

THERE IS NO VIOLATION OF FLORIDA STATUTE 517

18. The Original Complaint admits that the employees of NSI who sold insurance products were not employees of the PLC's. In addition, neither Complaint alleges that those individuals were agents of the PLC's. They were not.

19. The elements that must be proven to establish a violation of Section 517.301 Florida Statutes (Securities Transactions) proscribing unlawful sale of securities are:

> (1) that misrepresentation or omission of material fact was made, (2) that misrepresentation or omission was justifiably relied on, (3) that misrepresentation or omission was made in connection with the sale of securities, (4) that misrepresentation or omission was made with scienter or reckless disregard as to the truth of the communication, and (5) that the untruth was the direct proximate cause of the loss.

20. Florida Rule of Civil Procedure 1.120(b) further mandates that "the circumstances constituting fraud shall be stated with such particularity as the circumstances may permit." Fl.R.Civ.P.1.120(b). A claim must clearly and concisely set out the essential facts of the fraud, and not just legal conclusions. Thompson v. Bank of New York, 862 So. 2d. 768 (Fla. 4th DCA 2003).

21. There are no allegations in either Complaint that meet the pleading standard of 517.301 Florida Statutes. Plaintiff is attempting to hold Defendant liable for things Plaintiff cannot, in good faith, allege that Cucuiat did or knew about. A review of the alleged misrepresentations arguably attributable to "sales agents" are as follows:

23. Page 18 of the Original Complaint states, "sales agents directly participated in the note offerings and sales in various ways, including: introducing investors to PPE offerings, providing PPM and related documents, answering investor questions." None of these activities, in and of themselves, constitutes solicitation under Chapter 517. The further assertions in the aforementioned quote that the actions of the sales agents include: filling out subscription agreements, filling out questionnaires, or obtaining checks, are overbroad, conclusory statements with no suggestion of wrongdoing as to Cucuiat.

24. Paragraph 66 (page 18) misstates that the offer and sale of notes was a component of the sales agents' employment, or as stated in Paragraph 67, p.19, that the sales agents received compensation for selling PLC's. The sales agents were not hired by NSI pursuant to employment agreements, and there is no factual basis proffered to support the notion that sales agents knowingly received any remuneration from any entity for the sale Note Securities. These assertions have no factual foundation. In other words, the allegations are specious, in bad faith and do not protect the pleading from dismissal.

25. The Original Complaint further references alleged misrepresentations made in the PPM's or by the owners or managers of Receiver Entities. None of these misrepresentations, however, are alleged to have been known to or made by Cucuiat, at any time.

26. On p. 26 of the Original Complaint, Plaintiff attempts to attribute the contents of a single sales letter written by someone other than Cucuiat to him as well as all the other sales agents. Such broad attribution of wrongdoing is unwarranted. There is also no indication that the information stated therein has any connection to Cucuiat or that the track record of the Notes Securities was untrue at the time it was made.

BAD FAITH CLAIM OF LIABILITY

27. Plaintiff's own Complaints undermine the assertion that the "SH agents" solicited investors for Note Securities. Paragraph 62 (p. 17) states:

> ...the sales agents offered the notes to existing insurance customers and other potential investors discovered through free lunch seminars and internet advertisements touting financial advice and insurance products.

28. There is no evidence that Cucuiat solicited the sale of any Note Securities. As the OFR is surely aware, neither Florida common law nor Chapter 517, considers any of the following to constitute a solicitation:

- Merely providing information about securities without encouragement to engage in a transaction; or

- Responding to an inquiry of a prospective investor who sought information from Cucuiat with respect to a Note Security, which he or she heard of in a seminar. Even if this happened (and there is no evidence it did), Cucuiat's response would not have gone beyond providing information or referring the individual to consult with Seeman or Holtz. Importantly, there is nothing in either Complaint that suggests he did otherwise.

29. The assertion in Paragraph 125 of the AC that Cucuiat, an Executive Senior Financial Advisor, did anything wrong or received "substantial proceeds" from the sale of Note Securities is salacious and false. Moreover, Plaintiff does not state how much Defendant earned for purportedly

selling the Note Securities because it cannot, since no such remuneration was ever delineated in a manner that would have put Cucuiat on notice of such payments.

30. Plaintiff cannot point to a single client of Defendant, elderly, retired, living on social security or otherwise, who was told a misstatement by Cucuiat to induce a sale. Any false or misleading statement would need to be shown to have been made in connection with the purchase or sale of a security; the Defendant would have to know that the statement was false when made (scienter), and the customer would have to have relied on such misstatement such that a reasonable person would be persuaded by the misstatement. None of these elements are demonstrated in either Complaint.

31. Plaintiff wrongly extends the parameters of securities fraud beyond its boundaries. Rule 517 in relevant part, requires that a misrepresentation need be made in connection with the purchase or sale of a security. It does not apply to statements made after the transaction. Statements subsequent to a transaction do not change or affect an investor's intent to invest. Plaintiff's attempt to include the servicing of a security in an investment account or rendering advice as to such security as part of an overall portfolio after its purchase, is equally misplaced and unwarranted.

32. Exhibit D of Plaintiff's AC, purports to show Note Securities solicited by Cucuiat. It does not. Based on knowledge and belief it shows Cucuiat's total compensation.

33. Cucuiat was not paid any commission or remuneration of any kind in connection with the Note Securities. The allegation that Cucuiat received between 4-6% commission for selling the Note Securities is untrue. This is a further example of bad faith. Plaintiff assumes that Cucuiat would have received $592,772, if 6% were earned on the sale of Note Securities. That calculation is belied by the assertion in the AC that the entire amount paid to Defendant for all purchases by his customers for insurance products (not including Note Securities) during the entire time he worked for Seeman Holtz owned entities, was $316,348.

34. Plaintiff makes further unsubstantiated allegations in Paragraph 94 (p. 27), that:

> Defendants further created this misleading PPM, which misrepresented that these "secured promissory notes were secured."

There is no allegation that Cucuiat had anything to do with the preparation of the language in the PPM's for the Note Securities.

35. Plaintiff's Complaints omit that, due to a mandate by the OFR, the Note Securities were no longer sold as of approximately Spring 2019. It is curious why the OFR took this action at that

time since Stermer and his accounting team had valued the Note Securities at over $350,000,000. That was their conclusion after spending months in the offices of Seeman Holtz evaluating each Note Security.

36. The Original Complaint (p. 12), contains vague, amorphous statements such as: Holtz interacted extensively with sales agents, sales agents escalated client complaints, or Seeman told certain agents that they should be wary of OFR inquiries. These statements do not give rise to any cause of action.

AGENCY

37. Plaintiff attempts to hold Cucuiat, along with all of the other insurance sales agents employed by NSI, liable for soliciting Note Securities. Cucuiat was a sales agent employed by NSI, not the PLC's. Neither Complaint explains how SNI's sales agents became or acted as agents of any PCL. Neither Complaint demonstrates any factual support for Cucuiat acting as an agent of the PLC's. The Complaints do not define any personal interest Cucuiat had in the Note Security transactions. There is no factual predicate asserting that Cucuiat acted to serve the interests of the PLC's or that Cucuiat personally participated in the sale of any Note Securities.

38. In the case of J.P. Morgan Securities, LLC v. Gerevan Investments Limited, 224 50. 3d 316 (4th DCA, 2017), the Court held as follows:

> As noted above, section 517.211(2), Florida Statutes (2012), also extends liability to "every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase." It is undisputed that Namburi and Schreck were not directors, officers, or partners of LSG, so if they are liable under this category, it must be as agents of LSG. The Fourth District Court of Appeal has held that under section 517.211, the term "agent" is given its common meaning – "representation of a principal." Rubin v. Gabay, 979 So.2d 988, 990 (Fla. 4th DCA 2008). Agency can either be actual or apparent. Id. The elements of actual agency are: 1) acknowledgment by the principal of the agent, 2) the agent's acceptance; and 3) control of the agent by the principal. Id.

While Namburi signed the agency agreement with LSG, he did so as an employee of J.P. Morgan and not in his personal capacity. Shreck did not sign the agreement and had a narrower role in the transaction. The second amended complaint specifically alleges that J.P. Morgan had a contractual relationship with LSG to act as its agent in soliciting the investment and attached the agreement to the complaint. The complaint does not allege or demonstrate that either Namburi or Schreck accepted an agency agreement with LSG or that LSG exercised control over them. Therefore, Geveran failed to state a cause of action against Namburi and Schreck based on an actual theory.

Likewise, whatever apparent agency is alleged to exist in the transaction was apparent agency between J.P. Morgan and LSG, rather than Namburi, Schreck, and LSG. The elements of apparent agency are: 1) a representation by the principal; 2) reliance by a third party; and 3) a change in position by the third party based on the representation of an agency relationship. Id. The second amended complaint does not allege any facts relating to these elements but merely asserts that Namburi and Schreck were agents or "subagents" of LSG by virtue of their employment with J.P. Morgan. This is insufficient to state a cause of action under an apparent agency theory.

Geveran argues that Namburi and Shrek are nonetheless liable because they "personally participated or aided in making the sale." § 517.211(2), Fla. Stat. Yet personal participation is a limitation on the list of people enumerated in the statute who may be liable – officers, directors, partners, and agents who personally participated. Geveran essentially reads additional language into the statute that would extend liability to anyone who personally participated. Geveran essentially reads additional language into the statute that would extend liability to anyone who personally participated or aided in the sale even if the party did not have a pecuniary interest in the investment

> and did not qualify as an officer, director, partner or agent under the statute. This reading conflicts with the statutory text and is not supported by any other source. Therefore, because Geveran failed to allege facts that would establish that Namburi and Schreck were agents of LSG, the trial court erred in denying J.P. Morgan's motion to dismiss Geveran's claims against them.

39. In the present case, Plaintiff can point to no specific act of solicitation, no misrepresentation by Defendant, no incidence of knowingly making a misrepresentation for the purpose of inducing a sale to an investor, no evidence that the investor ever reasonably relied on any such misstatement or that Defendant was paid a commission (or any compensation) in connection with the sale of any Note Securities. Plaintiff's case is nothing more than a misguided attempt to intimidate and promote fear in Defendant that unless he settles, every dollar earned by Cucuiat in the normal course of selling insurance products will be attributed entirely to the illusory commissions paid on Note Securities, inflated to hundreds of thousands of dollars.

40. It appears that one or more over-zealous OFR staffer(s) and the Corporate Monitor/Receiver, through their unjustified, preconceived notions of wrongdoing, put the fourth largest insurance company in the State of Florida out of business through the crippling taint of wholly unsubstantiated allegations of fraud or the perception of fraud. When the OFR prohibited any further sale of Note Securities in or about Spring 2019, it ostensibly precluded funding for the Note Securities. It is incorrect to maintain that any Ponzi scheme was perpetrated. Simply, in a Ponzi scheme, the wrongdoer borrows from one investor to pay another investor. This was not the case with the Note Securities. The life insurance policies that made up the pool of policies that comprised each Note Security were active policies that continued to require premium payments. In some cases, the collective life insurance policies of a respective Note Security were pledged as collateral for loans to meet those premium payments, which were paid back as life insurance policies paid off.

41. It was not the case that subsequent Note Security capital raises were used to pay loans of prior Note Securities. The OFR's direction to the Receivership Entities to discontinue the creation of Note Securities presented a perception of wrongdoing which caused the lending to dry up. The impertinent restrictions imposed by the OFR resulted in catastrophic losses, which took down all of the Seeman Holtz companies.

42. Based on knowledge and belief, Plaintiff caused hundreds of millions of dollars of losses to the Seeman Holtz companies, which would have likely been avoided through the proper management of the Note Securities by experienced insurance executives; like Seeman and Holtz. This is not mere conjecture; these statements will be corroborated by numerous witnesses who had direct, personal knowledge of the facts and circumstances, at the relevant times.

43. The Receiver asserts that he has a duty to recover losses on behalf of elderly, retired investors yet also avers that he has an obligation to recover losses on behalf of the Receivership Entities. In fact, any net funds collected by the Receiver would actually be paid to the very entities who are alleged to have committed the fraud in the first place, not directly to individual investors.

44. Perhaps, the person most responsible for the losses sustained by the Receivership Entities and, indirectly, the investors, is the person inserted into the Receivership Entities to prevent loss of assets. Notwithstanding, the Receivership Entities were placed into receivership. Stermer was the Corporate Monitor before he was appointed as the Receiver. Moreover, before he was the Corporate Monitor, his accounting firm valued the Note Securities at $350,000,000. Under Stermer's mandate, the PLC's value eroded in value from $350,000,000 to ostensibly zero. That the same person was auditor, Corporate Monitor, and Receiver clearly creates at the very least, a perception of conflict of interest.

45. In the course of his audit valuing the Note Securities at $350,000,000, Stermer surely would have recognized if insurance agents, unlicensed to sell securities, were nevertheless receiving commissions from the PLC's; the very entities he was valuing. Based on knowledge and belief, Stermer's valuation and evaluation of the Note Securities did not indicate that any such commission payments to the sales agents were made. As such, Stermer knew or should have known of fraudulent transfers, if there were any, well in excess of two years prior to September 14, 2021, the initial tolling date set by the Court. Thus, the two-year Statute of Limitations period had already run out for Chapter 517 claims prior to the commencement of the Court ordered tolling period, commencing on September 14, 2021.

FRAUDULENT TRANSFERS

46. Section 726, Florida Statutes, the Fraudulent Transfer statute does not support a clawback of any remuneration paid to Cucuiat. Pursuant to Section 726.109 Florida Statute, a transfer is not

voidable if made in the ordinary course of business or if the transfer "took in good faith and a reasonably equivalent value." Cucuiat was compensated by commissions for the sale of insurance products which were paid to him in the ordinary course of business. He, as well as his colleagues also received a salary.

47. By all accounts, the salary was determined by Holtz in his complete and unfettered discretion. His calculations were referred to as "Holtz' Math." Based on knowledge and belief, a primary component of the salary was the number of accounts opened by the insurance agent. Apparently, Holtz's salary determinations were fair, as NSI had a relatively low turnover of sales agents. Moreover, there are no allegations that Cucuiat made an improper transfer or that he even had the ability to effect transfers of corporate funds. He did not.

48. Note Securities purchases were apparently allocated to a pre-existing customer account (if one existed) serviced by that particular sales agent. In other words, if a pre-existing customer of Cucuiat purchased a Note Security, that Note Security would typically be held in that customer's account which Cucuiat serviced. Notwithstanding, Cucuiat had never discussed with Holtz or anyone else, the advent that any component of his salary was in any way attributed to Note Securities. The subject of any remuneration, of any kind, being received by Cucuiat for soliciting and for selling Note Securities was never discussed, implied, assumed, or known of by Cucuiat. He earned his commissions in good faith and for a reasonable exchange of services. The notion that Plaintiff is attempting to recover every dollar of compensation received by Defendant, though egregiously inflated "fraudulent transfers" can only be understood for what it is, a shakedown.

49. Plaintiff has a duty to show what portion, if any, of Cucuiat's compensation was attributable to Note Securities. It is rather evident that he can not do so since if he could, such calculations would no doubt be reflected in the AC. Plaintiff fails to identify any amount of commissions or salary derived from Note Securities that Cucuiat was aware of that happening. Plaintiff cannot, in good faith, aver that Cucuiat knew that a component of salary was attributable to Note Securities (which he did not). There is also no substantive basis for alleging that Cucuiat had any involvement in the fraudulent transfer or otherwise handling of such funds.

50. The Complaint presumes that commissions were paid to NSI by a PLC. In such case, the remittance of a commission to licensed securities industry registered representatives would not have constituted a fraudulent payment. In the capital raises done by the PLC's, the "concession" or commission is paid by the issuer; here the PLC's. Such payment to licensed individuals would

not be fraudulent but rather, a legitimate cost of doing business. If commissions were paid to non-PLC Receivership Entities, that would not have been a fraudulent transfer. It certainly would not constitute a basis to clawback all or any part of the total compensation earned by Cucuiat over years of service: grossly inflated.

51. Plaintiff fundamentally misconstrues or consciously seeks to improperly conflate supposed violations of the Fraudulent Transfer Statute and violations of Chapter 517.

52. A person violates the Fraudulent Transfer statute by making a transfer of assets or incurring an obligation with the intent to hinder, delay, or defraud creditors (Chapter 726 Florida Statutes). There is no allegation in either Complaint that Cucuiat transferred funds with the intent to defraud creditors. There is no allegation that Cucuiat transferred or participated in the transfer of any funds, at all. To put this in the terms of the Receivership Order entered March 29, 2023, there is no legitimate accusation that any transfers are traceable, directly or indirectly, to Cucuiat.

53. Therefore, the remediary measures spelled out in 726 for those who engage in fraudulent transfers have no application to Cucuiat. Further, since there is no evidence that Cucuiat knew of or even received any remuneration arising from the sale of Note Securities, the Florida Fraudulent Transfer statute does not apply to him at all. Plaintiff's knowingly false characterization of the payments reflected in its exhibit D does nothing to establish a well-found allegation. It does, however, further demonstrate the bad faith and callous indifference by which the Plaintiff has brought forth claims against Cucuiat.

54. Cucuiat's circumstances are far removed from those at issue in Wiand v. Lee 753 F 3d 1194 (11th Cir. 2014). In that case, the Receiver was able to recover "false profits" from a Ponzi scheme's operator who illicitly transferred funds away from their lawful purpose. Wiand's case held as follows:

> First, an explanation of how the Receiver has standing to sue also explains how the receivership entities are creditors of Nadel for the transfers he made in perpetrating the Ponzi scheme. Judge Posner, in the leading case on the issue, addressed a receiver's standing to sue in a clawback action related to a Ponzi scheme in Scholes v. Lehmann, 56 F. 3d 750 (7th Cir. 1995). A receiver of entities used to perpetrate a Ponzi scheme does not have standing to sue on behalf of the defrauded investors but does have standing to sue

on behalf of the corporations that were injured by the Ponzi scheme operator. 56 F. 3d at 753-55. Although the corporations constitute the "robotic tools" used by the Ponzi operator, they are "nevertheless in the eyes of the law separate legal entities with rights and duties." Id. at 754. The money they receive from investors should be used for their stated purpose of investing in securities, and thus the corporations are armed when assets are transferred for an unauthorized purpose to the detriment of the defrauded investors, who are tort creditors of the corporations. Id. Although the corporations participate in the fraudulent transfers, once the Ponzi schemer is removed and the receiver is appointed, the receivership entities are no more the "evil zombies" of the Ponzi operator but are "[f]reed from his spell" and become entitled to the return of the money diverted for unauthorized purposes. Id.

RELATE BACK

55. The AC does not relate back to the Original Complaint. Fla.R Civ P1.190(c) provides that "When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading.

56. Superficially, the allegations in the Original Complaint use some of the same verbiage in the AC with respect to the sales agents. That does not mean the allegations were sufficiently pled. In Kopel v. Kopel, 229 So. 3d 812 (Fl 2017), the court found "in other words, as long as the initial complaint gives the defendant fair notice of the general factual scenario as factual underpinning of the claim, amendments stating new legal theories relate back (Cites omitted).

57. The allegations in the Original Complaint are essentially summarized as follows: that the SH Enterprise co-mingled funds, that as of May 2021, the "Seeman Holtz Enterprise" was not paying interest to noteholders and failing to return principal, that certain stock interests in an insurance acquisition and consolidation company were purportedly pledged by a Seeman Holtz holding company which was foreclosed on in June 2021, that the Seeman Holtz Enterprise

insurance agents were not registered to sell unregistered notes, that Seeman Holtz mischaracterized sales agents compensation as insurance servicing fees, that Notes were sold to certain investors who were not qualified, that the sales agents acted as unregistered investment advisors, that they held themselves out as wealth managers and that the OFR recently discovered that the Seeman Holtz Enterprises utilized the same sales agent to solicit existing note investors.

58. Cucuiat left NSI in or about December 2019. Obviously, none of the aforementioned facts occurring at or around 2021, were extent as of Cucuiat's departure from NSI. It would be far-fetched to conclude that factual allegations taken years after Cucuiat's departure from employment with NSI could be fairly construed as putting Cucuiat on notice of anything even remotely relevant to him. Cucuiat was not named in the Original Complaint, did not engage in any wrongful conduct and was unable, even if he tried, to sell any Note Securities after such sales were discontinued by the OFR.

59. Cucuiat was and is a resident of California. Plaintiff is attempting to use the Florida long-arm statute to obtain personal jurisdiction over Cucuiat. However, Plaintiff has failed to plead the basis for that jurisdiction.

> In cases involving jurisdiction over nonresidents, there are constitutional issues which we must also consider. A court may acquire personal jurisdiction over a nonresident only if the nonresident has minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Venetian Salami Company v. J.S. Parthenais, 554 So.2d 499, 502 (Fla 1989).

Neither Complaint alleges that Cucuiat was ever in Florida, ever serviced an account of a Florida resident, or ever did anything that warrants a finding of minimum contacts with Florida.

61. Cucuiat never solicited a single customer to purchase a Note Security, had no knowledge of any misrepresentations in PPM's, or otherwise, never knowingly made any misrepresentation of any kind regarding Note Securities, never used PPM's to sell anything. Never knowingly received any compensation in connection with a Note Security, and importantly, other than vague, conclusory statements, Claimant does not plausibly argue that he did. He sold insurance products

for which he received commissions. Simply, Cucuiat never received commissions for selling products he never sold.

62. Plaintiff argues that Cucuiat was on notice of vague, amorphous allegations in the Original Complaint, as an unnamed party to the Original Complaint who left the company (NSI) well before the allegations or most thereof set forth in the Complaints even occurred, who did not engage in any wrongful conduct, or knew of any wrongful acts having been done by others. Moreover, Plaintiff cannot, in good faith, aver otherwise. The notion that Cucuiat was on notice of a court filing 3,000 miles or so from where he lives under these circumstances is incongruous with fairness, reason or reality. This is especially true when Plaintiff is falsely characterizing commissions earned from the sale of legitimate insurance products, where those commissions are remitted by the Company selling the insurance product and where wholly unsubstantiated representations of receipt of funds and fraudulently transfers are illusory, grossly inflated and manifestly made in bad faith.

63. It is true that court appointed Receivers enjoy judicial immunity for acts within the scope of their authority as guaranteed by the orders of the appointing judge; which authority extends to carrying out such orders faithfully and carefully. New York Life Insurance Company v. Zelda T. Waxenberg, et al. 2009 WL 632896 p.5 (MD Fla 2009). However, that court, applying Florida law, held that:

> The Receiver provides no authority, however, indicating that judicial immunity suspends the application of substantive law in suits initiated by a receiver. Put another way, the Receiver may not engage in sanctionable conduct, or avoid the consequences of sanctionable conduct, merely because he is acting on the authority of the court. (Cite omitted). If particularity egregious, the pursuit of a claim without reasonable inquiry into the underlying facts can be the basis for a finding of bad faith (Cite omitted) Id.

And;

> Claims predicated on outrageous, scandalous, and slanderous, or based on false and unsupported allegations are frivolous (Cite Omitted). If particularly egregious, the pursuit

of a claim without reasonable inquiry into the underlying facts can be the basis for a finding of bad faith. Id.

STATUTE OF LIMITATIONS

64. Chapter 517 claims against Cucuiat are precluded by the applicable statutes of limitation. The Note Securities were no longer sold as of spring 2019. The Original Complaint was filed on July 12, 2021, and the Court's Receivership Order began the tolling of claims from September 14, 2021. Pursuant to Chapter 95.11, Florida Statutes, the limitation for bringing a fraud or negligence action is four years and two years for a violation founded on any provision of 517, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence. Since the Original Complaint was filed more than two years after the Note Securities ceased to be sold, all of the claims against Cucuiat are tolled. Surely, after discontinuing the issuance of any further Note Securities, the OFR was on inquiry notice; or why else would it have stopped the sales. The OFR had plenty of opportunity and authority to initiate a review, examination, inquiry or investigation of the Note Securities. One would expect that ending the Note Securities sales came about only after a careful analysis by the OFR. Therefore, since the Original Complaint fails to articulate the requisite elements of any claims against Cucuiatt, it fails as a pleading, at least with respect to Cucuiat and as such forestalls claims in the AC against Cucuiat as untimely.

COUNT I
AIDING AND ABETTING FRAUD

65. A cause of action for aiding and abetting fraud requires: (1) the existence of the underlying fraud, (2) knowledge of fraud, and (3) the defendant having provided substantial assistance to the commission of fraud. Logan v. Morgan Lewis & Bockius 350 SO. 3rd 404 (Fla zd DCA 2022.) None of the requisite elements as to Cucuiat are plead in any way other than in conclusory fashion. The elements of fraud pursuant to Section 517 Florida Statutes are set forth above. The common law elements of a fraud claim under Florida law are: (1) a false statement concerning a specific material fact; (2) the maker's knowledge that the representation is false; (3) an intention that the

representation induces another's reliance; and (4) consequential injury by the other party acting in reliance on the interpretation. Serefex Corp. v. Hickman Holdings, LP, 695 F. Supp. 2d 1331 (M.D. Fla. 2010).

66. There is no showing of fraud, and, as such, there can be no aiding and abetting of fraud.

67. Plaintiff has not pleaded with the requisite specificity the existence of fraud. Plaintiff does not show that Defendant had knowledge of any such fraud, or that Defendant provided substantial assistance to the commission of any purported fraud. Moreover, Plaintiff's pleadings do not establish that Cucuiat, or for that matter, any of the "SH Agents" acted as agents of the "Para Longevity Companies" ("PLC's"). There is no allegation that Cucuiat ever accepted an agency agreement with the PLC's or that the PLC's had any control over Cucuiat. See J.P. Morgan Securities, LLC v. Geveran Investments Limited, 224 So 3d 316 (S DCA. 2017), or that Cucuiat aided, in any way, the sale of Note Securities, by others.

68. The Fourth DCA has held that under section 517.211, the term "agent" is given its common meaning – "representation of a principal." "Rubin v. Gabay, 979 So.2d 988,990 (Fla. 4th DCA 2008). Agency can either be actual or apparent. Id. The elements of actual agency are: 1) acknowledgment by the principal of the agent; 2) the agent's acceptance; and 3) control of the agent by the principal." Id.p.329. Moreover, there are no facts that constitute an allegation that Cucuiat "personally participated" or aided in making any sale of a Note Securities and certainly not a fraudulent sale.

69. Plaintiff further fails to allege any material misrepresentations by Cucuiat or that he aided in the presenting of materially false statements made by others. As previously stated, communication with a customer after the customer has made the purchase of a security is not in "connection with the purchase or sale of a security." "Rousseff established that parties liable under 517.211 have to be directly involved in a sale of securities". Id. p. 328.

70. Plaintiff actually does not allege a single instance where Cucuiat aided in a misrepresentation by another person to anyone prior to a Note Security purchase. Plaintiff, in paragraph 126, alleges a single e-mail where Cucuiat states to an investor that the PLC is appropriate for

> "a portion of your investible assets mainly because of the yield it can provide to get you through the 5-year period."

71. Merely stating that a security might be appropriate for a portion of a customer's investable

assets does not constitute a solicitation of that investment. It might constitute a suitability determination, but it is not a solicitation for its purchase. Importantly. Plaintiff does not attach the purported e-mail to either Complaint. In addition, Plaintiff does not identify when that e-mail was sent, whether that statement was untrue at the time it was made, what the PLC was yielding at the time, whether Cucuiat personally participated or aided in making of a sale if one was made, upon circumstances where no investor is identified, is not alleged to have relied on the misrepresentation under circumstances where the misrepresentation was material. Nowhere in the four corners of either Complaint is there a factually supported, non-conclusory allegation of Cucuiat aiding and abetting securities fraud under any definition of that term.

COUNT II

SECOND CAUSE OF ACTION

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

72. Florida law "typically recognized no fiduciary relation between an insurer and insured. Drilling Consultants, Inc. v. First Montauk Securities Corp. 806 F. Supp. 2d 1228 (M.D. Fla. 2011). As to the brokerage industry, even if Cucuiat was engaged in the sale of a security with the proper registration, which is not the case, there is no fiduciary duty owed to a non-discretionary customer other than the "narrow task of consummating the transaction requested." De Kwiatkowski v. Bear, Stearns & Co., Inc. 306 F. 3d 1293, 1302 (2d Cir 2002). As such, he could not have aided or abetted breaches of fiduciary duty by others, which do not exist in law. The fiduciary duties that are left are a corporate officer's breach of a duty of loyality or duty of care to the corporation that employed him and for which he was an agent, NSI. There are simply no facts plead that would give support for such allegation.

73. To state a cause of action for aiding and abetting the breach of a fiduciary duty, a plaintiff must plead facts establishing: (1) a fiduciary duty on the part of a primary wrongdoer; (2) a breach of that fiduciary duty; (3) knowledge of the breach by the alleged aider and abettor; and (4) the aider and abettor's substantial assistance or encouragement of the wrongdoing. Taubenfeld v. Lasko, 324 So. 3 d 529, 541. (4th DCA 2021).

74. None of the elements of aiding and abetting a breach of a fiduciary duty are pled in either Complaint.

UNJUST ENRICHMENT

75. "The essential elements that must be shown to prove unjust enrichment under Florida law are a benefit conferred on the defendant by the plaintiff, the defendant's appreciation of the benefit, and the defendant's acceptance and retention of the benefit without paying the value thereof. In re ConAgra Foods, Inc. 90 F. Supp. 3d 919, 994 (C.D. Cal. 2015). In Kapel v. Kapel, the Florida Supreme Court held that "to prevail on an unjust enrichment claim, the plaintiff must directly confer a benefit to the defendant." No. SC13-992, 2017 WL 372074, at 5 (Fla. Jan.26, 2017) (citing Peoples Nat'l Bank of Commerce v. First Union Nat'l Bank of Fla. N.A., 667 So. 2d 876 (Fla.Dist. Ct. App. 1996)); see also Johnson v. Catamaran Health Solutions, LLC, 687 Fed.Appx. 825, 830 (11th Cir. 2017) (affirming dismissal of an unjust enrichment claim for failure to plead a direct benefit where the plaintiffs alleged that they "conferred a benefit on [the defendant] by paying membership fees to [a third party], who in turn paid premiums to [the defendant]").

76. Plaintiff's AC only shows the amount Cucuiat earned from commissions for selling insurance products. That commission is paid by the insurance company which sells the insurance product, not NSI. As such, the commission was not derived from any funds arising out of a fraudulent transfer that Cucuiat directly caused or even knew about. Plaintiff's AC does nothing more than total the insurance commissions, which Plaintiff mischaracterizes and grossly inflates. There is not even a traceable connection suggesting that Cucuiat was, in any way, conferred a benefit from a fraudulent transfer.

CONCLUSION

In conclusion, based on the foregoing, both the Original Complaint and the Amended Complaint should be dismissed against Cucuiat on the basis that: Plaintiff fails to make allegations that satisfy the requisite pleading standard of each respective cause of action, fails to plead the requisite elements of fraud other than by espousing self-serving, conclusory, yet false accusations, fails to attach necessary documents, fails to allege facts which relate specifically to Cucuiat, do not constitute fraudulent transfers, do not allege the requisite elements of aiding or abetting fraud do not allege aiding of abetting breaches of fiduciary duty, where the allegations are precluded by the applicable statutes of limitation, the Complaints fail to show a requisite level that the AC would

relate back to the Original Complaint. The Complaints fail to state a cause of action, fail to allege violations of Section 517 Florida Statutes, allegations which are insufficiently pleaded, precluded by the applicable statutes of limitation and have been pursued in bad faith.

Therefore, Defendant respectfully requests that this Honorable Court grant the instant Motion to Dismiss.

Dated: August 30, 2024

Respectfully submitted.

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Attorney for Defendant, Daniel Cucuiat

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, the foregoing was filed using the Florida E-Portal Filing System, which will serve a copy electronically of the upon counsel for the Plaintiff and on the Counsel of the other interested parties, set for below.

Dated: August 30, 2024

Todd A. Zuckerbrod, Esq.

Brian G.Rich,
Albert Gregory Melchior
Bernard Charles Carollo Jr.
Gavin C. Gaukroger
Kerry L. Burns
Daniel J. Stermer
David L Luikart
Gary A. Woodfield
Gavin C. Gaukroger
George C Bedell III
Harris J Koroglu,
Ian M. Ross,
James C. Moon
Joshua W. Dobin
Jeffrey H Sloman
John Jeremy Truitt
Bernard Charles Carollo Jr.
William Leve
Joshua W. Dobin
Carey D. Schreiber
Michael Niles
Robert W Pearce
Scott A Orth
Steven Aaron Roth
Susan B Yoffee
Gary A. Woodfield
Victoria R Morris

Exhibit A

PRIVATE PLACEMENT MEMORANDUM
CONFIDENTIAL

PARA LONGEVITY 2018-5, LLC

$25 MILLION OFFERING

Series A – 8.75% 5 Year Secured Promissory Notes
(monthly interest payments)
or
Series B – 10.00% 5 Year Secured Promissory Notes
(interest accrues until maturity)

PARA LONGEVITY 2018-5, LLC
Five Concourse Parkway, NE
Suite 3000
Atlanta, GA 30328
Telephone: (404) 968-8400
Fax: (770) 392-3303

This document is the Regulation D, Rule 506 Private Placement Memorandum for PARA LONGEVITY 2018-5, LLC, offered to a limited number of individuals and entities who are "Accredited Investors."

INVESTORS SHOULD MAKE THEIR OWN DECISION WHETHER THIS OFFERING MEETS THEIR INVESTMENT OBJECTIVES AND RISK TOLERANCE LEVEL. NO FEDERAL OR STATE SECURITIES COMMISSION HAS APPROVED, DISAPPROVED, ENDORSED, OR RECOMMENDED THIS OFFERING. NO INDEPENDENT PERSON HAS CONFIRMED THE ACCURACY OR TRUTHFULNESS OF THE DISCLOSURES IN THIS MEMORANDUM, NOR WHETHER THEY ARE COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS ILLEGAL. NO STATE ADMINISTRATOR HAS REVIEWED THIS DOCUMENT. THE ISSUER IS RELYING ON AN EXEMPTION FROM REGISTRATION OR QUALIFICATION. OTHER IMPORTANT RISK FACTORS ARE EXPLAINED IN DETAIL IN THIS DOCUMENT. THE NATURE OF THE RISKS OF THIS OFFERING REQUIRES THAT INVESTORS MEET MINIMUM ASSET/INCOME CONDITIONS.

The date of this Memorandum is June 1, 2017

OFFEREE NAME Donald Ball PPM No. 16-JP-07A

IMPORTANT NOTICE ABOUT THIS MEMORANDUM

The information contained in this Private Placement Memorandum (this "Memorandum") is confidential and is furnished for use only by potential investors. Each potential investor agrees that he/she will not transmit, reproduce, or make available this Memorandum or any related exhibits or documents to any other person or entity. Any action to the contrary may place the potential investor in violation of various state and/or federal securities laws.

CONTENTS

Exhibit "A" - Note Purchase Agreement
Exhibit "B" Series A Promissory Note
Exhibit "C" Series B Promissory Note
Exhibit "D" Security Agreement
Exhibit "E" Collateral Agency Agreement
Exhibit "F" Suitability Standards
Exhibit "G" Noteholder Questionnaire
Exhibit "H" IRS Form W-9

REPRESENTATIONS ON BEHALF OF THE COMPANY WITH RESPECT TO THE COMPANY OR THESE SECURITIES OTHER THAN THE REPRESENTATIONS CONTAINED HEREIN. ACCORDINGLY, ANY REPRESENTATIONS, OTHER THAN THOSE SET FORTH IN THIS MEMORANDUM, AND ANY INFORMATION OTHER THAN THAT CONTAINED IN DOCUMENTS AND RECORDS FURNISHED BY THE COMPANY UPON REQUEST, MUST NOT BE RELIED UPON. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE MATTERS SET FORTH HEREIN SINCE THE DATE OF THIS MEMORANDUM.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

IN MAKING A DECISION TO PURCHASE THESE SECURITIES, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY OFFERING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY AUTHORITY. FURTHERMORE, GOVERNMENTAL AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THIS MEMORANDUM CONSTITUTES AN OFFER ONLY IF A NAME APPEARS IN THE APPROPRIATE SPACE PROVIDED ON THE COVER PAGE HEREOF. OFFERS MAY BE MADE ONLY TO PERSONS DEEMED ELIGIBLE FOR PARTICIPATION IN THE OFFERING UNDER THE CRITERIA SET FORTH IN THIS MEMORANDUM AND RELEVANT FEDERAL AND STATE SECURITIES LAWS. THE COMPANY RESERVES THE RIGHT, NOTWITHSTANDING ANY SUCH OFFER, TO WITHDRAW OR MODIFY THIS OFFERING AND TO REJECT ANY SUBSCRIPTIONS FOR THESE SECURITIES, IN WHOLE OR IN PART.

THE OBLIGATIONS OF THE PARTIES TO THE TRANSACTIONS CONTEMPLATED HEREIN ARE SET FORTH IN AND WILL BE GOVERNED BY THE DOCUMENTS ATTACHED AS EXHIBITS HERETO. ALL OF THE STATEMENTS AND INFORMATION CONTAINED IN THIS MEMORANDUM ARE QUALIFIED IN THEIR ENTIRETY BY SUCH DOCUMENTS. CONSEQUENTLY, EACH PROSPECTIVE INVESTOR IS URGED TO CAREFULLY READ THE DOCUMENTS ATTACHED HERETO BECAUSE SUCH DOCUMENTS FORM AN INTEGRAL PART OF THIS MEMORANDUM AND ARE HEREBY INCORPORATED HEREIN BY REFERENCE FOR ALL INTENTS AND PURPOSES. IN ADDITION, EACH PROSPECTIVE INVESTOR IS URGED TO AVAIL HIMSELF/HERSELF OF

APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OR ANY STATE SECURITIES LAWS OR THE LAWS OF ANY OTHER NATION OR JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED UNLESS THE SAME HAVE BEEN INCLUDED IN AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGING MEMBER OF THE COMPANY HAS BEEN RENDERED TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION UNDER APPLICABLE SECURITIES LAWS IS AVAILABLE. IN ADDITION, TRANSFER OR OTHER DISPOSITION OF THE NOTES IS RESTRICTED AS PROVIDED IN THE NOTES AND THE NOTE PURCHASE AGREEMENT.

Notice to Florida Residents:

PURSUANT TO SECTION 517.061(11)(a)(5) OF THE FLORIDA STATUTES, FLORIDA RESIDENTS HAVE A THREE DAY RIGHT OF RESCISSION. IF A FLORIDA RESIDENT HAS EXECUTED A NOTE PURCHASE AGREEMENT, HE MAY ELECT, WITHIN THREE BUSINESS DAYS AFTER SIGNING THE NOTE PURCHASE AGREEMENT, TO WITHDRAW FROM THE NOTE PURCHASE AGREEMENT AND RECEIVE A FULL REFUND AND RETURN (WITHOUT INTEREST) OF ANY MONEY PAID BY HIM. A FLORIDA RESIDENT'S WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON. TO ACCOMPLISH SUCH WITHDRAWAL, A FLORIDA RESIDENT NEED ONLY SEND A LETTER OR FACSIMILE TO THE COMPANY AT THE ADDRESS OR FACSIMILE NUMBER SET FORTH IN THIS MEMORANDUM INDICATING HIS INTENTION TO WITHDRAW. SUCH LETTER OR FACSIMILE MUST BE SENT AND (IF A LETTER) POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED THIRD BUSINESS DAY. IF A FLORIDA RESIDENT SENDS A LETTER, IT IS PRUDENT TO SEND IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO INSURE THAT IT IS RECEIVED AND ALSO TO EVIDENCE THE TIME AND DATE WHEN IT IS MAILED. SHOULD A FLORIDA RESIDENT MAKE THIS REQUEST ORALLY, HE SHOULD ASK FOR A WRITTEN CONFIRMATION THAT HIS REQUEST HAS BEEN RECEIVED.

FORWARD-LOOKING STATEMENTS:

THIS MEMORANDUM CONTAINS FORWARD-LOOKING STATEMENTS. SUCH FORWARD-LOOKING STATEMENTS ARE GENERALLY ACCOMPANIED BY WORDS SUCH AS "INTENDS," "PROJECTS," "BELIEVES," "ANTICIPATES," "PLANS," "WILL" AND SIMILAR TERMS THAT CONVEY THE UNCERTAINTY OF FUTURE EVENTS OR OUTCOMES. THE FORWARD-LOOKING STATEMENTS CONTAINED HEREIN ARE SUBJECT TO CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM

PARA LONGEVITY 2018-5, LLC

SUMMARY OF SECURED PROMISSORY NOTES (THE "NOTES") PRIVATE OFFERING

The following summary is qualified in its entirety by reference to more detailed information appearing elsewhere herein. Each prospective Noteholder is urged to read this Memorandum in its entirety, including without limitation the risks identified in the "Certain Risk Factors" section and the conflicts identified in the "Conflicts of Interest" section. The Company undertakes no obligation to revise this Memorandum to reflect events or circumstances that arise after the date hereof.

The Company:

PARA LONGEVITY 2018-5, LLC, a Georgia limited liability company (the "Company"), was organized in June 2017. The Company is managed by its Managing Member, Para Longevity Holdings VI, LLC, a Georgia limited liability company (the "Managing Member"). The Managing Member is controlled by Marshal Seeman and Eric Holtz. Messrs. Seeman and Holtz are principals and/or executive officers of National Senior Insurance, Inc. d/b/a/ Seeman Holtz, a wealth management and financial services company that exclusively serve the senior market. Seeman Holtz is involved in numerous facets of the life insurance industry and, as more fully disclosed herein, it and its affiliated companies may perform services or otherwise participate in the Company's business. However, Seeman Holtz does not own an interest in the Company, will not receive any of the profits of the Company and is not otherwise involved in promoting or conducting this offering.

Company Objectives:

The Company will use the net proceeds from this offering to acquire and sell, either directly or indirectly, entities and assets that are expected to generate regular and predictable cash flows.

The net proceeds from this offering will be used in the following activities:

1. The purchase, through debt or equity, of entities and assets that offer regular and predictable cash flows. Examples of cash flowing assets and businesses include (but is not limited to) property & casualty assets, registered investment and other wealth management advisory businesses, and insurance related commissions.
2. Funding premium finance loans which enable certain suitable candidates of in-force life policies to borrow to pay for premiums, origination fees and other transaction costs related to their existing life insurance policies, using such underlying life insurance policies as collateral

assurance, however, can be given that the Company will be able to liquidate its assets in a timely fashion or on favorable terms in the time and amounts necessary to satisfy the Notes by maturity. If any assets of the Company have not been liquidated by maturity of the Notes and the Company therefore has insufficient assets to fully satisfy the Notes by their maturity date, such assets (plus reasonable reserves to fund such assets through liquidation as determined by the Managing Member) will be placed in a liquidating trust and the Company will continue its efforts to liquidate those assets in a timely manner and distribute net proceeds to satisfy the Notes.

No assurance can be given that the Company will achieve its objectives or be able to repay the principal or pay any interest on the Notes. See *"Certain Risk Factors."*

The Offering:

The Company is offering up to $25,000,000 of Series A and Series B Secured Promissory Notes to individuals and entities that qualify as "Accredited Investors" within the meaning of Regulation D under the Securities Act of 1933, as amended (the "Securities Act"). The minimum offering amount is $50,000. The minimum subscription requirement per investor is $50,000, subject to waiver in the Managing Member's discretion.

The Notes:

The Notes are being offered in two series.

Series A Secured Promissory Notes ("Series A Notes") will bear interest at a rate of eight and three quarter percent (8.75%) per annum, payable monthly in cash in arrears.

Series B Secured Promissory Notes ("Series B Notes" which together with the Series A Notes are referred to as the "Notes") will accrue interest at a rate of ten percent (10.00%) per annum, payable in full together with principal at maturity.

The Notes will mature five (5) years from the date of issuance, but may be extended for an additional ninety (90) days at the Managing Member's discretion.

The Notes will be secured by the Company's assets pursuant to the Security Agreement in the form attached hereto as Exhibit "D" and will be subject to a Collateral Agency Agreement in the form attached hereto as Exhibit "E".

The Notes by their terms provide that, if the Company utilizes leverage (in addition to the Notes) for purposes of achieving its

Capitalization:	100% of the Company's limited liability company interests are currently owned by the Managing Member. The Managing Member will make a nominal capital contribution to the Company in respect of its limited liability company interest. The capital structure of the Company will be comprised almost entirely of the principal amount of the Series A and Series B Notes. See *"Certain Risk Factors."*
Risk Factors and Conflicts of Interest:	An investment in the Notes entails substantial risks. Please see the sections entitled *"Certain Risk Factors"* and *"Conflicts of Interest"* for greater detail of certain of these risks.

Description of Securities: *The following summary is subject to and qualified in its entirety by reference to the provisions of the forms of Secured Promissory Notes, attached hereto as Exhibits "B" and "C", and made a part hereof.*

The Notes will bear a face value of $1 for every $1 loaned to the Company, and will obligate the Company to pay the holder of the Note cash equal to the face value of the Note upon maturity. Series A Notes will bear interest at a rate of eight and three quarter percent (8.75%) per annum, payable monthly in cash in arrears. Series B Notes will accrue interest at a rate of ten percent (10.00%) per annum, payable in full together with principal at maturity.

Maturity: Each Note will mature five (5) years after its Date of Issuance, although the maturity date may be extended for an additional ninety (90) days at the Company's discretion.

Possible Interest Reserve for Series A Notes: The Company may, but is not required to, establish an interest reserve to cover all or a portion of the interest payable on the Series A Notes as it becomes due (the "Interest Reserve"). If established, the Interest Reserve will be held by the Company. There will be no interest reserve for the Series B Notes. If an Interest Reserve is established, the Company may use a portion of the net proceeds from the sale of the Notes in this offering to fund the Interest Reserve, which will reduce the amount otherwise available to the Company to make loans and acquire assets.

Prepayment: The Company shall have the right to prepay all or a portion of the amounts due under the Notes at any time, without any prepayment penalty or premium. The Company may prepay all or part of a single series of Notes with no obligation to make any prepayment on the other series of Notes. Notes will be prepaid (if at all) in the order of priority that corresponds to the order of their issuance by the Company, such that the Notes that have an earlier Date of Issuance (and thus an earlier maturity date) will be entitled to priority of any prepayment. The Company reserves the right on a case-by-case basis to prepay all or any portion of a Note (without making any prepayment on any other Note) in the Managing Member's discretion if the Managing Member determines that such prepayment is necessary or appropriate to avoid an adverse legal, operational, economic, tax, regulatory or securities law effect upon the Company or the Managing Member or its members including, without limitation, to avoid or resolve litigation or claims against the Company or the Managing Member or its members.

Security; Collateral Agent: The Notes will be secured by the assets of the Company. See *"Certain Risk Factors."* The Series A Notes and the Series B Notes will be treated on a *pari passu* basis with respect to priority of repayment in the event of default and priority of lien on the Company's assets serving as collateral.

The Company has entered into a Collateral Agency Agreement, in the form

of their respective Notes. See Collateral Agency Agreement, Exhibit "E".

Use of Proceeds: The Company intends to use the net proceeds from the sale of the Notes offered hereby, after payment organizational and offering expenses estimated to be approximately $25,000 to $35,000 (exclusive of applicable federal and state blue sky filing fees and costs), and Collateral Agent fees, and after deducting amounts to fund the Interest Reserve if established by the Managing Member, and after deducting Management Fees, to invest in longevity-linked assets directly or indirectly consistent with the Company's objectives set forth above and for general working capital purposes and other legitimate Company purposes including paying or providing for Company Expenses (as herein defined).

Restrictions on Resale: The Secured Promissory Notes offered hereby have not been registered under the Securities Act or any state securities laws and may not be offered or sold unless registered or pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws. The Company has no intention to seek registration. Further, the transfer of the Notes is restricted pursuant to their terms.

No Participation in Equity Distributions: As the sole member of the Company, the Managing Member is entitled to receive 100% of the total distributions (and profit and loss allocations) of the Company after payment or provision has been made for the Company's expenses and obligations including, without limitation, satisfaction of the Notes and payment of all fees to affiliates and third parties. Outside of the Management Fee of 10%, the Company will not make any distributions to the Managing Member in respect of its equity interest in the Company until the Notes have been satisfied or until due and adequate reserves have been established to fully satisfy the Notes, except that the Company may make distributions to enable the Managing Member or its direct or indirect members or beneficial owners to defray their tax liabilities attributable to their direct or indirect interests in the Company. As a Noteholder, the purchasers of the Notes will only be entitled to receive payments on their Notes and will not be entitled to receive or otherwise participate in distributions from (and profit and loss allocations of) the Company.

Company Expenses: The Company will bear all costs and expenses relating to the operation of the Company and/or management of its business, and will reimburse the Managing Member and its principals for all such costs and expenses incurred or advanced by them, including but not limited to: (i) all expenses associated with acquiring, holding, managing, owning, selling, transferring, conveying, assigning, encumbering or otherwise disposing of its assets including, without limitation, expenses of travel, marketing, counsel, independent accountants and others; (ii) all expenses related to the evaluation, due diligence investigation, closing or monitoring of loans, assets and investments, and all expenses relating to transactions that are not consummated; (iii) all normal operating expenses incidental to the provision

DESCRIPTION OF POSSIBLE COMPANY ACTIVITIES

The following is a description of the type of activities in which the Company may engage. These descriptions do not represent all the possible opportunities in which the Company may participate. The Company may make loans and acquire assets either directly or indirectly by investing in other entities or programs managed by third parties or affiliates, or may make loans that are subordinate to other lenders.

COMPANY OBJECTIVES

The Company's objective is to acquire and ultimately dispose of or monetize cash flowing assets and entities, either directly or indirectly. The Company may invest in cash flowing assets and entities in a variety of industries in order to diverse their investment pool.

Examples of cash flowing assets and businesses include (but is not limited to) property & casualty assets, registered investment and other wealth management advisory businesses, and insurance related commissions.

Longevity-linked assets are one of the industries that the Company may invest in. Longevity-linked assets are financial and life insurance products or assets that utilize longevity as a basis for calculation of price or value. This includes, but is not limited to, premium financing, life insurance, annuities, life settlements and structured settlements.

The net proceeds from this offering will be used in the following activities:

1. Purchasing, directly or indirectly, assets and entities from a variety of industries whose operations expect to generate regular and predictable cash flow. These assets include, but are not limited to, aviation assets, registered investment advisors and wealth management entities, property and casualty assets, and commercial real estate assets.

2. Purchasing or acquiring life insurance policies, paying the premiums and eventually collecting the death benefits upon the death of the insured.

3. Opportunistic investments in asset classes that may include, without limitation, (a) purchasing, acquiring, originating, funding, investing in, holding for investment, selling and/or otherwise disposing of loans, life insurance policies, annuities, life settlements, structured settlements, other cash flowing and longevity-linked assets and (b) making debt or equity investments in other funds or entities engaged in the business of purchasing, acquiring, originating, funding, investing in, holding for investment, selling and/or otherwise disposing of premium finance loans, life insurance policies, annuities, life settlements, structured settlements or other longevity-linked assets or that otherwise participate in the life insurance asset class in any manner.

4. Company may also make unsecured loans to affiliated entities related to the Managing Member, at their sole discretion.

ACQUIRING LIFE INSURANCE POLICIES

The Company may also purchase life insurance policies on the life settlements market or acquire policies that are surrendered following defaults by insureds/borrowers on premium finance loans made by the Company. Once the Company acquires a policy, it may sell the policy on the life settlements market or it may hold the policy for investment, pay the premiums until the death of the insured, and then collect the death benefits upon the death of the insured. The Company may also invest in entities engaged in the business of investing in life insurance policies, as more particularly described below.

INVESTING IN FUNDS/ENTITIES WHICH INVEST IN LONGEVITY-LINKED ASSETS

The Company may invest in other funds, businesses or entities which are engaged in the business of purchasing, acquiring, originating, funding, investing in, holding for investment, selling and/or otherwise disposing of longevity-linked assets ("Other Funds"). Such Other Funds may be affiliates of the Managing Member (an "Affiliated Fund"), or may be unaffiliated third parties. See *"Conflicts of Interest."* The Company may structure such investments in Other Funds as debt or equity investments, or a combination thereof.

Without limiting the foregoing, a possible investment structure that the Company may pursue is to invest in any other fund domiciled in Ireland or another jurisdiction with favorable tax treaties with the U.S (an "Offshore Fund"). The purpose of this structure is to allow the Offshore Fund to avail itself of favorable tax rules which would allow it to avoid U.S. withholding tax on death benefits payable to it. Affiliates of the Managing Member are exploring the possibility of organizing such an Offshore Fund (an "Affiliated Offshore Fund"). If organized, the Affiliated Offshore Fund would seek to acquire a large pool of life insurance policies with leverage in the form of a senior secured credit facility to fund the premiums on such policies with a view toward ultimately collecting the death benefits upon the death of each insured. The credit facility would be provided by an institutional lender who finds the asset pool to be sufficiently large and diversified to lend against. The senior credit facility would be secured by a first priority lien on the insurance policies (and perhaps other assets) of the Affiliated Offshore Fund. Affiliates of the Managing Member may have a controlling interest in the trustee or the beneficiary of the Affiliated Offshore Fund, or both, to the extent permitted under applicable tax laws. See *"Conflicts of Interest."*

If such an Affiliated Offshore Fund were organized, the Company may invest in the Affiliated Offshore Fund by making a loan to the Affiliated Offshore Fund, which in turn would use the loan proceeds to acquire additional life insurance policies and other longevity-linked assets consistent with such Affiliated Offshore Fund's investment objectives. The Company may secure its loan with a lien on the Affiliated Offshore Fund's assets, if permitted by the terms of the senior credit facility, but the Company's loan would be subordinated to the senior credit facility in both payment and lien. See *"Certain Risk Factors."* The interest rate, maturity date and payment terms of the Company's loans taken as a whole would be appropriately structured to generate scheduled cash flows sufficient for the Company to make timely payments on the Notes. The potential benefit of such an investment by the Company in an Affiliated Offshore Fund is asset diversification coupled with tax-free cash flows of the borrower available to satisfy the Company's loans. No assurance can be given that an Affiliated Offshore Fund will be

the insurance company. The amount of the purchase price will always be less than the cumulative amount of the remaining periodic payments. The typical structured settlement that may be targeted by the Company will have been previously sold by the original claimants or plaintiffs and the original acquisitions/assignments of these structured settlements will have been court approved, if required under applicable state law. Accordingly, no further court approval would be required under applicable law for the transfer to the Company.

The Company may use independent third parties or affiliates of the Managing Member to source and service structured settlements, annuities and rights to receive cash flows therefrom, and pay them a fee for such services. See *"Conflicts of Interest."*

LEVERAGE

The Company may utilize leverage (in addition to the Notes) for purposes of achieving its objectives. Leverage may be particularly useful in connection with the Company's strategy of holding policies it acquires and funding the premiums on such policies with the objective of eventually collecting the death benefit upon the death of the insured. This strategy can result in enhanced returns to the Company, but is capital intensive. The Company may desire to pursue such opportunities but may not have sufficient capital to do so. In such instances, the Company may utilize leverage by borrowing funds from a lender to pay the premiums on a policy through the death of the insured, and may grant the lender a first priority security interest in the policy (and death benefit proceeds) and/or other assets to secure the loan. This would allow the Company to pursue an opportunity to enhance the Company's returns that it otherwise could not pursue without utilizing leverage. The Notes by their terms would be subordinated both in right of payment and lien to the senior lender's loan and security interest. See *"Certain Risk Factors."*

LONG AND SHORT TERM INVESTMENTS

As part of its strategy, the Company may buy and quickly resell (or "flip") life policies and other longevity-linked assets for a quick profit, or it may hold such assets with a longer time horizon, in each case as determined by the Managing Member in its sole discretion.

Because the Company is newly formed and has not conducted any material operations to date, the Company has not prepared any financial statements and has no material revenues, assets, business, books, records or agreements.

expenses and/or other compensation in connection with their activities related to such Other Funds. These fees will be paid by such Other Funds, in which the Company may be an investor or participant. See *"Conflicts of Interest."*

- Service Fees. The Company may engage affiliates of the Managing Member to service the Company's loans or other assets or to perform other services in connection with the Company's business and pay such affiliates a fee at market rates. For example, if the Company acquires structured settlements or the right to receive cash flows derived from structured settlements, the Company may engage an affiliate of the Managing Member to service the payments from the annuity issuer to the Company.

The Company may engage in various transactions with affiliates of the Managing Member in connection with the Company's business including, without limitation, the following:

- The Company may lend money to affiliates of the Managing Member. To illustrate a scenario in which this may occur, a borrower/insured may default on a premium finance loan made by an affiliate of the Managing Member. The affiliate may need money to fund the premiums on the policy serving as collateral for the defaulted loan until such time as the policy is surrendered to and sold by the affiliate. The Company may lend money to such affiliate to fund such premiums. To illustrate another scenario in which this may occur, an affiliate of the Managing Member may make a premium finance loan to a borrower which by its terms may be funded in installments. The affiliate may need money to fund an installment when it becomes due. In this event, the Company may lend money to such affiliate to fund such installment or, if permitted under the loan documents, may lend money directly to the borrower as a co-lender. If the Company makes any such loans to affiliates of the Managing Member, it will lend money at the same rate of interest as the original interest rate of the defaulted loan and acquire a lien on the policy serving as collateral, which may be subordinate to the lien of the affiliate.
- The Company may borrow money from affiliates of the Managing Member. To illustrate a scenario in which this may occur, a borrower/insured may default on a premium finance loan made by the Company. The Company may need money to fund the premiums on the policy serving as collateral for the defaulted loan until such time as the policy is surrendered to and sold by the Company. The Company may borrow money from such affiliate to fund such premiums. To illustrate another scenario in which this may occur, the Company may make a premium finance loan to a borrower which by its terms may be funded in installments. The Company may need money to fund an installment when it becomes due. In this event, the Company may borrow money from an affiliate of the Managing Member to fund such installment or, if permitted under the loan documents, may permit such affiliate to lend money directly to the borrower as a co-lender. If the Company borrows money from affiliates of the Managing Member, it will borrow at the same rate of interest as the original interest rate of the defaulted loan and grant a lien on the policy serving as collateral which may be superior to the lien of the Company.
- The Company may co-invest with affiliates of the Managing Member. Such investments may include making premium finance loans with such affiliates as co-

MANAGEMENT

MARSHAL SEEMAN, age 51, is the Chief Executive Officer of Para Longevity 2018-5, LLC and Co-Founder of Seeman Holtz and has fourteen years' experience in the origination of life policies and the settlement of life policies. He has been recognized by his peers in both aspects. Between the years 2004-2010, Mr. Seeman has achieved the Top of the Table status within the Million Dollar Round Table. This prestigious achievement identifies the world's top life insurance producers. Mr. Seeman's achievements in the life settlement area have been acknowledged with his appointment to the Advisory Board of a leading life expectancy and actuarial company in the industry. Prior to co-founding Seeman Holtz, Mr. Seeman established various entrepreneurial ventures as Founder and CEO which include the development and eventual sale of one of the largest college catalogue businesses in the country. Mr. Seeman obtained his Bachelor of Science and Business Administration degrees from Washington University in St. Louis in 1988.

ERIC HOLTZ, age 51, is the Executive Vice President and the Secretary of Para Longevity 2018-5, LLC and Co-Founder of Seeman Holtz. Mr. Holtz, along with Mr. Seeman, has been instrumental in developing Seeman Holtz into a leading national insurance and financial services company. Mr. Holtz' key strengths include sales and marketing, product development, wealth transfer strategies and chronic illness planning. Mr. Holtz has conducted thousands of educational workshops and lectures nationwide directed toward the senior and post retirement market, as well as to life insurance agents and financial advisors. For many years Mr. Holtz hosted his own financial radio talk show, "Asset Protection Workshop", which aired on both WSBR AM 740 and WNN AM 1470 in South Florida. Mr. Holtz is a Chartered Financial Consultant, Chartered Advisor for Senior Living and a Certified Member of the Board of Senior Advisors. Prior to co-founding Seeman Holtz, Mr. Holtz was Founder and President of his own construction company. Mr. Holtz earned his Bachelor of Arts degree from Washington University in St. Louis. Mr. Holtz also earned a graduate degree from University of Florida in 1990.

CERTAIN RISK FACTORS

The securities being offered hereby involve a high degree of risk. Prospective Noteholders should carefully consider the following risks and speculative factors inherent in and affecting the business of the Company and this offering, and should consult independent qualified sources of investment and tax advice. This investment is intended only for persons who can afford to lose all of their investment. This Memorandum contains forward-looking statements. Such forward-looking statements are generally accompanied by words such as "intends," "projects," "believes," "anticipates," "plans," "will" and similar terms that convey the uncertainty of future events or outcomes. The forward-looking statements contained herein are subject to certain risks and uncertainties that could cause actual results to differ materially from those reflected in the forward-looking statements. The risks involved include, but are not limited to, the following:

1. The Notes are subject to restrictions on transferability and there is no public market for the Notes; therefore, the Notes should be considered an illiquid investment. The Notes are not registered under the Securities Act or qualified under the blue sky laws of any state or jurisdiction, nor does the Company have any intention to seek registration. The Notes are also subject to significant restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act, and applicable state securities laws, pursuant to registration or exemption therefrom, and except as permitted under the terms of the Notes. There is no market for the Notes and, as a result, Noteholders should assume the Notes are illiquid and the principal will not be paid prior to maturity (subject to extension in accordance with the Note terms).

2. The Company's ability to satisfy the Notes is dependent on the principals of the Managing Member, the loss of any of whom will have a material adverse effect on the Company. The Company's ability to satisfy the Notes will be largely dependent on the Managing Member and its principals, Marshal Seeman and Eric Holtz, who manage the business. The skill of the Managing Member and its officers is critical to the success of the Company. The loss of Messrs. Seeman and/or Holtz's services for any reason may have a material adverse effect on the Company. There is no key person insurance on any of these individuals.

3. The Noteholders have no right to participate in the management of the Company. The Managing Member has the exclusive right, power and authority to manage the Company's business and make all decisions with respect thereto. The securities to be issued in this offering consist of Secured Promissory Notes, the holders of which do not have any right to vote or participate in the management of the Company or in any decisions by the Company.

4. No assurances can be given that the Notes will be satisfied. The Company's ability to satisfy the Notes is subject to the success of its business model and the performance of its assets. Due to the numerous risks described herein, there can be no assurance that the Company will be able to pay any or all of the accrued interest on the principal amount of the Notes, or any or all of the principal amount of the Notes.

5. The Managing Member and its principals may have conflicts of interest, which may not be resolved in favor of the Noteholders. The Managing Member and its principals may have conflicts of interest. No assurances can be given that these conflicts will be resolved in

acquired or made on desirable terms or in a desirable timeframe. Any delays as well as any transaction on less than desirable terms will adversely affect the Company's ability to satisfy the Notes.

11. The Managing Member has sole discretion over how the Note proceeds will be used. Noteholders will have no control or discretion over how the Company utilizes the proceeds from the Notes, and must trust the judgment of the Managing Member and its principals as to how they utilize the offering proceeds. There can be no guarantee or assurances that the Company will utilize the offering proceeds in a manner that produces a cash flow stream sufficient to satisfy the Notes.

12. The Company may experience difficulty protecting its rights, which could have a material adverse effect on its business and its ability to satisfy the Notes. Although the Company believes that the legal documentation to be used by the Company (or, as applicable, the Lender of Record or Other Fund) in connection with its transactions will enable it to enforce its legal remedies against borrowers, sellers and other parties to the transaction, it is possible that the rights of such other parties to the transaction, as well as the rights of other secured lenders, investors, creditors and third parties, may limit the Company's (or, as applicable, the Lender of Record or Other Fund's) practical realization of those benefits, and the adequacy of its security interest and other legal remedies may not be sufficient to recover its investment plus costs of enforcement. Further, although the legal documentation may contain various representations and warranties with respect to the loan or asset, it is possible that material representations and warranties will prove to be false or misleading, either due to error or possibly fraud. Under such circumstances, although claims may be brought by the Company (or, as applicable, the Lender of Record or Other Fund) for damages, litigation is expensive and time consuming and would require the Company to expend resources that otherwise could be devoted to achieving its business objectives. Furthermore, even if a judgment could be obtained, the solvency or ability of the borrower, seller or other party to the transaction to satisfy such judgment cannot be assured. Accordingly, the Company could suffer financial losses which may adversely affect its ability to satisfy the Notes. To the extent the Company engages in transactions with affiliates of the Managing Member, the Noteholders will be relying on the principals of the Managing Member to protect the Company's interests and to enforce its rights in the event of a dispute despite their inherent conflicts of interest, and no assurance can be given that such conflicts will be resolved in favor of the Company.

13. Junior liens on collateral securing premium finance loans made by the Company (or, as applicable, the Lender of Record or Other Fund) as well as on collateral securing loans made by the Company to Other Funds as investments may be subject to control by senior creditors with superior liens and, therefore, in the event of default the collateral may be insufficient to satisfy in full the Company loan. Certain premium finance loans that the Company (or, as applicable, the Lender of Record or Other Fund) makes to borrowers/insureds will be secured on a junior priority basis by the same collateral securing senior secured debt of such borrowers/insured. Further, loans that the Company makes to Other Funds as part of its strategy will likely be secured on a junior priority basis by the same collateral securing senior secured debt of such Other Funds. This is particularly likely in those cases as described above where the Company invests in an Offshore Fund which is significantly levered with senior debt used to fund the premiums on (and secured by a senior lien on) life insurance policies owned by the

engaged in the business of purchasing, acquiring, originating, funding, investing in, holding for investment, selling and/or otherwise disposing of longevity-linked assets, which Other Funds may or may not be affiliated with the Managing Member. Such investments involve additional risks, including the following:

- Risk of default by Other Funds. Any Other Fund in which the Company invests may default on its obligations to the Company, or may default on its obligations to third parties that could lead to defaults and possibly termination of the Other Fund's loans and foreclosure on its secured assets, which could trigger cross-defaults under other agreements and jeopardize the Other Fund's ability to meet its obligations under the debt or equity securities that the Company holds. The ability of an Other Fund to satisfy its obligations to the Company will depend on its operating performance and other factors beyond the control of the Managing Member (assuming it is not an Affiliated Fund). As a result of defaults by an Other Fund, the Company could lose all or a portion of its entire investment in the Other Fund, or the Company may incur expenses to the extent necessary to seek its remedies upon default or to negotiate new terms with a defaulting Other Fund. No assurance can be given that any or all of the Other Funds in which the Company invests will be able to satisfy their obligations to the Company when due. The failure of any Other Fund in which the Company invests to satisfy its obligations to the Company when due could have a material adverse effect on the Company's ability to satisfy the Notes.

- Other Funds in which the Company invests may incur debt that ranks senior to, or equally with, its investments in such Other Funds. Other Funds in which the Company invests may have, or may be permitted to incur, other debt that ranks senior to, or equally with, the debt that the Company acquires. For example, an Other Fund (including an Offshore Fund as described above) which uses leverage to fund premiums on policies that it acquires will likely have secured debt that is senior to the Company's loan to the Other Fund. By their terms, such debt instruments may entitle the holders to receive payments of interest or principal on or before the dates on which the Company is entitled to receive payments with respect to the debt instruments that it holds. Also, in the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of an Other Fund, holders of debt instruments ranking senior to the Company's debt instruments would typically be entitled to receive payment in full before the Company receives any payments. After repaying such senior creditors, such Other Fund may not have any remaining assets to use for repaying its obligation to the Company. In the case of debt ranking equally with debt instruments that the Company holds, it would have to share on an equal basis any payments with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the Other Fund. No assurance can be given that any Other Fund in which the Company invests will have sufficient assets to satisfy its obligations to the Company in whole or in part after all senior debt has been repaid, or that the Company would receive any payment in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the Other Fund. The failure of any Other Fund in which the Company invests to satisfy its obligations to the Company when due could have a material adverse effect on the Company's ability to satisfy the Notes.

- The Company may not have the funds to make additional investments in Other Funds in which it invests. The Company may not have the funds to make additional investments in Other Funds in which it invests. After its initial investment in an Other Fund, the Company may be called upon from time to time to provide additional funds to such Other Fund or have the opportunity to increase its investment through the purchase of additional interests. There is no assurance that the Company will make, or will have sufficient funds to make, follow-on investments. Any decisions not to make a follow-on investment or any inability on the Company's part to make such an investment may have a negative impact on an Other Fund in need of such an investment, may result in a missed opportunity for the Company to increase its participation in a successful business, or may reduce the expected yield on the investment, any of which will have an adverse effect on the Company's ability to satisfy the Notes.

16. The Company (or Other Funds in which it may invest) may acquire policies and not have sufficient capital to fund the premium payments, which may result in defaults and/or financial losses. The Company (or Other Funds in which the Company may invest) may acquire life insurance policies and not have sufficient capital to fund the premium payments. This risk is particularly heightened under circumstances where the Company (or Other Fund, as applicable) acquires a life insurance policy serving as collateral for a premium finance loan upon the borrower's default and surrender of the policy to the Company (or Other Fund, as applicable) and the Company (or Other Fund, as applicable) cannot sell the policy at or promptly following loan maturity. This risk is also particularly heightened under circumstances where the Company (or Other Fund, as applicable) purchases a policy as part of its strategy but due to unanticipated circumstances (including the survival of the insured beyond his or her life expectancy) the Company (or Other Fund, as applicable) is unable to continue funding the premiums. The Company's (or, as applicable, Other Fund's) failure for any reason to continue funding premium payments on any life insurance policy it acquires may cause a default under the policy or require it to dispose of the policy at a loss, which would have a material adverse effect on the Company's performance or profitability and ability to satisfy the Notes.

17. The Company (and Other Funds in which the Company may invest) relies on third party pricing models and assumptions regarding life expectancies and other matters in valuing policies which, if inaccurate or changed, could adversely affect the Company's ability to satisfy the Notes. The Company (or Other Funds in which the Company may invest) relies on pricing and premium forecasting models developed by third parties that specialize in the valuation of policies, as well as assumptions regarding life expectancies, future mortality rates and anticipated returns. Any changes to or inaccuracies in these pricing models or assumptions may impact the value of the Company's assets and, in turn, adversely affect the Company's ability to satisfy the Notes.

18. The Company will be substantially capitalized with debt securities and, therefore, creditors of the Company could claim that the Notes are equity securities which could have adverse consequences to the Noteholders. The Company will be, upon issuance of the Notes, substantially capitalized with debt securities. Accordingly, creditors of the Company could potentially seek to attack the Notes (or the secured status thereof) based on legal and equitable theories traditionally employed by creditors of companies with a high concentration of debt. It is, therefore, possible that all or a portion of the Notes could be re-characterized as equity securities

23. Noteholders will not have the ability to enforce the terms of the Note individually. The Notes will be secured by a security interest in the Company's assets pursuant to the Security Agreement attached hereto as Exhibit "D". The security interest will be managed by a Collateral Agent that will take direction from the Noteholders in accordance with the Collateral Agency Agreement attached hereto as Exhibit "E". The Collateral Agency Agreement provides, among other things, that no Noteholder may alter the terms of the Notes or enforce the Notes against the Company individually. All such actions and similar actions are reserved for voting among the Noteholders and/or delegated to the Collateral Agent. The Security Agreement contains a cross-default provision such that a default by the Company on one Note will constitute a default on all Notes. Noteholders are dependent upon the efforts of the Collateral Agent to enforce their rights under the Notes and foreclose on the collateral and prosecute related claims. The Collateral Agent can only be removed by a supermajority vote of the Noteholders if it has been found to have engaged in willful misconduct. To the extent the Collateral Agency Agreement requires the vote or consent of a majority of the Noteholders or less than all of the Noteholders, such consent, if not obtained, could have an adverse affect on the Noteholders or, if obtained, could result in action being taken by the Collateral Agent which the non-consenting Noteholders find objectionable. Finally, if the security interests in the collateral are not perfected, third party claims may successfully attach to the collateral, thereby adversely affecting the Noteholders. Noteholders should carefully review the Collateral Agency Agreement and the Security Agreement.

24. There are risks relating to the security interest in the Company's assets serving as collateral to secure the Notes. It is anticipated that the Collateral Agent's security interest in the Company's assets serving as collateral to secure payment on the Notes will be perfected solely through the filing of a UCC-1 financing statement. However, the perfection of a security interest in certain assets of the Company may require a method other than the filing of a UCC-1 financing statement, such as through possession or control of such assets or through filings of other documents with other governmental agencies. Any such assets in which the Company is granting a security interest to the Collateral Agent which cannot be perfected by filing a UCC-1 financing statement will not be perfected. If the security interest in the collateral is not perfected for this or any other reason (including the Collateral Agent's failure to properly perfect its security interest), third party claims may successfully attach to the collateral and have priority over the Collateral Agent's security interest in such collateral, thereby adversely affecting the Noteholders' security for the Company's obligation to make payments on the Notes. Further, under the terms of the Collateral Agency Agreement and the Security Agreement, the Company will have the right to use, dispose of and encumber its assets in the ordinary course of its business prior to an event of default under the Notes, free from any encumbrance of the security interest granted to the Collateral Agent in favor of the Noteholders.

25. If a successor Collateral Agent is required to replace an existing Collateral Agent due to resignation or removal, there may be additional fees and costs as well as modified terms to the Collateral Agency Agreement. If the Collateral Agent resigns or is removed; the Company will be required to find a successor to takes its place. In such an event, a successor Collateral Agent may require other or additional fees or terms to those set forth in the existing Collateral Agency Agreement. Accordingly, there is a risk that the Collateral Agency Agreement may have to be modified if the Collateral Agent resigns or is removed in order to accommodate its

Member and cannot be estimated or predicted. If the Company experiences unanticipated costs or liabilities, including as a result of future litigation, the inability to liquidate assets on favorable terms or otherwise, then this could have a material adverse effect on the Company's results of operation and financial condition and ability to satisfy the Notes. In addition, the Company may be required to establish reserves from time to time to cover known and unknown liabilities that may arise. Such reserves will be determined by the Managing Member in its sole and absolute discretion. These reserves may be established out of any Company funds as determined by the Managing Member, including out of the offering proceeds (which will reduce amounts available to make loans and acquire assets) and out of revenues derived from operations and asset (which will reduce amounts available to make payments on the Notes). Without limiting the foregoing, if the Company is unable to liquidate all of its assets prior to the maturity of the Notes and must place them in a liquidating trust, the Company will be required to set aside due and adequate reserves at that time to cover the expenses of holding, maintaining and disposing of those assets while in the liquidating trust. Any such costs and reserves will reduce amounts otherwise available for application toward satisfaction of the Notes.

31. If Notes are prepaid, Noteholders may not be able to find an alternative investment at the same yields. The Company may prepay all or a portion of the outstanding amounts due under the Notes at any time without prepayment penalty or premium. If the Notes are prepaid, Noteholders expecting a fixed return at the applicable Note rate for the full 5-year term may not be able to find an alternative investment at the same or higher yields than the debt that was repaid, particularly in a declining interest rate environment.

32. Notes with later maturity dates are subject to the risk of less diversified, liquid or valuable collateral. Noteholders holding Notes with later maturity dates are subject to the risk that collateral securing their Notes will be liquidated to satisfy or prepay Notes with earlier maturity dates. Such Noteholders holding Notes with later maturity dates may be left with a smaller and less diversified pool of collateral securing their Notes, or with collateral that is illiquid or less valuable compared to the collateral that has been liquidated to satisfy or prepay Notes with earlier maturity dates.

33. Changes in economic and market conditions may adversely effect the Company's business. Changes in economic and market conditions including inflation, industry conditions, supply and demand variables, political and regulatory events, tax laws, and a number of other variables beyond the Managing Member's control may have a material adverse effect on the Company's business and prospects and, consequently, on the Company's ability to satisfy the Notes.

34. Defaults by borrowers and other payees on the Company's loans and assets may cause the Company to not be able to fully satisfy the Notes. The Company expects to generate revenues from its asset portfolio primarily from (a) interest payments and principal repayments on its premium finance loans, (b) proceeds from the sale or other disposition of, or the receipt of death benefits from, life insurance policies or other longevity-linked assets that it acquires, (c) payments of interest and principal on any loans it makes to, and distributions of cash in respect of any equity investments it makes in, Other Funds and (d) cash flows and revenue streams from any structured settlements or annuities (or rights to receive cash flows derived therefrom) that it acquires. The Company intends to satisfy the Notes from the net revenues derived from these

cancellation of the policy. In the case where the policy serves as collateral for a premium finance loan made by the Company, the amount returned by the insurance company will be paid to the Company in partial satisfaction of the loan; however, it will not cover the full amount of outstanding principal (i.e., amounts lent to cover transaction costs and origination fees in excess of premiums) or any accrued interest. In such an event, although the Company may have recourse to a partial guarantee, no assurance can be given that the Company will pursue such remedy and the Company may suffer a loss in such transaction, which could have an adverse effect on the ability of the Company to satisfy the Notes.

39. The Company may rely on servicing companies to service its loans and assets. The Company may engage servicing companies to service its loans and assets. For example, if the Company acquires structured settlements or cash flows derived therefrom, it may engage a servicer to collect payments from the annuity issuer and remit such payments to the Company. The servicing company could become insolvent or otherwise experience financial difficulties or go out of business, thereby adversely affecting the Company's ability to collect payment on its loans and assets, which would have a material adverse effect on the Company and its ability to satisfy the Notes.

40. There are risks associated with the Company's utilization of leverage. The Company does not currently have any leverage facility in place (other than the Notes). However, the Company may utilize leverage in addition to the Notes sold in this offering ("Senior Debt") for purposes of achieving its objectives, including to fund premiums on policies it acquires with the objective of holding the policies until it collects the death benefits upon the death of the insureds. Pursuant to the terms of the Notes, the Senior Debt will be senior in payment and in lien to the Notes. It is anticipated that debt service payments due on any Senior Debt will be paid primarily out of cash flow generated from the Company's assets. No assurance can be given that the amount of the Company's cash flow or other available resources will be sufficient to make the debt service payments on any Senior Debt that may be incurred by the Company. In addition, increases in the interest rate on any Senior Debt that may be incurred by the Company that bears interest at a variable rate could make it more difficult and/or expensive for the Company to meet its debt service requirements. In addition, the Company's Senior Debt lender would likely require it to secure repayment of any Senior Debt with all or a portion of the Company's assets, or at least the specific assets in respect of which it provides financing, which assets currently serve as collateral to secure the Notes. If the Company does not have financial resources available to satisfy the Senior Debt prior to the maturity date, it may be required to sell its assets to do so which would reduce the collateral securing the Notes. There can be no assurance that any of the Company's assets can be successfully sold to pay off any Senior Debt incurred by it. If the Company fails to make payments on any secured Senior Debt loan made to it or otherwise defaults under the applicable loan documents, the secured Senior Debt lender generally would have the right to execute and foreclose its security interest in the collateral. Because the Notes will be subordinated to such Senior Debt in payment and in lien, the claims of such Senior Debt lender would take priority over the claims of Noteholders, and no assurance can be given that the Company will have sufficient assets to satisfy the Notes after satisfaction of such Senior Debt lender's claims. In that case, the Company could lose all or a portion of its assets, which will have a material adverse effect on the Company's ability to satisfy the Notes.

45. Actual results of the Company will vary from any pro forma financial information contained in this Memorandum or elsewhere. Any pro forma financial information, if any, discussed in or accompanying this Memorandum are "forward-looking statements" that involve significant risk and uncertainty. All materials or documents supplied to prospective Noteholders by the Company, the Managing Member and their respective affiliates, including any such pro forma financial information, should be considered speculative and are qualified in their entirety by the assumptions, information and risks disclosed in this Memorandum. The assumptions and facts upon which such financial information, if any, is based are subject to variations that may arise as future events actually occur and to a complex series of events, many of which are outside the control of the Company, the Managing Member and their respective affiliates. Such pro forma financial information, to the extent any is provided, is based on assumptions made by the Managing Member regarding future events. There is no assurance that actual events will correspond with these assumptions. Actual results may differ significantly.

CONFLICTS OF INTEREST

1. The Managing Member's financial interest in the Company as well as fees payable to affiliates in connection with the Company's activities may create an incentive for the Company to engage in transactions that are riskier or not in the best interest of the Noteholders. Noteholders are entirely dependent upon the Company's Managing Member to manage the Company's day-to-day operations as well as the selection and disposition of loans and assets. The Managing Member's financial interest in the Company is dependent on revenues and gains generated by the Company's asset portfolio, and specifically that such revenues and gains exceed expenses and the amounts necessary to satisfy the Notes. Therefore, the Managing Member's interest in the Company may create an incentive for the Managing Member to cause the Company to acquire assets or make loans that are riskier than those the Managing Member would acquire or make in the absence of such interest or otherwise to acquire assets or make loans not in the best interest of the Noteholders. This is particularly important due to the fact that its affiliates will be receiving fees, commissions and other compensation with respect to the Company's activities whether or not the Notes are satisfied.

2. The Managing Member's principals may form or control competing funds which may create conflicts of interest in allocating loan, asset acquisition and investment opportunities among such funds. Messrs. Seeman and Holtz manage and/or own the Existing Affiliate Funds and are not restricted from forming, investing in, managing, controlling or otherwise participating in other funds or businesses in the future which have objectives substantially similar to those of the Company. Conflicts of interest may arise in connection with the promotion of the Company and such other funds to prospective investors (to the extent their offering periods coincide) as well as the selection of assets and loans for the Company and such other funds or the allocation of such assets and loans among the Company and such other funds. The Noteholders will be relying upon the Managing Member to act, in all instances, in the best interests of the Noteholders and to promote the Company to prospective investors and to select the best assets and loans for the Company, despite their interest in and relationships with other funds and the inherent conflicts of interest arising therefrom.

3. The Managing Member's principals may have conflicts of interest in allocating their time between the Company's business and their other activities. Principals of the Managing

despite their inherent conflicts of interest, and no assurance can be given that such conflicts will be resolved in favor of the Company and the Noteholders.

7. The Managing Member's ability to borrow additional funds increases risk to Noteholders. The Managing Member may cause the Company to borrow funds from third parties or Affiliates to increase the number or aggregate amount of loans and assets the Company acquires, in order to increase the financial return to the Managing Member (assuming all Notes are satisfied). However, this use of leverage, while possibly allowing for greater returns to the Managing Member, may increase the risk to Noteholders because of, among other things, their subordinated position in the collateral. Accordingly, the incentive to increase leverage may conflict with the interests of Noteholders and the Noteholders must therefore rely upon the Managing Member's judgment to prudently manage the use of such leverage in a way to minimize risk to Noteholders.

CAUTIONARY STATEMENTS CONCERNING TAX CONSEQUENCES

THE COMPANY ADVISES ALL PROSPECTIVE INVESTORS TO CONSULT THEIR OWN TAX ADVISORS, WITH SPECIFIC REFERENCE TO THEIR OWN TAX SITUATION AND THE POTENTIAL EFFECT OF APPLICABLE LAWS AND REGULATIONS. THIS MEMORANDUM CONTAINS NO ANALYSIS OF, AND THE COMPANY PROVIDES NO ADVICE CONCERNING, ANY OF THE POTENTIAL TAX CONSIDERATIONS AND CONSEQUENCES RELATING TO THE PURCHASE, OWNERSHIP OR DISPOSITION OF THE NOTES. IN ADDITION, THE COMPANY HAS NOT OBTAINED, NOR DOES THE COMPANY INTEND TO OBTAIN, A RULING FROM THE IRS OR AN OPINION OF COUNSEL WITH RESPECT TO ANY TAX CONSEQUENCES OF PURCHASING, OWNING OR DISPOSING OF THE NOTES. NEITHER THE COMPANY NOR THE MANAGING MEMBER, OR COUNSEL OR ANY OTHER PROFESSIONAL ADVISORS ENGAGED BY THE COMPANY, WILL ASSUME RESPONSIBILITY FOR THE TAX CONSEQUENCES OF THIS TRANSACTION TO A NOTEHOLDER. IF YOU ARE CONSIDERING THE PURCHASE OF A NOTE, YOU SHOULD CONSULT YOUR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO YOU OF ACQUIRING, HOLDING OR DISPOSING OF THE NOTES, INCLUDING THE EFFECT AND APPLICABILITY OF FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS.