

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. D/B/A/ PAR FUNDING, ET
AL.,

Defendants,

and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

CASE NO.: 20-CIV-81205-RAR

**JOHN GISSAS AND RETIREMENT EVOLUTION DEFENDANTS’
MEMORANDUM TO THE COURT REGARDING SCOPE OF THE RECEIVERSHIP**

Defendants John Gissas, Retirement Evolution Group, LLC (“REG”), Retirement Evolution Income Fund LLC f/k/a RE Income Fund LLC, and RE Income Fund 2, LLC (collectively, the “RE Defendants”), by and through their undersigned counsel, submit this memorandum to the Court regarding the scope of the receivership and state as follows:

Mr. Gissas has not sent any investor funds to Complete Business Solutions Group d/b/a Par Funding (“Par”) since February 2020 and has not offered or sold any Par investments since March 2020. Yet, in July 2020 the SEC sought *ex parte*, and obtained on an emergency basis, a receivership and asset freeze over the entirety of Mr. Gissas’ business, which includes clients that never have invested in Par, locked him out of his office, and prevented him from servicing his clients and investments unrelated to Par.¹

¹ The Court granted the Receiver power over all Receivership Entities, which are defined to include the entire business

This is all based on the SEC's charges against Mr. Gissas, who is not included in Counts 1 through 4 (the intentional fraud claims) but only in (1) Counts 5 and 6, negligently failing to disclose information to investors about the principals of Par; and (2) Count 7, offering and selling unregistered securities in Par without a valid exemption, both of which Mr. Gissas vigorously contests. Unlike the other Defendants, the SEC does not allege, nor could it, that Mr. Gissas committed any intentional fraud, misappropriated client funds or other assets, received or moved money improperly, or otherwise engaged in any intentional wrongdoing.

By the SEC's own allegations, Mr. Gissas is not alleged to have engaged in any intentional fraud in connection with Par investments. And because Par is frozen, and Mr. Gissas is not selling (and has not sold, for months) any new Par investments, it is impossible for Mr. Gissas to continue any of the conduct alleged in the SEC's Complaint. Therefore, even accepting the SEC's allegations as true, there is no factual basis to shut down Mr. Gissas' business and prevent him from accessing his office to service his other clients and investments. Indeed, it is not necessary to accomplish the SEC's and the Receiver's stated goals of making Par investors whole. Mr. Gissas is willing to cooperate, while fighting these allegations, to minimize the harm to his clients, his business, and himself.

I. Mr. Gissas and His Business, Retirement Evolution Group

John Gissas is a 70 year-old retiree who lives in the Villages Retirement Community in Florida with his wife of 46 years. He has become embroiled in this case as a result of his limited affiliation with Par, as a piece of his part-time work for REG, which he founded in April 2018 to find and market investments primarily to retirees, mostly now his neighbors in the Villages,

of the RE Defendants, and vested the Receiver to have the "exclusive power, duty, and authority to ... manage the Receivership Entities' business affairs, funds, assets ... and any other property." ECF No. 36 at 2-3. This includes approximately \$12 million the SEC alleges was invested in Par through the RE funds but, as explained below, the RE Defendants do not hold those assets, except for approximately \$1.3 million received as interest payments from Par and held.

friends, and family. Mr. Gissas has spent his life building his reputation, which is the lifeblood of his business. He has a long and unblemished record of offering various investment vehicles for sale to his clients and never has been the subject of an SEC investigation or enforcement action. Mr. Gissas lives simply, in a modest house and drives a used car. He relies on his Social Security and his part-time earnings from REG, which are his primary sources of income. For the short duration that Mr. Gissas was involved with Par, he drew a modest salary, which was for his work not only for Par but for all of REG's other investments too. Mr. Gissas believed so strongly in Par that he put his own money into it, investing over \$500,000 of his and his family members' money in Par-related funds, including over \$286,000 of his own money and approximately \$246,000 of his family members' money.

REG operates five investment funds, only two of which were adding investors before the Receiver took them over, for the benefit of 218 clients. Within those funds, REG manages approximately three different investments. These funds and investments require providing monthly interest payments, managing, servicing and paying necessary premiums to life insurance carriers, and providing updates to the commercial property, among other necessary maintenance.

Yet, this case is about Par only. At present (and as best Mr. Gissas can tell without access to his office), REG has approximately \$4.46 million in all of its bank accounts, which have all been frozen. At most, approximately \$1.3 million of that relates in any way to Par, which means the Receiver has frozen \$3.1 million that is not related in any way to Par.

The SEC argues that the Receiver and asset freeze are necessary to prevent Mr. Gissas from continuing the alleged securities law violations. Yet, Mr. Gissas has not sent any money to Par since February 2020 and has not offered or sold any Par investments since March 2020 and so it would be impossible for that to happen even without the Receiver or asset freeze. And there is no risk Mr. Gissas will attempt to move or hide Par-related assets for the simple reason that he does

not have any, other than the \$1.3 million related to Par that he is willing to provide to the Receiver.

II. REG's Involvement With Par

a. *Mr. Gissas Is Introduced to Par*

Around the time Mr. Gissas founded REG, Dean Vagnozzi, whom he had known for several years, introduced him to Par. Mr. Gissas did extensive due diligence on Par, including through internet searches and visiting its offices in Philadelphia along with his accountant, who were both very impressed by the professional operation. Indeed, Mr. Gissas was so impressed with the Par opportunity, he invested over \$500,000 of his own and his family's money in Par.

b. *Only Three of REG's Funds Invested In Par From May 2018 to February 2020*

Mr. Gissas formed REG in 2018 to provide clients with investment opportunities, including in Retirement Evolution Income Fund, LLC f/k/a RE Income Fund LLC ("Income Fund 1"), among others. In May 2018, Income Fund 1 made an exempt offering into Par of promissory notes under Rule 506(b), as reflected in a Form D filed through counsel with the SEC in June 2019, totaling approximately \$5.4 million from 62 investors, according to the SEC's Complaint. Investors in this offering were people Mr. Gissas already knew who he had established relationships with and were repeat clients or were referrals from other acquaintances, or were investors whose money was "rolled over" into that Fund from another fund. Mr. Gissas did not solicit any of the investors in this offering.

In 2019, Mr. Gissas formed RE Income Fund 2, LLC ("Income Fund 2"). Income Fund 2 made an exempt offering for Par of promissory notes under Rule 506(b), as reflected in a Form D filed with the assistance of counsel in August 2019. The Complaint alleges this offering generated \$150,000 for Par. Mr. Gissas also offered promissory notes exempt from registration under Rule 506(c) through Retirement Evolution Insured Income Fund, LLC ("Insured Income Fund"), which

filed a Form D with the assistance of counsel in March 2019. This fund is not mentioned in the Complaint; it offered investments in Par in loans that were insured against default.

c. *How The Par Investment Worked*

A client of Mr. Gissas that selected to invest in Par signs a subscription agreement, and provides the funds to REG. REG maintains one management account into which client funds are deposited, for Par and other investments. For investors that deposit funds with REG for Par investments, that money is then transferred to Par by wire transfer. All Par investments were sent to Par's bank account. Certain clients invested with REG through their 401(k) or IRAs. Due to various rules and regulations, those investors would deposit their money with self-directed IRA custodians that approve the investment and add it to their platform, including Camaplan and NuView, and then transfer the money from the individual's retirement account to the applicable RE fund and then the fund wires the money to Par's account.

All monies received by REG for investors in connection with the Par investments (including those made through qualified IRA custodians, such as Camaplan or NuView) were transferred by wire transfer from Par's account to REG's managerial account. Generally, Par would pay interest payments to REG twice per month, around the 10th and 30th of each month. REG clients invested in Par would either: (1) request that their money be distributed on a monthly basis as Par makes interest payments; or, (2) request that REG distribute money to them on an annual basis or reinvest the interest payments back into Par (or to some other investment), for tax and other reasons. Thus, the \$1.3 million pertaining to Par in REG's bank accounts is being held for those investors. Mr. Gissas fully intends to provide that money to those investors, but does not dispute or oppose transferring this amount to the Receivership, if necessary.

III. A Receivership is Not Necessary As To the RE Defendants But, At a Minimum, the Receiver Should Be Limited to Controlling Par-Related Assets

As explained above, not all of Mr. Gissas' clients are invested in the three RE funds or in Par. Yet, the Receiver has taken over REG's offices and has prohibited access to all of REG's files, bank accounts, emails and other electronic files. This lockout has made it impossible for Mr. Gissas to conduct his business for his clients, including for those investments that are entirely unrelated to Par and may be at risk of default. For instance, if the life insurance policies in the RE Defendants' life portfolio are not managed and premiums are not paid timely, the policies will lapse and millions of dollars of death benefits will be lost. Also, commercial properties are at risk of default, which would cause investors to lose monthly and annual payments, meaning some of Mr. Gissas' clients, most of whom are retirees, will not receive monthly checks they depend on.

The Receiver and the all-encompassing asset freeze are not necessary as to the RE Defendants. This is because it is impossible for Mr. Gissas to continue to engage in the alleged conduct identified in the Complaint, which all relates to offering and selling Par investments—something he is not doing and has not attempted to do for months. Further, there is no likelihood that Mr. Gissas could misappropriate, dissipate, or otherwise lose any Par-related assets because he does not have any in his possession, other than the \$1.3 million in bank accounts that is related to Par, which Mr. Gissas is in the process of disclosing to the Receiver.

For every day the Receivership has total control over the RE Defendants' assets and they remain frozen, Mr. Gissas' clients who are not invested in Par are being harmed. Further, Mr. Gissas is suffering irreparable harm to his reputation and his business. He has built his name and reputation over his lifetime and it is being tarnished to his clients and neighbors for alleged wrong that he had no involvement in. And, Mr. Gissas is being forced to commit considerable legal fees to litigate, without access to his business accounts to pay those fees.

Thus, Mr. Gissas respectfully requests that the RE Defendants be removed as Receivership Entities, or alternatively, that the Receivership be modified so it impacts only those assets that are directly traceable to Par, which is the \$1.3 million that REG has received back from Par and nothing else. Mr. Gissas will transfer those funds to the Receiver, if necessary. The \$3.1 million in the bank accounts that have been frozen that is unrelated to Par should be freed up and Mr. Gissas should be given access to that money and to his office and non-Par related files so that he can continue to operate his business and service his clients who are not invested in Par. To assist the Receiver in this process, Mr. Gissas is willing to provide an accounting (or other reports, as needed) to the Receiver and allow for only the \$1.3 million in the REG accounts attributable to Par to remain frozen and kept under the Receiver's control.

Dated: August 4, 2020.

Respectfully submitted,

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Counsel for Defendants John Gissas, Retirement Evolution Group, LLC, Retirement Evolution Income Fund, LLC f/k/a RE Income Fund LLC, and RE Income Fund 2, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 4, 2020, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Allison Kernisky