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United States District Court
Attn: Honorable Chad F. Kenney
601 Market Street
Philadelphia, PA 19106

19106-179699

TRULINCS 02555506 - CAMMARATA, JOSEPH ANTHONY - Unit: PHL-F-S

FROM: 02555506
TO:
SUBJECT: Motion for Pleadings Pt 1
DATE: 08/28/2022 09:11:31 PM

SECURITIES AND EXCHANGE :
COMMISSION :
Plaintiff : Civil Complaint 2:21-cv-04845
V. :
JOSEPH CAMMARATA :
Defendant:

MOTION FOR RELIEF FROM STAY FOR THE LIMITED PURPOSE OF HEARING A MOTION FOR JUDGEMENT ON PLEADINGS UNDER FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6) AND/OR 12(c)

I, Joseph Cammarata, come before this Court as a pro-se Defendant in the above captioned civil complaint No. 2:21-cv-04845 (the "Complaint"). As this Court is aware, I am and have been incarcerated for over 7 months, pending the trial of a criminal case, U.S. v Cammarata, No. 21-cr-427 (E.D. Pa) ("Criminal Action"). Due to the SEC's civil action, I have no available assets to be represented by counsel and being detained because of the criminal action, I have no way to officially access legal documents, discovery, previous dockets or even my own files for defense. While I will not repeat my accusations of government misconduct on both the civil and criminal actions, it has already been sufficiently demonstrated that I have been prejudiced from a proper defense and a fair trial in both actions, due to wrongful incarceration, 9 month delayed access to criminal legal counsel, discovery, access to attorneys, my own files and trial preparation. In light of the devastating damages to my life, Constitutional rights and prejudice I have suffered as a result of the Complaint, I respectfully request the Court to temporarily lift the stay for the limited purpose of hearing my motion for the judgement on the pleadings under FRCP 12(b)(6) and/or 12(c).

1. BACKGROUND

I was arrested on November 3, 2021 for a weak and evidentiary deficient indictment that I allege was misrepresented and wrongfully obtained by the ex parte Grand Jury in the Criminal Action. The very next day, on November 4th, the SEC (coincidentally) filed a civil complaint, No. 2:21-cv-04845 and an accompanying ex parte injunction, which I did not consent to. The Complaint allowed the SEC to issue an overreaching an exceedingly broad freeze of every penny of my assets, which exceeded $71M and was my entire estate and life's work. I have been on the record, representing the devastating damage that said injunction has caused to my life, my family and 20 other families I had employed that needed to be terminated. I have stated and this Court has seen, and will continue to see, the way it has caused my civil and Constitutional rights to be violated and prejudice me in both of these actions from the ability to a fair trial as a result of malicious prosecution, wrongful incarceration and prosecutorial misconduct.

Not withstanding the motives or actions of the Government thus far, I come with an independent motion for this Court's consideration. I apologize to the Court for my previous unconventional "motions", which Mr. Donnelly may have been right in calling "slapdash motions". However, I am in the fight for my life, have been wrongfully accused of crimes, spent over 1% of my life imprisoned and denied Constitutional and civil rights in trying to fight as best I can, by myself, without any financial or legal resources. I have tried to improve and take a lot of emotion and anger out of this motion. I have done significant research on the limited law library here in jail regarding this Complaint. I remind the SEC and the Court that I have over 31 years experience with the SEC rules and regulations and never had a single complaint, infraction of any rule or even accused of any violation. I ask this Court for its patience with my reasonable request to have a judgement on the pleadings, as I am doing the best I can under the circumstances and hope that the Court understands.

2. CLAIMS FAILED TO BE STATED

The SEC's complaint includes two claims for relief:
(1) Violation of Section 10(b) of the Exchange Act and Rule 10b-5

Section 10(b) states: "it shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any NATIONAL STOCK EXCHANGE...to use or employ, IN CONNECT connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of

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such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."
and;
(2) Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5
Rule 10b-5 states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or any facility of any national securities exchange,
(a) To employ any device, scheme, or artifice to defraud,
(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

3. SUMMARY:

The SEC Civil Complaint, No. 2:21-cv-04845 (the "Complaint"), within its four corners, describes generally, with no detail of an actual damage amount, fails to identify the actual fraudulent claims, nor does it identify any victims. More importantly, for a judgement on the pleadings, the SEC's Complaint fails to state a claim.

AlphaPlus was a debt collection company that the Complaint accurately describes in Section 5 "AlphaPlus purports to be a 'claims aggregator', which, for a fee, submits claims to distribution fund administrators on behalf of clients, such as hedge funds and family offices, which are allegedly victims in security class actions or SEC enforcement actions by a nature of their purchase and sales of the underlying securities." As clearly identified by the Complaint's own language, the claims [not securities transactions] were submitted to distribution fund administrators [not national securities exchanges] on behalf of clients [who were the ones that transacted the purchase or sale of securities, which is why the client was eligible for the settlement payment for an earlier violation of 10b or 10(b)-5]...which are alleged victims in securities class actions by nature of their [the client's purchase or sale of the security years previous, which further means the filing of claims cannot coincide with the decision or act of the purchase or sale]. Purchases and sales of the underlying securities [these are the only transactions that are "in connection with the purchase or sale of any security"].

I am filing this motion to represent to the Court that the SEC's complaint fails to state a claim due to the two "claims for relief" require that the alleged fraudulent activity be "in connection with the purchase or sale of any security". Even if the factual allegations of fraud are true, it is impossible for AlphaPlus' making false claims to a settlement fund to be in any way "in connection with a purchase or sale of any security" as held by many Courts.

The purchase and sale of securities is what caused the initial class action and resulting class action settlement to occur. The public company (the Stock or Security) committed some 10(b) violation and as a result, settled to a financial amount to reimburse smething back the victims that actually traded the security (in connection with the purchase or sale of any security). The initial transactions/trades, all of which, occurred many years before AlphaPlus would have even filed a claim, is what caused the securities class action settlement.

4. COMPLAINT EXTRACTS

These are relevant sections of the Complaint that further evidence its failure to state a claim for relief within the four corners of the Complaint itself.

Section 1 states that "starting in approximately 2014, Defendants orchestrated a scheme to steal money FROM DISTRIBUTION FIRMS ESTABLISHED FOR THE BENEFIT OF SECURITIES FRAUD VICTIMS."

---This statement is clear that any alleged fraudulent activity involved settlement distribution funds, not national security exchanges, and filed claims, not engaged in the purchase or sale of securities. Any security transactions were executed by the security fraud victim and was transacted years before AlphaPlus even filed a claim and can in no way even coincide with the securities transactions and be "in connection" with them as defined herein.

Section 3 states that "Defendants defrauded THESE DISTRIBUTION FUNDS (AND THEIR RIGHTFUL BENEFICIARIES) BY SUBMITTING FALSE CLAIMS AND FALSIFIED SUPPORTING DOCUMENTS TO THE DISTRIBUTION FUND ADMINISTRATORS in the names of at least 3 entities that DID NOT TRADE IN THE UNDERLYING SECURITIES, and thus were ineligible to recover."

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---Throughout the Complaint, there is not a single reference to AlphaPlus having any involvement with the purchase or sale of security as required by 10b and 10(b)-5. Most interestingly, this section states that the alleged (sham) entities, "did not trade in the underlying securities". Thereby, also making "in connection with the purchase or sale of any security" impossible.

Section 6 states "Defendants committed many deceptive acts in furtherance of their scheme, such as claiming losses for SECURITIES TRADES THAT WERE NEVER MADE; fabricating brokerage records, trading records and other securities REPORTS to submit in support of their fraudulent CLAIMS..."

---This statement, by the SEC's own admission, again states that securities trades were never made and only talks about brokerage and trading records and claims, of which are a result from trades executed several years previously and again are in no way "in connection" with the securities as well documented by the case law.

Section 9 states "by engaging in the conduct described in this Complaint, Defendants violated, directly or indirectly, and unless enjoined will continue to violate, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]. In addition, by the conduct described herein, cammarata, Cohen, and Puntuieri have also aided and abetted AlphaPlus' violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and, unless restrained and enjoined by this Court, will continue to aid and abet violations of that statute and rule.

---Based on the definition of the 10b and 10(b)-5 rules, along with the interpretations of the Supreme Court, the Third Circuit, and other Courts, this statement and accusation can also not be true and fails to state a proper claim for relief in the Complaint.

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FROM: 02555506
TO:
SUBJECT: Motion for Pleadings Pt 2
DATE: 08/28/2022 09:12:39 PM

5. RELEVANT CASE LAW

There is an abundance of case law on the interpretation of "in connection with the purchase and sale of any security" and in all of it, there is consistently no way possible for any alleged fraud cited in the SEC's complaint can possibly be construed to be transacting in "securities". Most notably, and relevant to this topic, come from the Supreme Court and the Third Circuit.

Chadbourne & Park LLP v. Troice, 571 U.S. 377, 377 (2014)

LAWYERS EDITION HEADNOTES:

FRAUD -- DEFINITION OF "SECURITY"
Headnote: 4
For purposes of 15 US.C.S. 78j(b) and 17 C.F.R. 240.10b-5 (2013), the Securities Exchange Act defines "security" broadly to include not just things traded on national exchanges, but also any note, stock, treasury stock security future, security-based swap, bond, debenture or certificate of deposit for a security. 15 U.S.C.S. 78c(a)(10). (Breyer, J. joined by Roberts, Ch.J., and Scalia, Thomas, Ginsburg, Sotomayor, and Kagan, JJ.)

FRAUD -- COVERED SECURITY
Headnote: 8
The Securities Litigation Uniform Standards Act, 15 U.S.C.S. 78bb(f)(1)(A),, defines "covered security" narrowly. It is a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933. 15 US.C.S. 78bb(f)(5)(E). And the relevant paragraphs of 18(b) of the 1933 Act define a "covered security" as a security listed, or authorized for listing, on a national securities exchange, 15 U.S.C.S. 77r(b)(1), ,or as a security issued by an investment company, 15 U.S.C.S. 77r(b)(2)). The Litigation Act also specifies that a "covered security" must be listed or authorized for listing on a national exchange at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred. 15 U.S.C.S. 78bb(f)(5)(E). (Breyer, J., joined by Roberts, Ch. J., and Scalia, Thomas, Ginsburg, Sotomayor, and Kagan, JJ.)

FRAUD -- COVERED SECURITY -- CONNECTION
Headnote: 13
A connection with the purchase or sale of a covered security under 15 U.S.C.S. 78b(f)(1) matters where the misrepresentation makes a significant difference to someone's decision to purchase or to sell a covered security, not to purchase or to sell an uncovered security, something about which the Securities Litigation Uniform Standards Act expresses no concern. Further, the "someone" making that decision to purchase or sell must be a party other than the fraudster. If the only party who decides to buy or sell a covered security as a result of a lie is the liar, that is not a "connection" that matters. (Breyer, J., joined by Roberts Ch. J., and Scalia, Thomas, Ginsburg, Sotomayor, and Kagan, JJ.)

FRAUD -- CONNECTION WITH TRANSACTION
Headnote: 15
Every securities case in which the U.S. Supreme Court has found a fraud to be in connection with a purchase or sale of a security has involved victims who took, who tried to take, who divested themselves of, who tried to divest themselves of, or who maintained an ownership interest in financial instruments that fall within the relevant statutory definition. (Breyer, J., joined by Roberts, Ch. J., and Scalia, Thomas, Ginsburg, Sotomayor, and Kagan, JJ.)

The {571 U.S. 378} phrase "material fact in connection with the purchase or sale" suggests a connection that matters. And a connection matters where the misrepresentation makes a significant difference to someone's decision to purchase or to sell a covered security, not an uncovered one, something about which the Act expresses no concern. See Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 37-40, 131 S. Ct. 1309, 179 L Ed. 2d 398. Further, for the connection to matter, the "someone" making the decision to purchase or sell a covered security must be a party other than the fraudster. Third, the securities cases in which this Court has found a fraud to be "in connection with" a purchase or sale of a security, under both the Litigation Act and 10(b) of the Securities Exchange Act of 1934 (which also uses the "in connection with" phrase), have involved victims who took, who tried to take, who divested themselves of, who tried to divest themselves of, or who maintained an ownership interest in financial instruments that fall within the relevant statutory definition.

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* 571 U.S. 389*
Fourth, we read the Litigation Act in light of and consistent with the underlying regulatory statuses, the Securities Exchange Act of 1934 and the Securities Act of 1933. The regulatory statutes refer to persons engaged in securities transactions that lead to the taking or dissolving of ownership positions. And they make it illegal to deceive a person when he or she is doing so. Section 5 of the 193 Act, for example, makes it unlawful to "offer to sell or offer to buy...any security unless a registration statement has been filed as to such security." 15 U.S.C. 77e(c). Section 17 of the 1933 Act makes it unlawful "in the offer or sale of any securities...to employ any device, scheme, or artifice to defraud, or to obtain money or property by means of any untrue statement of a material fact." 77a(a)(1)-(2). And 10(b) of the 1934 Act makes it unlawful to "use or employ, in connection with the purchase or sale of any security...any manipulative or deceptive device or contrivance." 78j(b)

Not only language but also purpose suggests a statutory focus upon transactions involving the statutorily relevant securities. The basic purpose of the 1934 and 1933 regulatory statutes is "to insure honest securities markets and thereby promote investor confidence." See O'Hagan, 521 U.S., at 658 , 117 S. Ct. 2199, 138 L. Ed. 2d 724. Nothing in the regulatory statutes suggests their object is to protect persons whose connection with the statutorily defined securities is more remote than words such as "buy", "sell", and the like, indicate. Nor does anything in the Litigation Act provide us with reasons for interpreting its similar language more broadly.

Page 20, Paragraph C

Mindful of the ends of both SLUSA and Rule 10b-5, the Court's precedents interpret the key phrase in both laws to mean that a "misrepresentation or omission of a material fact" is made "in connection with the purchase or sale" of a security when the "fraud coincided with the sales [or purchases] themselves." Zandford, 535 U.S. at 820, 122 S. Ct. 1899, 153 L. Ed. 2d 1.

Howard v. Arconic, June 23, 2021

A. Count III: Section 10(b) of the Exchange Act, paragraph 2

The Supreme Court has implied a private cause of action from the text and purpose of 10(b) available to investors who have been injured by its violation. See Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 318, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007). To state a securities fraud claim under 10(b), a plaintiff must allege the following elements: (1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance on the misrepresentation or omission; (5) economic loss; and (6) loss causation. Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 341-42, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005).

Walden v. Bank of N.Y. Mellon Crop., 2021 U.S. Dist. LEXIS 228461 (W.D. Pa., Nov. 30, 2021)

{A}
In Dabit, "the [Supreme] Court stressed that the "in connection with" requirement should be interpreted broadly, as '[a] narrow reading of the statute would undercut the effectiveness of the [PSLRA] and thus run contrary to SLUSA's stated purpose,' which is to prevent state-law class actions from end-running the PSLRA." Banks, 929 F.3d at 1050 (quoting Dabit, 547 U.S. at 86). "The Court explained that 'it is enough that the fraud alleged 'coincide' with a securities transaction - whether by the plaintiff or by someone else' - to meet the "in connection with" requirement. Id.

{B}
Subsequently, in Chadboune & Parke LLP v. Troice, 571 U.S. 377, 134 S. Ct. 1058, 188 L. Ed. 2d 88 (2014), the Supreme "Court revisited the 'in connection with' requirement." Banks, 929 F.3d at 1050-51 (9th Cir. 2019). The Court held that the individual making the buy/sell decision "must be a party other than the fraudster." Troice, 571 U.S. at 388. "If the only party who decides to buy or sell a covered security as a result of a lie is the liar, that is not a 'connection' that matters." Id. "[T]he classic paradigms of securities violations 'in connection with' buying or selling a security involve insider trading, manipulation of share prices, diversion of investment opportunities, fraudulent overvaluation, and similar dishonest practices that relate directly to the securities markets." In re Robinhood Outage Litig., 495 F. Supp. 3d 831, 834 (N.D. Cal. 2020).

{C}
In Taskir v. Vanguard Grp., 903 F.3d (3d Cir. 2018), the Third Circuit considered the interplay between Dabit and Troice. In Taskir, the plaintiffs filed a civil complaint against Vanguard," an investment services company that offers retail securities brokerage accounts to consumers." Id. at 96. The plaintiffs believed "that Vanguard was overcharging sales commissions to

clients meeting certain balance thresholds." Id. Vanguard filed a motion to dismiss the complaint, arguing that the action was preempted by SLUSA, and the District Court denied that motion. Vanguard filed an interlocutory appeal to the Third Circuit, which held that "overcharges of commissions do not have a 'connection that matters' to the securities transactions at issue." Id. at 100. Specifically, in Taskir, the Third Circuit accepted the plaintiffs' argument that "the overcharges are not the result of a material misrepresentation about securities transactions, but rather a contractual breach that is tangentially related to the securities transactions." 903 F.3d at 99.

In looking at {A} above, even this broad reading of this statute, the Court still required the fraud alleged to "coincide with a securities transaction." In the Complaint, AlphaPlus is even further removed from any claim under 10b or 10(b)-5 as the "security transactions" in question were from years before any misstatements filed and can in no way "coincide".

In the next paragraph, {B}, the Supreme Court has again confirmed my motion, by holding that the individual making the buy/sell decision "must be party other than the fraudster"; and further describes, in great detail, that the "in connection with a purchase or sale of any security" must involve specific securities violations related to said securities transactions.

Lastly, in the final paragraph, {C}, it discusses, in Taskir, and a third affirmation that the Complaint is deficient, the Third Circuit held that even overcharges of commissions do not have a "connection that matters" to the securities transaction at issue (Id. at 100). A brokerage commission does not only coincide with a securities transaction and the fraudster may even be part of the buy/sell decision and the Courts still held that there was no connection with a purchase or sale of security.

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FROM: 02555506
TO:
SUBJECT: Motion for Pleadings Pt 3
DATE: 08/28/2022 08:08:31 PM

6. STANDARD OF REVIEW
The applicable inquiry under Federal Rule of Civil Procedure 12(b)(6) is well-settled. Under Federal Rule of Civil Procedure 8, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8 (a)(2). Rule 12(b)(6) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). A complaint that merely alleges entitlement to relief, without alleging facts that show entitlement, must be dismissed. See Fowler v. UPMC Shadyside, 578, F.3d 203, 211 (3d Cir. 2009).

7. CONCLUSION
I again apologize to this Court if this Motion is not correct in format or formalities, but I hope I was at least able to prove to this Court that I may not be as crazy or wrong in my accusations and representations as previously believed. Any alleged false claims, untrue statements, omissions that may have been made to a settlement fund cannot be any way interpreted as being "in connection with the purchase or sale of any security." This Court is now well armed with the clear backing of the Third Circuit and the Supreme Court that the actions of AlphaPlus may be fraud, if true as alleged, but in now way can be considered a violation of 10b or 10(b)-5.

Based on the facts brought to light and the failure of the SEC's complaint to state a claim upon which relief can be granted, the Complaint should be immediately dismissed with prejudice along with the associated temporary injunction.