

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-00886-VMC-SPF

OASIS INTERNATIONAL GROUP
LIMITED; OASIS MANAGEMENT,
LLC; SATELLITE HOLDINGS
COMPANY; MICHAEL J. DACORTA;
JOSEPH S. ANILE, II; RAYMOND P.
MONTIE, III; FRANCISCO "FRANK"
L. DURAN; and JOHN J. HAAS,

Defendants,

and

MAINSTREAM FUND SERVICES,
INC.; BOWLING GREEN CAPITAL
MANAGEMENT LLC; LAGOON
INVESTMENTS, INC.; ROAR OF
THE LION FITNESS, LLC; 444
GULF OF MEXICO DRIVE, LLC;
4064 FOUNDERS CLUB DRIVE,
LLC; 6922 LACANTERA CIRCLE,
LLC; 13318 LOST KEY PLACE, LLC;
and 4 OAKS LLC,

Relief Defendants.

**MICHAEL J. DACORTA’S OBJECTION TO RECEIVER BURTON
WIAND’S MOTION (DOC. 478)**

1. Comes now Michael J. DaCorta, pro se Defendant, and objects to Receiver’s (Doc. 478) Motion to Approve Retention of Special Counsel.

SUMMARY OF OBJECTION

2. The Receiver’s (Doc. 478) Motion to Approve Retention of Special Counsel should be denied for the following reasons:
3. The Commodity Futures Trading Commission (“CFTC”) does not have statutory jurisdiction in the instant case; and
4. Absent jurisdiction sufficient to authorize the filing of the Complaint, without which the allegations and charged Counts are insupportable, and failing to establish the three prongs necessary to support standing, the CFTC failed to make a sufficient facial, much less factual case adequate to sustain this Court’s jurisdiction.
5. The Complaint in the instant case failed to present sufficiently factual allegations necessary to support a case or controversy “arising under the Constitution, laws, or treaties of the United States” and thus factually denied this Court jurisdiction under the requirements of 28 U.S.C. § 1331; and
6. The Complaint contains misrepresentations and false recitals of statutory definitions upon which all Counts against Defendants rest; and

7. There is presently a pending Motion to Dismiss the instant case filed by Defendant on 12 December 2021 (Doc. 454) to which the CFTC Responded on 13 January 2022. (Doc. 465); and
8. The CFTC's allegations being wholly insufficient to support its claimed statutory violations, the Court may properly review the Motion to Dismiss as a "factual attack", irrespective of the pleadings; and
9. The continued employment of any expansion of authority for the Receiver depends upon the adjudication of the Motion to Dismiss.
10. The Plaintiff did not fulfill applicable statutory requirements pertaining to prejudgment appointment of receivers; and
11. Receiver's Behavioral Fact Pattern betrays unprincipled personal pecuniary motivations that are inconsistent with a receiver's fiduciary obligations pursuant to *Leedom Mgmt. Grp., Inc. v. Perlmutter*; and
12. Because the cited authority upon which the Complaint (Doc. 1) is explicitly based is without foundation in law; and
13. Because the Receiver's temporary authority did not lawfully extend into a permanent receivership; and
14. All five Counts named in the Complaint fail to state a claim upon which relief can be granted; and
15. A Grant of Receiver's Motion would endorse Plaintiff's violations of FRCP Rules 11(b)(2) and 11(b)(3).

CONCLUSION

16. For the reasons summarized above and comprehensively elucidated in the attached Informational Notice and Memorandum of Law, which is wholly included herein by reference; until such time as the Motion to Dismiss (Doc. 454) has been finally adjudicated, Defendant opposes any further extension, grant, or increase of authority to the Receiver as such may result in additional irreparable damage to Defendant.

* * *

The standard for fiduciaries, such as Receiver Wiand, has withstood the test of time, remaining applicable: *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928), as quoted by this Court, famously described the fiduciary duty owed by one co-venturer to another as cited by this Court:

Many forms of conduct permissible in a workday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. *Meinhard v. Salmon*, [249 N.Y. 458, 464](#), [164 N.E. 545, 546](#) (N.Y. 1928).

Leedom Mgmt. Grp., Inc. v. Perlmutter, CASE NO.: 8:11-cv-2108-T-33TBM, at *13 (M.D. Fla. Feb. 15, 2012)

Justice Cardozo's articulation of the duty of loyalty imposed upon a fiduciary has endured for decades and has been cited in judicial opinions addressing the fiduciary duty owed not just by co-venturers, but in numerous other contexts.

To the best of his knowledge, information, and belief, Defendant has fully complied with the provisions of the Federal Rules of Civil Procedure Rule 11(b).

CERTIFICATE OF SERVICE

I, Michael J. DaCorta, filed the foregoing with the Middle District of Florida through the Courts e-filing system (ECF) which in turn will send a copy to the following persons:

J. Alison Auxter (CFTC)
A. Brian Phillips (for Satellite Holdings Co. and John J. Haas)
Mark L. Horwitz (for Raymond P. Montie, III)
Francisco "Frank" L. Duran
Christopher Walker (for Mainstream Fund Services, Inc.)
Peter John Grili (Mediator)
Eric Ryan Feld (for Burton W. Wiand)
David W. A. Chee (Movant-United States of America)

Dated: 4 March, 2022
Respectfully,

Signed: /s/ Michael J. DaCorta, pro se
11774 Via Lucerna Circle
Windermere FL 34786
Telephone: (941) 807-9933
Email: mdacorta64@yahoo.com

1 **INFORMATIONAL NOTICE AND MEMORANDUM OF LAW**

2
3 Abbreviations and Definitions used:

4 Case no. 8:19-cv-00886-VMC-SPF (“case 886”) (“original case”)

5 **Notice:**

- 6 1. The original civil action Complaint in the instant case failed to present
7 sufficiently factual allegations necessary to support a case or
8 controversy “arising under the Constitution, laws, or treaties of the
9 United States” and thus factually denied this Court jurisdiction under
10 the requirements of 28 U.S.C. § 1331 *ab initio*.
- 11 2. Plaintiff misguided this Court by directing its attention to the text of an
12 inapplicable statutory definition found in 7 U.S.C. § 1a(18)(A)(xi),
13 needed to sustain its claim of jurisdiction. (Doc. 1, ¶ 89).
- 14 3. 7 U.S.C. § 1a(18)(A)(xi) pertains only to “individuals” and is irrelevant
15 because the only pertinent eligible contract participants that engaged in
16 forex transactions on behalf of Defendants were corporations.
- 17 4. The relevant statutory definition is found at 7 U.S.C. §
18 1a(18)(A)(v)(III)((aa)-(bb) and it specifically **denies** jurisdiction to the
19 CFTC. (See ¶¶ 57, 95-96, *infra*, for more details)
- 20 5. Plaintiff misled this Court into believing it held statutory jurisdiction by
21 altering the text of 7 U.S.C. § 2(c)(2)(C). Plaintiff exchanged the inclusive
22 form of the conjunction “or” to mean that **either** section 1 or

1 section 2 or 3 of the statute could grant Plaintiff jurisdiction, when in
2 fact the conjunction “and” in the original text requires that **both**
3 sections 1 and either 2 or 3 apply. (Doc. 465, pp. 5-6).

4 6. The pertinent statutory text is found at 7 U.S.C. § 2(c)(2)(C)(i)(I)(aa) and
5 (bb) and it too denies the CFTC jurisdiction. (See ¶¶ 67-70, *infra*, for
6 more details). A two-prong test applies, not one.

7 7. The First Amended Complaint (Doc. 110) was filed on 06/12/19 and,
8 respecting the allegations and claims, contained nothing substantially
9 different from the original Complaint relating to anything in this
10 section. References in this section refer to the original complaint.

11 8. The Complaint is like a 3-legged stool, which, upon creation, was
12 thrown into a deeply tangled thicket of statutory definitions, recursive
13 regulations, conflations, misrepresentations of statutes, and false
14 allegations disguised as facts.

15 9. The 3 “legs” upon which the entire case and all six of its derivative
16 cases depend are: 1) the statutory definition of a “commodity pool”; 2)
17 the statutory definition of “retail forex transaction”; and 3) a
18 confabulation of misrepresentative, erroneous, false, and overstated
19 allegations which fundamentally depend entirely upon the allegation
20 that the Defendants in case 886 operated a “commodity pool”.

21 **Section I. Leg One: Alleged Commodity Pool**

1 10. To emphasize the importance of this primary leg of the Complaint,
2 references to allegations that Oasis Global FX, Ltd (“OGFXL”) and
3 Oasis Global FX, SA (“OGFXS”) were “commodity pools” (Doc. 1, p.1)
4 appear 218 times in the singular form, “pool”, variously referring to
5 “Oasis pool” (2), “pool funds” (63), “pool participants” (110), “pool
6 participant” (19), “pool participant’s (1), “commodity pool” (10), “pool
7 property” (3), “pool disclosures” (2), “pool disclosure” (1), “forex pool”
8 (1), “pool” (5), “pool operator” (1), and another 109 times in the plural
9 form, “pools”, as “commodity pools” (1), “Oasis pools” (106),
10 “Investment Pools” (1), and simply “Pools” (1).

11 11. Collectively, the conflated references to “pools” – referring either
12 directly or indirectly to the core allegation that OGFXL and OGFXS
13 were commodity pools—appear 328 times in the Complaint.

14 12. A “commodity pool” is defined under 7 U.S.C. § 1a(10)(A) as “any
15 investment trust, syndicate, or similar form of enterprise operated for
16 the purpose of trading commodity interests. . .” (also *See* 886 Doc. 465,
17 p. 9).

18 13. The *Ejusdem Generis* Canon of statutory construction teaches how to
19 parse the meaning of a statute constructed like 7 U.S.C. § 1a(10)(A): it
20 states: “Where general words follow an enumeration of two or more

1 things, they apply only to the persons or thing of the same general kind
2 of class specifically mentioned (*ejusdem generis.*)”¹

3 14. “The *ejusdem generis* canon applies when a drafter has tacked on a
4 catchall phrase at the end of an enumeration of specifics, as in *dogs, cats,*
5 *horses, cattle, and other animals.* Does the phrase and other animals refer
6 to wild animals as well as domesticated ones? . . . The principle of
7 *ejusdem generis* essentially says just that: It implies the addition of *similar*
8 after the word *other.*”²

9 15. Adhering to the *ejusdem generis* canon in interpreting the statutory
10 definition of “commodity pool”, one finds two specific references;
11 (“any investment trust”, and “syndicate”), followed by the general
12 reference to “or similar form of enterprise”.

13 16. “Investment Trust” is defined by a redirected reference in Black’s Law
14 Dictionary³ to “Investment Company” as: “A company formed to
15 acquire and manage a portfolio of diverse assets by investing money
16 collected from different sources. • The Investment Company Act of
17 1940 defines the term as an issuer of securities that (1) is, holds itself out
18 to be, or proposes to be engaged primarily in the business of investing,

¹ Antonin Scalia & Bryan Garner, 32. *Ejusdem Generis Canon* in Reading Law: Interpretation of Legal Texts, 199 (2012)

² Antonin Scalia & Bryan Garner, Reading Law: Interpretation of Legal Texts, 199 (2012)

³ Black’s Law Dictionary, 7th Ed., 275 (1999)

1 reinvesting, or trading in securities; (2) is engaged or proposes to
2 engage in the business of issuing face-amount certificates of the
3 installment type, or has been engaged in this business and has such a
4 certificate outstanding; or (3) is engaged or proposes to engage in the
5 business of investing, reinvesting, owning, holding, or trading in
6 securities, and owns or proposes to acquire investment securities
7 having a value exceeding 40% of the value of the issuer's total assets
8 (exclusive of government securities and cash items) on an
9 unconsolidated basis. 15 USCA § 80a-2(a)(16). - Also termed *investment*
10 *trust.*"

11 17. "Syndicate" is defined as "A group organized for a common purpose;
12 esp., an association formed to promote a common interest, carry out a
13 particular business transaction, or (in a negative sense) organize
14 criminal enterprises."⁴

15 18. The Canon requires that we identify the common element(s) of the two
16 specifics given in the statutory definition of a "commodity pool", which
17 create the necessary similarity for the class of things so defined.

18 19. Neither OGFXL nor OGFXS qualified as an Investment Trust defined
19 by the Investment Company Act of 1940 because neither of them either

⁴ Black's Law Dictionary, 7th Ed., 1463 (1999)

1 proposed to or engaged in security transactions. Therefore, they must
2 each be “A company formed to acquire and manage a portfolio of
3 diverse assets by investing money collected from different sources.”
4 and they must each separately share characteristics of a syndicate.

5 20. As a syndicate in any way similar to an investment trust, OGFXL and
6 OGFXS must each be separately definable as a “group” or “association”
7 formed to promote a particular business transaction, being restricted in
8 nature to the purposes of an investment trust.

9 21. Neither OGFXL nor OGFXS was a group or association and neither of
10 them served as investment trusts, ergo, they were not a “similar form of
11 enterprise operated for the purpose of trading commodity interests.”

12 22. Neither OGFXL nor OGFXL was a commodity pool pursuant to the
13 statutory definition.

14 23. Forex, an abbreviation for “foreign currency exchange”, is an interbank
15 currency market.

16 24. Access to the Forex market can be provided by two types of legal
17 organizations: Forex dealer and Forex broker. They are similar but have
18 different capabilities.

19 25. A Forex dealer is a company that offers intermediary services to search
20 counterparts for its clients on the Forex market. Deals are formed on
21 behalf of the company and at its expense through the establishment of

1 financial obligations in the agreements between clients and the dealing
2 company. As payment for the work, the dealer takes fees which its sets
3 up on its own in the form of spreads (the difference between bid and
4 ask) from the currency price.

5 26. A Forex dealer can form a clients' quotations base (set spreads) and
6 mate client trades among themselves. It can act as a counterparty
7 without putting the money into the inter-bank market.

8 27. By contrast, a broker offers only intermediate functions on entering the
9 Forex market and cannot set spreads or match counterparties.

10 28. OGFXL and OGFXS were separately licensed and functioned as forex
11 dealers. They set the spread price for trades executed exclusively by
12 and for either Oasis Management, LLC ("OM") or Oasis International
13 Group LLC ("OIG") through them. There were no "open market", i.e.
14 retail, forex transactions executed through either OGFXL or OGFXS.

15 29. OGFXL was licensed by the central bank of New Zealand and OGFXS
16 was licensed by International Financial Services Commission (IFSC) in
17 Belize as foreign currency exchange ("forex") dealers.

18 30. OGFXL was a Limited Liability Corporation (LLC) formed under the
19 laws of New Zealand (a common law country), registered there on 12
20 May 2012, and Deregistered 30 June 2015.

1 31. OGFXS, or Oasis Global FX, S.A., was licensed in Belize and its sole
2 customer, OIG, was chartered in the Cayman Islands. Transactions
3 between the two parties are not regulated by the laws of the United
4 States nor governed by their regulatory agencies.

5 32. "S.A." designates a type of corporation in countries that employ civil
6 law and is roughly equivalent to public limited liability company in
7 common law jurisdictions like that of the United States of America and
8 New Zealand.

9 33. OIG's funds were obtained by lawful, unsecured loans that residents
10 and citizens of the United States are free to make without hindrance or
11 obstruction of their liberty of contract.

12 34. Registrations for companies like OGFXL and OGFXS are usually
13 reviewed for compliance updates each year by the licensing
14 commission in the country of their origin.

15 35. As is the case everywhere, in the event of a dispute arising over a trade
16 executed via OGFXL or OGFXS, jurisdiction for trial is under the
17 country in which the dealer was licensed.

18 36. No dispute was ever filed against either company and neither of them
19 was, nor required to be, licensed in the United States.

20 37. Both OGFXL and OGFXS were limited liability corporations licensed to
21 operate as dealers in the Foreign Exchange Currency ("forex") markets.

1 38. Neither OGFXL nor OGFXS was a group or association and neither
2 may be characterized as an investment trust, syndicate, or similar
3 organization.

4 39. Neither OGFXL nor OGFXS conform to the statutory definition of a
5 commodity pool found at 7 U.S.C. § 1a(10)(A).

6 40. Neither OGFXL nor OGFXS was a commodity pool.

7 41. Absent the existence of OGFXL and/or OGFXS as commodity pool,
8 there was no "Oasis pool", "pool fund", "pool participant", "pool
9 property", "pool disclosure", "forex pool", "pool", "pool operator",
10 "Investment Pool".

11 42. Absent the existence of a commodity pool there cannot be a commodity
12 pool operator (CPO) or associated person (AP) as statutorily defined in
13 Title 7, nor may there exist "commodity pool participants" or "pool
14 funds".

15 43. Absent the existence of OGFXL and/or OGFXS as commodity pool, the
16 Complaint collapses of its own weight like a circus tent whose central
17 tentpole has been pulled down.

18 44. Again, neither OGFXL nor OGFXS were commodity pools any more
19 than a bank that transacts exchanges between deposits and loans and
20 charges service fees in the form of interest is a commodity pool.

1 45. As neither OGFXL nor OGFXS were commodity pools, the CFTC had
2 no basis for its Complaint, nor jurisdiction over either of them.

3 **Section I(A): Memorandum of Law**

4 46. *Kennedy v. Floridian Hotel, Inc.*, states the conditions necessary for a case
5 or controversy to arise in a Federal court:

6 Under Article III of the Constitution, our jurisdiction is limited
7 to “cases” and “controversies.” U.S. Const. art. III, § 2;
8 *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189
9 (11th Cir. 2011). The standing doctrine “stems directly from
10 Article III’s ‘case or controversy’ requirement” and
11 “implicates our subject matter jurisdiction.” *Bochese v. Town of*
12 *Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) (quotation marks
13 omitted).

14
15 To establish standing under Article III, a plaintiff must
16 demonstrate: (1) an injury-in-fact; (2) a causal connection
17 between the asserted injury-in-fact and the defendant’s
18 actions; and (3) that “the injury will be redressed by a
19 favorable decision.” *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th
20 Cir. 2001) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561,
21 112 S. Ct. 2130, 2136, 119 L.Ed.2d 351 (1992)). An injury-in-fact
22 is the “invasion of a legally protected interest which is (a)
23 concrete and particularized; and (b) actual or imminent, not
24 conjectural or hypothetical.” *Lujan*, 504 U.S. at 560, 112 S. Ct.
25 at 2136 (quotation marks and citations omitted).

26
27 Plaintiffs who seek injunctive relief must make an additional
28 showing to demonstrate standing. *Houston*, 733 F.3d at 1328
29 (“The ‘injury-in-fact’ demanded by Article III requires an
30 additional showing when injunctive relief is sought.”).
31 “Because injunctions regulate future conduct, a party has
32 standing to seek injunctive relief only if the party shows ‘a
33 real and immediate – as opposed to a merely conjectural or
34 hypothetical – threat of future injury.’ “ *Id.* at 1329 (quoting
35 *Shotz*, 256 F.3d at 1081). When a plaintiff seeks an injunction,
36 she must demonstrate that a future injury is imminent – that

1 there is “a sufficient likelihood that he [or she] will be affected
2 by the allegedly unlawful conduct in the future.” *Koziara v.*
3 *City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004)
4 (quotation marks omitted).

5
6 *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1229-30 (11th Cir.
7 2021)

8
9 47. Further, Defendant Michael DaCorta moved this Court to Dismiss the
10 instant case pursuant to Rule 12(b)(1) for lack of subject-matter
11 jurisdiction. (Doc. 454).

12 48. In its Response (Doc. 465) to the DaCorta’s Motion to Dismiss, the
13 CFTC cites the presumed sufficiency of its allegations to defeat the
14 Motion on facial grounds while simultaneously misrepresenting the
15 actual text of the statute that was allegedly violated by the
16 Defendant(s).

17 49. This misrepresentation of the statutory text may have served to deflect
18 this Court from a proper review of the Motion on factual grounds.

19 50. The CFTC’s allegations being wholly insufficient to support the alleged
20 statutory violations, the Court may properly review the Motion to
21 Dismiss as a “factual attack”, irrespective of the pleadings.

22 51. *Kennedy v. Floridian Hotel, Inc.* states:

23 Attacks on subject matter jurisdiction, which are governed by
24 Rule 12(b)(1) , come in two forms: facial or factual attack.
25 *Lawrence v. Dunbar*, 919 F.2d 1525, 1528–29 (11th Cir. 1990). A
26 “facial attack” challenges whether a plaintiff “has sufficiently
27 alleged a basis of subject matter jurisdiction, and the

1 allegations in his complaint are taken as true for the purposes
2 of the motion." Id. at 1529 (quotation marks omitted). A
3 "factual attack," in contrast, challenges the existence of subject
4 matter jurisdiction irrespective of the pleadings, and extrinsic
5 evidence may be considered. Id. A district court evaluating a
6 factual attack on subject matter jurisdiction "may proceed as it
7 never could" at summary judgment and "is free to weigh the
8 evidence and satisfy itself as to the existence of its power to
9 hear the case." Id. (quotation marks omitted).

10
11 *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021)

12
13 **II. Leg Two: No Jurisdiction & Falsely Alleged Retail Forex Transactions**

14 52. Subparagraphs of 7 U.S.C. § 2(c)(2) define the CFTC's potentially
15 pertinent or otherwise claimed jurisdiction over OM, OIG, OGFXL and
16 OGFXS under the following subsections of § 2(c)(2):

- 17 a. (A) Agreements, contracts, and transactions traded on an
18 organized exchange.
- 19 b. (B) Agreements, contracts, and transactions in retail foreign
20 currency.
- 21 c. (C) (no title - applies to any qualified "agreement, contract, or
22 transaction in foreign currency)
- 23 d. (D) Retail commodity transactions

24 53. As with "commodity pool" and all of the conflations, regulations, and
25 derivative references used by the CFTC, the allegation that Defendants

1 conducted "retail forex" appears in 27 iterations scattered throughout
2 the Complaint, but ultimately each refers to "retail forex transactions".

3 54. "Retail forex" is not statutorily defined.

4 55. "Retail forex transactions" (cited 11 times in the Complaint) are defined
5 at 17 C.F.R. § 5.1(h)(m) as "any account, agreement, contract or
6 transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act."

7 56. Forex trades were executed through OGFXL or OGFXS exclusively for
8 the benefit of Oasis Management (OM) or Oasis International Group
9 (OIG) and no other party.

10 57. OM and OIG were eligible contract participants ("ECP's") as defined in
11 7 U.S.C. § 1a(18)(A)(v)(III)((aa)-(bb): "The term "eligible contract
12 participant" (A) acting for its own account – (v) a corporation,
13 partnership, proprietorship, organization, trust, or other entity – (III)
14 that – (aa) has a net worth exceeding \$1,000,000; and (bb) enters into an
15 agreement, contract, or transaction in connection with the conduct of
16 the entity's business or to manage the risk associated with an asset or
17 liability owned or incurred or reasonably likely to be owned or
18 incurred by the entity in the conduct of the entity's business.

19 58. As required, OM and OIG ("the Companies") had a net worth
20 exceeding \$1,000,000 and entered into forex contracts for the express
21 purpose of managing "the risk associated with an asset or liability

1 owned or incurred or reasonably likely to be owned or incurred by the
2 entity [OM or OIG] in the conduct of the entity's business."

3 59. It was precisely in order to manage the longer-term risks associated
4 with the Companies' diverse investments, which, at the time of their
5 disruption by government seizures included investments in precious
6 metals, a significant silver position in the forex market (where silver is
7 traded as a currency), residential and commercial real estate holdings,
8 income-producing rental units, established businesses like Roar of the
9 Lion with pre-sold inventory, and a controlling interest in other
10 businesses that OIG was preparing to develop that the Companies
11 managed their forex trading activities on a daily basis.

12 60. As mentioned before, the Companies were both limited liability
13 corporations.

14 61. Forex trades for OM and OIG were executed exclusively for the
15 respective company's own corporate account as an Eligible Contract
16 Participant ("ECP"), Per 7 U.S.C. 2(c)(2)(B)(i)(II).

17 62. Since all forex transactions were executed by Eligible Contract
18 Participants, no transaction described under 7 U.S.C. § 2(c)(2)(B) or
19 2(c)(2)(C) applies to OM, OIG, OGFXL, or OGFXS.

1 63. ECPs are specifically excluded from the CFTC’s jurisdiction for
2 transactions described under 7 U.S.C. § 2(c)(2)(B) or 2(c)(2)(C). *See* 7
3 U.S.C. § 2(c)(2)(B)(i)(II):

4 a. (2) Commission jurisdiction—(B) Agreements, contracts, and
5 transactions in retail foreign currency—(i) This chapter applies to,
6 and the Commission shall have jurisdiction over, an agreement,
7 contract, or transaction in foreign currency that— (I) is a contract
8 of sale of a commodity for future delivery (or an option on such a
9 contract) or an option (other than an option executed or traded
10 on a national securities exchange registered pursuant to section
11 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); **and**
12 (II) is offered to, or entered into with, a person that is **not** an
13 eligible contract participant. . . [emphasis added].

14 64. No trade executed through either OGFXL or OGFXS was for a “contract
15 of sale of a commodity for future delivery...or option”.

16 65. All trades through OGFXL and OGFXS were executed by either OM or
17 OIG as eligible contract participants.

18 66. The CFTC held no jurisdiction over OM, OIG, OGFXL, or OGFXS
19 pursuant to 7 U.S.C. § **2(c)(2)(B)(i)(I)–(II)**

1 67. The CFTC had no jurisdiction over OM, OIG, OGFXL, or OGFXS
2 pursuant to its claimed authority under 7 U.S.C. **2(c)(2)(C)(i)(I)(aa)-(bb)**,
3 which states:

4 a. (2) Commission jurisdiction-(C)(i)(I) This subparagraph shall
5 apply to any agreement, contract, or transaction in foreign
6 currency that is – (aa) offered to, or entered into with, a person
7 that is **not** an eligible contract participant. . **and** (bb) offered, or
8 entered into, on a leveraged or margined basis, or financed by the
9 offeror, the counterparty, or a person acting in concert with the
10 offeror or counterparty on a similar basis. [bold, red letter
11 underline emphasis added]

12 68. In its (Doc. 465) Response, the CFTC falsely represented 7 U.S.C. §
13 2(c)(2)(C) by stating, “As a first matter, 7 U.S.C. § 2(c)(2)(C) grants the
14 CFTC jurisdiction over forex transactions that are entered into (1) with
15 “a person that is not an eligible contract participant” or one of a list of
16 enumerated persons, (2) are “offered, or entered into, on a leveraged or
17 margined basis, or financed by the offeror, the counterparty, **or** a
18 person acting in concert with the offeror or counterparty on a similar
19 basis,” and (3) do not result in delivery within two days or create an

1 enforceable obligation to make or take delivery.” [bold red letter
2 underline emphasis added]

3 69. The CFTC wrongly substituted the conjunction “or” for the statutory
4 text “and”.

5 70. “Or” suggest that *either* the qualification found in 7 U.S.C.

6 **2(c)(2)(C)(i)(I)(aa) OR (bb)** would give the CFTC jurisdiction when in
7 fact the limiting qualification in subparagraph (aa)—that the person
8 entering into the qualifying agreement or contract NOT be an eligible
9 contract participant, and the fact that OM and OIG WERE eligible
10 contract participants, vitiates every condition listed in subparagraph bb
11 that follows the word “and”. BOTH, not either, of the conditions
12 specified in subparagraphs (aa) and (bb) must be met to give the CFTC
13 jurisdiction under this section.

14 71. 7 U.S.C. § 2(c)(2)(D) clarifies the remaining potential jurisdiction of the
15 CFTC relative to Retail Commodity Transactions.

16 72. 7 U.S.C. § 2(c)(2)(D) Retail Commodity Transactions states:

17 a. (i) Applicability—Except as provided in clause (ii), this
18 subparagraph shall apply to any agreement, contract, or
19 transaction in any commodity that is – (I) entered into with, or
20 offered to (even if not entered into with), a person that is **not** an
21 eligible contract participant or eligible commercial entity; **and** (II)

1 entered into, or offered (even if not entered into), on a leveraged
2 or margined basis, or financed by the offeror, the counterparty, or
3 a person acting in concert with the offeror or counterparty on a
4 similar basis.

5 73. The CFTC had no jurisdiction over OM, OIG, OGXFL, or OGXFS
6 pursuant to 7 U.S.C. § 2(c)(2)(B)-(D).

7 74. In its (Doc. 465) Response to the (Doc. 454) Motion to Dismiss, the
8 CFTC rightly states that “This Court has subject matter jurisdiction over
9 violations of the Act and Regulation” (Doc. 465, p.2).

10 75. There was no violation of the Act nor its implementing Regulations, but
11 rather unsupported allegations of such, specifically including, but not
12 limited to, those allegations recited on pages 5-8 of the CFTC (Doc. 465)
13 Response to DaCorta’s Motion to Dismiss.

14 76. Neither OGFXL nor OGFXS executed any retail forex transactions.
15

1 **Section II(A): Memorandum of Law**

2 77. The legal standard governing a FRCP Rule 12(b)(6) dismissal is
3 provided by *Brignac v. United States*:

4 Plaintiff need not provide “detailed factual allegations” to
5 survive dismissal, but the “obligation to provide the
6 ‘grounds’ of his ‘entitle[ment] to relief’ requires more than
7 labels and conclusions, and a formulaic recitation of the
8 elements of a cause of action will not do.” *Bell Atlantic Corp. v.*
9 *Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929
10 (2007). In essence, the pleading “**must contain sufficient**
11 **factual matter**, accepted as true, to ‘state a claim to relief that
12 is plausible on its face.’” *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937
13 (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). [emphasis
14 added]

15
16 *Brignac v. United States*, 239 F. Supp. 3d 1367, 1373 (N.D. Ga. 2017)

17 78. Following the holding in *Bell Atl. Corp. v. Twombly*, a great deal of
18 latitude is given the Plaintiff in the court’s determination as to whether
19 or not a case should be dismissed under FRCP Rule 12b)(6):

20 [While a complaint attacked by a Rule 12(b)(6) motion to
21 dismiss does not need detailed factual allegations, *ibid.*;
22 *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40
23 F.3d 247, 251 (CA7 1994), a plaintiff's obligation to provide the
24 “grounds” of his “entitle[ment] to relief” requires more than
25 labels and conclusions, and a formulaic recitation of the
26 elements of a cause of action will not do, see *Papasan v. Allain*,
27 478 U.S. 265, 286, 106 S. Ct. 2932, (on a motion to dismiss,
28 courts “are not bound to accept as true a legal conclusion
29 couched as a factual allegation”). Factual allegations must be
30 enough to raise a right to relief above the speculative level, see
31 5 C. Wright & A. Miller, *Federal Practice and Procedure* §
32 1216, pp 235-236 (3d ed. 2004) (hereinafter *Wright & Miller*)
33 (“[T]he pleading must contain something more . . . than . . . a
34 statement of facts that merely creates a suspicion [of] a legally

1 cognizable right of action”),³ on the assumption that all the
2 allegations in the complaint are true (even if doubtful in fact),
3 see, e.g., *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1,
4 122 S. Ct. 992; *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct.
5 1827, (“Rule 12(b)(6) does not countenance . . . dismissals
6 based on a judge's disbelief of a complaint's factual
7 allegations”); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct.
8 1683, (a well-pleaded complaint may proceed even if it
9 appears “that a recovery is very remote and unlikely”).

10
11 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)

12
13 79. In *Georgia State Conference of NAACP Branches v. Cox*, the 11th Circuit
14 clearly stated that the U.S. Constitution limits the power granted to
15 federal courts adjudicating actual “cases” and “controversies” and
16 described the three-prongs that must each be established in order to
17 gain standing before a federal court in a “case” or “controversy” arising
18 from the Constitution or laws of the United States:

19 Article III of the United States Constitution limits the power of
20 federal courts to adjudicating actual “cases” and
21 “controversies.” U.S. Const. art. III, § 2, cl. 1. This case-or-
22 controversy doctrine fundamentally limits the power of
23 federal courts in our system of government, *Allen v. Wright*,
24 468 U.S. 737, 750, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984),
25 and helps to “identify those disputes which are appropriately
26 resolved through judicial process.” *Whitmore v. Arkansas*, 495
27 U.S. 149, 155, 110 S.Ct. 1717, 1722, 109 L.Ed.2d 135 (1990)
28 (citation omitted).

29
30 Perhaps the most important of the Article III doctrines
31 grounded in the case-or-controversy requirement is that of
32 standing. *Allen*, 468 U.S. at 750, 104 S.Ct. at 3324. “In essence
33 the question of standing is whether the litigant is entitled to
34 have the court decide the merits of the dispute or of particular

1 issues." *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205,
2 45 L.Ed.2d 343 (1975).

3
4 To establish standing, a plaintiff must first have suffered an
5 "injury in fact." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560,
6 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992). The injury must
7 be an invasion of a legally protected interest that is sufficiently
8 concrete and particularized rather than abstract and
9 indefinite. *Id.*; see also *FEC v. Akins*, 524 U.S. 11, 118 S.Ct. 1777,
10 1785 (1998). Second, there must be a causal connection
11 between the injury and the challenged action of the defendant
12 which is not too attenuated. *Lujan*, 504 U.S. at 560, 112 S.Ct. at
13 2136; *Allen*, 468 U.S. at 751, 104 S.Ct. at 3324. Third, it must be
14 likely rather than speculative that "the injury will be
15 redressed by a favorable decision." *Lujan*, 504 U.S. at 561, 112
16 S.Ct. at 2136 (citations and internal quotations omitted).

17
18 *Georgia State Conference of NAACP Branches v. Cox*, 183 F.3d
19 1259, 1262-63 (11th Cir. 1999)

20
21 80. Absent jurisdiction over the Defendants, as hereinbefore explained, the
22 CFTC fails to establish the fundamental first prong's requirement for
23 showing an "injury in fact".

24 81. If jurisdiction over an action is lacking, it cannot be logically sustained
25 that *any* injury accrues from the action itself, since there is no "legally
26 protected interest" by the violation of which an injury may arise.

27 82. Since the relevant statutory definitions proscribed the possibility of
28 alleged violations by Defendant parties, neither the statutes nor the
29 regulations alleged to have been violated could in fact have been
30 infringed. Thus, the CFTC was void of any legally defensible claim for

1 injury to their statutory jurisdictional rights or legally protected
2 interests.

3 83. *Lexmark Int'l, Inc. v. Static Control Components, Inc.* clarifies the
4 limitation of statutory causes of action:

5 A statutory cause of action is presumed to extend only to
6 plaintiffs whose interests “fall within the zone of interests
7 protected by the law invoked.” *Allen v. Wright*, 468 U.S. 737,
8 751, 104 S. Ct. 3315, 82 L. Ed. 2d 556. “[T]he breadth of [that]
9 zone . . . varies according to the provisions of law at issue.”
10 *Bennett v. Spear*, 520 U.S. 154, 163, 117 S. Ct. 1154, 137 L. Ed. 2d
11 281.

12
13 *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S.
14 118, 119 (2014)

15
16 84. Absent jurisdiction sufficient to authorize the filing of the Complaint,
17 without which the allegations and charged Counts of the Complaint are
18 insupportable, and failing to establish the prongs necessary to support
19 standing, the CFTC failed to make a sufficient facial, much less factual
20 case adequate to sustain this Court’s jurisdiction.

21 85. The Case should be dismissed under the 11th Circuit’s standard of
22 review for such circumstances under FRCP Rule 12(b)(1):

23 We review a district court's dismissal of a complaint for lack
24 of standing de novo. See *Taylor v. Polhill*, 964 F.3d 975, 979
25 (11th Cir. 2020). “Because standing is jurisdictional, a
26 dismissal for lack of standing has the same effect as a
27 dismissal for lack of subject matter jurisdiction under [Federal
28 Rule of Civil Procedure] 12(b)(1).” *Stalley ex rel. United States v.*
29 *Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th

1 Cir. 2008) (quoting *Cone Corp. v. Fla. Dep't of Transp.*, 921 F.2d
2 1190, 1203 n.42 (11th Cir. 1991)).

3
4 *Smith v. Ivey*, No. 20-14765, at *1 (11th Cir. July 21, 2021)

5
6
7 **III. Leg Three: False Allegations, Fraudulently Amended Statutes:**
8 **Failure to State a Claim for Which Relief May Be Granted; Violation of**
9 **FRCP Rule 11(b)(2)**

10
11 86. OIG was authorized under the terms of the lenders' Promissory Note
12 and Agreement to use loaned funds for the development of a diverse
13 range of assets as deemed necessary and prudent by Oasis'
14 management. The only requirement OIG bore was to pay lender's 12%
15 interest annually, from whatever source derived.

16 87. The Agreement and Risk Disclosures portion of the Promissory Note
17 and Agreement that EVERY lender was required to confirm (or their
18 loan was returned in full not later than 30 March 2019) contained the
19 following pertinent statements:

- 20 a. § 1: Lender is loaning Oasis money on a short-term unsecured
21 basis
22 b. § 2: Any loan made by You [the lender] will require that You
23 complete (or update) the information on the Application so that a
24 Promissory Note and Loan Agreement can be generated for
25 acceptance by Oasis.
26 c. § 3: At any time, in Oasis' sole discretion and without prior
27 demand or notice, Oasis may use any or all money loaned by
28 Lender, including any interest thereon, for any purpose
29 whatsoever including without limitation any investment; the
30 purchase or sale of foreign exchange products, securities or
31 commodities, exchange or off-exchange products; the purchase or
32 sale of any businesses assets or liabilities, the purchase or sale of

1 any real estate; or for any other purpose, including any general
2 company use or payment, any company payment or loans to any
3 company affiliate, officer, employee, or third party, any company
4 indebtedness or other company obligations. Lender hereby
5 agrees that Oasis may, at any time and from time to time, in the
6 sole discretion of Oasis, apply and transfer from any of Lender's
7 funds with Oasis to any of Oasis' other accounts, whether held at
8 Oasis or other individuals or entities in connection with any
9 Oasis investment. Lender hereby authorizes Oasis to sell, pledge,
10 rehypothecate, assign, invest, commingle and otherwise use any
11 money loaned to it by Lender, including any interest thereon.
12 Where Lender's Loan Account consists of more than one loan,
13 this authorization shall apply to all loans, including any interest
14 thereon. Anything to the contrary notwithstanding, including
15 without limitation, any rule, regulation or law, Oasis shall have
16 the right to sell, pledge, rehypothecate, assign, invest, commingle
17 and otherwise use any money loaned to it by Lender, including
18 any interest thereon, free from any claim or right of any nature
19 whatsoever of the Lender. [underline added for emphasis]

20 d. § 4(b): Lender has read and understands the provisions contained
21 in this Agreement, including, without limitation, Oasis' risk
22 disclosure statements herein contained. Lender will review the
23 Agreement each time it is amended, as provided herein. Lender
24 will not lend Oasis any money unless Lender understands Oasis'
25 revised Agreement, and Lender agrees that in effecting any
26 continuation of a loan or any interest thereunder, Lender is
27 deemed to represent that Lender has read and understands
28 Oasis' revised Agreement as in effect at the time of such loan.

29 e. § 6(a): Lender is aware that Oasis may invest money loaned to it
30 by Lender, including any interest thereon, in foreign exchange
31 and/or spot metal trading. Lender understands and agrees that
32 foreign exchange trading and spot metal trading is highly
33 speculative and is suitable only for those investors who (a)
34 understand and are willing to assume the economic, legal and
35 other risks involved, and (b) are financially able to assume losses
36 significantly in excess of margin or deposits. Foreign exchange
37 and spot metal trading may not be an appropriate investment for
38 Lender's retirement funds. Lender represents, warrants and
39 agrees that Lender understands these risks; that Lender is willing
40 and able, financially and otherwise, to assume the risks of Oasis
41 engaging in foreign exchange and /or spot metal trading with

- 1 Lender's money and that loss of Lender's entire Loan Account,
2 any principal and interest, will not change Lender's life style.
- 3 f. § 6(b): Lender understands and agrees that Oasis and its third
4 party suppliers make no warranties or representations of any
5 kind, whether express or implied for Oasis' investment of
6 Lender's funds hereunder. Oasis and its third party suppliers
7 also disclaim any warranty of merchantability or fitness for any
8 particular purpose and will not be responsible for any damages
9 that may be suffered by Lender, including loss of funds. . .
- 10 g. §6(c): Any decision by Lender to enter into any transaction with
11 Oasis and each decision whether such investment is appropriate
12 or proper for Lender is an independent decision by Lender. Oasis
13 is not acting as an advisor or serving as a fiduciary to Lender.
14 Lender agrees that Oasis has no fiduciary duty to Lender and no
15 liability in connection with and is not responsible for any
16 liabilities, claims, damages, costs and expenses, including
17 attorneys' fees, incurred in connection with Lender following any
18 of Oasis' investment recommendations or taking or not taking
19 any action based upon any recommendation or information
20 provided by Oasis.
- 21 h. § 6(d): Lender is aware that Oasis will invest money loaned to it
22 by Lender, including any interest thereon, in foreign exchange
23 transactions. Lender understands and agrees that foreign
24 exchange transactions carry a high degree of risk and any
25 transaction involving currencies is exposed to, among other
26 things, changes in a country's political condition, economic
27 climate, acts of nature - all of which may substantially affect the
28 price or availability of a given currency. Speculative trading in
29 the foreign exchange market is a challenging prospect with above
30 average risk. You must therefore carefully consider your
31 investment objectives, level of experience and appetite for such
32 risk prior to loaning any money to a participant in this market.
33 Most importantly, do not invest money that You are not in a
34 position to lose. You should be aware that off-exchange Forex
35 transactions are not regulated. You should also be aware that
36 Oasis can rapidly lose all of the funds loaned to it by You. That is,
37 Oasis' trading on a margin basis means that any market
38 movement will have a proportionate effect on its deposited
39 funds. This can work for Oasis as well as against Oasis. The
40 possibility exists that Oasis could sustain a total loss of margin
41 funds. Oasis' trading system is designed to automatically

1 liquidate all open positions if its margin deposit is in jeopardy so
2 that it cannot lose more than the funds that it has on deposit in its
3 account. There are also risks associated with Oasis' utilizing an
4 Internet-based trade execution software application including,
5 but not limited to, the failure of hardware and software. Oasis
6 maintains back-up systems and contingency plans to minimize
7 the possibility of system failure. Finally, You should thoroughly
8 investigate any statements which minimize the importance of, or
9 contradict any of the risk warnings discussed herein. Such
10 statements may indicate potential fraud.
11

12 88. Essentially, every element of the Complaint, from the Summary to the
13 five Counts concluding it, relies upon one or the other of the first two
14 legs of the "stool" described above, i.e. every allegation and every
15 count depends upon the false allegation that OGFLX and OGFXS were
16 "commodity pools" and that OM and/or OIG transacted "retail forex
17 transactions". As explained above, neither "leg" of the "stool" is
18 factually supported.

19 89. The arguments presented in the Complaint are rebutted by factual
20 evidence and statutory definitions.

21 90. Defendants did not solicit funds to invest in two commodity pools, as
22 alleged. (Doc. 1, p.1).

23 91. There were no "pool participants" as repeatedly alleged. (Doc. 1, pp. 1-
24 2, 5-10, 13-27, 30, 34, 39-41, 44).

1 92. There were no Commodity Pool Operators (“CPOs”) as alleged because
2 there were no commodity pools to operate. (Doc. 1, pp. 5-6, 13, 27, 31-
3 33, 35-40).

4 93. There were no Associated Persons (“APs”) as alleged because there
5 were no CPOs nor commodity pools with which to associate. (Doc. 1,
6 pp. 5-6, 12-13, 32-33, 35-36, 39).

7 94. Counts One through Five all fail to state a claim upon which relief can
8 be granted.

9 95. Count One depends upon the exclusion of a pertinent part of the
10 definition of an ECP (eligible contract participant), which part is stated
11 in 7 U.S.C. § 1a(18)(A)(v)(III)((aa)-(bb): “The term “eligible contract
12 participant” (A) acting for its own account – (v) a corporation,
13 partnership, proprietorship, organization, trust, or other entity – (III)
14 that – (aa) has a net worth exceeding \$1,000,000; and (bb) enters into an
15 agreement, contract, or transaction in connection with the conduct of
16 the entity’s business or to manage the risk associated with an asset or
17 liability owned or incurred or reasonably likely to be owned or
18 incurred by the entity in the conduct of the entity’s business.

19 96. Count One, Doc. 1, ¶ 89 identifies only “1a(18)(A)(xi) of the Act, 7
20 U.S.C. § 1a(18)(A)(xi)”, an alternative section that follows 7 U.S.C. §
21 1a(18)(A)(v)(III)((aa)-(bb) and contains different aggregate requirements

1 applicable to an individual, not a corporation such as OGFXL and
2 OGFXS as properly defined in 7 U.S.C. § 1a(18)(A)(v)(III)((aa)-(bb).

3 97. Further, Count One, (¶¶ 88, 90-91) alleges and relies upon the existence
4 of “retail forex transactions”, but none were transacted by Defendants.

5 98. Counts Two and Three, depend upon the existence of CPOs and APs.
6 (Doc. 1, p. 31 35).

7 99. There existed no CPOs nor APs, therefore Counts Two and Three fail to
8 state a claim upon which relief may be granted.

9 100. Count Four rests upon the allegation that OGFXL and OGFXS were
10 commodity pools. Since they were not, as explained above, Count Four
11 fails to state a claim upon which relief can be granted.

12 101. The foundation of Count Five rests upon the alleged existence of
13 commodity pools and the requirement for a commodity pool operator
14 (CPO) to register. As no commodity pool existed and none of the
15 named Defendants were CPOs, Count Five fails to state a claim upon
16 which relief can be granted.

17 102. For the foregoing reasons, case 886 should be dismissed under FRCP
18 Rule 12(b)(1) for lack of subject matter jurisdiction and/or Rule 12(b)(6)
19 for failure to state a claim upon which relief may be granted.
20

1 **III(A) Leg Three: Memorandum of Law**

2 103. The CFTC violated Rules 11(b)(2) and 11(b)(3) by submitting
3 numerous claims, legal contentions, and counts in the Complaint that
4 were unwarranted by existing law and which were factually false.

5 104. *Tacoronte v. Cohen* clarifies the conditions under which Rule 11 is
6 violated:

7 In general, Rule 11 is violated, and sanctions are warranted,
8 when a party files a pleading, motion, or paper that (1) is filed
9 in bad faith or for an improper purpose (see Rule 11(b)(1)); (2)
10 is based on a legal theory that has no reasonable chance of
11 success and that cannot be advanced as a reasonable
12 argument to change existing law (see Rule 11(b)(2)); or (3) has
13 no reasonable factual basis (see Rule 11(b)(3)). See also *Baker*
14 *v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998).

15 *Tacoronte v. Cohen*, 654 F. App'x 445, 7 (11th Cir. 2016)

16
17
18 105. *Royal v. Boykin* clearly states that, given the CFTC's lack of standing
19 as hereinbefore explained, the case should be dismissed under Rule
20 12(b)(6)

21
22 “If a plaintiff does not have statutory standing, he lacks a
23 cause of action, and the action should be dismissed under
24 Federal Rule of Civil Procedure 12(b)(6).” (*Walker v. New*
25 *Orleans City, La.*, No. 16-31229, 2017 WL 3467879, at *1 (5th
26 Cir. Aug. 11, 2017) (per curiam) (citing *Malvino v. De*
27 *lluniversita*, 840 F.3d 223, 229–30 (5th Cir. 2016); *Harold*
28 *H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.2
29 (5th Cir. 2011)

30
31 *Royal v. Boykin*, CIVIL ACTION No. 1:16-cv-00176-GHD-RP, at *4
32 (N.D. Miss. Sep. 5, 2017))
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Gully v. First Nat. Bank, 299 U.S. 109, 114 (1936)

* * *

The phrase "prima facie case" not only may denote the establishment of a legally mandatory, rebuttable presumption, but also may be used by courts to describe the plaintiff's burden of producing enough evidence to permit the trier of fact to infer the fact at issue. 9 J. Wigmore, Evidence § 2494 (3d ed. 1940).

Tex. Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 n.7 (1981)