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 4OAKS LLC,

Relief Defendants.

DEFENDANT MICHAEL J. DACORTA'S RESPONSE AND MEMORANDUM IN OPPOSITION TO PLAINTIFF CFTC'S MOTION FOR SUMMARY JUDGMENT

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COMES NOW, Defendant, **Michael J. DaCorta** (hereinafter "DaCorta") by and through his undersigned Attorney Ronald J. Kurpiers, II of Kurpiers Law Firm, P.A. and who hereby files his Response and Memorandum in Opposition to Plaintiff CFTC's Motion for Summary Judgment in the above-captioned matter pursuant to Rule 56 of the Federal Rules of Civil Procedure.

In support of this Response and Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, DaCorta submits the following memorandum of law and response showing Plaintiff CFTC is not entitled to Summary Judgment on the Plaintiff's First Amended Complaint.

INTRODUCTION

Defendant Michael J. DaCorta affirms his Opposition to Plaintiff's Commodity Futures Trading Commission ("CFTC") Motion for Summary Judgment (hereinafter referred to as "Plaintiff CFTC Mtn for S.J.) filed on July 17, 2023. (Doc. # 749) and hereby files his Memorandum in Opposition as outlined herein.

DaCorta has no objection to the recitations outlined in Plaintiff's ***Section I. Standard of Review***; ***Section II. Relevant Procedural History***; and ***Section III. Related Criminal Proceeding***. Defendant will address separately the Plaintiff's

allegation of ***Issue Preclusion*** as stated within their Summary Judgment Motion as ***Section IV. Issue Preclusion***.

DEFENDANT DACORTA'S RESPONSE/OPPOSITION TO PLAINTIFF CFTC'S STATEMENT OF MATERIAL FACTS

1. DaCorta admits the stated material facts in ¶ 1 of Plaintiff CFTC Mtn for S.J.

2. DaCorta admits the stated material facts in ¶ 2 of Plaintiff CFTC Mtn for S.J.

3. DaCorta admits the stated material facts in ¶ 3 of CFTC Mtn for S.J.

4. DaCorta admits the stated material facts in ¶ 4 of CFTC Mtn for S.J.

5. DaCorta admits the stated material facts in ¶ 5 of CFTC Mtn for S.J.

6. DaCorta admits the stated material facts in ¶ 6 of CFTC Mtn for S.J.

7. DaCorta admits the stated material facts in ¶ 7 of CFTC Mtn for S.J.

8. DaCorta admits the stated material facts in ¶ 8 of CFTC Mtn for S.J.

9. DaCorta disputes the stated material facts in ¶ 9 of CFTC Mtn for S.J.

Nothing in the Plaintiff's citation to the record of DaCorta's trial testimony in either (Day 10 - *April 29, 2022 (Document 221, Page 179-259)) or (Day 11 - May 2, 2022 (Document 222, Pages 8-266))* in their Mtn for S.J. (Doc. No. 749) supports this bare and unsubstantiated allegation alleging "funds from pool participants" for foreign exchange trading.

Defendant DaCorta solicited no funds for OGLtd or OGSA. (DaCorta Second Motion to Dismiss, Doc.#663, Page 5, ¶ 21).

OIG was a diversified corporation engaged in investments designed to produce varied revenue streams from real-estate purchases and sales; business purchases, operations, and sales; Foreign Exchange (Forex) Trading; precious metal investing, along with other endeavors. (DaCorta Second Motion to Dismiss, Doc.#663, Page 5, ¶ 23). OM and OIG collateralized all properties they owned through ATC Brokers in London. (DaCorta Second Motion to Dismiss, Doc.#663, Page 6, ¶ 24). OIG was the sole customer of Broker-dealers OGLtd and OGSA. OIG did not trade for any individual resident of the United States or any group of residents in the United States in any capacity. (DaCorta Second Motion to Dismiss, Doc.#663, Page 6, ¶ 25). OGLtd or OGSA did no retail forex transactions. (DaCorta Second Motion to Dismiss, Doc.#663, Page 6, ¶¶ 26).

The CFTC has no jurisdiction over OM and OIG because said corporations: (1) were "eligible contract participants", (2) operated no "commodity pools", and (3) engaged in no "retail forex transactions". (DaCorta Second Motion to Dismiss, Doc.#663, Page 7, ¶ 29).

Eligible Contract Participants ("ECP") –OGLtd, and OGSA traded on their corporate account for their sole customer OIG. (Title 7 U.S.C. 2(c)(2)(B)(i)(II)). (DaCorta Second Motion to Dismiss, Doc.#663, Page 7, ¶ 30). "Eligible contract

participant" is defined by Title 7 U.S.C. §1a(18)(A)(v)(III)(aa-bb), § 2(c)(2)(C)(i)(I)(aa), and is referred to in 17 CFR §§ 5.1:(d)(1), (e)(1), (f)(1), and (h)(1)(ii)(i-k). (DaCorta Second Motion to Dismiss, Doc.#663, Page 7, ¶ 31). No transaction described under 7 U.S.C. § 2(c)(2)(B) or 2(c)(2)(C) applies to OIG, OGLtd, or OGSA, since only an ECP executed all forex transactions. (DaCorta Second Motion to Dismiss, Doc.#663, Page 7, ¶ 32).

The CFTC had no jurisdiction over OM, OIG, OGLtd, or OGSA because Title 7 U.S.C. 2(c)(2)(C)(i)(I)(aa), limits the Trade Commission's jurisdiction as follows: Commission jurisdiction–(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—(aa) offered to, or entered into with, a person that is not an **eligible contract participant**. . . . [bold type added]. (DaCorta Second Motion to Dismiss, Doc.#663, Page 7, ¶ 33).

Title 7 U.S.C. §2(c)(2)(D)(i) explicitly excludes CFTC jurisdiction over OM, OIG, OGLtd, and OGSA's trading activities. (See Doc.#454, Ex. B(4)). (DaCorta Second Motion to Dismiss, Doc.#663, Page 7, ¶ 34).

Commodity Pools–The Amended Complaint states: DaCorta denies he fraudulently solicited hundreds of members of the public ("pool participants") to invest approximately $75 million in two commodity pools—Oasis Global FX, Limited and Oasis Global FX, SA—that purportedly would trade in forex.

(Amended Complaint, ¶ 1, Doc.#110). (DaCorta Second Motion to Dismiss, Doc.#663, Page 8, ¶ 35).

Title 7 U.S.C. § 1a(10)(A) defines a "commodity pool" as "any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests . . . ." (Doc. #465, p.9). But neither OGLtd nor OGSA was an "investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests . . . ." (Doc. #465, p.9). (DaCorta Second Motion to Dismiss, Doc.#663, Page 8, ¶ 36).

The Amended Complaint inaccurately refers to OGLtd and OGSA as "commodity pools" stressing this inaccurate assertion 328 times, citing Title 7 U.S.C. § 1a(18)(A)(xi) as support which is actually a section pertaining only to "individuals". (DaCorta Second Motion to Dismiss, Doc.#663, Page 8, ¶ 37).

The parties engaging in forex transactions on behalf of OIG were corporations, and more specifically, both were ECPs under pertinent statutes and regulations. Neither OGLtd, OGSA or OIG traded for any individual resident of the United States in any capacity. (DaCorta Second Motion to Dismiss, Doc.#663, Page 8, ¶ 38).

Since, OGLtd and/or OGSA were not "commodity pools", there was not, as the Amended Complaint claims: "Oasis pool", "pool fund", "pool participant", "pool property", "pool disclosure", "forex pool", "pool", "pool operator", or

"Investment Pool". (Doc. #1, pp. 5–6, 13, 27, 31–33, 35–40). (DaCorta Second Motion to Dismiss, Doc.#663, Page 8-9, ¶ 39).

According to Title 17 CFR § 5.1(d)(1), no person under the control or supervision of OIG was a "Commodity Pool Operator" ("CPO"); and according to Title 17 CFR § 5.1(d)(2), neither was any person an "Associated Person" ("AP"). (Title 7 U.S.C. 1a(3-4; Doc. 454, Ex. A(3-4)). (DaCorta Second Motion to Dismiss, Doc.#663, Page 9, ¶ 40).

Thus, there were no "pool participants" nor "associated persons" because there were no "commodity pool operators" nor "commodity pools" with which to associate. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 29–40).

10. DaCorta admits the stated material facts in ¶ 10 of CFTC Mtn for S.J.

11. DaCorta disputes the stated material facts in ¶ 11 of CFTC Mtn for S.J. OM never solicited, received, and accepted funds for investment in commodity pools. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

12. DaCorta admits the stated material facts in ¶ 12 of CFTC Mtn for S.J.

13. DaCorta admits the stated material facts in ¶ 13 of CFTC Mtn for S.J.

14. DaCorta admits the stated material facts in ¶ 14 of CFTC Mtn for S.J.

15. DaCorta admits the stated material facts in ¶ 15 of CFTC Mtn for S.J.

16. DaCorta disputes the stated material facts in ¶ 16 of CFTC Mtn for S.J. OIG never received pool participant funds into the same bank account it paid

employees, principals, and payments related to OIG-owned properties. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

17. DaCorta disputes the stated material facts in ¶ 17 of CFTC Mtn for S.J. DaCorta denies the only payments that came into the OIG accounts were funds from pool participants. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

18. DaCorta disputes the stated material facts in ¶ 18 of CFTC Mtn. for S.J. DaCorta denies OIG pool participant money was used for OIG operating expenses, real estate purchases, and business investments. Anile Tr. (Day 6) 184:17–185:4, 190:7–191:15. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

19. DaCorta disputes the stated material facts in ¶ 19 of CFTC Mtn. for S.J. DaCorta denies there are over 800 pool participants who did not receive what they were promised from OIG or OM. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

20. DaCorta disputes the stated material facts in ¶ 20 of CFTC Mtn. for S.J. DaCorta asserts there were no "Funds from pool participants" went to one of three Oasis-related entities: OIG, OM, or SHC. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

21. DaCorta admits the stated material facts in ¶ 21 of CFTC Mtn for S.J.

22. DaCorta disputes the stated material facts in ¶ 22 of CFTC Mtn. for S.J. DaCorta asserts there were no "pool participants." (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

23. DaCorta disputes the stated material facts in ¶ 23 of CFTC Mtn. for S.J. DaCorta asserts there were no "pool participants." (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

24. DaCorta disputes the stated material facts in ¶ 24 of CFTC Mtn. for S.J.). DaCorta never testified, contrary to the allegations made by the Plaintiff CFTC, that "money received from pool participants." (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). Please review DaCorta Tr. (Day 11) 233:15-18.

25. DaCorta disputes the stated material facts in ¶ 25 of CFTC Mtn. for S.J.). There were no pool participant subaccounts created by OIG as Pool Participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

26. DaCorta disputes the stated material facts in ¶ 26 of CFTC Mtn. for S.J.). There was no pool participants or Oasis Pools as alleged as Pool Participants and/or Oasis Pools did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

27. DaCorta disputes the stated material facts in ¶ 27 of CFTC Mtn. for S.J.). There were no pool participants or potential pool participants as alleged as Pool

Participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

28. DaCorta disputes the stated material facts in ¶ 28 of CFTC Mtn. for S.J.). There were no pool participants so there were no solicitations and/or representations to pool participants as Pool Participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

29. DaCorta disputes the stated material facts in ¶ 29 of CFTC Mtn. for S.J.). There were no pool participants or potential Pool Participants as pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

30. DaCorta admits the stated material facts in ¶ 30 of CFTC Mtn for S.J.

31. DaCorta admits the stated material facts in ¶ 31 of CFTC Mtn for S.J.

32. DaCorta admits the stated material facts in ¶ 32 of CFTC Mtn for S.J.

33. DaCorta admits he raised over $75 million in loans but disputes the remaining stated material facts in ¶ 33 of CFTC Mtn. for S.J.). There were no pool participants as alleged as Pool Participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

34. DaCorta disputes the stated material facts in ¶ 34 of CFTC Mtn. for S.J.). There were no pool participants and the allegation of owing pool participants approximately $120 million is a fabrication and false. (DaCorta's Second Motion

to Dismiss, Dkt. 663 at ¶¶ 21–40). This allegation is inherently inconsistent with the allegation contained within ¶ 36 of the CFTC Mtn for S.J.

35. DaCorta disputes the stated material facts in ¶ 35 of CFTC Mtn. for S.J.). There were no Oasis pools as Oasis Pools did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

36. DaCorta disputes the stated material facts in ¶ 36 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

37. DaCorta disputes the stated material facts in ¶ 37 of CFTC Mtn. for S.J.). There were no Oasis pools as Oasis Pools did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

38. DaCorta disputes the stated material facts in ¶ 38 of CFTC Mtn. for S.J.). There were no Oasis pools as Oasis Pools did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

39. DaCorta disputes the stated material facts in ¶ 40 of CFTC Mtn. for S.J. As evidenced through the trial testimony of Harold McFarland, OIG did operate profitably from its inception when you consider all the relevant investment vehicles. Harold McFarland testified to ***Defense Exhibit 84*** which was a chart of valuations of the 3.8 million ounces of silver held by Oasis showing Oasis' silver position at various points in time. On December 31, 2019 the silver position would

have been $11,248,000.00. In June 30, 2020 it would have been $12,540,000.00. If it was held to August 6, 2020 the value would have been $56,506,000.00. If Oasis had been able to hold their silver position a few months past the time they were shut down the value of the silver position would have been $19 million. (Doc. 223, T.T. Page 10, lines 11-25 and Page 11, lines 1-7).

Mr. McFarland further testified precious metals are considered a good hedge against certain market factors. Generally precious metals are considered a good hedge against market volatility and against inflation. Between April of 2019 and the end of 2019, the value of silver went up about 17 times, proving investing in silver was a prudent business decision. (Doc. 223, T.T. Page 11, lines 12-25 and Page 12, lines 1-6). Mr. McFarland believed that Oasis investing in a silver position would have helped to secure the lenders because silver did go up substantially. (Doc. 223, T.T. Page 12, lines 7-11).

Mr. McFarland also testified he analyzed data that showed Oasis owned properties of different tiers in terms of values. ***Defense Exhibit 76*** was identified and admitted into evidence which showed a summary all the residential properties that had been owned by Oasis. ***Defense Exhibit 76*** was based on Mr. McFarland's review of the appraisals for all the properties as well as adding them all together. The total purchase prices for the Oasis properties were $9,246,499.00. It also reflects appraised value of the Oasis properties as of April 1, 2019 at

$10,100,000.00 and the total appraised value as of January 30, 2022 at $14,882,000.00. Thus, showing a profit of over $5 million from date of purchase to the dates if it was still held by Oasis. Mr. McFarland opined that the purchases of these properties promoted the stability of Oasis because real estate has traditionally been a very good investment because it steadily increases. (Doc. 223, T.T. Page 27, lines 1-25 and Page 28, lines 1-15).

Mr. McFarland also calculated overall assets of Oasis at different periods of times. At the time the Receiver took possession of Oasis in April 2019, Oasis had in its bank accounts $10,500,000.00. The Oasis properties were worth $10,100,000.00. There was physical cash in the amount of $175,000.00. At the time the Receiver seized Oasis the overall value of the assets of Oasis would have been $23,038,000.00. If Oasis had been left undisturbed, the total value would be in his opinion about $46,729,000.00. Therefore, in his professional opinion, Harold McFarland opined that Michael DaCorta was attempting to build a successful business. Assuming, Oasis would have closed out their silver position at $20 million, Oasis would have been able to satisfy a demand for a lender within 90 days. (Doc. 223, T.T. Page 30, lines 8-25 and Page 31, lines 1-12 and Page 32, lines 1-25 and Page 33, lines 1-7).

Mr. McFarland testified in all the records he reviewed, when a request was made from a lender for a return of their loan/investment it was fulfilled within the 90 days. (Doc. 223, T.T. Page 33, lines 8-12).

40. DaCorta disputes the stated material facts in ¶ 40 of CFTC Mtn. for S.J.). There were no Oasis pools as Oasis Pools did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

41. DaCorta admits the stated material facts in ¶ 41 of CFTC Mtn for S.J.

42. DaCorta admits the stated material facts in ¶ 42 of CFTC Mtn for S.J.

43. DaCorta admits the stated material facts in ¶ 43 of CFTC Mtn for S.J.

44. DaCorta disputes the stated material facts in ¶ 44 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). There is no evidence submitted by Plaintiff CFTC supporting this baseless allegation that anyone misappropriated over $28 million of pool participants' funds.

45. DaCorta disputes the stated material facts in ¶ 45 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). Nothing within Michael DaCorta's trial testimony cited by the Plaintiff CFTC supports this baseless allegation.

46. DaCorta disputes the stated material facts in ¶ 46 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

47. DaCorta disputes the stated material facts in ¶ 47 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). Even the Plaintiff CFTC's own allegations within their Motion for Summary Judgment outlines various amounts inconsistent with each other of $83,795,457.00; $120 million; $75 million; $63 million, etc. Even the CFTC does not know the specific amount and at this stage it is mere speculation.

48. DaCorta disputes the stated material facts in ¶ 48 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

49. DaCorta disputes the stated material facts in ¶ 49 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). DaCorta offered into evidence the Sworn Declaration of John Paniagua as Defendant's S.J. Ex. 3. Mr. Paniagua's swore as part of his due diligence prior to investing/loaning money to OIG, he performed a risk management analysis on the company. First off, the rule of thumb in any investment is to diversify. He saw a certain percentage of

investment went into trading and the rest in other assets. Mr. Paniagua's belief was OIG was invested in properties, real estate, commodities like silver and gold and into small companies. He believed this was a sound strategy. (Sworn Declaration of John Paniagua, ¶13).

50. DaCorta admits the stated material facts in ¶ 50 of CFTC Mtn for S.J.

51. DaCorta disputes the stated material facts contained in ¶ 51 of CFTC Mtn for S.J. There were no pool participants therefore no money came directly from pool participants. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

52. DaCorta disputes the stated material facts contained in ¶ 52 of CFTC Mtn for S.J. There were no Oasis Pools or pool participants. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

53. DaCorta disputes the stated material facts contained in ¶ 53 of CFTC Mtn for S.J. DaCorta specifically testified he did not intend to deceive or cheat investors or lenders out of their money. (Doc. 222, T.T. Page 264, lines 21-25 and Page 265, line 1).

54. DaCorta disputes the stated material facts contained in ¶ 54 of CFTC Mtn for S.J. DaCorta specifically testified he did not intend to deceive or cheat investors or lenders out of their money. (Doc. 222, Trial Testimony (T.T.), Page 264, lines 21-25 and Page 265, line 1).

55. DaCorta disputes the stated material facts contained in ¶ 55 of CFTC Mtn for S.J. DaCorta specifically testified he did not intend to deceive or cheat investors or lenders out of their money. (Doc. 222, T.T. Page 264, lines 21-25 and Page 265, line 1).

56. DaCorta disputes the stated material facts contained in ¶ 56 of CFTC Mtn for S.J. DaCorta specifically testified he did not intend to deceive or cheat investors or lenders out of their money. (Doc. 222, T.T. Page 264, lines 21-25 and Page 265, line 1).

57. DaCorta disputes the stated material facts contained in ¶ 57 of CFTC Mtn for S.J. DaCorta admits he was found guilty beyond a reasonable doubt but strongly denies he is in fact guilty of such offense. DaCorta specifically testified he did not intend to deceive or cheat investors or lenders out of their money. (Doc. 222, T.T. Page 264, lines 21-25 and Page 265, line 1).

58. DaCorta disputes the stated material facts in ¶ 58 of CFTC Mtn. for S.J.). There were no pool participants. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

59. DaCorta disputes the stated material facts in ¶ 59 of CFTC Mtn. for S.J.). There were no pool participants. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). DaCorta specifically testified he did not intend to deceive or cheat

investors or lenders out of their money. (Doc. 222, T.T. Page 264, lines 21-25 and Page 265, line 1).

60. DaCorta admits a Judgment in the Criminal case was entered upon conviction and sentence in the amount of $53,270,336.08. DaCorta denies that was from a fraudulent scheme as outlined in the Amended Complaint and his trial testimony (Day 10 and Day 11).

61. DaCorta disputes the stated material facts in ¶ 61 of CFTC Mtn. for S.J.). DaCorta denies there were any proceeds from a wire and mail fraud conspiracy and money laundering offense. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

62. DaCorta disputes the stated material facts in ¶ 62 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). DaCorta admits OIG provided an "Agreement and Risk Disclosure" along with a "Promissory Note and Loan Agreement." Mr. DaCorta testified he and Attorney Anile had Oasis investors sign risk disclosure agreements that Attorney Anile had created in the end of 2018, which gave Oasis the ability to do whatever Oasis wanted with the money. (Doc. 221, T.T. Page 252, lines 4-9).

63. DaCorta disputes the stated material facts in ¶ 63 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's

Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40). On April 15, 2019, every lender had signed a Promissory Note and Loan Agreement ("PNLA") and "Agreement and Risk Disclosure" ("ARD"). If any lender did not sign these documents, on or before March 30, 2019, OIG returned their loan in full. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 28). Harold McFarland testified he reviewed both the promissory notes and agreement and Risk Disclosure statements. (Governments Exhibit 205A). With regards to Paragraph No. 3 of the Agreement and Risk Disclosures, Mr. McFarland testified that Oasis had considerable leeway in how they invested the loan proceeds. (Doc. 222, T.T. Page 301, lines 5-22).

Mr. McFarland testified the agreements specify Oasis was able to purchase or sell foreign exchange products, securities, commodities, exchange or off-exchange products, business assets, liabilities, purchase or sale of real estate, or any other purpose including general company use, company payment or loans to company affiliates. (Doc. 222, T.T. Page 301, line 23-25 and Page 302, lines 1-5).

64. DaCorta disputes the stated material facts in ¶ 64 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

65. DaCorta disputes the stated material facts in ¶ 65 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

66. DaCorta disputes the stated material facts in ¶ 66 of CFTC Mtn. for S.J.). There were no pool participants as Pool participants did not exist. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

67. DaCorta disputes the stated material facts contained in ¶ 67 of CFTC Mtn. for S.J.). There were no pool participants and/or Oasis pools. (DaCorta's Second Motion to Dismiss, Dkt. 663 at ¶¶ 21–40).

68. DaCorta admits the stated material facts in ¶68 of CFTC Mtn for S.J.

69. DaCorta admits the stated material facts in ¶ 69 of CFTC Mtn for S.J.

70. DaCorta admits the stated material facts in ¶ 70 of CFTC Mtn for S.J.

71. DaCorta admits the stated material facts in ¶ 71 of CFTC Mtn for S.J.

72. DaCorta admits the stated material facts in ¶ 72 of CFTC Mtn for S.J. There is no testimony from DaCorta at his trial, specifically referenced and cited by Plaintiff CFTC as (Trial Testimony (Day 11)-159:4-161:1), where DaCorta admits to changing the numbers.

THE SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate "if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). A properly supported motion for summary judgment is not defeated by the existence of a factual dispute. *Anderson v. Liberty Lobby, Inc.*

477 U.S. 424,249 (1986). Only the existence of a *genuine* issue of material fact will preclude summary judgment *Id*. (*emphasis added*).

The moving party bears the initial burden of showing that there are no genuine issues of material fact. *Hickson Corp. v. N. Crossarm, Co*., 357 F.3d 1256, 1260, (11th Cir. 2004). When the moving party has discharged its burden, the nonmoving party must then designate specific facts showing the existence of material fact. *Jeffrey v. Sarasota White Sox, Inc*. 64 F.3d 590, 593-94 (11th Cir. 1995). If there is a conflict between the parties' allegations and evidence, the nonmoving party's evidence is presumed to be true and all reasonable inferences must be drawn in the nonmoving party's favor. *Shotz v. City of Plantation, Florida* 344 F.3d 1161, 1164 (11th Cir. 2003) and *United States v. Four Parcels of Real Property*, 941 F.2d 1428, 1437 (11th Cir. 1991).

Pursuant to Federal Rule of Civil Procedure 56, Summary Judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See* also *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574 (1986). Summary judgment may be entered only where there are no genuine issues of material fact. *See Twiss v. Kury*, 25 F.3d 1551, 1554 (11th Cir. 1994). "[The]

mere 'scintilla' of evidence supporting the [nonmoving] party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." *Allen v. Tyson Foods, Inc.,* 121 F.3d 642, 646 (11th Cir. 1997). Defendant DaCorta has shown this Honorable Court there are multiple areas of dispute of genuine issues of material fact in which this Honorable Court should deny the Plaintiff's Motion for Summary Judgment.

MEMORANDUM OF LAW

VI. ISSUE PRECLUSION (Collateral Estoppel)

It is well established that a prior criminal conviction may work an estoppel in favor of the Government in a subsequent civil proceeding. *United States v. Greater New York Live Poultry Chamber of Commerce*, 53 F.2d 518 (S.D. N.Y. 1931), affirmed, *Local 167 v. United States*, 291 U.S. 293 (1934); *Farley v. Patterson*, 166 A.D. 358, 152 N.Y.S. 59 (1915); *see State v. Adams*, 72 Vt. 253, 47 A. 779 (1900); *2 Freeman, Judgments* (5th ed. 1925), § 657. Such estoppel extends only to questions "distinctly put in issue and directly determined" in the criminal prosecution. *See Frank v. Mangum*, supra, at 334; *United States v. Meyerson*, 24 F.2d 855, 856 (S.D. N.Y. 1928). In the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment. Cf. *Commonwealth v. Evans*, 101 Mass. 25 (1869).

However, as it is in this matter before this Honorable Court, it can be hard to determine what matters were adjudicated in prior criminal litigation. A general verdict of the jury or judgment of the court without special findings does not indicate which of the means charged in the indictment were found to have been used in effectuating the conspiracy or other crime. And since all the acts charged need not be proved for conviction (*United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940)), such a verdict does not establish that defendants used all the means charged or any particular one. Under these circumstances what was decided by the criminal judgment must be determined by the trial judge hearing, upon an examination of the record, including the pleadings, the evidence submitted, the instructions under which the jury arrived at its verdict, and any opinions of the courts. *Sealfon v. United States*; cf. *Oklahoma v. Texas*, 256 *Emich Motors v. General Motors*, 340 U.S. 558, 568-69 (1951)–cited on pp. 5–6 of CFTC Mtn for S.J.

Collateral estoppel is an awkward phrase, but it stands for an important principle in our adversary tradition. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. *Ashe v. Swenson*, 397 U.S. 436, 443 (1970) – cited p. 6.

The traditional threshold requirements for application of the doctrine of

collateral estoppel are: (1) the issue to be concluded must be identical to that involved in the prior action; (2) in the prior action the issue must have been actually litigated; and (3) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. *See Restatement of Judgments* § 68 (1942), *Moore's Federal Practice* ¶ 0.433 [1]; *Scott, Collateral Estoppel by Judgment*, 56 Harv.L.Rev. 1, 4–5 (1942). If any one of these requirements is lacking, there is no collateral estoppel. *James Talcott, Inc. v. Allahabad Bank, LTD*, 444 F.2d 451, 458-59 (5th Cir. 1971).

"It is against these basic principles that we must test the effect of the prior litigation upon the issues Plaintiffs seek to litigate in this case." *Stevenson v. Intl. Paper Co., Mobile, Alabama*, 516 F.2d 103, 110 (5th Cir. 1975).

In precluding a party from relitigating an issue, the court must be satisfied that the application of res judicata or collateral estoppel does not contravene any overriding public policy. *Garner v. Giarrusso*, 571 F.2d 1330, 1336 (5th Cir. 1978); *Moch, supra; Johnson v. United States*, 576 F.2d 606, 614 (5th Cir. 1978).

In the federal courts, it is not necessary for the party asserting the estoppel to have been a party to the prior adjudication if . . . the estoppel is used defensively. *See Blonder-Tongue Labs v. University of Illinois Foundation*, 402 U.S. 313, 349-50, 91 S.Ct. 1434, 1453, 28 L.Ed.2d 788, 811 (1971). The party asserting the estoppel must show (1) that the issue to be concluded is identical to an issue

decided in the prior litigation, (2) that it was actually litigated, and (3) that the decision on the issue must have been necessary to the prior judgment. *Stevenson v. International Paper Co.*,516 F.2d 103, 110 (CA5, 1975); *see Garner v. Giarrusso*,571 F.2d 1330, 1336 (CA5, 1978). *Matter of Merrill*, 594 F.2d 1064, 1067 (5th Cir. 1979).

Estoppel in general: An equitable doctrine which prevents a party from raising a claim or taking a legal position when his conduct with regard to that claim is contrary to his position. Estoppel requires (1) words, acts, conduct, or acquiescence causing another to believe in the existence of a certain state of things; (2) willfulness or negligence with regard to the acts, conduct, or acquiescence; and (3) detrimental reliance by the other party upon the state of things so indicated. *See, e.g., Minerals Chemicals Philipp Corp. v. Milwhite Co.*,414 F.2d 428 (5th Cir. 1969); *Richards v. Dodge*,150 So.2d 477 (Fla.App. 1963); *State ex rel. Watson v. Gray*,48 So.2d 84 (Fla. 1950).

To survive a motion for summary judgment, a plaintiff need "only present evidence from which a jury might return a verdict in his favor. If he does so, there is a genuine issue of fact that requires a trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *Samples on Behalf of Samples v. Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988)).

"The actual decision whether to apply collateral estoppel undoubtedly involves equitable considerations, *Hercules Carriers v. Claimant State of Florida*, 768

F.2d 1558, 1582 (11th Cir. 1985), and is therefore subject to review under an abuse of discretion standard. *Deweese v. Town of Palm Beach*, 688 F.2d 731, 734 (11th Cir. 1982)."

The initial question of whether collateral estoppel is available is a legal question which the court must consider de novo. *Davis Cox*, 751 F.2d at 1519.

The party seeking to invoke collateral estoppel bears the burden of proving that the necessary elements have been satisfied. *Matter of Merrill*, 594 F.2d 1064, 1067 (5th Cir. 1979). The identity of issues required to invoke collateral estoppel was lacking in a case where transactions at issue in prior cases were similar in nature and close in time to, but not precisely the same as, the case then before the court. *Matter of McWhorter*, 887 F.2d 1564, 1566–67 (11th Cir. 1989).

Collateral estoppel applies only to those issues which were "actually" or "fully" litigated in the prior action. However, this rule does not refer to the quality or quantity of argument or evidence addressed to an issue.

Collateral estoppel requires only two things: first, that the issue has been effectively raised in the prior action, either in the pleadings or through development of the evidence and argument at trial or on motion; second, that the losing party have had a fair opportunity procedurally, substantively and evidentially to contest the issue. *In re Bush*, 62 F.3d 1319, 1323 (11th Cir. 1995).

During DaCorta's criminal trial there was no mention of solvency of the Oasis Companies or whether they operated "Commodity Pools" or "Pool Participants" and were not deciding factors in the jury verdict. At least it is completely unclear what and why the jury decided on the verdict they returned. The CFTC relies on this statement from *U.S. v. Jean-Baptiste*: "Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial" *U.S. v. Jean-Baptiste*, 395 F.3d 1190, 1194 (11th Cir. 2005)–cited p. 5. However, in *Jean-Baptiste*, the issue that the government sought to prove in . . . [his civil] denaturalization proceeding—*Jean-Baptiste's* conspiracy to possess crack cocaine with the intent to distribute—was the same issue it sought to prove in the criminal trial; *Jean-Baptiste's* commission of this offense was litigated, and his conviction was affirmed on appeal. Indeed, the government proved the commission of the offense. Moreover, proving the doing of the crime was necessary to the conviction.

But Defendant DaCorta's case differs in that the CFTC offered no evidence at DaCorta's criminal trial for the issues it seeks to preclude under collateral estopple. (1) The jury instructions did not include any mention of whether Oasis was solvent or was a commodity pool. (2) Unlike the *Jean-Baptiste* case DaCorta's appeal has not yet been decided.

ARGUMENT

Therefore, Oasis was always solvent. Oasis did not operate a Ponzi scheme. Oasis never made any "Ponzi-like" payments and did not operate pool participants or Oasis pools.

CONCLUSION

Based on the disputed issues of material facts, the Sworn Declarations of John Paniagua (Ex. S.J. 3) (including Exhibits JP-A through JP-E) as well as the Sworn testimony of Harold McFarland and Michael J. DaCorta, all applicable statutes and Federal Regulations, all applicable case law, and the arguments set forth hereinabove, Defendant Michael J. DaCorta respectfully requests this Court enter an order denying Plaintiff CFTC's Motion for Summary Judgment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7, 2023, I electronically filed the foregoing with the Clerk of Court for the Middle District of Florida using their CM/ECF system, which is obligated to send notice of electronic filing to:

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