

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SUSAN ZIMMERMAN, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

MATSON MONEY, INC.,
CHRISTOPHER W. BURNS,
INVESTUS ADVISERS LLC d/b/a
DYNAMIC MONEY LLC,
INVESTUS FINANCIAL LLC, and PEER
CONNECT LLC

Defendants.

Case No.:

COMPLAINT – CLASS ACTION

CLASS ACTION COMPLAINT

Plaintiff Susan Zimmerman files this class action complaint individually and on behalf of all others similarly situated against Defendants Matson Money, Inc. (“Matson Money”), Christopher W. Burns (“Burns”), Investus Advisers LLC d/b/a Dynamic Money LLC (“Investus Advisers”), Investus Financial LLC (“Investus Financial”) and Peer Connect LLC (“Peer Connect”) (Burns, the Investus entities and Peer Connect are collectively referred to as “Investus Defendants”). Plaintiff further allege as follows:

SUMMARY OF CASE

1. This matter involves a fraudulent scheme orchestrated by and among Defendants who defrauded Plaintiff Zimmerman and Class Members to invest in promissory notes that were falsely described to them as safe and conservative “peer to peer” investment opportunities. In reality, the promissory notes were sham investments, unregistered securities and part of a Ponzi scheme that, as explained below in greater detail, Defendants used to line their pockets and defraud investors out of millions of dollars.

2. Plaintiff Susan Zimmerman is a victim of this scheme and between January 2018 and September 21, 2020, she invested a total of approximately \$350,000 of her hard-earned retirement savings into the scheme and lost her investment. In fact, just days before it was reported in the news that Burns vanished, he bilked Zimmerman out of an additional \$50,000 and convinced her to invest in another peer to peer investment.

3. At all times material, Defendant Investus Advisers acted in the capacity of an investment adviser pursuant to O.C.G.A. §10-5-32 and Defendant Burns acted as an investment adviser representative pursuant to O.C.G.A. §10-5-33. There is no question that both Investus Advisers and Burns were fiduciaries that owed Plaintiff and Class Members the highest of legal duties under Georgia and federal laws.

4. As reported in the news, Burns was a well-known financial advisor and entrepreneur based in Atlanta that claimed to be an investment guru and even had his own radio program on 95.5 WSB called The Chris Burns Show. Burns also regularly appeared on television providing investment advice.¹ According to Burns' website:

The Chris Burns Show, powered by Dynamic Money, unpacks how the week's headlines practically impact your life, wallet, and future. Chris records the show live in Atlanta every Sunday to help you become excited about your money, your dreams, and understand how real headlines have a real impact on your life.²

5. Burns made himself appear to the public as a charismatic, competent, and trustworthy family man, which is why the Atlanta community was shocked to learn that he was reported missing by his wife on September 24, 2020, the day before he was supposed to provide the Securities and Exchange Commission with documents related to his business.³ Since his disappearance, Burns has been charged with the federal crime of mail fraud and a warrant has been issued for his arrest.⁴ In addition, on October 20, 2020, the Georgia Commissioner of Securities

¹ <https://www.ajc.com/neighborhoods/gwinnett/atlanta-financial-adviser-reported-missing/3H4TIPBLQ5A6PBDHQWUEHETMIE/>

² <https://dynamicmoney.com/>

³ <https://www.ajc.com/neighborhoods/gwinnett/atlanta-financial-adviser-reported-missing/3H4TIPBLQ5A6PBDHQWUEHETMIE/>

⁴ https://www.fbi.gov/contact-us/field-offices/atlanta/news/press-releases/fbi-charges-financial-adviser-and-seeks-publics-help-locating-him?fbclid=IwAR3XjtnJlZjLtCn5-d66kz5gPgXbtb7qete81k_GS9w98xzEiZ_-QwiX-k

issued an *Emergency Order to Cease and Desist* against the Investus Defendants for violating the Georgia Uniform Securities Act of 2008 by engaging in a fraudulent scheme and selling unregistered securities, i.e. promissory notes.

6. The crux of Defendants' investment scheme is that from at least 2017 to September 2020, Defendants illegally raised money from investors in what Burns referred to as "peer to peer" lending investment opportunities. Burns raised investment capital from Plaintiff and Class Members based on the false promise that Investus Financial and Peer Connect were lending the Plaintiff's and Class Members' money that had been entrusted to Investus Financial to third-party individuals and/or entities that were in need of operating capital. In exchange for the money invested by Plaintiff and the Class Members, Investus Financial and/or Peer Connect issued promissory notes to Plaintiff and Class Members promising to repay their principal and interest over a period of time. At all times material, the promissory notes at issue were illegal, because they were unregistered securities under Georgia law.

7. Burns falsely claimed that Plaintiff's and Class Members' investments were safe and conservative in part because they were purportedly secured by the assets of third-party borrowers. In truth, the peer to peer investment opportunities were nothing more than a Ponzi scheme that Defendants attempted to keep afloat by taking in money from new investors to pay interest to earlier investors.

8. Upon information and belief, there are over ninety (90) victims of this fraudulent scheme and the damages exceed \$5 million, exclusive of interest and costs.⁵

9. Defendant Matson Money is a large investment advisory firm with over \$15 billion in assets under management. Matson Money participated in and profited from the fraudulent scheme. For example, upon information and belief, Burns used Matson Money's proprietary software and marketing materials to recruit clients, gain their trust and create uniform financial plans for a fee. Burns uniformly used Matson Money's software to obtain confidential financial information from Plaintiff's and Class Members, gain their trust, and to open investment accounts with Matson Money.

10. As part of an overall investment strategy, Burns uniformly recommended that Plaintiff and Class Members invest a portion of their portfolio in the illegal promissory notes. At all times material, Burns had an exclusive agreement with Matson Money to refer all his clients to Matson Money, and Burns' investment adviser agreements with his clients expressly required clients to agree to open investment accounts with Matson Money. Further, the investment

⁵ According to Investus Advisers' most recent Form ADV on file with the SEC, Investus Advisors and Burns had over ninety (90) clients. Upon information and belief, most, if not all, of those clients are victims of this alleged fraud and are putative class members. Based on Plaintiff's counsels' preliminary assessment and investigation, the damages exceed \$5 million, exclusive of interest and costs.

adviser agreements between Plaintiff and Class Members and Matson Money listed Matson Money and Investus Advisers as “Co-Advisors,” and the Co-Advisors agreed to manage Plaintiff and Class Members’ investments with full discretionary authority. Upon information and belief, Matson Money was required by its contracts with Plaintiff and every Class Members’ to invest their money in its proprietary mutual funds, not promissory notes.

11. Importantly, the illegal promissory notes were not listed on the Matson Money account statements, but Matson Money permitted interest (i.e. false profits) from the promissory notes to be deposited into Plaintiff’s and Class Members’ investment accounts. Even though it was required to do so, Matson Money did not conduct adequate due diligence to identify the source of funds being received and under the firm’s control. Instead, Matson Money simply invested the illegal proceeds in Matson Money’s proprietary mutual funds and charged Plaintiff and Class Members advisory fees.

12. Equally important, Matson Money also liquidated Plaintiff’s and Class Members’ investments in their investment accounts and Matson Money transferred the liquidated funds out of the accounts for investment in the initial illegal promissory note purchases by Plaintiff and Class Members, and in additional investments in illegal promissory notes.

13. As explained below, there is no question that Matson Money violated

its fiduciary duties to Plaintiff and Class Members, failed to act in their best interest as required by Georgia and federal law, acted as a statutory seller of the promissory notes, and materially aided the Investus Defendants in connection with the fraudulent scheme.

14. As alleged in greater detail below, Defendant(s) are liable to Plaintiff and Class Members for breach of fiduciary duty, violations of O.C.G.A. §10-5-70, *et seq.* (Georgia's Uniform Securities Act of 2008), breach of contract, negligence, negligence per se, attorney's fees pursuant to O.C.G.A. §13-6-11, and punitive damages pursuant to O.C.G.A. §51-12-5.1.

PARTIES, JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), as the amount in controversy exceeds \$5 million exclusive of interest and costs and some of the Defendants have a different citizenship from Plaintiff.

16. Plaintiff Susan Zimmerman is a citizen and resident of the State of Georgia.

17. Defendant Matson Money, Inc. is registered as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"). Matson Money's principal office is located at 5955 Deerfield Blvd., Mason, OH 45040. Matson Money has been registered as an investment adviser in the State of Georgia

since June 23, 1995. Pursuant to its Form ADV (Uniform Application For Investment Adviser Registration and Report By Exempt Reporting Advisers) filed with the SEC on June 24, 2020, Matson Money irrevocably appointed the Georgia Secretary of State as its agent to receive service, and agreed that such persons may accept service on its behalf of any summons if, as alleged herein, the action arose out of any activity in connection with its investment advisory business that is subject to the jurisdiction of the United States, and is founded, directly or indirectly, upon the provisions of the Investment Company Act of 1940 or any rule or regulation thereunder.

18. This Court has personal jurisdiction over Matson Money pursuant to O.C.G.A. §9-10-91, Georgia's long-arm statute. At all times material, Matson Money transacted business within this State by exercising full investment decision-making authority over the investment accounts of Georgia residents, including the Plaintiff and Class Members. The activity transacted and conducted in Georgia was not isolated activity and therefore, Matson Money could reasonably have anticipated being haled into court in Georgia. Without limiting the generality of the forgoing, at all times material, Matson Money knowingly received fees and/or other forms of revenue derived from the Investus Defendants' solicitation of Georgia residents to use Matson Money's advisor services.

19. Defendant Christopher W. Burns is a citizen and resident of the State

of Georgia and may be served at 472 Lakeshore Drive, Berkley Lake, Gwinnett County, Georgia, 30096. Burns is registered with the Georgia Securities Commission as an investment adviser representative of Investus Advisers. This Court has personal jurisdiction over Christopher Burns.

20. Defendant Investus Advisers LLC d/b/a Dynamic Money LLC is a limited liability company organized and existing under the laws of the State of Georgia. Investus Advisers is registered with the Georgia Securities Commission as an investment adviser pursuant to O.C.G.A. §10-5-32. Investus Advisers may be served by service upon its registered agent, Christopher W. Burns, 472 Lakeshore Drive, Berkeley Lake, Gwinnett County, Georgia, 30096. This Court has personal jurisdiction over Investus Advisers.

21. Defendant Investus Financial LLC is a limited liability company organized and existing under the laws of the State of Georgia. Investus Advisers may be served by service upon its registered agent, Christopher W. Burns, 472 Lakeshore Drive, Berkeley Lake, Gwinnett County, Georgia, 30096. The promissory notes at issue in this case were issued by Investus Financial from the State of Georgia. The promissory notes are not federal covered securities and were/are not registered, as required, under the Georgia Uniform Securities Act of 2008. This Court has personal jurisdiction over Investus Financial.

22. Defendant Peer Connect LLC is a limited liability company organized

and existing under the laws of the State of Georgia. Peer Connect may be served by service upon its registered agent, Christopher W. Burns, 472 Lakeshore Drive, Berkeley Lake, Gwinnett County, Georgia, 30096 or at its principal office located at 7000 Central Parkway, Suite 1100, Atlanta, Georgia 30328. This Court has personal jurisdiction over Investus Advisers. The promissory notes at issue in this case were issued by Peer Connect from the State of Georgia. The promissory notes are not federal covered securities and were/are not registered, as required, under the Georgia Uniform Securities Act of 2008. This Court has personal jurisdiction over Peer Connect.

23. Venue is proper within this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events, acts, and omissions giving rise to Plaintiff's and Class Members' claims occurred in this District.

STATEMENT OF FACTS

A. Matson Money relies upon Burns and Investus Defendant(s) to solicit and refer clients to Matson Money.

24. Defendant Matson Money was founded in 1991 and provides advisory services to individuals, trusts, corporations, non-profit organizations, retirement plans and foundations. Matson Money has over \$15 billion in assets under management. As of December 2018, Matson Money had 35,000 clients as in all 50 States, Puerto Rico and Guam, and over 500 Financial Advisors.

25. Matson Money offers financial advisors a turnkey asset management program (“TAMP”). Matson Money offers a fee-account technology platform that financial advisers use to oversee their clients’ investment accounts, including asset management.

26. Matson Money’s main line of business is providing asset-allocation advice. Matson Money allocates its client assets across model portfolios built with its proprietary mutual funds and securities managed by other firms.

27. Matson Money provides discretionary asset allocation investment services through its Matson Fund Platform and the client’s relationship with the solicitors and co-advisors who market Matson’s advisory services, known as “Referrers.” Matson Money’s advisory services are marketed almost exclusively by Referrers.

28. The Matson Fund Platform consists of shares of one or a combination of certain series of a no-load, open-end investment company, commonly known as a mutual fund, which is managed by Matson Money and is registered as “The RBB Fund, Inc.” under the Investment Company Act of 1940, (collectively, the “Matson Funds”).

29. At all times material, one or more of the Investus Defendants was a Matson Money Referrer.

30. At all times material, Defendant Investus was a co-advisor to Matson

(“Co-Advisor”) for the client accounts maintained by Plaintiff and the Class Members..

31. At all times material, Burns was investment advisor representative (Co-Advisor Representative”) of Investus.

B. Christopher Burns used his radio show and his perceived expertise in investing to gain the trust of investors.

32. As alleged above, at all times material, Burns was an investment adviser representative of his own investment advisory firm, Investus Advisors a/k/a Dynamic Money, and Burns held himself out to the public as a charismatic, competent, and trustworthy family man with a passion for helping investors to make smart and informed investment decisions. Burns had his own radio program called The Chris Burns Show that aired on Sunday mornings on 95.5 WSB and he regularly appeared on television providing investment advice.

33. Burns also promoted Investus Advisors through a social media blog, <https://dynamicmoney.com/blogs>, a Christian themed podcast and a number of other websites and social media platforms, including:

<http://www.mylifeismore.com>

<https://www.facebook.com/morethanmoneyfm/notifications>

https://www.instagram.com/morethanmoney_financialplanner/?hl=en

https://www.instagram.com/dynamic_money

<https://www.facebook.com/DynamicMoneyPlanning>.

34. Investus Advisers’ “Mission,” according to Dynamic Money’s website, <https://dynamicmoney.com>, is “to equip those who desire to identify and reach

their dreams through affordable fee-only planning.” Its “Strategy” was to “focus on building a strong foundation, assessing your risk tolerance, setting clear goals, and monitoring your progress along the way.” And its “Promise” was that “we promise to be more than a transaction, but a resource, a tool, and a key to your life’s greatest adventures. We promise our full integrity and our best in every meeting.”

C. Plaintiff and her husband were in search of a trustworthy investment adviser and instead found Burns.

35. On an early Sunday morning in November 2017, Plaintiff’s husband, Norman Zimmerman, Jr. was on his way to go hunting and he listened to Burns’ radio show and was immediately impressed with Burns’ perceived expertise in investing. Coincidentally, Norman and Plaintiff Susan Zimmerman had recently discussed their need to find a trustworthy financial professional to help them plan for retirement. Both felt that they were unsophisticated on matters related to investing and Norman was glad to have identified someone to potentially hire.

36. Shortly after hearing Burns’ radio show, Plaintiff and her husband contacted Investus Advisers to schedule an appointment with Christopher Burns.

37. On or about November 29, 2017, Plaintiff and her husband met with Burns at his office and they discussed creating a financial plan for retirement and possibly hiring Burns as their investment professional. Plaintiff and her husband were impressed with Burns and wanted to explore their options on investing.

D. Christopher Burns used Matson Money software to collect confidential financial information from Plaintiff.

38. The day after the initial meeting, on November 30, 2017, Plaintiff received an email from Burns' assistant "thank[ing] [them] for taking the time to meet with Chris [...] yesterday." The email also stated Plaintiff would be receiving "our Comprehensive Financial Profile form" and that the form "contains everything Chris will need to initiate a full analysis." Burns also asked Plaintiff and her husband to attach their most recent account statements and represented "that instructions are built into the form to attach them."

39. Upon information and belief, the Comprehensive Financial Profile Form was software provided by Matson Money. In addition, Burns charged Plaintiff approximately \$800 to create a financial plan that was based on the information Plaintiff provided in the Comprehensive Financial Profile Form.

E. Defendants' advisory contract required Plaintiff to hire Matson Money as a Co-Advisor.

40. In the same email described above dated November 30, 2017, Burns' assistant also attached a copy of the Advisory Contract and copies of Investus Adviser's Form ADV. The Advisory Agreement stated in pertinent part:

The undersigned ("Client"), being duly authorized, has established an account (the "Account"), and hereby agrees to engage Investus Advisers LLC ("IAL") on the following terms and conditions.

I. *Appointment of Investus Advisers LLC*

Client hereby appoints IAL as an investment adviser for investments of the Account to be held at other third-party investment advisers. IAL shall recommend other third-party advisers, pursuant to the objectives of Client.

The persons authorized to act on behalf of Client with respect to the Account are identified in Exhibit II. Client agrees to promptly notify IAL in writing of any changes to information pertinent to the Account and to provide IAL with prior written notice of any changes in the identity of persons authorized to act on behalf of Client with respect to the Account.

II. *Services by IAL.*

By execution of this Agreement, IAL hereby accepts the appointment as investment adviser for the Account and agrees, as of the effective date set forth in the signature page below, to:

- (a) to select third-party investment advisers in accordance with the investment objectives of Client; and
- (b) to monitor the investments of the Account supervised by other third-party investment advisers.

III. *Client Accounts.*

Client has opened or will open an advisory agreement with **Matson Money, Inc.** (third-party adviser).

(Emphasis added).

41. The Advisory Agreement also expressly stated that Matson Money, not Investus Advisers, could execute purchases and sales of securities. For example, the Advisory Agreement stated:

XVI. Authority.

IAL is not authorized to execute purchases and sales of securities and acts only as a monitoring adviser for the Account. (Emphasis added)

F. On or about January 22, 2018, Plaintiff agreed to hire Matson Money, Burns and Investus Advisers as her investment advisers.

42. After meeting with Burns and receiving the financial plan, Plaintiff believed that Burns, Matson Money, and Investus Advisers were trustworthy and competent. As a result, Plaintiff hired them to be her investment advisers.

43. On January 22, 2018, Plaintiff's husband sent Burns the following email:

Chris

We have decided to move [\$]200,000 dollars from Susan's wealthfront account to be managed by you. Please let us know what we need to do to put that in motion.

Thanks for all your help.

Norman

44. The following day, on January 23, 2018, Burns made material misrepresentations about his anticipated investment recommendations and set up Plaintiff to falsely believe that the recommended investments were going to be safer and more conservative than her existing portfolio. The email stated:

Norm,

Good chatting briefly yesterday. We appreciate you and Susan's trust in managing a portion of your portfolio. I'll send Susan a docu-sign application to open an IRA with our custodian, Trust Company of America; and we will coordinate making sure those funds transfer.

As we discussed a few weeks ago, it's important that we maintain the right risk level across all your investments. Currently you are in

growth/aggressive growth territory, we want to move in the direction of moderate, which I would define as 40-60% in stock; the remainder in “fixed” instruments. Based on my conversations with you I would think this \$200K should be in 60% stocks, 40% fixed (primarily short term bonds).
(Emphasis added).

45. The following day, one or more of the Defendants sent Plaintiff the account opening documents for Matson Money and the custodial account that would hold the investments.

G. The Matson Money documents signed by Plaintiff at the outset confirmed that Matson Money was a fiduciary and confirmed that her investment objectives and risk tolerance was moderately conservative.

46. At the time that Plaintiff opened her Matson Money account, she signed completed and signed a *Matson Money, Inc. Investment Management Agreement* that expressly stated that Plaintiff agreed to “retain Matson Money to provide discretionary investment management services and the Co-Advisor (Investus Advisers) to provide relationship services to [Plaintiff].”

47. The agreement also stated that Matson Money “provides discretionary asset allocation investment services through Matson Money Fund Platform. The Matson Money Fund Platform consists of shares of one or a combination of certain series of a no-load, open-ended investment company, commonly known as a mutual fund, which is managed by Matson Money.”

48. In other words, per the *Investment Management Agreement*, Matson Money had full control over investment decisions, i.e. discretionary authority in

Plaintiff's account and investments and was authorized only to invest her money in Matson Money's proprietary mutual funds. Significantly, the *Investment Management Agreement* specifically stated that Plaintiff did "understand and agree that Matson Money and only Matson Money has discretionary authority over your Account and that [Investus Advisors and Burns] have no discretionary authority to access or to manage the assets in your Account." Investus Advisors' and Burns' authority was limited "to provid[ing] relationship services."

49. The Investment Policy Statement provided by Matson Money to Plaintiff on the same date expressly stated that her retirement savings would be managed in a manner consistent with an investment objective of "Balance Growth (40% Equities/ 60% Fixed Income)" and that her risk tolerance was "Moderate."

50. As explained below, Matson Money not only breached its fiduciary duties in multiple ways to Plaintiff and Class Members, but it participated in and profited from the fraudulent scheme.

H. From the outset of its relationship with Plaintiff, Matson Money participated in the Investus Defendants' fraudulent scheme and allowed the Investus Defendants to divert money to and from her Matson Money account and invest her retirement savings in illegal promissory notes.

51. Rather than invest Plaintiff's initial \$200,000 investment in Matson Money mutual funds, Defendants recommended that Plaintiff invest in a "peer to peer" lending investment opportunity.

52. The Defendants made uniform misrepresentations that their peer to peer investment opportunity involved investors lending money to third parties with collateral who were in need of capital and in exchange, Plaintiff and Class Members would receive a promissory note issued by Investus Financial or Peer Connect promising to repay investors their principal and interest back over a period of time.

53. On or around January 31, 2019, Burns recommended that Plaintiff invest the entire \$200,000 in a peer to peer lending investment opportunity that would pay interest at 8% per year its date of maturity, which was January 25, 2023. The promissory note also stated that Plaintiff would receive approximately \$4,055.28 per month until the maturity date.

54. Burns falsely claimed that the Plaintiff's investment was needed by a third party that inherited a large quantity of Coca-Cola stock that could not be sold without the third-party being taxed on the investment gains. As a result, the third party was willing to pledge a sufficient quantity of Coca-Cola stock as collateral to secure the loan from Plaintiff. Burns explained that the investment was safer and more conservative than the investments that Plaintiff held in her 401(k) at the time and that Plaintiff would incur no risk from the peer to peer loan and make a higher return than bonds because the loan was secured and Chris could sell off the collateral Coca-Cola stock at any time if they borrower defaulted or if the stock

market declined more than 30%.

55. At the time, the investment recommendation sounded plausible to Plaintiff and Plaintiff had no reason not to believe and trust Burns. As a result, Plaintiff followed the investment recommendation, invested \$200,000 from her 401(k), and received a promissory note dated January 31, 2018.

I. Throughout 2018, Matson Money allowed Plaintiff's Matson Money account to be funded by the proceeds from the Ponzi scheme. Matson Money invested the illegal proceeds in its proprietary mutual funds and charged Plaintiff fees.

56. There is no question that Matson Money had a fiduciary duty to know, among other things, the source of funds for Plaintiff's investments under its management.

57. Throughout 2018, however, Matson Money either knew or failed to conduct adequate due diligence to learn that the deposits to Plaintiff's investment account for the entire year of 2018 was funded solely by false profits from a Ponzi scheme that the Investus Defendants were perpetrating.

58. For example, according to Plaintiff's Matson Money account statements, the deposits for the year totaled \$44,609.08 and all of that money was from the Ponzi scheme. Matson Money invested all of the proceeds in its proprietary mutual funds, thereby increasing the net assets of those funds, for which it earned fees based on the value of the assets under its management. On information and belief, those fees were not less than .50% of the average daily net

assets of each proprietary mutual fund.

J. In December 2018, Plaintiff invested in a second promissory note for \$100,000 and Matson Money liquidated \$37,000 in mutual funds to fund the illegal promissory note.

59. Unbeknownst to Plaintiff at the time, she was already a victim of an ongoing Ponzi scheme. Because the interest payments were being deposited into her Matson Money account monthly, as promised, she had no reason to suspect anything.

60. Consistent with how Ponzi schemes operate, the Defendants were not going to let Plaintiff retain her “interest payments” that were building value in her Matson Money account. On or about December 14, 2018, Burns recommended that Plaintiff invest an additional \$100,000 in another peer to peer investment opportunity with the same hallmarks as the first one. This second note was set to mature in February 2021 and purported to pay 8% per year in interest, i.e. \$691.10 per month.

61. Plaintiff followed Burns’ recommendation and withdrew an additional \$63,000 from her 401(k) and transferred it to Investus Financial.

62. To make up the difference, Matson Money participated in and materially aided the Investus Defendants to perpetrate the fraudulent scheme by selling \$37,000 worth of mutual funds in Plaintiff’s Matson Money account and transferring those funds to Investus Financial.

K. Matson Money continued to allow Plaintiff's Matson Money account to be funded solely by the proceeds from the Ponzi scheme. Matson Money invested the illegal proceeds in its proprietary mutual funds and charged Plaintiff fees.

63. Just like the prior year, throughout 2019 and 2020, Matson Money either knew or failed to conduct adequate due diligence to learn that the deposits to Plaintiff's investment account for the entire year of 2019 was funded solely by false profits from a Ponzi scheme that the Investus Defendants were perpetrating.

64. For example, according to Plaintiff's Matson Money account statements, deposits for 2019 totaled \$56,956.56 and all of those funds were proceeds from the Ponzi scheme. Matson Money invested all of it in its proprietary mutual funds, thereby increasing the net assets of those funds, for which it earned fees based on the value of the assets under its management. Each month, the account statements also state that the interest payments from the two promissory notes were being wired into Plaintiff's account by Investus Financial, which should have been a red flag to Matson Money.

L. On September 21, 2020, three days before Burns went missing, he recommended that Plaintiff invest an addition \$50,000 in a new peer to peer investment opportunity.

65. Plaintiff continued to trust Burns and reasonably believed that he was always acting in her best interest.

66. In fact, on or about September 18, 2020, Burns recommended that Plaintiff use the proceeds from a recent real estate sale and invest it in a third

promissory note in the amount of \$50,000. Burns explained that the peer to peer opportunity was for a very short duration and that the promissory note would mature and repay Plaintiff her principal and interest in one month, on October 25, 2020.

67. Once again, based on the relationship of trust and confidence that had been cultivated and encouraged, on September 21, 2020, Plaintiff agreed to invest \$50,000 in an additional promissory note. Three (3) days later, on September 24, 2020, Burns disappeared.

M. Criminal charges have now been brought against Burns.

68. On or about October 23, 2020, the United States Department of Justice brought criminal charges against Burns for defrauding investors in the “peer to peer” lending program.

69. The allegations in the criminal complaint further support Plaintiff’s allegations and also allege that Burns orchestrated his fraudulent scheme uniformly and consistently to all Class Members. For example, the criminal complaint alleges:

Burns’s scheme to defraud often operated as follows. Burns offered his friends, family, and clients an opportunity to invest in a “peer to peer” lending program that offered attractive returns in short periods of time via promissory notes. According to the investors, their money was supposed to be loaned to businesses that needed financing with little to no risk. The promissory notes documented the investor’s loan amount, rate of return, dates interest was to be paid, and the maturity date. Many promissory notes also identified specific collateral that

secured the loan to reduce the level of risk associated with the investment and to induce investors to participate in the lending program.

See Criminal Complaint at 3, Case No.1:20-mj-00906-CCB.

CLASS ACTION ALLEGATIONS

70. Plaintiff brings this lawsuit as a class action on behalf of herself and all others similarly situated members of the proposed Class described as follows:

Nationwide Class

All persons and/or entities who are citizens of the United States that were clients of Matson Money, Inc. and invested in unregistered promissory notes issued by Peer Connect LLC and/or Investus Financial LLC.

Excluded from the Class are Plaintiff's counsel and family members, Defendants' employees, officers, directors; Defendants' legal representatives, successors, and assigns; any entity in which Defendants have a controlling interest; any Judge to whom the litigation is assigned and all of members of the Judge's immediate family; and all persons who timely and validly request exclusion from the Class.

71. This action had been brought as a class action, and may properly be maintained, pursuant to Rule 23 of the Federal Rules of Civil Procedure and case law thereunder.

A. Plaintiff Meets the Prerequisites of Rule 23(b)(3)

1. Numerosity of the Class

72. The Class is so numerous that individual joinder of class members is impracticable. Investus Advisers' Form ADV, filed dated March 27, 2019, reveals that it had 91 clients for whom it provided investment advisory services during its most recently completed fiscal year, as well as one (1) corporate or business client. The precise number of class members and their identities and addresses are unknown to Plaintiff at this time, but such number, identity and address of each class member, can be readily ascertained from Defendants Investus' and Burns' records. Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

2. Existence and Predominance of Common Questions of Fact and Law

73. There is a well-defined community of interest in common questions of law and fact that exists as to all Class Members. These questions predominate over the questions affecting only individual Class Members. These common legal and factual questions include:

- a) Whether Defendants owed a fiduciary duty to the Class Members;
- b) Whether the promissory notes issued are securities under Georgia's Uniform Securities Act of 2008;
- c) Whether the promissory notes that were sold to all Class Members were unregistered securities;

- d) Whether Defendant(s) were statutory sellers of the promissory notes;
- e) Whether Defendants made material misrepresentations and/or omissions in connection with the purchase or sale of the promissory notes presented to members of the Class;
- f) Whether any of the Defendants materially aided the other Defendants in connection with the purchase or sale of a security;
- g) Whether Defendants participated in the alleged fraudulent scheme;
- h) Whether Defendants sold a security in violation of O.C.G.A. § 10-5-20, or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission;
- i) Whether Defendants bought and sold securities by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.
- j) Whether Defendants concealed the fraudulent nature of the investments from all Class Members.

- k) Whether Matson Money breached the duties imposed upon it by law, statute, regulation, and/or contract to Plaintiff and Class Members, including but not limited to whether it had a duty and obligation to supervise the business and activities of Investus Advisers as its Referrer and Co-Advisor, and Burns as a Co-Advisor Representative of Investus.
- l) Whether Matson Money was negligent in failing to adopt and implement written policies and procedures reasonably designed to prevent Investus Advisers as its Co-Advisor and Burns as Investus Adviser's Co-Advisor Representative from diverting the money Plaintiff and Class Members had entrusted to Matson Money to the purchase of the unregistered promissory notes.
- m) Whether the Class Member's promissory notes are in default.

3. Typicality of Claims

74. Plaintiff's claims are typical of the Class. Plaintiff, like other Class Members, was clients of Matson Money and was owed a fiduciary duty and the obligation to supervise the business and activities of Investus as its Referrer and Co-Advisor and Burns as a Co-Advisor Representative of Investus. Plaintiff, like other class members, was defrauded into investing in unregistered securities unlawfully sold to her by Defendants as a result of uniform misrepresentations and omissions made by those Defendants. Plaintiff's and other Class Members' claims

therefore arise from a common course of conduct by Defendants Investus and Burns and are based on the same legal theories.

4. Adequacy of Representation

75. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class, and she has retained counsel competent and experienced in complex class action litigation and civil litigation. The interests of the Class will be fairly and adequately protected by Plaintiff and her counsel.

5. Superiority of the Class Action

76. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by class members are likely to exceed millions of dollars. However, while the damages suffered by each individual class member are significant, they are small in comparison to the burden and expense of individual prosecution. Without the class action device, it would be virtually impossible for class members individually to obtain effective redress for the wrongs done to them.

77. Furthermore, the *Investment Management Agreement* each Class Member signed requires that those claims be brought before the American Arbitration Association, in Hamilton County, Ohio. The *Investment Management Agreement* prohibits any client of Matson Money from being a putative or certified

class action to arbitration, effectively requiring that each Class Member pursue an individual arbitration claim. Individualized arbitrations present a potential for inconsistent and contradictory judgments. Individualized arbitration would involve numerous separate actions, increasing the delay and expense to all parties. By contrast, the class action device presents fewer management difficulties, requiring only a single adjudication of the complex legal and factual issues in this dispute, thereby providing the benefits of economy of scale, and comprehensive supervision by a single court.

78. Plaintiff and her counsel know of no difficulties which will be encountered in the management of this case which would preclude it being maintained as a class action.

CAUSES OF ACTION

COUNT I BREACH OF FIDUCIARY DUTY (Against All Defendants)

79. Plaintiff restate and reallege Paragraphs 1 through 78 as if fully set forth herein.

80. Matson Money and Investus Advisers are registered investment advisors, and Burns, was an investment advisor representative. They owed Plaintiff and the Class Members a fiduciary duty under the Investment Advisors

Act of 1940, 15 U.S.C. § 80b-1 et seq. and under Rule 590-4-4-.19 of the Rules and Regulations of the Georgia Securities Commissioner.

81. All Defendants were fiduciaries, and each owed their clients, the Plaintiff and the Class Members, the highest obligation of good faith and fair dealing, doing solely what was in their clients' best interest.

82. Defendants breached their fiduciary duties to the Plaintiff and the Class Members.

83. Defendants' breach of their fiduciary duties proximately caused the Plaintiff and Class Members to suffer monetary damages.

COUNT II
VIOLATION OF GEORGIA SECURITIES ACT OF 2008
(Against All Defendants)

84. Plaintiff restates and realleges Paragraphs 1 through 78 as if fully set forth herein.

85. The promissory notes were unregistered securities, in that they were not a federal covered security; they were not exempted from registration under O.C.G.A. §§10-5-10 through 10-5-12; and they were not registered under the Georgia Uniform Securities Act of 2008.

86. Pursuant to O.C.G.A. §10-5-20, it is unlawful for a person to offer or sell an unregistered security in the State of Georgia.

87. Pursuant to O.C.G.A. §10-5-58(b), Defendants sold the Plaintiff and Class Members unregistered securities in violation of Code Section O.C.G.A. §10-5-20, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

88. In addition, pursuant to O.C.G.A. §10-5-58(c), Defendants bought and sold securities in Plaintiff's Matson Money account a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

89. Plaintiff and the Class Members did not know the untruth or omission.

90. Defendants cannot sustain the burden of proof that they did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.

91. In addition, pursuant to O.C.G.A. § 10-5-58(g), Matson Money, as an investment adviser, materially aided the conduct giving rise to the liability of the other Investus Defendants.

92. Matson Money is therefore liable jointly and severally to Plaintiff and the Class Members to the same extent as the other Investus Defendants are liable to the Plaintiff and the Class Members.

93. Matson Money cannot sustain the burden of proof that it did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist.

94. Pursuant to O.C.G.A. §10-5-58(b)(1), Plaintiff hereby tenders the promissory notes to Defendants, and are therefore entitled to recover the consideration paid for those unregistered securities, less the amount of any income received, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorney fees.

COUNT III
BREACH OF CONTRACT
(Against Defendant Matson Money)

Plaintiff restates and realleges Paragraphs 1 through 78 as if fully set forth herein.

95. The contracts entered into by Plaintiff and Class Members with Matson Money and Investus granted to Matson Money the discretionary authority to act as the Plaintiff's and Class Members' attorney-in-fact and gave to Matson Money full investment decision-making authority over Plaintiff's and Class Member's investment accounts, including the authority to access or to manage the assets in those accounts.

96. Matson Money breached its contractual obligations when it, among other things, (1) allowed Plaintiff's and Class Members' money to be invested in

promissory notes; (2) allowed Plaintiff's and Class Members' money, which was required to be invested only in Matson Money's propriety mutual funds, to be invested by Investus Advisers and Burns in unregistered securities; (3) allowed the Investus Defendants to take custody of client funds which violated state and federal laws and regulations; (4) exposed Plaintiff's and Class Members' money to undisclosed risks related to the promissory notes and the alleged fraudulent scheme; (5) failed to fully, properly, and effectively exercise its exclusive grant of discretionary authority to effectively monitor and review the transactions undertaken by the Investus Defendants, which caused assets over which it had authority to be invested by Investus Advisers and Burns in unregistered securities; (6) delegated investment decisions and implementation to its Co-Advisor Burns and Investus Financial respecting the investment in unregistered securities; and (7) failed to supervise its Co-Advisor Burns and Investus Advisers.

97. Matson Money's breach of contract has caused the Plaintiff and Class Members to suffer monetary damages.

COUNT IV
NEGLIGENCE
(Against Defendant Matson Money)

98. Plaintiff restates and realleges Paragraphs 1 through 78 as if fully set forth herein.

99. Matson Money owed a duty to the Plaintiff and the Class Members, pursuant to the standard of care set forth in C.F.R. §275.206(4)-7, to adopt and implement written policies and procedures reasonably designed to prevent Investus Advisers as Matson Money's Co-Advisor and Burns as Investus' Co-Adviser' Representative, from causing an unreasonable risk of harm to the financial assets which the Plaintiff and the Class Members entrusted to Matson Money to manage and invest.

100. Matson Money breached its duty to the Plaintiff and the Class Members by participating in the fraudulent scheme and by failing to detect the violations of law as alleged herein the Investus Defendants.

101. Matson Money's breach caused an unreasonable risk of financial harm to the financial assets which the Plaintiff and the Class Members entrusted to Matson Money, by and thru its Co-Advisor Investus, which assets were diverted to the purchase of the unregistered promissory notes.

102. Plaintiff and the Class Members therefore seek recovery of all damages from Matson Money's negligence. consideration paid for the unregistered Promissory Notes, less the amount of any income received, and interest at the legal rate of interest from the date of the purchase, and costs.

COUNT V
NEGLIGENCE PER SE
(Against Defendant Matson Money)

103. Plaintiff restates and realleges Paragraphs 1 through 78 as if fully set forth herein.

104. Pursuant to 15 U.S.C. § 80b-2, Matson had a duty to supervise some or all of the Investus Defendants, because the Investus Defendants provided investment advice to Plaintiff and the Class Members on behalf of Matson Money respecting the initial selection of a model portfolio for Plaintiff and the Class Members.

105. Accordingly, pursuant to C.F.R. §275.206(4)-7, Matson Money had a duty to “adopt and implement written policies and procedures reasonably designed to prevent violation, by [Investus as its Co-Advisor and Burns as Investus’ Co-Advisor Representative], of the [Investment Advisors Act of 1940] and the rules that the Commission has adopted under the Act.”

106. Matson Money violated the duties imposed upon it by the aforementioned regulation and rules to supervise the activities of its Co-Advisor, Investus Advisers, and Burns, as Investus’ Co-Advisor Representative.

107. Plaintiff and the Class Members are within the class of persons intended to be protected by said regulation and rules.

108. The harm suffered by Plaintiff and Class members as alleged herein is the harm from which they were intended to be protected by said regulation and rules.

109. Matson Money's violation of said regulation and rules was the proximate cause of Plaintiff's and the Class Member's damages as alleged herein.

COUNT VI
ATTORNEY'S FEES AND EXPENSES
(Against All Defendants)

110. Plaintiff restates and realleges Paragraphs 1 through 78 as if fully set forth herein.

111. Breaches of fiduciary duty constitute acts of "bad faith" under O.C.G.A. §13-6-11, and therefore, the Plaintiff and the Class Members are entitled to recover all attorneys' fees, costs, and expenses incurred in these proceedings.

112. Further, the Plaintiff and the Class Members are entitled to an award of reasonable attorney's fees and costs pursuant to O.C.G.A. § 10-5-58 of the Georgia Uniform Securities Act of 2008.

COUNT VII
PUNITIVE DAMAGES
(Against All Defendants)

113. Plaintiff restates and realleges Paragraphs 1 through 78 as if fully set forth herein.

114. Pursuant to O.C.G.A. §51-12-5.1, Plaintiffs and Class Members are entitled to recover punitive damages from Defendants on the basis that Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the court grant Plaintiff and all Class Members the following relief against the Defendants:

- A. An order certifying the proposed plaintiff class herein pursuant to Rule 23 of the Federal Rules of Civil Procedure, and appointing Plaintiff and her counsel of record to represent the Class;
- B. An award of damages to Plaintiff and Class Members resulting from Defendants' wrongful conduct;
- C. An award of any additional damages, consequential and incidental damages and costs suffered by Plaintiff and Class Members because of Defendants' wrongful conduct;
- D. Prejudgment interest;
- E. Attorney's fees, costs of suit, including expert witness fees; and
- F. Such other and further legal and equitable relief, including exemplary damages, as his Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury on all matters so triable.

Dated: October 28, 2020

By: /s/ Jason Doss

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