

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Case No. 18-19121-RAM

1 GLOBAL CAPITAL LLC, *et al.*,

Chapter 11

Debtors.

Jointly Administered

\_\_\_\_\_  
SARAH FOSTER, individually and on  
behalf of all others similarly situated,

Adv. Pro No. 18-1438-RAM

Plaintiff,

v.

CARL RUDERMAN,

Defendant.  
\_\_\_\_\_

**DEFENDANT CARL RUDERMAN'S  
ANSWER AND AFFIRMATIVE DEFENSES TO  
FIRST AMENDED CLASS ACTION COMPLAINT**

Defendant Carl Ruderman (“Mr. Ruderman”), through undersigned counsel and pursuant to Federal Rules of Civil Procedure 7 and 8, as made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7007 and 7008, hereby files his answer and affirmative defenses to Plaintiff Sarah Foster’s (“Plaintiff[’s]”) First Amended Class Action Complaint (the “Amended Complaint”).

**INTRODUCTION**

1. Admitted, except it is denied that 1 Global Capital LLC d/b/a 1st Global Capital (“1 Global”) sold “securities” and that the conduct that gives rise to the Plaintiff’s claims was “unlawful.”

2. Admitted that this allegation sets forth the basis upon which the Plaintiff seeks relief.

**THE PARTIES**

3. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in Paragraph 3.

4. Admitted that Mr. Ruderman is a resident of Aventura who founded 1 Global, and that he served as 1 Global's Chairman and Chief Executive Officer, but denied as to the remaining allegations.

5. Admitted.

6. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6.

7. Mr. Ruderman denies that any violation of the securities laws has occurred and he denies the allegations regarding his acts, practices, and course of business.

**JURISDICTION**

8. Admitted that the State Court had original jurisdiction over the Plaintiff's claims for violation of the Federal Securities Act, but that the proceeding was removed to this Court. This Court has entered the *Agreed Order Granting Defendant's Objection and Motion to Determine Whether Proceeding is Subject to Entry of Final Orders and Judgments By the Bankruptcy Court* (the "*Agreed Order Determining Proceeding Not Subject to Final Orders*") [D.E. 130], which provides that this Court shall not enter final orders or judgment in this non-core proceeding and will refer the proceeding to the District Court if and when it is ready for trial unless the District Court withdraws the reference prior to such time.

9. Denied.

10. Denied. This action was removed to this Court and is subject to the *Agreed Order Determining Proceeding Not Subject to Final Orders*.

11. This action was removed to this Court and is subject to the *Agreed Order Determining Proceeding Not Subject to Final Orders*.

12. This allegation is moot as the matter has been removed to this Court.

**FACTUAL BACKGROUND**

13. Denied that the Memoranda of Indebtedness (“MOIs”) constituted securities that were subject to the Federal Securities Act’s registration requirements. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 13.

14. Admitted that 1 Global sold MOIs through its Merchant Cash Advance Program. To the extent the allegations of Paragraph 14 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents.

15. Denied.

16. Denied.

17. Admitted that 1 Global provided marketing materials to its sales agents. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 17.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. To the extent the allegations of Paragraph 22 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents. The remaining allegations in Paragraph 22 are denied.

23. Admitted that 1 Global had discretion over how to use lenders' funds, and that lenders did not have any say in how 1 Global lent their money and could not and did not manage their MCA portfolios. The remaining allegations in Paragraph 23 are denied.

24. Admitted that 1 Global sold notes that had a nine-month term. To the extent the remaining allegations of Paragraph 24 seek to paraphrase or characterize the contents of the MOIs, the MOIs speak for themselves, and Mr. Ruderman denies the allegations to the extent that they are inconsistent with the MOIs. The remaining allegations in Paragraph 24 are denied.

25. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 25.

26. Denied.

27. Admitted, except that Mr. Ruderman denies that an unwinding period was caused by the way 1 Global used investor money to fund MCAs.

28. Denied.

29. To the extent the allegations of Paragraph 29 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves, and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents. The remaining allegations in Paragraph 29 are denied.

30. To the extent the allegations of Paragraph 30 seek to paraphrase or characterize the contents of the MOIs, the MOIs speak for themselves, and Mr. Ruderman denies the allegations

to the extent that they are inconsistent with the MOIs. The remaining allegations in Paragraph 30 are denied.

31. Denied that the MOIs constitute “securities” within the meaning of the Federal Securities Act because they are short-term notes that fall under judicial and statutory exemptions. Mr. Ruderman also denies that *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946), is applicable because the MOIs are notes, and in *Reves v. Ernst & Young* the United States Supreme Court expressly “reject[ed] the approaches of those courts that have applied the *Howey* test to notes; *Howey* provides a mechanism for determining whether an instrument is an ‘investment contract.’” 494 U.S. 56, 63 (1990).

32. Denied, and the *Howey* elements are inapplicable to this case.

34. Denied, and the *Howey* elements are inapplicable to this case.

35. Denied, and the *Howey* elements are inapplicable to this case.

36. Denied.

37. To the extent the allegations of Paragraph 37 seek to paraphrase or characterize the contents of Mr. Ruderman’s Memorandum in Opposition to Preliminary Injunction in the SEC matter, the filing and any “admissions” made therein speak for themselves, and Mr. Ruderman denies the allegations to the extent that they are inconsistent with the contents of that filing.

38. To the extent the allegations of Paragraph 38 seek to paraphrase or characterize the contents of Mr. Ruderman’s Memorandum in Opposition to Preliminary Injunction in the SEC matter, the filing and any “admissions” made therein speak for themselves, and Mr. Ruderman denies the allegations to the extent that they are inconsistent with the contents of that filing.

39. To the extent the allegations of Paragraph 39 seek to incorporate deposition testimony, the deposition testimony speaks for itself, but Mr. Ruderman is without knowledge or

information sufficient to form a belief as to the truth or falsity of the testimony and the remaining allegations in Paragraph 39.

40. To the extent the allegations of Paragraph 40 seek to incorporate deposition testimony, the deposition testimony speaks for itself, but Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the testimony and the remaining allegations in Paragraph 40.

41. To the extent the allegations of Paragraph 41 seek to incorporate deposition testimony, the deposition testimony speaks for itself, but Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the testimony and the remaining allegations in Paragraph 41.

42. To the extent the allegations of Paragraph 42 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 42.

43. To the extent the allegations of Paragraph 43 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 43.

44. To the extent the allegations of Paragraph 44 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents. Mr. Ruderman is without

knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 44.

45. Admitted that since 2015, attorneys from Kopelowitz Ostrow P.A. have represented 1 Global and Mr. Ruderman. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 45.

46. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 46.

47. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 47.

48. To the extent the allegations of Paragraph 48 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents.

49. 1 Global's account statements speak for themselves, and Mr. Ruderman denies the allegations to the extent that they are inconsistent with the statements.

50. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 50.

51. Admitted.

52. Admitted.

53. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

54. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

55. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

56. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

57. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied

58. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

59. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

60. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

61. Admitted to the extent consistent with the Court's order granting Plaintiff's motion for class certification, which was entered on March 24, 2020 [D.E. 125], but otherwise denied.

### **FIRST CLAIM FOR RELIEF**

#### **(Against Defendant Ruderman: "Control Person" Liability for Federal Securities Law Violations)**

62. Mr. Ruderman restates his admissions and denials as set forth in response to Paragraphs 1 through 61 of the Amended Complaint.

63. Admitted, but denied that the referenced standards are applicable to the conduct and instruments at issue in this case.

64. Admitted, but denied that the referenced standards are applicable to the conduct and instruments at issue in this case.



65. Denied.

66. Admitted that no registration statements were filed, but denied that any such requirement was applicable to the MOIs.

67. Denied

68. Denied.

69. Admitted, but denied that the referenced standards are applicable to the conduct and instruments at issue in this case.

70. Denied.

71. Denied.

72. Denied.

73. To the extent the allegations of Paragraph 73 seek to incorporate the contents of sworn declarations, the declarations speak for themselves, but Mr. Ruderman denies to the extent inconsistent with the declaration and Mr. Ruderman denies the substantive allegations contained therein.

74. To the extent the allegations of Paragraph 74 seek to incorporate the contents of sworn testimony, the testimony speaks for itself, but Mr. Ruderman denies to the extent inconsistent with the testimony and Mr. Ruderman denies the substantive allegations contained therein.

75. To the extent the allegations of Paragraph 75 seek to paraphrase or characterize the contents of written documents, the documents speak for themselves and Mr. Ruderman denies the allegations to the extent that they are inconsistent with those documents and otherwise denies the allegations.

76. Denied.

77. Admitted.

## **SECOND CLAIM FOR RELIEF**

### **(Against Defendants KO and Ledbetter: “Statutory Seller” Liability for Federal Securities Law Violations)**

78. Mr. Ruderman restates his admissions and denials as set forth in response to Paragraphs 1 through 77 of the Amended Complaint.

79. This paragraph asserts allegations in connection with claims against Defendants other than Mr. Ruderman; thus, no answer to this paragraph is required.

80. This paragraph asserts allegations in connection with claims against Defendants other than Mr. Ruderman; thus, no answer to this paragraph is required.

81. This paragraph asserts allegations in connection with claims against Defendants other than Mr. Ruderman; thus, no answer to this paragraph is required.

82. This paragraph asserts allegations in connection with claims against Defendants other than Mr. Ruderman; thus, no answer to this paragraph is required.

83. This paragraph asserts allegations in connection with claims against Defendants other than Mr. Ruderman; thus, no answer to this paragraph is required.

84. This paragraph asserts allegations in connection with claims against Defendants other than Mr. Ruderman; thus, no answer to this paragraph is required.

## **THIRD CLAIM FOR RELIEF**

### **(Against Defendants Ruderman, KO, and Ledbetter: FSIPA Violations)**

85. Mr. Ruderman restates his admissions and denials as set forth in response to Paragraphs 1 through 84 of the Amended Complaint.

86. Admitted, but denied that the referenced standards are applicable to the conduct and instruments at issue in this case.

87. Admitted.

88. Denied.

89. Admitted, but denied that any such requirement was applicable to the MOIs.

90. Admitted, but denied that the referenced standards are applicable to the conduct and instruments at issue in this case.

91. Denied.

92. Admitted.

93. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 93.

94. Mr. Ruderman is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 94.

95. Admitted.

#### **TENDER**

96. Denied that the Plaintiff is entitled to recessionary relief.

#### **PRAYER**

Ruderman denies that Plaintiff is entitled to any relief set forth in this section.

#### **AFFIRMATIVE DEFENSES**

Ruderman asserts the following affirmative defenses and reserves the right to amend his answer and affirmative defenses based upon information obtained in the course of litigation.

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(The MOIs Are Not Securities)**

The MOIs at issue are not securities because they fall squarely within the list of non-securities enumerated in the Supreme Court's decision of *Reves v. Ernst & Young*, 494 U.S. 56,

63 (1990), since they are secured by a lien on small business assets and an assignment of accounts receivable. Likewise, the MOIs are exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1)) for notes not exceeding nine months in duration.

**SECOND AFFIRMATIVE DEFENSE**

**(Advice of Counsel)**

Mr. Ruderman reasonably relied in good faith upon the advice of counsel and the legal opinions that the MOIs were exempt from registration under the Securities and Exchange Acts.

**THIRD AFFIRMATIVE DEFENSE**

**(Good Faith)**

Mr. Ruderman acted in good faith at all times relevant to the Amended Complaint.

**FOURTH AFFIRMATIVE DEFENSE**

**(Reservation of Rights to Assert New Defenses)**

Mr. Ruderman reserves the right to assert additional affirmative defenses that may become apparent through discovery in this matter.

**JURY DEMAND**

Mr. Ruderman requests a jury trial on any and all issues so triable.

Dated: June 16, 2020

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*Counsel for Carl Ruderman*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing answer and affirmative defenses was served on June 16, 2020 via transmission of Notices of Electronic Filing generated by CM/ECF to all parties registered to receive notice in the adversary proceeding and via electronic mail as noted below.

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