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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD HOFMAN

PLAINTIFF,

vs.

FIDELITY BROKERAGE SERVICES,
LLC;(PREVIOUSLY SUED AS FIDELITY
INVESTMENT FINANCIAL SERVICES
CORPORATION); FINANCIAL INDUSTRY
REGULATORY AUTHORITY;
DEPOSITORY TRUST & CLEARING
CORPORATION; AND DOES 3-100,
INCLUSIVE

DEFENDANTS.

Case No. 2:23-CV-00881-MCS-PVC

**Opposition to Motions to Dismiss of
Defendant's Fidelity Brokerage Services,
LLC, Financial Industry Regulatory
Authority & Depository Trust Clearing
Corporation; Declaration of Richard
Hofman in support thereof**

**Hearing date: 4-21-2023
Time: 900am
CTROOM: 7c**

COMES NOW Plaintiff, a solo attorney, and jointly opposes the motions to dismiss filed herein

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1 by each Defendant and requests that for the reasons asserted, that the Motions be denied or that
2 Plaintiff be provided leave to amend based on the newly discovered facts and admissions
3 offered. For the grounds stated, **Plaintiff would also request that the Defendants immediately**
4 **participate in a discovery conference and that discovery be commenced immediately.**

5
6 Preliminary Statement

7 On 3-16-2023, one day after Defendant Finra filed its motion to dismiss, in a purported
8 attempt to finally address the MMTLP disaster, Defendant publicly published a FAQ which is
9 attached to the Hofman declaration. Although this FAQ appears to also supply false,
10 misleading and self-serving matter, at times it also contains admissions of fact that can be
11 construed as an admissions of criminal behavior. That will be addressed below. It also directs
12 responsibility and further responsibility and culpability at Defendants such As Fidelity.

13 As such, to the extent, and in the interests of Justice and credibility to all citizens,
14 and after considering Exhibit 1 to the Hofman declaration the Court does not believe
15 that the current complaint provides adequate notice of Plaintiff's claims, in light of the
16 new matter not reflected in the Complaint (and not disclosed until after the Motion to dismiss
17 was filed) plaintiff would request leave to amend to incorporate the new matter admitted in the
18 3-15-2023 FAQ as well recent admissions made by Fidelity. However, and this is truly what
19 Defendants are fighting against; open discovery will clarify all claims and all points and
20 issues. As such, Plaintiff requests that all of Defendants' motions be denied and that the Court
21 direct that Discovery commence.

22 NEW MATTER

23 The suspect timing of Finra's FAQ, a public and official statement of their position
24 voluntarily published by them , was provided only after their Motions to Dismiss ("MTD") was
25 filed. In large part, if they had filed the FAQ prior to the MTD filing they would probably be
26 subject to Rule 11 sanctions. It should be noted that it took Finra 100 days with scrutiny from
27

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1 investors and those in Congress to develop the FAQ. Sadly, as they do not explain it or say how
2 it happened, but one of the admissions is that Finra acted incompetently with regard to the
3 coding of short shares. Thus, along with other bad activity, they seemingly believe that admitting
4 incompetence provides them credibility because it might bring them immunity. This is a sick
5 and harmful way to protect investors. If there had not been regulatory concerns over the failing
6 banks, SVB, there probably would not have been enough pressure for Finra to stop its Ostrich
7 like behavior.

8 Obviously investors cannot trust the regulators, broker dealers and especially the
9 Market Makers. Counsel for Defendants massage the Truth by asserting they did all
10 they could do and all is well, when in a separate communication post 3-16-2023 they admit to
11 the existence of still pending short shares and that as of 3-21-2023 nothing is settled and other
12 than dealing with short positions (how could they be traded) they will not talk with anyone else.

13 Another broker has admitted, again post 3-16-2023, that the reason Finra issued the U3 halt to
14 only protect short interest, Marker Makers and their cronies (everyone but the retail investors
15 they are supposed to protect) is that the dark pool premarket on 3-9-2023, in light of large
16 unlawful short positions permitted by all defendants illegally, would have yielded a minimum
17 sale price of in excess of \$300 per share at open on 3-9-2023.

18 This new evidence can be incorporated into all of the causes of action and are new facts
19 and to the extent there is any shortcoming in the existing complaint, Plaintiff should be
20 entitled to add the factual claims along with the ones below. This is especially the case where all
21 of the Defendants primary tactic is to stonewall and prevent justice. **Per Fidelity's own**
22 **admission we know that nothing has been settled and no retail investor has what they were**
23 **promised or anything of value.**

24 Thanks to Finra, under pressure due likely to the Banking collapse and congressional
25 pressure, finally on 3-16-2023, probably with the mind set that just admitting incompetence
26 would immunize them (as sad a premise as that is) Finra put out its FAQ. Although like

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1 everything coming from Defendants a lot of their content is fabricated and false, There is
2 additional new evidence of misconduct post 3-16-2023 as well as admissions that seemingly
3 provide evidence of criminal wrongdoing by Defendants. So as referenced and incorporated in
4 the summary referenced in the declaration attached hereto, we know the following additionally
5 from the admissions of the FAQ.:

- 6 1. That Finra asserts that this mess is the Broker-Dealers fault.
- 7 2. That despite there being short positions somehow carried from MMTLP to NB
8 (seemingly unlawfully from a public company to a publicly reported private non trading
9 company) that **NB cannot currently trade** so that the shorts cannot close their positions
10 and recognize the taxable gain they have made and are therefore **evading taxes** with the
11 assistance of all Defendants..
- 12 3. That despite the U3 halt and the cessation of trading on 12-8-2022, and seemingly no
13 trading, that without public disclosure Broker-Dealers have the ability to “dispose of”
14 short positions against the interests of Long holders.
- 15 4. That despite the promise that the exchange of shares from MMTLP to NB would be 1 to
16 1, in light of Finra’s admission of the existence of millions of unlawful short positions,
17 that the short positions have diluted long shareholders so that they cannot receive a one
18 to one exchange.
- 19 5. That Finra admits to prematurely deleting the MMTLP ticker symbol prior to the
20 deletion of MMTLP shares.
- 21 6. That Finra wrongfully classified MMTLP as a security of a non SEC reporting company
22 which led to improper reporting re short positions (although this section of the FAQ—
23 No.8 is virtually gibberish).
- 24 7. That All Defendants failed to do their jobs as Corporate Action notices generated at the
25 direction of Finra (gentleman with the initials of LC was the Finra representative driving
26 the language of the Corporate action notices) failed to require the short positions held at
27 MMTLP to close (again protecting those holding short positions, and marker makers
and brokers who lend out the shares like Fidelity who generate interest income from the
open short shares). As a result, despite the large what should be taxable gains to the
coffers of the US treasury, Defendants permits short holders to retain their ill-gotten
gains and assist with tax evasion and other related Federal crimes.
- 28 8. They admit that NB shares are currently not tradeable at this time and they admit there
are short positions (at least millions if not hundreds of millions) who do not have to
close their positions nor recognize the profit and pay the taxes due.
How do we know that the shorts made a profit? If we look just at the last trading day 12-
8-2022 before the U3 halt. On that day, just under 10 million shares (nearly 80% of the
trading that day) were shorted. MMTLP shares went from approximately \$8.25 at the
start of the day to \$2.89 at close. Therefore, excluding everything else and other illegal

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1 shorting that has occurred and been facilitated by all defendants, the nearly 10 million
2 short shares on 12-8-2023 should have had a taxable event which Finra and the other
3 Defendants have knowingly and intentionally blocked from occurring despite an actual
4 taxable gain. Moreover, that has illegally diluted the interests of shareholders like
5 Plaintiff.

6 9. The declaration of Richard Hofman attaching the FAQ and the points raised in the
7 declaration are incorporated by reference and shall be incorporated herein in full if
8 portions of the declaration are deemed as argument. The entirety of the points raised in
9 the Declaration addressing the FAQ are fully incorporated herein by reference. It also
10 contains a summary of other disturbing points in the FAQ that also are new facts that if
11 an amended complaint should be required, that Plaintiff have the ability to add same.
12 . It should also be noted, that due to the illegal nature of the transactions as perpetrated
13 by Defendants, which was post the filing of the SAC, Fidelity was late multiple
14 times at providing tax forms to investors re MMTLP and when they did they were so
15 inconclusive, false, inaccurate that they improperly imposed an extra burden on
16 Plaintiff. This is further evidence that there must be something rotten in the fridge.

17 However, despite Defendants in their MTD falsely claiming that they do not
18 comprehend the claims, and especially as they have stonewalled and blocked discovery, they are
19 on sufficient notice of the Securities Fraud and Racketeering claims to respond to the complaint,
20 stop hiding and initiate discovery. As such, the Motions to dismiss should be denied and
21 discovery initiated.

22 ISSUE

23 So the issue involves the MMTLP shares that were supposed to be exchanged in December
24 2022 for Next Bridge Hydrocarbons ("NB") on a 1 to 1 basis. As of 3-24-2023 there are no
25 Viable or Valid or Tradeable shares to be had. Fidelity has directly refused to send any of the
26 share certificates, refused to comment re the trapped short sales etc. On or about 3-21-2023,
27 Fidelity admitted that the status of the both MMTLP and NB securities remained unfinished and

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1 unsettled (certainly not reconciled).

2 The real problem is that Defendants, collectively are stonewalling. The Congressional Finance
3 committees are investigating the MMTLP transactions. Apparently Finra has refused to turn over
4 requested documents based on the existence of three lawsuits (The instant, Roza Tawil v Finra
5 (NF Florida 4:22-cv-440-RH-MAF and a third action). Although as a public servant refusing to
6 cooperate with federal investigations is both improper and suspect, No one claims that this
7 matter is resolved and in fact Fidelity on 3-21-2023 in an email from Ms. H. acknowledged
8 having short NB positions and that the situation remains unresolved.

9
10 Relevant Procedural status

11 Plaintiff does not really understand Plaintiff's arguments other than it reflects their interest at
12 not exposing the truth.

13 On or about December 15, 2022, after not receiving the promised shares or any
14 communication of any sort, and after a bogus U3 trading halt fraudulently and criminally
15 imposed by Defendant Finra, Plaintiff filed the instant action in State Court against Defendant
16 Fidelity only. After analyzing the involvement of other parties, Plaintiff added both Finra &
17 DTCC to the action as does. Eventually the action was removed by Defendants to Federal Court.
18 As of that time, Discovery was already pending between Plaintiff and Defendant Fidelity. Since
19 that time Defendants, in bad faith, have failed to engage in a discovery conference, have lied and
20 not done what a servant of its citizens would expect or demand.

21 Because of the various procedural activities of Defendants, there has yet to be any hearing
22 challenging the merits of the complaint. As such, if the Court asserts that new matter should
23 be added or something similar, it would be inappropriate, especially in light of the false and
24 troubling information provided by Defendants, to not allow leave to amend (but again Plaintiff
25 believes as of now, and especially with the seeming criminal misconduct, that this case should go
26 forth to discovery).

1 BRIEF FACTUAL HISTORY

2 Torchlight Energy Resources Inc (“TRCH”) entered into a merger agreement with (MMAT)
3 Metamaterial Inc in 2021 whereby per the merger TRCH shareholders would receive 1 share of
4 MMTLP for every share of TRCH and two shares of MMAT (as of about June 2021). Contrary
5 to the intent of MMAT & TRCH although MMTLP was not expected to trade or be listed,
6 unlawfully and with the assistance of Finra & the DTCC the ticker and MMTLP securities
7 started to trade again on or about October 7, 2021. This was based on an apparent fraudulent
8 request based on false information from market makers and generously that Finra’s failed to do
9 their job. Not only did Finra permit MMTLP shares to be traded based on false information, but
10 Finra, as facilitated by the DTCC and broker dealers, moved “UNCLOSED” short positions
11 existing in TRCH (many of them likely fraudulent) illegally into MMTLP (and also probably
12 into MMAT).

13 The validity of the MMTLP trading was contested in 2021, but Finra, and the other
14 Defendants (trying to protect their alliances) ignored it and continued to let MMTLP trade
15 illegally and permitted, with the assistance of the other Defendants, to illegally short it
16 (apparently to the tune of hundreds of millions of illegal shorts). The problem with that was that
17 MMTLP was supposed to be non-traded and in the FAQ Finra admits that NB is not currently
18 tradeable. There was a set number of MMTLP shares that would go into NB (that was
19 approximately 165 million). However, with all of the illegal shorting of MMTLP, that was not
20 supposed to trade, there are substantially more than 165 million NB shares and that is why we
21 are here today.

22 In November 2021, Defendant Fidelity privately indicated that MMTLP shares should not be
23 sold to investors as they recognized an inherent problem with the security and the trading of it.
24 However, despite that, they sold MMTLP shares to plaintiff herein later to protect Finra, the
25 DTCC, market makers and those holding short positions especially as to borrowed shares
26 from Fidelity who were paying Fidelity interest. High rates of interest for those borrowed shares
27

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1 were paid ,which share lending problem was improperly managed by DTCC.

2 As of November 25, 2022, the date of the final prospectus, all defendants were aware that as
3 to MMTLP there were on the order of 45 days of Failures to deliver (reflecting that shorts had
4 not or could not cover short positions as required though lending programs directed and run
5 by broker-dealers such as Fidelity and DTCC who managed the lending program). On or about
6 12/6/2022, Finra, in their daily list notices, indicated their awareness and involvement in the
7 transaction.

8 Finra, though their rep C.L., not only monitored but directed the language of the two
9 corporate action notices on 12/6 & 12/8. Per same, it was understood by everyone that MMTLP
10 would trade regularly though 12-8 , 12-9 & 12-12 would be close only for the shorts to close
11 out their positions, to permit a 1 for 1 trade of MMTLP to NB, and shorts would be obligated on
12 any taxes due on any gains. On 12-6-2022, the VP of the OTC exchange held a press
13 conference referencing MMTLP and the Corporate action notice prepared by Finra and
14 referenced a word change to be made that was reflected in the 12-8-2022 Finra Corporate action
15 notice (Delete to cancellation).

16 That word change was present in the 12-8-2022 Corporate action notice as initiated and
17 directed by Finra. So although it was way back in 2021 that all Defendants were aware of all
18 the fraud, illegal shorting etc., even if they were not, as reflected in 12-6-2022 notice and as
19 declared by the OTC VP, Finra, and all of the Defendants were aware of all of the issues with
20 MMTLP & NB long before 12-8-2022, yet all defendants let it trade and benefited from it.
21 Fidelity made money in trading and lending shares to shorts. Finra & DTCC protected their
22 cronies, perhaps received bribes but certainly maintained network channels facilitating future
23 movement for profit form regulatory firms to private Securities firms and other such benefits.
24 Clearly it involved the non-regulatory business interests of Defendants and was not done in any
25 way to satisfy any mission statement or protecting investors..

26 As admitted by Finra, all Defendants knew that short positions were illegally being carried

1 over to NB without disclosure or consent or notice to investors . So as to protect those shorts,
2 protect them from not closing and from having to pay taxes, rather than making short positions
3 cover and close on 12-9 & 12-12, as everyone knew was required to occur but would harm hedge
4 funds who held short positions, Defendants elected a fraudulent course of action. Sometime on
5 12-9-2022, after Finra and the other defendants realized that the short position holders would get
6 crushed on 12-9 & 12-12 due to having to cover a massive number of illegal and legal short
7 positions, and before MMTLP could trade at a sum of at least \$300 per share, Finra issued the
8 extraordinary U3 halt. The halt therefore constitutes intentional and illegal activity designed to
9 protect and insulate illegal shorts and harm retail traders.. Note that Finra did not even have the
10 courtesy of complying with any of their settlement rules either. See Finra Rule 11800 et seq.

11 Finra, perhaps as comical relief, insisted that it issued the U3 halt to protect investors. Yet,
12 the halt was not issued until Short holders had illegally crashed the MMTLP share price on 12-8
13 -2022 from about \$8.25 to \$2.89 thereby making short holders literally billions of taxable gains
14 just on that date. Moreover, and contrary to their claims, it was not until after Finra and the
15 other defendants realized that because of the illegal short positions they had structured that on
16 12/9/2022 the opening share price, destroying hedge funds, short holders, brokers, Finra &
17 **DTCC would exceed \$300 per share that the halt was issued.** So they intervened to protect
18 Hedge Funds, Broker-Dealers, shorts and the shadow regulatory system. Their
19 intentional misconduct only served to harm retail investors not protect them.

20 If in fact Finra was out to protect retail investors, wouldn't they have stopped trading on 12-
21 8-2022 before market open. Wouldn't they have intervened before the stock dropped almost
22 80% in one day?? Like much of what Finra asserts this is utter nonsense and even a 5 year old
23 can see thru the true deceit of these defendants.

24 They do not care and do not protect retail investors. They cheat retail investors and they
25 steal money from retail investors, They do nothing but hurt and harm retail investors and their
26 suggestion to the contrary is obscene. **Defendants are anti American.**

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2 MERITS OF MOTION TO DISMISS

3
4 Although with all the new matter, even if the Court finds Plaintiff's complaint currently
5 inadequate to provide notice of his claims to Defendants, which he disputes, the Court should
6 grant leave to amend to add the new matter. Plaintiff again believes that sufficient notice has
7 been provided. Defendants who are playing ignorant publicly know what is going on and that the
8 motions should be denied out of hand.

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10
11
12 Dated: March 23,2023

RICHARD HOFMAN

13
14
15 By:



Plaintiff

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2
3 Plaintiff's Second Amended Complaint In General
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5 It appears that one of Defendant's arguments is that they claim insufficient facts have been
6 asserted in the Second Amended Complaint ("SAC"). The fact that Defendants up through 3-16-
7 2023 (long after the SAC was filed) were nonresponsive regarding this ongoing matter makes the
8 assertion less than genuine. However, as will be pointed out below, there is sufficient allegations
9 on information and belief that have now been validated by Defendants that they are on sufficient
10 notice of Plaintiff's claims.
11

12
13 We now have admissions by both Fidelity and Finra that this is an ongoing matter and that
14 there are trapped short positions in NB (and NB cannot now trade). We know that Finra was also
15 incompetent (just apparently as to the MMTLP security) because they admit it in various points
16 in their unilaterally produced FAQ (attached to the Hofman Declaration but also available to the
17 Court as a public record and per Judicial Notice).
18

19
20 Preliminary Allegations Incorporated by Reference
21

22 Before addressing the specific motions, the following allegations are asserted preliminarily
23 and are a part of each claim. Plaintiff's brief paraphrases the applicable areas of the SAC but not
24 quoting it entirely for brevity,
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26
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1 Para. 1—Plaintiff is the owner of both MMAT & MMTLP, bought them from Fidelity
2 and Defendants collectively have obstructed justice and blocked plaintiff from figuring
3 out what was going on re MMTLP. That Finra helped establish the trading of MMTLP
4 based on fraudulent documents, lack of authorization etc. That Finra is designed to
5 protect investors but in this occasion operated in their own business interests and outside
6 their regulatory capacity (and seemingly criminally too). They illegally benefitted from
7 the trading of illegal short shares.
8

9
10 Para. 1 Page 3 starting LN 2-Again alleged on information and belief due to the
11 concealment by Defendants, facts now which have been confirmed subsequent to 3-15-
12 2023, Plaintiff analogizes this to a Res Ipsa Loquitur case. They have delivered nothing
13 of value, have sought to cover it up, and even backdated deletion codes (seemingly
14 tampering with evidence during an ongoing legal proceeding in Florida)
15

16
17 Ln 17-(Now confirmed by the 3-16-2023 FAQ), Defendants have at least aided and
18 abetted in tax evasion and other financial crimes. That all defendants permitted the
19 trading, brokering or settlement of illegal short sales diluting Plaintiff's interests and have
20 permitted the short positions not to close those to permit them to evade taxes and gain
21 side benefits while they are at it.. Again, although this allegation was made on the basis
22 of information and belief as it is the practice of Defendants to not provide access to their
23 documents nor engage in appropriate discovery, the 3-16-2023 Finra FAQ and the other
24 additional post 3-16-2023 communications referenced in Plaintiff's declaration support
25 these allegations of gross misconduct and seemingly criminal activity.
26
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1 **2. Para 3**-Regarding the DTCC, that although they were obligated to preserve the
2 integrity of the market, DTCC helped facilitate the ongoing illegal shorting of MMTLP
3 through its settlement procedures (As reflected in the Hofman Declaration the lending
4 programs related to short borrowers is also coordinated by DTCC). That neither Finra nor
5 the DTCC acted in a regulatory capacity as to this matter but acted for their own business
6 purposes or for illegal purposes both of which are not regulatory.
7

8
9 **3. Para 4 (Pg5 Ln 3)**-That Plaintiff does not have any shares arising out of MMTLP,
10 anything of value, anything legal and that plaintiff has been charged usurious interest on
11 top of it. Moreover, that Defendants have acted in concert to withhold relevant and
12 determinative information (intentionally obstruct justice)
13

14 **4. Para.6**-That to the detriment of retail investors that there is an inherent conflict of
15 interest in light of the incestuous nature of the relationship between all of Defendants
16
17

18 **5. Para 8**-That there was a conspiracy amongst all Defendants to intentionally offer for
19 sale unlawful and untradeable securities, including illegal short shares that did not exist
20 (Admitted to by both Finra in its FAQ and Fidelity on or about 3-21-2023). That they
21 collectively worked to shield each of the defendants from liability and that this
22 financially benefitted the collective group by continuing the cycle of naked shorting
23 (which has now been specifically admitted).
24
25
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1 **6.Para. 9-**Again asserted on information and belief but now specifically admitted and
2 confirmed by Finra and Fidelity post 3-15-2023, the date all defendants each filed their
3 moving papers, Defendants collectively hid the existence of illegal shorts and
4 **intentionally failed to require shorts to close their positions in order to prevent a**
5 **taxable event** (This has now been admitted to by Finra FAQ see for example Points 1, 8
6 & 9).

7
8
9 Standards re Motion to Dismiss-

10
11 A motion to dismiss (“MTD”) under FRCP 12(b) (6) tests the basic legal sufficiency
12 of Plaintiff’s claim. The central issue of a MTD is not ultimate success on the merits but
13 whether Plaintiff should be allowed to present evidence to support the claims asserted. See
14 Gilligan v. Jamco Dev. Corp. 108 F.3rd.246, 249 (9th Cir 1997). When evaluating the motion, the
15 Court must accept all material allegations in the complaint as true and construe them in the light
16 most favorable to the non-moving party. See Skilstaf, Inc v. CVS Caremark Corp 669 F.3rd
17 1005, 1014 (9th Cir. 2012)

18
19
20 Per Rule 8(a) all that is required is a short plain statement for relief. Where Plaintiff is
21 Pro Se, the Court must be careful to construe the pleadings liberally and to afford Plaintiff any
22 benefit of doubt. See Erickson v. Pardus 551 U.S. 89, 94 (2007). Through just the points above
23 referencing the preliminary allegations of the complaint, which is more than sufficiently alleged
24 to support the claims and defeat Defendants motion to Dismiss at this point. With the additional
25 admissions and back up obtained post 3-15-2023, substantially more than just a short statement
26

1 has been provided justifying the denial of the motion. Defendants are on more than adequate
2 notice of Plaintiff's claims.

3
4
5 Where the complaint does not seemingly survive 12b6 scrutiny, the Court will grant
6 leave to amend unless it determines nothing can cure the defects. See De Soto v. Yellow Freight
7 Sys., Inc 957 F2d. 655, 658 (9th Cir. 1992). Moreover, before dismissing a complaint per 12b6
8 against a pro se Plaintiff, the Court must first seemingly provide that plaintiff with notice of the
9 specific deficiencies in the complaint to permit Plaintiff a meaningful opportunity to amend. See
10 Ferdick v. Bonzelet 963 F2d 1258 (1992). As this is the first hearing on any demurrer or MTD,
11 the Ferdick, logic, supra, should apply. See also Doe v United States 58 F. 3rd 494 (9th Cir. 1995)

12
13 Plaintiff is a lawyer but certainly is not an expert in securities law and does not regularly
14 practice in this area. Thus, although he is a lawyer, he is representing himself and either should
15 be construed as a sophisticated Pro Se or dumb, whichever is more applicable. However, per the
16 authorities above, Plaintiff should receive pro se treatment. Either way, the preliminary
17 allegation on information and belief as now verified and admitted to by Defendants are sufficient
18 to satisfy the liberal pleading standards.
19

20
21 FINRA IS NOT IMMUNE
22

23
24 Initially, plaintiff's argument is predicated on the fact or claim that Defendant is immune from
25 liability and suit because strict regulatory behavior is absolutely immune from damage suits.
26 However, Courts have found that even when normally immune from suit, SRO's like Finra may
27

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1 be held liable when undertaking non regulatory activities like for business or commercial
2 reasons. Invocation of absolute immunity is done on a case by case basis. See DL Capital Group
3 v. Nasdaq 409 F3rd 93 (2nd Cir. 2005) For example conduct based on advertising is not
4 protected. See Weisman v. Nasd 500 F3rd 1293 (11th Cir 2007). Moreover, mispricing of the
5 Nasdaq 100 in order to promote the index was also deemed non regulatory . See Opulent Fund,
6 LLP v. Nasdaq 2007 US DIST LEXIS 79260 (ND CAL 2007). The 9th circuit has adopted the
7 rule that non regulatory activity is not immune. See Sparta (9th Cir. 159 F3rd 1209).

8
9
10 So in the instant, the claimed misconduct is aiding and abetting tax fraud and tax evasion
11 and money laundering with obstruction of justice. No one can reasonably argue that such
12 activity is within the regulatory function of Finra. Just like it is not within their regulatory
13 activity to take bribes, steal money, set themselves up for future endeavors or just engage in
14 profit making activities, engaging in acts of tax evasion & obstruction of Justice and other
15 asserted criminal behavior is not a protected regulatory activity. Moreover, the admissions and
16 other data that has arisen since 3-15-2023 supports such a conclusion.

17
18
19 The basis even stated for the U3 HALT smells foul based on the timing, alternatives and
20 ultimate beneficiaries;. However, it is not the U3 halt that is solely relevant. It the obstruction of
21 justice and aiding and abetting tax evasion that is at issue. Such activities are not protected.
22 Moreover, as there is a claim for declaratory relief, that claim would also not fall within any
23 immunity provisions anyway. Finra has in essence admitted to tax crimes in its March 16,2022
24 FAQ. Criminal behavior must not be accepted. Gross immunity only serves to weaken the
25 regulatory scheme and put all citizens at greater risk for a financial collapse. The US needs the
26 intervention and protection from these Courts.

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1 Additionally, meritorious private actions are essential to supplement any enforcement actions
2 including if it involves the exchange act. Additionally, there is an implied right also of a right to
3 private relief.. See Tellabs, Inc v. Makor Issues & Rights, LTD 551 U.S. 308, 313 (2007)
4

5
6 Plaintiff is not seeking a remedy for a criminal violation. What plaintiff is seeking to establish is
7 that Finra and the other Defendants engaged in criminal misconduct-to which they admitted- and
8 that takes it out of any immunity claim. Moreover, the law is clear that if they act outside their
9 regulatory capacity they lose any and all immunity and are at risk like any private company.
10

11 As to the 1983 claim, Defendant is a quasi-governmental entity purportedly, but not
12 competently, supposed to be supervised by another Governmental entity the S.E.C. We know by
13 the instant that the Government regulators supervising the purported regulators are either asleep,
14 incompetent or corrupted (See e.g. Silicon Valley Bank). Defendant's continual assertion of
15 immunity based on its governmental activity should fit it within action undertaken on behalf of
16 the US Government, especially where Defendants claim there can be no remedy against them
17 even if they act illegally, fraudulently and with specific intent to carry out governmental actions.
18 As such, the 1983 claim should move forward against both Finra & DTCC.
19
20

21 As to the Declaratory relief claim they misstate the relief Plaintiff is seeking in the prayer on
22 the declaratory relief action. In effect, see 8f, plaintiff is seeking an order precluding all
23 defendants from engaging in illegal shorting practices in California going forward. The plaintiff
24 also asks for a series of findings (also set forth in the prayer but not addressed by Defendants in
25 any manner), that establish why the Court should order that Defendants stop engaging in
26 criminal and unlawful activities and the continuing risks. Clearly this does relate to a claim or
27

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1 controversy arising out of the legal duties of the respective parties and will be clarified and
2 settled by a ruling by the Court. It also arises from and is related to the contract that Plaintiff has
3 with Defendant Fidelity. Absent that agreement and Fidelity engaging in the trade, the issue of
4 illegal shorting and tax evasion with money laundering would not even be an issue. As such,
5 Plaintiff's Declaratory relief claim, outside of any permissible immunity claim, must be
6 permitted to go forward.

7
8
9 Finra's specific MTD

10
11 All the Defendants, other than the immunity claim, basically make the same assertions.
12 Obviously claimed by Defendant before 3-16-2023 and later admissions, Defendant minimizes
13 and casts improper conclusions by basically asserting that plaintiff is angry because he lost his
14 money fair and square. Defendant is part correct. Plaintiff is angry but plaintiff has a beef with
15 Defendants because it took plaintiff's money, gave him nothing in return, diluted his interest by
16 trading short and illegal short positions, in MMTLP and NB, failed to communicate with him,
17 helped short sellers evade taxes harming people like plaintiff, charged usurious interest to
18 plaintiff on securities not delivered and a host of other reasons delineated in the SAC and the
19 attached declaration.
20

21
22 Contrary to what is asserted in the SAC, Defendant asserts that there is not any facts to
23 support the claims. Again, although this statement is false, it was made before the direct
24 admissions made by Finra on 3-16-2023 and the 3-21-2023 admissions made by Fidelity and
25 others.
26

1 Defendant in effect claims that plaintiff did not assert a single claim of actionable
2 misconduct, however, and excluding the 3-16-2023 and later admissions, just the preliminary
3 paragraphs cited in the SAC and incorporated by reference in each claim, assert actionable
4 securities fraud claims as well as establish criminal misconduct done in concert by all
5 Defendants. Moreover, all of the allegations are that Defendants acted in concert. So even in the
6 references that Defendant makes to allegations of other parties, those stick to all defendants too.
7 In fact, Defendant for pages lays out the factual allegations of the complaint thereby bolstering
8 plaintiff's argument that more than sufficient detail is alleged (and now post 3-16-2023
9 admissions). Fidelity is now unlawfully holding short positions in NB, which is also diluting the
10 interests of Plaintiff and obstructing justice by all Defendants blocking the access to information
11 involving that matter.
12
13

14 Defendant appears to defend the practice of short selling and ignores the undisputed nearly
15 **10 million counterfeit short shares just trapped now in NB from trading on MMTLP on**
16 **just 12-8-2023 alone.** They were counterfeit as since a halt was placed, the shares could not be
17 borrowed nor located and did not exist. Moreover, as there was such an overabundance of short
18 shares versus legitimate shares, there is no way feasible that the shares sold and marketed by
19 Defendant to plaintiff could have been anything other than naked and illegal and nonexistent
20 short shares during the first week of December 2022. Moreover, Fidelity has a share lending
21 program and was lending out shares to short holders during December 2023 and thus in that
22 process was further devaluing Plaintiff's interest **which Fidelity now shows at zero value and**
23 **zero cost and not tradeable.**
24
25
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28 OPPOSITON TO MOTION TO DISMISS

1 holders and let them evade Federal and State taxes. Additionally there are additional factual
2 allegations satisfying the pleading requirements. In Para. 37 & 39 for example, it is asserted that
3 Defendants facilitated illegal short selling, preventing plaintiff from disposing of his shares,
4 while reducing the value of plaintiff's holding and that plaintiff relied on this to invest. All of
5 these allegations provide additional factual support satisfying the pleading burden. While
6 Defendants openly and publicly refused to identify any issues prior to 3-16-2023, their recent
7 admission of short positions and an ongoing dispute, are misleading and inconsistent with the
8 assertion that all is well.

11 Defendant further falsely asserts that Plaintiff has not asserted reliance, but even a cursory
12 look at the SAC (and ignoring all the allegations of intentional concealment) for example, just
13 looking at the bottom of SAC Para. 39, it clearly states that but for the false promises etc.
14 Plaintiff would have not purchased shares. That is an adequate allegation of reliance and if not it
15 can be easily corrected.

18 As to causation, Plaintiff gave Fidelity his money and received nothing of value and was
19 charged usurious interest. But for the false promises and concealment, Plaintiff would not have
20 bought the shares. Thus, and Defendant knows this, causation is easily established.

22 There is no direct SHO or Civil Fraud Claim in this SAC nor any State claims so Defendant's
23 reference to same is irrelevant.

1 CIVIL RICO CLAIM MUST SURVIVE

2
3 Defendant wrongly asserts that Plaintiff's claim is based on securities fraud (an
4 admission by counsel that what is pled in the Securities Fraud claim is valid and proper) and that
5 a Rico claim cannot be based on just a claim for Securities fraud. However, the Rico claim is
6 based on acts of **tax evasion and obstruction of Justice** in concealing their wrongdoing. Such
7 acts have deprived US Citizens such as Plaintiff tax revenue thereby driving up interest rates,
8 worsening inflation and placing the entire financial system at risk. See Para 44 of SAC for
9 example.
10

11
12 It should be noted that based on the recent failure of Silicon Valley Bank and its lack of
13 supervision, and now Finra's admission of at least incompetence as to MMTLP, offering no
14 assistance and blaming Broker Dealers for the current plight, Plaintiff asserts that regulators are
15 either not capable to do their jobs or too corrupted. Congress is totally ineffectual so the citizens
16 of this Country look to the Courts as a last resort to protect Americans' right to live freely and
17 fairly.
18

19
20 There were multiple illegal acts which occurred during the week of December 5, 2022 and
21 are being repeated each day in the suppression and obstruction and continuing tax evasion,
22 collectively involving the Broker-Dealers and other Defendants. As Plaintiff made multiple
23 purchases of counterfeit shares that week and those same shares could not have been closed out
24 **(and plaintiff's Fidelity Account reflects a zero value now, is not tradeable and Defendant**
25 **has refused to provide the share certificates)** this evidences and constitutes Tax fraud for
26
27

28 OPPOSITON TO MOTION TO DISMISS

1 financial benefit, to protect their cronies and to set up themselves for future opportunities while
2 exposing Americans to a threat of Financial collapse.

3
4
5 Declaratory Relief Claim Must Survive

6
7 Contrary to Defendant's' assertion, the Declaratory relief Cause of action relates to present,
8 ongoing and potential future misconduct. Per the prayer (Pg. 24 Ln 15-27. Pg 25 LN 1) F, it asks
9 for an order precluding Defendants from marketing, selling or otherwise being involved in
10 the unlawful shorting of any stock in California or to California residents. No Defendant
11 has taken responsibility for anything, so in light of the March 16, 2023 confirmation of
12 counterfeit shorting, the order is necessary as the tax evasion is ongoing each day. Plaintiff
13 incurs both a new loss each day and escalating prior losses, and there is no reason to expect
14 other than this will continue to re-occur indefinitely. Moreover, Plaintiff requests findings as to
15 items A thru E because they make up parts of what Plaintiff sees as the order reflected in F..
16

17
18 ACCOUNTING CLAIM

19
20
21 As reflected in plaintiff's Fidelity account, which has changed symbols, costs, valuations as
22 to MMTLP, replacement id's for MMTLP, Ghost NB symbols etc. it currently reflects a zero
23 value, at a zero cost and is untradable. Plaintiff paid for the shares so the cost should be more
24 than zero. Fidelity and the other Defendants have admitted to the existence of short NB shares.
25 Defendant Fidelity, as seemingly managed by DTCC who seemingly controls the share lending
26

27
28 OPPOSITON TO MOTION TO DISMISS

1 program for shorts, without any specific disclosures, also lent out MMTLP shares to short
2 holders contrary to the interests of non-short holders such as Plaintiff.

3
4
5 There is really know way to understand where Plaintiff's account stands without awarding
6 a complete and full accounting. There are sufficient irregularities to support imposition of a
7 receiver let along a simple accounting, As such, Plaintiff's claim must survive.

8
9 OBJECTION TO MTD AND SHOULD BE STRICKEN

10
11
12 The three seemingly coordinated MTD filed by all defendants appear to rely on data
13 outside the four corners of the complaint. There appears to be extensive use of Judicial Notice
14 and reference to documents outside the SAC. That seemingly converts the MTF to an
15 improperly supported Motion for Summary Judgment pre discovery. See Wright & Miller, Fed.
16 Prac. & Proc. Civ. Section 1357 (3rd ed). As such, the motions to dismiss of all Defendants
17 should be stricken with prejudice. This maneuver by Defendants, along with the new matter
18 previously concealed by Defendants pre 3-16-2023, is also what has necessitated the inclusion
19 of a declaration.

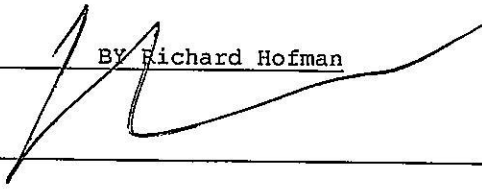
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21 
22 CONCLUSION

23
24 For all these reasons stated., Defendant's motion to dismiss should be denied and if portions of it
25 are granted Plaintiff should be provided leave to amend. Respectfully Submitted

26
27
28 OPPOSITON TO MOTION TO DISMISS

1 Date: 3-27-2023

BY Richard Hofman



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28 OPPOSITON TO MOTION TO DISMISS

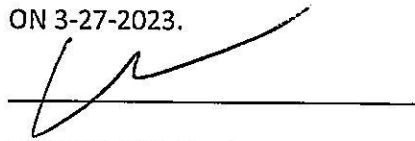
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I, HEREBY CERTIFY THAT ON THIS 27th day of March 2023, the foregoing document was electronically filed with the clerk of Court via the CN/ECT system, which will send notification of and the filing to all counsel of record. *Final app*

WORD COUNT-

Pursuant to local rules, I hereby certify that the foregoing document contains ⁶⁸⁵⁸~~4547~~ words per the Microsoft Word system used in preparation of this document.


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RICHARD HOFMAN

BY EMAILING THE REFERENCED DOCUMENTS TO EACH PARTY AT THE INDICATED ADDRESS ON 3/21/2023

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