UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**Case No. 1:15-cv-659-JMS-MJD**
TOBIN J. SENEFELD, ET AL.,	
Defendants,	

PLAINTIFF'S MOTIONS *IN LIMINE*

Plaintiff U.S. Securities and Exchange Commission ("the SEC"), pursuant to Rule 103(e) of the Federal Rules of Evidence, and for its motions in *limine*, states as follows:

Legal Standard

Every federal district court has broad discretion in ruling on evidentiary questions before a trial. *See Jenkins v. Chrysler Motors Corp.*, 316 F.3d 663, 664 (7th Cir. 2002). By granting appropriate motions *in limine*, a court can preclude consideration of inadmissible evidence that "ought not to be shown to a jury." *See Jonasson v. Lutheran Child and Family Services*, 115 F.3d 436, 440 (7th Cir. 1997). Accordingly, the Court should preclude Defendant Tobin Senefeld from introducing evidence on all of the following subjects, for the reasons stated below.

1. Defendant Should Not Be Permitted to Elicit Opinion Testimony from Harold Birch

Senefeld has identified Harold Birch as an individual who may be called "to testify as to the due diligence into, the operations of and the refinance of Crossroads Farms and Kirbach Farms." [Filing No. 248 at ¶ 4.] However, after the close of fact discovery, in support of his motion for summary judgment, Senefeld submitted a lengthy declaration from Harold Birch.

[*See* Filing No. 191-4.] In his declaration, Birch set forth his qualifications and experience in agriculture. [*See Id*. at ¶¶ 2 – 10.] Birch then offered a number of opinions, including:

- "it also is common for farms to refinance an existing operating loan when a farm takes out a new operating loan for the next crop production season, either with the same lender or a new lender." [Filing No. 191-4 at ¶12.]

- "the refinance of a farm operating loan functions similar to refinance of a residential mortgage or other debt, whereby at the time of refinance lender of the preceding operating loan is repaid the amount of its outstanding debt and the farmer becomes responsible to repay the full amount of the new operating loan, including all refinanced amounts;" [*Id*.]

- "I understood this transaction [the Kirbach Farms' refinancing in 2013] to be standard refinancing, and the transaction functioned the same as any other refinance in which I have been involved, with the lending-entity of Kirbach's 2012 debt being repaid at the time of refinance;" [*Id.* at ¶ 20.]

- "As with Kirbach's refinance in 2013, I understood the refinance in 2014 to be standard refinancing. [*Id.* at ¶ 24.]

- "I understood this transaction [Kirbach Farms' 2015 refinancing] to be standard refinancing, and the transaction functioned the same as any other refinance in which I have been involved, with the lending-entity of Kirbach's 2014 debt being repaid at the time of refinance;" [*Id.* at ¶ 25.]

- "I understood this transaction [Crossroads Farms' 2013 refinancing] to be standard refinancing, and the transaction functioned the same as any other refinance in which I have been involved, with the lending-entity of Crossroads' existing loan being repaid at the time of refinance." [*Id.* at ¶ 26.]

Senefeld has never disclosed Harold Birch as an expert witness, or provided the SEC with a report pursuant to Fed. R. Civ. P. 26(a)(2).[1] In addition, Senefeld's initial disclosures stated only that Birch had knowledge "regarding farm operating loans he borrowed through

[1]Under the parties' Case Management Plan, experts were to be identified and the required reports produced by May 15, 2016. [Filing No. 67 at 5.] However, on May 13, 2016 Senefeld filed a motion requesting that the Court to extend the deadline for disclosing his expert witness(es) until after the Court ruled on his motion for summary judgment. [Filing No. 211 at ¶¶ 2, 5, 7.] The Court granted that motion and ordered Senefeld to provide the SEC with any expert witness disclosures by July 13, 2016. [Filing No. 219 at p. 2, ¶ F] However, Senefeld did not disclose Harold Birch, or anyone else, as an expert witness or serve the SEC with an expert report.

FarmGrowCap," and did not suggest that Birch had any special expertise that would permit him to offer opinion testimony in this matter.

Based on a brief telephone interview with Harold Birch and the declaration, which Senefeld submitted previously, it now appears that Senefeld will attempt to elicit opinion testimony from Birch at trial. This should not be permitted.

The SEC acknowledges that Birch may testify as to any relevant facts within his personal knowledge, including the facts regarding the Kirbach and Crossroads refinancings. However, because Birch was not disclosed as expert the SEC was not provided with anything like an expert report; and Senefeld has not demonstrated Birch is qualified to offer expert opinion testimony, Senefeld should be precluded from eliciting any "expert" opinion testimony from Birch. *See Musser v. Gentiva Health Services*, 356 F.3d 751, 758 (7th Cir. 2004) ("exclusion of non-disclosed evidence is automatic and mandatory" unless the failure was "justified or harmless"). Senefeld's counsel obtained an extension of time within which to disclose his expert; therefore, he had ample opportunity to comply with Rule 26(a)(2).

Moreover, the SEC would be prejudiced if Senefeld were allowed to offer opinion testimony from a purported expert without first producing the expert disclosure required by Rule 26(a)(2). Senefeld's failure to adhere to the schedule set by the parties' Case Management Plan, as amended, denied the SEC an effective opportunity to take Birch's deposition, hire a counter-expert and/or file a *Daubert* motion.

Further, in his declaration in support of Senefeld's Motion for Summary Judgment, which is not an expert report or CV, Birch merely states that his experience includes consulting, agricultural management, and accounting. [*See* Filing No. 191-4 at ¶¶ 2 – 10] He does not describe any special education, training, knowledge or experience about farm loan financing.

[*See Id.*] Birch simply asserts that, because of his personal experience "assisting family farms with their business operations," he knows that it is "common" for farms to use operating loans. [*Id.* at ¶ 11] Birch then offers the opinions stated previously. This is clearly insufficient to qualify Birch as an expert in farm loan financing – let alone an expert in offering farm loans for the purpose of repaying investors in different offerings. Consequently, Senefeld cannot establish that any Birch has any "scientific, technical or other specialized knowledge" that would assist the jury in understanding the evidence, that his testimony is based on sufficient facts and is the product of reliable principles and methods, and that those principles and methods were "reliably applied" by Birch to the facts of this case. *See* Fed. R. Evid. 702.

Moreover, Senefeld should not be allowed to offer Birch's opinions about farm loan financing as lay opinion testimony. [2] Under Rule 701 of the Federal Rules of Evidence, a non-expert witness is allowed to offer opinion testimony only when that opinion is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702. *See* Fed. R. Evid. 701 (emphasis supplied). Lay opinion testimony "results from the process of reasoning familiar in everyday life, while expert testimony results from a process of reasoning which can be mastered only by specialists in the field." *United States v. Christian*, 673 F.3d 702, 709 (7th Cir. 2012). Lay opinion testimony is not admissible to "provide specialized explanations or interpretations" that could not be made by untrained laymen observing the same acts or events. *United States v. Conn*, 297 F.3d 548, 554 (7th Cir. 2002).

[2] Indeed, the purpose of Rule 701 is "to eliminate risk that the reliability requirements set forth in Rule 702 will be evaded by the simple expedient of proffering an expert in lay witness clothing." *United States v. Conn*, 297 F.3d 548, 553 (7th Cir. 2002).

Here, the opinions in Birch's declaration are clearly tied to his experience providing consulting and management services to family farms. They are not based on the process of reasoning in everyday life, but rather are clearly intended to provide interpretations or explanations to the jury based on some specialized knowledge or experience. Therefore, they cannot be construed as lay opinions.

Accordingly, Senefeld should be precluded from eliciting any opinion testimony from Harold Birch, either expert or lay opinions, regarding farm loan financing, including Birch's "understanding" of how such loans commonly or typically f unction.

2. The SEC Should Be Allowed to Offer into Evidence the Consent Judgements against Matthew Haab and Jeffery Risinger.

As the Court is aware, the SEC initially filed this case against a number of related defendants, including three individuals: Matthew Haab, Jeffery Risinger and Tobin Senefeld. [*See* Filing No. 1.] However, this case will be proceeding to trial against only Senefeld, because Haab and Risinger settled and have been dismissed as defendants.

On July 11, 2016, Haab entered into a Consent whereby he consented to the entry of a Final Judgment, which, among other things:

(a) permanently restrained and enjoined Haab from violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-5; Section 17(a) of the Securities Act of 1933 ("Securities Act"); and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") and

(b) ordered Haab to pay disgorgement in the amount of $183,640.

[Filing No.253-1.] A final judgment against Haab was entered on September 14, 2016. [Filing No. 273.]

On July 19, 2016, Risinger entered into a Consent whereby he consented to the entry of a Final Judgment, which, among other things:

(a) permanently restrained and enjoined Risinger from violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5; Section 17(a) of the Securities Act; and

(b) ordered Risinger to pay disgorgement in the amount of $100,000.

[Filing No.252-1.] A final judgment against Risinger was entered on September 14, 2016. [Filing No. 272.]

The SEC acknowledges that it is not entitled to an unfair advantage in proving its claims against Senefeld. The jury is not allowed to conclude, merely from the fact that Haab and Risinger settled the SEC's claims, that Senefeld violated the securities laws in the way alleged by the SEC. However, the SEC's settlements with Haab and Risinger should not subject the SEC to an unfair disadvantage in proving its claims against Senefeld. The jury should not be allowed to conclude that the SEC failed to charge Haab and Risinger with violating the securities laws, or that the SEC did charge Haab and Risinger but failed to prevail against them.

In presenting its evidence against Senefeld at trial, the SEC plans to elicit testimony from both Haab and Risinger regarding the 2013 Veros Farm Loan Holdings and the 2014 FarmGrowCap investment offerings. Haab and Risinger each played significant roles in the farm loan offerings that are at issue in this case, but because the SEC's claims against them have been resolved, the SEC expects to focus its questions on Senefeld's role in the offering schemes. In order to demonstrate that the SEC is not singling out Senefeld for responsibility in the farm loan offering scheme, the SEC is inclined to ask them *whether* they were charged by the SEC in this case, *what* they were charged with and *how* the charges against them were resolved. The SEC

also is inclined to mention these settlements in its opening statement. The SEC would introduce Haab's and Risinger's consents and final judgments as needed, to ensure that their answers were accurate and complete.[3]

Consistent with Rule 408 of the Federal Rules of Evidence, the SEC would not be offering evidence of its consent judgments against Haab and Risinger in an effort to prove the validity or amount of the SEC's claim. Fed. R. Evid. 408. But rather, under Rule 408(b), "[t]he court may admit this evidence for another purpose." *See also Breuer Electric Manufacturing Co. v. Toronado Systems of America, Inc.*, 687 F.2d 182, 185 (7th Cir. 1982) (allowing introduction of "settlement evidence"); *United States v. Austin*, 54 F.3d 394, 400 (7th Cir. 1995) (admitting evidence of defendant's prior settlement with FTC). *See also Bohannon v. Pegelow*, 652 F.2d 729, 734 (7th Cir. 1981) (excluding evidence of prior investigation "would have resulted in an incomplete presentation of the facts to the jury").

In addition, because both Haab and Risinger are expected to testify at trial, their credibility will be at issue. The fact that they settled and the terms of their settlements should be admitted to show that they did not receive any favorable settlements or "leniency" from the SEC in exchange for their testimony. The purpose of Rule 408 "is to encourage settlements." *Central Soya Co. v. Epstein Fisheries, Inc.*, 676 F.2d 939, 944 (7th Cir. 1982) (allowing testimony regarding a settlement). It would be a perverse result if Rule 408 was used to exclude the Haab

[3] It will not be sufficient for the SEC simply to ask Haab and Risinger whether the SEC's charges against them have been "resolved." Without knowing *how* the SEC's charges were resolved, the members of the jury may be inclined to speculate and reach inaccurate and conflicting conclusions about Haab and Risinger. Some may believe that the SEC filed charges against Haab and Risinger but later dismissed those charges. Other jurors may speculate that the SEC previously tried its claims against Haab and Risinger but lost on the merits. Even if Senefeld opens the door for more detailed evidence regarding the settlements, without the availability of using the consents and judgments, the jurors may focus on the modest settlement amounts paid by Haab and Risinger and conclude either that the charges against them were not serious or that Senefeld must have been the person most responsible for the farm loan offerings.

and Risinger settlements and open them up to claims by Senefeld that their testimony was in exchange for favorable settlements. Hence, there is no reason why the SEC should not be allowed to introduce the Consents and Final Judgments or the facts: (1) that Haab and Risinger were named as defendants by the SEC in this case; (2) that they each settled the SEC's claims against them; and (3) the terms of their settlements.

Accordingly, the SEC respectfully requests that, subject to an appropriate limiting instruction by the Court, the SEC be permitted to mention Haab's and Risinger's settlements in its opening statement, question Haab and Risinger about their resolution of the SEC's claims against them in this case, and to introduce the Haab and Risinger Consents and Final Judgments and the facts: (1) that Haab and Risinger were defendants; (2) that they settled the action; and (3) the terms of their settlements.

3. The SEC Should Be Permitted To Treat The Fact That The Private Placement Memoranda Mischaracterized the SEC's Previous Charges Against Senefeld As Undisputed.

On September 30, 1998, the SEC instituted public administrative and cease-and-desist proceedings against Senefeld. [*See* Filing No. 11-17.] In 1999, Senefeld settled the SEC administrative proceeding. [*Id.*] The SEC issued "Order Making Findings and Imposing Remedial Sanctions Against Tobin J. Senefeld" ("Order"). [*Id.*] In the Order, the SEC found that Senefeld personally engaged in a fraudulent scheme called "free-riding." [*Id.*] Senefeld, while a broker and branch manager at a now defunct broker-dealer, purchased stocks without sufficient funds to pay for those purchases and then used the proceeds of the sale of that same stock to cover the purchase price. [*Id.*]

Specifically, the SEC Order found that:

> D. On or about July 1, 1996, Savla and Senefeld discussed several large purchases of Palomar stock that had recently been made in Savla's customers'

> accounts. At that time, Savla told Senefeld about her free-riding scheme and the profits that she had previously made. Upon learning of Savla's free-riding and the resulting profits, Senefeld asked her to open several additional nominee accounts in order to engage in free-riding himself.
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> E. During a four-week period in June and July 1996, Savla and Senefeld purchased a total of 106,000 shares of stock at a cost of more than $1.6 million in various nominee accounts and without any good faith basis to believe that full cash payment for the security would be made before the security was sold. Savla and Senefeld intended to make a quick profit and use the proceeds from the sale of the same stock to cover the purchase price. Of that total, Senefeld purchased 30,000 shares of stock at a cost of $364,825.
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> F. After Savla and Senefeld made initial profits of more than $14,000, their scheme soon collapsed because the price of Palomar stock declined. In order to avoid Savla and himself having to sell at a loss and pay for the stock they purchased, Senefeld improperly approved and obtained extensions of the settlement date pursuant to Regulation T, hoping that the price of the stock would go up again. Ultimately, Savla and Senefeld did not pay for the purchases, and H.J. Meyers sold out the remaining stock in the accounts at a loss of $211,902. Of that total, the losses incurred by Senefeld in the accounts he controlled amounted to $49,393.
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> G. As a result of engaging in his free-riding scheme, Senefeld willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Senefeld also willfully violated Section 7(f) of the Exchange Act and Regulation X by causing H.J. Meyers to violate the credit restrictions of Regulation T.

[Filing No. 11-17 at 2.]

However, contrary of these findings, the 2013 VFLH and 2014 FarmGrowCap private placement memorandum stated that "Mr. Senefeld entered into an Offer of Settlement with the Security (sic) & Exchange Commission ("Commission") in which the Commission entered findings that an employee under the supervision of Mr. Senefeld purchased stocks without sufficient funds to pay for the purchases, then used the proceeds of the sale of the same stock to cover the purchase price." [Filing No. 11-1 at 22; Filing No. 11-2 at 76.] On January 23, 2013, Risinger sent an email to Senefeld stating "I have restated the SEC history disclosure to emphasize the 'management' nature of the alleged infraction." [*See* Trial Ex. 56 at

VEROS027663.] The attached disclosure was a "redline" containing the very same language quoted in the first sentence of this paragraph. [*Id.* at VEROS027671.] There is no evidence that Senefeld ever told Risinger to correct the disclosure regarding the SEC charges against him and the findings against him. Additionally, in his deposition in this action, Senefeld finally admitted that the disclosure did not accurately describe the charges against him or the findings. [Filing No. 198-1 (Senefeld Dep., 114:9-16; 118:13-20).]

Based on the foregoing, it does not appear to be reasonably disputed that the 2013 and 2014 private placement memorandums mischaracterized the SEC's prior charges against Senefeld and the findings in the settlement Order. This statement is one of several in the 2013 VFLH and 2014 FarmGrowCap offering materials that the SEC contends is false and misleading. Although the SEC is prepared to prove that the 2013 VFLH and 2014 FarmGrowCap offering materials contained false or misleading statements, it does not appear necessary for the SEC to spend time or effort arguing to the jury that this statement is false or misleading. Accordingly, the SEC should be permitted to refer to this misstatement as undisputed, and publish the Order to the jury, during its opening statement.

4. Senefeld Should Not Be Permitted to Introduce Evidence Regarding the Interested Investors' Complaints against the Receiver.

Senefeld's Final Witness List indicates that he may elicit testimony from William Wendling regarding "his work as Receiver in this matter." [*See* Filing No. 248 at ¶ 22.] Presumably, Senefeld intends to ask the Receiver to describe investments he was asked to control, or Senefeld could be planning to question the Receiver about his interactions with Senefeld after the Receiver's appointment. This sort of testimony might be relevant and appropriate. However, Senefeld should not be permitted to criticize or challenge the Receiver's actions or decisions, or offer evidence regarding the complaints raised by certain investors

against the Receiver. Additionally, Senefeld should not be allowed to offer his own testimony on similar issues, in an attempt to persuade the jury that the appointment of a Receiver caused the investors to suffer losses on their investments, rather than the actions of Defendants. None of these arguments should be permitted, and the Court should preclude Senefeld from attempting to offer any such evidence.

First, while the investors' previous complaints against the Receiver have little or no probative value in a trial of the SEC's claims against Senefeld, they have the "obvious potential" to unfairly impact the substance of Mr. Wendling's testimony. *See United States v. Robinson*, 341 Fed. Appx. 546, at *2 (11th Cir. 2009) (affirming limitation of cross examination of investigating officer where unproven allegations of misconduct were irrelevant and prejudicial); *Dicks v. United States*, 2010 WL 11484356 (E.D. Pa. Sept. 8, 2010) (finding complaints and unproven allegations against witnesses were of only marginal relevance, and would have distracted and confused the jury). Therefore, the jury should not hear any such evidence.

Second, the SEC's allegations against Senefeld and the other Defendants concern their conduct before the filing of Complaint in 2015. The Receiver was not even appointed until months later, and he took control of the investments as he found them. He has made numerous reports to the Court regarding his activities, and the Court has approved all of his proposed actions with respect to the FarmGrowCap investments and the other private offerings. Senefeld had the opportunity to be heard on all of the Receiver's proposals, before they were approved by the Court. Allowing Senefeld to argue now that the Receiver did something improper, or failed to do something important, would be unfair to Mr. Wendling. This sort of testimony, or challenge, would also be inappropriate to the extent that it constitutes a collateral attack on any of the Court's prior rulings.

5. Senefeld Should Not Be Permitted to Refer to Any Unrelated SEC Investigations or Enforcement Actions.

As the Court knows, the SEC's claims in this matter arose out of the SEC's investigation of Veros Partners, Inc., and there were a number of other individuals and corporate entities that were named in the SEC's Complaint. [*See* Filing No. 1] However, the SEC's allegations in this matter are not derived from, and do not refer to, the SEC's investigations or cases against other individuals, including its well-publicized case against Bernard Madoff.[4] Nothing that has occurred in connection with any unrelated SEC investigation or lawsuit would make any fact in this case "more or less probable" under Rule 401 of the Federal Rules of Evidence. *See Vukadinovich v. Zentz*, 995 F.2d 750, 756 (7th Cir. 1993) (affirming preclusion of complaints and news articles that did not "pertain . . . to the instant case"). If Senefeld were permitted to offer evidence of, or refer to, any other, unrelated SEC enforcement actions, it might unfairly and improperly distract the jury from considering the merits of this case. *See SEC v. True North Fin. Corp.*, 2013 WL 4781037 at *4 (Sept. 6, 2013) (granting motion *in limine* to preclude argument and evidence about Bernie Madoff and other SEC litigation was "presumptively inadmissible" under rules of evidence).

Accordingly, the Court should enter an order barring Senefeld from offering evidence, or making any reference at trial, to any unrelated SEC enforcement investigations or cases, including but not limited to the SEC's previous investigation or lawsuit against Bernie Madoff.

6. Senefeld Should Not Be Permitted to Assert an Advice of Counsel Defense.

Senefeld has not asserted reliance on the advice of counsel as an affirmative defense in this matter. [*See* Filing No. 78] However, in response to several of the SEC's interrogatories regarding Senefeld's knowledge of the disclosures provided to investors, Senefeld stated: "I

[4] *SEC v. Madoff*, No. 08-cv-10791 (S.D.N.Y., filed Dec. 11, 2008).

relied on Jeffery Risinger's legal expertise to ensure that the disclosures were adequate." Accordingly, Senefeld may contend that, even if the SEC proves the other elements of its claims against him, he should not be liable because his reliance on Risinger demonstrates that he did not act with fraudulent intent (*i.e.*, intentionally or recklessly).

In order to establish a reliance on counsel defense within the Seventh Circuit, a defendant must prove that, before taking some action, he or she sought the advice of a competent attorney, made a complete disclosure of the relevant facts, received advice from the attorney, and acted strictly in accordance with that advice. *See Liss v. United States*, 915 F.2d 287, 291 (7th Cir. 1990). In SEC enforcement actions, courts require defendants asserting an advice of counsel defense to: (1) make a complete disclosure to counsel; (2) request advice as to the legality of the contemplated action; (3) receive advice that it was legal; and (4) rely in good faith on that advice. *See Zacharias v. SEC*, 569 F.3d 458, 467 (D.C. Cir. 2009) (affirming decision of administrative law judge that defendant had failed to establish the elements of an advice of counsel defense); *SEC v. Ferrone*, 2016 WL 824721 at ** (N.D. Ill. Feb. 22, 2016). Here, Senefeld cannot establish the elements of an advice of counsel defense.

First, Jeffery Risinger was never Senefeld's personal attorney. Like Senefeld, Risinger was a PinCap partner who was intimately involved in all of the details and decisions regarding the FarmGrowCap and VFLH offerings. Although Risinger drafted the legal and disclosure documents for both offerings, and undoubtedly used his experience as an attorney in doing so, he shared his drafts with both Haab and Senefeld, and requested their input, before they were finalized. Further, Risinger was acting as a principal of PinCap with a personal, financial interest in each offering. Senefeld was also a principal of PinCap and had the same personal, financial interest in the outcome as Risinger.

The SEC's case against Risinger has been resolved by settlement. Thus, the jury will not be asked to make any determination about Risinger 's actions. Ultimately, this case is about Senefeld's actions in connection with a scheme to defraud investors by withholding information about the intended and actual uses of their investments. There is no evidence that Senefeld ever asked Risinger about the *legality* of anything that Haab, Risinger and/or Senefeld told investors about the use of their funds in connection with the VFLH and FarmGrowCap offerings. Also, there is no evidence that Senefeld ever asked Risinger about the *legality*, of any use that Haab, Risinger and Senefeld intended to make of investor funds. Finally, there is no evidence that Senefeld actually received any advice that his intended conduct was legal, or that Senefeld limited his own activities to those things that Risinger had advised him to do.

Accordingly, the Court should not permit Senefeld to testify, or offer any other evidence, that he relied upon the legal advice of Jeffery Risinger and therefore has a complete defense in this matter or lacked the required *scienter*. Furthermore, the Court should not permit Senefeld to testify about any conversations with Risinger, of a legal nature, that were not previously disclosed to the SEC in discovery.

7. Senefeld Should Not Be Permitted to Offer Evidence of Financial Hardship or Refer to His Current Financial Condition.

Senefeld currently is *pro se* and is expected to represent himself at trial. The SEC anticipates that Senefeld may wish to inform the jury that he lacked the funds to pay his prior attorney or retain new representation. Senefeld may even intend to testify that the SEC's lawsuit has caused him financial losses, and that he has no income or assets available to pay a disgorgement award if he is found liable in this matter. No such testimony from Senefeld should be permitted during the trial of this case.

First, under Rule 401 of the Federal Rules of Evidence, any reference to the impact of this case upon Senefeld's personal life, or his financial condition, would be irrelevant to the jury's determination of the main question at issue, which is whether he violated the securities laws in the manner alleged by the SEC. *See SEC v. Moran*, 1995 WL 785953, at *1 (S.D.NY. Oct. 31, 1995) (granting motion to preclude defendants' evidence of hardship and losses resulting from the Commission's charges because there "is no relevant basis under which such proof could be offered" and that "the trier of fact must consider only the factual issue of liability without regard to any potential consequences which may befall a defendant"). It is inappropriate to invite jurors to excuse a violation of the law simply because a defendant has suffered some financial hardship. *See SEC v. Nutmeg Group, LLC*, 2017 WL 3269389 at ** 7-8 (N.D. Ill. Aug. 1, 2017) (excluding evidence of defendants' financial condition under Rules 401 and 403).

Second, it is not relevant to the jury's determination of liability that Senefeld might suffer future financial hardship if he found liable in this matter. *See, e.g., SEC v. Saul*, 1991 U.S. Dist. LEXIS 14982 at *3-4 (N.D. Ill. Oct. 15, 1991) (excluding testimony concerning potential penalties and other consequences "which defendants might experience as the result of an adverse judgment"). However, if Senefeld is found liable by the jury, it would be appropriate for the Court to consider his current financial condition in connection with the SEC's request for remedies, including civil penalties.

Third, Senefeld has produced some information to the SEC regarding his income and assets, in connection with prior settlement discussions. However, Senefeld did not provide all of the information requested by the SEC. Thus, the SEC currently does not have sufficient information, either to understand Senefeld's current financial condition or to effectively cross-examine Senefeld if he testified about his current financial status an issue.

Accordingly, Senefeld should not be permitted to present evidence, or argue to the jury, that the SEC's lawsuit against him has cost him assets, income, or business opportunities; that he lacks the financial resources to hire an attorney or pay a judgment in this case; or that their financial condition has deteriorated since the filing of this lawsuit.

Dated: September 29, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2017, I served Defendant Tobin Senefeld with a copy of the foregoing Plaintiff's Motions *in Limine*, by email and U.S. Mail, and filed the same via CM/ECF, which will notify all counsel of record.

/s/Robert M. Moye
Robert M. Moye