STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CIVIL DIVISION

Carebourn Capital, L.P.,

Plaintiff,

v.

DarkPulse, Inc., Standard Registrar & Transfer Company, Inc.,

Defendants,

DarkPulse, Inc.,

Third-Party Plaintiff,

v.

Chip A. Rice,

Third-Party Defendant.

ORDER ON DARKPULSE, INC.'S MOTION FOR SUMMARY JUDGMENT AGAINST MORE CAPITAL, LLC

Court File No.: 27-CV-21-1173

More Capital, LLC,

Plaintiff,

v.

DarkPulse, Inc. and Standard Registrar Transfer Company, Inc.,

Defendants,

DarkPulse, Inc.,

Third-Party Plaintiff,

v.

Court File No.: 27-CV-21-1173

Michael J. Wruck,

Third-Party Defendant.

This matter came on before the Court on September 14, 2023, on DarkPulse, Inc.'s, motion for partial summary judgment against Defendant More Capital, LLC.

Lee Hutton III, Esq., appeared as counsel for More Capital, LLC ("More").

Eric Benzenberg, Esq., Marjorie Santelli, Esq., Jacques Lerner, Esq., and Jordan Weber, Esq., appeared as counsel for DarkPulse, Inc. ("DarkPulse").

DISCUSSION

1. **Procedural Background.** More initiated this action on June 29, 2021, alleging that DarkPulse defaulted on its financing agreements ("Agreements") with More by improperly withholding shares that should have been More's under the Agreements. (Pl.'s Compl. ¶¶ 24–30 (Court file no. 27-CV-21-8111).) The Complaint asserted claims for the following: Count I—Declaratory Judgment (Against Standard Register and DarkPulse); Count II—Breach of Contract (Against DarkPulse Only); Breach of Contract—Count III (Against Standard Register and DarkPulse); Count IV—Attorney's Fees (Against Standard Register and DarkPulse); Count V—Unjust Enrichment (Against DarkPulse Only); Count VI—Quantum Meruit (Against DarkPulse Only); Count VII—Account Stated (Against Standard Register and DarkPulse); and Count VIII—Conspiracy (Against Standard Register and DarkPulse).[1] The More suit was then consolidated with the Carebourn suit into court file number 27-CV-21-1173.

2. DarkPulse now brings this motion for summary judgment seeking a declaratory judgment that (1) More is an unregistered securities dealer in violation of the Exchange Act, 15 U.S.C. § 78o(a) and the Minnesota Securities Act § 80A.56; (2) the Agreements between More and DarkPulse are unlawful, unenforceable, void, and subject to recission under the Exchange Act, 15 U.S.C. § 78cc; (3) DarkPulse has no further legal or equitable obligations under the Agreements; (4) grant summary judgment to DarkPulse on Counts I, II, IV, V, and VI of More's Complaint;[2] and (5) grant summary judgment to

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[1] Standard Register was dismissed from this action due to lack of personal jurisdiction. (Order Granting Mtn. to Dismiss, Index no. 203 (Wahl, J.) (Court file no. 27-CV-21-1173).)

[2] Declaratory judgment, breach of contract, attorney's fees, unjust enrichment, and quantum meruit, respectively.

DarkPulse on its first, third, fourth and fifth affirmative defenses.[3]

3. **Facts.** More is a New York limited liability company that was formed by Michael Wruck in February of 2015. (Benzenberg Aff. Ex. 10, 20:14–21; *id.* Ex. 8, at 7 ¶ 11.) Its principal place of business is 8995 Goldenrod Lane, Maple Grove, MN 55369. (*Id.* Ex. 10, 29:17–18.) Before More began investing for its own account itself, More performed due diligence work for Carebourn. (*Id.* at 21:12–18.) Wruck has known Chip Rice, founder of Carebourn, for most of his life. (*Id.* at 23:22.)

4. Given this background, More's business model is, unsurprisingly, substantially similar to Carebourn's. More invests in high-risk start-ups through convertible debt products. (*Id.* 29:19–23, 30:23–31:13.) In exchange for financing, and after the Rule 144 holding period has passed, More converts the issuer's debt into common stock which it then sells. (*Id.*) More never sought or received payment in cash. (*Id.* 78:10–23.) The convertible debt financing is More's only business—it does not make any other type of investment, offer any marketing or business development guidance, or offer investment advice to the issuers or any other entity. (*Id.* at 31:18–33:2.) More only acquired stock directly from the issuers or by purchasing convertible notes from other lenders, never from an open market. (*Id.* Ex. 6, at 8 ¶ 19; Ex. 9 at 4 ¶ 27.) More admits that it makes all of its profits from converting the debt and selling the issuers' common stock on the open market. (*Id.* Ex. 10, 33:16-34:2; Ex. 6, at 10 ¶ 28.) More has neither registered as a dealer with the SEC nor as broker-dealer under Minnesota law. (*Id.* Ex. 6 at 6–7, ¶¶ 12–13; Ex. 10 at 127:11-13.)

5. DarkPulse is a startup sensor technology company. (*See* Hutton Aff. Ex. B, at 6 (May 27, 2021) (DarkPulse 10-Q Filing filed on Aug. 15, 2018).) It is a Delaware Company located in New York. (Benzenberg Aff. Ex. 1, at 1, 19.)

6. Business Relationship Between More and DarkPulse. More and DarkPulse entered into a Securities Purchase Agreement and a Convertible Promissory Note on August 20, 2018 (together, "Agreements"). (*Id.* Ex. 1, at 1; Ex. 2, at 1.) The Agreements provided that the principal amount of the note was $152,000 and that it had a 12% interest rate. (*Id.* Ex. 1.) The Agreements also provided an original issue discount of $20,000, for a total purchase price of $132,000. (Ex. 10, at 77:3–78:4.) DarkPulse was also supposed to pay $7,000 to cover transactional expenses in connection with converting the debt into stock, and therefore would receive, in total, $125,000. (*Id.* Ex. 2 at 2.) Payments were wired from More's bank in Minnesota to DarkPulse's attorney's escrow account in Utah. (*Id.* Ex. 2, at 21, Disbursement Authorization.) More would eventually submit a total of nine

[3] Lack of standing, More cannot lawfully engage in securities transactions, More cannot lawfully exercise any of its rights under the Agreements, and More is barred from obtaining relief sought in the Complaint as a result of unclean hands, *in pari delicto*, waiver, release, satisfaction, and/or estoppel, respectively.

conversion notices and acquire 355,078,738 shares of DarkPulse common stock. (*See id.* Ex. 4.) Eventually, More alleges, DarkPulse withheld its stock, which led to the initiation of More's suit against DarkPulse. (Compl. ¶ 25 (Court file no. 27-CV-21-8111).)

7. **DarkPulse's Motion to Strike More's Opposition.** As an initial matter, DarkPulse asks this Court to strike More's brief in opposition because it was filed one day late. (Def.'s Reply, at 1 n.2.) Minnesota Rule of General Practice 115.03(b) states that the party responding to a motion shall file and serve its response at least fourteen days before the hearing. Because the hearing on this motion was September 14, 2023, More should have filed its opposition by August 31, 2023. However, More did not file the opposition until one day later on September 1, 2023. The Court may take "appropriate action" if a response to a dispositive motion is not properly served and filed. Minn. R. Gen. Prac. 115.06. The district court has discretion in enforcing these rules. *See* Minn. R. Gen. Prac. 115.06 advisory comm. cmt. ("[t]he permissive language is included to make it clear the court retains the discretion to hear matters even if the rules have been ignored."). In this case, the opposition was filed only one day after the fourteen-day deadline. Furthermore, the arguments raised by More are substantially similar to the arguments raised in Carebourn's briefs against summary judgment. *Cf. Roberson v. STI International*, A20-0020, 2020 WL 5107336, at *2 (Minn. Ct. App. Aug. 31, 2020) (holding district court did not err striking plaintiff's exhibits that were filed two days before the hearing and one day after defendant had filed its reply). Given these circumstances, More's tardiness is not so prejudicial to DarkPulse as to justify striking its opposition from the record.

8. **Summary Judgment Standard.** Summary judgment is appropriately granted when there are no genuine issues of material fact, and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. In determining a summary judgment motion, the Court must view evidence in the light most favorable to the party opposing the motion. *See Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). Summary judgment is "inappropriate when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (citing *Illinois Farmers Ins. Co. v. Tapemark Co*., 273 N.W.2d 630, 634 (Minn. 1978)). On a motion for summary judgment, the district court's function "is not to decide issues of fact, but solely to determine whether genuine factual issues exist." *Id.* (citing *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981)). "[T]he court must not weigh the evidence on a motion for summary judgment." *Id.* (citing *Murphy v. Country House, Inc*., 240 N.W.2d 507, 512 (Minn. 1976); *Fairview Hosp. & Health Care Servs. v. St. Paul Fire & Marine Ins. Co.*, 535 N.W.2d 337, 341 (Minn. 1995)). Mere denials, general assertions, and speculation are insufficient to raise an issue of material fact. *Gutbrod v. Cnty. of Hennepin*, 529 N.W.2d 720, 723 (Minn. Ct. App. 1995).

9. More argues that summary judgment is improper because there are issues of material fact relating to whether More is a "dealer" under the Exchange Act or a "broker-dealer" under the MSA—namely, More says it is not, and DarkPulse says it is. (Pl.'s Opp.

Mem. 7–8.) It is well settled that statutory interpretation is a question of law. *Bingham's Trust v. CIR*, 325 U.S. 365, 370 (1945). When there is no issue regarding the underlying predicate facts in a case involving statutory interpretation, summary judgment is appropriate. *See SEC v. Keener*, 580 F. Supp. 3d 1272 (S.D. Fla. 2022) (holding defendant was a dealer under the Exchange Act on summary judgment motion) (hereinafter *Keener II*); *SEC v. Almagarby*, 479 F. Supp. 3d 1266 (S.D. Fla. 2020) (granting SEC summary judgment on claim that defendant was a dealer, based on undisputed factual record, and rejecting defendant's trader exception defense). Furthermore, a party opposing summary judgment must point to specific facts showing that there is a fact issue. Minn. R. Civ. Pro. 56.03. In its brief, More does not point to any underlying factual dispute. Instead, it describes the summary judgment standard at considerable length. (Pl.'s Opp. Mem. 9–14.)

10. Near the end of its reply brief, More again states that summary judgment is inappropriate. Without citing any authority, More asserts that the fact finder must go through the "history of each and every transaction, the frequency of transactions, the credibility of the documents and participants[] drafting the documents including the attorney opinions that find More not to be a dealer, [and] the industry standards and practices."[4] (Pl.'s Reply at 14.) However, More again fails to point to any evidence on the record regarding any transactions that would preclude summary judgment. Because More does not point to factual issues beyond making general denials that it is a dealer, summary judgment is proper.

11. **More's Activities Fit the Definition of "Dealer" Under the Exchange Act.** Section 15(a)(1) of the Exchange Act makes it unlawful for anyone who is a dealer to use the mails or interstate commerce to engage in or attempt to induce the purchase or sale of securities unless the dealer is registered with the SEC. *See* 15 U.S.C. § 78o(a)(1). The Exchange Act defines "dealer" as "any person[5] engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise." 15 U.S.C. § 78c(a)(5)(A). Explicitly excluded from this definition is any person who buys or sells securities "for such person's own account, either individually or in a fiduciary capacity, but *not as a part of a regular business*."

12. As the Eleventh Circuit Court of Appeals has found, the central distinction between these activities is whether the entity is engaged "in the business of" buying and selling securities." *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 809 (11th Cir.

[4] Interestingly, DarkPulse claims that it asked for the full records of More's sales of issuer stock, but never received them. This makes it difficult to know the complete extent of More's selling activity. (Def.'s Mem. 21.)

[5] *See* 15 U.S.C. § 78c(a)(9) (defining "person" as "a natural person, company, government or political subdivision, agency of instrumentality of a government").

2015).[6] That circuit has defined business as a "commercial enterprise carried on *for profit*, a particular occupation of employment habitually engaged in for *livelihood* or *gain*." *Id.* Additionally, courts have looked at the volume of activity to determine whether a person is a dealer:

> While evidence of merely *some* profits from buying and selling securities may alone be inconclusive proof, the defendants' *entire* business model was predicated on the purchase and sale of securities. Big Apple and its subsidiaries depended on acquiring client stock and selling that stock to support operations and earn a profit.

Id. 809–10 (11th Cir. 2015) (citation omitted, emphasis original). Regular participation in securities transactions is the "primary indicia of being 'engaged in the business.'" *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12–13 (D.D.C. 1998).

13. More admits that converting debt into common stock, and then selling it on the open market for a profit, is its *entire* business model. (*See* Benzenberg Aff. Ex. 10, at 78:10–23 (Wruck stating that he did not think that any issuer paid More back in cash, and that the way More sought repayment was through converting the debt into stock and selling it); 94:12–16 (Q: "It sounds like from your experience, that you never actually received any cash even after the term of notes, the payment was always in conversion of debt into stock?" A: "Yes, absolutely.").) The fact that the activity comprised the whole of More's business model strongly weighs in favor of finding that More acted as a dealer.

14. Additionally, the SEC has promulgated a series of question to help persons determine whether they are acting as a dealer. *See Guide to Broker-Dealer Registration*, U.S. Securities and Exchange Commission, https://www.sec.gov/about/reports-publications/investor-publications/guide-broker-dealer-registration#II (last modified Dec. 12, 2016). The relevant portion reads:

- Do you advertise or otherwise let others know that you are in the business of buying and selling securities?
- Do you do business with the public (either retail or institutional)?
- Do you make a market in, or quote prices for both purchases and sales of, one or more securities?

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[6] Eighth Circuit caselaw defining "dealer" under the Exchange Act is sparse, but existing cases are consistent with the Eleventh Circuit's requirement that a person must be involved in buying and selling securities as a business, not just as a sometime investor. *See SEC v. Ridenour*, 913 F.2d 515, 517 (8th Cir. 1990) ("We agree with the government that Ridenour's level of activity during this period made him more than an active investor.").

- Do you participate in a "selling group" or otherwise underwrite securities?

- Do you provide services to investors, such as handling money and securities, extending credit, or giving investment advice?

- Do you write derivatives contracts that are securities?

A "yes" answer to any of these questions indicates that you may need to register as a dealer.

Id. at ¶ II(B). These factors are not controlling and do not have the force of law, but rather may be used by courts to help determine whether an entity is a dealer. *See Almagarby*, 479 F. Supp. 3d. at 1273 ("The factors listed are merely examples of activity or actions that might render one a dealer. There is nothing . . . that implies that the listed factors are an exclusive or exhaustive checklist that creates a burden of proof . . . ."); *SEC v. River N. Equity LLC*, 415 F. Supp. 2d 853, 858 (N.D. Ill. 2019) (noting the factors are not "a checklist through which a court must march to resolve a dispositive motion").

15. More Let Others Know that It Was in the Business of Buying and Selling Securities. The record shows that More held itself out to the public as willing to purchase convertible notes and sell securities. Such actions are consistent with dealer activity. *See Guide to Broker-Dealer Registration*, U.S. Securities and Exchange Commission at ¶ II(B). Specifically, More attended conferences around the country to network with potential customers. (Benzenberg Aff. Ex. 10, 66:17–25.) More also cold-called companies he found on the OTC market. (*Id.* at 66:4–67:3.) This activity supports finding that More is a dealer.

16. More Engaged in Underwriting Activity. DarkPulse also asserts that More engaged in underwriting activity. Several courts have found that underwriting activity is strong evidence of a dealer. *See Keener II*, 580 F. Supp. 3d at 1287–88 ("As further evidence that [d]efendant meets the statutory 'dealer' definition, [d]efendant acquired newly issued stock directly from issuers at a discount . . . and then resold the stock into the public market."); *SEC v. River North Equity LLC*, 415 F. Supp. 3d 853, 859 (N.D. Ill. 2019) (finding that defendant's practice of acquiring newly issued stock and turning a profit by quickly reselling was the type of underwriting activity that the SEC has found to be characteristic of a dealer). The Exchange Act defines "underwriter" as "any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security . . . ." 15 U.S.C. § 78c(a)(20). More admittedly invested in issuers in order to convert the debt into stock and sell it on the open market. (Benzenberg Aff. Ex. 10, at 29:19–23, 30:23–31:13.) More also obtained stock directly from the issuer—not the open market—and it did so at a discount (*Id.* Ex. 6, at 8 ¶ 19; Ex. 9, at 4 ¶ 27; Ex. 10, at 81:8–20 (discussing the original issuer discount); *id.* at 88:20–89:7 (stating that More would receive stock at an estimated 42% discount from the market price).) More then quickly sold the discounted stock for market value. (*Id.* at 88:20–89:7.) This activity is

remarkably similar to the activities of the defendants in *Keener* and *River North Equity* and is consistent with the definition of underwriter in the Exchange Act.

17. More's Argument Regarding the Lack of an SEC Enforcement Action Is Unpersuasive. More argues that the fact that the SEC has not brought an enforcement action conclusively means that More is not a dealer. More states that the Court "can reasonably conclude that the Commission found no wrongdoing" and that "this Court is handcuffed." (Pl.'s Reply at 9.) However, More does not provide any evidence to support this conclusion. Without supporting evidence, it is just as possible that the SEC, being a government agency with limited resources, decided to use those resources elsewhere despite determining that More acted as a dealer. For all this Court knows, the SEC could initiate an action against More tomorrow. The lack of SEC enforcement does not equate to an SEC determination.

18. The Exchange Act's Definition of Dealer Does Not Require Provision of Services to Customers. First, More argues that it is not a dealer because it does not provide services to customers. (Pl.'s Reply at 9–10.) It claims that to be a broker or dealer, an entity must "execute *customer* orders." (*Id.* at 10 (emphasis in original).)

19. In fact, there is no language in 15 U.S.C. § 78c(a)(5) mandating provision of services to a customer in order to be a dealer. Rather, the statute merely requires that the person be "engaged in the business of buying and selling securities." Indeed, several courts have rejected similar arguments. *See Almagarby*, 479 F. Supp. 3d at 1272–73 (granting SEC summary judgment and rejecting defendant's claim it was a only trader when its business model was based on purchasing aged debt from issuers' bondholders and obtaining conversion agreements at deep discounts, then selling them on the market for profit); *River North*, 415 F. Supp. 3d at 858 (denying motion to dismiss SEC claim that defendant was a dealer when it purchased discounted stock from issuers and turned profit not from waiting for market price to rise but from quickly reselling at marked-up price); *SEC v. Keener*, 2020 WL 4736205, at *9 (S.D. Fla. Aug. 14, 2020) (denying motion to dismiss by defendant arguing it was a trader and noting it was plausible that defendant had held itself out as willing to buy convertible notes as a regular part of its business which it frequently converted into stock at a deeply discounted price); *SEC v. Fife*, 2021 WL 5998525, at *5 (N.D. Ill. Dec. 20, 2021) (cataloguing decisions permitting SEC enforcement actions to proceed and also rejecting argument that "dealer" must buy and sell the same securities in the same condition) ; *SEC v. GPL Ventures LLC*, Case No. 21 Civ. 6814 (AKH), 2022 WL 158885, at *5 (S.D.N.Y. Jan. 18, 2022) (rejecting argument by defendants that since they had no customers and provided no services, they could not be dealers).

20. More's argument also ignores the plain text of the statute. The definition of dealer explicitly includes a person that buys and sells securities *for the person's own account*. 15 U.S.C. § 78c(a)(5)(A). There is no requirement that a dealer must provide

services for others. *Cf.* 15 U.S.C. § 78c(a)(4)(A) (defining broker as "any person engaged in the business of effecting transactions in securities *for the account of others*.") (emphasis added). Adopting More's definition would add text to the statute that is simply not there.

21. Even the sources cited by More seem to undermine its argument. The 1936 SEC report states that a firm can trade solely for the account of the customer *or* for its own account as a dealer. Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker, at XIV (1936). The treatise cited by More also states that "[a] dealer *sells to* and *buys from* a client whereas *a broker buys and sells for the account of a client*." Charles F. Hodges, Wall Street 361 (1930). Both sources are essentially saying the same thing—a dealer need not act on behalf of a customer's account.

22. **The Securities Contract Between More and DarkPulse Is Void Because of More's Status as an Unregistered Dealer.** DarkPulse next asks the Court to void the contract between it and More due to More's status as an unregistered dealer. Section 29(b) of the Exchange Act makes voidable any contract made in violation of the Act, with certain exceptions not at issue here. 15 U.S.C. § 78cc(b). To void the contract, the injured party must show (1) the contract involved a prohibited transaction; (2) the party is in contractual privity with the opposing party; and (3) the party is in the class of persons that the securities acts were designed to protect. *Regional Properties, Inc. v. Financial and Real Estate Consulting Co.*, 678 F.2d 552, 559 (5th Cir. 1982). Because this Court has determined that More acted as an unregistered dealer in violation of the Exchange Act, the first element is satisfied. There is also no doubt that the parties were in privity of contract. (*See* Benzenberg Aff. Exs. 1–2.) Lastly, this Court has already determined that DarkPulse is within the class of persons that the Act was designed to protect because it is an issuer transacting with an unregistered dealer. February 16, 2022, Order, ¶ 10, Index No. 233. DarkPulse is therefore entitled to void the contract between it and More.

23. **DarkPulse Is Entitled to Summary Judgment on More's Attorney's Fees, Unjust Enrichment and Quantum Meruit Claims.** DarkPulse seeks summary judgment on More's unjust enrichment and quantum meruit claims in its Amended Complaint. An unjust enrichment claim requires proof that (1) a party received something of value; (2) that the recipient was not entitled to the thing of value; and (3) it would be unjust under the circumstances for the recipient to retain the benefit. *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. Ct. App. 2001). The term "unjust" could mean illegal, unlawful, or it would be morally wrong for one party to enrich itself at the expense of another. *See First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981); *Schumacher*, 627 N.W.2d at 729. Quantum meruit is restitution for the value of a benefit conferred in the absence of a contract under a theory of unjust enrichment. *Faricy Law Firm, P.A. v. API, Inc. Asbestos Settlement Trust*, 912 N.W.2d 652, 657–58 (Minn. 2018) (citation omitted).

24. The parties do not dispute that DarkPulse received something of value from More. However, the Minnesota Supreme Court has held that, generally, no rights can be enforced when a contract is illegal, even if the defendant received something under the contract. *Fox Film Corp. v. Muller*, 255 N.W. 845, 848 (Minn. 1934); *Ylijarvi v. Brockphaler*, 213 Minn. 385, 319 (1942) ("[T]he mere fact that a part performance has been beneficial is not enough to render the party benefited liable to pay for the advantage."); *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981) ("[U]njust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others . . . ."). Lastly, it would undermine the policy of Section 29(b)—protecting persons from a contract involving a prohibited transaction—by allowing an unregistered dealer to essentially enforce the contract through restitution. *See* Restatement (Third) of Restitution § 32(2) (Am. Law. Inst. 2011) ("Restitution will also be allowed . . . if the allowance of restitution will not defeat or frustrate the policy of the underlying prohibition."). Because of this, More is not entitled to equitable relief.

25. Lastly, this Court turns to DarkPulse's argument that More's claim for attorney's fees fails as a matter of law. The parties' contract included a provision that in the event of legal action, the prevailing party would be entitled to recover attorney's fees. (Benzenberg Aff. Ex. 2, at 14.) Because the Court has found that the securities contracts are void as to More, it no longer has the contractual right to attorney's fees.

26. **More Is an Unregistered Broker-Dealer Under the MSA.** DarkPulse also asserts that More is a broker-dealer under the Minnesota Securities Act ("MSA"). More does not respond to this assertion in its reply brief. The MSA defines a broker-dealer as "a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account." Minn. Stat. § 80A.41(5). Minnesota Statute § 80A.56 makes it unlawful for a person to act as a broker-dealer in the state of Minnesota unless that person is registered as a broker-dealer or falls under an exemption. The law specifically states:

> (a) Registration requirement. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).
>
> (b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a):
>
> > (1) a broker-dealer without a place of business in this state if its only transactions effected in the state are with:
> >
> > > (A) the issuer of the securities involved in the transactions;

> (B) a broker-dealer registered under this chapter or not required to be registered as a broker-dealer under this chapter;
>
> (C) an institutional investor;
>
> (D) an accredited investor . . . .

Minn. Stat. § 80A.56.

27. Courts are encouraged to use federal case law as a guide in deciding questions of state securities law. *See Foley v. Allard*, 427 N.W.2d 647, 650 (Minn. 1988) (noting that "federal case law is of considerable value as precedent" in deciding questions arising under the MSA.) The MSA was modeled on the Uniform Securities Act and is intended to coordinate with and complement federal law. *Merry v. Prestige Capital Markets, Ltd.*, 944 F. Supp. 2d 702, 708 (D. Minn. 2013); *Minneapolis Emps. Ret. Fund v. Allison-Williams Co.*, 519 N.W.2d 176, 179 (Minn. 1994) ("The Minnesota Securities Act is patterned after federal law."). The definition of "broker-dealer" under the MSA and the definition of "dealer" under the Exchange Act are also similar. *Compare* Minn. Stat. § 80A.41(5)("'Broker-dealer' means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.") *with* 15 U.S.C. § 78c(a)(5)(A) ("The term 'dealer' means any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise.").

28. Having previously determined that More is a dealer under the Exchange Act, it follows that More is also a broker-dealer under the MSA. As discussed above, federal courts have found that the language "in the business of" is the crucial distinction between a dealer and a casual trader. *See SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 809 (11th Cir. 2015). For the same reasons that it determines that More is in the business of buying and selling securities and thus a dealer, this Court now holds that More is a broker-dealer under the MSA and was required to register as such.

29. **DarkPulse Is Entitled to Recover Its Damages.** DarkPulse seeks to recover damages against More under Minn. Stat. § 80A.76(d). That section provides:

> A person acting as a broker-dealer or agent that sells or buys a security in violation of section 80A.56(a) . . . is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

Minn. Stat. § 80A.76(d). Subsections (c)1 through (3) allow recovery in the following manner:

> (1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).
>
> (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).
>
> (3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

Minn. Stat. § 80A.76(c)(1)–(3).

30. Calculation of Damages. DarkPulse argues that it is entitled to $300,809.39 in damages, excluding pre- or post-judgment interest, for the difference between the price at which the security was sold and the value the security would have been at the time of the sale in the absence of the purchaser's conduct per Minn. Stat. § 80A.76(c)(3). To reach this figure, DarkPulse calculated the difference between the conversion price More paid for the shares and the price the shares would have been if they had been sold for the fair market value at the time More converted the shares. DarkPulse used the adjusted closing price as determined by Yahoo! Finance to determine fair market value. (*See* Benzenberg Aff. Ex. 4, Conversion Notices.) More does not respond or contest this amount in its response.

31. Calculation of Attorney's Fees and Costs. DarkPulse also seeks attorney's fees as authorized by Minn. Stat. § 80A.76(c).[7] Rule 119 of the Minnesota General Rules of Practice requires that an application for attorney's fees must be made by motion, including a memorandum of law that discusses the basis for recovery of attorney's fees and explains the calculation of the fees sought and the appropriateness of the calculation, and is accompanied by an affidavit of an attorney of record which describes each item of work performed, the date it was performed, the amount of time spent on each item, the identity of the lawyer or legal assistant who performed the work, the hourly rate sought for the work performed, the normal hourly rate for the person for whom compensation is sought, an itemization of all amounts sought for disbursements or expenses, and a declaration that the affiant has reviewed the work in progress or original time records, that the work was actually performed for the benefit of the client and was necessary for proper representation,

[7] More does not contest the attorney's fees submitted by DarkPulse, beyond generally asserting that summary judgment is inappropriate.

and that charges for any unnecessary of duplicative work have been eliminated from the motion. Minn. R. Gen. Prac. 119.01–119.02, 119.04. The Court has discretion to strictly enforce or waive the requirements for Rule 119 when considering a motion for attorney's fees. *Rooney v. Rooney*, 782 N.W.2d 572, 577 (Minn. Ct. App. 2010); *Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999).

32. The approved lodestar method "requires the court to determine the number of hours 'reasonably expended' on the litigation," and multiply those hours by "a reasonable hourly rate." *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 628 (Minn. 1988) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). When considering a motion for attorney's fees, the Court will consider its "knowledge of the character of the litigation and of the value of the services rendered." *Jensen v. Chicago, M. & St. P. Ry. Co.*, 199 N.W. 579, 580 (Minn. 1924). As the Minnesota Supreme Court elaborated in *State by Head v. Paulson*,

> Where, as authorized by statute, counsel fees are to be assessed against the adverse party in a proceeding before the court, what constitutes the reasonable value of the legal services is a question of fact to be determined by the evidence submitted, the facts disclosed by the record of the proceedings, and the court's own knowledge of the case. Absent any statutory limitations, allowances should be made with due regard for all relevant circumstances, including the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client.

188 N.W.2d 424, 426 (Minn. 1971).

33. The Basile Law Firm, DarkPulse's lead counsel, submitted an affidavit for a total of $97,040.00 in attorney's fees, which is roughly half the amount it sought against Carebourn. This seems proper, given that many of the legal issues DarkPulse has argued against More are the same that it argued against Carebourn, and, therefore, it should not take as much time to draft the filings in the More case. Based on the affidavit and the Court's knowledge of the case, this amount is appropriate.

34. Taft, DarkPulse's local counsel, submitted an affidavit for attorney's fees in the amount of $13,989.00. Based on the affidavit and the Court's knowledge of the case, this amount is appropriate.

35. Lastly, the Basile Law Firm asserts that it incurred $210.25 in costs defending this action. This cost stems from its use of Cloud9, a cloud-based e-discovery platform. To support this figure, counsel submitted invoices from Cloud9. (Benzenberg

Aff. Attorney's Fees Ex. 1.) The invoices confirm that counsel for DarkPulse expended $210.25 on this matter.

IT IS SO ORDERED:

1. DarkPulse's motion for a declaratory judgment that More is an unregistered dealer under the Exchange Act and a broker-dealer under the MSA is GRANTED.

2. DarkPulse's motion for a declaratory judgment that the Agreements between it and More are unlawful, unenforceable, void, and subject to recission under 15 U.S.C. § 78cc(b) is GRANTED.

3. DarkPulse's motion for a declaratory judgment that is no further legal or equitable obligations to More under the Agreements is GRANTED.

4. DarkPulse's motion for summary judgment on Counts I, II, IV, V, and VI of More's Complaint is GRANTED.

5. DarkPulse's motion for summary judgment on its request for its actual costs and attorney's fees pursuant to Minn. Stat. § 80A.76(d) is GRANTED.

6. Based on this Order, the Court's Order on DarkPulse, Inc.'s Motion for Summary Judgment filed April 21, 2023, and the Court's Order on DarkPulse, Inc.'s Motion for Partial Summary Judgment filed November 17, 2023, and the Court's Order Granting Standard Registrar & Transfer Company, Inc.'s Motion to Dismiss Amended Complaint filed December 6, 2021, the parties shall submit correspondence to the Court **within seven (7) days** of this Order setting forth their position as to whether there are any remaining issues precluding entry of final judgment in this matter pursuant to these Orders.

BY THE COURT:

Dated: December 11, 2023

Robben, Patrick
Jud District Court Judge
Dec 11 2023 12:33 PM

Patrick D. Robben
Judge of District Court