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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HOUSTON BYRD, JR.

Plaintiff-Appellant,

v.

CHRISTOPHER COOK; BRAD D. FARNSWORTH,

Defendants-Appellees.

Case No. 21-3623

Before: SUTTON, Chief Circuit Judge, ROGERS and GRIFFIN, Circuit Judges.

ORDER

Appellant filed a motion to reconsider the order denying the motion to recall the mandate.

Upon consideration, it is ORDERED that appellant's motion is hereby DENIED.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

Issued: January 11, 2022

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING APPELLANT MOTION TO RECALL THE MANDATE (JANUARY 3, 2022)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HOUSTON BYRD, JR.

Plaintiff-Appellant,

v.

CHRISTOPHER COOK; BRAD D. FARNSWORTH,

Defendants-Appellees.

Case No. 21-3623

Before: SUTTON, Chief Circuit Judge,
ROGERS and GRIFFIN, Circuit Judges.

ORDER

Appellant filed a motion recall the mandate.

Upon consideration, it is ORDERED that the motion is DENIED.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

Issued: January 03. 2022

NOTICE OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING MOTION FOR NON-DISCRETIONARY FINDINGS AND RECUSAL (DECEMBER 22, 2021)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HOUSTON BYRD, JR.

v.

CHRISTOPHER COOK, ET AL.

Case No. 21-3623

Houston Byrd Jr.
241 N. Tenth Street
Newark, OH 43055

Dear Mr. Byrd,

The court is in receipt of your documents for the above-referenced case. They are being returned to you untiled and with no further action.

Please be advised that the court denied your en banc petition on December 15, 2021, and as such, no further review is available.

Sincerely yours

/s/ Julie Connor
Case Manager

Direct Dial No. 513-564-7033

cc: Mr. Steven Alan Chang
Mr. Jeffrey T. Cox
Mr. Brian Patrick Nally

Enclosures

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (DECEMBER 15, 2021)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HOUSTON BYRD, JR.,

Plaintiff-Appellant,

v.

CHRISTOPHER COOK; ET AL.,

Defendants-Appellees.

Case No. 21-3623

Before: SUTTON, Chief Circuit Judge, ROGERS and GRIFFIN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (NOVEMBER 8, 2021)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HOUSTON BYRD, JR.,

Plaintiff-Appellant,

v.

CHRISTOPHER COOK; ET AL.,

Defendants-Appellees.

NOT RECOMMENDED FOR PUBLICATION

Case No. 21-3623

On Appeal from the United States
District Court for the Southern District of Ohio

Before: SUTTON, Chief Circuit Judge,
ROGERS and GRIFFIN, Circuit Judges.

ORDER

Houston Byrd, Jr., an Ohio resident proceeding pro se, appeals from the district court's dismissal of his complaint against defendants Christopher Cook and Brad Farnsworth, filed under 18 U.S.C. §§ 656, 1341, 1348 & 1349; 42 U.S.C. § 1985; and Ohio Revised Code § 2913.02. Byrd also moves this court to issue

sanctions, to strike Farnsworth's appellate brief, and to grant default judgment in his favor. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

This action appears to stem from the allegedly unauthorized acquisition, by Farnsworth, of an annuity for Byrd's individual retirement account. After a long-running dispute over the annuity and its associated fees, Farnsworth's financial advisory firm terminated its relationship with Byrd in 2017. Byrd sought relief from the Financial Industry Regulatory Authority ("FINRA") and eventually elevated his complaint to FINRA's Office of the Ombudsman, where Cook serves as associate director. Dissatisfied with FINRA's response, Byrd proceeded to file suit against Cook and Farnsworth in the Licking County Court of Common Pleas.

Because Byrd's suit consisted primarily of claims arising under federal law, Cook removed the action to the United States District Court for the Southern District of Ohio. Cook and Farnsworth both then moved to dismiss for failure to state a claim, with Cook arguing that he was entitled to absolute regulatory immunity as an employee of FINRA and that the statutes cited by Byrd provide no private right of action, and Farnsworth arguing that Byrd's claims failed as a matter of law and were otherwise time-barred. Farnsworth followed up with a motion to declare Byrd a vexatious litigator, and Byrd moved to strike the notice of removal, arguing that the district court lacked subject-matter jurisdiction.

After a magistrate judge concluded that jurisdiction was proper under 28 U.S.C. § 1331 and recom-

mended that Byrd's motion to strike be denied, Byrd objected and continued to rely on his argument that jurisdiction was not proper under 28 U.S.C. §§ 1332 or 1369. The district court adopted the magistrate judge's recommendation, concluding that the defendants properly invoked § 1331 as the source of the court's subject-matter jurisdiction because Byrd cited several federal statutes as the bases for his claims. *Byrd v. Cook*, No. 2:21-CV-2288, 2021 WL 2176596 (S.D. Ohio May 28, 2021).

Byrd then moved for sanctions against the defendants and requested compensatory and punitive damages in the amount of $25,000. The magistrate judge denied the motion because Byrd failed to comply with the mandatory "safe harbor" provision in Federal Rule of Civil Procedure 11, but also noted that Byrd's motion would have failed on the merits. Byrd again moved the court for sanctions, this time requesting "reparations due to the Defendants['] perjurious allegations for . . . libel and slander," and asking for $50,000 in compensatory damages and $350,000 in punitive damages. He also moved to strike the defendants' outstanding motions.

The district court ultimately granted the defendants' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), granted Farnsworth's motion to declare Byrd a vexatious litigator, overruled Byrd's various objections, and denied Byrd's motion for sanctions and motion to strike. Specifically, the district court held that: (1) Byrd's complaint failed to assert a plausible claim against Cook, either in his individual or professional capacity; (2) Byrd's complaint against Farnsworth relied largely on federal criminal statutes that lack private causes of action; (3) Byrd's

fraud claims against Farnsworth were time-barred; (4) Byrd displayed a "demonstrated willingness to file repetitive and baseless motions that strain judicial bandwidth," thereby rendering him a vexatious litigator; (5) the motions to dismiss and the motion to declare Byrd a vexatious litigator were not "pleadings" within the definition of Federal Rule of Civil Procedure 7(a), and were therefore not proper subjects of a motion to strike; and (6) Byrd's second motion for sanctions was meritless for the same reason as his first. *Byrd v. Cook*, No. 2:21-CV-2288, 2021 WL 2688543 (S.D. Ohio June 30, 2021).

Byrd now appeals, continuing to argue that his complaint was not properly removed to the district court and generally disputing the district court's conclusions. He has also filed a motion for Rule 11 sanctions against Cook's counsel, a motion to strike Farnsworth's principal appellate brief, and a motion for default judgment.

We generally review de novo a district court's judgment dismissing a complaint pursuant to Rule 12(b)(6). *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015). We also review de novo the denial of a motion to remand. *Husvar v. Rapoport*, 430 F.3d 777, 780 (6th Cir. 2005). As a threshold matter, however, Byrd has largely waived appellate review of the district court's findings and conclusions. While pro se filings are to be liberally construed, *see Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004), pro se litigants must still attempt to put forth "developed argumentation" in support of their claims on appeal, *see Doe v. Mich. State Univ.*, 989 F.3d 418, 425 (6th Cir. 2021) (quoting *United States v. Johnson*, 440 F.3d 832, 846 (6th Cir. 2006)). Byrd's appellate brief and filings are mostly disjointed

and largely indecipherable, and he has barely "suggested any defects in the district court's dismissal of [his] claims, much less advanced any sort of argument for the reversal of the district court's rulings." *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007); *see also Coleman v. Shoney's, Inc.*, 79 F. App'x 155, 156-57 (6th Cir. 2003) (noting that an appellant's brief "must contain the 'appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies'" (quoting Fed. R. App. P. 28(a)(8)(A))).

The single exception is Byrd's argument that the district court lacked jurisdiction over the underlying action and therefore should have concluded that removal was improper. However, Byrd cited a number of federal statutes as the bases for his claims, thereby presenting a federal question and conferring upon the district court subject-matter jurisdiction. *See* 28 U.S.C. § 1331. The action was properly removed to federal court, and Byrd's argument is without merit. *See* 28 U.S.C. § 1441(a); *Husvar*, 430 F.3d at 781-82.

As to Byrd's outstanding motions, each one is rooted in a fundamental misunderstanding or misapplication of procedural rules. First and foremost, the Federal Rules of Civil Procedure "govern the procedure in all civil actions and proceedings in the United States district courts." Fed. R. Civ. P. 1 (emphasis added). Therefore, "Rule 11 does not apply to papers filed here," and Byrd's motion for sanctions is without merit. *Chandler v. Vulcan Materials Co.*, 81 F. App'x 538, 540-41 (6th Cir. 2003). In his motion to strike, Byrd argues that Farnsworth's principal brief is "redundant," and he appears to be under the mistaken belief that appellees are required to file joint briefs.

He cites no authority in support of his position, and his motion to strike is without merit. Finally, Byrd relies on Federal Rule of Civil Procedure 55 in his motion for default judgment. He fails to cite any authority that supports our use of such a mechanism, however, and his motion for default judgment is without merit. *See Bond v. Collins*, 891 F.2d 289 (6th Cir. 1989).

Accordingly, we AFFIRM the district court's judgment, DENY the motion for sanctions, DENY the motion to strike, and DENY the motion for default judgment.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION (JUNE 30, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOUSTON BYRD, JR.,

Plaintiff,

v.

CHRISTOPHER COOK; ET AL.,

Defendants.

Case No. 2:21-cv-2288

Before: Sarah D. MORRISON, United States District Judge, Chelsey M. VASCURA, Magistrate Judge.

OPINION AND ORDER

Plaintiff Houston Byrd first filed this action against Defendants Christopher Cook (individually and in his capacity as Associate Director of FINRA's Office of the Ombudsman) and Brad D. Farnsworth in the Licking County Common Pleas Court. (ECF No. 4.) Defendants timely removed the action to this Court. (ECF No. 1.) The case is now before the Court

on several motions. Both Mr. Cook and Mr. Farnsworth have filed Motions to Dismiss. (ECF Nos. 5, 6.) Mr. Farnsworth also filed a Motion to Declare Plaintiff a Vexatious Litigator. (ECF No. 7.) Mr. Byrd belatedly responded to those motions (ECF No. 27) and moved to strike them. (ECF No. 25.) Mr. Byrd has also filed objections (ECF No. 17) to this Court's May 28, 2021 Opinion and Order denying his motion for remand and motion to dismiss, objections (ECF No. 19) to the Magistrate Judge's June 4, 2021 Order denying his motion for sanctions, and a renewed Motion for Sanctions (ECF No. 24).

For the reasons set forth below, the Court GRANTS Mr. Cook's and Mr. Farnsworth's Motions to Dismiss; GRANTS Mr. Farnsworth's Motion to Declare Plaintiff a Vexatious Litigator; OVERRULES Mr. Byrd's objections; and DENIES Mr. Byrd's Motion for Sanctions and Motion to Strike.

I. Background

Proceeding without assistance of counsel, Mr. Byrd filed this suit in the Common Pleas Court of Licking County on April 7, 2021. (*See* ECF No. 4.) Before summarizing the allegations, the Court must note that Mr. Byrd's Complaint is nearly incomprehensible. It lacks organization and structure, which renders the content difficult to interpret. The Complaint also includes several emails—some of which appear to have been later annotated—in no discernable order and without context. Despite its shortcomings, the Complaint does make clear that Mr. Byrd's claims center around the allegedly unauthorized purchase of an annuity contract for his individual retirement account ("IRA").

Mr. Byrd engaged Wayne Farnsworth, Jr., Brad Farnsworth, and Valmark Securities, Inc. to provide financial advice and investment services. (*See* ECF Nos. 4-2, 4-3.) Through that relationship, an AIG variable annuity policy (the "Annuity") was purchased for Mr. Byrd's IRA. (*See* ECF No. 4-2.) The application to purchase the Annuity was signed by Mr. Byrd and Wayne Farnsworth, Jr. on December 10, 2012. (ECF No. 4-2. *See also* ECF No. 4-5, PAGEID #155.) According to an investigation into the matter conducted by AIG,

> [AIG received] proof of contract delivery to [Mr. Byrd's] address of record on January 3, 2013, at 9:35AM. The contract . . . provided a full description of the product as well as the provisions associated therewith.
>
> The [Annuity] contained a Right to Examine provision, which afforded [Mr. Byrd] the opportunity to render it void by returning it within the specified timeframe after receipt for a full refund . . . [AIG's] records do not reflect [Mr. Byrd] chose to exercise [his] rights under this provision.

(ECF No. 4-5, PAGEID # 155.)

A dispute erupted between Mr. Byrd and his advisors about the Annuity and associated fees, and the relationship was terminated. (*See* ECF Nos. 4, 4-8.) The termination notice, dated April 28, 2017, reads:

> Dear Mr. Byrd,
>
> Please be advised that, effective immediately, Farnsworth Financial and ValMark Securities, Inc. are terminating our professional rela-

> tionship with you, and will no longer render investment services to you.
>
> Your AIG/SunAmerica variable annuity policy and your American Funds mutual fund account will now be serviced by the respective carrier and fund family. You may contact them directly for any questions or concerns that you have regarding your accounts in the future.

(ECF No. 4-8.)

Mr. Byrd sought relief from the Financial Industry Regulatory Authority ("FINRA").[1] Mr. Byrd was apparently dissatisfied with FINRA's response, both initially and when he elevated his complaint to the Office of the Ombudsman, headed by Mr. Cook. (*See* ECF No. 4, 16.) He now appears to assert claims for mail fraud, securities fraud, theft, breach of fiduciary duty, and civil conspiracy to defraud, among others. (*See* ECF No. 4.)

II. Motions to Dismiss

A. Standard of Review

Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient specificity to "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp.*

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[1] FINRA is a self-regulatory organization ("SRO") that "conduct[s] the daily regulation and administration of the securities markets," including by "promulgat[ing] rules, enforc[ing] compliance with those rules, and disciplin[ing] members [(registered broker dealers and other securities representatives)] and associated persons who violate the rules or federal securities laws." (ECF No. 1, ¶ 7.)

v. Twombly, 550 U.S. 544, 555 (2007) (internal alteration and quotations omitted). A complaint which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The Supreme Court has explained:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citations and quotations omitted). The complaint need not contain detailed factual allegations, but it must include more than labels, conclusions, and formulaic recitations of the elements of a cause of action. *Directv, Inc. v. Treesh*, 487 F.3d, 471, 476 (6th Cir. 2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

A plaintiff faces a heightened pleading standard with respect to claims sounding in fraud. In particular,

a plaintiff must plead "with particularity the circumstances constituting the fraud. . . ." Fed. R. Civ. P. 9(b). To satisfy the heightened standard, a plaintiff must "allege the time, place, and content of the alleged misrepresentations on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud." *Aero Fulfillment Servs. Corp v. Oracle Corp.*, 186 F. Supp. 3d 764, 776 (S.D. Ohio 2016) (Black, J.) (quoting *U.S. ex rel. Marlar v. BWXT Y-12 LLC*, 525 F.3d 439, 444 (6th Cir. 2008)). In other words, the plaintiff must plead sufficient detail "to allow the defendant to prepare a responsive pleading." *Id.* (quoting *MyVitaNet.com v. Kowalski*, No. 2:08-cv-48, 2008 WL 2977889, at *5 (S.D. Ohio July 29, 2008) (Frost, J.)).

These standards apply equally when the plaintiff is *pro se*. Although a *pro se* litigant is entitled to a liberal construction of his pleadings and filings, he still must do more than assert bare legal conclusions, and the "complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Mezibov v. Allen*, 411 F.3d 712, 716 (6th Cir. 2005).

B. Discussion

Both Mr. Cook and Mr. Farnsworth have filed Motions to Dismiss. The Court will address them in turn.

1. Mr. Byrd fails to state a claim against Mr. Cook upon which relief may be granted.

Mr. Cook argues that Mr. Byrd's claims against him must be dismissed because: (i) the Complaint fails to state a claim against him upon which relief

may be granted; (ii) he is entitled to absolute regulatory immunity as an employee of FINRA; and (iii) there is no private right of action under the Securities Exchange Act of 1934 against FINRA employees or under the various federal criminal statutes cited in the Complaint. (ECF No. 5, 1.) Mr. Cook's arguments are well-taken.

With respect to the claims against him in his individual capacity, it is striking that the Complaint scarcely mentions Mr. Cook. The Complaint excerpts a November 16, 2020 email Mr. Cook authored, which states, in full:

> Mr. Byrd,
>
> There is no rule governing the confidentiality–this is a FINRA internal policy. In line with that policy, FINRA does not provide other information such as dates/times of contact. However, it appears you already have much of that in your past emails.
>
> Regards,
> Christopher Cook

(ECF No. 4, 4) (emphasis omitted). The only other mention of Mr. Cook is in a January 21, 2021 email, in which Mr. Byrd expresses his dissatisfaction with FINRA's handling of his dispute. (*Id.*, 7.) In short, the Complaint does not allege that Mr. Cook engaged in any conduct that might form the basis of a claim—let alone a claim sounding in fraud. Though it contains the conclusory allegation that "FINRA . . .failed to ethically investigate and patently fabricated the truth," the Complaint fails to allege any facts in support of that conclusion. As a result, Mr. Byrd's Complaint fails to assert any plausible claims against Mr. Cook

in his personal capacity. *See Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

Even assuming, *arguendo*, that the Complaint could be construed to state a cause of action against Mr. Cook in his professional capacity, it still must fail. As Mr. Cook points out, Mr. Byrd faces substantial hurdles in bringing suit against a FINRA employee. First, as this Court has recently explained, "FINRA is immune 'from suit for conduct falling within the scope of the SRO's regulatory and general oversight functions.'" *Mohlman v. Fin. Indus. Regulatory Auth., Inc.*, No. 3:19-cv-154, 2020 WL 905269, at *3 (S.D. Ohio Feb. 25, 2020) (Rose, J.) (quoting *D'Alessio v. New York Stock Exch., Inc.*, 258 F.3d 93, 105 (2d Cir. 2001)) (collecting cases), *aff'd on other grounds*, 977 F.3d 556 (6th Cir. 2020). What's more, "FINRA's regulatory immunity extends to its employees acting within the 'aegis of the Exchange Act's delegated authority.'" *Id.* at *4 (quoting *P'ship Exch. Sec. Co. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 169 F.3d 606, 608 (9th Cir. 1999)). *See also Standard Inv. Chartered, Inc. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 637 F.3d 112, 115 (2d Cir. 2011) ("There is no question that an SRO and its officers are entitled to absolute immunity from private damages suits in connection with the discharge of their regulatory responsibilities."); *Hurry v. Fin. Indus. Regulatory Auth., Inc.*, No. CV-14-02490-PHX-ROS, 2015 WL 11118114, at *5 (D. Ariz. Aug. 5, 2015) (concluding that, because regulatory immunity derives from sovereign immunity, it extends to FINRA employees carrying out their duties).

Mr. Cook's Motion to Dismiss the claims against him is GRANTED.

2. Mr. Byrd fails to state a claim against Mr. Farnsworth upon which relief may be granted.

Next, Mr. Farnsworth argues that Mr. Byrd's claims against him fail because (i) there is no private right of action under the various criminal statutes cited in the Complaint; (ii) any claim based on Mr. Byrd's 2012 purchase of the Annuity is time-barred under federal and state securities laws; and (iii) any state law tort claim is similarly time-barred. (ECF No. 6, 4.) Mr. Farnsworth's arguments are also well-taken.

First, to the extent Mr. Byrd seeks to assert claims under federal or Ohio criminal statutes, he cannot. The criminal statutes cited in his Complaint are varied—including, *inter alia*, 18 U.S.C. §§ 656, 1341, 1346, 1348, 1349, and Ohio Rev. Code § 2913.02—but share one critical commonality: none establishes a private right of action. *See Parks v. Schelderer*, No. 2:20-cr-672, 2020 WL 2112160, at *3 (S.D. Ohio May 4, 2020) (Deavers, M.J.) ("Unless specifically provided, federal criminal statutes typically do not create private rights of action.") (citation omitted). "[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 19 (1979). Mr. Byrd cannot proceed under these statutes in a civil action for money damages.

Mr. Farnsworth argues that Mr. Byrd's remaining claims against him are time-barred. The Court agrees. Those claims, predicated on the purchase and sale of the Annuity, can be generally divided into statutory securities fraud and common law torts sounding in

fraud. Under both the federal and Ohio securities laws, a claim for securities fraud must come within five years of the date on which the security is sold. 28 U.S.C. § 1658(b); Ohio Rev. Code § 1707.43(B). Similarly, Ohio law establishes a four-year statute of limitations on common law tort claims, which begins to run only when "the complainants have discovered, or should have discovered, the claimed [fraud]." *Investors REIT One v. Jacobs*, 546 N.E.2d 206, 207 (Ohio 1989) (syllabus). *See also* Ohio Rev. Code § 2305.09(C).

A motion to dismiss for failure to state a claim "can be an appropriate mechanism for dismissal of time-barred claims . . . [']when the complaint shows conclusively on its face that the action is indeed time-barred.'" *Hawkins v. CooperSurgical, Inc.*, No. 1:19-cv-01047, 2020 WL 1864907, at *2 (S.D. Ohio Apr. 14, 2020) (Barrett, J.) (quoting *Allen v. Andersen Windows, Inc.*, 913 F. Supp. 2d 490, 500 (S.D. Ohio 2012) (Frost, J.)). The Complaint indicates that the Annuity was purchased at the turn of 2013. (ECF No. 4-5, PAGEID # 155.) It also includes emails from Mr. Byrd, which reference the Annuity, dating as far back as July 14, 2015. (ECF No. 4, 6.) Mr. Byrd commenced this action on April 7, 2021. Accordingly, the Complaint conclusively shows that Mr. Byrd's non-criminal claims against Mr. Farnsworth are time-barred.

Mr. Farnsworth's Motion to Dismiss the claims against him is GRANTED.

III. Motion to Declare Plaintiff a Vexatious Litigator

Contemporaneous with his Motion to Dismiss, Mr. Farnsworth moved for this Court to declare Mr.

Byrd a vexatious litigator. (ECF No. 7.) He later moved for leave to supplement the motion. (ECF No. 22.) Mr. Byrd filed an objection to the motion for leave to supplement, which the Court construes as a response in opposition. (ECF No. 23.) The response does not contain argument on-topic, except to state that it "[s]eems [to Mr. Byrd] as if the defendant's actions best meet the . . . criteria for a vexatious litigator[.]" (*Id.*, 2.) Mr. Farnsworth's motion for leave to supplement the Motion to Declare Plaintiff a Vexatious Litigator is GRANTED.

In his Motion to Declare Plaintiff a Vexatious Litigator, Mr. Farnsworth argues:

> Although obtaining dismissal of the Complaint would customarily be a satisfactory result, Mr. Byrd's prior history demonstrates that additional relief is warranted. . . . Mr. Byrd has turned *pro se* litigation into a hobby, and absent being deemed a vexatious litigator, will file objections, motions for reconsideration, and countless other filings that would require Mr. Farnsworth to respond and require this Court to devote needless resources to this case.

(ECF No. 7, 4.) He points out that, since 1999, Mr. Byrd has filed at least fifteen *pro se* civil actions in state and federal courts—all of which have been dismissed as meritless or for Mr. Byrd's failure to prosecute. (*See* ECF Nos. 7-1–7-44.) Underscoring Mr. Farnsworth's argument, Mr. Byrd responded to an email containing courtesy copies of motion filings by threatening to file another sanctions motion based on improper removal of the case, and "a complaint to the United States Courts, Circuit Justice Brett Kava-

naugh, or FBI Corruption Division[.]" (ECF No. 22, PAGEID # 712) (emphasis omitted).

"Federal courts have recognized their own inherent power and constitutional obligation to protect themselves from conduct that impedes their ability to perform their Article III functions and to prevent litigants from encroaching on judicial resources that are legitimately needed by others." *Johnson v. University Housing*, No. 2:06-cv-628, 2007 WL 4303728, at *12 (S.D. Ohio Dec. 10, 2007) (Holschuh, J.) (citing *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986)). The Sixth Circuit Court of Appeals has upheld the imposition of prefiling restrictions on vexatious litigators. *Id.* (collecting cases). Given the extensive number of meritless cases filed by Mr. Byrd, and his demonstrated willingness to file repetitive and baseless motions that strain judicial bandwidth, the Court finds it appropriate to declare Mr. Byrd a vexatious litigator.

Mr. Farnsworth's Motion to Declare Plaintiff a Vexatious Litigator is GRANTED. Mr. Byrd is DEEMED A VEXATIOUS LITIGATOR and is ENJOINED from filing any new actions without either (i) submitting a statement from an attorney licensed to practice in this Court or the State of Ohio certifying that there is a good faith basis for the claims Mr. Byrd seeks to assert, or (ii) tendering a proposed complaint for review by this Court prior to filing. He is further ORDERED to include the captions and case numbers of all of his prior actions with any complaint filed in this or any other court.

IV. Motion to Strike, Motion for Sanctions

Except to broadly paint them as "lacking in substance," "uncorroborated," "flawed," and "irrelevant," Mr. Byrd does not respond to the arguments set forth in the Motions to Dismiss or the Motion to Declare Vexatious Litigator. (ECF Nos. 25, 27.) Instead, he moves to strike the motions and to sanction the attorneys who filed them. (ECF Nos. 24, 25.) Mr. Byrd's motions are without merit.

Mr. Byrd first moves to strike Defendants' Motions. (ECF No. 25.) Under Rule 12, "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "Pleadings" generally include only complaints and answers. Fed. R. Civ. P. 7(a). The Motions to Dismiss and the Motion to Declare Vexatious Litigator are not pleadings and, thus, are not the proper subjects of a motion to strike. Accordingly, Mr. Byrd's Motion to Strike (ECF No. 25) is DENIED.

Mr. Byrd also moves to sanction opposing counsel. (ECF No. 24.) This is Mr. Byrd's second motion for sanctions. (*See* ECF No. 16.) Under Rule 11, "the court may impose an appropriate sanction on any attorney, law firm, or party that violate[s Rule 11(b)] or is responsible for [such] violation." Fed. R. Civ. P. 11(c)(1). For the precise reasons set forth in Magistrate Judge Vascura's order (ECF No. 18) denying Mr. Byrd's first motion for sanctions, this renewed Motion for Sanctions (ECF No. 24) is DENIED.

V. Objections

Finally, Mr. Byrd has filed objections to this Court's May 28, 2021 Order and to the Magistrate Judge's June 4, 2021 Order. (ECF Nos. 17, 19.) In both filings, he belabors the familiar argument that this Court lacks jurisdiction over the case. (*Id.*) As both the Magistrate Judge and this Court have ruled, Mr. Byrd's Complaint presents a federal question over which this Court has subject-matter jurisdiction. (ECF Nos. 10, 15.) Mr. Byrd offers no persuasive reason why the Court should review or revise its holding. His objections are OVERRULED.

VI. Conclusion

Accordingly, Mr. Cook's Motion to Dismiss (ECF No. 5) is GRANTED. Mr. Farnsworth's Motion to Dismiss (ECF No. 6) is also GRANTED.

Further, Mr. Farnsworth's Motion to Declare Plaintiff Vexatious Litigator (ECF No. 7) and related Motion for Leave to Supplement (ECF No. 22) are GRANTED. Accordingly, Mr. Byrd is DEEMED A VEXATIOUS LITIGATOR and is ENJOINED from filing any new actions without either (i) submitting a statement from an attorney licensed to practice in this Court or the State of Ohio certifying that there is a good faith basis for the claims Mr. Byrd seeks to assert, or (ii) tendering a proposed complaint for review by this Court prior to filing. It is further ORDERED that Mr. Byrd must include the captions and case numbers of all his prior actions, should he file a complaint in this or any other court.

Mr. Byrd's Motion to Strike (ECF No. 25) and Motion for Sanctions (ECF No. 24) are DENIED.

Finally, Mr. Byrd's objections (ECF No. 17) to the Court's May 28 Opinion and Order are OVERRULED, as are his objections (ECF No. 19) to the Magistrate Judge's June 4 Order.

This case is DISMISSED. The Clerk is DIRECTED to terminate it from the docket of the United States District Court for the Southern District of Ohio.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
United States District Judge

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE (MAY 28, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOUSTON BYRD,

Plaintiff,

v.

CHRISTOPHER COOK; ET AL.,

Defendants.

Case No. 2:21-cv-2288

Before: Sarah D. MORRISON, United States District Judge, Chelsey M. VASCURA, Magistrate Judge.

ORDER

Plaintiff Houston Byrd first filed this action against Defendants Christopher Cook, individually and in his capacity as Associate Director of FINRA's Office of the Ombudsman, and Brad D. Farnsworth in the Licking County Common Pleas Court. (ECF No. 4.) Defendants timely removed the action to this Court on the grounds that, though lacking in clarity and specificity, Mr. Byrd's Complaint asserts claims

under federal law and, thus, this Court had original jurisdiction under 28 U.S.C. § 1331. (ECF No. 1.) Mr. Byrd then filed a Motion to Strike the Notice of Removal. (ECF No. 8.) This matter is now before the Court on the Magistrate Judge's Report and Recommendation recommending that Mr. Byrd's Motion to Strike be denied (ECF No. 10.) Mr. Byrd has since filed objections to the Magistrate Judge's Report and Recommendation (ECF No. 13) and a related Motion to Dismiss for lack of subject matter jurisdiction (ECF No. 14). For the reasons set forth below, the Court OVERRULES Mr. Byrd's objections and ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation. For the same reasons, Mr. Byrd's Motion to Dismiss is DENIED.

I. Standard of Review

If a party objects within the allotted time to a report and recommendation, the Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

II. Analysis

The Magistrate Judge construed Mr. Byrd's Motion to Strike the Notice of Removal as a motion to remand this matter back to the state courts. In the Report and Recommendation, she carefully analyzed whether Defendants' Notice of Removal was properly filed. Namely, whether the notice contains "a short

and plain statement of the grounds for removal" and whether the case is removable under statute. She found in the affirmative, and recommended that this Court deny Mr. Byrd's motion. Mr. Byrd objects to the Report and Recommendation, arguing that the Magistrate Judge "failed to address the stipulations set-forth by 28 U.S.C. § 1441 and 28 U.S.[C.] § 1446." (ECF No. 13, PAGEID # 656.) Mr. Byrd's objections are without merit.

"[I]t is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute . . . , which is not to be expanded by judicial decree . . . ." *Hudson v. Coleman*, 347 F.3d 138, 141 (6th Cir. 2003) (internal citations omitted). Accordingly, a case must fall into one of very few categories to be heard by this Court. Those categories are set out by statute. "The basic statutory grants of federal court subject-matter jurisdiction are contained in 28 U.S.C. § 1331, which provides for 'federal-question' jurisdiction, and § 1332, which provides for 'diversity of citizenship' jurisdiction." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006) (alterations omitted). More specifically, under § 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." And under § 1332, federal district courts "have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between . . . citizens of different States . . . ."

Defendants invoke 28 U.S.C. § 1331 as the source of the Court's subject matter jurisdiction over this case. They note that Mr. Byrd's Complaint cites a number of federal statutes—including 18 U.S.C.

§§ 1341, 1348, and 1349 and 42 U.S.C. § 1985—as the basis for his claims. They correctly assert that the claims, therefore, present a federal question over which this Court has original jurisdiction.

Mr. Byrd hangs his objections on the language of 28 U.S.C. § 1441(b)(2):

> A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title [(diversity jurisdiction)] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

He points out that, in some instances, cases initiated in state court may not be removed to federal court. Mr. Byrd reiterates this argument in his more recently filed Motion to Dismiss. While the general proposition is correct, it is inapplicable here. Defendants do not argue that this Court has subject matter jurisdiction solely on the basis of diversity of citizenship of the parties. Instead, they argue—and both the Magistrate Judge and this Court agree—that the Complaint raises a federal question, and that it is, accordingly, properly removable to this Court.

III. Conclusion

Mr. Byrd's objection (ECF No. 13) is OVERRULED. The Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (ECF No. 10). Mr. Byrd's Motion to Strike Notice of Removal (ECF No. 8) and Motion to Dismiss (ECF No. 14) are DENIED.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
United States District Judge

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE (MAY 19, 2021)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOUSTON BYRD,

Plaintiff,

v.

CHRISTOPHER COOK; ET AL.,

Defendants.

Case No. 2:21-cv-2288

Before: Sarah D. MORRISON, United States District Judge, Chelsey M. VASCURA, Magistrate Judge.

REPORT AND RECOMMENDATION

Plaintiff, Houston Byrd, an Ohio resident who his proceeding without counsel, brought this action in state court against Christopher Cook and Brad Farnsworth (collectively "Defendants"). Although Plaintiff's Complaint lacks clarity, he references a number of federal and state laws that he appears to maintain Defendants violated. Defendants filed a Notice of Removal (ECF No. 1), removing this action on the basis of original jurisdiction under 28 U.S.C.

§ 1331. Defendants point out that although his Complaint lacks clarity, Plaintiff relies upon and cites numerous federal statutes. This matter is before the Court for consideration of Plaintiff's Motion to Strike Removal (ECF No. 8), in which Plaintiff maintains that Defendants' removal of this action from state court was improper. The undersigned construes Plaintiff's Motion to Strike Removal as a motion for remand, and, for the reasons that follow, RECOMMENDS that Plaintiff's Motion be DENIED.

"To remove a case from state court to federal court, a defendant must file in the federal forum a notice of removal 'containing a short and plain statement of the grounds for removal.'" *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014). Generally, a defendant may remove a civil case brought in a state court to federal court if it could have been brought there originally. 28 U.S.C. § 1441(a); *Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 871 (6th Cir. 2000). "The basic statutory grants of federal court subject-matter jurisdiction are contained in 28 U.S.C. § 1331, which provides for '[f]ederal-question' jurisdiction, and § 1332, which provides for '[d]iversity of citizenship' jurisdiction." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Federal-question jurisdiction is invoked when a plaintiff pleads a claim "arising under" the federal laws or the United States Constitution. Id. (citation omitted).

Here, Defendants properly initiated removal of this action by filing a Notice of Removal (ECF No. 1) that contains a statement of the grounds for removal, namely, that this Court has original jurisdiction because Plaintiff purports to bring claims arising under federal laws. Review of Plaintiff's Complaint reflects

that Plaintiff does, if fact, cite numerous federal statutes that he maintains Defendants violated. (*See* Pl.'s Compl., ECF No. 4 (referencing 18 U.S.C. § 656 (theft, embezzlement, or misapplication by bank officer or employee), 18 U.S.C. § 1341 (frauds and swindles), 18 U.S.C. § 1348 (securities and commodities fraud), 18 U.S.C. § 1349 (attempt and conspiracy), and 42 U.S.C. § 1985 (conspiracy to interfere with civil rights)).) The fact that Plaintiff also cites numerous state statutes that he maintains Defendants violated does not deprive this Court of jurisdiction.

For these reasons, it is RECOMMENDED that Plaintiff's Motion to Strike Removal (ECF No. 8) be DENIED.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a de novo determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District

Judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ Chelsey M. Vascura
United States Magistrate Judge

NOTICE OF FILING FOR REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION (COLUMBUS) (MAY 6, 2021)

IN THE COMMON PLEAS COURT OF LICKING COUNTY, OHIO

HOUSTON BYRD, JR.,

Plaintiff,

v.

BRAD D. FARNSWORTH, ET AL.,

Defendants.

Case No. 21-cv-0287

Before: W. David BRANSTOOL, Judge.

TO THE HONORABLE CLERK OF THE LICKING COUNTY COMMON PLEAS COURT:

PLEASE TAKE NOTICE the Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Christopher Cook serves notice of his filing for Removal of the above-captioned case from this Court to the United States District Court for the Southern District of Ohio, Eastern Division (Columbus).

Defendant Christopher Cook has filed a Notice of Removal of this action to the United States District

Court for the Southern District of Ohio, Eastern Division (Columbus). A copy of the Notice of Removal is attached to this notice as Exhibit 1 and Incorporated by reference as if fully set forth.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST (JULY 23, 2021)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Sixth Circuit Case Number: 21-3623
Case Name: Byrd v. Cook, et al.
Name of the Counsel: Jeffrey T. Cox
Pursuant to 6th Cir. R. 26.1, Christopher Cook

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, fist below the identity of the parent corporation or affiliate and the relationship between it and the named party:

> No. Mr. Cook is the Associate Director in the Office of the Ombudsman of the Financial Industry Regulatory Authority, Inc. ("FINRA"). FINRA is a private, not-for-profit Delaware corporation that has no stock or parent corporation.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

> No. Mr. Cook is the Associate Director in the Office of the Ombudsman of the Financial Industry Regulatory Authority, Inc. ("FINRA"). FINRA is a private, not-for-profit Delaware corporation that has no stock or parent corporation.

I certify that on July 23 2021, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record

/s/ Jeffrey T. Cox

CIVIL COVER SHEET
HOUSTON BYRD, JR. v. BRAD D. FARNSWORTH AND CHRISTOPHER COOK
(MAY 6, 2021)

I.

(a)

Plaintiffs

Houston Byrd, Jr

(c)

Attorneys Name and Address

Pro se

Defendants

Brad D. Farnsworth and Christopher Cook

Attorneys

Jeffery T. Cox, Callum S. Morris, Faruki PPL and Brain Nally, Reminger Co., L.P.A.

II. Basic of Jurisdiction

Federal Question

IV. Nature of Suit

890 Other Statutory Actions

VI. Cause of Action

Cite the U.S. Civil Statute under which your are filing *(Do not cite jurisdictional statutes unless diversity)*

Potentially 18 U.S.C. § 656, 18 U.S.C. 1341, 18 U.S.C. 1346, 18 U.S.C. 1349, and 42 U.S.C. § 1985

Brief description of cause

The Complaint potentially alleges fraud, theft, and conspiracy

VII. Requested in Complaint

Demand $ 875,484

Jury Demand - No

Signature of Attorney of Record

/s/ Callum S. Morris

Date: May 6, 2021

HOUSTON BYRD VALMARK SECURITIES
NEW ACCOUNT ENTITLEMENT FORM
(DECEMBER 10, 2012)

Rep No. BE22

VALMARK FINANCIAL GROUP

Account Registration Information

Houston Byrd

Address

241 N. 10th Street Newark, OH 43055

Occupation

Engineer

Employer

Heath, Ohio 43056

Information Enquired by USA Patrice Act

Driver's License

Affiliation with Financial or Publicly Traded Form

1. Is an account party or any immediate family member affiliated with employed by a securities firm, bank, trust, or insurance company?

   No

2. Is an account party or any immediate family member; a director, a 10% or grater shareholder, or policymaking executive officer of a publicly traded company?

   No

Account Registration Type:

Traditional IRA

Initial Transaction

Buy: Yes

Transaction Amount: 313,428.66

Source of Funds: Boeing 401k Rollover

What if any, PROSPECTUSES disclosure documents and Form ADV's were received by the client? If none, please explain

Sun America Polaris Platinum III

Client Financial Situation and Needs-For any requested financial information, you may provide an actual estimated or a range amount However, the suitability of recommendations will be based on the information provided. For Joint Accounts, provide combined information. For Trust account, provide information based upon the Trust assets. For Custodial accounts (such as UGMA), provide Custodian's information.

Are tax Deferred/Tax Free Investment Important?

Yes

Risk Tolerance: (Definitions on following page)

Moderate

Investment Time Horizon:

Long (>10 yrs)

Investment Objective: (Definitions on following page)

Growth

General Investment Experience Knowledge:

Low

Need for Investment Liquidity: (Definitions on following page)

Low

Client Certification and Acceptance to the ValMark Client Agreement: I certify that the information provided on this form is true, correct and complete. In consideration on your accepting this account. I hereby acknowledge that I have read, understood and agree to the terms set forth in this certification statement and the ValMark Client Agreement (Which is attached on the third page of this New Account form and included the pre-dispute arbitration clause, as found in paragraph 7), a copy of which I have received All parties to the account must sign.

Client Signature

/s/ Houston Byrd
Date: 12-10-12

{signature not legible}
Registered Representative

{signature not legible}
Principal Approval Signature

CONCERN LETTER FROM BRAD FARNSWORTH TO HOUSTON BYRD (AUGUST 7, 2015)

From: Brad Farnsworth
Sent: Friday, August 7, 2015 1:30 PM
To: Houston Byrd
Subject: RE: Annuity Statement

Houston,

I'd really appreciate if we could set up and appointment so we can go over your account. I need to make sure you fully understand it. It probably would not be in your best interest to transfer your account to a new agent as you have surrender charges on your contract. It would really be in your best interest to review your account with our office.

As far as borrowing money, you took a *withdrawal from your IRA* last year and used it for your daughters college. Also you are forgetting about your guaranteed lifetime income with this account. If you transfer your account you'd be giving up your guarantees. When you first met with me these guarantees were important so I don't know why you'd want to give them up.

The IRA product you have is a Variable annuity and AIG American General is a member of FINRA, and all investments are governed by the SEC. These are US government agencies.

My main concern is making sure you understand the product you have and using it to meet your retirement needs.

Again I feel it is in your best interest to review your account with our office before . . . .

[. . .]

EXHIBIT 1-A

Types of annuities Contradicts, see enclosed Exhibit 1-A. there are only there types of annuities:

I. Fixed annuities, which out a fixed amount.

II. Variable annuities, which pay out based on the performance of investments.

III. Indexed annuities, which are a hybrid of fixed and variable annuities and pay out a preset amount plus a variable amount depending on the performance of investment.

LETTER FROM DOUGLAS F. WILBURN TERMINATING RELATIONSHIP WITH HOUSTON BYRD (APRIL 28, 2017)

ValMark Financial Group, LLC
130 Springside Drive
Akron. OH 44333
P 330-576-1234 TF 800 765-5201

VALMARK FINANCIAL GROUP

Houston Byrd, Jr.
241 N. 10th St.
Newark, OH 43055

Dear Mr. Byrd,

Please be advised that, effective immediately, Farnsworth Financial and ValMark Securities, Inc. are terminating our professional relationship with you, and will no longer render investment services to you.

Your AIG/SunAmerica variable annuity policy and your American Funds mutual fund account will now be serviced by the respective carrier and fund family. You may contact them directly for any questions or concerns that you have regarding your accounts in the future. Their contact information is as follows:

AIG/SunAmerica - Policy number ending xxx
Annuity Service Center
Telephone: 800-445-7862
Hours of Operation: Monday through Friday, 7 a.m. to 7 p.m. Central Time

American Funds - Account number ending xxx
Account Services
Telephone: 800-421-0180

Hours of Operation: Monday through
Friday, 8 a.m. to 7 p.m. Eastern Time

We wish you the best in your future endeavors.

Very Truly Yours

/s/ Douglas F. Wilburn
Chief Compliance Officer

CC: Brad Farnsworth

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