

BEFORE THE ARKANSAS SECURITIES COMMISSION

CASE NO. S-19-0034

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF

**SOCIAL AUTOMOTIVE MANAGEMENT SERVICES, LLC;
SOCIAL, INC.; and ADAM B. SHARP**

RESPONDENTS

CEASE AND DESIST ORDER

On August 29, 2019, the Staff of the Arkansas Securities Department ("Staff") filed its Request for Cease and Desist Order ("Request"). In its Request, the Staff states that it has certain information and evidence indicating that Social Automotive Management Services, LLC; Social, Inc.; and Adam B. Sharp have violated provisions of the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509. The Arkansas Securities Commissioner has reviewed the Request and based upon the representations made therein finds that:

FINDINGS OF FACT

The Request contains the following representations of fact:

1. Social Automotive Management Services, LLC ("SAMS") is a limited liability company organized and existing under the laws of the state of Arkansas. At all relevant times herein, SAMS had a principal place of business located at 5417 W. Pinnacle Pointe Drive, Suite 203, Rogers, Arkansas 72758. Adam B. Sharp is the founder, majority owner, president, and general manager of SAMS. SAMS is a subsidiary of Social, Inc. Fender.Cars is a fictitious business name registered to SAMS. SAMS' registration with the Office of the Arkansas Secretary of State is currently in a revoked status. SAMS has never been registered with the Arkansas Securities Department ("Department") in any capacity pursuant to the Act.

2. Social, Inc. is a corporation organized and existing under the laws of the state of Arkansas. At all relevant times herein, Social, Inc. had a principal place of business registered at

249 Arlington Way, Springdale, Arkansas 72762. Social, Inc. owned and served as the managing and holding company of SAMS. Adam B. Sharp is the owner, co-founder, and president of Social, Inc. Social, Inc.'s corporate registration with the Office of the Arkansas Secretary of State is currently in a revoked status. Social, Inc. has never been registered with the Department in any capacity pursuant to the Act.

3. Adam B. Sharp ("Sharp") is an individual currently residing in the state of Tennessee. Sharp is the co-founder, owner, and president of Social, Inc. and the founder, majority owner, and president of SAMS. At all relevant times herein, Sharp was a resident citizen of Springdale, Arkansas. Sharp has never been registered with the Department in any capacity pursuant to the Act.

4. According to an investor packet prepared by Social, Inc., SAMS was in the business of marketing a proprietary automotive shopping web application, named Fender.Cars. The packet represented that Fender.Cars would allow consumers to shop for automobiles on a national scale, utilizing "swipe for like" technology and the capability for automotive staff to communicate directly with customers in real time. The application purportedly would allow automobile dealers to track the individual users browsing its inventory and determine the financial ability of the user to purchase the car that the user was viewing. A website would accompany the Fender.Cars application as part of the overall business plan.

5. In its investor packet, SAMS proposed to generate revenues through a number of methods: (1) annual fees paid by automobile dealers, referred to as "franchisees", (2) fees from "like" swipes, (3) sales of market data analysis prepared for automobile manufacturers, and (4) advertising fees paid by companies wishing to advertise on the application or Fender.Cars website. The financial projections cited in the investor packet lacked any independent verification, and the

investor packet failed to contain any substantial disclosure of risks associated with investment in a technology startup company like SAMS. The specific revenue projections in the packet were as follows:

(a). Annual Franchise Fees: Franchisees would pay \$499.00 annually for each automobile franchise listed on the application. SAMS projected that the company would receive 2,500 dealerships in the first year, generating \$1,247,500 in yearly revenue alone. These 2,500 dealerships would list 875,000 cars for sale on the application each month.

(b). “Like” Swipe Fees: Automobile dealers listing vehicles on the application would be charged for each like swipe from a user on a vehicle. Through a number of calculations, SAMS projected these fees would generate \$54,750,000.00 in annual revenue for the company.

(c). Sales from Market Data Analysis: Automobile manufacturers interested in market data analysis performed by SAMS would pay \$100,000.00 for the data package at the close of the calendar year. SAMS projected a revenue generation of \$1,000,000.00 per year from these sales.

(d). Advertising Fees: Companies of all backgrounds wishing to reach consumers of automobile-related information would pay to advertise on the application and website. Through a number of calculations, SAMS projected advertising sales potential of \$1,825,000.00 per year.

6. In 2016, Sharp began soliciting investors in SAMS, primarily through the use of the investor packet, social media, and face-to-face meetings. Sharp represented to investors that SAMS was in need of start-up capital to fund and market its Fender.Cars application to businesses. Specifically, the investor packet stated that Social, Inc. was issuing 5,000 preferred membership unit shares to investors, with each share being valued at \$250.00. The offering of membership

units would raise a total of \$1,250,000.00, to be spent according to a chart labeled “Start-Up Expenses and Requirements”, as follows:

- (a). Legal Services - \$10,000.00
- (b). IT Development - \$235,000.00
- (c). Advertisement - \$1,000,000.00

7. From 2016 to 2018, Sharp solicited a minimum of \$551,500.00 from at least twenty-five different investors through the offer and sale of membership interests in SAMS. At least six of the investors were Arkansas residents, with the remainder coming from other states, including Missouri, Texas, and Louisiana. Sharp caused Social, Inc., as the managing and holding company of SAMS, to issue membership units to investors via Purchase Agreements. Many of the Purchase Agreements were signed by his then-wife, who was the Secretary-Treasurer of Social, Inc. The initial value of SAMS ownership units was set at \$250.00/unit. However, investors paid varying amounts to acquire their units, with some later investors paying more per unit than previous investors.

8. According to the terms of the Purchase Agreements, investors had no control over the business activities necessary to generate revenues for the company. An Exhibit A attached to the Purchase Agreements stated the following: “[t]his assignment of Membership Interests does not entitle the transferee to participate in the management and affairs of the company or exercise any rights of a member. Moreover, the Investor shall have no liability as a member of the Company solely as a result of this assignment.”

9. Through the investor packet and in-person representations by Sharp, investors were promised lucrative returns on their investments in a relatively short period of time. The investor packet represented that SAMS would reach a positive cash flow within eight months of operation,

allowing for “expedited repayment” of the initial investment, as well as regular dividends from company revenues. In support of this statement, the packet stated: “[r]evenue will top \$12,710,240 within the first year and profits will reach about \$2,033,639 in the first year of operation.” Sharp made similar representations regarding potential returns when making in-person pitches to investors. For example, Sharp, without disclosing risks associated with the investment, told one investor that she could expect to quickly double the amount of her initial investment.

10. When marketing the membership interests in SAMS, Sharp failed to disclose to investors certain pertinent and material financial information that a reasonable investor would want to know prior to making the investment, including, but not being limited to, the following:

(a). The personal residence of Sharp had been foreclosed on by Arvest Mortgage Company as the result of a civil action filed in the Circuit Court of Washington County, Arkansas in 2014;

(b). Sharp was a defendant to civil litigation commenced in the Circuit Court of Washington County, Arkansas in 2015, which later resulted in a civil judgment being entered against him on December 13, 2017 in favor of Truist Federal Credit Union in the total amount of \$23,567.84;

(c). Sharp failed to tell certain later investors that they were paying more per membership unit than previous investors had paid.

11. To date, none of the investors have received any funds as a return on their principal investment or any dividend payments from SAMS. While Sharp represented that investor funds would be used primarily for business purposes, Sharp converted large amounts of investor funds to his personal use. The Staff’s examination of applicable bank records found the following with regard to Sharp’s personal expenditure of investor funds: at least \$50,000.00 in ATM withdrawals

and checks made payable to “Cash”; at least \$30,000.00 spent on rent and housing for Sharp, Sharp’s family, and employees of SAMS; at least \$15,000.00 spent on miscellaneous personal expenses, including transactions at Jojo’s Asian Massage, Lou Nails, The Duck Blind, Dillard’s, American Eagle, The Buckle, Bella Baby Photography, and Joseph A. Bank; at least \$2,500.00 spent at bars, including, but not being limited to, a \$624.00 transaction at Coyote Ugly, a \$214.00 transaction at Outlaw Country, and transactions at Willy D’s, Ernie Biggs, and the Electric Cowboy; at least \$2,500.00 spent at liquor stores, including, but not being limited to, a \$712.44 transaction at Discount Smokes & Liquor, a \$279.27 transaction at Discount Smokes & Liquor, and a \$231.61 transaction at Sharp County Bootlegger.

12. In addition to the outright personal use of funds, the Staff found the following questionable expenditure of investor funds during its review of applicable bank records: at least \$23,000.00 spent at convenience stores, including, but not being limited to, a \$2,474.00 transaction at Casey’s General Store, a \$1,146.41 transaction at Casey’s General Store, and a \$1,027.38 transaction at a Shell Service Station; at least \$23,500.00 spent at restaurants and eateries; at least \$12,000.00 on other miscellaneous expenses, including Apple iTunes subscriptions, Netflix subscriptions, and RedBox DVD Rentals; at least \$15,000.00 in Google Wallet and Google P2P transfers; and at least \$2,300.00 in overdraft fees and account offset charges.

13. Sharp’s excessive personal use of investor funds rendered the proposed business operations of SAMS unsustainable. While there were some legitimate business expenses found in bank records, Sharp’s personal use of investor funds prevented the company from ever becoming operational to the point of generating any real revenues through its proposed software applications or methods. The investor packet stated that the founders of SAMS would be “primarily compensated through 5% of gross monthly income, adjusted for business needs.” As noted above

in paragraph 6, investors were given specific projections for how investment funds were to be expended by SAMS. Neither the investor packet nor Sharp, during his in-person meetings with prospective investors, disclosed that a substantial amount of investor funds would be converted to Sharp's personal use.

14. Several investors have contacted Sharp requesting updated information on the status of their investment. Sharp has made additional "lulling statements" to investors which were false and misleading and designed to cover up the improper expenditure of investor funds.

15. During the post-investment phase, SAMS, via Sharp as its authorized representative, offered investors rescission of their original investment, plus 6% interest from the date of purchase. SAMS and Sharp made the rescission offer via a letter to investors after receiving contact from the Missouri Securities Division of the Office of Secretary of State, the state regulator of securities in Missouri, amidst pressure from aggrieved investors. The Rescission Offer, among other things, admitted that the membership units were securities under state and federal law and, also, admitted to Sharp's mismanagement of the company, stating the following:

"The Shares sold to you and all of the other investors in the Company are defined and regulated as 'Securities' under both state and federal law."

"Those laws require that the sale of such Securities to investors such as yourself must either be registered, or exempted from registration, with both the state and federal governments."

"The sale of these Securities was not properly registered or exempted from registration under either state or federal law."

"In the development of this Concept into a capitalized business with investors, Sharp was unaware that these Shares were defined as 'Securities' under both state and federal law which required either a registration of the sales process, or a duly accomplished exemption from which [sic] registrations and as a result proceeded during the sales period to sell such Shares without registration or exemption in violation of state and federal securities laws."

“The offering was not subscribed as proposed: rather than 5,000 shares being sold at \$250 per share to generate a capital base of \$1,250,000, 5,224 shares were sold generating a total of \$551,500 as its capital base, substantially less than the target base.”

“In the process of selling these Securities, because the concept and process were dynamic, the Company’s representatives made a number of oral and written representations, formal and informal, to various investors that were not uniform among investors or uniform time-to-time, because of the dynamic nature of the process...However, there is not a uniform offering circular which can be relied on as a sole source of offering information, and the facts and circumstances communicated to one investor pertaining to this investor may have been different than the facts and circumstances communicated to other investors regarding this investment.”

“Under the stress of trying to accomplish the Concept with limited funds, Sharp engaged in various acts or omissions of questionable propriety in his management of the company.”

16. An email to investors attached as an exhibit to the rescission offer letter attempted, among other things, to disclose and explain away Sharp’s personal use of investor funds. In this regard, Sharp made the following representations in his email:

“I made the decision, rather than taking a regular paycheck as outlined in the investor document of \$5,000 per month plus mileage or 5% of the gross, to conduct a majority of my spending directly from the operating account, and separating in our financial statement to reflect ‘person [sic] owners draw’ then [sic] meals and travel and other expenses.”

“Through the 15-month period we are attributing \$124,311.36 in owners draw for a negative credit difference of \$2,101.82 or that amount of savings. Does not sound like much savings, however bare [sic] in mind this includes everything from living expenses to vehicle maintenance, transportation needs such [as] vehicle payments, etc., housing, internet service particularly while living in Virginia, family travel, and personal life spending as outlined above including various cash withdraws, clothing, personal services, including hair, nails, spa, website services and WiFi/television including Amazon, Netflix, Comcast, AT&T, Spring, etc., and entertainment such as music and movies, and varied locations that accommodate these types of entertainment including adult oriented facilities, gas, lodging, food reimbursement for rent when staying with family, etc.”.

17. An Operating Agreement for SAMS also was attached as an exhibit to the rescission letter sent to investors. Like the investor packet, the Operating Agreement notes an offering of 5,000 membership units in SAMS to investors. However, certain terms in the Operating Agreement concerning Sharp’s allowable distributions from the company varied greatly from the

representations made in the investor packet and by Sharp during in-person solicitations to investors. The Operating Agreement provides for executive compensation to Sharp of \$5,000 gross per month and reimbursement of not more than \$3,000 per month for travel and per diem. It is upon these terms that Sharp seemingly justifies his expenditures to investors in the rescission offer letter. However, the investor packet makes it clear that investor funds were needed for the start-up expenses outlined in the table referenced above in paragraph 6. While the packet later notes certain salary amounts for corporate officers, the packet contemplates those salaries being funded by profits from the operations of the company. The packet states that the founder, Sharp, would be compensated with up to 5% the company's monthly gross income, and not on a regular owner's draw as set out in the Operating Agreement. The Staff found that Sharp made the same representations found in the investor packet to investors in SAMS when he was soliciting their investment. Based on the in-person representations by Sharp and the representations in the investor packet, investors purchased membership units in SAMS to fund the start-up expenses of SAMS, and not to fund Sharp's lifestyle.

18. The Staff's investigation determined that the rescission offer made by SAMS and Sharp to investors was not a valid offer, as the company and Sharp lacked the financial resources necessary to refund the investments plus 6% interest at the time the offer was made. In fact, several investors accepted the rescission offer but, to date, have not received a return of the initial investment or 6% interest thereon. Additionally, SAMS did not seek to register the securities or otherwise remedy the registration issues after making the offer of rescission to investors.

19. The Staff's investigation found that the membership interests offered and sold by SAMS, Social, Inc., and Sharp were not registered as securities pursuant to the Act. Regarding these investments, the Staff has found no record of a filing evidencing a proof of exemption in

accordance with the Act and no notice filing pursuant to federal law in connection with a covered security.

APPLICABLE LAW

20. Ark. Code Ann. § 23-42-102(17)(A)(xi) includes investment contracts under the Act's definition of a security.

21. Ark. Code Ann. § 23-42-102(10) defines issuer as any person who issues any security.

22. Ark. Code Ann. § 23-42-301(a) provides that it is unlawful for any person to transact business as an agent of an issuer of securities without first being registered as such pursuant to the Act.

23. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security unless it is registered, exempt, or a covered security.

24. Ark. Code Ann. § 23-42-507(2) makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

25. Ark. Code Ann. § 23-42-507(3) makes it unlawful to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

CONCLUSIONS OF LAW

26. The subject membership interests issued by Social, Inc. and SAMS and sold to investors by Sharp constitute securities as defined by Ark. Code Ann. § 23-42-102(17)(A)(xi). The membership interests were advertised, offered, and sold on the premise that investors would receive economic benefits in the form of large returns on their principal investment. The investors

contributed to the risk capital of the venture. The money invested was always subject to the risk that the Respondents would not fulfill promises and investors would not receive the return advertised. The investors had no control over the business processes necessary to generate returns on the investment. The membership interests were packaged, advertised, marketed, and sold as the types of investments that the Act is intended to govern. Sharp admitted when making the rescission offer to investors that “[t]he Shares sold to you and all of the other investors in the Company are defined and regulated as ‘Securities’ under both state and federal law.” Therefore, for all of the above and foregoing reasons, the subject transactions are investment contracts under Ark. Code Ann. § 23-42-102(17)(A)(xi).

27. None of the securities sold by Social, Inc., SAMS, and Sharp were registered with the Department, exempt from registration with the Department, or a covered security. Therefore, Social, Inc., SAMS, and Sharp violated Ark. Code Ann. § 23-42-501 when they sold the subject securities to investors.

28. Social, Inc. and SAMS are both defined as an issuer by Ark. Code Ann. § 23-42-102(10). The facts set out above demonstrate that Sharp represented Social, Inc. and SAMS in effecting or attempting to effect purchases or sales of securities to investors. Therefore, Sharp acted as an unregistered agent of an issuer in violation of Ark. Code Ann. § 23-42-301(a).

29. Social, Inc., SAMS, and Sharp committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2) by making false and misleading statements to investors and by omitting to state material facts necessary to make statements made, in light of the circumstances under which they were made, not misleading, as set forth above in paragraphs 4 through 19. Specific violations of Ark. Code Ann. § 23-42-507(2) as set forth herein include, but are not limited to, the following:

(a). Making large revenue projections for SAMS that were unverified by any independent party and unrealistic in light of the financial condition of SAMS and Sharp at the time the projections were made;

(b). Failure to disclose any risks associated with investment in a technology startup company;

(c). Failure to disclose to certain later investors that they were paying more per membership unit than previous investors had paid;

(d). Failure to disclose material information regarding Sharp's financial condition, including a recent home foreclosure and pending civil litigation that later resulted in a civil judgment against Sharp; and

(e). Failure to disclose that substantial portions of investor funds would be expended for Sharp's personal use.

30. Social, Inc., SAMS, and Sharp committed securities fraud in violation of Ark. Code Ann. § 23-42-507(3) by engaging in an act, practice, or course of business that has operated as a fraud or deceit upon investors by converting substantial amounts of investor funds to the personal use of Sharp, a purpose not aligned with the reasons for which the subject securities were advertised, marketed, and sold.

ORDER

31. Respondents Social, Inc., SAMS, and Sharp shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501 by refraining from soliciting, offering, or selling securities in the state of Arkansas unless and until the securities are properly registered pursuant to the Act, exempt from such registration, or are covered securities.

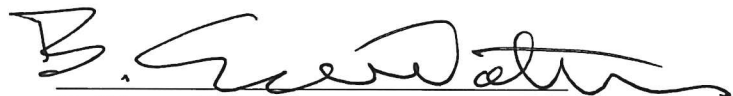
32. Respondent Sharp shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301(a) by refraining from acting as an agent of the issuer until such time as he is properly registered or shown to be exempt from registration pursuant to the Act.

33. Respondents Social, Inc., SAMS, and Sharp shall immediately cease and desist from further violations of Ark. Code Ann. §§ 23-42-507(2)-(3) by refraining from committing fraud or deceit in connection with the offer or sale of any securities in the state of Arkansas.

34. A hearing on this Cease and Desist Order shall be held if requested by any of the Respondents in writing within thirty days of the entry of this Order or if otherwise ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). Such request should be addressed to the Commissioner and submitted to the following address: Arkansas Securities Commissioner, 201 East Markham, Suite 300, Little Rock, Arkansas 72201.

35. If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order shall remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B).

Dated this 29th day of August, 2019.

A handwritten signature in black ink, appearing to read "B. Edmond Waters", written over a horizontal line.

B. Edmond Waters
Arkansas Securities Commissioner