

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-CV-81205-RAR**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

_____ /

**MEMORANDUM OF FOX ROTHSCHILD LLP IN OPPOSITION TO
RECEIVER’S MOTION TO COMPEL THE PRODUCTION OF OPINION
LETTERS AND COMPLIANCE MATERIALS FROM LAW FIRMS**

Fox Rothschild LLP (“Fox”), by undersigned counsel, files this memorandum in opposition to the Receiver’s¹ Motion to Compel the Production of Opinion Letters and Compliance Materials From Law Firms (the “Motion to Compel”) (DE 160) and states the following:

PRELIMINARY STATEMENT

1. The Court entered an Order Granting the Security and Exchange Commission’s Motion for Appointment of Receiver (DE 36) dated July 27, 2020, and an Amended Order Appointing Receiver (DE 141) dated August 13, 2020 (the “Receivership Order”).

2. Fox is not a Receivership Entity nor a Defendant in this action. Fox is one of the law firms that represented CBSG and other Receivership Entities. Fox’s primary role, pre-receivership, was to represent CBSG in legal actions filed to obtain payment from merchants who

¹ Ryan K. Stumphauzer, Esq. is the Receiver of Defendants Complete Business Solutions Group, Inc. d/b/a Par Funding (“CBSG”); Full Spectrum Processing, Inc.; ABetterFinancialPlan.com d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; and RE Income Fund 2 LLC (the “Receivership Entities”).

defaulted on their financial obligations to CBSG. Fox stands ready, willing and able to resume that role, as counsel for the Receiver, and otherwise to assist the Receiver for the benefit of creditors of CBSG. Fox fully complied with the Receiver's August 10, 2020 letter request for documents by providing the responsive documents that were "easily retrievable" and "readily accessible," just as the Receiver requested.

3. If the Receiver wants Fox to retrieve email and other electronically-stored documents ("ESI") that discuss or mention one or more of the legal issues referred to in the Receiver's August 10, 2020 letter—and, to be clear, the Receiver's letter does not request this—the Receiver should provide specific guidance to Fox concerning the search parameters, and Fox must be compensated fairly for the significant amount of time and effort this task will involve. Fox wishes to assist the Receiver but to do so in a manner that does not impose undue burden and expense on Fox.

4. Similarly, Fox wishes to assist the Receiver with respect to the ongoing litigation matters that Fox was handling for CBSG. Fox has offered to be retained as counsel for the Receiver in the cases in which Fox has appeared for CBSG. Fox wants to assist the Receiver in serving the interests of creditors of CBSG by continuing to pursue appropriate legal remedies for obtaining payment of monies due to CBSG (now to its receivership estate) from merchants.

5. Fox believes that it complied, to the best of its ability, with the informal document request made by the Receiver that is the subject of the present Motion to Compel, and that the instant Motion to Compel was neither appropriate nor necessary. Indeed, Fox regrets having to file a response and is hopeful that an amicable resolution can be reached between Fox and the Receiver before either party invests more time and effort in motion practice. Having said that, the Motion to Compel is not well-founded for a number of reasons.

6. The Receiver's Motion to Compel should be denied because (1) the Receiver has not served any subpoena or Fed. R. Civ. P. 34 request for documents on Fox, and, therefore, there is no legal predicate for an order compelling production, (2) Fox has fully complied with the Receiver's informal request for the "readily accessible and easily retrievable" responsive documents, and (3) if the Receiver wishes Fox to search for, review and produce potentially responsive ESI, the Receiver should avoid imposing undue burden and expense on Fox by clearly defining the parameters of the search and compensating Fox fairly and adequately for the substantial time and effort that will be required of Fox's professionals and IT staff.

THE FOX FIRM'S ROLE

7. For a period of approximately two years, the Fox firm, a national firm that has its main office in Philadelphia, served as counsel for CBSG and affiliates in a variety of matters. The vast majority of the work performed by Fox involved litigation with merchants who received merchant cash advances from CBSG and failed to repay those advances, and the majority of this work occurred from late 2019 up until the time that the Receiver was appointed. In most of the legal actions, CBSG was the plaintiff. In several actions, CBSG and others were sued by merchants. Most of the cases are pending in Pennsylvania. Some are in other jurisdictions.

8. In addition to Fox's role as litigation counsel, Fox also performed limited transactional work for CBSG. For instance, in 2018, one Fox partner reviewed and provided advice with respect to certain documents CBSG utilized to evidence a limited subset of merchant funding transactions. In April 2020, Fox prepared corporate documents to be used in conjunction with "exchange notes" and related documents in an effort to enable CBSG to survive the Covid-19 pandemic.

9. To be clear, prior to CBSG's engagement of Fox, CBSG had been in the merchant advance business for several years. Prior to engaging Fox, CBSG had relied on the advice and assistance of several prominent law firms. After it engaged Fox, CBSG continued to rely on several other law firms around the country to handle specific legal matters. Further, Fox did not provide any securities or securities law advice to CBSG, and Fox did not assist CBSG in raising investor funding.

10. In order to explain its history with CBSG, and the legal services it performed, Fox, on August 20, 2020, voluntarily filed with the Court a detailed Status Report (DE 178). A copy of Fox's Status Report is attached as Exhibit A hereto. Rather than repeat the content of the Status Report here, Fox incorporates by reference the factual background set forth in the August 20, 2020 Status Report.

THE RECEIVER'S LETTER REQUEST

11. Fox was not served with any subpoena or a Fed. R. Civ. P. 34 document request. (Since Fox is not a party, a subpoena would be the appropriate discovery document.) Instead, the Receiver sent Fox (and other law firms) a letter, dated August 10, 2020, requesting that Fox produce "*to the extent that they are readily accessible and easily retrievable*" copies of "memoranda (internal or otherwise), analysis, or correspondence relating to" the following: CBSG's "MCA business," "risks associated with the MCA business," "legality of the funding business," "purchase and sale of future receivables agreement[s]," "initial promissory note/security agreement[s]," "note purchase agreement[s]," "non-principal debt instruments," "defaults by merchants," "issues raised by the Texas Securities Commission," and "note

restructure[s]” relating to an “Exchange offer.” The Receiver defined the foregoing as the “Legal Issues.”² *See* Motion to Compel, Ex. 2, p. 2.

12. Based on its review of the Receiver’s letter, Fox did not understand that the Receiver was expecting Fox to search ESI. The letter clearly states that the Receiver seeks production of responsive documents that are “readily accessible and easily retrievable” and that the Receiver is not asking Fox (or other law firms) to “perform an exhaustive search.” These directions were appropriate. Fox is not a Defendant or a Relief Defendant. Fox has not been charged with any wrongdoing, and it is not adverse to the Receiver. Indeed, both Fox and the Receiver share a common goal—recovering money for creditors of CBSG. Therefore, the Receiver’s expression of a desire not to burden Fox was appropriate under the circumstances.

13. In the August 10, 2020 letter, the Receiver did not explain the need for legal opinions or documents relating to the “Legal Issues” other than to state that certain Defendant, in a Joint Memorandum (DE 84) had referred to receiving advice from various law firms regarding the “Legal Issues.” It was not clear to Fox why the Receiver needed these materials on an urgent basis or why the Receiver could not obtain the materials from CBSG’s files. Nevertheless, Fox endeavored to comply with the Receiver’s informal request.

14. Notably, the Receiver filed the instant Motion to Compel on August 16, 2020. The Receiver has acknowledged that the first of its letters was sent on August 10, 2020 and that it was not until August 13, 2020 that the attorney-client privilege issue was resolved by the Court. Motion to Compel, ¶¶ 13, 15-16. Thus, the Receiver filed a Motion to Compel only six days after making an informal letter request for documents and only three days after the Court, for the first time, cleared up the privilege waiver issue.

² After the Court determined that the Receiver controls CBSG’s attorney-client privilege, the Receiver followed up with an August 14, 2020 letter renewing the request that was made in the August 10, 2020 letter. Motion to Compel, Ex. 7.

FOX'S RESPONSE TO THE RECEIVER'S REQUEST

15. In response to the Receiver's letter, and without insisting on a subpoena or other formal discovery request, Fox produced, without limitation, (a) copies of memoranda filed in courts addressing legal issues, (b) opinion statements by other law firms, and (c) email communications and documents concerning certain transactional work that the Receiver's counsel requested (over 800 documents). Fox also provided documents that are not sought in the Motion to Compel such as its existing case lists, research regarding the legality of the MCA business, analysis regarding legal positions taken by the Receivership entities in litigation and billing summaries.

16. In an effort to be cooperative, and without requiring a subpoena or any formal discovery request, Fox has already provided to the Receiver the responsive materials that were "readily accessible and easily retrievable." Again, that is all the Receiver requested in his informal letter.

17. Fox also explained, more than once, that, to the best of its knowledge, it did not issue any formal legal opinion letters to CBSG or related parties. At the same time, Fox explained that, during the course of its approximately two-year involvement with CBSG, and in the course of serving as CBSG's counsel in many court cases, Fox attorneys communicated by email with CBSG personnel, and it is likely that some of the emails discuss some of the matters listed by the Receiver as "Legal Issues." Fox also explained that it would be extremely burdensome to attempt to retrieve and review the email. Fox also advised the Receiver that CBSG's "cloud-based" document storage system, to which the Receiver has access, should contain all of the ESI.

18. In addition, Fox, through counsel, prepared a detailed letter, dated August 26, 2020, summarizing the prior production and explaining Fox's positions concerning various

categories of documents. Further, all responsive documents to the Receiver's request were organized in folders and uploaded to a ShareFile for the Receiver and his counsel to easily review and download. A copy of the August 26, 2020 letter is attached as Exhibit B hereto.

19. At this point, Fox is not clear as to what the Receiver is still requesting. If the Receiver is requesting any emails that mention or discuss any of the "Legal Issues," and, if, for some reason, the Receiver cannot obtain such documents from the CBSG database, and assuming the Receiver demonstrates adequate need for such records, the Court should require procedures that avoid imposing undue burden and expense on Fox.

ABSENCE OF LEGAL BASIS FOR MOTION TO COMPEL

20. Fox, not being a party in this action, did not have standing to object to the terms of the Receivership Order. Nonetheless, Fox has not violated the Receivership Order in any manner.

21. The Receivership Order provides, in paragraph 8, that certain persons, including attorneys, are required to turn over to the Receiver "Receivership Property" in their possession. The Receivership Order provides no specific deadline for doing so (certainly not the six-day period that elapsed between the Receiver's informal letter request and the filing of the instant Motion to Compel). Further, the Receivership Order does not require law firms to produce all documents in their possession relevant to the services they provided or copies of all communications with any of the Receivership Entities.

22. Fox considers the copies of documents in its files, whether electronically stored or otherwise, to be its own law firm records, not "Receivership Property." To its knowledge, Fox is not holding originals of CBSG documents or the corporate "books and records" of CBSG. Having said that, Fox understands that the Receiver, as a party "standing in the shoes" of CBSG, has a right to inspect documents in Fox's files that were created for the benefit of CBSG during the

course of Fox's services for CBSG. Nevertheless, this right does not mean that undue burden and expense can be imposed on Fox or that unreasonable time demands can be placed on Fox.

23. The Receivership Order provides that the Receiver is authorized to make discovery requests in accordance with the Federal Rules of Civil Procedure and to issue subpoenas to compel testimony or the production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules concerning any subject matter within the powers and duties granted by the Receivership Order. DE 141, ¶¶ 12-13. As noted above, the Receiver did not serve discovery or a subpoena on Fox.

24. There is no legal basis to compel production of documents by a party in the absence of a formal document request or, in the case of a non-party like Fox, a subpoena. *See James v. Wash Depot Holdings, Inc.*, 240 F.R.D. 693, 694 (S.D. Fla. 2006).³ Had the Receiver proceeded in the appropriate manner, Fox would have had adequate time to respond, the ability to review documents for privilege and the ability to make objections based on overbreadth and undue burden. To the extent that, contrary to the statements in the August 10, 2020 letter, the Receiver was tasking Fox with undertaking a document review/retrieval process, including a review of ESI, the Receiver did not afford these important protections to Fox.

25. Both the Federal Rules of Civil Procedure and this Court's Local Rules provide important protections to parties and witnesses served with discovery requests. *See* Fed. R. Civ. P. 26(b) & Fed. R. Civ. P. 45; S.D. Fla. Local Rule 26.1. Non-parties, such as Fox, may be served with subpoenas seeking documents. But, Federal Rule of Civil Procedure 45 mandates that the

³ *See also* *Schwartz v. Mktg. Publ'g Co.*, 153 F.R.D. 16, 21 (D. Conn. 1994); *Suid v. Cigna Corp.*, 203 F.R.D. 227, 229 (D.V.I. 2001); *Susko v. City of Weirton*, 2011 WL 98557, *2 (N.D. W. Va. Jan. 12, 2011); *Tex. Dem. Party v. Dallas Cnty.*, 2010 WL 5141352, *1 (N.D. Tex. Dec. 9, 2010); *Garrison v. Dutcher*, 2008 WL 938159, *2 (W.D. Mich. Apr. 7, 2008); *Sithon Maritime Co. v. Mansion*, 1998 WL 182785, at *2 (D. Kan. Apr.10, 1998); *Britton v. Dallas Airmotive, Inc.*, 2010 WL 797177, *9-10 (D. Id. Mar. 4, 2010).

court protect non-parties from undue burden. Since 2015, Rule 45's protections have been supplemented by Rule 26's requirement that discovery be proportional to the needs of the case.

26. Rule 45 empowers a party to serve a subpoena that commands a non-party to "produce documents, electronically stored information [ESI], or tangible things." But, a court must modify or quash such a subpoena if it fails to allow a reasonable time to comply, requires a person to travel more than 100 miles, requires disclosure of privileged or other protected materials or subjects a person to undue burden. *See* Fed. R. Civ. P. 45(d)(3)(A)(i-iv); Fed. R. Civ. P. 45(e).

27. Both the Federal Rules and this Court's Local Rules provide protections to limit the immense burden that can be imposed when ESI is sought. Here, the majority of Fox's copies of documents and emails are ESI. If the Receiver expects Fox to search its ESI (again, not requested in the letter), these protections must be afforded to Fox.

28. Fed. R. Civ. P. 26(b)(2)(B) and S.D. Fla. Rule 26.1(e)(4) provide limits and protections concerning the production of ESI. The responding party need not provide discovery of ESI if "not reasonably accessible because of undue burden or cost" unless the party seeking the discovery shows "good cause" and the discovery request conforms to the limitations imposed by Fed. R. Civ. P. 26(b)(2)(C). Moreover, the court may specify conditions and limits on the production of ESI to avoid undue burden.

29. Congress, the Judicial Conference and this Court have adopted protections to avoid undue burden and cost both to parties and witnesses, especially in the area of ESI. The Receiver should not be permitted to run roughshod over these protections under any circumstances. But, here, imposing undue burden on Fox is especially inappropriate and unfair because Fox has been responsive. In addition to providing, in a timely manner, the easily retrievable documents and

information responsive to the informal request made by the Receiver, Fox responded promptly to requests by the Receiver's counsel for information and conferences.

30. Moreover, it is improper to file a motion to compel when there has been no formal discovery request and no opportunity to respond as the applicable rules provide. This is clear from Local Rule 26.1(g)(2) which provides:

Motions to Compel. Except for motions grounded upon complete failure to respond to the discovery sought to be compelled or upon assertion of general or blanket objections to discovery, motions to compel discovery in accordance with Federal Rules of Civil Procedure 47, 33, 34, 36 and 37, or to compel compliance with subpoenas for production or inspection pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), shall, for each separate interrogatory, question, request for production, request for admission, subpoena request, or deposition question, state: (A) verbatim the specific item to be compelled; (B) the specific objections; (C) the grounds assigned for the objection (if not apparent from the objection); and (D) the reasons assigned as supporting the motion as it relates to that specific item. The party shall write this information in immediate succession to enable the Court to rule separately on each individual item in the motion.

The above requirement refers to discovery requests made under the Federal Rules and presupposes that a subpoena with a document list or a Rule 34 document request has been served. An informal letter containing a vaguely-worded request for opinion-related materials is not a substitute for a formal item-by-item document request.

AVOIDING UNDUE BURDEN ON FOX

31. Fox believes that the Receiver has full access to CBSG's cloud-based document storage system which houses all of its email communications with Fox, documents prepared by Fox, court records and other documents and data. Fox was advised that the Receiver obtained all the necessary passwords to access CBSG's database. Fox also was advised that the Receiver retained Development Specialists, Inc. ("DSI"), a firm that offers litigation support services. Accordingly, Fox is not clear why the Receiver insists on obtaining materials from Fox that CBSG has in its database, including CBSG's ESI related to Fox's legal services and legal work.

32. To avoid undue burden and expense on Fox, the Receiver should endeavor to obtain the relevant documents from CBSG's own files and cloud-based storage systems. If, for some reason, the Receiver is unable to obtain the documents in this manner, then the Receiver should agree to steps, or the Court should require steps, that avoid undue burden and expense for Fox. These steps include the following:

(i) Specify the categories of documents requested;

(ii) Provide Fox with appropriate search parameters for electronic documents (*e.g.*, word searches, date ranges, etc.).

(iii) Provide Fox with adequate time to perform the searches and to review the potentially responsive documents to make sure that Fox does not inadvertently produce documents relating to other clients (*i.e.*, non-Receivership Entities) or documents that concern Fox law firm management or law firm business matters rather than work performed for CBSG; and

(iv) Agree to compensate Fox at its standard hourly rates for attorneys and legal assistants who are involved in the document retrieval and review process and to compensate Fox fairly for the utilization of its in-house IT staff.

33. Based on a preliminary electronic search of total documents under the approximately 69 "matters" opened for this client, it appears that Fox has, in its database, approximately 60,000 documents, in addition to countless hard copy files Fox maintains in various offices around the country. Any document retrieval, review and production process will be time-consuming and will involve significant labor.

CONCLUSION

34. Fox wishes to assist the Receiver without suffering undue burden and expense. As discussed herein, Fox, prior to the date of this response, has provided the Receiver with the

responsive documents known to Fox that are easily retrievable. Because the Receiver already has access to the CBSG database, there should be no need to task Fox with retrieving, identifying, reviewing, sorting and producing email that may discuss legal subjects of concern to the Receiver. But, if the Receiver demonstrates a need for these materials, and that the materials can only be obtained from Fox's records, the Court should protect Fox from undue burden and expense.

35. Based on the state of the record before this Court, there is neither a legal foundation for an order compelling production nor the need for an order compelling production. The Court should deny the Motion to Compel.

Respectfully submitted,

/s/ Peter H. Levitt

Miranda Lundeen Soto, Esq.

Fla. Bar No. 637963

Peter H. Levitt, Esq.

Fla. Bar No. 650978

SHUTTS & BOWEN LLP

200 S. Biscayne Boulevard, Suite 4100

Miami, Florida 33131

Tel.: (305) 358-6300

Fax: (305) 415-9847

mlundeensoto@shutts.com

plevitt@shutts.com

ATTORNEYS FOR FOX ROTHSCHILD LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2020, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Peter H. Levitt

Peter H. Levitt

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

STATUS REPORT BY FOX ROTHSCHILD LLP

Fox Rothschild LLP (“Fox”), by its undersigned counsel, provides this report to the Court regarding its services for CBSG, its cooperation with the Receiver and its response to requests made by the Receiver for documents.

Fox’s Role as Counsel and Services

1. Fox served as counsel for Complete Business Solutions Group, Inc. d/b/a Par Funding and certain affiliated entities (collectively, “CBSG”) and has possession of documents that were created or received by Fox during the course of its legal work for CBSG.

2. Fox understands that the Receiver has possession and access to a cloud-based document storage site that houses all of the files of CBSG. Those files should include all communications between CBSG and Fox and all documents provided by Fox to CBSG and vice versa.

3. Fox’s primary role for CBSG was as litigation counsel in representing CBSG in cases and proceedings involving the collection of defaulted merchant cash advance agreements. This role for Fox began in February 2020 and ended with the filing of this action. Fox also

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represented CBSG in defense of claims filed by individual merchants and in defense of several proposed class actions (none of which were certified or that went beyond certification, non-merits based discovery). Fox also provided limited services to CBSG in corporate related matters. Fox never served as securities counsel for CBSG, and Fox did not assist CBSG in raising capital through the issuance of notes to investors or otherwise.

4. In or about March 2018, CBSG engaged Fox to review CBSG's existing merchant advance documents, and Fox prepared revisions to a set of standard form merchant advance documents for CBSG. Then, in mid to late-2019, CBSG asked Fox to assist it in defending a federal action brought by certain merchants who were borrowers of CBSG. Fox was then asked to handle the defense of several other suits of this nature. Fox's role as litigation counsel later expanded to include several merchant cash advance enforcement/collection suits. In February 2020, Fox's role as litigation counsel greatly expanded when CBSG asked Fox to oversee numerous merchant cash enforcement actions. This representation included filing numerous new merchant cash enforcement actions. These generally were commenced by the filing of confessions of judgment in Pennsylvania. Fox filed numerous new confession cases, and it also entered its appearance in numerous existing confession cases, replacing prior counsel.

5. Fox also assisted CBSG, from time to time, with merchant cash advance modifications of various kinds. Beginning in the second half of March 2020, CBSG asked Fox to assist CBSG in loan modification work made necessary by the Covid-19 pandemic. This work involved review and preparation of modified corporate documents to address the financial impacts on CBSG by Covid-19. Fox prepared revised corporate documents, such as promissory notes, that would be part of the Exchange Offer that was proposed and designed by independent securities counsel not affiliated with Fox (the "Exchange Notes"). Fox did not perform any

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securities work, or provide securities law advice, in connection with this work. Instead, CBSG engaged specialized securities law counsel, Bybel Rutledge (who had represented CBSG since at least 2018 in dealing with securities related issues). Securities counsel provided securities advice and was responsible for any necessary securities filings.

6. Fox may have performed some other legal services for CBSG on a limited basis, and the foregoing description is intended to provide an overview and not to recite every assignment or legal service performed by Fox.

Fox's Current Role and Urgent Need to Attend to Litigation Matters

7. At this time, Fox is not representing any of the Defendants in this proceeding, and, as a result of the appointment of the Receiver, Fox is not continuing to perform services in connection with numerous legal actions in which Fox has appeared as counsel. As a result, Fox has been unable to respond to numerous requests and demands by merchants and their counsel to assist in the resolution of pressing issues.

8. A portion of Fox's work involved merchant cash advance enforcement and collection through garnishments, attachments and other collection and enforcement remedies. These matters and others often require immediate attention. Fox recently has been confronted with a number of situations that require urgent attention in this area. Fox has received demands from merchants and their counsel to resolve pressing issues concerning pending loan enforcement remedies. Fox has been threatened with lawsuits. Fox's inability to respond, or take any action whatsoever, is putting it in jeopardy and has the real possibility of creating unnecessary issues for merchants.

9. Fox has requested that the Receiver either allow Fox to continue as counsel in pending cases on an interim basis, subject to an arrangement for adequate compensation, or to

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agree that Fox may withdraw immediately as counsel in pending cases, with proper substitutions of counsel. Fox will address this matter by separate motion in the event it cannot be resolved on an agreed and expedited basis with the Receiver.

Document Production By Fox

10. With respect to documents, Fox understands that the Receiver stands in the shoes of CBSG and holds CBSG's attorney-client privilege. To date, Fox has cooperated with the Receiver and intends to cooperate fully with the Receiver in providing access to or copies of all documents that the Receiver reasonably requests that the Receiver is entitled to receive as the Court-appointed officer standing in CBSG's shoes.

11. The vast majority of Fox's documents consist of court filings and correspondence or email relating to court cases. As noted above, it is Fox's understanding that all of its communications with CBSG and all of the documents it prepared for CBSG or exchanged with CBSG are already available to the Receiver because the Receiver has access to CBSG's document storage system which is a cloud-based system.

12. To avoid undue burden to Fox, Fox would like the Receiver to provide a written list of the categories of documents the Receiver seeks from Fox. Fox will cooperate fully in providing to the Receiver all documents that Fox would have been required to provide to CBSG if CBSG had requested the documents. Fox does not anticipate that it will object to the production of documents requested by the Receiver, but it is possible that certain documents may be protected by attorney-client privileges that exist between Fox and third parties and that certain documents requested by the Receiver will be confidential documents that are owned by Fox, that are proprietary to Fox and that were not produced by Fox or received by Fox for the benefit of CBSG or as incident to Fox's services for CBSG.

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13. Fox requests that the Receiver categorize the documents it wishes to obtain, endeavor to obtain the documents from the CBSG cloud-storage system first before burdening Fox with document production tasks and provide reasonable compensation to Fox for its services in the event that Fox is not engaged to continue as litigation counsel. Fox, through its undersigned counsel, will respond promptly and fully to all reasonable requests by the Receiver.

Recent Urgent Requests By Receiver

14. Recently, the Receiver has made urgent requests for two categories of documents: (1) opinions as to legality of the business conducted by CBSG, and (2) documents relating to the exchange notes.

15. To the best of Fox's knowledge, and without having time to completely review all of the documents in Fox's possession, Fox is not aware of ever having provided an opinion letter on the legality of CBSG's business or having received such an opinion letter from other counsel prior to the institution of this action.

16. In 2018, when Fox was consulted with respect to merchant cash advance documents and enforceability issues, there were communications between one or more Fox lawyers and CBSG officers on these topics, and Fox prepared/revised some form of documents. The Receiver already has these documents, but nonetheless, Fox, on an exigent basis, conducted a search of its computer records for this category of documents. The retrieved and reviewed documents in this category are being produced today on a secure web site. Fox is continuing its retrieval and review of documents in this category.

17. During the course of Fox's representation of CBSG, attorneys at Fox, from time to time, were consulted with respect to legal issues of various kinds, and communications concerning legal matters and issues took place between Fox attorneys and officers of CBSG, as

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is normal in the course of any legal representation. Fox is willing to search for email communications of this nature and provide copies to the Receiver. However, in order to reduce the burden on Fox, and make a production in an organized manner, Fox requests that the Receiver provide a list of subject matters or topics that are deemed important to the Receiver.

18. As to the second category of documents requested by the Receiver on an urgent basis—the documents relating to the “Exchange Notes”—Fox conducted a similar exigent search of its records and is producing the retrieved and reviewed documents it believes are responsive today on a secure web site. Fox is continuing its retrieval and review of documents in this category.

Affirmation By Fox

19. Since the Receiver was appointed, Fox has been cooperating with the Receiver and its counsel. Specifically, and without limitation, Fox has been in regular communication regarding matters that are arising in pending cases, has provided documentation requested regarding the business and has provided court filings and court opinions to assist the Receiver.

20. Fox pledges to work cooperatively with the Receiver in providing information that may be helpful to the Receiver and documents that are reasonable requested by the Receiver. At the same time, Fox also wishes to minimize its burden, to the extent possible, and to have the time necessary to review documents before producing them to assure that Fox properly discharges all of its legal and ethical obligations.

Dated: August 20, 2020.

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Respectfully submitted,

/s/ Peter H. Levitt

Miranda Lundeen Soto, Esq.

Fla. Bar No. 637963

Peter H. Levitt, Esq.

Fla. Bar No. 650978

SHUTTS & BOWEN LLP

200 S. Biscayne Boulevard, Suite 4100

Miami, Florida 33131

Tel.: (305) 358-6300

Fax: (305) 415-9847

plevitt@shutts.com

mlundeensoto@shutts.com

ATTORNEYS FOR FOX ROTHSCHILD LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 20, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Peter H. Levitt

Peter H. Levitt



MIRANDA LUNDEEN SOTO
PARTNER, BOARD CERTIFIED IN CIVIL
TRIAL
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
DIRECT (305) 347-7326
FAX (305) 347-7985
EMAIL MLundeenSoto@shutts.com

August 26, 2020

Ryan Stumphauzer, Esq.
One Biscayne Tower
2 South Biscayne Boulevard
Suite 2550
Miami, Florida 33131

Dear Ryan:

Thank you again for meeting with Joe and me on Monday, August 24th. As promised, I write this letter to address the informal document requests that the Receiver has made to Shutts & Bowen's clients, Brett Berman and Fox Rothschild. As discussed, I thought it would make sense to provide a review of the what has transpired thus far including the requests to Fox, Fox's responses, and a current status report of the documents collection process.

Opinion Letters

On August 10, 2020, the Receiver sent a letter to Fox requesting copies of any opinion letters in its files for CBSG that could be retrieved without undue burden. On August 13, 2020, the Court entered its Amended Order Appointing Receiver (ECF No. 141). That Order resolved certain issues concerning the attorney-client privilege. On August 14, 2020, the Receiver sent a follow-up letter to Fox renewing the previous request for opinions. More recently, several emails have been sent to and from Mr. Berman asking for opinions.

In several conversations and emails, Mr. Berman explained that, to his knowledge, Fox did not issue any legal opinion letters concerning the subjects the Receiver identified. During a telephone conference on August 19, 2020, Mr. Berman advised the Receiver's counsel that, to his knowledge, no such legal opinions were issued. In a Status Report filed with the Court on August 20, 2020 by Shutts, Fox explained that it is not aware of any opinions that it issued on the topics identified by the Receiver. However, Fox also explained that, in the course of email communications with CBSG concerning various matters, legal issues, and topics were discussed. Fox's role was litigation counsel and to provided day to day legal advice. Mr. Berman has no independent recollection of formal legal opinions on general enforceability of agreements. But, in the course of Fox's services for CBSG, attorneys at Fox communicated with CBSG on various subjects, and emails may contain advice or information relevant to legal issues.

Based upon our review of the numerous emails between Mr. Berman, the Receiver and his Counsel, Mr. Berman produced the "Offit opinion" and DLA emails as well as several court

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decisions and substantive legal briefs addressing issues concerning the legality of the merchant funding business conducted by CBSG. Mr. Berman also highlighted the important rulings made by various judges around the country, and provided analysis regarding the impacts of such rulings, to assist the Receiver in answering the various enforceability questions.

For ease of reference, the documents previously provided by Fox and/or Mr. Berman and documents recently discovered responsive to the Receiver's requests will be uploaded in to a Sharefile for the Receiver and his assignees to access and download for the next 90 days. If the Receiver would like additional time beyond the 90 days, Shutts will gladly make such accommodations.

Fox recently located a fifty-state survey that was completed by two Fox summer associates that analyzes two points: (i) each state's acceptance of confessions of judgment from another state and (ii) the legality of MCA agreements in each state (the "Fifty-State Survey"). The work done by the Fox summer associates on the Fifty-State Survey was billed to Fox and not to the Receiver entities. However, in an effort to assist the Receiver, we are providing the Receiver with a copy of the Fifty-State Survey in the respective Sharefile folder.

In addition, Mr. Berman has provided to Shutts two expert reports by J. Duross O'Bryan (the "O'Bryan Reports") addressing certain matters concerning the legality of the merchant advance business conducted by CBSG. As you may recall, the O'Bryan reports were created for CBSG/Par during the HMC and Fleetwood litigations in Pennsylvania and are important as they highlight many of the legal flaws in the claims asserted by merchants. All documents Fox has identified that relate to advice or opinions as to matters concerning the legality of the merchant advance business conducted by CBSG will be located in the "Fox Opinion-Related Documents" folder in the Sharefile.

As noted, emails exchanged between Fox attorneys and CBSG personnel, during the course of Fox's approximately two-year long representation of CBSG in various matters, may discuss legal issues. We understand that there could be more than 60,000 electronic documents and emails that could contain reference to or discussion of certain legal issues that arose on a day-to-day basis or that could involve specific facts concerning individual cases and/or individual case developments. There are also hard copy files and boxes stored in Fox offices around the country. In order to obtain those emails, the electronic data base must be searched, download, and organized. It's our understanding that the CBSG emails are not organized in a manner that would allow easy retrieval of emails discussing any relevant subjects. Thus, technical expertise will be required to perform an accurate and diligent search. The retrieved emails would then need to be reviewed for privilege and other review (not CBSG's privilege, but the privilege that might apply if retrieved emails concern other clients). There are also over 10 Relativity-based platforms with document productions from various litigations that have a large amount of data from CBSG and third parties.

In an effort to be helpful, Fox offered, during the August 19, 2020 telephone conference

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with your counsel, to search for email and documents relating to two specific areas: (1) work on the “Exchange Notes,” and (2) work performed by a Fox corporate partner that involved a review of documentation for the merchant advances. This task took nearly two days of time by Fox personnel, and it was limited to these subject areas. The retrieved documents (*i.e.*, over 850 documents) were produced on Thursday afternoon, August 20, 2020 to meet the time sensitive deadlines requested by the Receiver. Beyond technical time, Mr. Berman spent numerous non-billable hours to assemble the documents and to ensure that there was a timely production. Just this relatively small production task, which was limited in scope, was burdensome to Fox.

We understand that the Receiver has access to CBSG’s cloud-based data storage platform. That data base should contain all emails exchanged between Fox attorneys and CBSG personnel. One option is for the Receiver to employ an ESI consulting firm to perform searches or perhaps DSI has that ability in-house.

The Fox firm would like to assist in this matter, but wishes to avoid any undue burden and continued efforts of attorneys in handling expedited discovery requests. That said, we are happy to discuss ways and means of accomplishing your objectives.

Search Warrants

You have advised us that your team was able to obtain copies of the search warrants you were seeking from another source. We greatly appreciate your advising us of that.

Case Lists

The Fox firm was maintaining various separate case lists – for the confessions of judgment cases and for other cases. At the outset of the receivership, Mr. Berman worked with counsel for the Receiver to have one of the former employees access the company’s server to obtain the confession of judgment case list maintained by the company. That case list was provided to the Receiver a few weeks ago. The other case list previously provided to the Receiver includes various cases in state and federal court, some offensive and some defensive. In addition, there are numerous bankruptcy cases in which Fox is on the notice list, and a list of those cases will be provided to the Receiver. We are also providing additional documents that Fox created/updated to assist the Receiver in reviewing the status of other actions around the country. We will upload the case lists that Fox was maintaining pre-Receivership that were previously produced to the Receiver and additional lists to assist the Receiver in the Sharefile folder under “Case Lists and Charts.”

As you know, the legal actions involving CBSG were handled by numerous Fox attorneys, and, as a consequence, there is no one attorney who is able to summarize the status of all of the cases. Mr. Berman was the partner in charge, but he depended on the many partners and associates who were involved in the day-to-day management of the cases.

At various times, your counsel has mentioned the idea of providing status reports on the

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various cases. Because there are numerous cases, including cases in state courts, federal district courts and bankruptcy courts, that would be a very large undertaking, and it would involve the time of numerous Fox attorneys. Simply stated, this is a daunting task and could consume weeks of Fox's attorneys' time to conduct a file review and to prepare summaries. As such, there are a number of approaches that can be taken, depending on whether you wish to retain Fox.

Here are some of the possible approaches:

1. The Receiver retains Fox to continue as counsel in the pending cases, with Fox reporting to the Receiver. Perhaps one of the Receiver's firms could appear as co-counsel to more effectively monitor the cases or Fox would be happy to provide detailed updates/status reports at any interval requested by the Receiver. A satisfactory retainer agreement would need to be reached. Of course, at a later point in time, the Receiver could make the decision to change law firms.

2. The Receiver agrees to compensate Fox for reasonable hourly fees (to be agreed upon) for transition work. Fox attorneys would then devote the hours needed to prepare reports, to meet with the Receiver's counsel and to do whatever is deemed necessary to make a smooth transition. Fox would withdraw once the transition is accomplished at a mutually agreeable time.

3. The Receiver allows Fox to withdraw now, and the Receiver relies on the case lists Fox provided, other case lists the Receiver has and the court dockets. Of course, even in this scenario, Mr. Berman will be available to respond to specific questions if that does not involve a large investment of time, and assuming he has the information needed, if any.

The Fox firm is ready, willing, and able to continue as counsel or as co-counsel in the litigation matters involving collection of amount due and the defensive cases. Fox believes that it is in the best position to collect money for the Receiver and can do so on an immediate basis. As discussed at our in person meeting, we believe that it will take another law firm between 3-4 months, conservatively, to get up to speed on the pending litigation cases.

Shutts and Fox are willing to work with you in implementing a structure that would resolve any concerns that you have about supervision of the cases or any ethical issues.

Invoices and Payment History

On August 24, the Receiver's counsel asked for invoices and a payment history. Fox has two summary documents: (i) a list/schedule of all time incurred/paid to date; and (ii) a list/schedule of the unbilled time and the breakdown for same. We will upload these documents to the "Invoice and Payment History" folder in the Sharefile.

Engagement Agreements

On August 24, we also received a request by the Receiver's Counsel for copies of all

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engagement agreements. Fox has provided Shutts with various engagement letters and scope of representation letters that Fox was able to locate. If any others engagement letters are located, Fox will provide them to Shutts to be uploaded to the Sharefile. Documents responsive to this request will be in the “Engagement Agreements” folder in the Sharefile.

Pending Issues

During the telephone conference on August 19th and during our in-person meeting on August 24th, I requested a written list of categories of documents that the Receiver wishes Fox to provide. If it can be accomplished without undue burden, we are pleased to assist. Accordingly, if there are document categories of immediate concern, other than those mentioned above, please provide a written list as soon as possible so that we may review the list and respond accordingly.

Finally, of utmost concern are the pending litigation cases. We would very much like the benefit of the Receiver’s decision, concerning the handling of the pending cases, within the next day or two. As the Receiver is well aware, Fox has been receiving many threatening emails, voicemails, and telephone calls about garnishments, executions, and other matters. At this point, Fox is unable to take any action in court to resolve these matters or to take any less formal action to work with company employees to address issues raised and to work out payment arrangements that are beneficial to the company/its investors. Unfortunately, one of the matters recently evolved in a legal action in a bankruptcy court in South Carolina. We firmly believe that there will likely be other legal actions and motions filed against Fox in the near future, if Fox is unable to take responsive action.

We greatly appreciate the efforts made by Receiver’s counsel to file appropriate papers in various courts regarding the litigation stay and to respond to several matters that have arisen, however, we fear that defensive/responsive actions will not be enough to protect Fox from adverse claims and disputes with opposing parties. Fox would like to take any many proactive measures as possible and not merely rely on defending itself and its attorneys each and every time a lawsuit or other complaint is filed against them.

Further, for each lawsuit that is lodged against Mr. Berman and Fox, or even worse a bar complaint, irreparable damage is being caused to their reputation. As someone that is well-versed in legal malpractice and ethical legal issues, typically each time a lawsuit is filed against a lawyer or law firm, this must be reported to his/her/its malpractice carrier. This could have scathing and long lasting financial repercussions on Fox and its attorneys—not to mention a tarnished reputation. Therefore, we most respectfully urge that Fox either be retained and permitted to take immediate responsive action in the pending litigation or that Fox be permitted to withdraw as counsel by close of business on Friday, August 28, 2020.

Once again, our goal is to assist the Receiver without imposing undue burden and expense on the Fox firm, if possible. We are open to discussing various ways and means of accomplishing this goal. We look forward to continuing our constructive dialog and look forward to the opportunity to resolve all pending issues on an expedited basis.

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If there are any issues or subjects of a pressing nature that I have not covered in this letter, please let me know.

Sincerely,

Shutts & Bowen LLP



Miranda Lundeen Soto

ML/mls