IN THE 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.
_____/

RECEIVER'S REPLY IN SUPPORT OF MOTION TO EXPAND RECEIVERSHIP

The Motion to Expand Receivership filed by Ryan K. Stumphauzer, Esq., Court-Appointed Receiver ("Receiver") of the Receivership Entities, comprehensively outlined the necessity of expanding the Receivership Estate over five categories of entities and properties owned or controlled by Defendants, each of which received tainted funds consisting of scheme proceeds and exhibited other hallmarks of alter ego status. *See* ECF No. 357 (the "Motion"). The Response filed by Defendants McElhone, Barleta, LaForte and Relief Defendant The LME 2017 Family Trust (ECF No. 401, the "Response")[1] fails to challenge most of the facts in the Motion. Rather, Defendants misapply the actual standard as to the expansion of a receivership, instead focusing on the showing the SEC must make to obtain the remedy of disgorgement. Even then, Defendants misstate the applicable law and fail to cite any relevant cases. Thus, for the reasons set forth in the Motion and herein, the Receiver respectfully requests that the Court grant the Motion and expand the Receivership Estate over the Target Entities.

I. Defendants Misplace Their Focus on Disgorgement, Rather Than on Equitable Principles That Compel Expansion of the Receivership Estate.

The Response misplaces its focus on disgorgement principles rather than on the standard for expansion of the Receivership Estate. A receiver acts as an officer of the Court in undertaking

[1] Defendant Perry Abbonizio (ECF No. 376, "Abbonizio Response") and Non-Party Capital Source 2000 (ECF No. 399, "CS 2000 Response") also filed responses to the Motion advancing discrete arguments addressed herein in Sections III and IV, *infra*.

the responsibility to safeguard receivership assets. *SEC v. Elliott,* 953 F.2d 1560, 1577 (11th Cir. 1992). The appointment of a receivership, or the expansion thereof, is thus governed by equitable principles to guard against the potential dissipation of assets in response to clear evidence of fraudulent conduct. *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (citation omitted). Courts consider a variety of factors in appointing a receiver, including:

> (1) "whether [the party] seeking the appointment has a valid claim"; (2) "whether there is fraudulent conduct or the probability of fraudulent conduct," by the defendant; (3) whether the property is in imminent danger of "being lost, concealed, injured, diminished in value, or squandered"; (4) whether legal remedies are inadequate; (5) whether the harm to plaintiff by denial of the appointment would outweigh injury to the party opposing appointment; (6) "the plaintiff's probable success in the action and the possibility of irreparable injury to plaintiff's interest in the property"; and, (7) "whether [the] plaintiff's interests sought to be protected will in fact be well-served by receivership."

Consolidated Rail Corp. v. Fore River Ry. Co., 861 F.2d 322, 326–27 (1st Cir. 1988), *cited by Nat'l Partnership Investment Corp. v. Nat'l Housing Devel'p Corp.*, 155 F.3d 1289, 1291 (11th Cir. 1998)*; see also Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 844 (9th Cir. 2009).

This Court has already determined the presence of most of these factors. In appointing the Receiver and granting the SEC's Motion for a Temporary Restraining Order, the Court found that the SEC "(i) present[ed] a prima facie case of securities laws violations by Defendants; and (ii) show[ed] a reasonable likelihood the Defendants will harm the investing public by continuing to violate the federal securities laws unless they are immediately restrained." Order Granting TRO (ECF No. 42) (the "TRO Order") at 2. The Court further determined that legal remedies were inadequate and that there was "good cause to believe that unless immediately enjoined by Order of this Court, the Defendants may dissipate, conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of Disgorgement." *Id.* Defendants cannot credibly challenge these basic findings in their Response – particularly given that they *consented* to the subsequent entry of a preliminary injunction, which this Court found "good cause" to enter. *See, e.g., Barleta Preliminary Injunction* (ECF No. 202) at 1; *McElhone Preliminary Injunction* (ECF No. 230) at 1; *LaForte Preliminary Injunction Order* (ECF No. 337) at 1.[2]

[2] To obtain a preliminary injunction, the moving party must demonstrate, among other things, "a substantial likelihood of success on the merits" and "that irreparable injury will be suffered unless the injunction is issued." *Jysk Bed'NLinen v. Dutta-Roy*, 810 F.3d 767, 774 (11th Cir. 2015).

Those same findings are relevant in determining whether expansion of the Receivership is warranted over additional entities and properties controlled by Defendants and funded with commingled proceeds of the fraud scheme. *See SEC v. Private Equity Mgmt. Grp., Inc*., No. CV 09–2901 PSG (Ex), 2009 WL 3074604, at *1 (C.D. Cal. Sept. 21, 2009); *SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 234 (D. Nev. 1985). As the Motion sets forth in detail, there is substantial evidence that each of the Target Entities and Properties received commingled scheme proceeds, were owned or controlled by the same Defendants, and, in some cases, utilized the same employees and physical space for operations. Motion at 5-20. The Target Real Estate Entities were formed as separate, single-purpose LLCs in a manner that concealed the actual ownership and control of those properties, each of which was funded through a complex web of disbursements involving commingled proceeds of the fraud scheme. *Id.* at 11-15. The LME Trust received millions of dollars *directly* from Par Funding during a period of substantial fraud, which it used to purchase real estate. *Id.* at 16-18. The Trust also served as the member of the grantee LLC for one of McElhone's personal properties. *Id.* at 11-15, 19.

Other than the ownership of CS 2000, addressed in Section III, *infra*, Defendants do not challenge—and present absolutely no evidence to counter—any of these underlying factual assertions. Rather, Defendants merely rely on cases involving the standard for disgorgement of profits and claim that the Receiver's tracing methodology is deficient. But Defendants' focus on disgorgement cases in opposing expansion of the receivership is misplaced because it ignores the fundamental distinction between imposing and expanding a receivership and disgorgement, which "is an equitable *remedy* intended to prevent unjust enrichment." *SEC v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014) (emphasis added). [3] The remedy of disgorgement is imposed only *at*

[3] For example, one of the primary decisions Defendants rely upon in support of their disgorgement/tracing theory supports *expansion* of the Receivership. In *In re Lee*, 574 B.R. 286 (Bankr. M.D. Fla. 2017), the Defendants did not challenge the *appointment* of a Receiver, but rather the imposition of an equitable lien and constructive trust on their residence. The issue was whether the home was exempt from a fraudulent transfer judgment under Florida's constitutional homestead exemption given that the Defendant-debtor was a non-party, innocent investor who did not participate in the fraud scheme. The court found this distinction to be irrelevant, citing multiple decisions holding that the "focus is not on the Defendants' culpability, but on the necessity of preventing or mitigating their unjust enrichment by permitting fraudulent transfers to be sheltered in their homestead." *Id.* at 293. The court then imposed the relief that the Receiver requested, which "**allow[ed] him to take control of Defendants' home and sell it**." *Id.* at 293 (emphasis added). The court's discussion of tracing methodologies related not to the imposition of a

the end of a case upon an ultimate finding that a defendant violated a relevant securities provision. *CFTC v. Southern Trust Metals, Inc.*, 391 F.Supp.3d 1167, 1171 (S.D. Fla. 2019) (stating that "disgorgement would be appropriate for any gains received in connection with Defendants' registration violations"). Indeed, this Court's orders appointing the Receiver and entering a TRO were not dependent upon a finding as to disgorgement, only that the Receivership property "*could* be subject to an Order of Disgorgement" later in the case. *See* TRO Order at 2 (emphasis added).

As set forth above, the SEC has already demonstrated that Receivership property "could be subject to" disgorgement. TRO Order at 2. The Receiver's request here is simply to expand the Receivership over property that clearly would have been subject to the Receivership had the SEC had access to full information at the outset, including the labyrinth of interconnected entities owned and controlled by Defendants, the extent of tainted asset transfers between various entities, and the overlapping properties and employees involved in the Receivership and Target Entities.

II. The Receiver Demonstrated that Each Target Entity Received Funds That Were Tainted with Proceeds of the Fraud Scheme.

Beyond asserting the wrong standard to govern expansion of the receivership, Defendants' claim that the Receiver is required to trace fully all illegitimate proceeds, even at the disgorgement stage, is contrary to established law. Courts order the remedy of disgorgement upon a showing of a "reasonable approximation" of a defendant's ill-gotten gains. *Monterosso*, 756 F.3d at 1337. "Exactitude is not a requirement." *Id.* "Once the SEC has produced a reasonable approximation of the defendant's unlawfully acquired assets, the burden shifts to the defendant to demonstrate the SEC's estimate is not reasonable." *Id.* (citation omitted). Other than attacking the Receiver's methodology, which this Court has already adopted in imposing the Receivership, Defendants have not even attempted to make such a showing here.

Defendants also misleadingly portray the "lowest intermediate balance rule," or LIBR, as the sole methodology that may be used to trace tainted funds.[4] But that argument ignores that in

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constructive trust, but to the ultimate amount of the equitable lien and proceeds the Receiver could retain *after taking possession of the home and selling it*. *Id.* at 300 (ordering that Defendants "shall not interfere with the Receiver's foreclosure of such lien or sale of the property" and that the "amount of the Receiver's equitable lien (and any administrative expenses associated with the sale) shall be paid in full from sale prior to the Defendants receipt of any remaining proceeds.").

[4] Application of LIBR is unhelpful to Defendants because it compels a finding that the funds in one of the primary investor accounts, Republic Bank Account No. 4126, were completely

many cases the SEC and/or the Receiver are not required to trace tainted funds prior to making a distribution. "In cases involving the liquidation of assets by a receiver, courts typically approve either a pro rata distribution **or** tracing of assets to specific investors." In fact, "when victims seeking restitution occupy similar positions, a pro rata distribution is preferred." *SEC v. Drucker*, 318 F.Supp.2d 1205 (N.D. Ga. 2004) (*quoting SEC v. Elliott*, 953 F.2d 1560, 1570 (11th Cir. 1992) ("The Supreme Court has recognized that, in equity, certain tracing rules should be suspended.")).[5]

In *SEC v. Byers*, 637 F.Supp.2d 166, 177 (S.D.N.Y. 1998), the United States District Court for the Southern District of New York explained that that there are two conditions under which a court may order a pro rata distribution out of commingled funds at the conclusion of a receivership:

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dissipated. As set forth in the Davis declaration (Ex. L to the Motion), the account had a starting balance of $5,000 on July 1, 2018. *See* Motion Ex. L ¶ 11. Over the next 18 days, a total of $1.54 million in investor funds were deposited into the account. *Id.* Yet, because Par Funding transferred commingled funds to another account, the account diminished to $305,000 on July 18, 2020. *Id.* ¶¶ 12-13. Thus, the account balance was less than the amount of the trust fund deposits, and the deposits "are considered lost." *Lee*, 574 B.R. at 296.

[5] In *Lee*, the defendants actually requested that the Court use two methodologies other than LIBR – the first-in-first-out, or FIFO rule, and the pro-rata distribution method – which the Court rejected because either would "allow Defendants to keep a larger portion of their unjust enrichment" under the circumstances of the case. *Lee*, 574 B.R. at 296 & n. 61 (noting that the pro-rata distribution method "is to be employed when there are multiple and similarly situated beneficiaries").

The other decisions cited by Defendants to assert that the LIBR is the sole tracing methodology are inapposite, particularly in the context of a motion to expand a receivership. Defendants cite a case involving money laundering, *United States v. Banco Cafetero Panama*, 797 F.2d 1154, 1159 (2d Cir. 1986), in which the Second Circuit applied the LIBR to trace drug proceeds – but neglect to note that Congress later provided a statutory fix "[i]n response" to that decision. *See In re 650 Fifth Avenue and Related Properties*, 777 F.Supp.2d 529, 571 (S.D.N.Y. 2011) (stating that the statute, 18 U.S.C. § 984(a), "frees the Government from having to prove that the dollars in the Account are the same ones that are traceable to the criminal activity giving rise to the forfeiture").

Similarly, *SEC v. Kaleta* involved a challenge by *investors* who claimed security interests in the proceeds of the sale of certain radio station assets held by a Court-appointed receiver. The issue was whether the investors were entitled to contractual or equitable subrogation, which required a showing that the investors had *completely paid off the debts*. The court found that the investors were not entitled to subrogation because the funds were commingled:

> The Investors' contentions regarding tracing also fail to some extent because a party seeking subrogation has the burden to establish that the funds it used to pay off the debt of another were "untainted." Due to the fungibility of money, **any commingling generally is enough to warrant treating all funds as commingled**.

Id. (emphasis added).

(1) that investor funds are commingled; and (2) that victims are similarly situated "with respect to their relationship to the defrauders." Citing cases from the Eleventh Circuit, the court endorsed an expansive view of the commingling requirement:

> The extent of commingling necessary to satisfy this requirement is unclear, and no case addresses it at any length. There are, however, cases in which courts have addressed commingling in different contexts and concluded that, due to the fungibility of money, **any commingling is enough to warrant treating all the funds as tainted**. *See, e.g., United States v. Garcia*, 37 F.3d 1359, 1365–66 (9th Cir.Cal.1994) (holding, under money laundering statute—18 U.S.C. § 1956—that "presence of some tainted funds in the commingled account is sufficient to taint" legitimately-acquired funds in same account); *SEC v. Better Life Club of Am., Inc.,* 995 F.Supp. 167, 181 (D.D.C.1998) ("[W]hen legitimate assets are co-mingled with illegitimate ones such that the assets cannot be separated out, a constructive trust may extend over the entire asset pool.").
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> A recent decision from the Southern District of Florida is particularly instructive. In *SEC v. Lauer*, the District Court denied a motion by the defendant to lift an asset freeze order as to certain assets in a bank account. No. 03 Civ. 80612(KAM), 2009 WL 812719, at *1, 2009 U.S. Dist. LEXIS 23510, at *4 (S.D. Fla. Mar. 25, 2009). In denying the motion, the District Court specifically rejected the defendant's argument that, because some of the money in a bank account was not attributable to any illicit activity, it was not properly subject to the asset freeze order. Quoting the Eleventh Circuit, the Court held that "'[b]ecause money is fungible, the government must prove only that the tainted proceeds were commingled with other funds,' " and that was sufficient to taint all of the funds. *Id*. at *5, 2009 U.S. Dist. LEXIS 23510 at *15 (*quoting United States v. Ward*, 197 F.3d 1076, 1083 (11th Cir.1999))

Id. (emphasis added). In finding sufficient evidence of commingling, the court examined the percentage of particular funds that had *any* evidence of commingling:

> As to the Real Estate Funds investors, regardless of the appropriate standard of commingling to apply, this requirement is satisfied. The Receiver's investigation has revealed that there was extensive commingling. According to an analysis performed by Deloitte Financial Advisory Services LLP ("Deloitte"), of 78 discrete real estate funds, 5 funds did not raise any money, money raised in connection with 62 funds was commingled, and 11 funds lacked enough information to make a determination. (2/11/09 Sordillo Decl. ¶ 9). Under any standard of commingling, where 62 out of 78 funds—almost 80%— are commingled, this requirement is satisfied.

Id. at 178.

The cases cited by the Receiver in the Motion stand for this same proposition. In *Lauer*, the Court held that "when *tainted* funds are used to pay costs associated with maintaining ownership of the property, the property itself and its proceeds are tainted by the fraud." 2009 WL

812719, at *3 ("[U]nder the facts presented here . . . [i]t is unnecessary to attempt to segregate in some manner the tainted funds from the commingled account . . . ."); *see SEC v. Faulkner*, No. 3:16-CV-1735-D, 2018 WL 4362729, at *4 (N.D. Tex. Sept. 12, 2008) (holding that the receivership estate should be expanded to include the assets of any non-party that is (i) controlled by a receivership defendant and (ii) in possession of funds traceable to receivership entities). The Court in *Nadel* found that 80% and 63% of the investments into the target entity during the first two years of its operation involved scheme proceeds, while none of the investments over the remaining years (totaling $15 million) were traceable to the fraud scheme. Despite that the overall amount of commingled proceeds into the target entity was approximately 20% ($4.6 million out of $22.25 million total), the court granted the motion to expand the receivership. *Id.* at *1-2;

Here, the evidence shows that approximately **$492 million** in unlawful investor funds flowed into accounts controlled by Defendants. The Receiver has traced the flow of funds from these commingled accounts containing fraud proceeds into *each* of the Target Entities.[6] The Receiver is not alleging a separate claim of "commingling" – the Receiver is alleging that tainted funds subject to the Receivership, which could be subject to disgorgement, may be found in the

[6] Defendants claim that the Receiver's evidence shows only the "mere pooling" of assets in accounts that are not subject to an expanded receivership. But the cases they rely upon in support of the "mere pooling" argument arise in a criminal context and do not relate to the appointment or expansion of a receivership. For example, in *United States v. Puche*, 350 F.3d 1137 (11th Cir. 2003), the Court of Appeals found that legitimate funds commingled with drug money were subject to criminal forfeiture because those funds facilitated the transfer of illegal funds by providing cover for them. In *SEC v. FTC Capital Markets, Inc.*, No. 09-CIV-4755, 2010 WL 2652405, *3 (S.D.N.Y. June 30, 2012), the Court found that a criminal defendant had a Sixth Amendment right to frozen funds in a non-receivership case to pay attorney's fees because not all of the frozen funds were traceable to the fraud. But the Court noted that a different, less-restrictive standard (as in *Lauer*) would have applied to the "release of frozen funds to pay attorney's fees in a criminal action: whether or not the funds are tainted by fraud." Id. at *7 ("Under this standard, defendants have been barred from utilizing frozen assets to pay legal fees associated with representation in a civil action when it is not clear 'whether the frozen assets exceed the SEC's request for damages' or disgorgement.") (emphasis added and citations omitted).

Defendants also rely upon *In re Alpha Telcom*, No. CV 01–1283–PA, 2005 WL 488675 (D. Oregon Feb. 1, 2005). Although *Alpha Telecom* involved a receivership, it did not involve a request to expand a receivership over additional entities. Rather, the receiver sought the *disgorgement* of certain profits that were unrelated to the fraud scheme. *Id.* at *3. The court upheld disgorgement orders as against approximately 150 other sales agents who received commissions in connection with the scheme to sell unregistered securities. *Id.* at *1.

Target Entities and Properties, all of which are owned or controlled by a Receivership Defendant.[7]

III. There is Sufficient Evidence that CS 2000 and Fast Advance Funding Should be Subject to the Expansion Order.

Defendants Barleta, McElhone, and LaForte assert that CS 2000 and Fast Advance Funding should not be included in the Receivership Estate because they were "separate and distinct corporations" that engaged in arm's length transactions with Par Funding. Response at 6-7. The record contradicts those assertions, and the Motion cites multiple factors as to why expansion of the Receivership over CS 2000 and Fast Advance is warranted. *See* Motion at 5-8. Each entity received millions of dollars of tainted funds tied to scheme proceeds, the extent of which are subject to a disgorgement Order. Both entities operated out of the same office space and utilized some of the same employees. *Id.* An organizational chart depicts both entities as part of the same family of entities as Par Funding, HBC, the Target Real Estate Entities, and other entities owned or controlled by McElhone. *See* ECF No. 305, Ex. 2 (Organization Chart dated March 31, 2020). Fast Advance is wholly owned by the Trust, which itself should be added as a Receivership Entity based upon evidence that it was used pervasively as a conduit to divert tainted Receivership funds.

Moreover, the unclear ownership structure of CS 2000 does not impact the Receiver's request to include it within the Receivership Estate. Defendants and CS 2000 assert that McElhone is not, as set forth in her personal financial statement ("PFS"), the sole owner of CS 2000.[8] Instead,

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[7] Defendants' arguments opposing expansion of the Receivership Estate over the LME Trust and personal property purchased by McElhone fail because they rely upon Defendants' mistaken view of the applicable tracing standard at this stage of the proceedings. Beyond claiming that the Receiver failed to engage in the appropriate tracing standard, Defendants offer no basis to oppose expansion of the Receivership Estate over the Trust. The Receiver thus incorporates the extensive evidence tying the Trust to tainted proceeds of the fraud scheme and additional Target Entities, as set forth on pages 16-18 of the Motion. Similarly, McElhone makes the unsupported assertion that the millions of dollars in property she purchased using funds transferred from accounts containing scheme proceeds consisted of legitimate "compensation." Apart from advancing an inapplicable tracing methodology, she offers no evidence to rebut the facts in the Motion. Instead, she cites to cases regarding disgorgement of compensation. Response at 17. To the extent McElhone will ultimately seek to challenge the Receiver's "reasonable approximation" of her unlawfully acquired assets at the disgorgement stage, she will have the burden to demonstrate that the Receiver's approximation is unreasonable. *See Monterosso*, 756 F.3d at 1337. For now, multiple factors support including this property in the Receivership, as set forth on pages 18-20 of the Motion.

[8] Defendants' explanation of the McElhone PFS as a "rough draft of a hypothetical prediction of possible values 10-15 years from now" is simply not credible. For example, the PFS listed

they assert that CS 2000 is owned by Barleta and non-party Bill Bromley. Response at 5. According to a separate response filed by CS 2000, Barleta owns a 70% interest in CS 2000 and Bromley owns the remaining 30% *See* ECF No. 399 at 2. CS 2000 claims that its relationship with Par Funding was limited to purchasing syndicated notes from Par Funding. *Id.* at 3 ("In other words, CS2000 purchased certain assets from Par Funding, but had no direct involvement in brokering MCA deals or interfacing with merchants.").

Notwithstanding that CS 2000's assertions regarding its operations appear to be at odds with statements made by Bromley about the company during an interview on an investment webcast,[9] Barleta's ownership of CS 2000, the extensive commingling of assets between Par Funding and CS 2000, and the numerous other factors cited in the Motion and above compel expansion of the Receivership Estate over CS 2000.[10]

IV. Expansion of the Receivership Estate is Necessary and Will Not Diminish Assets or Increase Expenses.

Finally, expansion of the Receivership is necessary and will not "[r]esult in the diminishment of their value" or "increase expenses." Response at 17. This Court has already determined that a Receivership is appropriate precisely because "the Defendants may dissipate, conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of

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$790,000.00 in assets tied to the *present value* of five vehicles, none of which would increase in value over the course of the next decade. Nor do Defendants provide any explanation (let alone one that is logical) as to why McElhone, who clearly prepared the document, would list CS 2000 as an asset that she owned (or planned to own) within the next 10-15 years. *See* Ex. 1 to Receiver's Status Report (ECF No. 305) (including email from McElhone stating, "See updated Personal Financial Statement attached. I totaled it by category and did a grand total at the bottom. This is impressive!!!! We can make corrections or revisions for anything you see that needs to be changed.").

[9] Bromley appeared on the "Cash Ninja" webcast. *See* "Bill Bromley Shares Merchant Cash Advance Cashflow," available at: https://www.youtube.com/watch?v=r2sJ4YphIYY (accessed Nov. 25, 2020). During that interview, Bromley did not portray CS 2000 as a company that was limited to doing syndication deals with another entity. Rather, he explained, in detail, his personal involvement in seeking out clients and participating in a stringent underwriting process, which included personal interviews with CEOs, site visits, and appraisals. *Compare* Amended Complaint (ECF No. 119) ¶¶ 154-184 (setting forth as actionable material misrepresentations made by Par Funding and the Defendants "False Claims about Par Funding's Rigorous Underwriting Process").

[10] Notably, CS 2000 does not oppose the expansion request. It instead simply requests that the court "consider the information contained herein and the documents attached hereto in evaluating the Motion's assertions related to CS2000." ECF No. 399 at 1.

Disgorgement." TRO Order at 2. Expansion of the Receivership Estate over the Target Entities is necessary to safeguard any potential dissipation of assets and to ensure the integrity of all Receivership property. Such property includes not only real property and physical assets, but also electronically stored information and the books and records of the Target Entities.

That need is particularly acute here, where several Defendants violated this Court's initial Receivership Order by setting up a new company, copying CBSG's entire QuickBooks database, and downloading over 100,000 pages of electronic documents from a cloud-based system that were the sole property of the Receivership Estate. These efforts required the Receiver and his agents to expend substantial time and efforts to ensure the integrity of Receivership property (*see* ECF No. 155 and 260), which resulted in the Court entering an emergency order enjoining Defendants or their agents from accessing Receivership property. *See* ECF No. 156. Yet, later evidence revealed that a Par Funding employee violated that Order by continuing to access Receivership information. ECF No. 260 at 13. And Defendant Barleta failed to inform the Receiver about information that he had accessed until more than ten days after the Order. *Id.* at 12. Thus, expansion of the Receivership Estate will not only ensure that Receivership assets are preserved, but also safeguard invaluable intangible Receivership property that will allow the Receiver to carry out his Court-ordered mandate. Other proposed remedies fail to ensure the integrity of all Receivership property.

Moreover, the argument that the Receiver will diminish assets or unreasonably increase expenses is baseless. Since his appointment, the Receiver has utilized qualified professionals to help manage business operations and properties subject to the Receivership. Defendants' invective regarding the Receiver's ability to manage additional properties is unsupported by the record – particularly given that, as noted in the Motion, the income producing properties are being managed by an experienced property manager the Receiver intends to retain. *See* Motion at 16 n.55.

Finally, Defendant Abbonizio, who does not dispute the underlying facts in the Motion, claims that expansion of the Receivership over New Field is too "drastic." ECF No. 376 at 1-4. As set forth above, the Receiver seeks to safeguard assets subject to the Receivership where this Court has already determined that there is the danger of asset dissipation or concealment. Regardless of whether New Field was a "pass through" entity, it retains tainted funds subject to potential disgorgement. And the Receiver's request is not merely for "investigatory" purposes, but to satisfy a clear need to safeguard *all* "property" subject to the Receivership. An asset freeze does not accomplish that result, particularly given Defendants' overall conduct to date.

V. Conclusion.

For all of these reasons, as well as those set forth in the Motion, the Receiver respectfully requests that this Court grant the Motion.

Dated: December 1, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 1, 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/ Timothy A. Kolaya
TIMOTHY A. KOLAYA