UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

DEFENDANTS MCELHONE AND COLE'S JOINT RESPONSE IN OPPOSITION TO THE RECEIVER'S MOTION FOR CONTEMPT

INTRODUCTION

Defendants Lisa McElhone and Joseph Cole Barleta ("Responding Defendants") (the words "defense" and "Defendants" refer herein to all defendants), by and through their attorneys, respectfully submit this Joint Response to the Order to Show Cause ("OTC") (DE 425) and in opposition to the Receiver's Motion for Contempt. (DE 423). Ms. McElhone and Mr. Barleta have not violated the prior orders, (DE 36 and 141), through unauthorized access of electronically stored information of ("ESI") of Par Funding. The instant motion is identical to the unfounded claims the Receiver previously alleged on September 16, 2020, (*see* DE 260), in response to Defendants' motion to clarify. (DE 220). Defendants thoroughly refuted the Receiver's claims at that time. (*See* DE 220 and 299). Rule 26 discovery thereafter began, and Ms. McElhone filed her first document request on September 22, 2020.

As proved by the recent information and technical data, analyzed herein, the claim of unauthorized access was and is unsupported. All of the unauthorized access claims relate to early

August 2020. It is now clear that the Receiver did not have any understanding of the computer systems, much less the business of Par Funding. They did not understand the purpose of Full Spectrum Processing ("FSP"), and that FSP held the documents and accounting systems not only for Par Funding, but for all of the Non-Receivership Entities ("NREs") as well. They did not realize that the NREs books and records were located in the G-Suite and that employees for the NREs had to go into those databases to continue to run those companies.

Nor did the Receiver tell the employees of Par Funding or FSP about the Orders or direct them to cease and desist all work. To the contrary, the employees endeavored mightily to keep the various businesses (both Par Funding and the NREs) afloat while working from home. Litigation on the extent of the Receivership continued to August 13, 2020. The employees' dedication to their jobs made possible all of the Court conferences wherein this Court urged the Receiver to make all efforts to keep these businesses operating.

At the end of the day, the technical evidence, some examined in the past few days, shows that there was no unauthorized access. But it was these unsupported claims that were used to deny Defendants access to discovery for over five months. From July 28, 2020 until January 11, 2021, Defendants were denied all discovery from the Receiver, and thus the right to defend themselves, while the Receiver alleged all manner of wrongdoing in its efforts to persuade the Court to enter various orders against the Defendants and the Trust.

The Receivership has left a once bustling, thriving business that ran like clockwork, employed seventy employees, and never once had an investor complaint – vacant and empty with the pipes bursting.[1] Since the takeover, the Receiver has not funded a single merchant. To the

[1] Despite many promises of running the business, and certainly numerous statements by the Court urging that course, the Receiver never paid rent on the Par Funding offices ($35,000 per month) and abandoned the offices after less than a few months. The rent arrears not paid by the Receiver

contrary, the Receiver has released millions of dollars in merchant collateral and numerous merchant agreements whose debt would have been collected in whole or in part by a knowledgeable law firm had the business continued to operate. Apparently, the Receiver never had a reason to be concerned about producing documents because the Receiver had no intention of conducting merchant funding from the get-go for any of the over 2,000 merchants extant at the time the Receiver took over.

For the reasons set forth below, the Receiver's request for an order of contempt should be denied.

HISTORY OF THE ORDERS AND DISCUSSION COMMON TO BOTH DEFENDANTS

a. The Initial Order

On July 24, 2020, the SEC moved *ex parte* for a motion appointing a Receiver and attached a nineteen-page proposed receivership order. (DE 4-2) ("The Proposed Order"). The proposed order, by its clear terms, "hereby dismissed" all employees and others associated with Par Funding and terminated their authority "with respect to the Receivership Entities operations or assets…" (¶ 2); "hereby ordered" them "to preserve and turn over all electronic information" (¶ 5); and "hereby directed" them to turn over Receivership Property (¶ 12).

At a status conference on July 27, 2020, Fox Rothschild ("Fox"), long-time corporate counsel for Par Funding and FSP, responded to the dramatic relief sought against Defendants. Fox objected to the extraordinarily broad relief the SEC was seeking. (*See* DE 43 at 3). The Court declined to adopt the SEC's proposed order and entered a more limited order. (Initial Order, DE 36).

totaled $175,000 and led to proceedings which, characteristically, the Receiver tried to blame on the Defendants. *See* December 15, 2020 Conference at T. 80-81.

The Initial Order did not adopt the SEC proposed language in paragraphs 2, 5, 12 and 15. Nor did it contain language that the Receiver was entitled to immediate possession of copies of electronic information of Receivership Entities "wherever located." The Initial Order also distinguishes between tangible things—"records, documents and materials"—of which the Receiver is authorized to "take custody, control and possession," and the category of "information technology, data, documents, storage and documents (sic)" that the Receiver is authorized only to "secure and safeguard." (DE 36 at ¶ 1 and ¶ 2). These separate categories recognize that electronic information exists in more than one place, unlike "records and documents." The Initial Order does not expressly authorize the Receiver to take custody of copies of electronic data—in contrast to the SEC's Proposed Order—and the Amended Order that this Court later issued. Nor does the Initial Order expressly direct any individual to turn over to the Receiver copies of electronic information that the individual already possessed prior to the Receivership.

b. FSP Employees Received No Notice from the Receiver. Further, Employees Were Assisting Numerous Merchants in Ongoing Payments and Working on the Numerous Non-Receivership Businesses ("NREs")

In late July 2020, FSP had about 70 employees who maintained collaborative, active, shared files hosted on its Google G-Suite. FSP also maintained accounting files hosted by Right Networks for all of its clients' companies. Such companies included both Receivership entities, i.e., Par Funding d/b/a CBSG, and approximately 25 NREs. FSP maintained all the accounting books and records of the Receivership and the 25-odd NRE companies in cloud servers hosted by Right Networks. Others also had access to the Right Networks data including Par's tax CPAs, Rod Ermel & Associates, the accountants for a solar panel construction company, and Elliot Davis, software consultants out of Greenville North Carolina. As such, FSP provided back office administrative work for companies that had nothing to do with Par Funding, such as Ms.

McElhone's pro-health salon, Lacquer Lounge, a physical therapy center called Metro Physical Medicine Group, a solar panel construction business called Vision Solar, and numerous other companies including LLCs holding commercial and residential real estate—all NREs.

The Court may recall that early on both the Defendants and this Court pressed the Receiver to continue to run the business and, in numerous filings, the Receiver promised to do so. *See* n. 2, *infra*. As the defense documented in multiple filings, those promises eventually proved to be illusory and hollow. Nonetheless, during the early days of the Receivership, FSP employees received no notice or direction from the Receiver and understood that Fox Rothschild was corporate counsel.

It was the Receiver's job to notify and direct anyone who should be bound by the Initial Order, including present and former employees. (*See* DE 36 at ¶ 6; DE 299 at 8-10). Yet, the Receiver failed to take this simple step long after assuming control over the receivership entities. FBI agents raided the offices of Par and FSP on July 28, 2020. (DE 299-2, Declaration of Margaret Clemons, dated September 29, 2020, ¶¶ 8-10)("Clemons Decl."). The employees present during the raid and the ensuing search received no instructions about their employment status or the Receivership and were simply sent home where most continued working remotely on behalf of FSP in order to continue servicing the business and the NREs. (*Id*. at 6-11).

In addition, on July 28, 2020, Kevin Young, the manager of the IT department, was interviewed and provided all passwords requested. While the Receiver changed the door locks on the Philadelphia offices (with the assistance of an FSP employee) on or about July 28, 2020, he took no action to lock down the FSP computer systems. The Receiver took no action to prevent FSP employees from working remotely nor did he tell them that they could not do so. The Receiver failed to insure that employee paychecks did not bounce—which they did for the first time since

the company was created in 2012—or provide any guidance at all to the employees.[2] As a result, most FSP employees continued working remotely with the understanding that Par Funding was not shut down and that FSP could continue to provide services to the 25-odd NRE companies.

Indeed, the employees struggled mightily to maintain these businesses. The employees continued to run the NREs. FSP employees tried to insure that NRE employees working on and at the buildings, the pro-health salon, and in other businesses, continued to receive their payroll and pay vendors providing services to these NREs.

Mr. Cole received dozens of calls expressing confusion from managers such as James Klenk, head of accounting, Ben Mannes, Kevin Young, head of IT, and others who were working from home and did not want the company to just shut down and miss payroll and other critical accounting functions while the Receivership was being sorted out. Mr. Klenk, Mr. Young and others in management received calls from concerned FSP employees who were continuing to work from home because they did want to lose their jobs or paychecks during the Covid-19 pandemic. For FSP to continue to maintain Par Funding and the 25-odd NREs, FSP employees necessarily had to log into the Right Networks and/or the G-Suite to do their work.

In addition, Aida Lau, whom the Receiver continues to unfairly castigate, was doing bookkeeping for the 25 or so NREs. To access the bookkeeping and payroll records of the commercial and residential buildings owned by the NREs, including Lacquer Lounge or Metro Physical Medicine Group, Ms. Lau had to log onto the FSP Right Networks and the FSP G-Suite.

There was no notice of, or limitation placed on, FSP employees' access to the FSP Right Networks accounting server or the Google G-Suite for more than two weeks after the Initial Order. There was no lockdown of the FSP G-Suite, much less any notice to employees that they should

[2] We are advised that some employees never were paid back salary by the Receiver.

not continue to have access to the G-Suite to do their jobs – which they endeavored to do in the hopes of keeping the company and NREs functioning.

If the Receiver intended for FSP employees to shut down all business activity, including for the NREs, and stop all payroll and regular banking activity, he should have directed all employees and management to stop all work no matter how necessary to the operations of the business, and shut down all electronic access. The Receiver did not do so. To the contrary, in statements to this Court and the public, the Receiver claimed to want to continue operating the business as a going concern and not conduct a liquidation. The Court also strongly supported the continued operations of the company, rather than a liquidation. Below is just a sampling of statements on this topic.[3]

[3] To the contrary, in statements to this Court and the public, the Receiver claimed to want to continue operating the business as a going concern and not conduct a liquidation. *See, e.g.*, August 4, 2020 at T. 81-82 (Mr. Stumphauzer: "In terms of liquidating the company, that's certainly not true. In fact, the motion has not been filed yet, but the expert that we that we're going to recommend that the Court allow us to hire…has actually run and operated multiple merchant cash advance businesses….The only reason to hire him is precisely so operations can continue.) And this Court similarly indicated that the goal of the Receiver was to keep the business running and not to liquidate. *See, e.g.*, August 4, 2020 at T. 72 ("We're not in a situation where this is not salvageable….there may actually be an untainted portion of this business that can operate under close watch by the receiver without essentially shutting the entire thing down, liquidating it, and paying investors whatever remains."); *Id.* at 73 ("[M]y order did not necessarily contemplate eventuality of liquidation under any circumstances. In fact, the whole purpose of the receivership is to try to save what we can and not leave everybody on the street."); *id.* at 78 ("I think to the extent that Mr. Berman's concern and the concern of his co-counsel on behalf of the business is that there's an end game here that it contemplates liquidation, I want the record obviously to reflect the Court's charge to the receiver is to try to find a way forward to maintain this business's going concern[.]");*id.* at 79-80 ("So as you pointed out, Ms. Berlin, they have a plan, we have got to let them execute that plan, but to the extent there has ever been any insinuation, which I have to agree I never got that sense from the SEC in their filings or any hearings you had up until today that the game plan here was one of liquidation, I have not, nor would I sanction such a plan. . . .); *id.* at 89 ("But the Court is on the record making it very clear, as I have from the beginning, no one is here seeking an end game of liquidation. The Court is not, the receiver is not and the SEC certainly isn't. So we're going to do our best to try to keep this business working with the current model that we're still investigating."); August 17, 2020 at T. 10 ("We want to avoid kind of a liquidation scenario here[.]"); September 8, 2020 at T. 62 ("But the deal was always not to liquidate, but to salvage.").

In any event, the Receiver had absolutely no authority to shut down the regular work being done on the 25-odd NRE businesses, including all of the real estate entities, the salon, the physical therapy center and other businesses.

c. The Amended Order

At the time of the Initial Order, and for two weeks thereafter, Fox asserted its role as corporate counsel for the owners and officers of the Receivership Entities and, as such, claimed to control the attorney-client privilege. (*See* DE 100 at 4-5). On July 28, 2020, on behalf of Par Funding, FSP, Ms. McElhone, Mr. Cole, and other defendants, Fox filed a Response to the SEC's *Ex Parte* Motions for Appointment of a Receiver and for an Asset Freeze (DE 14). (*See* DE 43). Fox asserted that it understood that the narrower language of the Initial Order adopted by the Court, (DE 36), in contrast to what the SEC had proposed, reflected that Defendants were not prevented from continuing to run the business.

> That order [DE 36], while selecting Mr. Stumphauzer to serve, did not at that time authorize him to take any formal action as the receiver. Instead, the Court provided that "If the Court grants Plaintiff's Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief," the Receiver will have a list of obligations and duties set out in that Order. As the Defendants understood and accept the provisions of that Order, which will provide the receiver with a fulsome and meaningful oversight function, while permitting Defendants' businesses to continue to operate, undersigned counsel immediately reached out to the SEC and to Mr. Stumphauzer to begin a dialogue on how the receiver could fulfill the role set out in that Order.

(DE 43 at 6).

Fox urged the Court not to adopt the SEC's pending proposed TRO Order (DE 14-2), citing case law suggesting that the powers of a receiver should be limited at the commencement of a case so as not to deprive defendants of the ability to run the company and defend themselves. (DE 43 at 4-5, 10-11).

At the close of a hearing on August 4, 2020, the SEC raised the issue of Fox's continuing role for Par and FSP and the Court instructed Fox to file a Notice informing the Court of its anticipated role as company counsel. In that Notice, filed on August 6, 2020, Fox stated that it had already discussed with the Receiver' counsel the legal standards entitling the owners of Par Funding and FSP to continue to have Fox participate as company counsel in the management of their merchant cash advance business. (DE 100) ("Notice of Independent Counsel's Continuing Role for the Companies"). Specifically, it had advised the Receiver that the Initial Order, (DE 36), did not "provide the Receiver with a legal change of control of the Companies," require the law firm's removal as corporate counsel or the transfer of the attorney-client privilege. (DE100 at 4-5).

On August 6, 2020, the SEC moved to amend the receivership order citing the need to provide "greater clarification of the Receiver's powers, duties, and limitations." (DE 105 at 2, 4-6). This Court considered both submissions and on August 13, 2020 granted the Receiver expanded powers in the Amended Order Appointing the Receiver. (DE 141) ("Amended Order").

d. Motion to Enjoin due to Allegations of Unauthorized Access

Two days after the Amended Order was entered, the Receiver raised concerns about unauthorized access to the Par Google G-Suite by former employees of FSP—not by the Defendants. On August 15, 2020, the Receiver filed an emergency motion to enjoin access to the Par Google G-Suite by seeking authority to suspend users' access to the Par Google G-Suite electronic data platform as well as "super administrator access rights" for individuals who had access not only to the Receivership Entities, but also to the NRE's that shared the same integrated account. (DE 155 at 6-7) (the "Unauthorized Access Motion"). The Receiver alleged that it had discovered that Aida Lau and ten other employees had accessed or downloaded data, and that at

least one employee had changed or edited information on a spreadsheet entitled "Leads Consolidated Data". (DE 155 at 4-6). None of the Defendants were named in connection with these claims of unauthorized access. These allegations, against Ms. Lau and 10 former employees, first raised on August 15, 2020, reappear in the Response to the Motion to Clarify on September 15, 2020 (DE 260), and in the instant motion for contempt filed on December 11, 2020 (DE 423).

e. Defendants Warned the Receiver of Unidentified Merchant Scammers

On August 24, 2020, Defendants were alerted to an apparent poaching scam in which unknown individuals were trying to misappropriate funds owed to the company. Counsel quickly notified the Receiver:

> I want to give you the heads up about a scam being run by a phony e-mail account posing as Par Funding. Take a look at Alan's [Futerfas] explanation below and the e-mail chain involving the scammer. Also, please let me know when we can catch up about Mr. Cole.
>
> From Alan [Futerfas]: I have just been advised that a phony account called Tori@ParFundnig is poaching Par's merchants. This is not the Tori who used to work at Par. Poaching is not uncommon in this business, which is why getting back the sales agents is important as they can stay in contact with the merchants. What is likely happening is that people are calling these merchants pretending to be Par, offering some money, and telling the merchant to create a new ACH account. Then they will use the new ACH to collect what is owed Par.

(Email from A. Soto to the Receiver and counsel, August 24, 2020 at 5:56 pm). The email chain including the scammer was attached. The following day, Mr. Kolaya responded:

> Thank you for bringing this to our attention. We are working to try to get to the source of this fake communication.
>
> Are you available at 10:30? We want to circle back with you on the proposal about Joe Cole [regarding scheduling his interview on August 27].

(Email T. Kolaya to D. Fridman, August 25, 2020 at 9:15 am, annexed hereto as Ex. B).

f. Counsel Endeavor to Promptly Address the Receiver's Concerns and Obtain Discovery

Over a four-day period in late August 2020, defense counsel worked diligently and cooperatively with the Receiver to resolve Defendants' desperate need for discovery to defend themselves in this case, while addressing the Receiver's demand for the immediate return of copies of a subset of Par Funding documents that Defendants possessed and the Receiver's concerns about unauthorized access. At the end of this process, it appeared to defense counsel that an agreement was in place.

After the preliminary injunction hearing and other motions filed in August, co-counsel Daniel Fridman, Esq., requested document production on behalf of all defendants. On August 26, 2020, counsel for Ms. McElhone spoke with Mr. Kolaya about discovery issues. Mr. Kolaya expressed concern about individuals, other than Defendants, having accessed electronic information on the Par Google G-Suite. A detailed process was discussed which included a standard protective order and the Bates stamping of all documents produced to the defense. Mr. Kolaya agreed that the defense should also receive documents reflecting the entire financial picture of Par Funding as of July 31, 2020, and that information postdating the receivership might also be relevant and discoverable to the defense.

The next morning, on August 27, 2020, defense counsel conferred to understand and address the Receiver's concerns. Defense counsel advised the Receiver that some of the data accessed from the Par Google G-Suite belonged to domains unrelated to the Receivership Entities. (DE 220-2 at 1-2). Counsel for the Receiver responded and agreed that the Receiver's authority did not extend to NREs. He agreed, as well, to the suggestion of a "protocol" to separate the NRE domains from the Receivership Entities when electronic data is exchanged with Defendants. (DE 220-2 at 1, Email T. Kolaya to A. Futerfas, August 27, 2020 at 10:42 a.m.).

Also, on August 27, 2020, a discussion ensued wherein if the parties could not agree on a protocol for discovery, the Defense would seek an amended order clarifying their access to documents.

> I spoke with Dan [Fridman] today and he suggested that the Defendants may decide to file a motion seeking an amendment to the Receivership Order that allows the Defendants to retain any "pre-TRO" files relating to the Receivership Entities, so long as the Receiver also has copies of those documents. The Receiver does not agree to that proposed amendment. We are not comfortable with any documents of the Receivership Entities remaining with the Defendants or other third parties.

(Email T. Kolaya to B. Schein, August 27, 2020 at 11:26 a.m.); (*see also* Emails between T. Kolaya and A. Futerfas dated August 27, 2020 at 10:04 am and 10:42 am, annexed hereto as Ex. C).

After numerous email exchanges about document production, on the afternoon of August 27, 2020, Mr. Cole participated in a two-hour Zoom interview with three of the Receiver's lawyers and three DSI consultants. Mr. Cole answered a litany of questions from DSI and offered to assist the Receiver and DSI in any way going forward.

On the evening of August 27, 2020, counsel for the Receiver discussed with defense counsel claims of unauthorized access of data attributed to Ms. McElhone, Jamie McElhone and Mr. Cole. The next day, August 28, 2020, defense counsel responded, to the Receiver's inquiries.

> Further to our discussions of last evening regarding your concerns, <u>we have verified that neither Lisa McElhone nor Jamie McElhone accessed the Par/CBSG G-Suite to obtain information after the Receiver took over the Par offices on or about July 28, 2020.</u> Information about each person is set forth below and in the documents attached. We are as concerned about this issue as you are. As we mentioned during our call, you must immediately change the password that allows users to gain access to Par Funding's G-Suite, if you haven't already. We also suggest that you check the user access log to identify the users who have accessed Par Funding's G-Suite account since July 28, 2020.

(Email A. Futerfas to T. Kolaya, August 28, 2020 at 1:03 p.m., annexed hereto at Ex. D).

On August 28, 2020, Mr. Cole's counsel responded to the Receiver about whether Mr. Cole improperly accessed the Par Funding G Suite, in addition to questions about the G-Suite created by Mr. Cole at the request of Fox Rothschild. Counsel stated:

> Mr. Cole did not access the Par Funding /CBSG G suite after the Receivership. As I previously told you and your colleagues, prior to the Receivership, Mr. Cole, who was the CFO of Par/CBSG, maintained a backup copy of company files on his personal computer. Right after the Receivership, while represented by Fox Rothschild, Mr. Cole created a new G Suite on which he placed many of the company documents and sent the link to counsel. This was, of course, so that new counsel could learn about the Par/CBSG business and about the case. The SEC complaint was also included on Mr. Cole's own G-suite.

(DE 260-9, email B. Schein to T. Kolaya, August 28, 2020 at 1:12 p.m., annexed hereto as Ex. E) (emphasis added). In this same email, counsel provided the Receiver with the passwords needed to change the username on the Par Google G Suite to prevent any future access by unauthorized individuals.

Thus, as of August 28, 2020, counsel for the defense fully believed that they were close to an agreement with the Receiver whereby Defendants would turn over all copies of electronic documents in their possession, delete their own copies, and the Receiver would then provide these documents back to defense counsel under a protective order and Bates stamped. The Receiver then decided to end all discovery and document production discussions.

On August 30, 2020, counsel for Mr. Cole drafted a four-page email endeavoring to get document production discussions back on track. (DE 260-7, Email B. Schein to T. Kolaya, August 30, 2020 at 11:47 a.m.). In this email, counsel for Mr. Cole reiterated the position of defense counsel that possession of pre-TRO documents did not violate the Orders.

> please recall that one of the reasons we have been coordinating the disclosure of the information held by Mr. Cole to you was that everyone, including you and the Receiver, acknowledged that the orders did not make clear whether records relating to Par Funding's operations obtained prior to the TRO and the receivership orders violated the scope of the Court's first receivership order. Recall that we even

> discussed filing a joint motion to amend the receivership order to clarify this issue and permit the defense team to maintain a copy of such records during the litigation. . . .In [DE 260-9], responding to your concerns about data breaches, we explained that the only information Mr. Cole possesses he obtained before the TRO and receivership orders were entered. *That remains true now*. We explained that Mr. Cole had retained a copy of this information on his personal laptop. We also notified you on Friday that Mr. Cole kept another copy on the cloud—on a Google drive. Please bear in mind that he was directed by prior counsel for the company to create this drive to ensure its preservation for litigation. That information is duplicative of the information on Mr. Cole's laptop and on computers which you have possession of at Par offices. Counsel has not viewed the information on the cloud or shared it with anyone else. In other words, there is no "ongoing data breach" by Mr. Cole or any other defendant nor any misconduct by Mr. Cole. . . We ask that you continue an open dialogue with us to preserve the progress we have made and continue moving forward productively. . .
>
> What your email fails to recognize is that we had reached an agreement in principle with you allowing us retain a copy of this very information subject to a protective order (which we agreed to) and Bates stamping (which we agreed to). We agree that we should have notified you of Mr. Cole's creation of this G-Suite when we provided his laptop to you. That was an oversight—but we need to keep the facts in their proper context. I only began representing Mr. Cole a few weeks ago . . . Perhaps because that G-suite was a preserved record suggested by prior counsel which, and because we were coordinating (and later) providing a copy of the same information to you, we simply didn't think about it again until we responded to your email in order to allay your concerns about data breaches. To suggest now that this duplicative copy of records we previously disclosed and produced to you merits the tone and accusatory tenor of your response is to overlook the discussions we have had to date and the court's admonition that we try to resolve matters whenever possible without involving the court.

(E-mail B. Schein to Tim Kolaya and Ryan Stumphauzer dated August 30, 2020 at 11:47 am, annexed hereto as Ex. F) (emphasis added).

Then counsel for Mr. Cole answered the specific numbered questions in Mr. Kolaya's prior email about the pre-Receivership databases that Mr. Cole had created at the direction of Fox Rothschild. (*Id.* at 4) Counsel's August 30, 2020 email provided links to those databases and, very clearly, sought the Receiver's direction as to what to do with the data:

- Set forth below are two links to the Google server created by Mr. Cole. Once you have had an opportunity to review the Google drive, **please let us know how you would like to proceed. As suggested above, we can Bates stamp the materials and provide them to**

you. Mr. Cole can delete the entire Google server. Counsel have not accessed the files. If Mr. Cole deletes the drive, it will be gone from the Google hosting site and unavailable to anyone.

- I have not reviewed the files in the Google server. If the Receiver prefers that I provide the information regarding the total number and size of the files belonging to the Receivership Entities in the Google server, I will review the files.

(*Id*. at 4) (emphasis added) (Exhibit F).

The Receiver did not respond. Rather, in an interim status report filed the following day, August 31, 2020, the Receiver presented the same allegations raised with defense counsel on August 26, 2020, which were fully responded to by counsel for Ms. McElhone in DE 220-2. (DE 215 at 3-5).

Faced with the refusal of the Receiver to provide Par Funding financial records to the Defendants and their accountants to defend themselves; and faced with silence from the Receiver about what Mr. Cole should do with the documents he had placed on, but did not access, on the Knewlogic Google drive, the Defendants sought relief from the Court.

g. Defendants Move to Clarify the Receiver's Order to Permit them to Use Par Business Records Assembled Prior to the Receivership to Defend Themselves.

On September 1, 2020, Defendants filed a Motion to Modify the Receivership Orders and to Clarify whether Defendants could maintain a copy of the documents they produced to the Receiver in order to defend themselves. (DE 220). In that motion, defense counsel asserted that Defendants were prepared to meet every condition requested by the Receiver in exchange for production of documents requested (DE 220 at 2-3, 11, and DE 220-1); and responded to the Receiver's claims of data breach. (DE 220 at 3-5).

During the status conference held on September 8, 2020, this Court stated: "the important thing is we are now going to progress to a different phase in the litigation. . . . we got through the preliminary injunction phase . . . . this is now going to proceed as you would expect a regular case

to proceed, while we let the rest of some of the discovery play out and some of the depositions take place." (Sept. 8 at T. 12). The Court further stated that, "because now we're kind of off the constant wheel that we were on . . . of having the rapid filings trying to get everything done . . . it was very time-sensitive." *Id.*

Turning to the Motion for Clarification, the SEC's counsel, Ms. Berlin, proposed that discovery start sooner as a way to avoid the Receiver's opposition to Defendant's motion which, as Ms. Berlin correctly predicted, would only result in unnecessary costs when the Defendants would soon be entitled to receive these very documents:

MS. BERLIN: As we just heard Mr. Fridman say, the purpose of their motion, is do they need to defend themselves and they want to get these documents? They've made it clear they're just trying to get early discovery. So before the receiver, which spends thousands of dollars defending it, putting in a response, and then we have a reply and we're all reading that, if we're ultimately billing the investors for every minute of this.

I mean, . . . is this sort of futile? I mean, is there any basis under which that we would even consider granting some sort of early discovery and putting this on the receiver to Bates-stamp it, go through this expense for the defendants? I mean, they didn't provide any basis for it. And presumably we're going to have a discovery schedule soon.

I just thought I would ask while we're all here before we undergo further expense for -- that, you know, . . . litigation, perhaps it makes sense for those -- us to all talk. You know, every time the Court recommends that we speak, we tend to resolve things with this group…..It could be that, even by the time their motion is decided, you know, we're almost in discovery. Or maybe everybody agrees to start discovery sooner. I just wanted to offer that as a way to avoid -- to maybe end this litigation.

THE COURT: I think it's a great point, number one, because we have a focus on the JSR and scheduling as the next major hurdle for us to get a true timetable we can live with. And if that's going to lead to production that satisfies the individual defendants and we can incorporate that into our scheduling order, then I would rather have the energy go to making sure that that's done in a timely fashion instead of drawing out litigation on this production motion under Docket Entry 220, where we are going to require responses and even replies. <u>And it may really be a moot point if we can get some discussion early and often.</u>

So, by all means, I urge all the defendants' counsels for McElhone, Barleta, LaForte, and the L.M.E. Trust to reach out to receiver's counsel, to Mr. Kolaya, to reach out to Ms. Berlin and see if we can perhaps, as we're discussing with Mr. Futerfas, all the

scheduling ….we can build in a component of production and a discovery schedule that makes everybody feel comfortable that they can get what they need to evaluate the respected positions.

I would much rather prefer that we do that so that we don't draw money away from trying to reimburse investors. ……

But, yes, Ms. Berlin, I would prefer that we try to come up with a way to moot this issue before we spend time and the receiver spends time filing a response, because it's -- I think it's unnecessary. We can come up with an expedited production schedule that would grant some relief to the defendants.

So let's hope we can do that and keep the line of communication open on that front. Okay?

MR. FUTERFAS: Your Honor, on behalf of Lisa McElhone, . . I agree with Ms. Berlin…….

THE COURT: And I appreciate that, Mr. Futerfas. So let's, you know, keep me posted so that I don't gear up to rule on that if it's unnecessary and you guys continue your track record of cooperation. I suspect when we start putting the scheduling order together, we'll find some common ground there.

(Transcript of Status Conference Sept. 8, 2020 at T. 32-35) (emphasis added).

Accordingly, as of September 8, 2020, the defense had agreed not to pursue the application since Rule 26 Discovery would shortly begin and an "expedited production schedule that would grant some relief to the defendants," was in sight. The parties convened and agreed upon a Joint Scheduling Report and the commencement of discovery. Notwithstanding the Court's clear direction that the Receiver not file a "response, because it's . . . unnecessary," the Receiver filed a response on September 15, 2020 which included twelve exhibits totaling over 2,600 pages.[4] On October 1, 2020, the defense responded by not only forcefully rebutting the Receiver's factual

[4]At the conference on December 15, 2020, the Receiver's counsel complained about the time it spent on baseless "unauthorized access" claims made in their response of September 15, 2020, a response which was not only unnecessary but, as described above, actually disinvited by this Court. (*See* Transcript of Status conference on December 15, 2020 at T. 51).

allegations,[5] but also reminding the Court that the Receiver's response was wholly unnecessary and, in fact, uninvited as all parties had agreed that Rule 26 discovery was imminent and thus the initial motion moot. (DE 299). On October 2, 2020, at the request of counsel for the defense, the Court dismissed the motion as moot. (DE 301).

h. Defendants Serve Discovery Demands on September 22, 2020. The Demands are Met with Continued Obstruction and Delay

On September 16, 2020, the parties submitted a Joint Scheduling Report, (*see* DE 261), and the Court entered an Order Setting Trial Schedule on September 23, 2020. (DE279). Counsel for Lisa McElhone sent her First Demand for Documents to the Receiver on September 22, 2020. On October 22, 2020, in a blatant violation of the Magistrate's Discovery Rules, the Receiver provided not one document. Instead, the Receiver sent a boilerplate 30 page set of Objections violative of the Magistrate's rules. In an email to the Receiver, counsel for Ms. McElhone demanded production and pointed out that the Receiver was still asking for a protective order on the documents Ms. McElhone was requesting while, at the same time, the Receiver and DSI were filing them "publicly with no redactions for names and personal identifying information or banking or account information." (Email from A. Futerfas to G. Alfano, et. al., dated November 25, 2020 at 12:05 pm, annexed hereto as Ex. G).

On November 27, 2020, in one of many follow up emails seeking documents, Ms. McElhone's counsel addressed the Receiver's objections as inconsistent with Judge Reinhardt's

[5] The Receiver's response failed, as it does here, to recognize that: (1) FSP managed a number of Non-Receivership Entities ("NREs") over which the Receiver has no control or authority; (2) the G-Suite contained the books and records and bookkeeping data for numerous NREs; (3) the Receiver never provided Notice to the former employees it now alleges gained "unauthorized access" about what they could and could not do; and (4) the Receiver failed to take the necessary steps to assume immediate control of the Google-Suite platform used by FSP employees.

Discovery Rules and highlighted the wastefulness of the Receiver's new objections and demands, especially when all of the data requested was already assembled and a mere click away. Counsel advised:

> We are done with the continued delay of our access to documents we need to defend the case and which are required to be produced under the FRCP and the local rules, including the Rules of Judge Reinhart. Let us know by Monday at 1 pm, whether you will comply with our discovery requests. Otherwise, we will bring this matter to the attention of the Magistrate Judge.

(DE 423-3 at 10, Email from A. Futerfas to T. Kolaya and G. Pietragallo, November 27, 2020 at 5:30 pm, annexed hereto as Ex. H).

When counsel for the Receiver finally responded on December 3, 2020, he refused all production and now conditioned his compliance with Rule 26 and Magistrate Reinhart's rules on a new demand—<u>that no Defendants could see any of the (already limited) categories of documents that the Receiver was proposing to produce.</u> Simply put, months after an agreement in August 2020 to Bates stamping and a standard protective order, the Receiver was now refusing production unless the Defense agreed "to the entry of a protective order that restricts access to these documents to attorneys and retained experts only." (DE 423-3 at 5). This new demand was particularly suspect since DSI had attached some of these same documents, and information from these documents, in reports filed publicly as exhibits to the Receiver's reports and motions.

On December 4, 2020, counsel for Ms. McElhone responded and objected to the Receiver's "adversarial" opposition to Defendants' discovery. (DE 423-3 at 3, Email A. Futerfas to T. Kolaya, December 4, 2020 at 1:59 p.m.) Additionally, counsel noted the absurdity of proposing to bar Defendants from viewing Par Funding documents when the Receiver was using these very documents to make allegations and publicly filing them in the case.

> Numerous email communications and telephone calls from Mr. Fridman and Ms. Schein made clear that the defense needs these files which were copied by the Receiver, from Mr. Cole's computer "as a first priority" to prepare the defense. . .
>
> Accordingly, we reject any request to limit all Defendants' access to data you already agreed to provide and which all defendants need to defend this case. All Defendants are entitled to this data under the law, notwithstanding your made-up issues regarding Joe Cole. As I stated yesterday in my email, the idea that all Defendants cannot review materials which they know best and have worked with for years, and which they have a right to utilize for their defense, and which they will provide to their expert accountants - the very data which you and the SEC regularly use and make public in reports and filings - is not only baseless but also denies them due process and violates the Rules. It makes no sense to deny Defendants access to this data when you and your team regularly publish this data, including private personal financial information about the Defendants and, indeed, the investors, to the world.
>
> As I also noted in my email of yesterday, just recently the Receiver published exhibits which contained obvious copies of the QuickBooks files. <u>So, your argument appears to be that when the Receiver chooses to use these very materials, you can publish them, but our clients, who are parties to the litigation, cannot see them unless and until you decide to publish highly selective slices of this data to the world. This is illogical.</u>
>
> Lastly, we will agree to a standard SDFL Protective Order which is readily available and will not cause your office to incur additional unnecessary legal fees. The delay is over. Provide these documents and the standard protective order by the close of business on Monday. Should your office insist on more or further delay document production, we will so advise the Magistrate and set forth your litany of unfounded delays and your failure to comply with our document requests and the Magistrate's Rules.

(*Id.*) (Emphasis added) (*See* emails A. Futerfas and T. Kolaya, dated December 2-4, 2020, annexed hereto as Ex. I).

Thereafter, the defense endeavored to work with the Receiver to obtain their discovery. For instance, the Receiver asked for proof that Mr. Cole did not access the QuickBooks at Summit Hosting. The next day, Mr. Cole's counsel provided the Receiver with a use and access log provided by Summit Hosting which confirmed precisely what counsel had represented—that Mr.

Cole had not accessed the QuickBooks data.[6] Production was still refused. Accordingly, Mr. Cole's counsel requested a discovery dispute hearing before Magistrate Reinhart. Prior to the Magistrate hearing, the parties appeared before this Court.[7]

i. The December 15, 2020 Conference and Delayed Production to January 11, 2021

During the December 15, 2020 conference, the delayed discovery was addressed. The Court stated, "to try and eliminate discovery battles, get you guys away from having to go through another round of this because you'd end up going to see me . . . I can think of no more efficient way that to just streamline this by the end of the week and get orders in place to start eliminating these barriers to the data you guys need." (Dec. 15, 2020 Conf. at T. 72)

Addressing the defense request for a copy of the static QuickBooks file which Mr. Cole placed on Summit Hosting at the direction of Fox Rothschild, counsel stated:

> With regard to Mr. Cole there has not been any unauthorized access. He set up the hosting of the static copy of the QuickBooks which we have asked for from the Receiver since August, ... he didn't access it . . . . (except to) check the remote desk access . . . so that when the . . . expert accountants were hired they would be able to access the data from their desks. So what I proposed to Mr. Kolaya is that in order to not incur additional costs by the Receiver . . . that we be permitted to provide this static copy which is hosted by Summit Hosting to the accountants to start looking at the copy of the QuickBooks. I think it is the most expeditious way and it won't incur any additional cost. (December 15, 2020 at T. 73)

[6] Email from B. Schein to T. Kolaya December 11, 2020 at 11:33 am, annexed hereto as Ex. J).

[7] Mr. Cole's counsel also objected to the Receiver's request for a protective order stating, "just yesterday, the Receiver filed another report which contained a declaration of Mr. Sharp based upon his claimed review of CBSG's QuickBooks and CBSG's bank statements. Since you have already placed bank records and parts of the QuickBooks in your public filings, there is no basis for your request that a protective order be in place prior to your production of the documents requested by Mr. Cole." (Email from B. Schein to T. Kolaya, dated December 14, 2020 at 2:42 pm, annexed hereto as Ex. K).

After further proceedings, the Court directed a three-step process: 1) a protective order in place; 2) return of materials to the Receiver; and 3) permit the Receiver access to the two sources of data that are being hosted by Knewlogic (G-Suite) and Summit Hosting (QuickBooks). (*Id*. at 74-75).

On December 16, 2020, in order to efficiently and quickly accomplish these goals, Mr. Cole's counsel sent an email to Receiver's counsel proposing, as to the QuickBooks only: 1) that Summit Hosting would continue to host the QuickBooks; 2) the Receiver's IT person would fully view the QuickBooks file hosted on Summit; 3) the Receiver would receive an access log; after which 4) Summit, as an neutral third party vendor, would maintain the data and defense counsel and their accountants would have access—all at no further cost to the Receiver. (Email of B. Schein to T. Kolaya, dated December 16, 2020 at 12:27 pm).

With regard to the KnewLogic Google suite, counsel proposed that since the Receiver has had access to Knewlogic since August 30, 2020 (*see* B. Schein email dated August 30, 2020, Ex. F), the Receiver's IT person could: 1) download and copy all the Par Funding documents - except for attorney-client and attorney-work product privileged documents; 2) delete those Par Funding documents from the Knewlogic Drive; and 3) then provide a copy of those very same documents to the defense. (*Id.*).

On December 17, 2020, the Receiver responded with a list of time-consuming conditions-precedent to providing any documents to the defense. To receive the static copy of the QuickBooks hosted by Summit, the Receiver demanded that: 1) he receive all login and access data (which counsel had already provided to the Receiver); 2) a copy of all data hosted on Summit; 3) that Summit must permanently delete and purge all copies of the data; and 4) that a representative from

Summit provide a declaration affirming that Summit Hosting has deleted and purged all data it hosted for Mr. Cole.

To accomplish these multiple tasks, including the segregation of attorney/client privileged documents, Mr. Cole's counsel had to hire an IT specialist. The IT specialist was hired on or about December 18, 2020. Over the next 20 days, Mr. Cole counsel worked diligently to meet the Receiver's demands. Almost one month later, and after co-defendants made a motion to compel discovery to Magistrate Reinhart, (*see* DE 459, dated January 5, 2021), the Defendants finally received the first round of electronic production on January 11, 2021 at about 11:20 pm.

The unsupported claims of unauthorized access and the deconstruction of the so-called support for those claims, is set forth below.

THE LEGAL STANDARD

"The court should only find a party in contempt if the order is clear and unambiguous, proof of noncompliance is clear and convincing, and the respondent has not been reasonably diligent in attempting to comply." *Medi-Weightloss Franchising USA, LLC v. Medi-Weightloss Cline of Boca Raton, LLC*, 2012 WL 2505930, at *2 (M.D. Fla. May 24, 2012)("*Medi-Weightloss*"), *report and recommendation adopted*, 2012 WL 2505735 (M.D. Fla. June 28, 2012), *citing EZ Pay Services, Inc. v. E–Z Pay Services*, 390 B.R. 445 (M.D.Fla.2008); *see also BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 2002 WL 35651568, at *3 (S.D. Fla. Dec. 6, 2002) ("*BUC Int'l Corp.*"), *report and recommendation adopted*, 2003 WL 27387242 (S.D. Fla. Feb. 26, 2003), *quoting Powell v. Ward*, 643 F.2d 924, 931 (2d Cir.), *cert. denied*, 454 U.S. 832 (1981) ("[A] party should only be held in civil contempt for its failure to comply with a court order if: (1) the order is clear and unambiguous; (2) proof of noncompliance is clear and convincing; and (3) the

respondent has not been "reasonably diligent and energetic in attempting to accomplish what was ordered.").

"In order to establish a *prima facie* case of contempt, a petitioner must first prove by clear and convincing evidence that the respondent violated a prior court order." *BUC Int'l Corp.*, at *3, *quoting South Beach Suncare Inc. v. Sea & Ski Corp.*, 1999 WL 350458, at *5 (S.D. Fla. May 17, 1999); *see Freedom Med., Inc. v. Sewpersaud*, 2020 WL 6449312, at *3 (M.D. Fla. Nov. 3, 2020 "[I]n analyzing a respondent's diligence, courts "examine the defendant's actions and consider whether they are based on a good faith and reasonable interpretation of the court order." *BUC Int'l Corp.*, at *3, *quoting Schmitz v. St. Regis Paper Co.*, 758 F. Supp. 922, 927 (S.D.N.Y. 1991).

"Generally, conduct that evinces substantial but not complete compliance with a court's order may be excused in a contempt proceeding if it was made as part of a good-faith effort at compliance." *Melikhov v. Drab*, 2019 WL 4635548, at *3 (M.D. Fla. Sept. 24, 2019), *quoting Smith Barney, Inc. v. Hyland*, 969 F. Supp. 719, 723 (M.D.FL 1997). A "person who attempts with reasonable diligence to comply with a court order should not be held in contempt." *Id.*, *quoting Newman v. Graddick*, 740 F.2d 1513, 1525 (11th Cir. 1984). "Civil contempt 'should not be resorted to where there is *[a] fair ground of doubt* as to the wrongfulness of the defendant's conduct.'" *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801-2 (2019), *quoting California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618, 5 S.Ct. 618 (1885) (emphasis in original).

While the standard is "generally" objective, *Taggart v. Lorenzen*, 139 S. Ct. at 1802, civil contempt is a "severe remedy" and principles of "basic fairness requir[e] that those enjoined receive explicit notice" of "what conduct is outlawed" before being held in civil contempt, *Id.*, *quoting Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713 (1974) (*per curiam*); 11A C. Wright,

A. Miller, & M. Kane, Federal Practice and Procedure § 2960, pp. 430–431 (2013) (suggesting that civil contempt may be improper if a party's attempt at compliance was "reasonable").

POINT ONE

MR. COLE DID NOT VIOLATE THE RECEIVERSHIP ORDERS

The Receiver claims breach of the Order by Mr. Cole in three respects. The Receiver claims that, first, after downloading a subset of Par Funding electronic documents onto his personal laptop computer before the TRO, Mr. Cole copied the static information from his laptop onto a new G Suite in the name of a new company called KnewLogic and shared a link with defense counsel. (DE 260. at 11-12, DE 423 at 11). Second, the Receiver claims that, at the same time, Mr. Cole created a new account at a cloud-hosting site, Summit Hosting, and placed Par Funding and FSP's static QuickBooks database onto that site for the purpose of review with forensic accountants in order to provide an accurate overview of Par financial information to the Court. (DE 260 at 13, DE 423 at 12-13). Third, the Receiver says that he did not learn of these databases – KnewLogic and QuickBooks until counsel for Mr. Cole disclosed the Knewlogic G Suite on August 28, 2020, (DE 260 at 11-12; DE 260-9), and the Receiver allegedly learned of the QuickBooks database from interviews with FSP employees. (DE 260 at 13, DE 423 at 13 n. 7).

Mr. Cole has not violated the Receivership Orders. It is not disputed that prior to the TRO, corporate counsel for Par Funding advised Mr. Cole to create a backup data base for company financial documents to assist the attorneys to defend the case. Mr. Cole did so. Mr. Cole downloaded a subset of company data onto his laptop computer. He then transferred some data to KnewLogic, a Google hosting site he created, and he moved a static copy of the company QuickBooks to Summit Hosting. At the time he did this, he had received no notice from the Receiver, or communications from the Receiver not to engage in company business.

Thereafter, Mr. Cole never logged into the Par Google G-suite or the FSP Right Networks accounting server. Moreover, Mr. Cole did not access the Summit Hosting QuickBooks he set up. He did upload documents he created for the defense of the case on the KnewLogic G-Suite. Mr. Cole also created and used an email account on the KnewLogic suite of services.

Moreover, from the beginning of the case, Mr. Cole, the former CFO of Par Funding, acting in good faith, endeavored to provide assistance to the Receiver. On August 17, 2020, his counsel sent a 4-page email to the Receiver providing answers to the numerous questions in the Receiver's letter of August 10th regarding the operation of the business. This response included a list of all current bank and ACH accounts of CBSG and FSP and other detailed information. Further, on August 27, 2020, Mr. Cole met via Zoom for 2 hours with Messrs. Stumphauzer, Kolaya, Alfano and three consultants for DSI. Mr. Cole then made himself available to continue assisting DSI and subsequently spoke separately with Yale Bogen, a DSI consultant, to answer his questions regarding the FSP QuickBooks files. Mr. Cole has assisted the Receiver and continues to remain cooperative.

Mr. Cole's counsel negotiated with the Receiver in pursuit of document discovery and proposed cost saving measures to the Receiver. All proposals by counsel were refused. When in December 2020, the Receiver demanded access logs from Summit Hosting, Mr. Coles' counsel provided them via email. The logs showed just what Mr. Cole's counsel had stated—there was no access to the data.

Notwithstanding these facts, the Receiver continues to labor mightily to lay their production delay at the feet of Mr. Cole. In the most recent instance, the Receiver incorrectly claims that the access logs provided to the Receiver on January 11, 2021 show that, "Defendant Cole deleted 8,494 documents belonging to Par Funding on ***December 21, 2020***, including

thousands of daily ACH deposit transaction records, leases for Par Funding's office space; operating agreements for Par Funding, invoices and various IRS and tax related documents." (Receiver's Opposition to Defendant's Motion to Compel, DE 464 at 7 and 8). Prior to making this inaccurate claim, the Receiver should have consulted with his IT specialist. He would have learned that Google records as a "deletion" merely moving a document from one location to another. (*See* Declaration of Marc Hirschfeld, dated January 13, 2021, annexed as Ex. A).

Try as they might, the Receiver cannot escape using unsupported claims against Mr. Cole to justify a more than 5-month delay in production. Had they understood the documents and systems of FSP, which they did not, and followed this Court's direction not to further litigate the Defendant's Motion to Clarify when these issues were being rendered moot by approaching Rule 26 discovery, they would have saved all of the monies they are seeking now.

Wherefore, the Order to Show Cause for contempt as to Mr. Cole should be denied in all respects.

POINT TWO

LISA MCELHONE DID NOT COMMIT ANY BREACH OF THE FSP G-SUITE OR FSP RIGHT NEWORKS

Ms. McElhone was a founder of then-CBSG in 2011. The dba name of Par Funding was created in 2015. But by 2012, Ms. McElhone opened other businesses to which she devoted much of her professional time. She was not often at the offices of Par Funding or FSP, especially over the past five years.

In July 2012, Ms. McElhone opened a pro-health beauty salon, Lacquer Lounge, which offered nail and beauty services. This is a NRE—Non-Receivership Entity. She also opened LM Property Management in 2012. This is also a NRE. LM Property Management manages a number of commercial and residential properties including the office space occupied by FSP in

Philadelphia. Ms. McElhone's work for this LM Property Management includes all aspects of property management including payroll, leasing, maintenance, marketing, repairs and taxes. In 2015, she became a partner in another NRE business, Metro Physical Therapy, which provides physical therapy treatments. Ms. McElhone spent most of her workdays either at Lacquer Lounge or her home office. She manages the marketing, payroll, training, hiring and events for Lacquer Lounge.

For all of these NRE companies, she takes care of the property management, insurance, payroll and banking. For Par Funding, she is the liaison with banks for forms or verification of documents and manages the insurance on the Philadelphia offices. She is not involved in sales or accounting in Par Funding or FSP.

Ms. McElhone has never accessed the FSP Google G-Suite. She does not even have administrative access to the FSP Google G-Suite. She has never accessed the FSP Right Networks accounting server. Similarly, she has never accessed QuickBooks or accounting data for Par Funding on any site. She has never accessed QuickBooks or accounting data for her NRE companies. Ms. McElhone has never set up an offsite data storage platform nor directed anyone to do so.

Ms. McElhone does not have a Par Funding email address. One was generated for her (and for every other officer and employee) in 2012, but Ms. McElhone never used it. Instead, she always used a personal email address which she acquired in 2010. Ms. McElhone has no knowledge of how, or if, her Par Funding email address was used. It certainly has not been used "on her behalf."[8]

[8] Mr. Kolaya responded to this evidence with the totally baseless claim that "if Lisa McElhome was not accessing her own Par Funding G Suite account, then it appears that Jeremiah Luddeni, or whoever else she provided her login information to, was accessing it on her behalf after the entry of the Receivership Order." (Email, T. Kolaya to A. Futerfas, August 28, 2020 at 9:47 a.m.). There is not even the pretense of a factual basis for that claim.

Rather, as the Receiver was advised, her Par Funding email address was taken over in September 2019 by Jeremiah Luddeni, a systems network engineer for FSP, because she was not using it. (*See* Ex. D, Email from A. Futerfas to T. Kolaya, August 28, 2020 at 1:03 P.M. attaching email from J. Luddeni to L. McElhone, September 19, 2019).

On July 28, 2020, FBI agents raided Ms. McElhone's home in Philadelphia. The agents seized every electronic device they could find—laptops, desktops, iPads and smartphones. Ms. McElhone needed to acquire new devices to continue running the NREs so, within a day or two, Mr. Luddeni, a network systems engineer for FSP, set up three new laptops in Ms. McElhone's home as well as new phones. It was anticipated that the laptops would be available for anyone in the house doing work for the 25 or more NREs, as well as for FSP and Par Funding. Since acquiring these new devices, Ms. McElhone has continued using her personal email, logging on to bank accounts, and otherwise engaging in the workflow of her NRE businesses.

With a broad bush and a heavy dose of innuendo, the Receiver has tried to paint Ms. McElhone as presumptively personally responsible for every act of every former employee after the Receivership began. On a motion for contempt, the Receiver has to actually connect the dots—and have dots in the first place. Here, the receiver has not alleged that Ms. McElhone accessed a single Receivership document. Nor has the Receiver shown that she directed or coordinated any of the conduct that the Receiver alleges against other individuals. With absolutely no proof that Ms. McElhone did anything wrong, the Receiver's motion for contempt fails.

POINT THREE

OTHER INDIVIDUALS HAVE NOT COMMITTED ANY UNAUTHORIZED ACCESS OF PAR, NOR ARE THEIR ACTS ATTRIBUTABLE TO MR. COLE OR MS. MCELHONE

The Receiver claims that Ms. McElhone and Mr. Cole violated the terms of the Receivership Orders by "using Par Funding employees to access and download Receivership Property." (DE 423 at 7).[9] The motion for contempt expressly incorporates DE 155 and DE 260 "which more fully set forth the facts relating to defendants' violations of the Order and Amended Order." (DE 423 at n. 2). As we show herein, the Receiver's claims are akin to throwing lots of baseless allegations against the wall to see if any stick. None do. This entire exercise—lasting months, costing thousands, and used as a basis to delay discovery for five months—was just a huge waste of time.

A. The Initial Order did not Prohibit Access to the Par Funding G-Suite

The alleged downloading of electronic files by other FSP employees did not violate the Initial Order. As discussed, *supra* at pp. 3-4, the Court declined to adopt the SEC's proposed order, DE 4-2. Instead of the broad powers for the Receivership requested in the Proposed Order, the Court issued the narrower Initial Order, DE 36. That Order does not clearly authorize the Receiver to take custody of copies of electronic data, nor does it expressly direct any individual to turn over copies of electronic information that the individual already possessed before the Receivership. Accordingly, accessing Par Funding documents was not clearly proscribed by the Initial Order.

[9] These and other allegations of unauthorized access were previously raised by the Receiver and were addressed by counsel for Ms. McElhone. (*See, e.g.*, Email T. Kolaya to A. Futerfas, August 26, 2020 at 11:06 p.m.; DE 220-2 at 2, Email from A. Futerfas to T. Kolaya, August 27, 2020 at 10:04 a.m.; and DE 220-2 at 1, Email A. Futerfas to T. Kolaya, August 27, 2020 at 10:42 a..m.).

B. There was No Notice or Direction by the Receiver

As discussed at length, *see supra* at pp.4-8, the Receiver did not send notice of the Order to the FSP employees nor did he direct the company to stop all work.

C. The Receiver had no Authority over the NREs

As discussed above, the Receiver had no authority to stop or interfere with the running of the NRE businesses. Nor did the Receiver understand that the books and records of these businesses were contained in databases managed by FSP.

D. There Was No Unauthorized Access by Aida Lau

i. Automatic Download

Aida Lau began working for FSP five years ago as an accounting manager in the accounting department. She and about 13 other accountants provided accounting and related services to Par Funding and the 25 or so NREs. Before the TRO, Ms. Lau also did bookkeeping for Par Funding as well the NREs. After the FBI raid, she continued to work remotely on her personal laptop to do the bookkeeping and banking activity for the NREs. She used this laptop in Ms. McElhone's home on occasion. McElhone did not instruct Ms. Lau to access any documents on the G-Suite relating to Par Funding. Ms. McElhone has never asked Ms. Lau to log onto the Par G-Suite or to the FSP Right Networks.

On July 29 or 30, 2020, Ms. Lau was interviewed by the Receiver by phone, with a Fox Rothschild attorney present, to discuss "various operational issues." (DE 155 at 3). The Receiver never bothered to advise Ms. Lau of the Initial Order. On August 17, 2020, Ms. Lau was interviewed again remotely and only then was served with a copy of DE 159. (*See* DE 299-1, Campos Decl. at ¶ 17; *see* August 17, 2020 Conf at T. 8, acknowledging notice given that day).

On August 19, 2020, she provided her laptop to the Receiver for forensic imaging. (*See* DE 180-7).

The Receiver has relentlessly claimed that Ms. Lau's downloading of thousands of files onto her laptop computer in the days after the raid was "initiated intentionally" as part of some nefarious activity imputed to Defendants. (DE 260 at 7-8; *see* DE 423 at 8-9; DE 155 at 5; DE 180-6-7). The Receiver also alleges that Ms. Lau downloaded hundreds of documents on July 29, 2020, from the same IP address as Ms. McElhone. (DE 260 at 9-10, citing DE 260-5). The Defendants have previously addressed and thoroughly rebutted these claims. (*See* DE 299 at 6-10; DE 299-1).

In support of his claim that Ms. Lau downloaded many files intentionally, the Receiver offers a comparison of two spreadsheets from the G-Suite access logs. (DE 260-1 and DE 260-2). These documents, so claims the Receiver, show evidence of Ms. Lau's "unauthorized access to the G-Suite in connection with her assistance to the Defendants." (DE 260 at 7 n. 4). From this comparison, the Receiver concludes that Ms. Lau is lying[10] when she claims that the large download of documents was not intentional. (DE 260 at 8 n. 5; see DE 423 at 8 n. 4; "there was no mass downloads. . . rather Lau intentionally downloaded the data").

The Receiver has a serious tech problem. The activity observed in the logs is entirely consistent with Ms. Lau's repeated assertions because the downloading may well have occurred automatically when she logged onto the G-Suite from her laptop. (Declaration of Marc Hirschfeld, dated January 14, 2021, "Hirschfeld Decl.," at ¶¶ 21, 24-26). Moreover, since the Par G-Suite

[10] *See also* DE 180 at 7, The Receiver's Interim Status Report, August 20, 2020 at 7: "The IT consultant has concluded that Ms. Lau's statement was false in that she manually downloaded the more than 95,000 documents, and it was not an inadvertent, automatic synchronization as she claimed."

contained files from NREs, even if Ms. Lau only intended to access NRE documents, by connecting the computer to the internet and opening the G-Suite with her credentials, she would have triggered the synchronization observed in DE 260-1. (Hirschfeld Decl. at ¶ 26).

Accordingly, the exhibits—DE 260-1 and DE 260-2—simply do not show whether the downloads were deliberate as opposed to automatically synchronized. (Cf. DE 260 at 8 and n. 4). As set forth in the Hirschfeld Decl. ¶ 24, one can reproduce the same result, i.e., each individual file appearing as "downloaded," as the Receiver offers as proof of manual downloading, by synchronizing a dummy account to a G-Suite. Had the Receiver's "expert" performed the same test, he would have observed that Google's synchronization software will produce the same download log.

To actually determine whether downloading was intentional, and not automatically synchronized, one would have to examine the settings on Ms. Lau's laptop. Hirschfeld Decl. at ¶ 27. Our expert has not had that opportunity. *Id.* But the Receiver's expert has. (*See* DE 180-7). Notably, the Receiver never claimed that the laptop settings were set to manually download.

ii. Number of Files Downloaded

There are yet more errors in the Receiver's claims. The purportedly "massive" amount of Par Funding files grossly overstates the number of documents actually downloaded by as much as 500 percent. Hirschfeld Decl. at ¶¶ 22-23. And an enormous percentage of the files do not appear to be Par Funding files. Although the file names are heavily redacted, anyone can readily observe that only a small percentage of the G-Suite files downloaded appear to be "CBSG" files. (*See* DE 260-1). This is hardly surprising since the G-Suite contains the files of many NRE's.[11]

[11] As the Receiver acknowledged in support of his motion on August 15, 2020 to enjoin access to the Par Funding G Suite, "CBSG and Full Spectrum have set up their G-Suite electronic data platform in a way that it is consolidated with several other companies associated with the

iii. Same IP Address Claim

The Receiver also alleges that Ms. Lau used the same IP address as Ms. McElhone when she printed two checks on August 12, 2020. (DE 260 at 9-10, and DE 260-5) We note that the Receiver's proof, DE 260-5, is not a computer-generated document but appears to be a spreadsheet created by the Receiver. In any event, the mere fact that Ms. Lau accessed the G-Suite to print checks while at Ms. McElhone's home is entirely consistent with the work that Ms. Lau was authorized to do. (*See* August 17, 2020 Conf. T. 8, Ms. Lau accessed the G-Suite for banking activity unrelated to the receivership).

iv. The Lau Declarations

The Receiver also alleges breach with respect to two declarations that Ms. Lau prepared—dated August 7, 2020 (DE 106-1) and August 9, 2020 (DE148-3). (DE 260 at 8; DE 423 at 9). Ms. McElhone did not direct or coordinate Ms. Lau's preparation of those declarations. Rather, Ms. Lau prepared those filings under the supervision, and at the direction of, Fox Rothschild in the firm's then-role as corporate counsel for Par Funding. Both declarations were central to the defense in rebutting allegations set forth in filings by the Receiver.

We certainly understand why the Receiver and the SEC would want to strike these Declarations from the record of this case since, on the merits, they expose serious fundamental inaccuracies about Par Funding's financial condition that the SEC and the Receiver have advanced to the detriment of Par Funding's owners and investors.[12] We note that one of the attachments to

---

individual Defendants. For example, the Receiver has learned that Aida Lau has six (6) total email accounts with different companies and entities that use this consolidated G-Suite electronic data platform, four of which are not Receivership Entities." (DE 155 at 6)(Emphasis added)

[12] The Lau Declaration, dated August 7, 2020, was an exhibit to Defendants' joint response to the Receiver's motion to engage an entirely new firm to run CBSG and motion to rehire CBSG's 70 employees. (DE 106, dated August 7. 2020) That Declaration responded to various inaccurate

the Lau Declaration, August 7, 2020, is a financial record that is distributed monthly to Par Funding's investors. This is an example of a monthly Key Performance Indicators (KPI) Report that Par Funding sent to about 40 investors every single month. (*See* DE 106-1 at 6: spreadsheet entitled "CBSG Funding Analysis," 1/1/2013 to 6/30/2020). Documents that are routinely publicly distributed to investors can hardly be deemed exclusive Receivership property. We do note that the transparency historically given to Par Funding investors through these monthly KPI Reports and an open-door policy, disappeared when the Receiver took over. All efforts to obtain transparency into the Receiver's activities and disposition of assets have been rebuffed.

v. Two Files

Finally, the Receiver identifies two files—Bank Activity Log-01 and Bank Activity Log-02—purportedly accessed by Aida Lau from the Knewlogic database on August 18, 2020 and August 25, 2020—as evidence that Defendants, and their agents, accessed copies of accounting and financial records belonging to Par. (*See* DE 423 at 11, citing DE 260-11 at 13). There is absolutely no basis to conclude, and none is provided, that these are banking records of Par

---

claims, including the Receiver's baseless assertion that Ms. Lau had personally told him "that Par has approximately $500 million in 'non-performing' agreements. (DE 106 at 4) Rather, Ms. Lau rebutted this claim with records of CBSG, attached to her Declaration as Exhibits A-E. (Id. at 4) In addition, she rebutted the equally careless claim that CBSG had only $2.5 million cash on hand, when a review of the various bank and ACH accounts showed a balance 1,000% larger – i.e. $25 million. (*Id*. at 5) The second Lau Declaration, dated August 14, 2020, was exhibit Q to Defendants' joint opposition to the preliminary injunction. Exhibit Q rebutted allegations made by the SEC's expert, Melissa Davis about the consulting fees paid to Ms. McElhone and Mr. Cole. (*See* DE 148-19) It showed that these fees were not paid from investor proceeds as Ms. Davis claimed, but rather, from operational income, i.e., the enormous revenue generated from the merchant cash advance business that dwarfed amounts paid as consulting fees. None of Ms. Lau's assertions have been rebutted by the SEC or the receiver. (*Id.*) Instead, the SEC moved orally to strike the Lau Declarations as based on CBSG records that Ms. Lau was purportedly barred from accessing. (August 17, 2020 Conf. T. 26-27; August 21, 2020 Conf. T. 50)

Funding as opposed to any of the NREs that Ms. Lau may have accessed as part of her continued ongoing bookkeeping work.

E. There was No Unauthorized Access by James LaForte

The Receiver alleges that James LaForte, brother of defendant Joseph LaForte, sent emails on August 13, 2020 to "an individual at a competing merchant cash advance company" with 3 attachments (DE 260 at 9; DE 423 at 9, *see* DE 260-4) The attachments to the three emails sent from an email address of James LaForte are: audited financials for 2017; Alan Candel's publicly filed motion to intervene in this case (*see* DE 128); and an Excel document entitled "CBSG Credit Contacts." (DE 260-4.) These emails, purportedly sent by James LaForte on August 13, 2020 between 10:00 a.m. and 11:00 a.m., occurred before the entry of the Amended Order filed later that same day. (DE 141). Individuals were not prevented from using their office emails at that time. In any event, there is no indication that any of these documents were downloaded from the G-Suite or even from a Par Funding source. One of the documents was clearly not exclusively a Receivership document because it was publicly filed in this case. (*See* DE 128). There was a heavily and carefully redacted investor list filed on August 7, 2020 by the defense (*see* DE 106-1 at page 10), but that document pales in comparison to the document filed by the Receiver and DSI on August 31, 2020.[13]

F. No Unauthorized Access by an Unidentified Individual

The Receiver also claims that one employee "not only downloaded information, but also edited and changed that information, including a spreadsheet titled 'Leads Consolidated Data

[13] As we previously advised the Court, on August 31, 2020 the Receiver publicly filed a comprehensive creditor spreadsheet as Exhibit 2 to the DSI report accompanying its interim status report. The document disclosed names, addresses, account balances and the last four digits of bank accounts. (DE 214-1) This disclosure led to a hack of the bank account of Kingdom – a Par Funding merchant - and the theft of hundreds of thousands of dollars.

Sheet.'" (DE 260 at 8-9, DE 423 at 10, *see* DE 260-3). There is no claim that Ms. McElhone knows anything about this alleged activity and is certainly not responsible for it. But since the complained-of conduct occurred before August 13, 2020, it would not even constitute a breach for the unidentified individual to have accessed the G-Suite. Moreover, documents on the G-Suite platform remain available on the G-Suite even if "edited." *See* Hirschfeld Decl. at ¶ 30.

G. No Unauthorized Access from a Shared IP Address

The Receiver alleges that unauthorized access of Par Funding data occurred by individuals from Ms. McElhone's home. (DE 260 at 9-11). Technologically, individuals in Ms. McElhone's home using their own device on the available internet connection would trigger the same IP address. Hirschfeld Decl. at ¶ 31. That does not mean Ms. McElhone conducted or coordinated their activity and the Receiver posits no evidence that she did so. None of the entries appearing in the Receiver's offer of proof (DE 260-5) constitutes a breach by anyone, least of all Ms. McElhone.

i. No Violation by Jeremiah Luddeni

The Receiver alleges that Jeremiah Luddeni accessed the G-Suite without permission from Ms. McElhone's IP address on July 30, 2020. (DE 260 at 9-10, DE 432 at 9). This claim is just silly. Mr. Luddeni was still working as a network systems engineer for Par Funding who continued to work remotely, assisting other employees, until he was formally notified of his termination on August 20, 2020. (DE 299-2, Clemons Decl. at ¶ 10). As noted, he assisted in setting up computers for Ms. McElhone in her home on or about July 30, 2020, so she could continue conducting non-receivership business.

ii. No Violation by Jamie McElhone

Lastly, the Receiver claims that Jamie McElhone accessed a G-Suite file from Ms. McElhome's home based on a single email sent from Jamie@parfunding.com on August 6, 2020.

(See DE 260-5). As the Receiver was previously advised, Lisa McElhone has no knowledge of this email—who sent it or why. (DE 220-2). The Receiver was advised on August 28, 2020 that defense counsel had "verified that neither Lisa McElhone nor Jamie McElhone accessed the Par/CBSG G-Suite to obtain information after the Receiver took over the Par offices on or about July 28, 2020." (Email A. Futerfas to T. Kolaya, August 28, 2020 at 1:03 p.m.). And there is no proof to the contrary. Aside from the email address, there is no reason to believe that Jamie McElhone ever had access to the G-Suite.

As we previously advised the Receiver, former employees continued to access the database of Par Funding by checking their emails to determine whether merchants were contacting them to address questions about their accounts. The Receiver was previously advised that Jamie McElhone did not respond to such requests but took screen shots of the emails to preserve them and sent these to counsel on August 27, 2020, who then offered to produce these emails to the Receiver. (DE 299 at 9 n. 4, citing DE 220-2 at 2).

WHEREFORE, for the foregoing reasons the Receiver's motion for contempt should be denied in all respects.

Dated: January 13, 2021

Respectfully submitted,

Bettina Schein, Esq.
Attorney for Joseph Cole Barleta
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 880-9417
bschein@bettinascheinlaw.com

Bettina Schein
BETTINA SCHEIN
Admitted Pro Hac Vice

Andre G. Raikhelson, LLC
301 Yamato Road, Suite 1240
Boca Raton, FL 33431
(954) 895-5566
arlaw@raikhelsonlaw.com

Andre G. Raikhelson
Andre G. Raikhelson Esq.
Bar Number: 123657

Law Offices of Alan S. Futerfas
Attorneys for Lisa McElhone
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400
asfuterfas@futerfaslaw.com

Alan S. Futerfas
ALAN S. FUTERFAS
Admitted Pro Hac Vice

GRAYROBINSON, P.A.
Attorneys for Lisa McElhone
Joel Hirschhorn, Esq.
333 S.E. 2d Avenue, Suite 3200
Miami, Florida 33131
(305) 416-6880
joel.hirschhorn@gray-robinson.com

Joel Hirschhorn
JOEL HIRSCHHORN
Florida Bar #104573

EXHIBIT A

UNITED STATES DISTRICT COURT
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.

DECLARATION OF MENACHEM MARC HIRSCHFELD

I, MENACHEM MARC HIRSCHFELD, state the following:

1. I am over the age of 18 and otherwise competent to testify. I make the following statements based on personal knowledge.

2. I am the president of Precision Legal Services.

3. I am an attorney admitted to practice in the State of Maryland and the District of Columbia.

4. I have been appointed by Federal and State courts to forensically collect and analyze adverse parties' computer systems in the following matters:

- *DC Trails v. Rich 8:17-CV-02545 (District of Md.).*
- *Matijkiw v. Strauss*, 2008 CA 4996 (DC Superior Court).
- *Angels of Mercy v. Virat,* Case No. 347041-V (Montgomery County Circuit Court).
- *CTS Capital Advisors, LLC v. Lotharius, et al.*, no 336376 (Montgomery County Circuit Court).

- *Elliot R. Goldstein, MD & Joel R. Schulman, MD, PA v Precision Imaging,* Case No. 346691-v (Montgomery County Circuit Court).
- *RITANI, LLC v. AGHJAYAN,* NO. 11 CIV. 8928 (SDNY).
- *Devine v. Regency*, 8:13-cv-00220 (District of Md.).
- *Housman v. Housman,* 2012 DRB 2187 (DC Superior Court)
- *Fernandez v. Soto*, 201568/12 (Supreme Court of NY Brooklyn)

5. I have submitted expert reports in the following Federal Court matters regarding spoliation of evidence:

- *RITANI, LLC v. AGHJAYAN*, NO. 11 CIV. 8928 (SDNY).
- *Devine v. Regency*, 8:13-cv-00220 (District of Md).

6. I have testified regarding spoliation of evidence in *Matijkiw v. Strauss*, 2008 CA 4996 (DC Superior Court).

7. I have testified regarding chain of custody and authenticity of data collected in *Housman v. Housman,* 2012 DRB 2187 (DC Superior Court).

8. I have presented at numerous conferences on e-discovery matters including:

- "Computer Forensics in Federal Litigation" March 2017 Federal Bar Association
- "Electronically Stored Information (ESI) – What Lawyers Need to Know" MSBA Litigation Section September 2016 with Judge Grimm
- PRACTICAL GUIDE TO E DISCOVERY, Bankruptcy Bar Association for the District of Maryland, May 2015 (with Judge Faciola)
- "Review of Proposed Changes to the Federal Rules of Civil Procedure" Masters Conference, Oct. 2014 (with Judge Facciola)
- "Tips and Tricks for the Court to Effectively Resolve E-Discovery and Computer Forensic Issues," 5th Judicial Circuit Meeting Seminar, Maryland, June 2014
- "Offensive and Defensive E-discovery Strategy" (with Judge Grimm), Montgomery County Bar Association, May 2013

- "Social Media and Family Law," Montgomery County Bar Association, November 2012
- "Commercial Litigation and Social Media," Montgomery County Bar Association, Commercial Litigation, September 2012
- "Commercial Litigation and Social Media," Baltimore City Bar Association, April 2012

9. I have written articles on E-discovery and computer forensics in the following publications:

- "Social Media Evidence," Daily Business Review, June 2012
- "Clouding E-discovery," Maryland Litigator, Maryland State Bar Association, Litigation Subsection, January/February 2012

10. I am a District of Columbia and Maryland licensed Attorney, and E-discovery and Computer Forensics Expert. I have been involved in resolving computer forensics and E-discovery disputes for 12 years.

The Knew Logic G-Suite

11. I became involved in this matter for the first time on December 18th 2020, when Defense counsel provided my email address to the Receiver.

12. I spoke with the Receiver on December 20th to understand the process that he proposed for removing materials from the Knew Logic G-Suite account.

13. The Receiver proposed that I, acting as a neutral, third party vendor, provide the Receiver with a spreadsheet listing all files stored on the Knew Logic G-Suite. Then, Mr. Cole and his counsel would review the same spreadsheet for files that were protected by the attorney-client privilege. Lastly, I would then produce access logs for the non-attorney-client privileged documents.

14. A forensic analysis in any discipline requires the forensic analyst to provide a documented process that can be repeated if performed by another analyst. For this reason, I asked the Receiver's expert for a defined process that I should follow in creating a file listing. The Receiver's expert asked me to create the following log files from the G-suite.

> Reports > Audit Log > Drive: Filter for Last 6 months | Download All Columns as CSV[1]
>
> Reports > Audit Log > Admin: Filter for Last 6 Months | Download All Columns as CSV
>
> Reports > Audit Log > Login: Filter for Last 6 months | Download All Columns as CSV
>
> Reports > Apps Reports > Drive | Download CSV for each (External Shares, Internal Shares, Files Added)
>
> Reports > User Reports > Apps Usage | Default filters are fine here, download all columns to CSV

15. After reviewing the log files I had created from the G-Suite, I noticed that none of them was a complete file listing. In addition, the log files contained an audit log of privileged information that the Receiver had specifically committed to exclude.

16. I proposed that I download the G-Suite files myself by logging into each of the user's drives and utilizing forensic software to create a file listing. The Receiver agreed to my proposal. I provided the file listing to the parties. Next, the parties were supposed to inform me which files were privileged so I could provide an audit log of the remaining files. As of Monday, January 11, 2021, the parties were still discussing which files were attorney-client privileged. However, I managed to provide all of the log files for all files that were not attorney-client privileged by working through the day into the night.

---

[1] A comma separated values file, or "CSV," contains data that is separated by commas. The file can be opened in a program such Microsoft Excel.

The Receiver's Motion of January 11, 2020

17. I was surprised to learn that the Receiver now believes that I was at fault for the delay in the process that they had defined. As they stated in DE 464, it was not until January 11, 2021 at 10:47 a.m., that I ("Defendant Cole's eDiscovery consultant") finally provided the Receiver with various access and audit logs for the information contained on the Knew Logic G Suite.

18. Additionally, the Receiver claims in DE 464 that on December 21, 2020 over 30,000 files were "deleted" according to the log. It is clear that the files were not deleted, as I provided a document listing of the same files on January 5, 2021, two weeks later. The reason they are marked as "deleted" is because Joe Cole moved them to a folder to make the process of identifying attorney-client documents efficient. The audit log tracks the move as a "delete," similar to an accounting procedure of debiting one account before crediting another account. Because the files are readily seen in the new folder, Google does not need to document the creation of the folder or the move of those files into the new folder.

19. The Receiver defined the process of identifying documents that were attorney client privilege. Joe Cole and his counsel performed the request in an efficient manner by moving the folders. The Receiver analyzed the resultant log incorrectly.

Responses to the Contempt and Other Motions

20. I have reviewed the forensic analysis claims in several of the other filings and, in so doing, have noticed a similar pattern. The Receiver provides ill-defined contradictory processes for performing electronic data tasks and demonstrates fundamental misunderstandings of the information provided in the audit logs.

21. For example, in the Receiver's current motion for contempt, DE 423, the Receiver appears to rely heavily on a layperson's analysis of several Par Funding G-Suite Google audit logs[2] to improperly conclude that there is "undeniable forensic evidence of these breaches and violations of the Court's Orders."(DE 260 at 2) Noticeably absent is an affidavit from the Receiver's expert explaining the significance of a particular piece of "evidence" from the logs.

22. The Receiver does not even provide an accurate number of the files it claims were accessed and downloaded. The Receiver states at one point that Aida Lau accessed and downloaded more than 95,000 documents (DE 180 at 7); then the Receiver states that 100,000 documents were downloaded from the Par Funding G Suite (DE 260 at 7); then the Receiver states that more than 139,000 documents were downloaded (*see* DE 260 at 17).

23. I have reviewed the exhibit purporting to show Ms. Lau's downloads (DE 260-1) by downloading the pdf exhibit and converting it into excel. Next, I filtered it for unique records. It appears that there were only 16,796 unique records. My analysis necessarily is incomplete because the Receiver inexplicably censored the last characters of the filenames that appear to be duplicates. Here are several examples.

5778	0167-nw****	aida@parfunding.com	Aug 3, 2020, 5:22:35 PM EDT	Download	PDF	173.49.6.191
24485	0167-nw****	aida@parfunding.com	Aug 3, 2020, 5:22:35 PM EDT	Download	PDF	173.49.6.191
86320	0167-nw****	aida@parfunding.com	Jul 31, 2020, 3:09:26 PM EDT	Download	PDF	173.49.6.191
92416	0167-nw****	aida@parfunding.com	Jul 31, 2020, 3:09:26 PM EDT	Download	PDF	173.49.6.191
138781	0167-nw****	aida@parfunding.com	Jul 31, 2020, 1:14:59 PM EDT	Download	PDF	173.49.6.191
42013	0181_00****	aida@parfunding.com	Aug 3, 2020, 4:31:47 PM EDT	Download	PDF	173.49.6.191
111068	0181_00****	aida@parfunding.com	Jul 31, 2020, 3:09:26 PM EDT	Download	PDF	173.49.6.191
43474	0182_00****	aida@parfunding.com	Aug 3, 2020, 4:31:47 PM EDT	Download	PDF	173.49.6.191
81683	0182_00****	aida@parfunding.com	Aug 3, 2020, 10:07:45 AM EDT	Download	PDF	173.49.6.191
100405	0186_00****	aida@parfunding.com	Jul 31, 2020, 3:09:26 PM EDT	Download	PDF	173.49.6.191
14952	0190_00****	aida@parfunding.com	Aug 3, 2020, 5:22:35 PM EDT	Download	PDF	173.49.6.191
31560	0190_00****	aida@parfunding.com	Aug 3, 2020, 4:31:47 PM EDT	Download	PDF	173.49.6.191
70703	0190_00****	aida@parfunding.com	Aug 3, 2020, 10:07:45 AM EDT	Download	PDF	173.49.6.191
123310	0190_00****	aida@parfunding.com	Jul 31, 2020, 1:14:59 PM EDT	Download	PDF	173.49.6.191

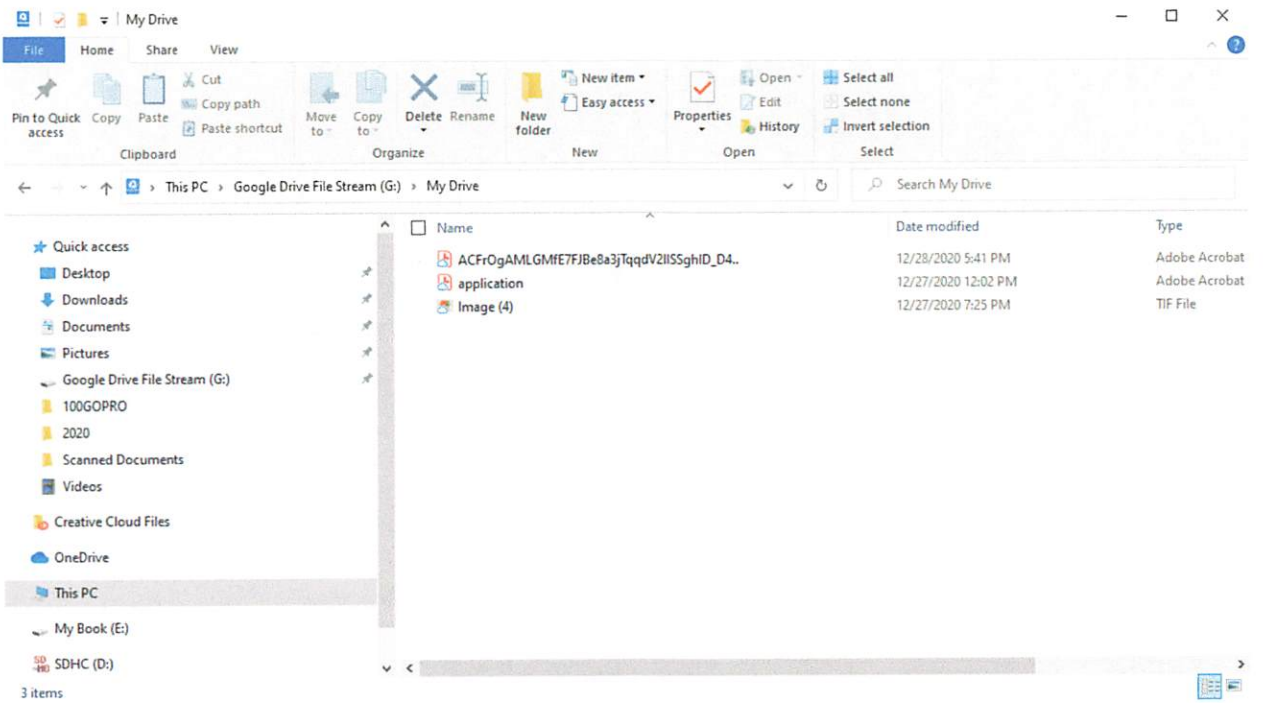
[2] As distinct from the Knew Logic G-Suite.

A full analysis, using the original audit log without censorship, would be conclusive regarding the amount of unique files that were downloaded. Naturally, I do not have access to this information.

24. In DE 180, the Receiver states "Following Ms. Lau's interview on August 17, the Receiver's IT consultant analyzed Ms. Lau's activity in the Par Funding and Full Spectrum G Suite database. The IT consultant has concluded that Ms. Lau's statement was false in that she manually downloaded the more than 95,000 documents, and **it was not an inadvertent, automatic synchronization as she claimed**." (Emphasis added) The Receiver appears to be relying on the Google audit log which says "download" next to each file to conclude that Ms. Lau manually downloaded 95,000 files, rather than the download occurring due to a synchronization as stated by Ms. Lau. I have run a synchronization on a dummy G-Suite account by logging into Google Drive. The audit log creates the same "download" record for my synchronization as a manual download for each file in the drive. I understand that the Receiver's expert made a copy of Ms. Lau's laptop, to which I have not been provided access. An analysis of the laptop should provide more conclusive information about whether there was an automatic synchronization.

25. It is important to understand how easy it is for an ordinary user may inadvertently show what looks to be an improper access. For example, merely logging into the Google drive is as simple and accidental as clicking on a folder on a person's desktop. See the image below of

the Google drive being accessed by an automatic synchronization.



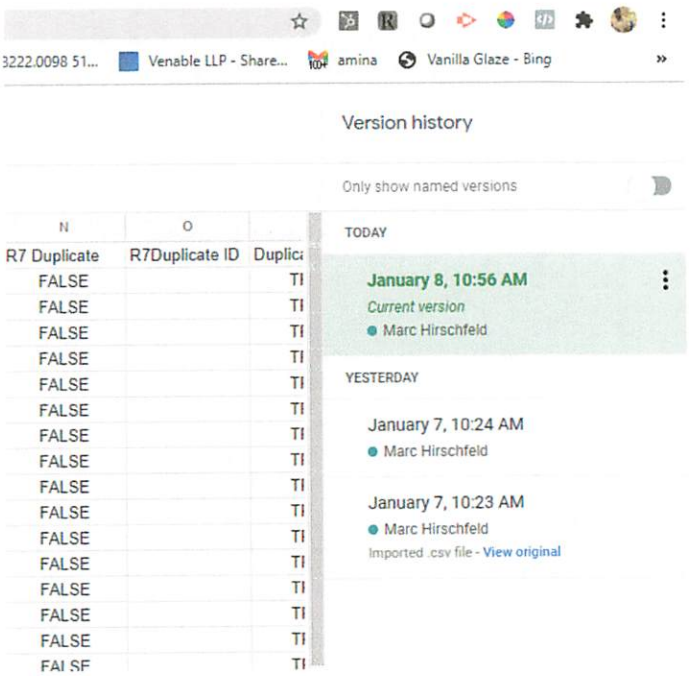
26. If a laptop user had not logged into a G-Suite, or if the computer was not connected to the internet for a long period of time, the G-suite synch will automatically download all new files on the drive when connecting to the internet or logging into the G-Suite from the desktop application.

27. An analysis of Ms. Lau's laptop would be a better source than the Google Audit Logs to determine whether the files were manually downloaded in bulk, or as a part of the Google drive desktop application synchronization. It is curious why the Reciever's expert did not analyze the laptop or provide an affidavit explaining their findings comprehensively. I was not provided access to the laptop to make my own full determination.

28. This could all have been avoided had the Receiver utilized best practices by shutting down access to the G-Suite and taking administrative access immediately from the IT staff, instead of attempting to obtain the username and password from Google.

29. In my experience, it is common practice for companies to shut off electronic access to data by employees it plans to terminate by obtaining the passwords from the IT department. This is far more preferable than contacting Google to obtain this information. It is also well known in my industry that Google does not provide usernames and passwords that can be obtained by court order from the parties to a litigation. In my experience, the only time Google provides access to an account is if law enforcement is able to make a showing of imminent physical harm.

30. The Receiver also concluded that a spreadsheet titled "Leads- Consolidated Data Sheet" was changed based on a simple reading of a line in the Google audit log stating "edit". The Receiver failed to provide information regarding the actual changes which can be viewed in the Drive directly. By default, Google Drive has an audit function built into every document. This allows an administrator to download and compare previous versions to the current document. See the image below.



31. The Receiver also alleges that unauthorized access of Par Funding data occurred from Ms. McElhone's home. (DE 260 at 9-11). It is important to note that each individual device connected to the internet from a particular location would register the same IP address. This means that it is possible that any other person, aside from Ms. McElhone, opened the G-Suite files or downloaded files on thier own machine independently from Ms. McElhone's actions on her or another machine.

32. At DE 260 page 13, the Receiver states that "Mr. Cole created a new account at Summit Hosting, a cloud-based hosting software for QuickBooks. He then proceeded to copy the entire QuickBooks database for Par Funding and Full Spectrum—containing 33,679 files and 3.5 gigabytes of data—onto that new account." This is incorrect. Only a few QuickBooks files were uploaded to Summit Hosting. The log file that the Reciever attaches, Exhibit 10, with over 30,000 records, appears to be a copy of the Google Drive, not the Summitt Hosting site.

Nassau County, New York
January 13, 2021

Menachem Marc Hirschfeld

EXHIBIT B

From: Timothy Kolaya <tkolaya@sfslaw.com>
Sent: Tuesday, August 25, 2020 9:50 AM
To: Daniel Fridman <dfridman@ffslawfirm.com>; Ryan Stumphauzer <rstumphauzer@sfslaw.com>; Gaetan J. Alfano <GJA@Pietragallo.com>
Subject: RE: Par Funding E-mail Scam

That would be great; thanks.

Image removed by sender.

TIMOTHY A. KOLAYA
PARTNER

DIRECT	305. 614. 1405	ONE BISCAYNE TOWER
MAIN	305. 614. 1400	2 SOUTH BISCAYNE BOULEVARD
MOBILE	305. 321. 3055	SUITE 1600
E-MAIL	TKOLAYA@SFSLAW.COM	MIAMI, FL 33131
WEB	WWW.SFSLAW.COM	

From: Daniel Fridman <dfridman@ffslawfirm.com>
Sent: Tuesday, August 25, 2020 9:26 AM
To: Timothy Kolaya <tkolaya@sfslaw.com>; Ryan Stumphauzer <rstumphauzer@sfslaw.com>; Gaetan J. Alfano <GJA@Pietragallo.com>
Subject: RE: Par Funding E-mail Scam

Yes, I am available at 10:30. Would you like me to send a dial-in?

Dan

From: Timothy Kolaya <tkolaya@sfslaw.com>
Sent: Tuesday, August 25, 2020 9:15 AM
To: Daniel Fridman <dfridman@ffslawfirm.com>; Ryan Stumphauzer <rstumphauzer@sfslaw.com>; Gaetan J. Alfano <GJA@Pietragallo.com>
Subject: RE: Par Funding E-mail Scam

Dan:

Thank you for bringing this to our attention. We are working to try to get to the source of this fake communication.

Are you available at 10:30? We want to circle back with you on the proposal about Joe Cole.

Regards,

Tim

Image removed by sender.

TIMOTHY A. KOLAYA
PARTNER

DIRECT	**305. 614. 1405**	ONE BISCAYNE TOWER
MAIN	**305. 614. 1400**	2 SOUTH BISCAYNE BOULEVARD
MOBILE	**305. 321. 3055**	SUITE 1600
E-MAIL	TKOLAYA@SFSLAW.COM	MIAMI, FL 33131
WEB	WWW.SFSLAW.COM	

From: Daniel Fridman <dfridman@ffslawfirm.com>
Sent: Monday, August 24, 2020 5:56 PM
To: Ryan Stumphauzer <rstumphauzer@sfslaw.com>; Timothy Kolaya <tkolaya@sfslaw.com>; Gaetan J. Alfano <GJA@Pietragallo.com>
Subject: Par Funding E-mail Scam

All:

I want to give you the heads up about a scam being run by a phony e-mail account posing as Par Funding. Take a look at Alan's explanation below and the e-mail chain involving the scammer. Also, please let me know when we can catch up about Mr. Cole.

From Alan: I have just been advised that a phony account called Tori@ParFundnig is poaching Par's merchants. This is not the Tori who used to work at Par. Poaching is not uncommon in this business, which is why getting back the sales agents is important as they can stay in contact with the merchants. What is likely happening is that people are calling these merchants pretending to be Par, offering some money, and telling the merchant to create a new ACH account. Then they will use the new ACH to collect what is owed Par.

I think we should discuss alerting the Receiver to this asap. Here is from an email chain:

From: Matt Guiliano <matt@betterbizloan.com>
Date: August 24, 2020 at 1:36:04 PM EDT
To: "jmulvi75@gmail.com" <jmulvi75@gmail.com>
Subject: FW: FW: Loan request to be lower/Extension time

Hey here is what I was just sent from one of my ISOs, clearly this is a identity theft scam/fraud. I will try and get a phone number in which they called from.

Thanks,

Matt Guiliano

CONFIDENTIALITY NOTICE and DISCLAIMER: This email message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately. Nothing in this communication should be interpreted as a digital or electronic signature that can be used to authenticate a contract or other legal document. The recipients are advised that the sender and Better Business Loan LLC are not qualified to provide, and have not been contracted to provide, legal, financial, or tax advice, and that any such advice regarding any investment by the recipients must be obtained from the recipients'

attorney, accountant, or tax professional.

From: Giacomo Piombo <gpiombo@hybridfinancialsolutions.com>
Sent: Monday, August 24, 2020 12:56 PM
To: Matt Guiliano <matt@betterbizloan.com>
Subject: Fwd: FW: Loan request to be lower/Extension time

---------- Forwarded message ---------
From: **Andre Martin**<amartin@hybridfinancialsolutions.com>
Date: Mon, Aug 24, 2020 at 12:53 PM
Subject: Fwd: FW: Loan request to be lower/Extension time
To: Giacomo Piombo <gpiombo@hybridfinancialsolutions.com>

---------- Forwarded message ---------
From: **Alcimar Pereira**<Alcimar@acpartnershipconstruction.com>
Date: Mon, Aug 24, 2020 at 11:40 AM
Subject: FW: Loan request to be lower/Extension time
To: Andre Martin <amartin@hybridfinancialsolutions.com>
Cc: Alcimar Pereira <Alcimar@acpartnershipconstruction.com>

Hello Andre,

Would you mind to take a look in the comments below and let me know what is your thoughts about it?
Before I do anything ?
Thank you very much,

Alcimar Pereira
<image004.png>
A&C Partnership Construction
Windows, Metal Panels, Curtain Wall & Storefront
C(301)213-5365 Fax 1410.510-1542
1004 Windmill Lane, Silver Spring, MD 20905
Alcimar@acpartnershipconstruction.com

From: Tori Villarose <tori@parfundnig.com>
Sent: Monday, August 24, 2020 12:37 PM
To: Alcimar Pereira <Alcimar@acpartnershipconstruction.com>
Subject: Re: Loan request to be lower/Extension time

Hi Alcimar

We are still in need of your ID or Passport. We will also be verifying your bank statement by call. You will

receive a call from Daniel Goodman, he works with the verification team and he will be requesting to confirm your bank login so as to authenticate the statement you sent to us.

Your file has been passed over to the verification team and you should receive an email from Daniel anytime from now.

Thanks

From: Tori Villarose <tori@parfundnig.com>
Date: Monday, 24 August 2020 at 14:36
To: Alcimar Pereira <Alcimar@acpartnershipconstruction.com>
Subject: Re: Loan request to be lower/Extension time

Good morning Alcimar

Please we need a copy of your ID or passport to place you on the loan extension. Please send it as soon as you can.

Thanks

From: Tori Villarose <tori@parfundnig.com>
Date: Friday, 21 August 2020 at 22:55
To: Alcimar Pereira <Alcimar@acpartnershipconstruction.com>
Cc: "amartin@hybridfinancialsolutios.com" <amartin@hybridfinancialsolutios.com>
Subject: Re: Loan request to be lower/Extension time

Hi Alcimar,

I have great news for you. You qualify for the extension, I will give you the full details by next Tuesday.

For now, please send me your valid ID, a passport or a Driver's license as soon as you receive my email.

Congratulations.

From: Tori Villarose <tori@parfundnig.com>
Sent: Tuesday, August 18, 2020 5:38 PM
To: Alcimar Pereira <Alcimar@acpartnershipconstruction.com>
Cc: amartin@hybridfinancialsolutios.com
Subject: Re: Loan request to be lower/Extension time

Received, i will review and get back to you. If I need anything else I will let you know.

Thanks

EXHIBIT C

Subject: RE: Follow up to our call of last night.
Date: Thursday, August 27, 2020 at 10:42:50 AM Eastern Daylight Time
From: Timothy Kolaya
To: Alan Futerfas
CC: Daniel Fridman, James Froccaro, Bettina Schein, Ellen Resnick, Gaetan Alfano (GJA@pietragallo.com), Douglas K. Rosenblum (DKR@pietragallo.com)

Alan:

Here are responses to the points you raised below:

First, as to paragraph one (1), Lisa McElhone knows nothing about these events. As per our call, I have no objection to a standard protective order (PO) precluding the defense from distributing documents beyond the defense team.

RECEIVER'S RESPONSE: Thank you. We will prepare a stipulation and protective order regarding the protection of confidential documents.

Second, as to paragraph two (2), we are aware that a document Lisa M received from Joe Cole was a redlined copy of the SEC's Complaint. This is a Privileged document and was marked up with redline notes pursuant to our joint-defense privilege. Your IT people should not be looking at Joint-Defense privileged materials, including emails that are clearly to counsel. We have identified the counsel domain names to Mr. Rosenblum and the computer expert. The Receiver should not be looking at these documents. This information shows that we have all not yet figured out how these various data bases interact and how to protect against incursions into attorney/client information.

RECEIVER'S RESPONSE: I have not seen or reviewed a redlined copy of the SEC's complaint with notes or comments to or from counsel. The document I was referring to was the Excel document titled "CBSG Creditor Contacts." James LaForte sent this Excel document to Bruno Scotti at Creative Capital Solutions. Where is this other document you are referring to, what email addresses was it sent to and from, and why do you believe the Receiver or his IT people have the document?

Third, as to paragraph three (3), the G-Suite holds the email domains of businesses that are unrelated to the Receivership entities. For instance, the G-Suite holds the domain of "@laquerlounge.com," the email domain for Lisa M's nail salon. We will have to have a protocol to separate these non-Receivership entities from the G-suite.

RECEIVER'S RESPONSE: Agreed. The Receiver is only reviewing and accessing emails from the @parfunding.com and @fullspectrumprocessing.com accounts. We are happy to have a discussion about separating the data from those other domains from that of the Receivership Entities.

Also, as to paragraph three (3) of your email, you note that "On August 12, 2020....a New IP address" was used. Please note that, to our knowledge, there is no "New IP address." Until the last week or so, Jamie McElhone, and all other Par employees, still had "@ParFunding" email domains on their cell phones that emanated from the G-Suite. Jamie's, for instance, was "Jamie@ParFunding.com."

RECEIVER'S RESPONSE: We are not referring to a domain. Rather, we are referring to an IP address. An IP address identifies the location from which a user is accessing information on the internet. In this particular case, after the Receivership Order was entered, three Par employees accessed the G Suite database for Full Spectrum/Par Funding from the very same IP address. Based on the data

log in the G Suite, it is clear that these were intentional logins to the database, and not the result of a cell phone pinging the server because of a connected email account. Those three different accounts were used to access the Full Spectrum / Par Funding database from the same location (*i.e.*, the same WiFi network located at the same home/business/etc.). The G-Suite had never been accessed from that particular IP address prior to July 28, 2020. We really need to understand why Jamie McElhome, Aida Lau, and Jeremiah Luddeni were accessing the Receivership Entities' G Suite database from the same location after the entry of the Receivership Order.

In the wake of the TRO, merchants were emailing Jamie seeking information regarding re-load requests, questions about their account status and all manner of related questions. She made screen shots to preserve this correspondence and we are happy to provide these screen shots as part of our proposed agreement that we share with you what we have.

RECEIVER'S RESPONSE: If these communications involve merchants of Par Funding, the Receivership Order requires Jamie McElhome to immediately provide that information to the Receiver.

Regards,

Tim

TIMOTHY A. KOLAYA
PARTNER

DIRECT	305. 614. 1405	ONE BISCAYNE TOWER
MAIN	305. 614. 1400	2 SOUTH BISCAYNE BOULEVARD
MOBILE	305. 321. 3055	SUITE 1600
E-MAIL	TKOLAYA@SFSLAW.COM	MIAMI, FL 33131
WEB	WWW.SFSLAW.COM	

From: Alan Futerfas <asfuterfas@futerfaslaw.com>
Sent: Thursday, August 27, 2020 10:04 AM
To: Timothy Kolaya <tkolaya@sfslaw.com>
Cc: Daniel Fridman <dfridman@ffslawfirm.com>; James Froccaro <jrfesq61@aol.com>; Bettina Schein <bschein@bettinascheinlaw.com>; Ellen Resnick <ebresnick@futerfaslaw.com>; Alan Futerfas <asfuterfas@futerfaslaw.com>
Subject: Follow up to our call of last night.

Dear Tim:

In an effort to bring document issues to a close, please see this response to your email of last night at 11:06 pm.

First, as to paragraph one (1), Lisa McElhone knows nothing about these events. As per our call, I have no objection to a standard protective order (PO) precluding the defense from distributing documents beyond the defense team.

Second, as to paragraph two (2), we are aware that a document Lisa M received from Joe Cole was a redlined copy of the SEC's Complaint. This is a Privileged document and was marked up with redline

notes pursuant to our joint-defense privilege. Your IT people should not be looking at Joint-Defense privileged materials, including emails that are clearly to counsel. We have identified the counsel domain names to Mr. Rosenblum and the computer expert. The Receiver should not be looking at these documents. This information shows that we have all not yet figured out how these various data bases interact and how to protect against incursions into attorney/client information.

Third, as to paragraph three (3), the G-Suite holds the email domains of businesses that are unrelated to the Receivership entities. For instance, the G-Suite holds the domain of "@laquerlounge.com," the email domain for Lisa M's nail salon. We will have to have a protocol to separate these non-Receivership entities from the G-suite.

Also, as to paragraph three (3) of your email, you note that "On August 12, 2020….a New IP address" was used. Please note that, to our knowledge, there is no "New IP address." Until the last week or so, Jamie McElhone, and all other Par employees, still had "@ParFunding" email domains on their cell phones that emanated from the G-Suite. Jamie's, for instance, was "Jamie@ParFunding.com."

In the wake of the TRO, merchants were emailing Jamie seeking information regarding re-load requests, questions about their account status and all manner of related questions. She made screen shots to preserve this correspondence and we are happy to provide these screen shots as part of our proposed agreement that we share with you what we have.

In a separate email, Bettina Schein and Mr. Cole, who spent two hours with your IT expert and Mr. Rosenblum yesterday, provides a list of the files that were removed and copied from Mr. Cole's computer. We need a copy of these files immediately so that we can defend the case.

Thank you,

Alan

Law Offices of Alan S. Futerfas
565 Fifth Avenue, 7th Floor
New York, New York 10017
Work: 212-684-8400
Fax: 212-856-9494
E-mail: asfuterfas@futerfaslaw.com
Website: www.futerfaslaw.com
Confidentiality Notice: This message and any attachments are confidential and may be privileged or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears that you have received this e-mail in error, do not read it. Please notify this office of the error then immediately delete the message and any attachments. Thank you.

EXHIBIT D

Subject: Information follow up from yesterday.
Date: Friday, August 28, 2020 at 1:03:03 PM Eastern Daylight Time
From: Alan Futerfas
To: tkolaya@sfslaw.com, Gaetan Alfano, Daniel Fridman
CC: Alan Futerfas
Attachments: Screenshot 7.29.png, Screenshot 7.30.png, Screenshot 8.10.png, Screenshot 8.13.png, Screenshot 8.16.png, SS 8.13_1.PNG, SS 8.13_2.png, SS 8.13_3.png

Dear Tim, et., al:

Further to our discussions of last evening regarding your concerns, we have verified that neither Lisa McElhone nor Jamie McElhone accessed the Par/CBSG G-Suite to obtain information after the Receiver took over the Par offices on or about July 28, 2020. Information about each person is set forth below and in the documents attached. We are as concerned about this issue as you are. As we mentioned during our call, you must immediately change the password that allows users to gain access to Par Funding's G-Suite, if you haven't already. We also suggest that you check the user access log to identify the users who have accessed Par Funding's G-Suite account since July 28, 2020.

Lisa McElhone

Lisa McElhone never had access to the Cloud/G-Suite and never had a password. Lisa McElhone had an email address of Lisa@ParFunding.com but that email was taken over and used by the Par IT department in September 2019 because she rarely used that email. Her email traffic will show the email correspondence where Par IT personnel requested to take over her email address. The email Lisa McElhone used then and now for all purposes is Lisa.McElhone@gmail.com.

Below is an email reflecting the above circumstances:

Forwarded message ---------
From: **jeremiah luddeni** <jeremiah@fullspectrumprocessing.com>
Date: Thu, Sep 12, 2019 at 1:30 PM
Subject: Re: A copy of your signed application
To: Lisa McElhone <lisa.mcelhone@gmail.com>

we have access to your parfunding email account and our isung it

On Thu, Sep 12, 2019 at 1:22 PM Lisa McElhone <lisa.mcelhone@gmail.com> wrote:
Hey Jeremiah,

I am getting some emails that I believe are for you. Should I forward or are you able to see them?

Thanks
Regards,
Lisa McElhone

---------- Forwarded message ---------
From: <noreply@netpayhq.com>
Date: Thu, Sep 12, 2019 at 12:21 PM
Subject: A copy of your signed application
To: <admin@netpaybankcard.com>, <SALES@highriskpay.com>, <lisa@parfunding.com>

Thank you for choosing High Risk Pay for your merchant account needs!
Attached is a copy of your application for your records.
In order to complete your approval process, please provide a copy of the following documents:

- Voided check or bank letter signed by your banker with your business name, routing number and account number

- Driver licenses or valid ID

- Business licenses or corp. papers (if any)

- Last 1-3 months bank statements, if the business is new and you don't have bank statements please send us screenshot from your online banking showing the balance

- Last 3 months merchant account/credit card processing statement (only if you are processing / accepting credit cards now)

Please Email or Fax back to:

Fax (Toll Free): 800-956-1278

Fax (Local): 949-768-5300

Email: sales@highriskpay.com

Please include your application ID or your business name on all documents

application ID:ID-5d7a6ede91064-4-96
<w:LsdException Locked="false" Priority="69" SemiHidden="false" UnhideWhenUsed="false" Name="Medium Grid 3 Accent

Jamie McElhone (Lisa's sister)

Jamie McElhone had no access to the Cloud/G-Suite and no password and did not access the Par/CBSG G-Suite after the TRO. Jamie McElhone worked in sales/customer service regarding the merchants. She did have access to ConvergeHub, which is the sales CRM. Her last day accessing ConvergeHub was her last day at the office, July 28, 2020. When the TRO went into effect and the merchants' accounts did not work, in either direction, the merchants began to reach out to Jamie using her Par email which was Jamie@RarFunding.com. Jamie McElhone took screen shots of those email messages but did not respond to the merchants. Attached here are the messages she received on August 13th and on other

dates - none of which she responded to.

I trust this information is of assistance.

Law Offices of Alan S. Futerfas
565 Fifth Avenue, 7th Floor
New York, New York 10017
Work: 212-684-8400
Fax: 212-856-9494
E-mail: asfuterfas@futerfaslaw.com
Website: www.futerfaslaw.com
Confidentiality Notice: This message and any attachments are confidential and may be privileged or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears that you have received this e-mail in error, do not read it. Please notify this office of the error then immediately delete the message and any attachments. Thank you.

EXHIBIT E

Subject: Follow up
Date: Friday, August 28, 2020 at 1:12:27 PM Eastern Daylight Time
From: Bettina Schein
To: Timothy Kolaya, Ryan Stumphauzer
CC: Daniel Fridman, Alan Futerfas

Tim *et al.*

I was told of the discussion you and your colleagues had with my co-counsel about access to the Par funding GSuite account. I send this email to follow up on that discussion and on the Zoom meeting yesterday.

Mr. Cole did not access the Par Funding /CBSG G suite after the Receivership. As I previously told you and your colleagues, prior to the Receivership, Mr. Cole, who was the CFO of Par/CBSG, maintained a backup copy of company files on his personal computer. Right after the Receivership, while represented by Fox Rothschild, Mr. Cole created a new G Suite on which he placed many of the company documents and sent the link to counsel. This was, of course, so that new counsel could learn about the Par/CBSG business and about the case. The SEC complaint was also included on Mr. Cole's own G-suite.

If someone accessed the Par/CBSG G-suite, the Receiver's IT person and the Receiver's lawyers could look at the Google audit user access logs and find out who did.

In order to use time efficiently and not pursue a tangent, I suggest, if you have not done so already, that the Receiver should immediately change the Google user name and password for the Company G suite so that no one who is not authorized to use the data can use it. We share the Receiver's concerns. We want to see the company restored so that investors can recoup their investment. We do not want unauthorized people to have access to the company G-Suite.

Yesterday, Mr. Cole and I participated in a Zoom meeting with you all and DSI. Mr. Cole sent a detailed agenda prior to the meeting for DSI and the Receiver to assist DSI. Mr. Cole is available to continue the conversation with DSI and answer any operational questions. Please send the contact information for DSI and Mr. Cole will send his contact information to DSI to continue the dialogue.

In addition, if DSI or your IT person has not already changed the passwords for the Right Network which hosts the CBSG and FSP Quickbooks, the following is the login information and it is my understanding that someone from Right Network will assist you to change the passwords:

user name and password for CPSG Right Network Admin – [redacted] Pass word [redacted]
user name and password for FSP Right Network Admin – [redacted] Pass word [redacted]

Please advise when I will receive a copy of the files that were taken by your computer expert from Mr. Cole's personal computer on Wednesday.

Thank you.

Regards,
Bettina

Law Offices of Bettina Schein
565 Fifth Avenue
New York, New York 10017
(212) 880-9417
(917) 375-5001
Bschein@bettinascheinlaw.com

Law Offices of Bettina Schein
565 Fifth Avenue
New York, New York 10017
(212) 880-9417
(917) 375-5001
Bschein@bettinascheinlaw.com

EXHIBIT F

Subject: Response to you email
Date: Sunday, August 30, 2020 at 11:47:50 AM Eastern Daylight Time
From: Bettina Schein
To: Timothy Kolaya, Ryan Stumphauzer
CC: Daniel Fridman, Alan Futerfas, James Froccaro

Tim,

We have been attempting to negotiate several matters with you for weeks, primarily: (1) the disclosure of information by Joseph Cole to DSI to assist regarding its understanding and management of Par Funding's operations; (2) the production to the Receiver of records obtained by Mr. Cole prior to the entry of the TRO and Receivership Order related to the operation of Par Funding; and (3) the production of those same records by the Receiver to the defense team for its use in the litigation. Your email seems to overlook that last part.

With respect to the first item on this list, we made significant progress last week. Mr. Cole met with DSI and the Receiver and his lawyers for two hours and the meeting was extremely productive. Prior to the meeting, Mr. Cole provided detailed information on the operational aspects of the company and a detailed agenda outline of operational topics to discuss during the Zoom meeting. There is no question that the information Mr. Cole provided was extremely helpful to DSI's preparation to restart the business and that DSI would like to continue its conversation with Mr. Cole. The tone and accusatory nature of your email and your bar to further dialogue between DSI and Mr. Cole is counterproductive in this regard and undermines the progress we have made to safeguard investor interests.

With respect to the second item on this list, please recall that one of the reasons we have been coordinating the disclosure of the information held by Mr. Cole to you was that everyone, including you and the Receiver, acknowledged that the orders did not make clear whether records relating to Par Funding's operations obtained prior to the TRO and the receivership orders violated the scope of the Court's first receivership order. Recall that we even discussed filing a joint motion to amend the receivership order to clarify this issue and permit the defense team to maintain a copy of such records during the litigation.

After the second order was entered, we began discussing production of these materials to you. You will recall that Mr. Cole's personal laptop contained personal information and attorney client privileged information. We worked past these issues and delivered his laptop to you. We were making progress. All the while, in the context of items 1 and 2 above, we were providing documents and information to you.

In the interim, we provided the passwords to the Par/CBSG G-Suite and suggested that you change the passwords to the Par Funding G-Suite to avoid the data breaches about which you expressed concern. We also suggested that you check the user access logs to identify individuals who attempted to access the G-Suite. Your tersely worded email suggesting you "already did these things" was the response we received to our efforts to assist.

During our discussions over the past week, if not longer, you and the Receiver agreed, in response to item 3 above, that the defense team could maintain a copy of Par Funding records Mr. Cole had in his possession prior to the entry of the TRO and Receivership Orders, under the following conditions: (1) that the parties enter into a protective order to ensure that

the records are not disseminated to third parties, and (2) that the records be Bates stamped to ensure an orderly production of the records and documents produced. We were well on our way to reaching a written agreement in this regard.
Last week, you sent us yet another email describing data breaches. We responded by assuring you that the defendants were not involved. In a filing a week ago, you said that you have evidence that other individuals have logged in, namely a salesperson who apparently took sales related materials. As you have learned from review of the data access logs, none of the defendants accessed the data of the Receivership Entity. As I have previously stated, neither Mr. Cole nor any of the other Defendants have or continue to engage in unauthorized access to or sharing of the data.

Further, before you make unfounded and inaccurate accusations, you should be aware that the Par G-suite hosts information about businesses *unrelated* to the Receivership entities. We urge you to continue an open dialogue with us so that you can better understand what the G-suite actually is and what it contains, including that there are businesses on it which are not Receivership entities and which other people and businesses need and have a right to access for their data. This is yet another reason we need to continue our dialogue regarding necessary modifications to the Amended Receivership Order.

In a subsequent email responding to your concerns about data breaches, we explained that the only information Mr. Cole possesses he obtained before the TRO and receivership orders were entered. *That remains true now*. We explained that Mr. Cole had retained a copy of this information on his personal laptop. We also notified you on Friday that Mr. Cole kept another copy on the cloud—on a Google drive. Please bear in mind that he was directed by prior counsel for the company to create this drive to ensure its preservation for litigation. That information is duplicative of the information on Mr. Cole's laptop and on computers which you have possession of at Par offices. Counsel has <u>not</u> viewed the information on the cloud or shared it with anyone else. In other words, there is no "ongoing data breach" by Mr. Cole or any other defendant nor any misconduct by Mr. Cole. What I have conveyed to you and the Receiver is that Mr. Cole has the exact same goal as that stated by the Receiver. The mission and goal of Mr. Cole is that the company's operations be restored, the investors paid back their principle with interest, and that the merchants receive their funding. His continuing efforts to respond to multiple questions by DSI and the Receiver are all to assist in this endeavor. To suggest any misconduct on his part is erroneous and counterproductive to these efforts. We ask that you continue an open dialogue with us to preserve the progress we have made and continue moving forward productively.

In response to my email, late Friday evening, we received your email. Your email suggests that Mr. Cole's creation of the G-Suite <u>as a means of preserving a copy of the same records we previously provided to you</u> violates court orders. What your email fails to recognize is that we had reached an agreement in principle with you allowing us retain a copy of this very information subject to a protective order (which we agreed to) and Bates stamping (which we agreed to). We agree that we should have notified you of Mr. Cole's creation of this G-Suite when we provided his laptop to you. That was an oversight—but we need to keep the facts in their proper context. I only began representing Mr. Cole a few weeks ago, at which time I began learning the extensive facts of the case, drafting the cross motion and reply urgently requesting the Receiver to rehire the 70 employees and preparing and presenting argument in opposition to the preliminary injunction at the hearing. Perhaps because that G-suite was a preserved record suggested by prior counsel which, and because we were coordinating (and later) providing a copy of the same information to you, we simply didn't think about it again until we responded to your email in order to allay your concerns about data breaches. To

suggest now that this duplicative copy of records we previously disclosed and produced to you merits the tone and accusatory tenor of your response is to overlook the discussions we have had to date and the court's admonition that we try to resolve matters whenever possible without involving the court.

An appropriate way to resolve this issue is to simply have your IT specialist Bates stamp the records in Mr. Cole's G-Suite and produce it, per our prior agreement, under a protective order prohibiting its dissemination to anyone other than the parties, their counsel, or the experts they hire. At that point, we can either delete the G-Suite and certify the same to you, or you can delete it. That's it. Nothing more is necessary.

Simply put, your email ignores that: 1) the TRO contains an expedited discovery provision applicable to all parties, including the Receiver; 2) that we had engaged in lengthy discussions to have you produce to us in short order (or have us retain a copy of) the documents Mr. Cole obtained and preserved prior to the entry of the TRO and Receivership orders; and (3) that there were discussions to amend on consent, the Receiver's Order to clarify the pre-TRO documents to allow defense counsel to receive documents. We need to get back to having productive discussions and avoid these accusatory emails. The Receiver's role, as you have acknowledged in your pleadings, is not to serve as an adversary to the defendants, but to preserve and maintain Receivership assets for investors. We are aligned in that regard and should conduct ourselves accordingly.

Unless we can resolve these issues, we will have no choice but to file a motion: (1) asking the court to compel production of the records you previously agreed to produce or allow us to maintain, which we have been discussing for weeks at great expense to our clients and our ability to defend this case, and (2) requesting modification of the Court's Order to clarify defense counsel's right to these documents. Alternatively, we can talk as required by the local rules and finalize the agreement we have been discussing for weeks.

The following responds to your numbered questions:

- Set forth below are two links to the Google server created by Mr. Cole. Once you have had an opportunity to review the Google drive, please let us know how you would like to proceed. As suggested above, we can Bates stamp the materials and provide them to you. Mr. Cole can delete the entire Google server. Counsel have not accessed the files. If Mr. Cole deletes the drive, it will be gone from the Google hosting site and unavailable to anyone.
- I have not reviewed the files in the Google server. If the Receiver prefers that I provide the information regarding the total number and size of the files belonging to the Receivership Entities in the Google server, I will review the files.
- The Google server was created by Mr. Cole on or about July 29, 2020 at the request of then-counsel for the company.
- Mr. Cole has admin control over the Google server.
- The defense attorneys were provided with a link to the Google server but did not access it.
- Of course, I would not alter, delete, or edit any contents on the Google server.

Company: https://drive.google.com/[redacted]

Accounting: https://drive.google.com/drive/[redacted]

Bettina Schein
Law Offices of Bettina Schein
565 Fifth Avenue
New York, New York 10017
(212) 880-9417
(917) 375-5001
Bschein@bettinascheinlaw.com

EXHIBIT G

Subject: September 23, 2020 Lisa McElhone Discovery Demand
Date: Wednesday, November 25, 2020 at 12:05:56 PM Eastern Standard Time
From: Alan Futerfas
To: Gaetan J. Alfano, Timothy Kolaya, dkr@pietragallo.com
CC: Bettina Schein, Alejandro O. Soto, Richard Brueckner, Ellen Resnick

Gaetan and Tim:

We have reviewed your Objections and Responses filed October 22, 2020. In our view, they are grossly violative of Magistrate Judge Reinhart's Standing Discovery Order (the Order), with particular attention to sections I and II. Please advise whether you intend to provide the requested documents, or any portion thereof. The Order makes clear that delays will not be tolerated.

Also, please advise whether you intend to engage "in a genuine effort to resolve" the discovery dispute by close of business today.

If the dispute is not resolved, we will seek Court intervention and advise Judge Reinhart that, among other matters relevant to these issues, you have used some of the very documents we have been seeking to create accountant Declarations as well as in your various exhibits to motions and in other filings with the Court. We will also make clear that all of your filings are made publicly with no redactions for names and personal identifying information or banking and account information. In other words, your request for a protective order, in light of your numerous filings to date, is frivolous.

Alan

The Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Floor
New York, NY 10017
212-684-8400
asfuterfas@futerfaslaw.com
www.futerfaslaw.com

Confidentiality Notice: This message and any attachments are confidential and may be privileged or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears that you have received this e-mail in error, do not read it. Please notify this office of the error then immediately delete the message and any attachments. Thank you.

EXHIBIT H

Subject: Lisa McElhone Document Demand Meet and Confer Follow-up.
Date: Friday, November 27, 2020 at 5:30:51 PM Eastern Standard Time
From: Alan Futerfas
To: Gaetan Alfano, Timothy Kolaya
CC: Bettina Schein, Alan Futerfas, Ellen Resnick, Richard Brueckner

Mr. Alfano and Mr. Kolaya:
This email is a follow up to our meet and confer on November 25, 2020, amongst you both, myself and Ms. Schein. We have reviewed your assertions and have done further research into the matters discussed.
We note at the outset that our Document Demands were served on September 23, 2020, thus our access to information has already been unnecessarily delayed by over two months. We have received not one piece of paper. This is flatly inconsistent with Judge Reinhart's Discovery Rules.
Information responsive to Requests numbers 1, 6 – 13 is contained in the QuickBooks (QB). Your suggestion of requiring us to make particular Report requests to obtain this information is almost impossible given the range of necessary materials, is grossly burdensome to the defense, and is totally unnecessary. And it will result in numerous wasteful back and forth requests further delaying our access to information when the source material is readily available and easily accessed. As you were advised in August, 2020, prior to the Receivership, Mr. Cole copied a set of the Quick books prior to July 27, 2020 at the direction of Par Funding's prior counsel, Fox Rothschild. That QB copy ends approximately July 27, 2020. Just so we are very clear as to the size of the QB file, it is less than 25 gigabytes. For frame of reference, a standard iPhone has data of 128-256 gigabytes. It would take just minutes to load the QB on to a Thumb drive.
The QB Mr. Cole copied in late July 2020 is presently hosted on Summit Hosting services. It has not been accessed. If the defense can access the QB on this hosting network, there will be no work; no effort; no billing; and no fees incurred by the Receiver in providing this critical and necessary discovery to defense counsel. This is the quickest and most cost-effective mechanism to provide the requested information to counsel and to our accounting experts. If you object to our access to this hosting network, we will immediately file a motion with the Magistrate setting forth the issues contained in this email.
Secondly, information responsive to requests numbers 1, 6 – 13 is also contained in bank statements. We expect copies of bank statements by all relevant Par entities up to July 31, 2020.
Documents responsive to Requests 2, 3 and 4 are Spreadsheets that are easily and readily available on the Right Networks accounting server. These are documents used every day by accountants at Par; thus individuals working at Par, such as James Klenk, now will know exactly what these are and where to locate them. They are easily accessible and downloadable.
Documents responsive to Request 5 are located in a folder of the one page Syndication Agreements on the CBSG Right Networks server. Further, there were are one page agreements on Joe Cole's desk at Par. In addition, the deposit logs, spreadsheets and other financial information pertaining to the syndication agreements are contained on the Right Networks accounting drive. Individuals such as Mr. Klenk can readily identify these documents and copy them onto an external thumb drive.
Documents responsive to Request 7 can also be found as Spreadsheets called Client Payment Logs, located on the Right Networks.
Please note that the total amount of information we are requesting that is hosted on Right Networks is less than 100 Gigabytes – less than the amount of data on a standard iPhone.
Documents responsive to Requests 8 and 9. In addition to the QB being responsive to these Requests, Mr. Cole's laptop computer, which was taken by your office for copying in August 2020 – and which has yet to be returned despite numerous requests from Mr. Cole counsel – contains investor files, including all investor agreements requested in our Demand for Production.
Documents responsive to Request 10 are, as noted above, contained on the QB. In addition, all merchant information requested in our Demand is on a site called ConvergeHub. If you provide the defense with "read only" login access, there will be no need for migration of documents or a download.

There will be no delay or expense whatsoever, except for whatever basic user fees are imposed; maybe a few hundred dollars per month.
Or, the information sought by Request 10 can be migrated to Amazon S3 storage. We have priced it and Amazon charges $2.30 per terabyte for monthly data hosting and access. Accordingly, to host even 20 terabytes of data, Amazon S3 would charge about $46.00 per month.
Documents responsive to Requests 12 and 13, are contained in the QB, as noted above. In addition, documents responsive to these re Requests are found on the local QNAP on the Par Funding server. Kevin Young, who still works at Par, set this up. In that server is the Payroll Data Drive and the Legal Drive. The QNAP has less than 50 gigabytes of data.
Documents responsive to Requests 14, 15 and 16 are all readily available on Mr. Cole's business laptop. There is an investor folder. The download of Mr. Cole's investor folder will take about one minute to copy onto a thumb drive.
Our Demands also include Par Funding and related entity tax returns. We are certain you possess these simple pdf documents and that they can be provided easily via email or via download.
As is clear from the foregoing, almost all of the data requested in our Demand for Production is located either on the QB's and/or on Joe Cole's laptop computer, which you have had since August 2020 and have yet to return or send a hard drive copy, despite numerous requests by Mr. Cole counsel. Other requests are responded to by easily accessed documents and files and are small productions. And other requests are easily complied with through data access or migration to inexpensive hosting services.
We are done with the continued delay of our access to documents we need to defend the case and which are required to be produced under the FRCP and the local rules, including the Rules of Judge Reinhart. Let us know by Monday at 1 pm, whether you will comply with our discovery requests. Otherwise, we will bring this matter to the attention of the Magistrate Judge.
Thank you,
Alan
The Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Floor
New York, NY 10017
212-684-8400
asfuterfas@futerfaslaw.com
www.futerfaslaw.com

Confidentiality Notice: This message and any attachments are confidential and may be privileged or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears that you have received this e-mail in error, do not read it. Please notify this office of the error then immediately delete the message and any attachments. Thank you.

EXHIBIT I

Subject: Re: Lisa McElhone Document Demand Meet and Confer Follow-up.
Date: Friday, December 4, 2020 at 1:58:42 PM Eastern Standard Time
From: Alan Futerfas
To: Timothy Kolaya, gja@pietragallo.com
CC: Bettina Schein, Ellen Resnick, Richard Brueckner, Alejandro O. Soto, Alan Futerfas

Tim:

To frame and clarify the issues for the Magistrate:

One, we reject your request that Mr. Cole take any action as a condition to all Defendants receiving the documents to which they are entitled under the FRCP and the Magistrate's Local Rules. Your office is not a party in this case but is, bizarrely, far more adversarial than even the SEC – which brought the case. Your office has delayed and obstructed the defense's access to important financial data for months.

Speaking of just Mr. Cole's laptop alone, on August 19, 2020, counsel for Mr. Cole and the Receiver agreed that Mr. Cole would deliver his personal laptop to the office of the Receiver's computer expert for him to examine the computer and make a copy of the work-related files. As per an email of August 19, 2020 at 1:33 pm, memorializing their agreement, Ms. Schein emailed your co-counsel Douglas Rosenblum that:

> "Our agreement is as follows: The independent computer expert will take an image of the data on Mr. Cole's personal computer. He will copy and retain only business files. The expert will not look at or retain Mr. Cole's personal files, nor will the expert look at or retain emails. Please provide me with a copy of the data that the independent computer expert has retained from my client's personal computer."

Thereafter, defense counsel, including Ms. Schein and Dan Fridman, repeatedly requested Mr. Cole's computer and the data on it which all Defendants needed to prepare their defense. Dan Fridman specifically advised of our retention of forensic accountants on August 22 – three- and one-half months ago – in connection with yet another request for the data on Mr. Cole's computer promised by the Receiver. Indeed, on August 26, 2020 – three months ago – Mr. Rosenblum emailed Ms. Schein and acknowledged that the Receiver had already copied the data on Mr. Cole's computer's drive, stating, "As we discussed and you agreed, our expert made an exact copy of Mr. Cole's computer."

Numerous email communications and telephone calls from Mr. Fridman and Ms. Schein made clear that the defense needs these files which were copied by the Receiver, from Mr. Cole's computer "as a first priority" to prepare the defense. On August 22, August 24, August 25, August 26, October 12, October 15 and into November, counsel requested the copied information from Mr. Cole's computer. Your office has delayed and obstructed the defense access to this simple, readily available data at every turn, including to today.

Accordingly, we reject any request to limit all Defendants' access to data you already agreed to provide and which all defendants need to defend this case. All Defendants are entitled to this data under the law, notwithstanding your made-up issues regarding Joe Cole. As I stated yesterday in my email, the idea that the all Defendants cannot review materials which they know best and have worked with for years, and which they have a right to utilize for their defense, and which they will provide to their expert accountants - the very data which you and the SEC regularly use and make public in reports and filings - is not only baseless but also denies them due process and violates the Rules. It makes no sense to deny Defendants access to this data when you and your team regularly publish this data, including private personal financial information about the Defendants and, indeed, the investors, to the world.

As I also noted in my email of yesterday, just recently the Receiver published exhibits which contained obvious copies of the QuickBooks files. So, your argument appears to be that when the Receiver chooses to use these very materials, you can publish them, but our clients, who are parties to the litigation, cannot see them unless and until you decide to publish highly selective slices of this data to the world. This is illogical.

Lastly, we will agree to a standard SDFL Protective Order which is readily available and will not cause your office to incur additional unnecessary legal fees. The delay is over. Provide these documents and the standard protective order by the close of business on Monday. Should your office insist on more or further delay document production, we will so advise the Magistrate and set forth your litany of unfounded delays and your failure to comply with our document requests and the Magistrate's Rules.

The Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Floor
New York, NY 10017
212-684-8400
asfuterfas@futerfaslaw.com
www.futerfaslaw.com

Confidentiality Notice: This message and any attachments are confidential and may be privileged or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears that you have received this e-mail in error, do not read it. Please notify this office of the error then immediately delete the message and any attachments. Thank you.

From: Timothy Kolaya <tkolaya@sfslaw.com>
Date: Thursday, December 3, 2020 at 6:42 AM
To: Alan Futerfas <asfuterfas@futerfaslaw.com>, "Gaetan J. Alfano" <gja@pietragallo.com>
Cc: Bettina Schein <bschein@bettinascheinlaw.com>, Ellen Resnick <ebresnick@futerfaslaw.com>, Richard Brueckner <rbrueckner@futerfaslaw.com>
Subject: RE: Lisa McElhone Document Demand Meet and Confer Follow-up.

Alan –

To be clear, my filing of other documents with the Court has no impact on responding to your requests regarding these documents. The person who has been gathering this information for the Receiver had a death in the family and has been dealing with that over the past several days, including attending a funeral this week. I am certain that any slight delay in our responding to you on these issues is more than justified, under the circumstances.

Again, you received our responses and objections to the request for production on October 22. We stated in those responses and objections that we would not agree to produce many of the documents you were requesting, but we were willing to meet and confer to discuss the various categories of documents you were requesting. Rather than take us up on our offer to meet and confer, you simply sat on the objections for more than a month, which constitutes a waiver of the ability to bring a discovery despite to the attention of the Magistrate Judge, absent a showing of good cause. We are not aware of any good cause for your delay and are confident that the Receiver's recent efforts to

respond to your request from last week has been more than reasonable.

We are still attempting to confirm and verify some of the answers below, but in the interest of moving this process along, here is the Receiver's position on the various document requests. This is subject to change, subject to final confirmation of the availability of certain categories of documents.

1. Request for QuickBooks Database Files (Requests 1, 6-13)

   - It is the Receiver's position that Mr. Cole's actions in copying the entire QuickBooks database sometime between July 24 and July 27, 2020, and subsequent retention and hosting of those files on "Summit Hosting" after the Court appointed the Receiver, is a violation of the operative Receivership Order. Notwithstanding this position, the Receiver agrees to produce to the Defendants a static copy of the QuickBooks database for Par Funding and Full Spectrum as of July 28, 2020. This information will be produced subject to the entry of a protective order that will restrict access to these files to attorneys and retained experts only. The Receiver will provide you with a draft protective order for your consideration. As a condition of producing this information, the Receiver demands that Mr. Cole: (a) provide the Receiver with a complete copy of all QuickBooks files hosted on Summit Hosting, including a log reflecting all access to this database since the time it was initially hosted with Summit Hosting; and (b) delete and purge the copy of the QuickBooks database that is currently being hosted on Summit Hosting.

2. Request for Bank Statements (Requests 1, 6-13)

   - You asked that the Receiver produce bank statements for "all relevant Par entities." We are not sure which entities are you referring to in this request. In any event, the Receiver agrees to produce bank statements for Par Funding and Full Spectrum Processing from July 2015 through July 2020. These documents will be Bates stamped and produced subject to the entry of a protective order.

3. Client Consolidation Schedules, Deposit Logs, and Bank Activity Reports (Requests 2, 3, 4)

   - We believe that we have been able to locate these documents, but are trying to confirm that we have the correct documents for the "Client Consolidation Schedules" and "Bank Activity Reports" you are requesting. Subject to this final confirmation, the Receiver agrees to Bates stamp and produce these documents subject to the entry of a protective order that restricts access to these documents to attorneys and retained experts only.

4. Syndication Agreements (Request 5)

   - The Receiver agrees to Bates stamp and produce these documents subject to the entry of a protective order that restricts access to these documents to attorneys and retained experts only.

5. Client Payment Logs (Request 7)

   - The Receiver has been attempting to locate these documents. Please provide additional detail about what these documents contain, and where specifically they are saved. Assuming we can locate these files, the Receiver agrees to Bates stamp and produce these documents subject to the entry of a protective order that restricts access to these documents to attorneys and retained experts only.

6. Documents Reflecting Use of Investor Funds (Requests 8, 9)

- The Receiver agrees to produce the QuickBooks database (see No. 1); bank statements (see No. 2); Investor Agreements, Investor Log Reports, and Investor Notes (see No. 9); and tax returns (See No. 10).

7. Accounting for and inventory of funds provided to Merchants (Request 10)

- The Receiver agrees to produce the QuickBooks database (see No. 1) and bank statements (see No. 2). The Receiver does not, however, agree to provide the Defendants with login access to or a copy of data contained on the ConvergeHub platform. As you noted, this information is duplicative of what is contained on the QuickBooks database and, therefore, production of this additional data is not necessary and not proportional to the needs of the case.

8. Payments to Defendants (Requests 12, 13)

- The Receiver agrees to produce the QuickBooks database (see No. 1); bank statements (see No. 2); and tax returns (See No. 10). The Receiver does not, however, agree to provide the Defendants with copies of data contained within the Payroll Data Drive and the Legal Drive on the QNAP, as production of this data is not proportional to the needs of the case.

9. Investor Agreements, Investor Log Reports, and Investor Notes (Requests 14, 15, 16)

- The Receiver agrees to Bates stamp and produce these documents subject to the entry of a protective order that restricts access to these documents to attorneys and retained experts only.

10. Tax Returns

- The Receiver agrees to Bates stamp and produce these documents for 2015 through 2019.

We are confident that, through the production of the documents identified above, the Receiver has more than satisfied his obligations in responding to the request for production. Please let us know if you have any additional questions regarding these document requests. Otherwise, we will continue to gather and prepare these documents for production.

Regards,

Tim

TIMOTHY A. KOLAYA
PARTNER

DIRECT	305. 614. 1405	ONE BISCAYNE TOWER
MAIN	305. 614. 1400	2 SOUTH BISCAYNE BOULEVARD
MOBILE	305. 321. 3055	SUITE 1600
E-MAIL	TKOLAYA@SFSLAW.COM	MIAMI, FL 33131
WEB	WWW.SFSLAW.COM	

From: Alan Futerfas <asfuterfas@futerfaslaw.com>
Sent: Wednesday, December 2, 2020 11:04 PM
To: Timothy Kolaya <tkolaya@sfslaw.com>; gja@pietragallo.com
Cc: Bettina Schein <bschein@bettinascheinlaw.com>; Ellen Resnick <ebresnick@futerfaslaw.com>; Richard Brueckner <rbrueckner@futerfaslaw.com>
Subject: Re: Lisa McElhone Document Demand Meet and Confer Follow-up.

Tim:

After your note below, sent at 6:52 pm on Tuesday, representing that you needed to confirm document availability and personal issues affecting certain people, you then filed a lengthy Reply to the Receiver's Expansion Motion at 10:39 pm and a motion regarding unredacted documents at 11:18 pm that same evening. You could have said that you were too busy preparing other motions for filing to attend to the outstanding discovery and needed Wednesday to respond.

As it turns out, here we are "tomorrow" (Wednesday) night at 11 pm, and there is still no response.

You have most of the requested documents easily at hand. They are on Joe Cole's computer which you have had since August 2020 and are thus readily available.

I firmly believe that the Magistrate will view the delay since September 23, 2020 as just a bald faced two month denial of our access to the documents we need to defend ourselves in the case and which we are entitled to by local Rules, the FRCP and the Judge's rules.

Alan

The Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Floor
New York, NY 10017
212-684-8400
asfuterfas@futerfaslaw.com
www.futerfaslaw.com

Confidentiality Notice: This message and any attachments are confidential and may be privileged or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears that you have received this e-mail in error, do not read it. Please notify this office of the error then immediately delete the message and any attachments. Thank you.

From: Timothy Kolaya <tkolaya@sfslaw.com>
Date: Tuesday, December 1, 2020 at 6:52 PM
To: Alan Futerfas <asfuterfas@futerfaslaw.com>, "Gaetan J. Alfano" <gja@pietragallo.com>
Cc: Bettina Schein <bschein@bettinascheinlaw.com>, Ellen Resnick <ebresnick@futerfaslaw.com>, Richard Brueckner <rbrueckner@futerfaslaw.com>
Subject: RE: Lisa McElhone Document Demand Meet and Confer Follow-up.

Alan:

We are still trying to confirm our position with respect to three of the categories of documents you have requested. It is a matter of confirming the availability of those documents and—between the intervening holiday and some personal issues affecting certain of the people who are providing us this information—this has unfortunately taken a bit more time than we expected. We'll be back to you tomorrow.

Regards,

Tim

TIMOTHY A. KOLAYA
PARTNER

DIRECT	**305. 614. 1405**	ONE BISCAYNE TOWER
MAIN	**305. 614. 1400**	2 SOUTH BISCAYNE BOULEVARD
MOBILE	**305. 321. 3055**	SUITE 1600
E-MAIL	TKOLAYA@SFSLAW.COM	MIAMI, FL 33131
WEB	WWW.SFSLAW.COM	

From: Timothy Kolaya
Sent: Tuesday, December 1, 2020 11:50 AM
To: Alan Futerfas <asfuterfas@futerfaslaw.com>; gja@pietragallo.com
Cc: Bettina Schein <bschein@bettinascheinlaw.com>; Ellen Resnick <ebresnick@futerfaslaw.com>; Richard Brueckner <rbrueckner@futerfaslaw.com>
Subject: RE: Lisa McElhone Document Demand Meet and Confer Follow-up.

Alan:

We are waiting to hear back internally on the availability of certain of the specific documents you are requesting. We will respond to you by the end of the day today with our position on the list of documents you have requested.

Regards,

Tim

EXHIBIT J

Subject: Re: SEC v. Par Funding, et al. - Proposed Stipulated Protective Order
Date: Friday, December 11, 2020 at 11:33:36 AM Eastern Standard Time
From: Bettina Schein
To: Timothy Kolaya, Alan Futerfas, Alejandro O. Soto
CC: gja@pietragallo.com
Attachments: image001.png

Tim,

As a follow up to our discussion with you and Gaetan yesterday afternoon, inquiry was made at Summit Hosting for a use log and /or access log for the static copy of the Quickbooks. The Network Engineer provided the response below. As I have stated, Joe Cole did not access Summit Hosting after setting it up and confirming that that RDA could be set up. On August 16, James Klenk accessed it to make sure the functionality was working so that it would be available for anticipated use by accountants retained by the defendants. There was no access after that.

Justin Kirilo (Summit Hosting)
Dec 10, 2020, 9:09 PM EST

Hello Joe,
We do not have anything automated, the last time the accounts were logged in will be showing below.

KnewLogic3 – last login 8/16/20
KnewLogic4 – last login 8/4/20
KnewLogic5 – last login 8/4/20

Thank you,

Justin Kirilo
Network Engineer

SUMMIT HOSTING®
MANAGED CLOUD SOLUTIONS

We will review the draft protective order and sent it back to you with any edits.

Thank you,

Bettina

EXHIBIT K

Wednesday, January 13, 2021 at 6:59:17 PM Eastern Standard Time

Subject: Document Production
Date: Monday, December 14, 2020 at 2:42:08 PM Eastern Standard Time
From: Bettina Schein
To: Gaetan J. Alfano, Timothy Kolaya, Douglas K. Rosenblum, rstumphauzer@sfslaw.com
CC: Alan Futerfas, Alejandro O. Soto, James Froccaro, Brian Miller, Jeffrey Marcus, Jeffrey Cox

Gaetan and Tim,

We conferred on Thursday afternoon, December 10th. At that time you stated you would provide the documents requested by Mr. Cole. Those documents which are all readily available to you include; 1) The static copy of the QuickBooks as of July 29, 2020; 2) The files removed and copied from Mr. Coles' personal computer in August; 3) The Par bank records; 4) The files relating to CS2000 and to other non- receivership entity files from Mr. Cole's computer. Your view that providing these non - receivership documents should wait until determination of the expansion motion is mistaken. Presently the documents are not part of the receivership, and whether or not they will be, they are still subject to production. Regarding the QuickBooks production, you requested and I provided proof that Mr. Cole has not accessed the static copy of the QuickBooks. We have requested since August that the receiver permit us to access this static copy of the QuickBooks, because it is the most cost effective and quickest way for the defense accounting experts to view and analyze those records. We still do not have access to these QuickBooks files.

Your position that a protective order be in place prior to any production of Mr. Cole's requested documents is untenable in light of the public filings by the Receiver, in motions and attached reports which contain portions of these very same bank records and QuickBooks. Just yesterday, the Receiver filed another report which contained a declaration of Mr. Sharp based upon his claimed review of CBSG's QuickBooks and CBSG's bank statements. Since you have already placed some of these documents in your public filings, there is no basis for your request that a protective order be in place prior to your production of Mr. Cole's documents.

Accordingly, please confirm that you will provide these documents today or tomorrow at the latest, including letting us know that our accounting experts may finally have access the static QuickBooks. If there is any delay past tomorrow, I propose the following dates to appear before the Magistrate: the afternoon on Dec.16th, Dec. 17th or the morning of Dec. 18th.

Thank you,

Bettina Schein
Law Offices of Bettina Schein
565 Fifth Avenue
New York, New York 10017
(212) 880-9417
(917) 375-5001
Bschein@bettinascheinlaw.com