

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

Case No. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

**DEFENDANTS' JOINT REPOSE TO THE RECEIVER'S QUARTERLY STATUS
REPORTS DATED DECEMBER 13, 2020 AND FEBRUARY 1, 2021**

Defendants Lisa McElhone (“Ms. McElhone”), Joseph W. LaForte (“Mr. LaForte”), Joseph Cole Barleta (“Mr. Cole”), and Perry S. Abbonizio (“Mr. Abbonizio”) file this Response and the attached Declaration of Joel D. Glick, a Certified Public Accountant and Director of Forensic and Advisory Services at Berkowitz Pollack Brant Advisors + CPA’s (“BPB”), in Opposition to the Receiver’s Quarterly Reports Dated December 13, 2020 and February 1, 2021.

I. INTRODUCTION

In the early stages of this case, shortly after the Court heard evidence from both sides during the preliminary injunction hearing, it remarked that Defendant Complete Business Solutions Group, Inc. (“CBSG”) was, “as far as I can tell [] making a profit pre-coronavirus. And so there were some positives, here, understanding they took, really, advantage of a difficult market that is, in my view, somewhat unregulated in the MCA world, in making loans to small business that couldn't otherwise qualify for them. And we can talk about the veracity of those loans and underwriting and insurance. But at a very basic level, there was an economic model here that was

making some money.” Transcript of Day 2 of Preliminary Injunction Hearing at 103, SEC v. CBSG, *et al.*, No. 20-CV-81205 (August 21, 2020).

During the same hearing, the Court later remarked “. . . we made a comment early on this wasn't a Ponzi scheme. It was one of the first things we talked about. This is not, quite honestly, a novel or complicated flow of money and, in fact, one of the things that I think I have noticed and it's been a recurring theme is, to some extent maybe even pre-coronavirus, pre-pandemic this was an extremely profitable enterprise. . . . This case, to me, really is simplified by what did the investors know when they put in their money? That's really all I see here. So the question really becomes did they get the information that securities regulation requires? Would they have invested had they known what is supposedly out there in terms of the backgrounds of investors, lack of alleged underwriting, lack of insurance, of return rates being lower than advertised.” *Id.* at 155–156.

The Court’s impression was, in essence, very much in line with the SEC’s Complaint. The SEC alleged the sale of unregistered securities and misrepresentations by CBSG and others regarding, among other things, “its underwriting and insurance,” but did not allege that CBSG’s MCA operations were either unprofitable or insufficient to pay investors the interest reflected in their promissory notes. *See* DE 119.¹ Then came a “sea change”—a significant shift in the Court’s impression of CBSG—based on a report prepared by DSI, a company hired by the Receiver presumably to operate the MCA business and collect funds. In the wake of that report, which was initially published on December 13, 2020, this Court stated:

. . . there was a conversation had probably three or four months ago where I asked Ms. Berlin, in no uncertain terms, what kind of case this was. Was this the kind of case that dealt with a regulatory issue and a registration issue and a disclosure issue? Or was this more akin to what we know as a Ponzi scheme. That was a question I asked early on in this litigation. *I was told by the SEC that it was not a Ponzi scheme at the time, that they were uncertain, they were not ready to make that representation,* and I will confess that the report from DSI goes to great lengths not to use that term. But looking at the way the

¹ The SEC amended its complaint, but only to correct a spelling error. *Id.*

snapshot that DSI has prepared, and, again, I know this is all, if you will, under protest by defense counsels who feel that it is a flawed methodology, but we have to remember that this is a conversation between me and my receiver, an officer of the Court, and his due diligence and what it has generated in terms of reports for me to digest what is going-on on the ground in this business and in all the related Par Funding businesses. *It seems to me, based upon the report and the fact that some of the payouts or the funds that investors were receiving were essentially generated or the product of new money coming into these investments that we maybe have had a sea change in the true nature of this business and that it is less about factoring and due diligence on loans, and more about taking from new investors to pay old investors.*

Transcript of Status Conference, at 14–15, SEC v. CBSG, *et al.*, No. 20-CV-81205 (Dec. 15, 2020) (emphasis added).

The DSI Report was, as defense counsel protested, prepared based on financial data that was then unavailable to the defendants. While the Court invited defense counsel to submit a competing expert report, with only one report before it, the Court nevertheless acknowledged its views of the company had significantly changed: “...I am openly recalling [a] statement early in the litigation that as far as the SEC knew, this wasn't a Ponzi scheme, and I read Sharp's report and, I mean, as Mr. Stumphauzer put it eloquently, there are many definitions of a Ponzi scheme. Well, this Court knows a couple and taking from Peter to pay Paul is one of them, and that's what it said in Sharp's entire report.” *Id.* at 95–96.

Through the attached Declaration of Joel D. Glick, a CPA and Director of Forensic and Advisory Services at BPB, the undersigned now ask the Court to consider what it specifically asked defense counsel produce - the verified report of a CPA expert “who looked at what Mr. Sharp looked at and came up with his own verified affidavit of their financial picture.” *Id.* at 34–35. At the very least, Mr. Glick’s conclusions are significant and should cause this Court to reconsider its opinion of CBSG:

- Mr. Glick’s forensic review of the same data Mr. Sharp looked at wholly disproves the erroneous implication in Mr. Sharp’s Declaration that CBSG was a Ponzi scheme.

- Mr. Glick’s use of the appropriate accrual basis methodology under U.S. General Accepted Accounting Principles (GAAP) reveals that CBSG earned hundreds of millions of dollars in top-line revenue between 2012 and 2019, whereas Mr. Sharp’s Declaration improperly ignored GAAP in its conclusions regarding CBSG’s profitability.
- In addition to drawing unfounded conclusions regarding profitability using a cash-flow analysis, Mr. Sharp’s Declaration misapprehends the meaning of CBSG’s historical collection of \$6.6 million more in cash than it advanced to merchants. As explained in Mr. Glick’s Declaration, because cash is inventory for an MCA business, MCAs such as CBSG keep a limited amount of cash on hand because cash sitting in a bank account does not realize a profit and carries a cost. Therefore, maintaining a low reserve of cash *is the goal of a well-managed MCA business*.
- Mr. Sharp’s Declaration reached several erroneous and misleading conclusions through what can only be described as a selective and biased review of the financial data. For example, Mr. Sharp’s conclusions regarding CBSG’s “entire” active receivables portfolio ignored thousands of merchant deals comprising more than 50% of the portfolio and hundreds of millions of dollars in receivables. It also ignored over 3,900 closed merchant deals successfully funded by CBSG between 2012 and 2019 that returned a blended factor rate of 1.399, which is *more* than the amount represented in Defendants’ Joint Response to the Status Report (DE 355) that Mr. Sharp incorrectly suggested was excessively sanguine.
- Even Mr. Sharp’s assessment of the Exception Portfolio is flawed. In his declaration, he condemns the use of reloads and states, with no basis whatsoever, that they are an indicator of a merchant’s inability to pay. Similarly, Mr. Sharp, citing no industry standard or other discernable support, suggests that the percentage of fees in the reloads in the Exception Portfolio were “excessive.” In so doing, he misleadingly suggests they are an indicator of trouble when, in fact, higher fees mean higher revenues for an MCA.

Ultimately, the picture that now emerges is that the Declaration authored by Mr. Sharp—whose firm, DSI, has earned well over two million dollars to date as a result of this engagement—went to great lengths to select facts to support a particular narrative rather than an objective and GAAP-compliant representation of CBSG’s actual financial performance. In so doing, it exudes a bias that casts serious doubt on its credibility, managing as it does to falsely characterize a business that earned hundreds of millions in real, GAAP-recognized revenue, into a supposed Ponzi scheme.² As a purported expert in his field, Mr. Sharp, while clearly not a CPA, is obligated

² This is also a case in which a company that *unequivocally* earned significant revenue through its MCA business operations and was able to collect all but 1.2% of the cash it advanced, paid millions of dollars in

to consider all relevant evidence and may not cherry-pick facts to support a finding that suits him while ignoring evidence that does not. For these reasons, his declaration, and the conclusions drawn from it by the Receiver should be disregarded.

II. The Receiver Relied in Error on the Mistaken Conclusions and Assumptions Made in the Sharp Declaration.

a. CBSG Is Not a Ponzi Scheme Under Any Definition of the Phrase.

First and foremost, Mr. Sharp's implication that CBSG was operating a Ponzi Scheme, whether or not he or the Receiver *used the word*, is nothing short of reckless. As explained in paragraph 37 of Mr. Glick's Declaration, his forensic examination of the 96-month period between 2012 and 2019 revealed that cash paid back to CBSG from merchants who received advances *always exceeded the amount necessary to pay investors* following the first three months of its existence.³ Glick Decl. ¶ 37. Consequently, new investor money would never have been needed to make principal and interest payments to existing investors, which is the core definition of a Ponzi scheme. *Id.*

Mr. Glick's second test of the data examined whether any new investor money would even be available after being deployed in merchant cash advances to make then-existing investor interest payments. *Id.* Excluding the first three months of the business, the second test revealed that in all but two months during the same 8-year period, CBSG advanced more cash to merchants than it received in new investor proceeds, meaning new investor proceeds were deployed per CBSG's

insurance premiums, and implemented an underwriting system that rejected more than 8 of 10 MCA applications received, saw its doors shut in an emergency action hastily brought by the SEC alleging misrepresentations about its default rate, insurance, and underwriting—a case where semantics and puffery somehow turned what should have been a regulatory examination into classic governmental overreach. That, in a nutshell, is the SEC case, but that is an argument for another day.

³ Notably, Mr. Glick examined the data using the same categories as DSI, such as new investor deposits, principal and interest payments to investors merchant advances, cash back from merchants, and the like. In other words, unlike Mr. Sharp, Mr. Glick did not manipulate categories or data to fit a particular conclusion.

business model and were unavailable for any other purpose. *Id.* In the two months this was not true, Mr. Glick's first test proved that cash collected from merchants exceeded the amounts necessary to pay investor interest commissions, consulting fees, and other expenses. *Id.* Therefore, in those two months, where new investor dollars were available after cash advances were made, they were not needed for payments to existing investors or other operational needs. *Id.* Thus, in addition to proving CBSG was not operating a Ponzi scheme, Mr. Glick's test proved that investor dollars were not used to pay commissions or consulting fees.⁴ *Id.*

In his comments to the Court regarding Mr. Sharp's Report, the Receiver maintained that his and Mr. Sharp's suggestion that CBSG was operating a Ponzi "without using the word" displayed restraint on their part. *See* Transcript of Status Conference, *supra* at 16–17. In fact, the opposite is true. By raising the specter of a Ponzi scheme without defining it, the Receiver gave himself license to lodge the accusation without tying the actual markers of such a scheme to CBSG's financial data, putting defense counsel in a position where they were forced to defend themselves against a moving target without the evidence. Mr. Glick not only tested and disproved the accusation using the data, but he also deconstructed it using the SEC's definition (and others) on a point-by-point basis. Glick Decl., ¶¶ 19–26. As the former lead forensic accountant in the Rothstein Ponzi case, Mr. Glick is keenly familiar with and qualified to opine regarding Ponzi schemes. *Id.* at ¶ 20.

⁴ Mr. Glick's Declaration also noted that James Klenk (himself a CPA) affirmed in a separate declaration that payments to merchant brokers and consulting fees were paid in the quarter *after such fees were earned based on new merchant business*. These payments were therefore tied to merchant funding and not to investor deposits. *Id.* at ¶ 37, n.24.

b. CBSG Paid Millions to Investors Even When No Investor Dollars Were Raised.

When the Covid-19 pandemic negatively impacted many of the small businesses who were CBSG clients, those first few dire months fortuitously revealed something noteworthy about CBSG. During this time period, between April and July 2020, CBSG did not receive new investor proceeds and still paid approximately \$15 million dollars to investors—most of whose notes had not even matured—because they needed the money,⁵ once again confirming that new investor dollars were not required to pay then-existing investors. Glick Decl., ¶ 21. And, despite the Receiver’s protestations about Covid-19’s impact on its ability to collect from merchants (DE 482, at 6), CBSG managed to collect \$100M of merchant payments during this same time period, thereby further dispelling the notion that the business was unsustainable without new investor dollars. *Id.*

c. Mr. Sharp’s Cash-Based Analysis Misled this Court.

The Receiver’s Report cites Mr. Sharp’s declaration for the proposition that CBSG’s MCA operations generated only \$6.6 million dollars in net cash from its operations. (DE 482, at 7.) During his comments to the Court in the December 15, 2020 Status Conference, the Receiver acknowledged that a cash-based analysis is “not the same as profit,” but argued that “it’s a good proxy and measuring stick.” *Id.* at 19. If GAAP matters—and it does—that assertion is simply incorrect. GAAP makes clear that a cash flow analysis alone is not appropriate to determine profitability. Glick Decl., ¶¶ 15, 50–51. Evaluating CBSG’s profitability using the required accrual basis method of accounting reveals that it was profitable, earning hundreds of millions of dollars

⁵ Mr. Glick is continuing to verify the amounts paid to investors during this time period, which is expected to increase beyond \$15 million, and the percentage of those investors whose notes had not matured.

in top-line revenue that was altogether ignored by DSI, who did not conduct an accrual-based review. *Id.* at ¶¶ 15, 28, 88.⁶

Despite recognizing that “cash is not the same as profit” and perhaps overlooking GAAP, the Receiver—in arguing to the Court that CBSG is some form of a Ponzi Scheme—nevertheless remarked, “You have to consider other factors. So, for example, what was the profitability of the underlying business? How does the profitability of the underlying business tie to representations that are being made to investors about the returns that are going to be delivered to him?” Transcript of Status Conference, *supra* at 17. Of course, a cash analysis, which is all Mr. Sharp did, would not answer these questions because it fails to recognize revenue in the cash already received and yet to be received (receivables). This was yet another consequence of Mr. Sharp not utilizing GAAP accounting principles in his financial analysis.

Among the more maddening aspects of Mr. Sharp’s conclusions, however, was the misleading notion that CBSG’s collection of “*only* \$6.6 million in cash from MCA activity despite advancing \$1.1 billion in MCA transactions” revealed something negative about its MCA business—as though this margin meant that the company had only earned that much over its existence. (DE 482-2, at 3) (emphasis added). In fact, the margin reveals just the opposite. As an MCA business, CBSG’s inventory was cash. Glick Decl., ¶ 29, 58. Like any other business, to remain profitable, sound inventory management required CBSG to keep its inventory (cash) reserves low—meaning keep cash on the street earning money—as cash in CBSG’s bank accounts earns nothing and instead decreases profits (because CBSG must pay interest on the cash it collects from investors). Glick Decl., ¶ 29, 58. Consequently, as Mr. Glick explains in paragraph 64, the

⁶ Beyond the inarguable fact that accrual basis of accounting is the required methodology for measuring profitability, CBSG maintained its books on an accrual-basis according to GAAP principles, and it paid taxes on revenue earned on that basis as required by the IRS tax code. Glick Dec., ¶ 53. The Sharp Declaration also ignored this.

proximity between the amount of cash advanced and received by CBSG simply confirms that the company “is managing their inventory.”

Unfortunately, the Receiver relied on DSI’s erroneous net cash analysis and incorrectly suggested that a chart in Mr. Sharp’s report showing that more money had gone out to merchants than had come in somehow proved CBSG was not profitable:

Now, Your Honor has been told repeatedly throughout this litigation, and this is the point I want to address in more detail if the Court will allow, but you've been told repeatedly, number one) that this is a highly profitable business, and, number two) what you have between told is that, you know, the portfolios were performing and that there were adequate profits, sometimes referred to as house money for the defendants to pay themselves. What this chart shows, *and, by the way, you were also told that the primary source of profit was the MCA's businesses, it goes to some of those business lines.* Now I should be careful in saying that this is an analysis of cash in and cash out, which is not the same as profit, but it’s a good proxy and a measuring stick, *and what you can see is throughout the life of this company, CBSG has routinely and uniformly given out more money to merchants than they have received back.*

Transcript of Status Conference, *supra* at 18– 19. (Emphasis added). In fact, Mr. Sharp’s own analysis shows that \$6.6 million more came in than went out to merchants, (DE 482-2, ¶ 15), which, as Mr. Glick’s Declaration repeatedly demonstrates, simply means CBSG was managing its cash inventory and says nothing about its profitability. Analyzed properly and in accordance with GAAP, the Glick Declaration makes clear that CBSG was highly profitable and that the faulty cash basis analysis employed by Mr. Sharp misled this Court as to the financial strength of CBSG’s MCA business.

d. The Sharp Declaration Makes Unsupported Assumptions About CBSG’s Portfolio of Receivables.

One of the more unusual aspects of the Sharp Declaration is its selective review of the available data. There are several examples of this, the most glaring of which is Mr. Sharp’s decision to present an incomplete analysis of CBSG’s merchant receivables. First, Mr. Sharp’s Declaration simply ignores over 3,900 CBSG closed merchant accounts (“Zero Balance

Merchants”), which represent more than half of the merchants to which CBSG advanced cash over its life span. Glick Decl., ¶¶ 17, 82–83. Notably, thousands of these included reloads. *Id.*, ¶ 73.

During his remarks to the Court on December 15, 2021, again relying on the Sharp Declaration, the Receiver referred to CBSG’s outstanding receivables as “paper profits,” and added, “But this notion that they're collecting in a multiple of 1.32 is, again, false. It's just false based on the numbers. They're not even actually collecting the entire net cash advance.” Transcript of Status Conference, *supra* at 17. In fact, the Receiver was wrong. What we now know is that during its 8-year existence, between 2012 and 2019, CBSG advanced cash to over 3,900 Zero Balance merchants, including hundreds of reloaded deals, **and earned a factor rate of 1.399**. Glick Decl., ¶ 87. According to Mr. Glick, “the overall blended factor rate of 1.399 proves the profitability of the 3,900 Zero Balance merchant funding agreements.” *Id.*⁷

Even when purporting to focus on merchant deals with an outstanding accounts receivable balance, however, Mr. Sharp’s selective bias continued. Instead of presenting a complete analysis of the entire merchant portfolio with an active balance, Mr. Sharp focused only on “the Exception Portfolio,” which comprises 46% of the outstanding accounts receivable balance, thereby ignoring an even greater balance of the portfolio than he examined. Glick Decl., ¶ 61. Amazingly, despite having access to the data for the entire portfolio (and twice the time Mr. Glick has had), Mr. Sharp draws conclusions about the entire portfolio based only on the Exception Portfolio: “Based on our

⁷ Mr. Glick’s analysis also demonstrates that the analysis prepared by Defendants in their Joint Response to the Status Report was not, as Mr. Sharp suggested (DE 482-2, ¶ 47), misleading. In fact, while Mr. Sharp states in his Declaration that he conducted “an analysis of the operations of CBSG,” his Declaration was based only on DSI’s “experience with the ‘Exception Portfolio.’” As we now see, it was Mr. Sharp’s analysis which was misleading.

analysis of the Exception Portfolio, we reached the following conclusions with respect to the quality of the CBSG portfolio.” (DE 482-2, ¶25.)⁸

Moreover, Mr. Sharp’s Declaration reached conclusions regarding certain features of the Exception Portfolio without a shred of support, in what can only be described as an incomplete analysis of a partial picture of CBSG’s active receivables. First, Mr. Sharp suggests, without any basis, that reloads suggest a merchant cannot afford to pay their obligations, this despite the fact that CBSG’s 3,900 Zero Balance merchants included thousands of reloads and yielded a highly profitable blended rate of 1.399. Glick Decl., ¶¶ 86–87. Next, Mr. Sharp suggests that the number of reloaded deals was “excessive” without a shred of support. *Id.* at 18. He cites to nothing in support of this; no industry average or quantitative analysis—nothing. His claim, in fact, is counterintuitive given that reloaded deals increase factoring fees thereby increasing profitability for CBSG at lower levels of collectability.⁹ Glick Decl., ¶ 28, n.18. And, as detailed in Mr. Glick’s Declaration, Mr. Sharp also suggests without any support that CBSG reloaded MCA deals that were unrelated to the merchant’s business operations. *Id.*, ¶ 18. In the end, Mr. Sharp provided

⁸ Mr. Sharp’s cherry-picked data analysis is the reason for the chart described in paragraph 64 of Mr. Glick’s Report. In Mr. Sharp’s Declaration, he uses only the merchant cash collected from and advanced to the Exception Portfolio merchants to make it appear that more money has gone out to merchants than has come in. In fact, the second graph in paragraph 66 shows that when examining the entire CBSG portfolio over the 8-year span of the business, more merchant money has been collected than advanced, and “the proximity of the lines” simply means that “CBSG is managing their cash inventory.” *Id.*

⁹ Mr. Sharp’s claim that the percentage of outstanding receivables—again only within the “Exception Portfolio”—is “excessive” is unsupported and at best unclear. Mr. Sharp does not explain his basis for suggesting that this phenomenon increases or lowers the risk of collectability. In his comments to the Court on this subject, the Receiver fares no better, suggesting the defense wrote off the receivables “as though they’re meaningless” because we argued that the composition of the receivables means CBSG already collected the principal advanced to merchants. (Tr. Dec. 15, 2021 Status Conf., at 30.) He misunderstood our argument. The point was and remains that the composition of the receivables means that CBSG often has already collected the cash it advanced, which lowers the risk of loss to it and investors. This means the composition described as “excessive” in Mr. Sharp’s Declaration means less risk, not more. Obviously, the fees still matter to CBSG. It is what earned them millions of dollars in profits over the years.

little to no analysis of the underwriting to support his conclusions and appeared to wholly ignore collateral obtained by CBSG to securitize the MCA deals. *Id.*, ¶¶ 40–42, 65.¹⁰

In the end, Mr. Sharp offered only speculation about the Exception Portfolio (*see id.*, ¶ 66), which, unlike the Zero Balance merchant deals that can be measured, remain unrealized assets of the company: “*If* CBSG is only able to collect the Cash Exposure (cash out less cash back) in the Exception Portfolio...” *Id.* (Emphasis not in original). In this way, Mr. Sharp’s analysis is no different than attempting to call the winner of a baseball game in the 5th inning based on the performance of fewer than half of the players on the field, without ever examining the team’s or the players’ statistical performance in that year or years prior. This is not the province of a Receiver. Profitable businesses make conservative deals, risky deals, good deals, and bad deals. *PNC Bank v. Presbyterian Retirement Corp., Inc.*, No. 14-0461, 2014 WL 6065778, at *8 (S.D. Ala. Nov. 13, 2014) (declining to impose a receivership where, *inter alia*, the facility had sufficient cash flow to meet its regular operational expenses). Mr. Glick’s Declaration makes clear that CBSG clearly had robust underwriting and operated a profitable MCA business. Mr. Sharp’s declaration, on the other hand, went to great lengths to craft a narrative that suited a particular end: to keep DSI engaged. To date, it has earned \$2,194,538.27 in fees, with more to come if this Court is persuaded to keep DSI in place. (DE 438, 491.)

¹⁰ Mr. Sharp appears to keep his thumb on the scales by including post-Receivership activity in his assessment of the CBSG Portfolio. Glick Decl., ¶ 60. On the one hand, when conducting a cash-flow analysis, he reviews CBSG’s financial data from inception through 2019, but when assessing CBSG’s “Exception Portfolio,” he includes data received through November 2020. *Id.* This is consistent with Mr. Sharp’s declaration, where he discusses collectability “based on *our experience* with the Exception Portfolio” (again ignoring the other more than half of the active portfolio.) (DE 482-2, ¶ 48.) (Emphasis added.) Of course, given the fact that the SEC commenced an emergency enforcement action against CBSG on July 24, 2020 (DE 1) and the Court appointed the Receiver over CBSG days later (DE 36), Mr. Sharp’s decision to consider activity after July 24, 2020 is both inconsistent and improper.

III. CONCLUSION

For the reasons above, Defendants Lisa McElhone, Joseph W. LaForte, Joseph Cole Barleta, and Perry S. Abbonizio respectfully ask the Court to consider the attached declaration of Joel D. Glick in Response to the Receiver's Quarterly Reports Dated December 13, 2020 and February 1, 2021.

Dated: April 15, 2021

Respectfully submitted,

Alejandro Soto, Esq.
Daniel Fridman, Esq.
Co-Counsel for Joseph LaForte
Fridman Fels & Soto, PLLC
2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134
(305) 569-7701
asoto@ffslawfirm.com
dfridman@ffslawfirm.com

Alejandro O. Soto
ALEJANDRO O. SOTO
Florida Bar No. 172847

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

**KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT**
Attorneys for Joseph W. LaForte
One W. Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
(954) 525-4100

David L. Ferguson
DAVID L. FERGUSON
Florida Bar Number: 0981737
Ferguson@kolawyers.com
SETH D. HAIMOVITCH
Florida Bar Number: 0085939
Haimovitch@kolawyers.com

James R. Froccaro Jr., Esq.
Attorney for Joseph W. Laforte
20 Vanderventer Ave., Suite 103W
Port Washington, New York 11050
(516) 944-5062-(office)
(516) 965-9180-(mobile)
jrfesq61@aol.com-(email)

James R. Froccaro Jr.
JAMES R. FROCCARO JR.
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

**MARCUS NEIMAN RASHBAUM &
PINEIRO LLP**

Counsel for Defendant Perry S. Abbonizio
2 South Biscayne Boulevard, Suite 1750
Miami, Florida 33131
(305) 400-4260

Jeffrey E. Marcus

Jeffrey E. Marcus, Esq.
Fla Bar No. 310890

jmarcus@mnrlawfirm.com

Daniel L. Rashbaum, Esq.
Fla Bar No. 75084

drashbaum@mnrlawfirm.com

Jason L. Mays, Esq.

jmays@mnrlawfirm.com

Fla Bar No. 106495

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

vs.

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

Defendants.

DECLARATION OF JOEL D. GLICK

1. Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:
2. My name is Joel Glick. I am over the age of 18 years and I make this declaration based upon my personal knowledge of the facts set forth herein.
3. I practice in the areas of forensic accounting and economic damages.
4. I have testified as an expert witness in both State and Federal courts. See attached Exhibit 1.
5. I am a Certified Public Accountant licensed in Florida, since 1994, and Certified in Financial Forensics, since 2008. Both credentials are through the American Institute of Certified Public Accountants.
6. I am a Certified Fraud Examiner credentialed through the Association of Certified Fraud Examiners since 2010.
7. I am a Director of Forensic and Advisory Services at Berkowitz Pollack Brant Advisors + CPA's ("BPB").
8. BPB was retained by the law firm of Fridman Fels & Soto, PLLC to assist with their

representation of Complete Business Solutions Group, Inc., d/b/a Par Funding (“CBSG”).

9. I have supervised and been extensively involved in the analysis to date of CBSG’s books and records.
10. No statements in this declaration are intended to render any legal opinions or conclusions.
11. The goal of the Court was *“that every piece of data that Mr. Sharp used to prepare this affidavit¹ be provided, pursuant to the guidelines [it] put in place, to a defense expert.”*² As of the signing of this declaration, it is unclear what the entirety of the data DSI reviewed and relied on to prepare their declaration is and, therefore, it is unclear whether they complied with the Court’s wishes.
12. We understand that although most of the activity from January 1, 2020 through July 27, 2020 had been entered into QuickBooks, the books had not yet been fully reconciled as of the date the Receiver took control. DSI has indicated they will update their analysis once the books are reconciled.
13. Based on the foregoing, and as discovery is ongoing, I reserve the right to update this declaration as more data becomes available.
14. I reviewed the following information:
 - a. Various docket entries (DE) filed in this matter:
 - i. RECEIVER RYAN K. STUMPHAUZER’S INTERIM STATUS REPORT DATED OCTOBER 6, 2020 (DE 305)
 - ii. DEFENDANTS’ JOINT RESPONSE TO RECEIVER’S INTERIM STATUS REPORT DATED OCTOBER 6, 2020 [DE 305] (DE 355)

¹ DECLARATION OF BRADLEY D. SHARP (DE 426-1)

² Transcript of the December 15, 2020 Status Videoconference Before The Honorable Rodolfo A. Ruiz, II 60:18-21.

- iii. RECEIVER RYAN K. STUMPHAUZER'S MOTION AND MEMORANDUM OF LAW TO EXPAND RECEIVERSHIP ESTATE (DE 357)
 - i. Exhibits E, F, G & L - Declarations of Melissa Davis
 - iv. RECEIVER RYAN K. STUMPHAUZER'S NOTICE OF FILING QUARTERLY STATUS REPORT PURSUANT TO PARAGRAPHS 53 AND 54 OF THE AMENDED RECEIVERSHIP ORDER (DE 358)
 - v. RECEIVER RYAN K. STUMPHAUZER'S NOTICE OF FILING REPORT ON OPERATIONS IN CONNECTION WITH STATUS CONFERENCE TO BE CONDUCTED ON DECEMBER 15, 2020 (DE 426)
 - i. Exhibit 1 DECLARATION OF BRADLEY D. SHARP (DE 426-1)
 - vi. DEFENDANTS' MOTION TO COMPEL THE RECEIVER TO PRODUCE DOCUMENTS RESPONSIVE TO DEFENDANT LISA MCELHONE'S REQUESTS FOR PRODUCTION OF DOCUMENTS (DE 459)
 - vii. RECEIVER RYAN K. STUMPHAUZER'S QUARTERLY STATUS REPORT DATED FEBRUARY 1, 2021 (DE 482)
 - i. Exhibit 1 STANDARDIZED FUND ACCOUNTING REPORT, dated 02/01/20 (DE 482-1)
 - ii. Exhibit 2 DECLARATION OF BRADLEY D. SHARP, dated 02/01/20 (DE 482-2)
 - viii. RECEIVER, RYAN K. STUMPHAUZER'S SECOND APPLICATION FOR ALLOWANCE AND PAYMENT OF PROFESSIONALS' FEES AND REIMBURSEMENT OF EXPENSES FOR OCTOBER 1, 2020 – DECEMBER 31, 2020 (DE 491)
- b. Transcript of DECEMBER 15, 2020 STATUS VIDEOCONFERENCE
 - c. Declaration of James Klenk
 - d. QuickBooks accounting records for CBSG (inception to July 27, 2020)
 - e. Bank statements and ACH vendor statements for CBSG

- f. CBSG internally prepared spreadsheets (including but not limited to)
 - i. Daily Deposit Logs
 - ii. Investor Logs
 - iii. Bank Activity Log
- g. Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”)
- h. Any cited material inadvertently excluded from this list.

CONCLUSIONS³

15. DSI erroneously alleges CBSG was a Ponzi Scheme. A forensic analysis of the QuickBooks/Bank/ACH accounts, from 2012 through 2019, demonstrates that cash flows from merchants were sufficient to cover principal and interest payments made to investors.

16. DSI’s incorrectly use of a cash analysis as a proxy for profitability or earnings disregards U.S. Generally Accepted Accounting Principles (“GAAP”).⁴ GAAP makes clear that a cash flow analysis alone is not appropriate to determine CBSG’s profitability. As set forth below at paragraphs 52-54, any such analysis should have been performed based on the accrual basis method of accounting, which DSI did not do. A forensic analysis of CBSG data using an accrual basis method of accounting reveals that CBSG was profitable, earning hundreds of millions of dollars in top-line revenue that was ignored by DSI.

17. DSI did not present a complete analysis of merchant receivables as they focused on what DSI refers to as an “Exception Portfolio,” and appeared to have extrapolated this

³ I am generally aware that one of the issues in this case is whether the promissory notes issued by CBSG in this case constitute securities. As explained above, no statements in this declaration are intended to render any legal opinions or conclusions, and none are intended by my use of the term “investor” as opposed to “noteholder.”

⁴ “U.S. GAAP (Generally Accepted Accounting Principles) are accounting standards, conventions and rules. It is what companies use to measure their financial results. These results include net income as well as how companies record assets and liabilities. In the US, the SEC has the authority to establish GAAP. However, the SEC has historically allowed the private sector to establish the guidance. See The Financial Accounting Standards Board.” [Generally Accepted Accounting Principles \(GAAP\) | Investor.gov](#)

analysis to the entire portfolio rather than analyzing the entire portfolio. This led to an incorrect analysis of the profitability of the portfolio. In fact, an analysis of 3,900 merchants, as described below in paragraphs 83-88, show a blended factor rate of 1.399.

18. DSI's analysis of the Exception Portfolio relies on several unsupported assumptions:

- a. DSI seems to suggest without support that the existence of "reloads" indicates that a merchant will not be able to pay its obligation to CBSG.⁵ As discussed below, this assumption is unsupported and speculative.
- b. DSI suggests without support that a certain percentage of reloads is "excessive."⁶ DSI's suggestion that the percentage of CBSG's receivables carried too high a factor rate is unsupported and they provided no industry data or other support for any of these opinions.
- c. DSI suggests without support that increasing reloads is "unrelated to [the merchant's] business operations."⁷

BASIS FOR CONCLUSIONS

Alleged/Implied Ponzi Scheme

19. While DSI does not use the term, it clearly implies CBSG is a Ponzi Scheme. The Court appears to agree with my assessment of DSI's implicit message: *"I was told by the SEC that it was not a Ponzi scheme at the time, that they were uncertain, they were not ready to make that representation, and I will confess that the report from DSI goes to great lengths not to use that term. But looking at the way the snapshot that DSI has prepared, ... It seems to me, based upon the report and the fact that some of the payouts or the funds that investors were receiving were essentially generated or the product of new money coming into these investments that we maybe have had a sea change in the true nature of this business and that it is less about factoring and*

⁵ Op. cit. FN1 ¶22

⁶ Op. cit. FN1 ¶25(a)

⁷ Op. cit. FN1 ¶23

due diligence on loans, and more about taking from new investors to pay old investors.”⁸ “The affidavit does not go that far, but it makes it clear that this was not a self-funding operation, meaning this operation could not, regardless of COVID-19, regardless of the SEC’s involvement, that this was truly not a self-engineered or self-funding enterprise, it thrived off new money being put in from investors.”⁹

20. According to the Receiver, DSI suggests there is not a single definition for a Ponzi Scheme.¹⁰ Having been the lead forensic accountant for the Chapter 11 Trustee (Judge Herb Stettin) in the Rothstein Ponzi Scheme matter,¹¹ I am keenly familiar with them. While I agree there are multiple definitions that may use slightly different language to define a Ponzi Scheme, they all contain the same common and primary theme in that new investors are funding repayment of returns to prior investors because the underlying business does not generate sufficient revenue to pay existing investors. The Receiver cites both the Ninth Circuit as well as the AICPA as having a definition of a Ponzi Scheme but does not provide such definitions to the Court. For the benefit of the Court, I have included the definitions from the Association of Certified Fraud Examiners (“ACFE”), the Federal Bureau of Investigation (“FBI”) as well as the Securities and Exchange Commission (“SEC”):

- *According to the ACFE, Dr. Joseph T. Wells’ Encyclopedia of Fraud, Third Edition, describes the characteristics of a Ponzi scheme:¹² A Ponzi scheme is an illegal business practice in which new investor’s money is used to make payments to earlier investors. In accounting terms, money paid to Ponzi investors, described as income, is actually a distribution of capital. Instead of returning profits, the Ponzi schemer is spending cash reserves, all for the purposes of raising more funds. ... There are usually little or no legitimate investments taking place. Most of the funds are used by promoters for expensive lifestyles and transferred into property or offshore accounts.*

⁸ Op. cit. FN2 14:13-25, 15:1 – 9.

⁹ Op. cit. FN2 15:10-15.

¹⁰ Op. cit. FN2 16:24-25, 17:1 – 9.

¹¹ Case No. 09-34791-BKC-RBR

¹² [Ponzi Schemes | Association of Certified Fraud Examiners \(acfe.com\)](https://www.acfe.com)

- *Per the FBI,¹³ “Ponzi” schemes promise high financial returns or dividends not available through traditional investments. Instead of investing the funds of victims, however, the con artist pays “dividends” to initial investors using the funds of subsequent investors.*
- *Per the SEC,¹⁴ a Ponzi scheme is an investment fraud that pays existing investors with funds collected from new investors. ... Ponzi used funds from new investors to pay fake “returns” to earlier investors.*

With little or no legitimate earnings, Ponzi schemes require a constant flow of new money to survive. When it becomes hard to recruit new investors, or when large numbers of existing investors cash out, these schemes tend to collapse.

21. As indicated, QuickBooks has not been fully reconciled through July 27, 2020. Nonetheless, a Bank Activity Log maintained by CBSG reflects that approximately \$15 million was paid to investors between April and July 2020 (prior to the Receivership). During this same period, no investor funds were received and approximately \$100M of merchant payments came in. We are in the process of verifying both the amount of investor principal payments made in 2020 as well as verifying these payments were not made due to maturing obligations. If both are verified it would show new investor dollars are not required to pay old investors. Additionally, CBSG managers forwent the \$13.1 million of consulting fees due to them for Q1 of 2020.¹⁵

22. Further, the SEC warns of Ponzi scheme “red flags”¹⁶ such as:

¹³ [Ponzi Schemes — FBI](#)

¹⁴ [Ponzi Schemes | Investor.gov](#)

¹⁵ As discussed in various pleadings or other documents and is uncontroverted, a 10% fee was paid on new merchant advances. During Q1 of 2020, \$131.3M of new merchant advances were made. $\$131.3\text{M} \times 10\% = \13.1M in consulting fees.

¹⁶ Ibid

- *High returns with little or no risk. Every investment carries some degree of risk, and investments yielding higher returns typically involve more risk. Be highly suspicious of any “guaranteed” investment opportunity.*
- *Overly consistent returns. Investments tend to go up and down over time. Be skeptical about an investment that regularly generates positive returns regardless of overall market conditions.*
- *Difficulty receiving payments. Be suspicious if you don’t receive a payment or have difficulty cashing out. Ponzi scheme promoters sometimes try to prevent participants from cashing out by offering even higher returns for staying put.*

23. CBSG raised funds through debt financing not equity financing. As such, it offered an annual rate of interest to note holders as reflected in promissory notes. This is not a promise of high [rates of] returns to investors.

24. Based on the production received to date, we have seen no indication that investor principal or interest payments were missed or late prior to March 2020. CBSG consistently paid note holders the interest rate stated in the promissory notes until a renegotiation of those notes due to Covid-19 economic conditions in March or April 2020. This is not promise of overly consistent [rates of] returns to investors.

25. The Receiver states that the profitability of the underlying business is an additional factor that should be considered in identifying a Ponzi scheme. That factor is evident in the above definitions. However, the Receiver incorrectly states that a cash analysis is a proxy for profitability. It is not. As will be discussed below, accrual basis accounting provides the best and most accurate, and most widely accepted method for analyzing profitability, it is the basis under which CBSG maintained its books, and therefore the proper test for profitability pursuant to GAAP.

26. Likewise, the fact that a company continues to raise capital does not by itself imply that it cannot sustain itself and such does not make it a Ponzi Scheme. Borrowing funds at a cost lower than the expected profit/return to be realized from the use of those funds is known as leverage. Leverage is a universal business concept and

strategy employed by many businesses. For example, a law firm working solely on contingency needs to secure a line of credit or similar financing, secured by its receivables, to operate on a day-to-day basis; a manufacturer needs to borrow funds to purchase inventory; and a real estate professional borrows funds to purchase and renovate a property. The presumption is these ventures will make a profit that exceeds the cost of the borrowing. As explained below, CBSG has historically generated profits on the factoring fees charged to merchants that exceeded the cost of borrowing the money it raised from investors.

27. MCA businesses advance cash to merchants and, in exchange, the MCA records the Right to Receivables (“RTR”) from that merchant’s future income stream. While it may charge origination fees, late fees, or other ancillary fees,¹⁷ an MCA’s main revenue source is from factoring fee income, which is the difference between the cash advanced to the merchant and the RTR. It is a fixed amount (a factor) determined and agreed to by and between the MCA business and the merchant up front. Under GAAP, the ancillary fees would either be recognized in full at the time of the transaction or as they are earned over time. The factoring fee income is recognized over the term of the MCA contract and would be recognized using the effective-yield (interest) amortization method or straight-line method (which follow the matching principle as defined by GAAP), and not by the cost recovery method utilized in the DSI analysis, as discussed below.

28. While the goal is to collect 100% of all amounts due, as with any business, that is not always the case. Some merchants will pay 100% of their obligation while others, for various reasons, pay only a portion. By having a portfolio of merchants paying an average factor rate of 1.34,¹⁸ an MCA does not need to collect 100% of the RTR to be profitable. A chart below reflects the specific analysis of the entire CBSG merchant portfolio and shows that CBSG earned millions of dollars in profits even though it did not collect 100% of RTR.

¹⁷ CBSG charges these same fees which are not included in the analysis below and would only be additive to revenue and net income.

¹⁸ This is based on the average factor rate for the 17,432 deals reflected in the CBSG Funding List and not based on any industry averages. This also does not reflect the impact from compounding as a result of reloads. Such compounding could increase profitability.

29. Factor fee income is no less real than the income created by selling any other type of product or service. Manufacturers sell products, service providers sell their time and MCAs sell cash. Cash is their inventory. If management is doing a good job, it should not have excess inventory – whether it be cars, legal services, or cash. Manufacturers want their products on store shelves rather than in the warehouse; service providers endeavor to keep their staff busy with billable time; and MCAs endeavor to keep their money “on the street”—in the hands of merchants to increase revenue. If the money is sitting in a bank account, it is not generating a return on investment (the stated purpose of the business) and, in fact, if the MCA is not self-funded, it is still incurring a cost to borrow or accept outside funds.

30. If the Receiver’s premise for the existence of a Ponzi Scheme is the lack of profitability, he is relying on DSI’s flawed analysis which: 1) erroneously focuses on cash flow rather than profit: *“From inception through 2019, CBSG incurred a cash loss from operations...”*; and 2) when analyzing the receivables of an exception portfolio, applies an incorrect methodology to the receipt of merchant payments:¹⁹ *From inception through 2019, CBSG generated only \$6.6 million in cash from MCA Activity...”*

Commingling

31. It is correct that investor proceeds were commingled with merchant payments in CBSG accounts. Commingled simply means mixed or blended. If not otherwise restricted pursuant to a legal agreement, GAAP does not prohibit commingling of funds which, if restricted, should be reported as such. An example of commingling would be an attorney trust account which contains funds from various clients. While State Bar organizations require attorneys to maintain records separately tracking these funds, the fact they are held in the same bank account means they are commingled. While DSI cites to no such similar requirement, CBSG did maintain a separate record of investor balances.

32. Forensic accountants use tracing to ascertain how commingled funds were used. If the use of these funds is not readily apparent, tracing rules are used, if possible, to identify the source of funds remaining in an account. Commonly accepted tracing

¹⁹ For the sake of clarity, money from merchants as opposed to merchant advances, money to merchants.

methodologies are: First In, First Out (FIFO); Last In, First Out (LIFO); Pro Rata Distribution; and Lowest Intermediate Balance Rule (LIBR).

33. The SEC's forensic accountant, Melissa Davis, has authored an article for the American Bankruptcy Institute ("ABI") on the LIBR method. In her article, she acknowledges these other methods stating: *"Courts have also applied the pro rata method, whereby withdrawals from an account containing commingled funds are attributed to the source in proportion to their respective balances at the time of the withdrawals. ...In the "first in, first out" method (FIFO), it is presumed that moneys are paid out in the order in which they were paid in. In the "last in, first out" method (LIFO), it is presumed that the last moneys deposited into an account are the first ones withdrawn, which results in an entirely different outcome.* ²⁰

34. Due to the nature of the MCA business and the purposes of the cash flow, a LIBR analysis is not applicable in this case. Investors were provided an explanation of the business and that their funds were to be used to make merchant advances.²¹ As such, it would be proper to treat investor funds as the first dollars out to merchants.

35. This analysis is also consistent with CBSG's business model. Let us start with some basic premises:

- i. The purpose of a for-profit business is to earn a profit.
- ii. To earn a profit, a business must generate revenue.
- iii. For a business to generate revenue, it must have a product or service to sell.
- iv. To have a product or service to sell, it must have the ability to:
 - a. pay the employees who provide the services,
 - b. purchase the inventory, machinery & equipment necessary to

²⁰ Tracing Commingled Funds in Fraud Cases, June 21, 2017 ABI [Tracing Commingled Funds in Fraud Cases | ABI \(kapilamukamal.com\)](https://www.kapilamukamal.com)

²¹ Our understanding is Investor funds were a pool of funds to be used for merchant advances. There is not a one-to-one relationship between a specific investor and a specific merchant.

manufacture the products they sell,

c. purchase and/or lease the real estate necessary to house the inventory and machinery.

d. pay other operating expenses or obligations that arise.

v. To pay for the items above, funds are required.²²

vi. If a business can borrow funds at a lower rate than the return it can generate in the business, it has created leverage. Leverage is an everyday occurrence in the business world.

vii. Once the funds are received the cycle can begin.

36. Applying these basic premises, CBSG's business model was to create leverage using funds borrowed from note holders to advance to merchants who in turn would make the requisite payments back to CBSG thus generating revenue. This is the very model that supports the use of FIFO as a tracing method here.

37. Using the same categories as DSI, we created a schedule of monthly cumulative inflows and outflows from inception (2012) to December 31, 2019. We then created a series of True/False tests. The first test was to determine if monthly merchant payments exceeded monthly principal and interest payments to investors. An answer of True indicated that the money coming in from merchants exceeded the amount necessary to pay investor obligations and, therefore, that new investor dollars were not needed. This first test yielded no instances of a False response, meaning that the merchant cash received by CBSG's business operations exceeded the amount of payments to investors (principal and interest) for every month of CBSG's business life through December 31, 2019 following the first three months of its existence. The second test was to determine if monthly merchant advances exceeded monthly investor dollars received. An answer of True meant that every dollar of investor money

²² The source of such funds can come from the business owners or be raised through debt or equity financing. Setting aside creative hybrid models, equity financing entitles investors to a share of the profits and exposes them to potential losses. Therefore, such investment comes with higher levels of risk and reward. Debt financing on the other hand provides a stated return in the form of an interest rate on the funds lent to the business.

received would have been subsumed by merchant advances and, therefore, not available to pay principal and interest to other investors. Of the 96 months of CBSG's business life through December 31, 2019, the test returned five (5) false results; three times in 2012, which is and could be expected; once in March 2015 (when the test failed by approximately \$39,000); and once in June 2019 (when investor dollars received exceeded merchant advances by \$3.9M). Therefore, in these months where investor dollars were not all committed to merchant advances, it is theoretically possible that these uncommitted investor dollars could have been used elsewhere in the business. However, based on the results of the first test, there was sufficient cash returned from merchants to satisfy the payments to investors in March 2015 and June 2019, so investor dollars would not have been needed. Moreover, in those same months, merchant dollars were also sufficient to cover operational expenses and other payments, including commissions paid to merchant brokers and consulting fees to management.²³

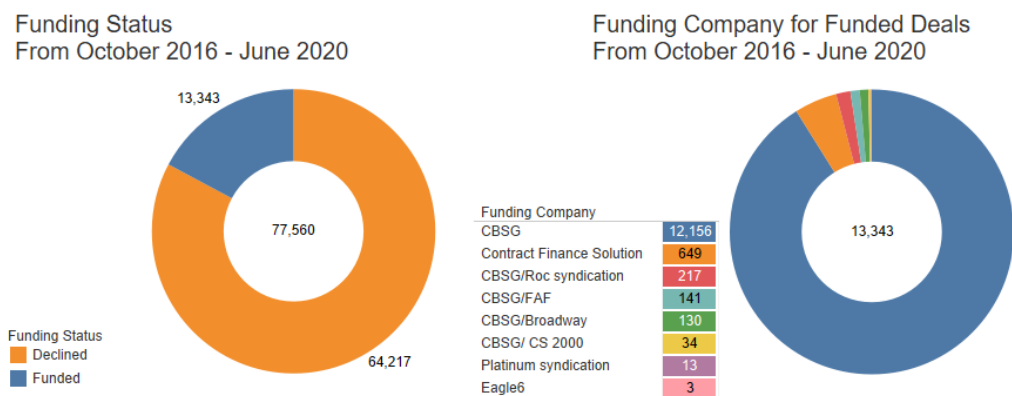
38. This analysis further indicates that CBSG does not meet the above definitions of a Ponzi Scheme and makes the following statement from DSI incorrect: *"CBSG paid \$231.0 million to investors, consisting of principal repayments totaling \$135.6 million and interest payments totaling \$95.4 million. CBSG could not have made principal and interest payments to the investors without additional funds from the investors."*

Underwriting

39. The charts below are based on data provided by the CRM system used by CBSG. These charts demonstrate that CBSG has an underwriting process as it does not accept every request from a merchant for an advance. To the contrary, the charts indicate that only 17% of the requests were approved and funded. According to the U.S. Federal Reserve's 2017 Small Business Credit Survey ("the FRB Survey"), fielded in Q3 and Q4 of 2017, 7% of respondents sought a merchant cash advance as a financing product. Of those in the FRB Survey, 79% of the applicants were

²⁴ As explained in paragraph 7 of the Declaration of James Klenk, payments to merchant brokers and consulting fees were paid in the quarter after such fees were earned based on new merchant business. These payments were tied to merchant funding and not to investor deposits.

approved.²⁴ The same survey issued in 2021, and fielded in September and October of 2020, reflects 8% of respondents sought a merchant cash advance as a financing product and of those, 84% of the applicants were approved.²⁵ CBSG’s application approval rating of 17% is significantly lower and would suggest stricter underwriting policies. Moreover, our understanding is that since the complete population of requests for funding by merchants has not yet been provided in discovery, the additional information would reduce this percentage further below 17%. The chart on the right is simply a breakdown of which MCA company provided funding to the accepted merchants.



40. As of the writing of this declaration, BPB has not had access to underwriting files and therefore is unable to review and provide comment on the underwriting process. It is not clear why DSI, who did or could have accessed these records, did not provide any explanation as to the analysis undertaken in reviewing CBSG underwriting procedures when preparing their Exception Portfolio analysis discussed in further detail below.

41. The only reference to underwriting was in the context of one of the five Exception Portfolio groups they defined. *“The documents in the files of CBSG with respect to this merchant do not support credit exposure of more than \$20 million and certainly not more than \$90 million. CBSG’s own Underwriting Profile dated May 12, 2015 recommended a credit limit of \$27,600.”* This, however, is a statement with no apparent analysis.

²⁴ 2017 SMALL BUSINESS CREDIT SURVEY | REPORT ON EMPLOYER FIRMS, U.S. Federal Reserve Bank

²⁵ SMALL BUSINESS CREDIT SURVEY | 2021 REPORT ON EMPLOYER FIRMS, U.S. Federal Reserve Bank

42. Upon a review of the DSI time records, I could only identify the following entries in which they reference an analysis of CBSG underwriting policies and records.

- *REVIEWED AND INDEXED 16 BOXES OF DOCUMENTS SEIZED BY THE FBI, INCLUDING TAX INFORMATION, UNDERWRITING MATERIALS, MODIFICATION AGREEMENTS, AND MERCHANT DEBIT CARD AUTHORIZATION FORMS 14.10 hours on 9/28 & 9/30/20.*
- *Compile questions for Par Funding regarding cash management, information systems, underwriting and collections procedures, etc. 1.10 hours on 08/09/20.*
- *Review emails regarding insufficient and inaccurate underwriting, or MCA decisions conflicting with underwriting. 0.20 hours on 9/8/20.*
- *Discussion with Kevin Young regarding the process for the underwriting of advances and request samples of the analysis done; review the analysis and further discussions with Kevin Young regarding same; e-mail the underwriting package and comments to Brad Sharp; follow-up e-mails with Brad Sharp regarding the analysis used for underwriting and settlements 1.00 hours on 10/23/20.*
- *Research on underwriting practices with regard to top ten merchants in response to Yale Bogen's request; collection supporting documentation and e-mail Yale Bogen 1.20 hours on 11/19/20.*
- *Research on CBSG's underwriting practice regarding Colorado Homes; collect supporting documents for Yale Bogen. For .70 hours on 11/19/20.*
- *Collect underwriting documents for B&T including bank statements .30 hours on 11/24/20.*

Cash Basis vs Accrual Basis Accounting

43. In the first section of the DSI declaration, **Cash Sources and Uses**, DSI performed an analysis²⁶ in which they categorized CBSG's sources of cash inflows and uses of cash outflows (collectively "cash flows") for the years 2012 – 2019.²⁷ As previously indicated and discussed in more detail below, a cash analysis is improper to determine profitability. It should be further noted that the form of the cash analysis that DSI presented does not seem to provide information useful to investors or the Court. The

²⁶ Op. cit. FN1

²⁷ We await copies of such updated accounting records from the Receiver and reserve the right to update our analysis through the date on which the Receiver took control.

intent of DSI's presentation of this information, which is inconsistent with GAAP, is unclear to me from an accounting perspective.

Improper Form of Analysis

44. Audited financial statements prepared under GAAP require a cash flow statement. A cash flow statement is divided into three activities, operating, investing, and financing. At a high level, these categories allow the reader to determine if cash increased or decreased because of business operations; if cash increased or decreased as the result of various investments made by the company; or if cash increased or decreased related to debt or equity raises, company stock transactions and owner contributions and distributions. Rather than prepare their analysis in such way that investors or the Court could get a sense of the financial operations comparable to other businesses using the most widely accepted framework, DSI prepared its cash flow analysis with the categories Investor Activity, MCA Activity, Other Related Entity Activity and Operating Expenses. It segregated commissions and consulting fees from all other operating expenses and then further segregated commissions and consulting fees into payments to Related Entities and payments to Other Entities. It is unclear why DSI chose this format as it does nothing to address profitability which, according to the Receiver, is a key factor in determining whether a business is a Ponzi Scheme.
45. Payments to related parties are common and certainly not improper by default. It is unclear why DSI chose to focus on them as a category yet provide no discussion or analysis to the Court as to what investigation they undertook to determine what services these entities may have performed for CBSG, what contracts/agreements may have been executed and whether such agreements were arms-length transactions.
46. The Notes to Financial Statements are an integral part of any set of financial statements and provide information to assist an investor in better understanding certain facts underlying the reported dollars. As relevant here, Note-6 Related Party Transactions in the 2017 audit clearly states the relationship and purpose of payments to Related Entities.

- a. Heritage Business Consulting, Inc. (“HBC”) is an entity affiliated to CBSG due to common ownership. Beta Abigail and New Field Ventures, LLC, Inc. are owned in part by the Company’s Chief Financial Officer and Director of Investor Relations. The amount of consulting expense is based on the gross funding for the quarter, as described in the individual consulting agreements.
- b. For Recruiting & Marketing Resources, Inc. (“RMR”), an entity affiliated to CBSG due to common ownership, CBSG is to pay a commission to RMR in the amount of 8% of new funding amounts to clients pursuant to the independent sales organization agreement with RMR.

47. While not listed in Note 6, Full Spectrum Processing (“FSP”) is referenced in the 2017 audit at Note-1 Description of Business and Summary of Significant Accounting Policies, as a wholly owned entity of CBSG²⁸ and that it provides employees and back-office support. During 2017, CBSG stopped processing internally and began to use FSP for such services. An examination of the CBSG income statement reflects that in 2017 processing expenses appeared and payroll expenses (other than officer salaries in later years), disappeared which is consistent with the notes.

48. DSI further aggregates the various categories of payments to Related Parties and specifically states that *“From inception through 2019, CBSG paid more than \$144 million to or for the benefit of LaForte, McElhone, Cole and Abbonizio (“Insiders”).”*

49. The DSI report is unclear as to the impact of payments to “Insiders” on profitability. As there is no dispute as to identity of the Insiders and their respective ownerships of the Related Entities, the question remains what investigation DSI undertook to determine what services these entities, owned by these Insiders, may have performed for CBSG, what contracts/agreements may have been executed, and whether such agreements were arms-length transactions.

Improper Analysis

50. In arguing to the Court that CBSG is some form of a Ponzi Scheme, the Receiver

²⁸ While FSP is an affiliated entity, according to CBSG management, it is not wholly owned entity. Additionally, such ownership would be apparent on CBSG’s balance sheet.

stated *“You have to consider other factors. So, for example, what was the profitability of the underlying business?”* Regardless of DSI’s categorization of cash flows, an analysis of cash flows is not the proper basis to determine an entity’s profitability. The Receiver has acknowledged as much twice in the December 15, 2020 transcript of the video status conference. *“Now I should be careful in saying that this is an analysis of cash in and cash out, which is not the same as profit, but it’s a good proxy and a measuring stick...”*²⁹ *“Again, I want to be careful, net cash which is different from profit.”*³⁰ While an analysis of cash flows has its use, it is neither a good proxy nor a measure of profitability. The accrual basis of accounting provides a more accurate measure of a company’s profitability and economic performance during an accounting period, and a more accurate picture of a company’s financial position at the end of an accounting period. It is the proper methodology to use to determine profitability as is the most widely used and accepted financial reporting framework in the United States.

51. The two main methods of maintaining an entity’s accounting books and records are the cash basis and accrual basis methods of accounting. The cash basis method of accounting, as the name suggests, recognizes revenue when cash is received and an expense when cash is paid. Conversely, the accrual basis method of accounting recognizes revenue when earned and expenses when incurred. The accrual basis results in a more accurate financial picture over the long term. Under GAAP, accrual basis accounting is required as it supports the matching principle which pairs revenues and the corresponding expenses incurred to generate such revenues to the period or periods in which they occurred.

52. The following is an example of why the accrual basis method of accounting properly tracks the true profitability of an entity:

Assume that to produce a single widget, it costs the manufacturer \$10 to purchase the raw materials and \$5 for the labor & overhead to produce the widget. Further assume the manufacturer produces and sells the widget for \$25 in December 2019. Under accrual accounting, the revenue and expenses are recorded in 2019 regardless of

²⁹ FN 1, Op. cit., 18:24-25, 19:1

³⁰ FN 1, Op. cit., 21:3-4

when cash is exchanged. The profit on the sale of the widget in 2019 is \$10 (Sale price \$25 – Materials \$10 – Labor \$5 = Profit \$10). While it is certainly possible for the cash basis to match the accrual basis, the cash basis can result in a mismatch of revenue and expense. If the manufacturer receives the \$25 sale proceeds and pays its employee the \$5, and pays the \$10 for the raw materials, all in 2019, the profit recognized under a cash basis is \$10, the same as would be under the accrual basis. However, if the manufacturer pays \$10 for the raw materials in December 2019 but does not pay its employee the \$5 or receive the \$25 sale proceeds until January 2020, under a cash basis, the manufacturer will record a \$10 cash loss in 2019 and a \$20 cash profit in 2020 (\$25 Sale proceeds - \$5 Labor). While the net of the two years results in the same \$10 profit, the revenues and expenses are not properly matched, and the financial condition of the business as of each period end is distorted and erroneously stated. Unless each CBSG investor was an investor for the entirety of 2012 to 2019, a cash flow analysis for an 8-year period³¹ using seemingly meaningless categories does not properly measure profitability or provide any beneficial analysis of economic performance.

53. In addition to GAAP requirements for the accrual basis, the Internal Revenue Service (“IRS”) requires accrual basis reporting.³² Both the 2017 and 2018 CBSG tax returns, Form 1120, reflect the accounting method as accrual. DSI seems to have ignored that CBSG’s tax returns and tax obligations were, as required by the IRS, prepared using the accrual accounting method.

54. It should be further noted that the 2017 CBSG audit cites the same revenue recognition rules promulgated by the Financial Accounting Standards Board (FASB), ASU 2016-13 Measurement of Credit Losses on Financial Instruments (Topic 326).³³ These are the same rules which were required to be adopted by CCUR Holdings, Inc. and Enova International, Inc., two publicly traded companies having subsidiaries in the MCA/RPA (Receivables Purchase Agreement) business. ASU 2016-13 was to

³¹ Exhibit A to the Declaration of Bradley Sharp [DE 482-2] was inadvertently omitted from the original [DE 426-1]. Exhibit A separates the original summary by year but suffers the same improper format for which to assess profit.

³² Internal Revenue Code § 448 Limitation on use of cash method of accounting.

³³ ASU 2016-13 will require changes to the terminology. References to allowance and provision for loan losses will be revised to reflect that ASU 2016-13 covers all financial assets and not just loans.

replace the existing incurred loss methodology affecting financial assets. As of the issuance of the audit, the new guidance was to be effective for annual reporting periods beginning after December 15, 2020. Early adoption was permitted, but not prior to fiscal years beginning after December 15, 2018.

Data Analysis

55. In its October 30, 2020 letter to the Receiver,³⁴ DSI indicated they examined and compiled approximately an eight-year period of information prior to his appointment which consisted of approximately forty-one bank and ACH accounts and over 1,250,000 transactions.

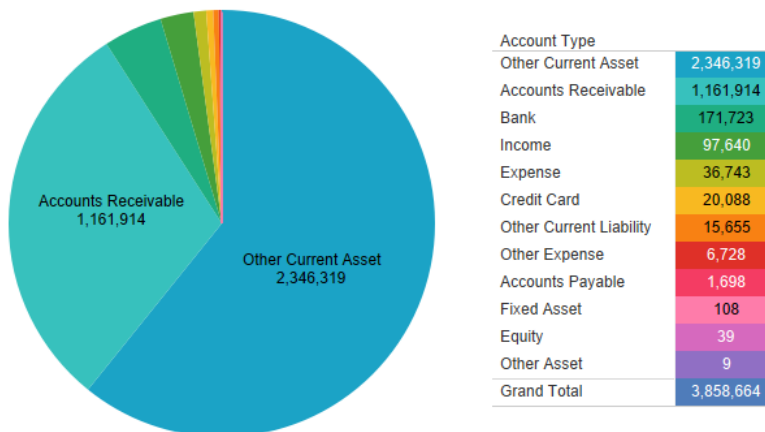
56. BPB has likewise reviewed the same eight-year period and concurs with the number of bank and ACH accounts.

57. BPB reviewed and consolidated the following:

- a. Using Microsoft Excel and Alteryx, BPB created a Daily deposit log transaction database containing approximately 1M records. CBSG maintained a monthly spreadsheet with a tab for each business day of the month. These tabs tracked what ACH debits were supposed to come in and those that did. The daily totals for each ACH processor was then booked into QuickBooks in batch entries.
- b. Using specialized software, BPB created an ACH vendor transaction database containing approximately 1M records.
- c. Using specialized software, BPB created a bank account transaction database containing approximately 100K records.
- d. Using Microsoft Excel, Alteryx and Tableau, BPB created a transaction database of QuickBooks data containing approximately 3.8M records.

³⁴ Case 9:20-cv-81205-RAR Document 358-1 Entered on FLSD Docket 10/30/2020

QuickBooks Number of Records



58. We agree with DSI’s overall analysis of cash, in that CBSG started with zero dollars and at the end of 2019 had approximately \$44.4M in cash. Again, because cash is inventory for an MCA business, carrying as low a reserve of cash as is necessary to cover expenses, and funding new merchant activity was the goal of the company.

59. Due to the merchant advances having a shorter-term than the investor promissory notes, it was possible for CBSG to advance and collect merchant funds more than once before any investor principal obligations matured. This difference in maturity allows CBSG to circulate the investor’s cash through MCA funding contracts before it must be repaid. While this might appear to account for the growth of the \$479.3 of investor funds into more than \$1.1 billion of merchant cash flow, it does not. First, the full \$479.3 million was not available on day one to start advancing to merchants. It was invested over an 8-year period and, per DSI’s Exhibit A, \$256.8 million of these funds were not received until 2019. Second, based on DSI’s own analysis, CBSG incurred significant expenses, such as investor interest payments, operating expenses, and other disbursements. When merchant funds were repaid to CBSG, the amount available for future advances from investor deposits would continue to decrease as such CBSG expenses were paid and required significantly more turns of the dollars than time would allow. Put simply, the only way the investor dollars could have generated the volume of merchant cash flow seen in the bank accounts is through CBSG’s collection of factoring fees (i.e., profits) from merchants in additional

to the amounts the merchants were advanced, as further shown in paragraphs 85-88 below.

Analysis of the Merchant Receivables Portfolio and CBSG Profitability

60. The second section of the DSI declaration, ***Portfolio Analysis***, devotes 11 pages of the 21-page declaration to the analysis of the CBSG merchant portfolio. DSI conducted a detailed cash analysis of a subset of CBSG merchants which they refer to as the Exception Portfolio. It is unclear whether their analysis includes post Receivership activity because they indicate that “[t]he following table provides a summary of the activities with respect to the Exception Portfolio from the inception of the relationship to November 2020.” For the sake of clarity, the Receivership began on July 28, 2020, so it would be improper to include any activity from that date forward in their analysis. This would also be inconsistent with their cash analysis which ended in 2019: “Our preliminary conclusions summarized above are based on our analysis of CBSG’s cash sources and uses for the calendar years 2012 through 2019.”

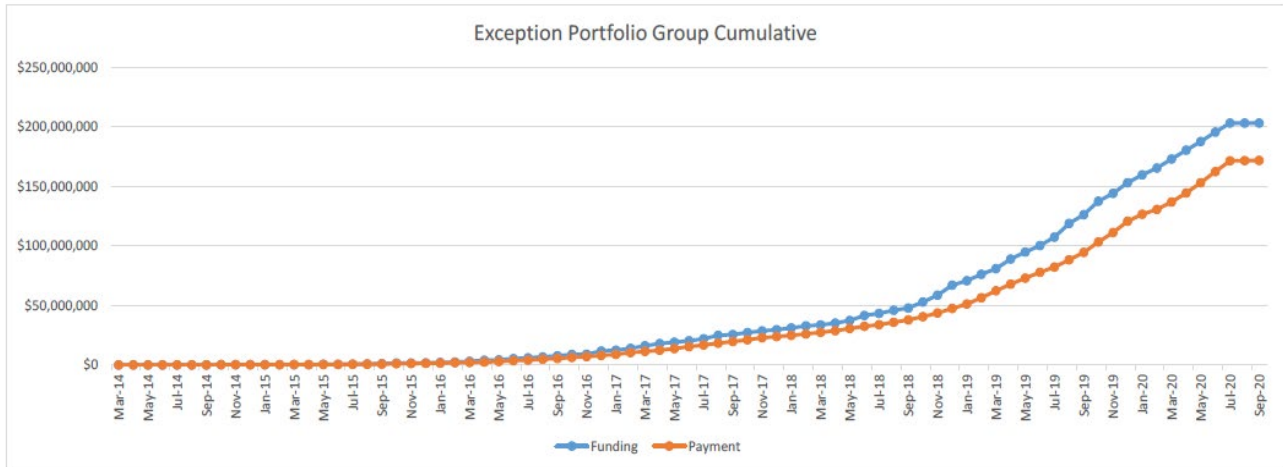
61. The Exception Portfolio represents approximately 46% of the outstanding accounts receivable balance and is comprised of 16 merchants divided into five groups. It is unclear if DSI is suggesting that 100% of the receivable balances related to the exception portfolio is uncollectible, or if they are suggesting that the Exception Portfolio has any impact at all on the remaining 54% of accounts receivable comprised of approximately 3,600 merchants.

62. The Receiver states: “As a result of the Defendants’ poor underwriting and management of the portfolio, the Par Financial model utilized by the Defendants requires significant additional cash investments to fund additional receivables, as the current portfolio does not generate sufficient cash.”³⁵ The only reference to underwriting in the DSI report was for one merchant, the B&T group, and that singular reference did not include any apparent analysis to support the Receiver’s conclusion regarding collectability.

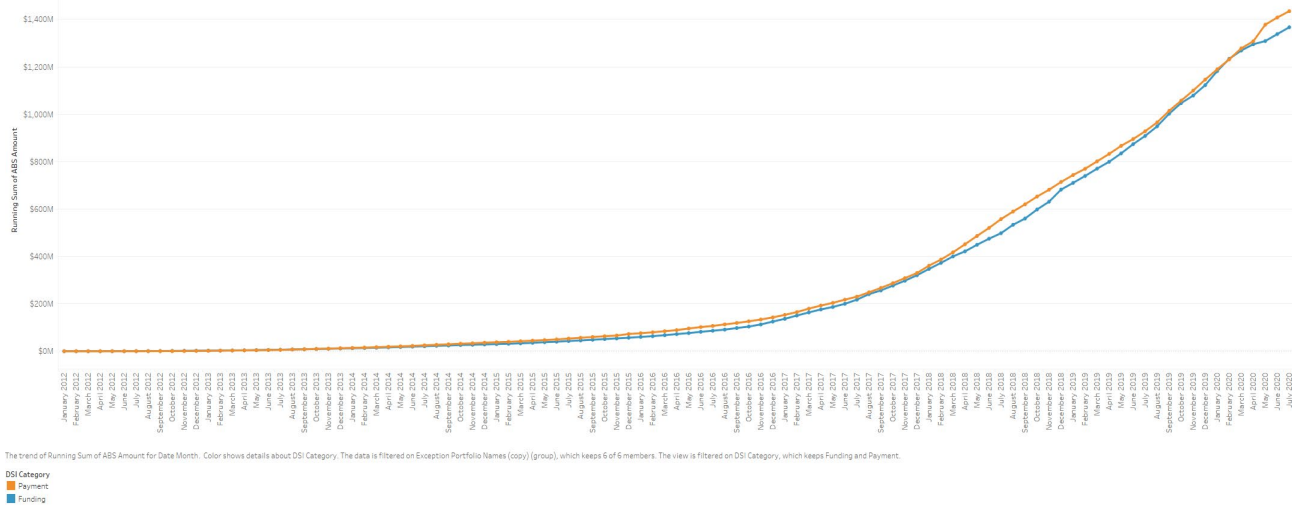
³⁵ Page 7, paragraph 3 of Receiver Ryan K. Stumphauzer’s Quarterly Status Report Dated February 1, 2021 (DE 482)

63. Additionally, DSI does not address what analysis it undertook related to the existence and value of the collateral securing the MCA funding agreements. In fact, DSI appears to ignore collateral altogether in its conclusions regarding the Exception Portfolio. I reviewed a Surety Agreement, including a Confession of Judgment, signed by the president of B & T. While the April 11, 2019 promissory note attached to the agreement indicates an existing liability of approximately \$27.1 million, the Surety Agreement states that: *The term "Liabilities" includes all liabilities of Maker to CBSG, whether now existing or hereafter incurred...* and *"The amount of the liability of Undersigned hereunder shall be unlimited."* While I am not rendering legal opinion, this would suggest that if B & T were to default, it is liable for the entire \$78 million included in accounts receivable.

64. I have included the graph from page 12 of the DSI report which reflects only the Exception Portfolio. In contrast to the DSI graph (Exception Portfolio Group Cumulative) immediately below, the BPB graph below it reflects the same funding and payment information, with the exception that we have included the entire CBSG portfolio of current receivables. The lower graph, of the entire CBSG portfolio, shows that payments coming in from merchants consistently exceed funding provided to merchants. The proximity of the lines confirms that CBSG is managing their cash inventory.



DSI - Charts All



The trend of Running Sum of ABS Amount for Data Month. Color shows details about DSI Category. The data is filtered on Exception Portfolio Names (covv) (group), which keeps 6 of 6 members. The view is filtered on DSI Category, which keeps Funding and Payment.

DSI Category
 Payment
 Funding

65. As discussed in paragraphs 40-43 above, it is unclear what, if any, analysis DSI performed as to the review of CBSG’s underwriting policies and files. Additionally, there is no indication of any analysis of merchants’ ability to repay their contractual MCA obligations.

66. Their conclusions reached are therefore unsupported as to what constitutes “excessive reloads” or speculative as to the statement: **“If CBSG is only able to collect the Cash Exposure (cash out less cash back) in the Exception Portfolio, CBSG’s assets will decline by \$165.1 million....”**

67. Further, in arriving at the speculative \$165.1 million possible loss assertion (see chart

below), DSI incorrectly applied a cost recovery methodology³⁶ rather than the GAAP required effective yield³⁷ or straight-line methodologies.

CBSG Exception Portfolio Merchant Balances and Fees

	Start of Relationship [1]	Cash Out	Cash Back	Net Cash Exposure [2]	Net Balance Transferred	Outstanding Fees and Other Charges [3]	% of Outstanding Balance	Outstanding Balance
B & T Supply	05/15/15	50,485,491	48,567,460	1,918,030	18,838,973	57,227,914	73%	77,984,917
Lifeguard	02/06/20	17,531,669	9,566,636	7,965,033	3,032,210	2,362,567	18%	13,359,810
Yanky Holding Supplies	03/29/16	4,585,877	2,793,427	1,792,450	(4,805,790)	3,013,340	N/A	-
YBT Industries Inc	04/12/16	12,477,305	6,407,979	6,069,327	(10,845,555)	4,776,228	N/A	-
Naki Cleaning Services	04/12/16	6,287,403	4,182,342	2,105,061	(4,462,483)	2,357,422	N/A	-
Anglo China	04/27/20	1,597,595	-	1,597,595	(1,757,355)	159,760	N/A	-
B & T Group Total		92,965,340	71,517,843	21,447,497	(0)	69,897,231	77%	91,344,728
Colorado Homes	02/05/18	24,533,701	21,212,640	3,321,061	(4,252,726)	20,581,824	105%	19,650,160
United by ECH	08/26/19	3,532,525	2,155,603	1,376,922	1,537,726	2,924,149	50%	5,838,797
CNP Operating	11/04/19	-	93,000	(93,000)	4,480,000	-	0%	4,387,000
Colorado Sky	02/22/19	1,200,000	1,235,000	(35,000)	(445,000)	480,000	N/A	-
Dickinson Wright	01/30/19	1,200,000	-	1,200,000	(1,320,000)	120,000	N/A	-
Colorado Homes Group Total		30,466,226	24,696,243	5,769,983	0	24,105,974	81%	29,875,957
Big Red Express (Big Red Ltl)	10/10/17	5,990,665	4,941,182	1,049,483	6,176,781	11,725,988	62%	18,952,252
Bulova Technologies	03/26/14	5,714,985	4,905,683	809,302	(5,027,611)	4,218,309	N/A	-
Twiss Cold Storage	04/26/16	1,630,505	1,072,904	557,601	(1,149,169)	591,568	N/A	-
Big Red Express Group Total		13,336,156	10,919,769	2,416,386	0	16,535,865	87%	18,952,252
Kingdom Logistics	08/01/18	31,097,243	27,785,333	3,311,910	-	17,604,689	84%	20,916,599
National Brokers Of America	05/07/15	35,313,398	36,993,310	(1,679,912)	-	36,973,530	105%	35,293,618
Grand Total		\$ 203,178,362	\$ 171,912,498	\$ 31,265,864		\$ 165,117,289	84%	\$ 196,383,154

68. As an example, assume CBSG advances \$100K to a merchant with a mutually agreed-upon factor of 1.30. The resulting recorded RTR is \$130K. Assuming the RTR is to be repaid in 100 installments, each installment from the merchant would be \$1,300.

69. Under GAAP, a portion of every payment should go to repay the initial advance and a portion should be recognized as factor income. As indicated, the effective yield or straight-line method is required by GAAP. Under the straight-line method, \$1,000 would be applied against the original advance and \$300 would be recognized as income. DSI incorrectly applied the cost recovery methodology and erroneously applied the full \$1,300 installment against the \$100K advance rather than recognizing the \$300 of income and \$1,000 return of initial advance. This was wrong and

³⁶ Applies every dollar received against the initial principal or investment until it is fully repaid at which time income begins to be recognized.

³⁷ Like a mortgage payment between a bank and a homebuyer. The homebuyer makes a monthly mortgage payment to the bank. From the bank's perspective, each payment received is split into return of investment and return on investment. This is intended as an example only and in no way suggests CBSG is a lender.

inconsistent with GAAP.

70. The flawed DSI methodology is evident in their chart below. National Brokers of America received \$35.3M from CBSG. It appears DSI applied 100% of the \$37M repaid by National Brokers against this \$35.3M resulting in an erroneous declaration of negative cash exposure. It is not possible to have negative cash exposure.

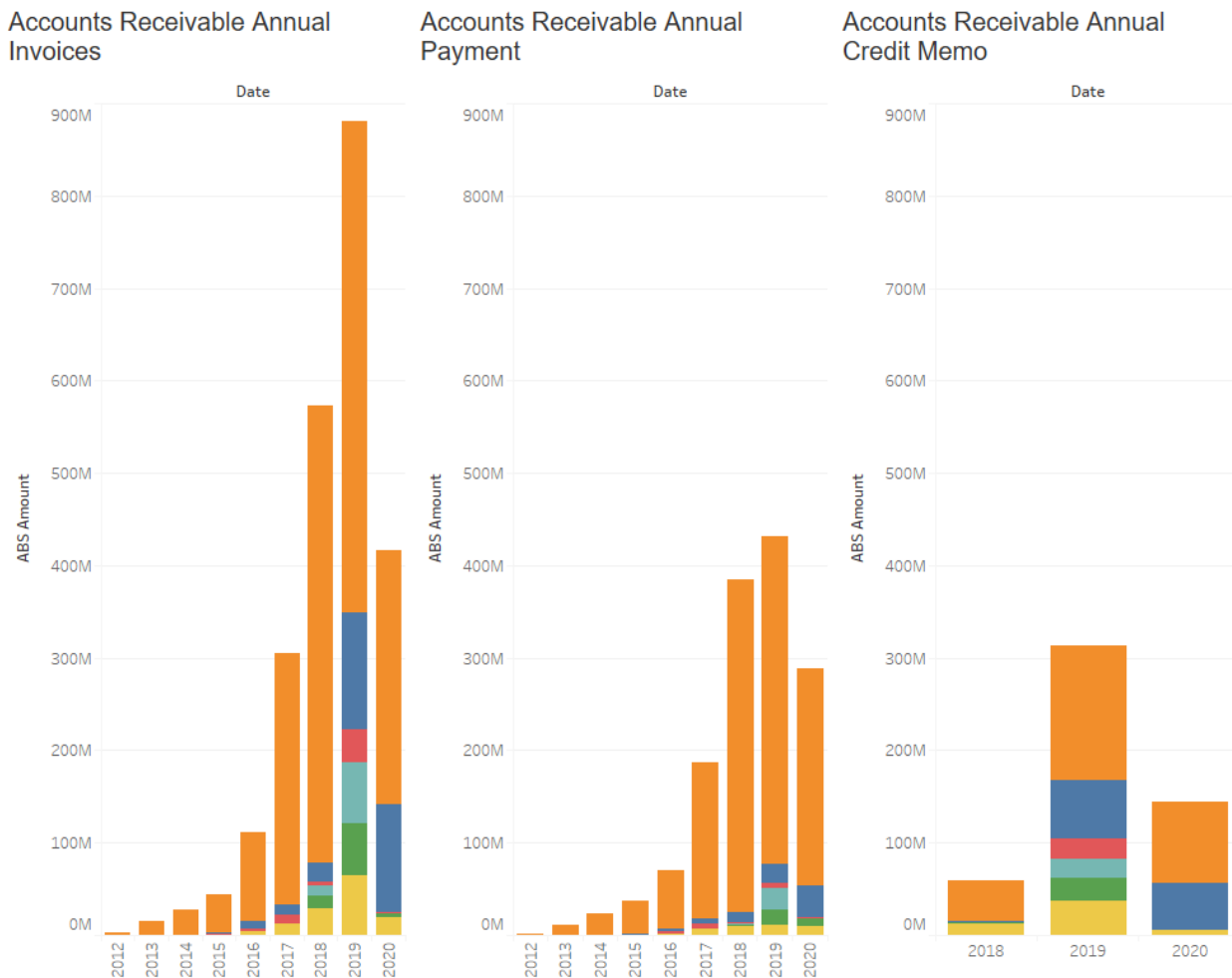
71. It appears that the same circumstances exist for CNP Operating and Colorado Sky, and it also appears that DSI utilized the same flawed methodology throughout, resulting in erroneously understated cash exposure.

72. DSI states that: “[a] significant amount of the receivable portfolio consists of “factors,” fees and expense and not cash advanced.” Based on its flawed cost-recovery methodology, shown above, it is evident that DSI has overstated the amount of “factor” fees contained in outstanding accounts receivable. Its results are inaccurate.

73. The following chart reflects the total number of merchants between 2012 and the date of the Receivership, the number of those merchants who had at least one reloaded deal, and the number of reloaded deals among those merchants.

Group	Number of Distinct Clients per Group	Number of Clients with a Reload	Reload Amount	Number of Reloads	Percentage of Clients with a Reload
Non Exception Portfolio	7,566	1,078	\$133,541,765	2,563	14.2%
Exception Portfolio	17	14	230,538,009	179	82.4%
Grand Total	7,583	1,092	364,079,774	2,742	14.4%

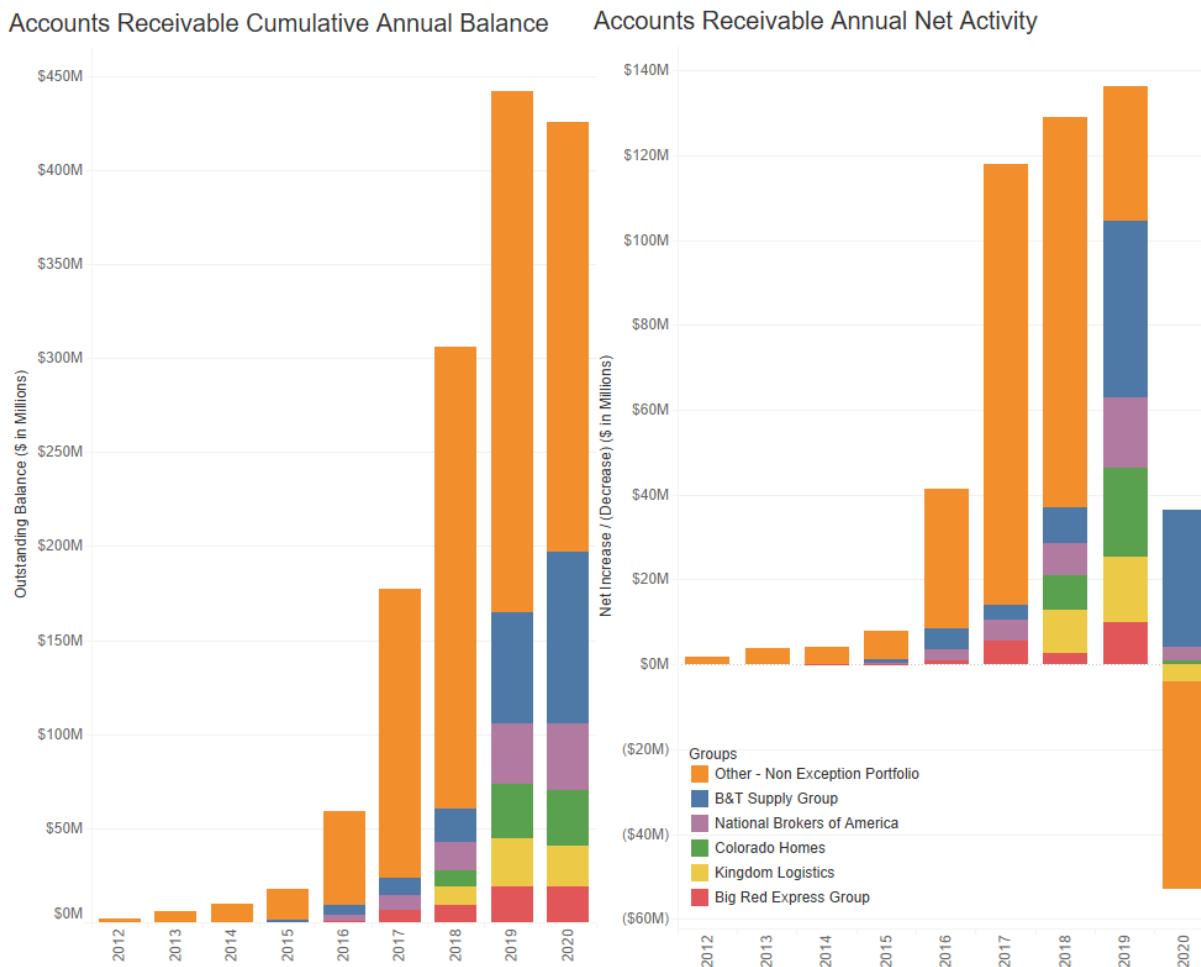
74. The following chart segregates annual accounts receivable activity into various transaction types. Subtracting the payments and credit memos from invoices equals the annual net activity for a given year (See Legend on chart in 76).



75. As an example, in 2019, almost \$890 million of RTR was recorded; approximately \$440 million payments were received from merchants; and approximately \$310 million of credit memos were issued. The credit memos represent either an adjustment to balances related to merchant defaults, agreed upon discounts, or necessary adjustments to avoid double counting of reloaded deals included in the \$890 million. The net of these amounts, approximately \$136 million, represents the net increase in the \$306 million accounts receivable balance at the end of 2018 to the \$442 million accounts receivable balance at the end of 2019.

76. The bar chart below left reflects the accounts receivable balance at the end of each year. The chart below right reflects the annual net activity summarized above which impacts each subsequent year-end balance. The 2019 net activity in the chart on the right is the approximate \$136 million referenced above (in para. 75) and the 2018 \$306

million and 2019 \$442 million balances can be seen in the chart on the left. Each chart indicates the portion of the CBSG total merchant portfolio, which is comprised of the non-exception portfolio, as well as that portion of the total merchant portfolio which is comprised of the 5 groupings of Exception Portfolio companies.



77. The negative amount in the chart on the right indicates a net reduction in accounts receivable through collections or adjustments. In other words, CBSG collected more than it funded during 2020.

78. BPB analyzed CBSG accounts receivable based on the cash transactions and accrual entries recorded in CBSG’s books. BPB agrees to within .5% of the DSI accounts receivable balances for the merchants identified as the Exception Portfolio. The following chart reflects the net accounts receivable activity as reflected in the QuickBooks records as of July 27, 2020. The balances have been segregated into

those merchants with no outstanding accounts receivable balance and those merchants with an outstanding accounts receivable balance.

Client Group (1)	2012	2013	2014	2015	2016	2017	2018	2019	2020	Grand Total / Distinct Count (2)
Non Exception Portfolio - A/R Zero Balance (No Credit Memo) \$	1,542,010	2,742,380	2,031,059	4,060,188	17,200,416	43,778,823	(16,281,151)	(17,963,226)	(37,110,500)	-
#	69	175	179	288	460	893	1,047	1,118	747	2,707
Non Exception Portfolio - A/R Zero Balance (With Credit Memo) \$	31,674	205,549	(159,094)	548,744	3,214,409	17,080,111	33,518,198	(7,855,201)	(46,584,390)	-
#	2	7	8	19	33	96	430	1,022	633	1,224
Non Exception Portfolio - A/R Zero Balance - All \$	1,573,684	2,947,929	1,871,965	4,608,932	20,414,825	60,858,934	17,237,047	(25,818,427)	(83,694,890)	-
#	71	182	187	307	493	989	1,477	2,140	1,380	3,931
Non Exception Portfolio - A/R with Balance \$	208,375	873,783	769,673	3,538,337	12,071,867	34,755,018	76,579,836	59,724,341	30,191,926	218,713,156
#	4	10	17	40	64	145	314	911	2,221	2,265
Non Exception Portfolio - Syndications \$		84,899	1,409,015	(1,328,637)	584,947	8,246,227	(1,933,511)	(2,339,387)	4,850,630	9,574,183
#		10	427	240	88	138	277	394	583	1,370
Exception Portfolio \$			39,100	1,018,417	8,380,213	14,139,633	36,959,933	104,538,276	32,187,204	197,262,776
#			1	4	7	8	9	13	12	16
Exception Portfolio - Syndications \$			50	(50)						-
#			1	1						1
Grand Total / Distinct Count (2) \$	1,782,059	3,906,611	4,089,803	7,836,999	41,451,852	117,999,812	128,843,305	136,104,803	(16,465,130)	425,550,115
#	75	202	633	592	652	1,280	2,077	3,458	4,196	7,583

- (1) \$ = U.S. Dollar amount per client group per year
= Distinct number of clients per client group per year
- (2) Distinct Count will not agree to annual total, as merchant could be included in multiple years

79. Merchants with outstanding accounts receivable balance were further segregated into Exception and non-Exception Portfolios and then again into Syndication and non-Syndication merchants. The reason for identifying syndication deals is that CBSG is only participating in those deals with another MCA company and therefore has no interaction with the merchant and no ability to control collections.

80. Merchants with no outstanding accounts receivable balance were further segregated into those merchants who had paid the full amount of their outstanding balances, from those merchants for whom, although the account balance was zero, it was the result of a credit memo.

81. While a credit memo could have been issued for various reasons, the impact is still a reduction of income and, depending on whether a deal had been fully funded or not, the Funding Obligation³⁸ is reduced.

82. Over the 103-month period, CBSG had just under 7,600 merchant clients and, of those, approximately 3,900 (52%) of those merchants have no outstanding accounts receivable balance (“Zero Balance merchants”).

³⁸ Based on our review of CBSG QuickBooks and discussion with CBSG, what is labeled as Funding Receivables in QuickBooks should in fact more correctly be referred to as Funding Obligations.

83. Of the Zero Balance merchants, approximately 2,700 (69%) have paid off their entire balance and approximately 1,200 (31%), have no balance but did not pay in full.

84. The following chart is a continuation of the previous chart and reflects the merchant groups previously described and the corresponding accounts receivable balance. We identified all of the merchant deals within each of these groups. We calculated the aggregate cash advanced and the actual factoring fees earned, as well as those with the potential to be earned, based on current accounts receivable.³⁹

Client Group	Total Number of Clients	Advances to Merchants	Factoring Fees	(1)	Factor
Non Exception Portfolio - A/R Zero Balance (No Credit Memo)	2,707	\$ 312,436,375	\$ 129,974,236	A	1.416
Non Exception Portfolio - A/R Zero Balance (With Credit Memo)	1,224	192,602,935	71,572,374	A	1.372
Non Exception Portfolio - A/R Zero Balance - All	3,931	505,039,310	201,546,610	A	1.399
All A/R with Balance	3,652	730,902,092	279,931,995	P	1.383
Non Exception Portfolio - A/R Zero Balance - All	7,583	1,235,941,403	481,478,605		

(1) A Actual Factor, A/R has zero balance
 P Potential Factor, A/R with balance

85. Of the approximately 2,700 Zero Balance merchants having paid off their entire balance, CBSG recognized an overall factor of 1.416. ((Advances to Merchants \$312,436,375 + Factoring Fee Revenue \$129,974,236) ÷ Advances to Merchants \$312,436,375).

86. Of the approximately 1,200 Zero Balance merchants having had some portion of their obligation reduced, CBSG recognized an overall factor of 1.372. ((Advances to Merchants \$192,602,935 + Factoring Fee Revenue \$71,572,374) ÷ Advances to Merchants \$192,602,935). Like the Exception Portfolio, this group of merchants had reloads.

87. For the 3,900 Zero Balance merchants, CBSG recognized \$201.5M in revenue and an overall blended factor of 1.399. This further demonstrates why the DSI analysis of \$6.6 million of cash is incorrect and misleading. DSI presented its analysis as a simple math problem of 2 + 2 = 4 but neglected to explain or provide an analysis of what comprises each of the “2s”, which, in this case, includes revenue and ultimately, profit. The overall blended factor rate of 1.399 proves the profitability of the 3,900 Zero

³⁹ This does not include other fees and revenue sources.

Balance merchant funding agreements.

88. The chart below was generated from the CBSG QuickBooks accounting records. Between 2012 – 2019, on an accrual basis, CBSG recognized factoring fee revenue totaling \$408.8 million and an additional \$25.8 million of ancillary fee income totaling \$434.6 million. Accrual basis net income during this period was \$64 million. For the sake of clarity: the expenses of CBSG as detailed in the P&L chart below; \$104.7 million in investor interest expenses; \$133.6 million of commission and consulting expenses; and recognition of \$106.1 million of factoring losses - all have been deducted in arriving at this net income amount.⁴⁰

⁴⁰ While both DSI and BPB agree as to the cash transactions recorded, BPB has not audited or otherwise independently verified the accuracy of these CBSG internally prepared income statements.

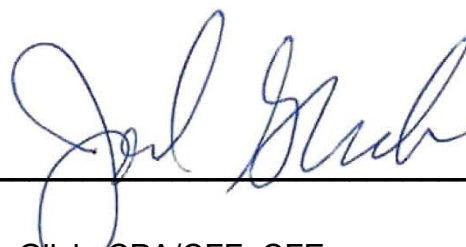
	Dec 31, 12	Dec 31, 13	Dec 31, 14	Dec 31, 15	Dec 31, 16	Dec 31, 17	Dec 31, 18	Dec 31, 19	TOTAL
Income									
Factoring Fee Income	\$ 772,499	\$ 5,452,417	\$ 8,373,426	\$ 13,427,522	\$ 21,598,989	\$ 66,609,332	\$ 123,378,492	\$ 169,213,496	\$ 408,826,174
Interest Income	-	42	-	-	-	-	-	-	42
Merchant Processor Commissions	-	1,182	31,015	4,399	-	-	-	-	36,596
Processing Fee Income	-	-	-	63,583	515,401	758,367	5,599,919	5,081,603	12,018,873
Program Fee Income	-	44,712	182,065	486,839	598,662	1,837,702	4,107,346	4,224,601	11,481,928
Recovered Receivables Income	-	-	-	-	425,993	286,763	454,321	1,101,291	2,268,367
Total Income	772,499	5,498,354	8,586,505	13,982,343	23,139,045	69,492,165	133,540,078	179,620,990	434,631,979
Expense									
Advertising & Promotions	2,924	829	17,899	2,876	8,274	100,802	104,199	241,767	479,570
Automobile Expense	605	28,938	65,124	72,933	52,039	53,088	49,559	8,123	330,409
Bank Fees	17,889	15,734	39,688	44,949	114,064	230,244	354,258	536,709	1,353,536
Charitable Donations	-	-	-	-	20,250	-	35,000	15,000	70,250
Computer and Internet Expenses	8,733	35,690	97,915	126,223	138,263	345,460	252,546	138,926	1,143,756
Continuing Education	-	-	4,598	-	-	-	-	-	4,598
Factoring Losses	-	1,264,466	1,696,035	3,262,495	8,713,601	20,580,713	33,944,059	36,684,346	106,145,715
Filing Fee	1,729	4,485	3,790	2,587	6,683	8,984	92,715	799	121,773
Gifts	-	198	-	3,653	51,523	726	1,758	2,857	60,716
Insurance Expense	959	546	3,252	2,781	15,099	19,711	264,413	79,191	385,952
Investment Expense	-	-	108,683	-	-	-	-	-	108,683
Janitorial	2,696	3,418	14,527	16,795	23,262	53,621	4,026	4,026	122,371
Leads	12,525	21,458	5,705	6,920	70,890	71,647	194,351	33,688	417,184
Legal Fees									
Collections Expense	-	-	96,460	162,223	182,427	415,771	434,479	761,904	2,053,264
Legal Fees - Other	10,000	56,523	67,874	79,752	139,917	156,674	285,617	515,005	1,311,362
Total Legal Fees	10,000	56,523	164,335	241,975	322,344	572,445	720,096	1,276,909	3,364,626
Licenses & Fees	244	1,742	1,605	-	-	-	-	-	3,591
Maintenance & Repairs	1,474	683	6,495	21,511	14,287	10,882	15,359	16,373	87,064
Meals and Entertainment	9,996	62,349	62,144	72,008	116,363	138,529	68,154	22,856	552,399
Merchant Account Fees	-	1,237	1,707	1	198	(665)	1,898	1,439	5,814
Moving Expense	-	8,035	1,740	7,152	2,161	2,698	2,163	6,533	30,481
Office Supplies	9,800	19,408	16,351	39,962	71,154	122,007	65,934	18,402	363,017
Total Payroll Expenses	29,608	347,490	329,737	453,129	656,719	-	-	209,939	2,026,622
Postage and Delivery	-	1,038	1,100	2,153	7,051	23,140	18,473	2,875	55,830
Processing Expense	-	-	-	-	-	1,044,568	4,132,093	2,343,240	7,519,902
Professional Fees	114,633	82,842	9,315	745	25,492	74,700	282,313	562,376	1,152,416
Rent Expense	26,849	113,612	159,057	242,548	233,009	152,291	121,954	148,028	1,197,348
Subcontractor Expense									
Commissions	53,626	383,900	830,963	840,713	1,991,539	6,022,587	10,009,278	13,715,364	33,847,970
Total Consulting	74,432	306,521	599,087	821,800	8,640,054	34,453,228	26,606,613	27,636,406	99,138,142
Subcontractor Expense - Other	-	-	37,230	-	49,190	360,387	105,178	19,300	571,285
Total Subcontractor Expense	128,058	690,421	1,467,280	1,662,513	10,680,783	40,836,202	36,721,069	41,371,070	133,557,396
Telephone Expense	1,150	14,899	11,521	13,867	25,650	37,408	56,009	13,644	174,147
Temporary Help	330	-	-	-	-	-	-	-	330
Travel Expense	13,684	10,153	41,271	27,470	58,146	108,354	58,499	65,707	383,282
Uncategorized Expenses	-	-	-	(1)	-	-	-	-	(1)
Underwriting Expense	-	26,077	25,366	34,711	57,320	187,020	358,984	348,758	1,038,236
Utilities	1,917	3,521	11,918	10,610	8,078	15,775	8,725	10,213	70,757
Total Expense	395,804	2,815,791	4,368,157	6,372,564	21,492,702	64,790,350	77,928,609	84,163,794	262,327,771
Net Ordinary Income	376,695	2,682,562	4,218,349	7,609,779	1,646,343	4,701,815	55,611,469	95,457,196	172,304,207
Other Expense									
Amortization Expense	-	-	-	-	6,415	-	-	-	6,415
Depreciation Expense	19,986	47,461	-	18,847	20,985	6,087	6,087	-	119,453
Fines & Penalties Expense	-	-	-	-	-	499,000	-	-	499,000
Interest Expense	110,544	1,047,652	1,511,607	1,621,516	3,613,754	12,384,442	28,278,237	56,085,746	104,653,498
Tax Expense	-	547,053	964,827	2,075,586	136,684	(1,600,544)	(1,786,563)	2,737,491	3,074,534
Total Other Expense	130,530	1,642,166	2,476,434	3,715,950	3,777,839	11,288,985	26,497,761	58,823,237	108,352,901
Net Income	\$ 246,165	\$ 1,040,396	\$ 1,741,915	\$ 3,893,829	\$ (2,131,496)	\$ (6,587,171)	\$ 29,113,708	\$ 36,633,959	\$ 63,951,307

EXPERT COMPENSATION

89. I am being compensated at my standard rate of \$495 per hour, while other members of our firm who worked on this engagement are compensated at \$85 to \$480 per hour.

Neither my compensation nor the compensation of the other BPB personnel who worked on this assignment is contingent on the outcome of this litigation.

90. I declare under penalty of perjury that the foregoing is true and correct, and made in good faith. Executed this 15th day of April 2021.

A handwritten signature in blue ink, appearing to read "Joel Glick", is written over a solid black horizontal line.

Joel D. Glick, CPA/CFF, CFE
Berkowitz Pollack Brant Accountants and
Advisors LLP
200 South Biscayne Boulevard, Seventh Floor
Miami, Florida 33131



Exhibit 1

CURRICULUM VITAE

JOEL D. GLICK

Joel D. Glick, CPA/CFF, CFE is a Director of the Forensic Advisory Services practice for Berkowitz Pollack Brant Advisors + CPAs, LLP.

Mr. Glick has extensive experience providing forensic and litigation support services in a wide array of matters, as both an expert and a consultant. He has testified as an expert in both Federal and State matters and has been qualified as an expert in U.S. Bankruptcy Court.

Practice areas include:

- Fraud and forensic accounting investigations
 - Ponzi schemes
 - Embezzlement
 - Construction cost investigations
- Bankruptcy, receivership and other insolvency matters
 - Fraudulent transfer and preference analysis
 - Tracing
- Calculation of economic damages
 - Breach of contract
 - Shareholder disputes
 - Non-compete covenants
 - Business interruption
- Litigation support services
- Preparation of prospective financial information, financial forecasts
- Financial consulting and business advisory services

Business Background:

Berkowitz Pollack Brant, Advisors and CPAs, LLP, Miami and Ft. Lauderdale, FL	1997 – Present
Mallah, Furman & Company, P.A., Miami, FL	1991 – 1997
Dohan, Simon & Company, P.A., Kendall, FL`	1990 – 1991

Qualifications

Certified Public Accountant (CPA), 1994 (Florida)
American Institute of Certified Public Accountants

Certified in Financial Forensics (CFF), 2008
American Institute of Certified Public Accountants

Certified Fraud Examiner (CFE), 2010
Association of Certified Fraud Examiners

Educational Background

University of Florida, 1989
Fisher School of Accounting
Bachelor of Science in Accounting

Nova Southeastern University, 1992

Publications

"Is Your Loan in Violation of State Usury Laws?" BPB Firm Article, Miami, FL Berkowitz Pollack Brant Advisors and Accountants, October 2014

"Do You Need a Construction Overrun Investigation?" *Success Magazine, Berkowitz Pollack Brant Year in Review: Volume 3*, 2015

Professional Memberships

American Institute of Certified Public Accountants

Florida Institute of Certified Public Accountants

Association of Certified Fraud Examiners

Joel Glick
Listing Of Cases Testified In
As An Expert Witness

COURT	JUDGE	CASE NAME/SUBJECT MATTER	REPRESENTED	YEAR
In The United States District Court Middle District Of Tennessee Nashville Division	Hon. Eli J. Richardson	AUTOMOTIVE EXPERTS, INC. Plaintiff, vs. KEITH KALLBERG, KATHRYN KALLBERG, KALLBERG EMERGENCY MANAGEMENT, INC., MATTHEW KALLBERG, and LISA KALLBERG Defendants Case No. 19-CA-8510 (Deposition)	Keith Kallberg, Kathryn Kallberg, Kallberg Emergency Management, Inc., Matthew Kallberg, and Lisa Kallberg	2020
In The Circuit Court of the Twentieth Judicial Circuit In And For Lee County, Florida	Hon. Keith R. Kyle	A&E Adventures, LLC, a Florida limited liability company, Plaintiff v. GCTC Holdings, LLC, a Delaware limited liability company, Defendant Case No. 19-CA-8510 (Deposition)	A&E Adventures, LLC	2020
American Arbitration Association	Hon. Joshua W. Martin, III	U.S. ECOGEN POLK, LLC, a Delaware limited liability company, Claimant and Counterclaim Respondent, vs. DUKE ENERGY FLORIDA, LLC (f/k/a Florida Power Corporation, Inc., a Florida limited liability company), Respondent and Counterclaimant. Case No. 01-19-0001-0249 (Trial)	U.S. ECOGEN POLK, LLC	2020
In The United States District Court Southern District of Florida	Hon. Donald M. Middlebrooks	LB Pharma Serves, LLC v KrunchCash, LLC and Jeffrey Hackman 9:20-cv-80141-DMM (Deposition)	LB Pharma Service, LLC	2020
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable William Thomas	D.P. Monaco, LLC, a Florida limited liability company, Plaintiff, vs. Chateau Beach, LLC, a Florida limited liability company, and Coastal Construction Group of South Florida, Inc., a Florida corporation, Defendants (Deposition)	D.P. Monaco, LLC	2019
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable Jacqueline Hogan Scola	SBM ACQUISITION 2, LLC, a Florida limited liability company, as substituted Party Plaintiff to METROPOLITAN MTG. CO. OF MIAMI, a Florida Corporation, Plaintiff, vs. IVOR HANO ROSE and RITA STARR, his wife, MICHAEL A. STERN, an individual; 900 COLLINS 10 AVE., LLC, a dissolved Florida limited liability company; CITY OF MIAMI BEACH, FLORIDA, CITY OF MIAMI, FLORIDA, Defendants (Deposition)	METROPOLITAN MTG. CO. OF MIAMI	2018
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable William Thomas	CRAIG A. FINGOLD, individually and as TRUSTEE of the FINGOLD FAMILY 2004 TRUST u/a/d JUNE 10, 2004, individually and derivatively in the right and for the benefit of KF PROPERTY HOLDINGS, LLC, a Florida Limited Liability Company Plaintiffs, vs. R. LEE KRELSTEIN, an Individual, R. LEE KRELSTEIN, as TRUSTEE of the R. LEE KRELSTEIN DECLARATION OF TRUST DATED SEPTEMBER 13, 2007, and L & L INTERNATIONAL I, L.L.C., a Florida Limited Liability Company, Defendants. (Deposition)	Craig Fingold	2018
In The Circuit Court, Seventh Judicial Circuit, In And For Volusia County, Florida	None assigned at time of deposition	Exxelia Usa Holding, Inc. And Exxelia-RAF Tabtronics, LLC, Plaintiffs, v. Robert Malkani, James Tabbi, RBM Technologies, Inc., Attractive Technologies, Inc., Defendants. (Deposition)	Exxelia Usa Holding, Inc. And Exxelia-RAF Tabtronics, LLC	2018
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable John W. Thornton	JEANETTE RAIJMAN BIBLIOWICZ, Individually and derivatively as Co-Trustee of the 2003 Waserstein Family Trust in the Right of and for the Benefit of the Miami Lakes Office Center, Inc, v. RICHARD WASERSTEIN, and individual, ALAN WASERSTEIN, an individual and as Trustee of the ATS TRUST; CHARLES WASERSTEIN, an individual; MARTA WASERSTEIN, an individual, et al., (Deposition)	Jeanette Rajzman Bibliowicz	2017
United States District Court Southern District of Florida Miami Division	Honorable Marcia G. Cooke /Honorable Edwin G. Torres	Jonathan B. Kling v. Jon Bourbeau, P.A. and Jon Bourbeau Case no. 15-22439-CIV-Cooke/Torres (Deposition)	Jon Bourbeau, P.A. and Jon Bourbeau	2016

Joel Glick
Listing Of Cases Testified In
As An Expert Witness

COURT	JUDGE	CASE NAME/SUBJECT MATTER	REPRESENTED	YEAR
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable Rosa I. Rodriguez	Matthew Rocca v. Victor Rones individually, as Co-Personal Representative of the Estate of Sidney Boyansky, etc., Irene Boyansky, individually, and as Co-Personal Representatives of the Estate of Sidney Boyansky, etc., and Emile Martin, individually, and as successor Co-Trustee of the Second Restated Sidney Boyansky Revocable Trust, et al Local Case No.11-596-CP-02 (Deposition)	Rones, Boyansky & Martin	2015
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Adv. No 11-03014-BKC-RBR-A RRA, Stettin as Trustee v Frank Preve et al [ECF No. 67] (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2013
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Approve Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed Jointly by the Trustee and the Official Committee of Unsecured Creditors (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2013
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Approve Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed Jointly by the Trustee and the Official Committee of Unsecured Creditors (Hearing)	The Honorable Herbert Stettin as Chapter 11 Trustee	2013
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Motion to Approve Settlement and Compromise with (i) Centurion Structured Growth LLC, Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Value Arbitrage Fund LP, and Level 3 Capital Fund LP (the "Funds"); and (ii) Regent Capital Partners LLC, Mark Nordlicht and his wife Dahlia Kalter Nordlicht, Murray Huberfeld and his wife Laura Huberfeld, David Bodner and his wife Naomi Bodner, and the Bodner Family Foundation [ECF No. 3185] (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2012
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Approve Settlement and Compromise with (i) Centurion Structured Growth LLC, Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Value Arbitrage Fund LP, and Level 3 Capital Fund LP (the "Funds"); and (ii) Regent Capital Partners LLC, Mark Nordlicht and his wife Dahlia Kalter Nordlicht, Murray Huberfeld and his wife Laura Huberfeld, David Bodner and his wife Naomi Bodner, and the Bodner Family Foundation [ECF No. 3185] (Hearing)	The Honorable Herbert Stettin as Chapter 11 Trustee	2012
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Motion to Substantively Consolidate Alleged Debtor Banyon 1030-32, LLC with and Into the Debtor's Bankruptcy Estate Nunc Pro Tunc to November 30, 2009 (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2011
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Substantively Consolidate Alleged Debtor Banyon 1030-32, LLC with and Into the Debtor's Bankruptcy Estate Nunc Pro Tunc to November 30, 2009 (Hearing)	The Honorable Herbert Stettin as Chapter 11 Trustee	2011

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COURT	JUDGE	CASE NAME/SUBJECT MATTER	REPRESENTED	YEAR
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Emergency Verified Motion and Supporting Memorandum of Law of the Plaintiff, Chapter 11 Trustee Herbert Stettin, for Entry of Preliminary Injunction and for other Relief and Request for Judicial Notice [D.E. 47] (Hearing)	The Honorable Herbert Stettin as Chapter 11 Trustee	2010