

**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.

**DEFENDANT JOSEPH LAFORTE’S RESPONSE TO THE RECEIVER’S MOTION
TO LIFT THE LITIGATION STAY TO ALLOW
COMMENCEMENT OF PROCEEDINGS AGAINST
D19 LIQUOR INC., FAWZI SIMON AND RELATED ENTITIES**

Defendant, Joseph W. LaForte (“ LaForte or “Defendant”) did not oppose the Receiver’s request to lift the litigation stay against D19 Liquors Inc., Fawzi Simon, and related entities (the “D19 Entities”). However, Laforte is compelled to file this Response to rectify several factual inaccuracies and misleading statements contained in the Motion.

I. INTRODUCTION

Defendant does not disagree with and did not oppose the relief sought by Receiver’s First Motion to Commence against a Merchant (DE 556) and agrees with the Order granting same (DE 558). Defendant hopes this is a signal that the Receiver is finally focusing on the most important task entrusted to him, pursuing merchants to collect cash advanced, after nine months as the Receiver; over 20,000 hours; and millions of dollars billed by the Receiver, his attorneys, and DSI; and eleven consecutive motions to release, compromise, or give away collateral. Although this may be a classic example of “too little, too late” it certainly is a step in the right direction.

Defendant files this Response to correct the latest false aspersions and factual inaccuracies peddled by the Receiver in Receiver's First Motion to Commence Proceedings Against a Merchant. On page three of the motion, the Receiver inaccurately contends that he seeks authority to lift the litigation injunction to pursue claims against the D19 Liquor Entities and Simon in an effort "to rectify Par Funding and Eagle Six's questionable underwriting practices in advancing these amounts." Receiver's contention is false and inaccurate because (1) the underwriting for the D19 Entities was thorough, as discussed below, (2) if the underwriting was insufficient as the Receiver argues then it would be unlikely that commencing proceedings against the merchant would be advantageous, (3) it is nonsensical to suggest that proceeding against the merchant can "rectify" purported "questionable underwriting practices," and (4) commencing against merchants to recover cash advanced to them when necessary is part of Par Funding's business model and a fundamental aspect of the Receiver's duties. Rather than simply asking the Court for permission to seek to proceed with litigation against this merchant to recover cash, the Receiver, as he has repeatedly done, uses the Motion requesting relief to perform his duties to take unwarranted and baseless shots at the Defendants.

On April 25, 2021, the Receiver notified defense counsel via email of his intention to move to lift the litigation injunction regarding the D19 Entities. Later that day, without having seen the proposed motion, counsel for the Defendants conferred with the Receiver and agreed that the litigation injunction should be lifted. The motion was filed on April 27, 2021 (DE 556) and contains several inaccurate statements and contentions that must be addressed. On April 28, 2021, the Receiver's Motion was granted. (DE 558) So, while the Defendant agrees that the Receiver should enforce the valid merchant cash advance agreements, Defendant objects to the Receiver's continuing efforts, as reflected in his Motion, to paint Par Funding as a business run by unscrupulous persons, advancing money to merchants without proper underwriting or regard to their financial

ability to repay the advances. Defendants also seek to correct several of the Receiver's erroneous conclusions regarding the financial relationship between Par Funding and the D19 Entities.

A. PAR FUNDING'S COLLECTIONS FROM THE D19 ENTITIES

1. Par Funding Had A Net Positive Cash Flow of \$423,029.58 From its Advances to the D19 Entities.

Over the course of this litigation, the Receiver has consistently posited the false argument that Par Funding had ineffective underwriting and willy-nilly extended cash advances to desperate merchants regardless of their ability to repay their respective obligations. So too, the Receiver has argued in his Motion that despite the D19 Entities' "multiple instances of non-payment prior to the Receiver being appointed," Par Funding continued to advance funds, and was paid only \$1,588,883.96 on a total balance owed of \$5,573,511.72. (DE 556, ¶¶ 18; 20). This statement is inaccurate and ignores payments received by CBSG from the affiliate D19 entities totaling \$10,598,884.51 against the \$10,175,854.93 in funding provided to these entities. This means that CBSG recovered \$423,029.58 in excess of funds provided to the D19 Entities.

The Receiver misapprehends and is misstating what the D19 Entities have paid back and, while it could be assumed he is doing so intentionally to paint the Defendants in a bad light, what is more disturbing is that it appears he is not able to properly compute such amounts despite having full access to all of the necessary records for over 9 months and being paid millions to do so. If Defendant did not point out these inaccuracies in this Response, it is likely that the Receiver's upcoming lawsuit/s against the D19 Entities would be based on inaccurate accounting and would include a demand to recover from the D19 Entities an amount different than what is owed. Just like the erroneous and faulty Bradley D. Sharp Declaration previously filed by the Receiver (DE 426-1), which was debunked by the Glick Declaration (DE 535-1), it appears that the Receiver and DSI are more concerned with painting the Defendants in the worst possible light than

understanding and running the MCA business entrusted to them. A simple phone call to counsel for Laforte or Joseph Cole could have allowed for an exchange of information that could have assisted the Receiver in understanding the D19 Entity transactions (or any other merchant transactions), but the Receiver seems more focused on playing the role of the SEC or a prosecutor than running the business. To be clear, the Receiver is submitting to the Court erroneous accounting for the D19 Entities and inaccurately casting doubt over these transactions, while blaming the Defendants for his own inaction over nine (9) months by failing to file lawsuits against non-paying merchants to recover receivables. A nine (9) month delay when many merchants were making daily or weekly ACH payments is highly detrimental to Par Funding.

On April 7, 2020, the D19 Entities and Par Funding entered into a new merchant cash advance agreement (DE 556, Ex.1) under which the previously outstanding total RTR of \$5,437,515.91 owed under the prior MCA agreements was consolidated into a single new agreement requiring daily \$25,000.00 payments, with a pay-off date of November 24, 2020. *Id.* No new money was advanced under the terms of the April 7 agreement. As a result of the consolidation Fawzi Simon agreed to pay an RTR balance \$7,068,770.68 under the new terms. In fact, and as the Receiver apparently fails to understand, the \$1,588,883.96 paid by the D19 Entities (DE 556, ¶ 18), were all made after April 7, 2020 and was not the “total” amount paid by all of the D19 Entities. The Receiver’s Motion neglects to state that up until April 7, 2020, when the advances were consolidated into a new agreement, Par Funding advanced a total of \$10,175,854.93 to the D19 Entities pursuant to individually structured merchant cash advance agreements and collected \$10,598,884.54, thereby realizing a positive net cash flow in the amount of \$423,029.58. Alarming, the Receiver’s Motion makes it appear to the Court that there was a substantial loss, which is not true. Moreover, as explained in the previously submitted declaration of Joel D. Glick (DE 535-1, ¶¶ 52-54), because Par Funding measured its profitability using the GAAP recognized accrual method.

2. The Breakdown of Par Funding's Advances to the D19 Entities

The \$10,175,854.93 Par Funding advanced to the D19 Entities from April 2018 through April 6, 2020, was broken down as follows:

a. D19 Liquors

D19 Liquors received funds in the amount of \$1,692,506.73 and made payments to Par Funding in the amount of \$3,427,544.94 out of which \$714,382.15 was returned for insufficient funds.

b. Simon Xpress Pizza Exposure

Simon Xpress Pizza received funds in the amount of \$7,770,124.83 and made payments to Par Funding in the amount of \$7,635,195.15 out of which \$322,348.42 was returned for insufficient funds.

c. Simon Land Development

Simon Land Development received funds in the amount of \$713,223.37 and made payments to Par Funding in the amount of \$668,541.66 out of which \$95,666.67 was returned for insufficient funds.

In total then, from April 2018 through April 6, 2020, Par Funding advanced to the D19 Entities \$10,175,854.93, and received total ACH payments in the amount of \$11,731,281.75, of which \$1,132,397.24 was returned for insufficient funds. The total positive cash flow to Par Funding was \$423,029.58.¹

3. Returned Checks

In its misplaced effort to show that the D19 Entities were financially unable to live up to the

¹ As explained in the previously submitted declaration of Joel D. Glick (DE 535-1, ¶¶ 52-54) since Par Funding measured its profitability using the GAAP recognized accrual method, Par Funding was profitable in its transactions with the D19 Entities in the amount of \$7,068,770.68.

terms of the April 7 MCA agreement, the Receiver claimed that on 43 separate occasions the merchant payments resulted in returned payments. (DE 556, ¶ 17). In fact, and as shown in the Receiver's Exhibit 2, thirteen (13) of the returned checks were booked on April 7 - - the same date the new agreement was executed. It is common knowledge in the MCA industry that in processing ACH checks there is typically a 3-4-day lapse in reporting returned payments. Accordingly, the 13 payments returned on April 7 had to have all been made prior to the April 7 agreement. Of the remaining returned checks, a vast majority were successfully recovered, and many more would likely have been recovered but for the Receiver's inexplicable inaction.

After the appointment of the Receiver, the Receiver inexplicably terminated Fox Rothchild, thereby losing the benefits of that firm's aggressive collection practice, and thereafter made no attempt to collect merchant debt for 44 days, July through September 2020. Then, rather than reengaging the aggressive collection practice through Fox Rothchild or a similarly competent counsel, the Receiver began a feckless letter writing campaign to merchants. (DE 556 at ¶ 37). It is no surprise that many merchants sensed the Receiver's lackluster and toothless efforts and stopped making payments. As shown above, even when the D19 Entities had returned payments, Par Funding was able to collect makeup payments. Par Funding likely would have continued this trend without the need for Court action. However, the Receiver feels the need to divert attention away from his ineffectiveness by attempting to blame Par Funding and Defendants for his failure to collect the \$500,000.00 per month under the new factoring agreement with D19.

B. PAR FUNDING'S UNDERWRITING OF THE D19 ENTITIES

Contrary to the false aspersions cast by the Receiver wholly unnecessary and unrelated to the relief sought in the Motion, Par Funding conducted robust underwriting of the D19 Entities. The D19 Group is based out of Waterford Michigan. They are incredibly successful and represent the proverbial American Dream. Fawzi Simon's family came to this country with little to no money in the 1970 from

Iran. His father and brothers started as gas attendants until one day they saved enough money to buy their own station. One of the brothers became a lawyer, the other a financial planner and Fawzi stayed in the gas station business. With hard work and dedication, he and his dad who passed approximately ten years ago amassed a gas station chain in Michigan consistency of 28 stations and convenient stores.

Mr. Fawzi and his family became interested in the pizza business. Using his fortunes from his gasoline empire he parlayed his money into more than 25 franchise stores for a pizzeria chain called Hungry Howie's. Par Funding is responsible for helping build Mr. Fawzi's portfolio of gas stations and pizzerias. Mr. Fawzi used the money Par Funding advanced to him to build his portfolio. He was able to buy 10 more pizza shops and 4 more gas stations and convenience stores. He did this by using the existing cash flow from his businesses to build a stronger business. It costs approximately \$450,000.00 to build a Hungry Howie's franchise and the product Par Funding provided to him worked out well. After a thorough underwriting and careful and prudent diligence, the analysis showed that the D19 Entities were averaging \$4,851,720.00 per month in income. *See* Merged Underwriting Analysis and Bank Statements, attached as Exhibits A and B, respectively. Par Funding set the D19 Entities' daily payment at \$25,000.00 per day. Multiplied by 20 business days, the D19 Entities' total monthly payment was \$500,000.00 per month, which only represents 10.3% of the D19 Entities' total monthly income.

Notably, in his October 6, 2020 Interim Status Report, the Receiver portrayed D19 Liquor, Inc. as a small liquor store in rural town in the middle of nowhere, with an owner who also owns a gas station and a pizza restaurant and some property in an obvious attempt to create a false narrative that it was reckless for Par Funding to make cash advances to the D19 Entities. *See* DE 305 at p. 14. ("D19 Liquor is a Michigan company that owns a small liquor store in Pinckney, Michigan. A rural town with a population of 2,400 people, approximately 20 miles northwest of Ann Arbor, Michigan")

and the principle of D19 also owns “a gas station, a pizza restaurant, and other entities that owned property where the businesses were located.”). In reality, the D19 Entities own 25 Hungry Howie’s and 28 Cactus gas stations.

Par Funding’s underwriting control sheet attached shows that Par Funding thoroughly analyzed the underwriting data from a personal standpoint, business, and even social media. *See* Underwriting Control Sheet attached as exhibit C. Among other documents, Par Funding based the D19 Entities’ credit decision upon a review of bank statements, merchant statements, lease agreements, a corporate verification, a Clear Report, an on-site inspection, a franchise agreement, Mr. Fawzi’s personal credit report, among others. *See* exhibits B, D, E, F, G, H, I, J. Mr. Fawzi had an excellent credit score and had no missed payments or delinquent on his credit. Additionally, Par executives even met with Mr. Fawzi for a family dinner. It was the practice of Par executives to meet with many of the merchants, especially its larger merchants. This personal meeting allowed Par executives to get to know Mr. Fawzi and his family and see the quality individual he was.

Based on the underwriting efforts of the D19 Entities explained above, there was adequate underwriting of the D19 Entities to warrant an unsecured advance to the D19 Entities. However, Par Funding also took to extra step of taking as collateral, a first position mortgage on a property with a large gas station and convenience store. *See* Mortgage, attached as exhibit K. Par Funding also prudently cross collateralized all Mr. Fawzi’s assets through a Confession of Judgment for all the D19 Entities. *See* Confession of Judgment, attached as exhibit L.

The above underwriting performed by Par Funding is the reason there are assets for the Receiver to pursue from the D19 Entities. While the Receiver does not support his allegations of “questionable underwriting practices” with any facts (because there are none), the facts are that Par Funding went over and above the standard in the MCA business. The proof is in the pudding as the Receiver knows that the D19 Entities have assets to collect on. This Court should ignore the

Receiver's false allegations used to hide his ineffectiveness in Par Funding's core mission of collecting merchant receivables. Defendant attaches hereto evidence of the robust underwriting practices undertaken prior to and for the cash advances to the D19 Entities. Specifically, merchant statements, bank statements, lease agreements, landlord verifications, a Clear Report, an on-site inspection, a franchise agreement, Mr. Fawzi's personal credit report. *See supra*. There are over 100 more underwriting documents regarding the D19 Entities that the Receiver has had access to for over 9 months, which he recently produced to Defendants through Converge Hub. The contention that there were questionable underwriting practices for Par Funding's cash advances to the D19 Entities is inaccurate.

Dated: April 30, 2021

**KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT**
One W. Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Attorneys for Joseph W. LaForte

By: /s/ David L. Ferguson
DAVID L. FERGUSON
Florida Bar Number: 0981737
Ferguson@kolawyers.com
JOSHUA R. LEVINE
Florida Bar Number: 91807
Levine@kolawyers.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2021, I electronically filed the forgoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmissions of Notices of Electronic Filing generated by CM/ECF.

By: /s/ David L. Ferguson
DAVID L. FERGUSON

Hungry Howie's

Number of Deposit	Total Deposits	Statements
1613	\$ 1,399,459.72	Chase *9599 Oct 19
1431	\$ 1,141,938.23	Chase *9599 Nov 19
1542	\$ 1,765,951.77	Chase *9599 Dec 19
4586	\$ 4,307,349.72	

F&Z Holdings

Number of Deposit	Total Deposits	Statements
436	\$ 1,581,232.86	MainStreet *9944 Jun 19
536	\$ 1,840,044.17	MainStreet *9944 Jul 19
529	\$ 1,908,553.18	MainStreet *9944 Aug 19
546	\$ 1,103,649.92	MainStreet *9944 Sep 19
512	\$ 1,187,814.34	MainStreet *9944 Oct 19
474	\$ 2,157,597.14	MainStreet *9944 Nov 19
562	\$ 3,022,875.68	MainStreet *9944 Dec 19
3595	\$ 12,801,767.29	

Simon Xpress Pizza

Number of Deposit	Total Deposits	Statements
976	\$ 1,119,365.15	BOA *0607 Mar 18
1073	\$ 2,111,115.11	BOA *0607 Aug 18
891	\$ 1,511,936.02	BOA *0607 Sep 18
1060	\$ 1,653,666.05	BOA *0607 Oct 18
1041	\$ 1,539,486.04	BOA *0607 Nov 18
5041	\$ 7,935,568.37	

This represents 15 statements totalling \$25,044,685.38

Average monthly income is \$4,851,720.81

Merchant daily payment \$25,000.00 per day is 10.3% of total income

This does not include the safety valve of collateral that Par Funding so prudently took

The companies average 881 deposits per month when typical UW guidelines more than 10 is excellent

**DEFENDANT JOSEPH LAFORTE'S RESPONSE TO THE
RECEIVER'S MOTION TO LIFT THE LITIGATION STAY TO
ALLOW COMMENCEMENT OF PROCEEDINGS AGAINST
D19 LIQUOR INC., FAWZI SIMON AND RELATED ENTITIES**

**EXHIBITS B, C, D, E, F, G, H, I, J, K, L
Pending Motion to File Under Seal**