

**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 INJUNCTION TO ALLOW
COMMENCEMENT OF PROCEEDINGS AGAINST NATIONAL BROKERS OF
AMERICA, INC.; NATIONAL BROKERS OF AMERICA, LLC;
BENE MARKET, LLC; AND ALAN REDMOND (DE 584)**

Defendant, Joseph W. LaForte (“LaForte or “Defendant”) does not oppose the Receiver’s request to lift the litigation stay against National Brokers of America, Inc.; National Brokers of America, LLC; Bene Market, LLC; and Alan Redmond (collectively “National Brokers”). However, LaForte is compelled to file this Response to rectify several factual inaccuracies and misleading statements and implications contained in the Receiver’s Motion (DE 584), as follows:

I. INTRODUCTION

While Defendant is heartened that the Receiver has now filed his second consecutive motion seeking to perform Par Funding’s basic function, he is seemingly incapable of doing so without unnecessarily attacking Par Funding’s business practices. In the previous motion (DE 556), the Receiver inaccurately portrayed the D19 Entities as Podunk and unworthy of funding

in an attempt to create the misimpression that Par Funding's underwriting was insufficient. Now, the Receiver gratuitously and inaccurately again tries to paint Par Funding's underwriting as insufficient for funding an allegedly nonexistent entity (an "LLC" instead of an "Inc"), but conveniently leaves out the fact, or worse does not know, that Par Funding collected over \$1,400,000.00 more than it has advanced during the life of the relationship with the merchant. The Receiver further omits the fact that the allegedly "nonexistent" entity has a bank account with PNC Bank in its name, National Brokers of America LLC, from which Par Funding drew payments. Furthermore, this merchant made payments every day from the start of the merchant and personal guarantor obligation in 2015 until the receivership started and the Receiver stopped drawing merchant payments. Unless this merchant that paid like clockwork coincidentally ran out of money on the day the Receivership was ordered, then there can be no dispute that its outstanding balance would be less than it is now if the Receiver had not taken over; very possibly significantly less, potentially as much as half of what it is now given the course of dealings. Unfortunately, the Receiver immediately fired all the employees and ceased drawing daily ACH payments from merchants when he took control. Rather than simply asking the Court for permission to proceed against this merchant to recover cash, the Receiver, once again, takes a gratuitous and baseless shot at the Defendants to try to make them look bad and to justify his existence.

A. Par Funding's Collections From the National Brokers of America 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 this Motion that "[w]ithout the proper account name, Par Funding's daily withdraws of

INC's bank account **might** have **potentially** failed, thereby revealing the difference between LLC and INC.” (DE 584 at 5-6) (emphasis added). The Receiver omits that Par Funding's records that he recently produced to the Defendants show that Par Funding drew payments from a bank account at PNC Bank in the name of National Brokers of America LLC. *See* Account Statement attached as Exhibit A.¹ Therefore, in reality there was never a risk that a discrepancy in the entity name would have caused the bank to decline an ACH draw.

Furthermore, Par Funding did in fact make regular ACH payment withdrawals from May 8, 2015, through July 28, 2020 (3,891 withdrawals, with 92 returns and 92 returns covered, which equals a returned payment rate of 2.3%, well below the average 5.6% returned payment rate CBSG has experienced on its MCA portfolio historically) from the merchant's bank account. While the Receiver talks about what “might” have “potentially” happened, what is more alarming is what did happen—the Receiver stopped taking daily payments from this merchant when he took over. National Brokers of America did not miss a single payment from the outset of the funding relationship in 2015 until the Receiver took over in July 2020, and this was a profitable (+\$1,413,947.39) relationship for Par Funding.

National Brokers of America had 8 different active factoring agreements from the 61 agreements funded by Par Funding since May 7, 2015. Fifty-three of these deals have been paid off or reloaded into new agreements since funding. None of these deals went into default and despite the bankruptcy filing by National Brokers of America, Inc., in September 2019, the merchant continued to make consistent payments to Par Funding until the Receiver took over. Over the last 9 months, 7 of the 8 factoring agreements would have likely been paid down, possibly

¹ Pursuant to Section 6(A) of the Southern District of Florida's CM/ECF NextGen Administrative Procedures, the Defendant is only including the last four digits of the account number in this filing.

even paid off if the Receiver had not stopped collecting payments, as proposed in the table below:

Projected Collected Payments

Deal No	Balance	August '20	September '20	October '20	November '20	December '20	January '21	February '21	March '21	April '21	Net
19013	\$ 23,607,274.40	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 17,307,274.40
20004	\$ 4,103,357.08	\$ 488,485.96	\$ 488,485.96	\$ 488,485.96	\$ 488,485.96	\$ 488,485.96	\$ 488,485.96	\$ 488,485.96	\$ 488,485.96	\$ 195,469.40	\$ -
20006	\$ 1,262,534.29	\$ 179,900.00	\$ 179,900.00	\$ 179,900.00	\$ 179,900.00	\$ 179,900.00	\$ 179,900.00	\$ 179,900.00	\$ 3,234.29	\$ -	\$ -
20007	\$ 1,072,500.00	\$ 650,000.00	\$ 422,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20008	\$ 642,857.35	\$ 102,857.00	\$ 102,857.00	\$ 102,857.00	\$ 102,857.00	\$ 102,857.00	\$ 102,857.00	\$ 25,715.35	\$ -	\$ -	\$ -
20009	\$ 2,347,999.00	\$ 887,500.00	\$ 887,500.00	\$ 572,999.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20010	\$ 1,624,400.37	\$ 433,173.40	\$ 433,173.40	\$ 433,173.40	\$ 324,880.17	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20011	\$ 528,000.00	\$ 440,000.00	\$ 88,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ 35,188,922.49	\$ 3,881,916.36	\$ 3,302,416.36	\$ 2,477,415.36	\$ 1,796,123.13	\$ 1,471,242.96	\$ 1,471,242.96	\$ 1,394,101.31	\$ 1,191,720.25	\$ 895,469.40	\$ 17,307,274.40

Since May 7, 2015, Par Funding provided \$35,358,393.04 in funding to National Brokers of America over the 61 MCA deals and successfully collected payments totaling \$36,772,340.43 through July 28, 2020. This means that Par Funding has collected **\$1,413,947.39 more** than was funded to National Brokers of America:

Total Funding:	\$ 35,358,393.04
Net Payments Collected:	\$ 36,772,340.43
Net Cash Exposure:	\$ (1,413,947.39)

Over a 5year long business relationship, Par Funding has earned revenues totaling \$36.2M in MCA deals with National Brokers of America. Contrary to the Receiver's insinuations, this has been a very profitable relationship for Par Funding, as shown for each year below:

2015	2016	2017	2018	2019	2020	Total
\$ 219,328.24	\$ 1,100,581.33	\$ 5,568,834.06	\$ 8,262,143.41	\$ 16,771,000.31	\$ 4,290,838.46	\$ 36,212,725.81

As pointed out by the Receiver, National Brokers of America's "payment obligations to Par Funding total \$35,293,618.31." (DE 584 at ¶ 62). What the Receiver fails to mention is that Par Funding was collecting \$970,479.90 in payments each week against the \$35,188,922.49 balance with National Brokers of America. Based on their contractually obligated payment agreements that were being met at the time the Receiver took over, Par Funding would have been paid \$17,881,648.09 over the nine months ending April 30, 2021, since the Receiver took over, leaving a collectible balance of \$17,307,274.40:

07/28/20 Balance:	\$ 35,188,922.49
9 Month Collections:	\$ 17,881,648.09
04/30/21 Balance:	\$ 17,307,274.40

The Receiver continues to make the unsupported argument that merchants were reloaded and funded in order to be able to make payments to Par Funding and promote Bradley Sharp's faulty contention that excessive reloads were given without proper underwriting before deals were reloaded because Par Funding "never conducted an additional risk analysis." (DE 584 at ¶ 35). Mr. Sharp's speculation was debunked by the Declaration of Joel Glick in which Mr. Glick states that "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." (DE 584 at ¶ 65). Furthermore, Mr. Glick adds that in analyzing a pool of 1,200 merchants that paid off balances, Par Funding successfully collected revenues equivalent to a 1.372 factor rate average, earning \$71,572,374 of revenue on merchant funding of \$192,602,935. He states that "this group of merchants had reloads." (DE 584 at ¶ 86).

As stated above, the numbers bear out that this was a profitable relationship for Par Funding. Clearly, the reloads were a good and profitable business decision by Par Funding. The same cannot be said for the Receiver's decision to stop making daily withdrawals from National Brokers of America and other merchants' accounts.

B. Par Funding's Underwriting of National Brokers of America Was Sound

Contrary to the Receiver's allegations and insinuations, Par Funding conducted sound underwriting on this merchant. National Brokers of America had a bank account with PNC Bank in the name of the LLC and provided statements from this account to support its underwriting. *See* Exhibit A. If the Receiver is correct that LLC is a completely nonexistent entity, National Brokers did not just trick Par Funding, but tricked the seventh largest bank in the United States, which has

extensive screening procedures in order to open a business account.² In order to open a business checking account at PNC Bank, the individual opening the account must show two forms of personal ID along with “[d]ocuments verifying your business registration and your authority to act on behalf of and control, manage, or direct the business.”³ For an LLC, the documents required to verify business registration and authority to act on behalf of the business include:

- SSN of members, managers or partners who will sign on account;
- Operating Agreement;
- Certification of Formation/Organization (LLC) or Certificate of Limited Partnership (LLP);
- Fictitious Name Registration, also known as Trade Name Registration, Certificate of Assumed Name, Registration of Alternate Name, or Assumed Name Registration;
- Information regarding the individual Beneficial Owners of the business. Beneficial Owners are those who own, directly or indirectly, 25% or more of the equity interests of the business.
 - Legal name, Social Security Number, Date of Birth, Address, Citizenship, Percent of Ownership.⁴

If National Brokers intended some sort of shell game to avoid payment, it was a curious strategy given that it never missed a payment until the Receivership.

Additionally, Par Funding took a personal guarantee from Alan Redmond, the Owner of National Brokers for the entire balance of the cash advances. Mr. Redmond further executed a Confession of Judgment both in his corporate capacity for National Brokers of America and individually as the guarantor. *See* Personal Guarantee (DE 584-1) and Confession of Judgment, attached as Exhibit B.

Notably, in his Motion, the Receiver fails to offer any explanation why no action has been taken over nine months to enforce the powerful confessions of judgment and personal guarantees

² <https://www.federalreserve.gov/releases/lbr/current/>

³ <https://www.pnc.com/en/small-business/banking/business-checking-overview/basic-business-checking-account.html#need>

⁴ *Id.*

ted up by the Defendants. However, Defendant is glad to see the Receiver taking some action to pursue merchants who are not paying Par Funding but is again concerned that it may be too little too late. Defendant files this Response to clarify the record about the gratuitous and inaccurate shots taken at the Defense within the Receiver's Motion.

Dated: May 14, 2021

**KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT**
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By: /s/ David L. Ferguson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 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

Business Checking Preferred



PNC Bank

For the Period 07/01/2016 to 07/29/2016

Primary Account Number: [REDACTED]-2475

Page 1 of 12

Number of enclosures: 0

NATIONAL BROKERS OF AMERICA LLC
 2525 N 12TH ST STE 390
 READING PA 19605-2771

For 24-hour banking sign on to
 PNC Bank Online Banking on pnc.com
 FREE Online Bill Pay

For customer service call 1-877-BUS-BNKG
 Monday - Friday: 7 AM - 10 PM ET
 Saturday & Sunday: 8 AM - 5 PM ET

Para servicio en español, 1-877-BUS-BNKG

Moving? Please contact your local branch

Write to: Customer Service
 PO Box 609
 Pittsburgh, PA 15230-9738

Visit us at PNC.com/mybusiness/

TDD terminal: 1-800-531-1648
 For hearing impaired clients only

Business Checking Preferred Summary

National Brokers Of America Llc

Account number: [REDACTED]2475

Overdraft Protection has not been established for this account.
 Please contact us if you would like to set up this service.

Balance Summary

Beginning balance	Deposits and other additions	Checks and other deductions	Ending balance
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		Average ledger balance	Average collected balance
		[REDACTED]	[REDACTED]

Deposits and Other Additions

Description	Items	Amount
Deposits	[REDACTED]	[REDACTED]
ATM Deposits and Additions	[REDACTED]	[REDACTED]
ACH Additions	[REDACTED]	[REDACTED]
Other Additions	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]

Checks and Other Deductions

Description	Items	Amount
Checks	[REDACTED]	[REDACTED]
Check Card Purchases	[REDACTED]	[REDACTED]
ATM/Misc. Check Card Transactions	[REDACTED]	[REDACTED]
ACH Deductions	[REDACTED]	[REDACTED]
Service Charges and Fees	[REDACTED]	[REDACTED]
Other Deductions	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]

Daily Balance

Date	Ledger balance	Date	Ledger balance	Date	Ledger balance
07/01	[REDACTED]	07/13	[REDACTED]	07/22	[REDACTED]
07/05	[REDACTED]	07/14	[REDACTED]	07/25	[REDACTED]
07/06	[REDACTED]	07/15	[REDACTED]	07/26	[REDACTED]
07/07	[REDACTED]	07/18	[REDACTED]	07/27	[REDACTED]
07/08	[REDACTED]	07/19	[REDACTED]	07/28	[REDACTED]
07/11	[REDACTED]	07/20	[REDACTED]	07/29	[REDACTED]
07/12	[REDACTED]	07/21	[REDACTED]		

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

20 N. 3rd Street
Philadelphia, PA 19106
(215) 922-2636

Attorneys for Plaintiff

COMPLETE BUSINESS SOLUTIONS GROUP, INC.	:	COURT OF COMMON PLEAS
d/b/a PAR FUNDING,	:	PHILADELPHIA COUNTY
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	No.:
NATIONAL BROKERS OF AMERICA LLC,	:	
and	:	
	:	
ALAN REDMOND, GUARANTOR,	:	
	:	
Defendants.	:	

PRAECIPE TO ENTER CONFESSION OF JUDGMENT AND ASSESSMENT OF DAMAGES

TO THE CLERK, OFFICE OF JUDICIAL RECORDS:

Please enter judgment in favor of Plaintiff Complete Business Solutions Group, Inc. d/b/a Par Funding and against Defendant NATIONAL BROKERS OF AMERICA LLC and Defendant ALAN REDMOND, Guarantor, in the amount of \$5,800,000.00 less timely payments plus attorney fees, costs, expenses, and interest allowed under the Agreement for the Purchase and Sale of Future Receivables.

Date: _____ By: _____
Attorneys for Plaintiff

Assessment of Damages:

Undelivered Receivables	\$5,800,000.00 less timely payments made
Fees, Costs, Expenses	Calculated per the Agreement
Interest (at the rate of 6% per annum from date of default through date of filing, and continuing)	6% per annum
Attorney Fees (5% of Unpaid Receivables)	To be determined

TOTAL

TO BE DETERMINED AT TIME OF FILING FOLLOWING DEFAULT

Date: _____ By: _____
Attorneys for Plaintiff

I hereby assess damages:

Clerk, Office of Judicial Records

Alan Redmond

88BC8C5E4CAC458
ACKNOWLEDGED



20 N 3rd Street, Philadelphia, PA 19106
Office: 215-922-2636 | Fax: 888-305-7562

Please Initial

EXHIBIT B

CONVERGECENTRAL000450