UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

"I am a winner.. I like to win at all costs.. always .. that's all that matters to me is winning .. nothing else."

- Defendant Joseph LaForte
to CBSG counsel, regarding litigation
March 17, 2020[1]

I. INTRODUCTION

The Defendants' Motion reflects both the lengths to which Lisa McElhone, Joseph LaForte, and Joseph Cole Barleta will go to avoid being held accountable for their violations of the law, and their lack of regard for the truth. The Defendants' character attacks against the Securities and Exchange Commission's trial attorney, investigative attorneys, accountants, and staff, as well as

[1] Exhibit 1, email of Joseph LaForte to Brett Berman, Esq, from documents produced by the Receiver to all parties in this case (ellipses in original). "Defendants," as used in this Motion, refers to Lisa McElhone, Joseph LaForte, and Joseph Cole Bareleta.

their character attacks on non-party witnesses and their lawyer, who cannot defend themselves in this case, serves no legitimate purpose whatsoever.

Ironically, however, the Defendants' willingness to resort to such depths of argument and outrageous characterizations shows their utter disregard not only for the truth, but also for these proceedings. Rather than present evidence to challenge the SEC's allegations against them during the two-day evidentiary hearing held for that purpose in August 2020, they instead present their purported defense now – one year later – by presenting a rich conspiracy theory based on nothing more than rhetoric, wild speculation, and falsehoods.

Their scorched earth argument for dismissal shows the Defendants will resort to any argument conceivable in order to avoid the presentation of evidence against them and the possible disgorgement of the luxury cars, mansions, and jewelry they bought with commingled investor funds. And they will make up any fact they can think of that fits their narrative – even when they know the facts they proclaim to this Court are not true. With just one month remaining before the SEC files its summary judgment motion against them, laying out additional evidence of their egregious fraud and Ponzi-like scheme, and knowing that there is an ongoing criminal investigation by the FBI, IRS, and FDIC,[2] it appears the Defendants are desperate. However, that is no excuse.

In this response, the SEC first addresses the fact that the Defendants' assertions, even if true, could not warrant the relief they seek and thus their Motion fails as a matter of law. However,

[2] Exhibit 2, Response brief of the USAO, *U.S. v. Joseph LaForte*, Case No. 20-cv-00231-PBT (E.D. Pa. 2020) (DE 22) ("This case is a result of a long-term, ongoing, criminal investigation of Joseph LaForte and his business by the FBI, the IRS, and the FDIC."). In this USAO's Response brief, the AUSA responds to similar attacks LaForte makes on the same private attorney he attacks in this Motion.

in the bulk of this response, the SEC shows the Court that not only are the Defendants' assertions false, but also that the Defendants *knew* they were false when they filed their Motion.

- Defendants contend that the SEC did not investigate this case or conduct due diligence, and instead "deputized" a private attorney and his client (a CBSG investor and MCA loan merchant, hereinafter referred to as the "client" or "investor/merchant client") to conduct the investigation for the SEC.
  - This is pure fiction, and the Defendants knew that when they filed. In truth, the SEC obtained documents and information from more than 80 sources, the investigative file includes in excess of 100,000 documents, and the documents obtained from the private lawyer and his client account for about **0.06%** of the investigative file.
  - The Defendants know this because in August 2020, the SEC produced these investigative files, organized by source, to the Defendants. Thus, the Defendants' allegations about the investigation are knowingly false.
- The Defendants also contend that the private attorney drafted declarations the SEC filed in this case.
  - This too is pure fiction. In truth, SEC attorneys, including undersigned, drafted the declarations and the private attorney did not draft a single one of them.
  - And again, the Defendants knew this assertion was false when they filed their Motion, because the SEC had produced to the Defendants the SEC staff emails to the declarants and/or their attorney, as well as the full threads reflecting the editing process for the those declarations, with the drafts attached to the emails. Thus, the Defendants' allegations about who drafted the declarations are knowingly false.

- The Defendants further contend that the private attorney used federal lawsuits he was litigating against the Defendants to obtain evidence for the SEC, and cite as their sole evidence that he asked questions during the depositions that were supposedly irrelevant to the claims in those cases.
    - This, too, is fiction, and the Defendants know it.
    - In truth, the Defendants litigated the scope of the depositions before they occurred, the District Court ruled these areas of inquiry were relevant in those cases, and incredibly – the very attorney whose testimony the Defendants rely on ("former CBSG Attorney") prepared the Defendants to testify about these areas of inquiry in advance of the depositions. The Order and the emails between the Defendants and that attorney are presented with this response.

Unfortunately, this is just the tip of the iceberg. We walk through each of the Defendants' contentions, demonstrate they are false, and demonstrate the Defendants knew they were false when they filed their Motion. Filed herewith is the chart of purported "Truths" the Defendants filed with their Motion (DE 663-22), to which we added a column addressing each false or misleading contention Defendants presented in that chart, with evidence proving the Defendants knew their contentions were not accurate. A review of the Motion reveals that it is a compilation of falsehoods, knowingly made to the Court, supported by nothing but rhetoric and, in some cases, doctored evidence, improper characterizations, or even testimony they know is false.

The Defendants published their attacks on the witnesses on the public docket, revealing the social security numbers, credit reports, and other private information about these non-party witnesses who cannot defend themselves in case – including, but not limited to a criminal felony record purporting to relate to one witness, who is, as the Defendants know, not a felon but an ordained minister, Harvard Law School graduate, and civil rights attorney in Washington, D.C. –

all in documents previously designated as Confidential in this case under the Court's Protective Order.[3] Defendant Dean Vagnozzi then emailed *investors* about the Motion, urging them to download it and providing a link to a publicly available video he posted where he urges them again to read the Motion.[4] If the Defendants' intent was to publicly humiliate and intimidate witnesses and potential trial witnesses in this case, or discourage witnesses to appear voluntarily to testify against them at trial, they accomplished their mission in spades.

What the Defendants have done here is not right, it is not fair, and it should not be tolerated by this Court. In denying the Motion, the Court should consider: (1) the evidence showing the Defendants made their allegations while knowing they were false; (2) the impact the Defendants' filing has had on all those – particularly the non-party witnesses – who were publicly attacked and humiliated, with no ability to defend themselves, for providing evidence and testimony in a government investigation; and (3) the impact and chilling effect the Defendants' public attacks on these witnesses will likely have on others' willingness to speak with the government, provide documents, or testify in connection with government investigations.

The Defendants' malicious claims are unsupported by evidence and are contradicted by the evidence the Defendants had when they filed the Motion. The private attorney's Declaration on the issues raised is clear, but Defendants did not speak with him before filing the Motion and

[3] DE 663-22. When undersigned counsel saw the filing, undersigned emailed the Receiver who then also emailed defense counsel to raise concerns that they had filed on the public docket the private information of the witnesses, that their redacting was not done in compliance with the Local Administrative Rule and social security numbers could be read through the black electronic "highlighter" they used to redact them, and they had filed and attributed a criminal report to one of the witnesses that purported to show the witness was a convicted felon, but it was clearly not the witness' criminal report. After much back and forth, with defense counsel taking no steps to withdraw or redact the information, the Receiver ultimately filed to seal these records.

[4] Exhibit 4, Email from Vagnozzi to investors.

making their outrageous allegations about him. The Declaration makes clear that contrary to the Defendants' hollow and malicious assertions, the private attorney:

- Did not draft any of the declarations;
- Did not reach out to the SEC;
- Did not tell, let alone consult with or take direction from, the SEC that he had recorded the November 2019 investor presentation until months after the private investigator he hired had already recorded it for use in one of the private attorney's cases;
- Did not tell, let alone consult with or take direction from, the SEC the deposition questions he asked of the Defendants in the private cases he was litigating, and instead only sent the SEC copies of transcripts after they concluded;
- Sought discovery in the private lawsuits he was litigating on behalf of clients because the evidence he sought was relevant to the claims and defenses in those cases; and
- Did not know the SEC had filed its case until reading about it in *The Philadelphia Inquirer*.[5]

Even without speaking with the private attorney, the Defendants knew their contentions were false. The evidence they had in their hands at the of filing shows that. The Motion is nothing more than a malicious[6] attack filed by Defendants who in their desperation will say and do anything to win at all costs.

[5] Exhibit 5, Declaration from private attorney.

[6] Exhibit 6, Composite of LaForte' email messages concerning the private attorney showing the deeply personal and malicious nature of LaForte's targeted attacks on him.

II. PROCEDURAL BACKGROUND

A. The Complaint and Ex Parte Motions For Emergency Relief

On July 24, 2020, the SEC filed a Complaint against the Defendants alleging violations of the anti-fraud and registration provisions of the federal securities laws. [DE 1]. On that same day, the SEC filed, among other things, an Ex Parte Motion for the Appointment of a Receiver [DE 4] and an Emergency Motion for Temporary Restraining Order ("TRO Motion") together with authenticated exhibits [DE 14].

On July 27 and 28, 2020, the Court granted, respectively, the Commission's Motion for Appointment of Receiver [DE 36] and the TRO Motion [DE 42], directing the Defendants to show cause why a preliminary injunction should not be entered and scheduling a show cause hearing where Defendants could present evidence to rebut the SEC's TRO Motion.

B. Discovery and the Defendants' Access to Documents

In the July 28, Order granting the TRO, the Court also granted all parties the opportunity to conduct expedited discovery until the date of the show cause hearing, which ultimately occurred on August 18 and 21, 2020. Prior to the show cause hearing, the SEC voluntarily produced non-privileged documents in its investigative file (the "Investigative File") to the Defendants. In advance of the show cause hearing, the SEC also served an additional 52 exhibits on the Defendants.

During the expedited discovery period one year ago, the Defendants did not serve any discovery requests or conduct any depositions of the declarants they now attack. On August 18 and 21, 2020 the Court conducted the Show Cause hearing. During the hearing, the Commission provided a lengthy Power Point presentation of the evidence supporting the Commission's claims

against the Defendants and the need for preliminary injunctions, presenting even more of the evidence the SEC developed during the investigation.[7]

Contrary to what the Defendants would have this Court believe, when the preliminary injunction hearing occurred, the Defendants had access to all of the documents they filed with their instant Motion, and then some. They also had access to even more evidence than the SEC did at that time. This is because the Defendants learned about the SEC's *ex parte* filings when they occurred and in the days before the Receiver was appointed, they reviewed the TRO Motion and took what they could from CBSG's records. This is not speculation. It is fact. The Receiver has already reported to the Court about the Defendants downloading, accessing, and copying documents even after the Receiver was appointed and during the days leading to the preliminary injunction hearing. After the Receiver waived CBSG's attorney-client privilege, we obtained email messages between the Defendants and the CBSG lawyer, telling the Defendants to take documents from CBSG after this case was filed.[8]

Discovery ends September 10, 2021, summary judgment motions are due on September 24, and trial is scheduled for the trial period commencing December 6, 2021 (DE 521).

III. LEGAL STANDARD

Rule 41(b)

Defendants cite Fed. R. Civ. P. 41(b) as the basis for dismissal, but point to no court order or Federal Rule of Civil Procedure that the SEC violated. The defendants also allude to the Court's inherent power, but "[t]he key to unlocking a court's inherent power is a finding of bad faith." *Barnes v. Dalton*, 158 F.3d 1212, 1214 (11th Cir. 1998). "Bad faith exists when the court

[7] Exhibit 7, Power Point Presentation from August 2020 preliminary injunction hearing.

[8] Exhibit 8, email exchange between CBSG attorney and Defendants.

finds that a fraud has been practiced upon it, or 'that the very temple of justice has been defiled' . . . ." *Allapattah Services, Inc. v. Exxon Corp.*, 372 F. Supp. 2d 1344, 1373 (S.D. Fla. 2005) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)); *see Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1335-36 & n.2 (11th Cir. 2002) (affirming sanction of dismissal based on plaintiffs' "continual and flagrant abuse of the judicial process"); *Chevaldina v. Katz*, No. 21-CIV-21363-RAR, 2021 WL 2414109, *4 (S.D. Fla. June 13, 2021) (court has inherent power to dismiss an action "which is frivolous, sham, vexatious, or brought in bad faith") (citation and quotation omitted). As the SEC demonstrates in detail below, the only bad faith abuse of the judicial process before the Court is Defendants' motion itself.

IV. THE DEFENDANTS' "STATE ACTOR" ARGUMENT

The Defendants contend that various facts and circumstances combine to meet their burden for dismissal under Rule 41(b), and specifically for demonstrating what they allege is an abuse of the judicial process warranting dismissal of this case. [DE 663]. They contend that the SEC did not conduct its own investigation, but rather "deputized" a private attorney to conduct the investigation for the SEC. They contend the private attorney drafted and provided false declarations to the SEC, and the SEC filed its case based on this false evidence and without engaging in any due diligence. The Defendants purport to support these contentions with references to evidence that the private attorney and his clients provided documents and information to the SEC staff during the investigation, and also rely on the nexus in the timing of the SEC's investigation with that of the private attorney's discovery and purported litigation losses in unrelated private lawsuits between his clients and CBSG.

Based on these contentions, Defendants argue that the private attorney and his client are "state actors" and arms of the SEC, and seek to dismiss this case based on purported violations of

internal SEC guidelines concerning "parallel investigations" in the SEC's Enforcement Manual as well as untold "constitutional violations" which we assume refer to Due Process under the Fifth Amendment.

A. THE DEFENDANTS' ARGUMENTS FAIL AS A MATTER OF LAW

1. The Defendants' Arguments About The SEC's Investigation Fail As A Matter Of Law

The Defendants' Motion criticizes the way the SEC investigated this case, from the fact that Defendants' former opposing counsel and his client provided documents to the extent to which Defendants believe the SEC reviewed evidence during the investigation and the decisions the SEC made about the evidence in determining whether the Defendants violated the federal securities laws. In sum, the Defendants argue that the SEC improperly brought this case and did so for an improper purpose based on a supposed secret financial agreement with the Defendants' former opposing counsel and his clients.

However, it has long been established that the "Commission has the power, in its discretion, to make such investigation as it deems necessary to determine whether any person has violated federal securities laws." *SEC v. Knopfler*, 658 F.2d 25, 26 (2d Cir. 1981).[12]

> The Exchange Act
>
> > suggests no standards by which the SEC's discretion to investigate [defendant] might be reviewed. ... The only apparent guidance for assessing the limits of the SEC investigatory authority is found in the SEC's own regulations (17 C.F.R. § 200.66) ... That general and exhortatory language does little to limit the discretion of the SEC in determining to investigate a particular case; it requires that its discretion be exercised on the facts and in good faith. Such a 'standard' is not judicially manageable: to apply it would require a plenary review of not only the particular facts but such intangibles as the commissioners' experience, the allocation of agency resources, the status of related investigations, and the like, in clear contravention of Congress' decision to confide the investigative determination to the SEC.

Treats Intern. Enterprises, Inc. v. SEC, 828 F. Supp. 16, 18 (S.D.N.Y. 1993).

Moreover, to prevail on a claim of improper purpose, the Defendants "must prove that the improper purpose is that of the Commission, not merely that of one of its investigators . . . and the burden may not be met by the presentation of conclusory allegations." *Knopfler*, 658 F.2d at 26. Here, the Defendants do not allege an improper purpose on the part of the SEC but focus exclusively on the SEC staff that investigated this case. Defendants provide no reason to believe that the persons who authorized the entry of the Formal Order authorizing the investigation did so for any reason other than to investigate whether the securities laws were being violated based on concerns that there could be a violation. Thus, the Defendants cannot succeed on this argument.

2. The State Actor Argument Fails As A Matter of Law

a. Even If The Defendants Demonstrated The Private Attorney Was A State Actor – And They Do Not – It Would Not Give Rise To Any Constitutional Violation

The State Actor Doctrine concerns, generally, whether a private party's actions can be attributed to the government such that individuals who are the subject of private party action should be, but are not, afforded those constitutional rights implicated by government action.

In SEC cases, the State Actor Doctrine has most frequently been raised in the context of parallel investigations by the SEC and the Self-Regulatory Organizations ("SROs") it oversees.[9] The issue arises because unlike in SEC testimony where a witness can refuse to answer questions

[9] We mention the context in which the State Actor Doctrine typically arises in order to explain it. The SEC is not stating that SROs are state actors. In reality, Courts routinely have held that SROs (such as, for example, FINRA) are *not* state actors for purposes of due process claims. *See, e.g., Desiderio v. Nat'l Ass'n of Sec. Dealers, Inc.*, 191 F.3d 198, 206 (2d Cir. 1999) (rejecting due process claim by concluding "NASD is a private actor, not a state actor"); *Craig M. Biddick*, Exchange Act Rel. No. 63453, 2010 WL 5092727, *8 n.21 (Dec. 7, 2010) (same); *Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328, 2009 WL 2138439, *7 & n.28 (July 17, 2009) (same).

by asserting his or her Fifth Amendment right, persons required to provide sworn testimony to an SRO have no such option.[10]

The Defendants raise the State Actor Doctrine in connection with something different: their opposing counsel in private District Court cases against them. They contend that this opposing counsel litigated cases against them and conducted discovery in those cases not because he was the lead attorney on the cases but because he was instead acting as a secretly "deputized" SEC investigator. As such, Defendants claim their constitutional rights were violated in the private District Court cases.

Even if the Defendants met their burden of showing the private attorney is a State Actor – and, as discussed below, they do not, and know they cannot – the Motion fails as a matter of law. This is because in the private District Court lawsuits, the Defendants were afforded the same Due Process rights under the Fifth Amendment that they are afforded in an SEC investigation. This can and should be the end of the inquiry. In *Busacca v. SEC,* 449 Fed. Appx. 886 (11th Cir. 2011), the Eleventh Circuit rejected appellant's argument that FINRA was a State Actor and had violated his constitutional rights during its disciplinary proceedings. The Court did not reach the State Actor issue, finding that "[a]ssuming that FINRA constitutes a governmental entity subject to the Due Process Clause, Busacca was not deprived of any process he was due." *Id*. at 891. Here, the supposed parallel investigations where Defendants testified were federal District Court cases, the testimony occurred during depositions, and according to the Defendants' Motion, the Defendants

[10] As a condition of membership, SROs require individuals to provide sworn, on-the-record testimony and to produce certain documents when requested to do so. *See* NASD Rules of Fair Practice, Art. IV, § 4, NASD Manual (1966); NYSE Rule 477, NYSE Constitution and Rules at 490 (CCH 2005); FINRA Rule 8210. Failure to comply with these requirements may result in significant sanctions, such as termination of membership with the SRO. In addition, many employers condition employment on cooperating with SRO investigations.

successfully and extensively litigated those cases. The Defendants were afforded due process in those cases, and do not and cannot claim to the contrary. Therefore, as in *Busacca*, the Defendants' arguments fail as a matter of law.

b. The Defendants Improperly Rely On The SEC Enforcement Manual To Support Their False Narrative

In a misguided effort to expand the scope of the State Actor Doctrine to something it is not, the Defendants offer an excerpt from the SEC's "Enforcement Manual," and seek dismissal based on the SEC staff's supposed violation of the Manual.

As Defendants know, the Enforcement Manual does not create rules for the SEC to follow and is instead guidance for the enforcement division staff. It "contains various general policies and procedures and is intended to provide *guidance only to the staff* of the Division. It is not intended to, *does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal*."[11] Thus, the Enforcement Manual cannot serve as a basis for relief by a defendant. *See San Pedro v. United States*, 79 F.3d 1065, 1070 (11th Cir. 1996) (similar language in United States Attorney's Manual "only provides guidance to officials at the Department of Justice and does not have the force of law").

In any event, nothing in the Enforcement Manual was violated. Defendants rely on Section 3.1.4, selectively excerpting language in a thinly veiled attempt to provide legal support for their false narrative that the law does not afford. See Motion at pdf pp.9-10. In truth, this Section of the Manual merely provides guidance to the SEC staff on when the State Actor Doctrine may be implicated – namely, "when there is a parallel investigation by a private entity (e.g., SRO) whose

[11] See supra, n.9.

action is fairly attributable to a government entity." This provision is not remotely implicated by the facts of this case.

B. THE DEFENDANTS' FAIL TO DEMONSTRATE THE PRIVATE ATTORNEY IS A STATE ACTOR – AND THE DEFENDANTS KNEW THEIR ALLEGATIONS WERE FALSE WHEN THEY FILED

As set forth above, the Defendants' theory of events, even assuming it is true, cannot as a matter of law establish a Fifth Amendment violation. Therefore, the Court should deny the Motion. However, because the Defendants' allegations concerning the private attorney acting as a deputized agent of the SEC are not only false, but knowingly false, the SEC addresses them.

1. The Defendants' Burden In Demonstrating The Private Attorney Is A State Actor

To establish a Fifth Amendment violation, the Defendants would have to demonstrate "that in denying the [defendant's] constitutional rights, the [private attorney's] conduct constituted state action."; *see also United States v. International Bd. of Teamsters*, 941 F.2d 1292, 1295 (2d Cir.1991). "That is because the Fifth Amendment restricts only governmental conduct, and will constrain a private entity only insofar as its actions are found to be 'fairly attributable' to the government." *D.L. Cromwell Investments, Inc. v. NASD Regulation, Inc.*, 279 F.3d 155, 161 (2d Cir. 2002) (internal citations omitted).

Actions are "fairly attributable" to the government where "there is a sufficiently close nexus between the State and the challenged action of the regulated entity." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974). That nexus exists either (1) where the state "has exercised coercive power [over a private decision] or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State"; or (2) where "the private entity has exercised powers that are 'traditionally the exclusive prerogative of the State.'"

Blum v. Yaretsky, 457 U.S. 991, 1004-05 (1982) (quoting *Jackson*, 419 U.S. at 351); *see also Desiderio*, 191 F.3d at 206.

Thus, to meet their burden here, the Defendants must demonstrate that the SEC exercised the degree of direction and control over the private attorney's discovery efforts and deposition questioning of the Defendants and in the private District Court actions so that it "must in law be deemed to be that of the [SEC]." *D.L. Cromwell*, 279 F.3d at 161 (affirming district court's rejection of claim that SRO was a state actor when only evidence was inferences from chronology of events); *United States v. Solomon*, 509 F.2d 863, 864-65 (2d Cir. 1975) (rejecting claim that SRO was state actor based on its forwarding of transcript of investigative testimony to SEC where the SRO had independent regulatory interests in making its inquiries). As one court aptly put it:

> Speculation based on no more than the temporal nexus of certain events, the apparent ebbs and flows of an investigation, or the sharing of information and evidence will not suffice absent evidence of direct SEC involvement in the private attorney's conduct in the private District Court actions, such as the presence of SEC personnel at the depositions of the Defendants, requests to the private attorney to obtain certain evidence, or evidence of jointly undertaken activities.

SEC v. McGinn, Smith & Co., Inc., Case No. 10-cv-00457, 2011 WL 13136028, *4 (N.D.N.Y. Jan. 5, 2011).

Similarly, in *United States v. Ferguson,* 06-CR-137 (CFD), 2007 U.S. Dist. LEXIS 87842 (D. Conn. Nov. 30, 2007), the Court found that the defendant failed to show a company, General Reinsurance ("GenRe"), acted as a State Actor during its investigation concerning an accounting fraud. The defendant, an employee of GenRe, argued that GenRe encouraged its employees to cooperate with the government investigation to avoid criminal charges, thus transforming GenRe into an arm of the state. The defendant cited as evidence of the government's control over GenRe: (1) a letter concerning GenRe's payment of the defendant's legal fees; (2) GenRe's statements in its own "White Paper" that it fully cooperated with the government's investigation and encouraged

its employees to do so as well; (3) GenRe's decision to postpone the termination of two employees to facilitate their availability for government interviews; and (4) GenRe's agreement to seek government approval before disclosing company documents to potential witnesses. *Id.* at 20.

In rejecting the defendant's argument, the *Ferguson* Court concluded that GenRe was not a State Actor for several reasons. First, the defendant failed to allege meetings between prosecutors and GenRe to determine how best to pressure the GenRe employees into cooperation. Second, GenRe did not condition its payment of legal fees on the employees cooperating, but instead notified employees that GenRe may reassess legal fees if the employees did not cooperate. Third, the Court emphasized that merely cooperating with the government is not enough; the government must have directed the decision-making of GenRe to make it a State Actor. *Id.* at 23. Even though GenRe encouraged its employees to cooperate with the government investigation, the Court emphasized that the more important fact was that the defendant to allege a manner in which the government affirmatively directed GenRe to encourage its employees to cooperate. *Id.* at 23. The Court stated, "[a]bsent a link between GenRe's actions and the government that demonstrates a 'close nexus' between them, GenRe's efforts to cooperate with the government remain just that – a unilateral effort to avoid indictment – and they do not transform GenRe into an arm of the state." *Id.* at 23.

Here, the Defendants' State Actor arguments have even less merit, as demonstrated by their resort to false assertions that the SEC did not conduct an investigation and that the SEC deputized the private attorney to investigate this matter instead. Defendants' hollow allegations echo almost identically those made in *McGinn*, where the defendants alleged "the SEC made no attempt to do [an investigation]," that the SEC "relied upon FINRA to carry out its investigation," that the SEC used FINRA "to do its bidding," and that "the SEC did not conduct any investigation of its own."

The Court found that the defendants, who were registered brokers, failed to offer facts that FINRA acted as a State Actor sufficient to warrant even *discovery* concerning that issue. The Court found that "[Defendants] have offered facts which at best demonstrate information-sharing between FINRA and the SEC but only mere speculation as to joint action, direction, or control." Accordingly, the Court denied the defendants' motion to compel the SEC to answer interrogatories, finding that defendants did not meet their burden of demonstrating a *prima facie* basis for the relevance of information sought in connection with their State Actor theory. (Exhibit 13). Thus, there is no basis to conclude that the private attorney was a State Actor.

2. The Defendants Do Not Present A Shred Of Evidence Supporting Their State Actor Theory, And They Know Their Assertions are False

In is undisputed that the SEC received information and documents from the private attorney and his clients during the investigation. The Defendants have offered no evidence of any joint action, direction, or control of the private attorney or his clients by the SEC. Nor can they. And so they resort to what they know – falsehoods. And pathetically, largely about facts that even if true would not show the private attorney was a State Actor.

In this section, we go through each contention Defendants made in support of their State Actor theory, showing that not only are they false, but that the Defendants *knew* each one was false when they filed this Motion. Many of the contentions are about the SEC's non-public information and the SEC is prohibited from disclosing details about it, as the Defendants know. Therefore, the SEC cannot simply file a declaration denying the contentions without revealing non-public information – which is perhaps what the Defendants were counting on. But the discovery provided to Defendants proves the falsity of each of their contentions. This is set forth below and in Notice of Filing response to Defendants' "Truth" chart filed herewith.

The Defendants' contentions fall into five categories, each of which is discussed below.

1. That the SEC opened an investigation based on a referral from biased people – namely, Defendants' former opposing counsel and his client; failed to conduct its own investigation and instead "deputized" these private citizens as SEC investigators to investigate this case for the SEC.

a. Examples from the Motion:

> "After failing in his private crusade against Par and other MCAs,[12] [the private attorney] and [his client] shop[ped] this case to multiple law enforcement agencies,[13] all of whom reject it, but the SEC accepts it without doing due diligence"
>
> "[The private attorney], along with his client and sidekick [ ], built this case for the Commission."
>
> "[R]ather than conduct its own investigation, the SEC delegated its investigative powers to a biased private attorney with a clear financial interest in the outcome of this case."
>
> "After deputizing this attorney as a *de facto* SEC investigator, the Commission then took his false legal theories, false facts, defective "default rate" analysis, and hastily thrown together declarations obtained from his obviously biased merchant clients and submitted them to this Court without any critical scrutiny or corroboration."

b. All of this is pure fiction. The Defendants present no support for their wild theory, and the Defendants *know* the contentions are false.[14] Neither the private attorney nor his

[12] The SEC is not going to address the validity of the Defendants' claims regarding the private attorney's litigation success record against them or that it was a crusade. This has no place in this case, and our silence about the private attorney's litigation track record should not be viewed as an agreement with this.

[13] The Defendants attack other federal agencies who are not parties to this case, whose investigations are also not public, and who cannot respond. However, if this allegation is of the same ilk as that against the SEC, it is pure fiction. We do not and cannot speak on behalf of or about another agency and address only the SEC in this response. Our failure to counter what the Defendants assert about the other agencies should not be read as any agreement with the Defendants' assertions.

[14] It is also irrelevant whether this occurred. The public can and does notify the SEC of potential violations, and this can of course be a source for an investigation. We address the Defendants

client shopped this case to the SEC, the SEC did not "deputize" anyone, the SEC staff conducted the investigation; the private attorneys and his client provided documents comprising a miniscule portion of the investigative file; and the private attorney did not draft a single declaration.

i. The Defendants' Motion would lead one to believe that the Defendants have exposed nefarious government actions previously concealed. They have not. The SEC is a civil enforcement agency, our investigations are non-public as a matter of law, and the SEC is authorized by Congress to investigate potential federal securities law violations by seeking and receiving documents and information from any source – including from the private attorney and his client. The Defendants know this.[15] They cite and rely on the SEC Enforcement Manual, which discusses investigations,[16] and the federal securities laws are clear on this issue.[17]

ii. Contrary to what they state in the Motion,[18] the Defendants do know when the SEC first spoke with the private attorney and his client – *August 2019* – and that the SEC contacted the client for information, not the other way around. They know this because we produced the emails where SEC staff contacted the client, explained that there was an investigation and inquired of the client.[19] Defendants also have the correspondence showing that later that same

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contention, and others, to show the Court that the Defendants' contentions (even irrelevant ones) are knowingly false.

[15] The Defendants are represented by experienced white collar attorneys, among them a former SEC enforcement attorney.

[16] Enforcement Manual Section 2.2.1.1 & Section 3.2.3 Voluntary Document Requests. Because the Enforcement Manual is more than 100 pages in length, we are not attaching it as an exhibit, but are instead providing the link to the Manual on the SEC website, https://www.sec.gov/divisions/enforce/enforcementmanual.pdf

[17] Sections 19 and 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934.

[18] Motion at pg 4, n.8.

[19] Exhibit 9.

month, we contacted the private attorney and he had granted the SEC staff permission to interview the client without him present. [20]

iii. Defendants also know that when the SEC sent its August 2019 email to the investor/merchant client, the investigation was already underway and that the Commissioners of the SEC had issued a Formal Order authorizing the investigation. They know this because in the August email, the staff states that there is an investigation and also attaches the Form 1662, which discusses the SEC's use of information and documents in investigations. [21]

iv. Defendants also know this because a year ago the SEC produced documents received during the investigation, organized to show who, including the private attorney and client, had produced which documents and when. Thus they know the SEC had received documents and issued subpoenas before ever contacting the private attorney and his client in August 2019.

v. The Defendants know the SEC conducted its own investigation because one year ago, at the outset of this case, the SEC produced to the Defendants its investigative file of more than 100,000 documents, and identifying dozens of sources for those materials, and also produced declarations from numerous witnesses and additional evidence in the TRO Motion filing and in advance of the preliminary injunction hearing. A chart showing the electronic production folders produced to the Defendants in August of last year, showing the sources and amount produced by each source, is attached as Exhibit 12.

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[20] Exhibit 10. The Defendants also include a footnote in their Motion accusing the SEC of withholding documents, citing the fact these emails were not produced. Motion at n15. Had they instead conferred with us, we could have pointed them to these emails in the production we made. In that vein, the same footnote states that Defendants are awaiting responses to requests for production of documents showing any financial reward or promise made to the attorney and his client. The SEC produced that response via email to defense counsel on June 11, and responded that there are no documents concerning any financial agreement with the private attorney or his clients.[Exhibit 11, Response to Request for Production, at Requests and Responses 8 & 9].

[21] Exhibits 10 & 11.

vi. Further, the Defendants know that the materials the private attorney and his clients sent the SEC are a miniscule portion of the investigative file. The investigative file – produced electronically to the Defendants and organized by source – shows that **only about 0.06%** of the investigative file came from the private attorney, and that number increases to only about 0.07% if referencing the total produced by the private attorney and his client.[22]

vii. Further, contrary to the Defendants' assertion that the private attorney created or calculated the "default" argument for the SEC, there is no evidence anyone other than the SEC's outside accountant and the SEC's internal accountant and senior auditor worked on analyzing any data in this case. As the Defendants know, this analysis was filed with the Court in sworn declarations, supported by the SEC auditor and accountant, summarizing what the auditor swore under oath was – and that in fact is – thousands of pages of documents reviewed.[23] The auditor's declaration alone includes an attachment showing what he swears is his own work product, a chart summarizing all the data he reviewed from reviewing more than a thousand case filings.[24]

viii. The Defendants offer no evidence whatsoever that the SEC encouraged, directed, or controlled the private attorney's work in connection with the District Court cases where he was Defendants' opposing counsel, or that the SEC staff even suggested how the private attorney should litigate his cases. Because we did not. And notably, the Defendants have never bothered to ask the private attorney whether this occurred.

---

[22] Exhibit 12. This chart does not even reflect the declarations from numerous additional sources and witnesses the SEC filed with its TRO Motion, which the Defendants know brings the total number of sources to more than 80 individuals and entities.

[23] DE 27-11, Andjich Declaration; DE 27-12. Ivory Declaration.

[24] DE 27-11, Andjich Declaration.

ix. Finally, the Defendants offer no support for their repeated assertion that SEC investigative team did not consider or think about witness bias or other issues. The Defendants offer no evidence of what the SEC investigative attorneys thought, considered, or knew (also known as attorney work product and attorney opinion product), and we will not dignify their wild speculation with any further response as none is warranted.[25]

2. That the merchant declarations are not corroborated by other evidence, the SEC did nothing to corroborate them, and the declarations are false.

a. Example

"[The SEC never questioned [the client's] credibility, bias, or financial motives and did nothing to corroborate her allegations."

b. The Defendants know this is false.

i. As set forth in the TRO Motion and during the preliminary injunction hearing where the SEC provided further evidence of the allegations, the client's declaration about what Defendants told her during the solicitation for her to purchase promissory notes (she is an investor as well as a merchant borrower) is consistent with what other witnesses swore under oath in their declarations – declarations the Defendants do not address in the Motion.[26]

[25] The private attorney is Defendants' former opposing counsel in cases involving confessions of judgments, RICO claims cases, a case his clients filed against all CBSG *investors* (the opposite of an SEC action, essentially) and a class action his clients filed against CBSG and others. Many of these case were still pending in federal court when this case was filed, and obviously the SEC action affects those cases, which are now stayed and the private attorney is no longer employed on those cases as a result.

[26] DE 21-4, Client declaration; DE 21-4, 22-1, 22-2, 23-6, 28-10, 28-11, 29, 29-1, 29-2, 29-3, 29-4, 29-5, 29-6, 29-7, 29-8, 29-9, 30, 30-1, 30-2, 30-3, 30-4, 30-5, 177-16, 177-30, 177-35, 177-38, 177-39-, 177-40, 177-41, 177-42, 177-43, 177-46, 177-47, 177-48, 177-49 and 290-9.

ii. The client's sworn statements about her experience as a merchant borrower are corroborated by the following, as well other evidence filed in connection with and before the preliminary injunction hearing:

- Defendant/Movant LaForte's own admission in a recorded statement to potential investors that he did not conduct due diligence and sometimes funded deals based on phone calls.[27]
- The declaration of CBSG's former assistant underwriter that they did not conduct extensive due diligence or onsite inspections for all deals.[28]
- CBSG's own website at that time, advertising that merchants could get "Get approved and funded within 48 hours"[29]
- CBSG documents showing that deals were approved before the onsite inspection occurred, filed with the TRO Motion.
- The declarations of other merchants filed with the TRO motion.

3. That the client emailed the SEC staff frequently, her messages contained false facts, and the SEC filed a case based on these email messages.

a. Example

"In her correspondence with the SEC, [the client] fabricated numerous allegations in an effort to spur the SEC into taking action against Par…."

b. The Defendants know their contention that the SEC based its case on emails the client sent is false

[27] TRO Motion Exhibit 129, at 299:24-300:8, which was and remains filed under seal. In this recording, LaForte tells individuals posing as potential investors that he has "probably a hundred anchor clients, meaning guys who I don't even have to underwrite really." As LaForte explained these anchor clients: "They call my phone - -like, 'Yeah, send me a hundred.' And I just send a hundred."

[28] [DE 29-7], Lionese Jones Declaration.

[29] Exhibit 14, SEC Declaration and website capture authenticating the website during the investigation period.

i. The vast majority the client's email messages to the SEC that the Defendants cite to and discuss at length do not even reference issues or facts the SEC pleaded in this case, which is apparent from reading the Complaint.[30] The Defendants cite that the client emails the SEC frequently, which is true, and she continues to do so. And there is nothing wrong with that.[31] The SEC produced these emails and will continue to produce any such emails we receive in the future.

4. That the SEC "deputized" the private attorney and his client as counsel and paralegal on the SEC's investigative and trial team.

a. Examples

> "The SEC deputized [the private attorney] and DiPietro as *de facto* co-counsel and paralegal."
>
> "Based on the uniform template of the merchant declarations and other information and documents finally obtained in discovery, including emails between [the private attorney] and the SEC, it is clear that [the private attorney] drafted the declarations for all of the merchants."
>
> "It is clear that [the private attorney] drafted the declarations for all of the merchants."
>
> "Incredibly, the SEC sent the Valz Declaration to [private attorney] soliciting his response. [The private attorney] then drafted a page-long comfort email to

[30] For example, the Defendants focus on the CBSG deals and whether they were merchant cash advances or deals, claiming the SEC alleges they are not MCAs. This is patently false, and we have repeatedly said that this case is not about the proper characterization (as loans or something else) of the transactions whereby CBSG advanced money to merchants who were required to pay it back. The complaint uses the terms loans and MCA loans, and does not allege they are not MCAs. Whether they are called MCAs or loans is not relevant to or part of any element of any claim in this case. And the Defendants known that, and have known that from day 1 when the SEC stated its position that this is not an issue in the case, and the Court told the Defendants it is not an issue in this case. [Exhibit 15, August 17 hearing transcript, at 29:10-32:2]. Yet they continue to argue this red herring.

[31] The SEC makes supplemental productions monthly to the Defendants of all new email messages that the client sends us. We also receive messages from numerous other investors. Nothing prohibits them from emailing the SEC anytime they want, and the Defendants' effort to demonize this is misplaced and unfounded.

> the SEC attempting (unsuccessfully) to rebut the Valz Declaration. [The private attorney] even offered to draft a counter-declaration."

b. The Defendants know this is false.

i. The Defendants know the private attorney did not draft any declarations because we produced the emails to Defendants showing that SEC attorneys drafted the merchant borrower declarations based on the questionnaire undersigned sent the declarants through their counsel, and that an SEC attorney drafted the declaration for the private attorney's client (who is also an investor). Those emails, drafts, and threads, were all in the hands of the Defendants when they filed their frivolous Motion.[32]

ii. The private attorney drafted precisely *none* of the witness declarations. There is no evidence of it, and the Defendants did not even inquire about this during discovery or at any time before filing this baseless allegation. Plus, they know he didn't draft them because we produced the email for each Declaration draft, showing undersigned or another SEC attorney emailed the drafts – from the SEC staff to the merchants through the private attorney because he is their counsel.

iii. As for the "comfort letter" they claim undersigned sought from the private attorney, this too is pure fiction. The message the Defendants filed shows nothing more than undersigned emailing the private attorney after this case was filed and in advance of the preliminary injunction hearing. It attaches a declaration by Norm Valz the Defendants filed in opposing the TRO Motion that is about the MCA vs Loan issue the Defendants were trying to get the Court to adjudicate, and *the Valz declaration is all about the private attorney' cases against*

[32] See Composite Exhibit 16. The Defendants make the related criticism that "The fourteen declarations bear the hallmarks of a single draftsman, tracking nearly identical language, all signed days before the Complaint was filed, with occasional blank fields suggesting both uniformity and haste." Undersigned drafted the declarations and has noted their editorial feedback.

CBSG. The Defendants know that we obtained a declaration from the private attorney opposing the Valz declaration for use at the preliminary injunction hearing in case the Court was going to consider this issue, because we produced the declaration to them. In advance of the preliminary injunction hearing, undersigned asked the Court if this was a matter that needed to be litigated and stated that whether CBSG was in the business of MCAs vs Loans is not a feature of this case and is not part of the charges, and the Court agreed and said it would not be litigated at the hearing.[33] Accordingly, we did not present the declaration during the preliminary injunction hearing. It is not legal advice or a comfort letter, but an email seeking information about a declaration that was about the private attorney and his cases.[34]

5. That private attorney asked questions during a June 30, 2020 deposition in a District Court case against CBSG that had no relevance to that case, but were 'critical' to the SEC investigation, and therefore the private attorney must have asked these questions for the SEC and known that the SEC was going to file its Complaint.

a. Examples

> "Perhaps most egregiously, on June 30, 2020, [the private attorney] took the deposition of Defendant Joe Cole in a merchant civil action. In that deposition, [the private attorney] asks numerous questions that were unrelated to any possible merchant concerns and beyond the proper scope of the deposition as ordered by the Court."
>
> "Specifically, [the private attorney] asked questions related to representations made to investors about topics outside the scope of the court order on permissible areas of inquiry for this deposition including topics such as: Par's

[33] Exhibit 15, transcript at 29-32.

[34] The Defendants go on in their Motion to criticize the SEC for not determining or researching whether there business is a lending company or a merchant cash advance company. As the SEC has made clear, and as is evident from the Complaint, not to mention the Court's statements during the August 17 hearing, this is not an issue in this case. Whether the Defendants sold dirt or financial transactions, it does not matter. This is a case about whether the securities offerings were registered and whether the Defendants made false representations to investors (none of which misrepresentations are alleged to be about the proper nomenclature of CBSG's cash advances).

> default rate, other companies owned by defendants, LME Trust assets and ownership, investors, office addresses, LaForte's role in Par, the CLA Audit, CBSG liabilities and assets, where McElhone lives and the address of her business Lacquer Lounge, COJ's, use of reloads, ABF owned by Vagnozzi, usury laws, investor disclosures, Laforte's statements about equity in the company, Joe Cole's partner Bill Broomly."
>
> "These questions and topics were irrelevant to [the private attorney]'s lawsuit on behalf of his merchant client, but they were key to the SEC's case filed approximately three weeks after the deposition took place, which [the private attorney] obviously knew about when he took the deposition."
>
> "Three days after the deposition, [the private attorney] forwarded the transcript to the SEC and the FBI in the same email."

b. The Defendants know this is false.

i. The case at issue involved claims against CBSG and its investors. The case was filed on July 26, 2019 - before the SEC ever contacted the private attorney or any of his clients in the investigation. The Defendants know this because they participated and directed the litigation as the principals of CBSG at that time and the transcript of the deposition of they claim was done at the SEC's direction shows the case filing year, and because, as set forth above, they know when the SEC staff contacted the private attorney and his client since the SEC produced that evidence to them.

ii. The Defendants litigated the scope of the deposition in advance, as is evidenced from the Court docket, and the Court found that subjects concerning investors, ownership, management, and other matters inquired about were relevant.[35]

iii. Contrary to Defendants' contentions, they knew that the deposition was going to cover the areas that they now claim were wholly unexpected and unrelated to that case.

[35] Exhibit 5, and Order attached as exhibit 3 thereto .

iv. We know this because the Receiver waived CBSG's attorney-client privilege with the CBSG attorney – the very one who testified in this case that there was no expectation of these questions and they were not relevant.

v. Before the deposition occurred, the CBSG attorney prepared Defendant Joseph Cole Barleta for his testimony. He emailed Barleta and LaForte a list of the questions and topics he expected would be asked in the deposition. And it covered the same areas the Defendants now claim are suspect and were only asked because the SEC was conducting an investigation. The email proves this is false, and that the Defendants know it is false.[36]

vi. Further, as for the specific details they cite, most were not even referenced in the Complaint or are clearly not at issue here, including the office addresses and Lisa McElhone's address, which are matters of public record; the CLA audit, which is not referenced in the Complaint; the CBSG liabilities, which are not referenced in the Complaint; "Laquer Lounge," the relevance of which is unclear; "reloads," which is also not a concept discussed in the Complaint; Vagnozzi's ownership of ABFP, which has never been a secret as Vagnozzi markets widely online as set forth in the TRO Motion; and "Bill Broomly," also not referenced in the Complaint.

vii. As with the other contentions, the Defendants' representations are false and they knew they were false at the time they filed their motion. And what they lied about is not even relevant.

In sum, the Motion is a sham, and the only thing it demonstrates is the length to which the Defendants will go to "win at any cost."[37]

---

[36] Exhibit 3, CBSG lawyer email.

[37] Exhibit 1.

V. CONCLUSION

For the reasons stated above, the Commission requests that the Court deny the Motion to Dismiss.

August 14, 2021

Respectfully submitted,

By: Amie Riggle Berlin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this fourteenth day of August 2021 via CM-ECF on all defense counsel and via email on the *Pro Se* Defendant in this case.

Amie Riggle Berlin
Amie Riggle Berlin

From: Joe Mack <joe@parfunding.com>
Sent: Tue, 17 Mar 2020 18:07:27 -0400
Subject: RE: [EXT] RE: 3/17/20 Daily Update
To: "Berman, Brett" <BBerman@foxrothschild.com>, Joe Cole <joecole@parfunding.com>

I am a winner.. I like to win at all costs.. always.. that's all that matters to me is winning.. nothing else..

From: Berman, Brett <BBerman@foxrothschild.com>
Sent: Tuesday, March 17, 2020 6:05 PM
To: Joe Mack <joe@parfunding.com>; Joe Cole <joecole@parfunding.com>
Subject: RE: [EXT] RE: 3/17/20 Daily Update

All I can say Joe is "don't shoot the messenger"!! Goal from me is to collect money and not leave the messes like you are dealing with from the olden days. That is what I am working on every day.

There are two or 3 items buried in the pile that talk about people paying you money!

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---

From: Joe Mack <joe@parfunding.com>
Sent: Tuesday, March 17, 2020 6:02 PM
To: Berman, Brett <BBerman@foxrothschild.com>; Joe Cole <joecole@parfunding.com>
Subject: [EXT] RE: 3/17/20 Daily Update

Going well!!!!! Any other ball kicks..

From: Berman, Brett <BBerman@foxrothschild.com>
Sent: Tuesday, March 17, 2020 5:57 PM
To: Joseph LaForte (joe@parfunding.com) <joe@parfunding.com>; Joe Cole <joecole@parfunding.com>
Subject: 3/17/20 Daily Update

• **South Coast**. Wire in the amount of $513,267.75 immediately due. Bond must be posted by Thursday or violation of court order. Please confirm wire being sent. TIME SENSITIVE.

• **Sunrooms/Foti** -- In the *Sunrooms* case, Heskin filed a Petition to Strike/Open the confessed judgment. *See attached (without exhibits)*. In the arguments to strike off/open, the merchant (Sunrooms) and guarantor (Michael Foti) raise similar arguments as we have seen in our cases challenging the confession of judgment. However, unlike prior cases, they also seek to use this petition as an omnibus vehicle for stating their own causes of action, alleging new class actions under multiple states' laws (NJ, TN, and TX), seeking to add multiple other merchants and guarantors from varying states as plaintiffs (Quantico Business Center, Annie's Pooch Pops, MH Marketing, Volunteer Pharmacy, National RX, Knava's Bounce House, Capital Jet, Petropangea, and Amos Jones Law Firm) and multiple new defendants. Specifically, they seek to add claims against Full Spectrum, RMR, MCA National Fund, MCA Capital Fund, and Joe personally. They allege causes of action for violating RICO, state usury laws, UCC provisions, PA writ of execution provisions, fraud, and unconscionability. They make numerous salacious allegations (including allegations of forged COJ affidavits and threats of physical harm) and launch countless personal attacks. We have already asked the Court to stay any response date to this voluminous and unwieldy petition until the Court rules on our motion to remand this confessed judgment back to state court. Otherwise, we will begin preparing a strong and substantive response to this petition and attack it on multiple levels, if the Court requires us to respond to it at all.

• **Barley Forge**: We filed a COJ. Barley Forge filed for bankruptcy. Then a suggestion of bankruptcy was filed. Defendants file a motion to sever the Guarantor because he wanted to file a petition to open and was unable to do so due to the automatic stay. Motion to sever was granted. Guarantor then filed a petition to open; it was granted. Then we file a motion to arbitrate; it was denied. We appealed the denial of the motion to arbitrate. This is pending in Superior Court, which Fox is handling. CBSG filed a proof of claim for the secured amount of $278,384.45. (Claim is attached).

  - The Trustee reached out for a settlement: "Barley Forge Brewing Company as debtor-in-possession will stipulate to allow your a general unsecured claim against the Barley Forge Brewing Company bankruptcy estate in the amount of $250,000. In exchange, your client will waive all further claims against the bankruptcy estate (including waiving any and all secured claim(s)), dismiss the Pennsylvania lawsuit with prejudice, agree to a mutual general release with the guarantor Greg Nylen, and release Greg Nylen and Mary Ann Frericks' property from your client's deed of trust. In return, Greg Nylen will also drop the counter claims he filed against your client in the confession of judgment action. " Offer expires on March 19 or they will pursue the sanctions for stay violation. That is the information we have and there is a lot owed to you.

• **SC Crawford/Steve Crawford** – advanced amount is $285,630.30, payback of $377,100.91 and $194,734.28 paid to date leaving outstanding out-of-pocket of $90,896. Settlement offer of $20k or threats of bankruptcy as many MCAs out there. Today offer was increased to

$34,000 based on a telephone call where I told them to get realistic. Let me know if you want any counter less than $100,000.

• **B Little** – internal legal confessed on wrong confession because earlier agreement was not funded and, instead, a second agreement was funded. We vacated the judgment without prejudice and filed a new confession. There was $95,210.51 funded. They paid back $41,663.34. That leaves an out of pocket deficit of $53,547.17. B Little offers $20,000. Let me know if we should counter at $53,547.17 or something different.

Genovese Joblove & Battista

• Law firm represented CBSG. CBSG failed to pay invoices. Law firm filed a lawsuit. CBSG did not enter its appearance. Law firm moved for a default.
  ○ Default request: damages in the amount of $22,462.85, plus attorneys' fees and costs in the amount of $3,814.50, for a total judgment amount of $26,277.35.
  ○ Hearing on Motion – **April 8**. They are amenable to a settlement. I would recommend we offer $10,000, with authority up to $20,000.

Ripe Assets Fund 1

• Received Demand letter – attached. Mortgage secured lien on loan of $799,391.71 was made by Ripe Assets Fund 1 to CBSG to on 12/28/2018
• Mortgage signed by Andrew Wilkin, as owner of Ripe Assets Fund 1
• Ripe Assets Fund 1 asserts that Wilkin was not the owner, and that had CBSG done due diligence it could have determined that.
• Threat: "If you client does not release its Mortgage and provide my office with evidence that it has done so before the close of business on March 19, 2020, I have been authorized to file suit against your client under C.R.C.P. 105.1 and/or C.R.S. § 38-35-204, in which my client will seek judicial removal of the Mortgage in question and an award of its costs and reasonable attorney's fees." (Demand Letter attached).

Oasis

• On October 31, 2019, Mr. Ron Weible petitioned the Philadelphia County Court of Common Pleas to release a safe deposit box held in garnishment as part of Complete Business Solutions Group, Inc. v. Oasis New World Rugs, Inc.
• Weible has provided credible evidence that he is the true owner of the box, that ownership never transferred to the Defendants, and that Defendants never had access to the box. For these reasons, it is my recommendation that the garnishment on the box be released. Please confirm.

Electra (CCP 191102801)

• Your entity purchased building from Electra and took possession in July 2019. We alleged that Electra is holding certain rent monies from August 2019 that belongs to you. Electra contends all fund disbursed to them at closing by broker/manager were disbursed to you…If there is a discrepancy and it is shown through an accounting, Electra will pay and proceed

against broker/manager. Electra does not want to litigate over the contested amount. Electra seeks an accounting detailing how you arrived at $5,568.50 in damages. Need accounting if you want to pursue.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	
v.	**:**	**CRIMINAL NO. 20-231**
JOSEPH LAFORTE	**:**	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PRETRIAL RELEASE

The government, by and through its attorneys, William M. McSwain, United States Attorney for the Eastern District of Pennsylvania, and Jonathan B. Ortiz and Patrick J. Murray, Assistant United States Attorneys for the district, hereby submits this Response in Opposition to the Defendant's Motion For Pretrial Release. For the reasons stated below, the defendant's motion for release should be denied and he should remain detained pending trial.

I. Background of the Case and Procedural History.

This case is a result of a long-term, ongoing, criminal investigation of Joseph LaForte and his business by the FBI, the IRS, and the FDIC. LaForte and his company are not currently facing any charges relating to the investigation. However, as a result of the investigation, the FBI sought several federal search warrants related to LaForte. On July 23, 2020, Judge Linda Caracappa (USMJ-EDPA) authorized search warrants for locations related to the business and for 568 Ferndale Lane, Haverford (the primary residence of LaForte and his wife). On July 27, 2020, Judge Bruce Reinhart (USMJ – SDFL) authorized search warrants for a second office for the business, and for 107 Quayside Drive, Jupiter, Florida (a vacation home of LaForte). These warrants authorized the seizure of a number of classes of documents and records relating to the investigation.

On July 24, 2020, Judge Karoline Mehalchick (USMJ-MDPA) also authorized a search warrant for 105 Rebecca Court, Paupack, PA (another vacation home of LaForte). The search warrant was justified, in part, by a recording made a mere two days earlier in the investigation, on July 22, 2020, when two FBI Undercover Employees (UCE 1 and UCE 2) participated in a meeting with LaForte and one of LaForte's business partners. During the recorded meeting, LaForte discussed owning a home on Lake Wallenpaupack and encouraged the UCEs to come to his residence to shoot firearms. Specifically, the following exchange occurred:

> LAFORTE: **You know what. I've got… I've got rifles**.
>
> UCE 2: We'd be shooting people that live on the lake, probably.
>
> LAFORTE: **You know what I'm saying. (inaudible) You've got rifles. I've got rifles.**
>
> . . . .
>
> LAFORTE: **I've got AR-15s, what do you want bro, come on.**
>
> UCE 1: AR-15s (laughing)
>
> UCE 2: Kill everybody.
>
> UCE 1: I'd love to shoot one of those…
>
> LAFORTE: And my dogs…..
>
> UCE 1: Do you have like a lot of cool guns to shoot? Yea, yea? (inaudible)
>
> . . . .
>
> LAFORTE: **We've got everything, AR-15s. We've got, uh, sawed off shotguns, rifles. We've got, I don't know, what do you want?**
>
> UCE 1: Are they all at the lake? (inaudible)
>
> . . . .

LAFORTE: **We've got gun rooms up there. Yea. (inaudible)**

On July 28, 2020, agents simultaneously executed all of the search warrants. At approximately 10:33 a.m. agents entered onto LaForte's Haverford property. After approach, LaForte's wife informed the agents that there were 4 firearms in the residence, including an "AR-15 under the bed," "handguns in each drawer by the bed," and one "gun in the first floor office" which she claimed was her office. However, upon searching the residence, agents recovered 7 guns in total (not 4, as she claimed existed), including two from the office (not 1, as she claimed they would find). Moreover, one of the guns from the office was recovered from within a locked drawer that housed Joe LaForte's personal journal.

On the second floor of the residence, agents entered the master bedroom. In an unlocked nightstand, agents observed a Smith & Wesson M&P Bodyguard 380 handgun, loaded with 5 rounds, and a Smith & Wesson EZ Shield 380 handgun, loaded with 8 rounds, and which also had a separate 8 round magazine within the drawer. Underneath the bed agents observed a black gun case which was later revealed to hold a Smith & Wesson M&P 15 rifle, loaded with 30 rounds of 556 ammunition.

Agents also observed two shotguns that were within cases in a basement storage area - a Beretta ES100 shotgun and a Beretta AL392 Urika shotgun.

After observing the firearms and several collections of large sums of currency (later determined to be approximately $592,847) in the residence, agents sought and obtained a follow-up search warrant for the premises to seize the currency and any and all firearms.[1] Judge

[1] Large sums of money were also approved for seizure from the other search locations. From the vacation home in the Middle District of Pennsylvania, agents recovered approximately

Elizabeth T. Hey (USMJ-EDPA) authorized the follow-up warrant. After the warrant was authorized, the agents concluded the search and vacated the premises.

On August 5, 2020, a grand jury returned an indictment charging the defendant with the possession of seven firearms and multiple rounds of ammunition by a convicted felon.

On August 11, 2020, after reviewing the parties' submissions and arguments, the Honorable Marilyn Heffley found LaForte to be a risk of flight and a danger to the community and ordered him detained pending trial.

On August 25, 2020, LaForte submitted a motion to this Court seeking pretrial release. Defendant's motion claims that (1) the government misrepresented the contents of a recording between LaForte and two Undercover Agents, (2) LaForte has not made credible threats against others, and (3) LaForte is not a violent danger to the community. The government responds as follows.

II. LaForte's Recorded Statements About Moving Money to Offshore Accounts.

As noted in the government's previous detention motion (attached as Exhibit A) and argument, LaForte is a risk of flight if released because, among other reasons, he has expressed a desire to move large sums of money to offshore bank accounts. As a result, any indication now that he will not flee must be met with great scrutiny and caution. On July 22, 2020, LaForte and one of his business partners (PERSON 1) engaged in a lengthy conversation with two FBI Undercover Agents posing as potential investors. During the conversation, the following

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$1,275,865 in cash. From the vacation home in the Southern District of Florida, agents recovered approximately $596,733 in cash. In total the FBI recovered approximately $2,532,885 from LaForte's properties and business.

exchange occurred:

PERSON 1: So what's in the Caribbean guys?

UCE 1: Nevis.

UCE 2: Nevis, specifically. Is uh, a great place to put money.

PERSON 1: Yeah it is. You a fly fishing?

UCE 2: A great place to put money I'm . . .

LAFORTE: When we going?

…

LAFORTE: I'm in by the way. Let's go.

UCE 2: And you get citizenship there when you buy a place over a certain amount of money. You get citizenship.

UCE 1: You get citizenship.

LAFORTE: I know. I know about this. I know about this.

UCE 2: You get citizenship and it gets you so much.

LAFORTE: But you gotta spend.

UCE 1: But you can get a scam condo there for 300 grand.

LAFORTE: Yeah, but you want to go bigger because you want to get nexus.

UCE 1: Well, yeah. Well.

…

LAFORTE: When are we flying down to Nevis?

UCE 1: When would you like to?

…

LAFORTE: Well if we go down to and buy a place, how fast can we get in front of a bank?

UCE 1: That day.

UCE 2: That day.

UCE 1: Seriously.

LAFORTE: Okay.

…

LAFORTE: And they accept cash there?

UCE 1: Absolutely.

PERSON 1: Yeah, he brought cash, my buddy.

UCE 1: So here's what you do.

UCE 2: The beauty of a private plane. You take a plane. No checked bags.

LAFORTE: Oh yeah.

UCE 1: Bring bags.

LAFORTE: Oh yeah.

As the interaction above demonstrates, LaForte demonstrated a desire to learn more about, and actually travel to, Nevis in order to move bulk currency into offshore accounts after obtaining citizenship. After being told that Nevis is a good place to stash money, LaForte stated, "When are we going?" After being told that he can get citizenship in Nevis if he purchases property, LaForte stated, "yeah, but you want to go bigger because you want to get nexus" and then added, "when are we flying down to Nevis?" LaForte then followed up the conversation by asking, "Well, if we go down to and buy a place, how fast can we get in front of

a bank?" LaForte was then told that he could see a bank the day he arrives in Nevis and buys a property, so he asked, "and they accept cash there?" After being told that, yes, he can bring cash on a private plane (which at the time LaForte had owned) and avoid customs inspections, LaForte stated, simply, "oh yeah." Clearly, a plain reading of the conversation shows that LaForte had a genuine interest in, desire to, and plan to, move bulk amounts of money to Nevis. Inexplicably, however, LaForte is bold enough to claim that the government had given a "misleading characterization"[2] of the recording to Judge Heffley. Unfortunately for LaForte, the conversation is a clear indication of his great interest in Nevis as he asks several questions about the possibility and feasibility of using his own private jet to fly bulk amounts of currency to Nevis where he could obtain citizenship and use the banking system – which is what the government represented to Judge Heffley in the detention hearing.

The representation made by LaForte that he has no means to flee, or no desire to flee, if released must be examined with great scrutiny by the Court. His prior statements about trying to hide his assets should speak volumes about his motivation and intent to flee if he is released. This means that his ties to family, friends, employment and the community should do nothing to ensure this Court that if released he will suddenly become a law abiding resident and will not flee.

---

[2] Unfortunately, LaForte's motion makes clear that instead of the government mischaracterizing the conversation, he is actually the one that mischaracterizes it. So that the Court is aware, the government provided the recording and transcript to LaForte's counsel on August 18, 2020. Yet, after having a full week to review it, LaForte chose to provide this Court with one small portion of the conversation which conspicuously omitted any of the damaging statements LaForte made about his thoughts and intentions. *See* Def.'s Mot. at 6-7. Whether the defendant did this as an attempt to malign the government's credibility and representations, or to simply misrepresent the nature of the recording to the Court, the defendant's motion is inaccurate.

III. LaForte Used Threats and Intimidation as Part of His Business Practice.

As noted in its detention motion and argument, LaForte used threats and intimidation as means to collect money from his business's clients. He has therefore demonstrated his dangerousness and now those acts should point this Court towards detention. Multiple witnesses have informed the FBI that LaForte and people acting on his behalf made a number of threats of physical harm for failing to pay LaForte money. As a result, LaForte is a danger to the community because he has engaged in dangerous activities in his recent past and now is in a much more dire circumstance, facing years in prison. Witnesses have told the FBI that LaForte threatened to kill them or family members, threatened to blow up their houses and car, and ominously referred to "cement shoes" as a means to threaten or harm his debtors. These prior statements, and the potential availability of these witnesses in a separate proceeding, should indicate to the Court that LaForte, a felon found to be in possession of multiple guns, is a danger to the community.

Unfortunately, when made aware that the government knew of, and spoke with, such witnesses, LaForte resorted to a wholly irrelevant and salacious slander on a person with no connection to this case. LaForte notes, in footnote 9 of his motion, that in connection with an unrelated civil suit LaForte investigated his opposing civil counsel and found alleged inappropriate activities by that lawyer. From there, apparently he seeks to imply that any person who was, or is, a witness against him must be untrustworthy. LaForte then has the gall to try to bring this irrelevant and inflammatory information into this case when it has absolutely nothing to do with whether LaForte is a flight risk, a danger to the community, or was a felon in possession of firearms. The government refuses to engage in any speculation on the validity of

LaForte's claim about the civil lawyer as it is an entirely baseless argument to make to this Court. It is plainly offensive to the professional practice before this Court. A character attack on a person who cannot defend themselves about a wholly irrelevant allegation, serves absolutely no legitimate purpose whatsoever. Ironically, however, LaForte's willingness to resort to such depths of argument and outrageous characterizations shows his willingness to put his own interests above all others. In an odd way, LaForte's scorched earth argument for release should show this Court that he cannot be trusted because he will, apparently, resort to any argument he can think of in order to be released.

IV. LaForte Was in Possession of Firearms – a Dangerous and Illegal Act.

LaForte claims that he should be released because the presence of firearms in his home was not a dangerous or violent act. This argument is not only incorrect but also misses the point of the detention analysis entirely. Detention determinations are specific inquiries into a particular defendant's ability to be trusted with release. As was demonstrated by the government in the prior detention hearing, LaForte is facing near certain conviction for being a felon in possession of a firearm with a likely lengthy prison sentence to follow. He also recently suffered a loss of his business and significant assets and has previously indicated a desire to relocate to a foreign country and a willingness to harm people. The reality of his present circumstance and history shows that he needs to be detained pending trial.

The government admits, as it did in its detention argument, that LaForte is not alleged to have used the firearms against another person. He is alleged to have possessed them, which as a twice-convicted felon, is and of itself a crime. LaForte claims, incorrectly, that the government argued that his case was a crime of violence. The government made no such argument and

indeed stated to Judge Heffley that there is "an issue where there are armed felons posing a safety threat to the community. We're not suggesting that this is a case that's a crime of violence. . . ." *See* Exhibit B (Transcript of August 11, 2020, Detention Hearing) at 5. While LaForte takes issue with cases cited in the government's detention motion, all of the cases acknowledge that a felon in possession of a firearm may be detained. Contrary to LaForte's motion, which again engages in mischaracterizations, the government never claimed LaForte used the guns against another person or that he is charged with an inherently violent crime. Instead, the government articulated several characteristics, specifically about LaForte, that show he is a danger, a flight risk, and is likely to be convicted. The government also demonstrated how he, particularly in possession of firearms, is a danger to the community which counsels towards continued detention.

Unfortunately, once again, LaForte also makes other irrelevant and inaccurate arguments in an attempt to secure his release. While admitting that LaForte spoke on July 22, 2020, to Undercover Agents about having "AR-15s", "shotguns" and "rifles" in his lake house, LaForte makes note that the "government omitted the parties' references to hunting." *See* Def.'s Mot. at 10 n.11. He also claims that the guns had never "been used in connection with a crime." *See Id.* at 12. These arguments completely miss the point because LaForte is a felon who cannot possess firearms in any context. He is charged with being a felon in possession of firearms. He is not charged with using the firearm. As a convicted felon, LaForte cannot legally hunt with firearms, he also cannot legally hold firearms, and he cannot legally constructively possess firearms in his lake house in the Middle District of Pennsylvania, in his mansion in the Eastern District of Pennsylvania, or anywhere else.

LaForte, while apparently admitting to knowing that the guns were in his own home also stated that the guns "were lawfully registered and safely secured in his childless home." *See* Def.'s Mot. at 12. This is not only factually inaccurate, but his admission of knowledge actually helps to prove the likelihood of his conviction. With the arguable exception of one pistol, the guns were not "safely secured." One loaded pistol was recovered from LaForte's unlocked desk drawer. Another two loaded pistols were recovered from LaForte's unlocked nightstand drawer. The AR-15 style rifle, which was loaded with a large capacity magazine, was recovered from the floor beneath the master bed. And two shotguns were recovered from cases in an unlocked closet. The guns were loaded, spread throughout the home, and in easily accessible places. The recoveries were so plain and apparent that any person residing in the home knew the guns were there and indeed LaForte appears to admit as much. LaForte is a felon who was knowingly in possession of firearms, and he is going to be convicted of that crime.

V. LaForte Should Remain Detained Pending Trial.

The government moved for pretrial detention because the defendant is both a danger to the community and a flight risk. Judge Heffley, after reviewing the filings and arguments, clearly understood that reality and ordered him detained. In this case, the defendant possessed seven firearms and multiple rounds of ammunition despite being a convicted felon. As noted above, LaForte was in possession of a rifle that was loaded with a large capacity magazine as well as 6 other firearms, therefore under the United States Sentencing Guidelines he likely faces an advisory guideline range of 51 to 63 months imprisonment and a maximum of 10 years imprisonment upon his conviction. Furthermore, this is not the defendant's first brush with the law. The defendant has prior convictions, including a conviction from the United States District

Court for the District of New Jersey[3] and from the New York State Supreme Court.[4] As detailed above, the investigation of LaForte has also revealed that he has a history of making threats to others, and recently has said that he wants to move large sums of his money to offshore bank accounts. He is therefore a danger and flight risk. Finally, the government's evidence in this case is quite strong and includes, among other things, firearms recovered from the defendant's home in numerous places and recorded admissions by the defendant that he possesses and uses firearms.

While the defendant has community ties, which often benefit a chance for pretrial release, here these ties are troubling as they relate to Mr. LaForte's potential release plan. The defendant's relationships with his family members, friends, and his employment have not stopped him from engaging in crime. Indeed his family, friends and employment are the means through which he has engaged in criminal conduct, since as early as 2012, when he opened his business. The defendant remains the subject of an ongoing criminal investigation led by the FBI, and he and his company are the subjects of a separate civil lawsuit brought by the United States Securities and Exchange Commission (SEC). The defendant, as alleged in public filings in the SEC matter, engaged in a number of frauds in order to obtain large sums of money through

[3] In 2010, LaForte was sentenced in the United States District Court for the District of New Jersey for a conviction for conspiracy to operate an illegal gambling business in violation of 18 U.S.C. § 371 (conspiracy), a felony. He was sentenced to 10 months incarceration followed by three years supervised release.

[4] In 2004, LaForte was convicted of money laundering, grand larceny, conspiracy, and related offenses in Nassau County, New York. LaForte was sentenced to 3 1/2 to 10 1/2 years in prison and was obligated to pay a $14 million dollar restitution. It is believed that the restitution remains outstanding and unsatisfied.

his company. The SEC matter also alleges that LaForte used aliases when conducting his business and failed to disclose to business investors and clients that he was a convicted felon. The extent of his wrongdoing through his business has already resulted in a temporary restraining order, seizure by the SEC of millions of dollars of likely ill-gotten monies, and the complete loss of control over his own business through a court-appointed receiver. This means that for the past several years, while attempting to appear as an honest business person, the defendant was engaged in a variety of forms of conduct, many of which are now being revealed, that have drastically altered the analysis of who Joe LaForte is. The SEC filing thus far shows that LaForte uses aliases, lies to others, misrepresents who he is and what activities his business is engaged in, and alters and manipulates his business records as a means to fraudulently obtain monies. This Court therefore cannot rely upon LaForte's claims about his alleged trustworthiness, community ties, or employment as a basis for a release plan. Consequently, no condition or combination of conditions can assure this Court that he will not flee.

Also, the criminal investigation, and the separate SEC investigation, have resulted in the seizure of millions of dollars and substantial assets from the defendant. The defendant, who had been used to a lifestyle of having several homes, multiple expensive cars, vast sums of money, a private jet and near limitless resources, now is a person facing not only loss of that entire lifestyle but of near certain conviction for an offense that will result in incarceration. The defendant has a significant motivation therefore to flee if released as he knows that he stands to lose everything he believed he had prior to the search of his home.

This means that his ties to family, friends, employment and the community do nothing to ensure this Court that if released he will suddenly become a law abiding resident and will not

flee. LaForte used his family ties and employment to commit fraud and wrongdoing, as evidenced by the SEC's public filings. Similarly, those ties – his family, his friends, his assets, and his employment – did nothing to prevent him from possessing seven firearms and numerous rounds of ammunition. His family and friends didn't prevent his crime here. And the potential loss of assets and risk of re-incarceration didn't prevent his crime here. His arguments that he will not flee or cause harm because of his family, his assets and employment ties are betrayed by the facts of this case. LaForte had 2 loaded guns in his office desk, 2 loaded guns in his nightstand, 1 loaded gun beneath his bed, and 2 guns in the basement of his home despite (1) being a felon, (2) sharing his home with his wife, (3) having substantial assets, and (4) steady lucrative employment. Those same connections cannot be a basis for releasing him now as they all failed him before.

Moreover, Joseph LaForte is charged with being a felon in possession of a firearm, which is one important factor to consider in determining his dangerousness to the community. However, equally probative of his dangerousness to the community is the fact that the Defendant has an extensive history of criminal activity and has shown, though the undercover recording described above, his willingness to not only possess firearms, but to transport them to other judicial district, brag about his stockpile of guns, and enjoys their use. LaForte's brazen statements to the Undercovers, as well as his apparent prior practice of keeping guns littered throughout his home, clearly show his unwillingness to follow court imposed restrictions, lead a law abiding life, and refrain from possessing and using firearms. LaForte by his words and actions has revealed that he is a danger to the community.

Therefore, taking a complete view of the defendant, his case, his history, and his community ties, Joseph LaForte must remain detained pending trial.

VI. Conclusion.

When all these factors are viewed in light of the substantial sentence the defendant faces if convicted, it is clear that no condition or combination of conditions will reasonably assure the presence of the defendant as required and/or the safety of the community.

WHEREFORE, the government respectfully submits that the defendant's motion for release from pretrial custody be denied.

Respectfully submitted,

WILLIAM M. MCSWAIN
United States Attorney

/s Jonathan B. Ortiz
JONATHAN B. ORTIZ
PATRICK J. MURRAY
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Government's Response in Opposition to Defendant's Motion for Pretrial Release, was served by electronic mail upon the following counsel of record for Joseph LaForte:

Brian J. McMonagle, Esq.
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20 Vanderventer Avenue, Suite 103W
Port Washington, NY 11050

/s Jonathan B. Ortiz
JONATHAN B. ORTIZ
Assistant United States Attorney

Dated: August 27, 2020

From: Joe Mack <joe@parfunding.com>
Sent: Wed, 4 Dec 2019 15:11:01 -0500
Subject: FW: Fleetwood Deposition Preparation -
To: Valerie Gomez <valerie@parfunding.com>

Joe Mack Email 1-C3-C2.pdf
Joe Mack Email 2-C3-C2.pdf
Joe Mack Email 3-C3-C2.pdf
Joe Mack Email 4-C3-C2.pdf
March 2017 agreement (unsigned)-C2-C2.pdf
1-3-17 FLEETWOOD SERVICES CONSOLIDATION FINAL-C2.xlsx
1-3-17 MATRIX FLEETWOOD SERVICES-C2.xlsx
January 2017 Factoring Agreement with Fleetwood (ECF No. 71-1)-C2.pdf
Joe Mack Email 5-C2.pdf
CONSOLIDATION REQUEST FORM FLEETWOOD SERVICES LLC-C2.pdf
105032311_1_Fleetwood (CBSG) - FILED ECF 71 D, CBSGs Ans & Affirm Def to Ps 2nd Amd Complaint-C2.PDF
105016859_1_Fleetwood (CBSG) - Ps Notice of Dep. of Joseph LaForte on 11.25.19 at 10 am-C2.PDF
104246664_1_CBSG_Fleetwood (EDPA) - FILED ECF 67 Ps 2nd Amd Complaint-C2.PDF
Fleetwood Payment History-C2.pdf
Fall_Behind_on_These_Loans__You_Might_Get_a_Visit_From_Gino-C2.pdf
105669678_1_CBSG_Fleetwood - CBSG Supplemental Resps to Putative Class Members 1st Set of Rogs-C3-C2.PDF
Credit Committee Email String-C2.pdf
105669540_1_CBSG_Fleetwood - CBSG Supplemental Resps to Putative Class Members 1st Set of RPDs-C2.PDF
104484986_1_CBSG_Fleetwood - CBSG Resps to Ps 1st Set of RPDs-C3-C1-C2.PDF

Print all attachments

From: Berman, Brett <BBerman@foxrothschild.com>
Sent: Wednesday, December 4, 2019 3:00 PM
To: Joseph LaForte (joe@parfunding.com) <joe@parfunding.com>
Cc: Joe Cole <joecole@parfunding.com>; Peter J. Mulcahy (pmulcahy@parfunding.com) <pmulcahy@parfunding.com>; Christman, Jonathan D. <jchristman@foxrothschild.com>
Subject: Fleetwood Deposition Preparation -

Joe,

Sorry in advance for the long email and we can go through this on our 6pm call.

For you deposition tomorrow, there will likely be a lot of fights on the scope of Plaintiffs' Counsel's questioning which I will have to handle and may involve one or more calls to the Court to resolve them in the midst of your deposition. But leaving that aside for the moment (we can discuss further how we'll handle those objections), the following subject matters are likely and non-objectionable areas of inquiry for your deposition tomorrow:

- The origins and founding of CBSG
- The services and/or various types of financing provided by CBSG
- Your relationship with CBSG (various publicly-available resources identify you as "Team Leader," "Sales Director," "Sales Leader," or "Vice President" for CBSG)
- The merchant cash advance industry, generally, and CBSG's place and standing within that industry
- Lawsuits naming you as a defendant, including lawsuits also naming CBSG
- Your background and prior criminal history
- Your involvement in the Fleetwood deal (at the beginning and during)
- Your communications with the Fleetwoods (copies of those communications have been produced by Plaintiffs and Plaintiffs' Counsel has otherwise alleged you are "the person that called our client and threatened to ruin my client's business if they did not pay")
- Your knowledge of CBSG's corporate and organizational structure
- Your knowledge of CBSG's negotiation, underwriting, funding, payments made, accounting, reconciliation, events of default and remedies available, collection and litigation efforts involving merchants (which would have equally affected Fleetwood)
- Your knowledge of any company-wide CBSG policies/practices/procedures/standards involving merchants (which would have equally affected Fleetwood)
- Your knowledge of CBSG's brokers, including any knowledge of Prime Time Funding (or Gus Yiambilis, of Prime Time

funding) which booked on the Fleetwood deal

- Your knowledge of CBSG's marketing and advertising efforts (which would have equally affected Fleetwood)
- Your knowledge of CBSG's dealings with Texas merchants (which would have equally affected Fleetwood)
- Your knowledge of and relationship with other individuals Plaintiffs and Defendant have identified, including: Jenna Buckingham, Ken Calcagnini/Jenkins, Joe Cole, Wendy Furman/Lyday, Lucia Garcia, Susan Graeser, Aida Lau, Lisa Masters/Rufo, Kimberly McBride, Jamie McElhone, Lisa McElhone, Marlon Sampson, Ashley Silva, Nate Trunfio, Anthony Zingarelli

From the pleadings and documents produced by the parties at this point, there are several categories of documents you should review as well:

- Emails and communications you had with Fleetwoods related to Fleetwood deal
- Emails related to the "Credit Committee"
- The underwriting analysis and calculations for Fleetwood deal
- The Fleetwood agreement signed in January 2017 and the written modification in March 2017
- The payment history on the Fleetwood deal
- Plaintiffs' Second Amended Complaint (Paragraph 94 specifically mentions you) and CBSG's Answer
- The Bloomberg News article discussing Gino and quoting you, which was cited in Plaintiffs' Second Amended Complaint
- Your deposition notice
- CBSG's discovery responses providing the company's verified answers on the Fleetwood deal, the business generally, and what documents do and do not exist.

Lastly, the main themes we will want to develop within your deposition are: (1) the Fleetwoods' commercial sophistication and their awareness of the MCA industry; (2) the economic benefit reaped by the Fleetwoods from doing the CBSG deal; (3) the individualized nature of the Fleetwood (or any merchant's) deal; and (4) debunking Plaintiffs' Counsel's other-worldly accusations.

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From: "Beeman, Brett" <BBeeman@foxrothschild.com>
To: "joecole@parfunding.com" <joecole@parfunding.com>
Cc: Joseph LaForte <joe@parfunding.com>, "Christman, Jonathan D." <jchristman@foxrothschild.com>
Subject: Fleetwood - Deposition Preparation
Sent: Sat, 8 Feb 2020 19:21:05 +0000
107520340_1_CBSG_Fleetwood - CBSG Interrogatory Answers - WITH HIGHLIGHTS-C2.PDF
ATT00001.htm
107520306_1_CBSG_Fleetwood - CBSG Rule 30b6 Amended Dep Notice - WITH MARKUPS-C2.PDF
ATT00002.htm
106044229_1_Fleetwood (CBSG) - (Mini) Dep. Transcript of Joseph LaForte taken on 12.5.19-C2.PDF
ATT00003.htm

Joe,
Sorry in advance for long email.

Thanks for taking the time to meet with us yesterday. As you review materials over the weekend, we have put together a summary of themes and key points for you to consider. We have also attached to this email a copy of the amended deposition notice that identifies the topics you are being presented on as the CBSG witness (they begin on the third page of the PDF). So you are aware, Topics 8 and 13 have been eliminated and Topic 4 is limited only to CBSG's interactions with the broker in the Fleetwood deal—i.e., Prime Time Funding. Please review the notice again (we have scratched out the topics that won't be covered), and let us know if you have any questions on ANY of the topics so that we can address them before Tuesday'sdeposition. We have also attached a copy of the interrogatory answers you verified for the company; you can ignore the objections but we have highlighted for you in pink the actual answers provided, many of which touch upon themes listed below.

We also think it would be helpful to schedule a call on Monday to walk through any last minute issues and review. Do you have some time on Monday afternoon?

Here are a list of key themes we want to develop:

· Each and every deal is not created equal.

· Each and every deal rises and falls on its own.

· Each and every deal is unique and individualized.

· "Facts and circumstances" dictate everything – underwriting, funding, default, collection, etc.

· It is no benefit to CBSG for merchants to go out of business.

· The Fleetwoods were frequent players in the MCA industry.

· The Fleetwoods were a seasonal business with largest receivables coming during the time of the CBSG deal.

· The Fleetwoods saved money by doing a deal with CBSG.

· The Fleetwoods knew what they were signing, knew what they were getting, and they got what they signed.

Here are a list of key points to review and consider (with relevant exhibits in your binder noted):

· The sourcing of the Fleetwood deal, and interactions, connection, and relationship with Prime Time Funding, the broker on the Fleetwood deal (and Fast Advance Funding's connection to the deal as well) (Tabs 9-12)

· The unique, technical, and many details, nuances, particulars and variables in the underwriting of the Fleetwood deal (or any deal) (Tabs 9-10, 13-15)

· The items, materials, reports, A/R sheets, statements, and documents reviewed, as well as the inspections and due

diligence investigations conducted before funding the Fleetwood deal (or any deal) (Tab 10)

· The written terms and conditions of the Fleetwood factoring agreement (Tab 5)

· The setting and establishment of the purchase price, specified percentage, daily specified amount, receipts purchased amount, and fee structure in the Fleetwood deal (Tab 5)

· The payment history on the Fleetwood deal, including the adjustment and modification of the daily payments and the fees charged (Tab 8)

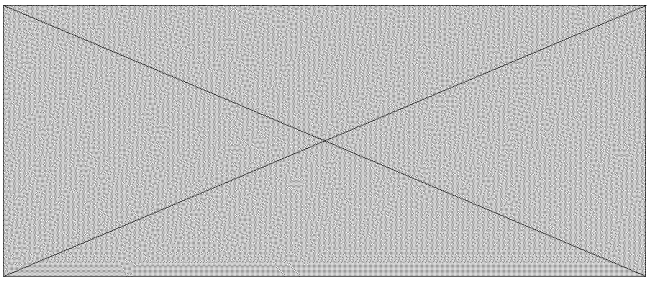
· The relationship of the following individuals with CBSG that communicated with the Fleetwoods: Joe Mack; Susan Graeser; Wendy Lyday; Jenna Buckingham; Ken Calcagnini/Jenkins; Lucia Garcia/Marianni; Aida Lau; Lisa Masters/Rufo; Kimberly McBride; Nate Trunfio; Ashley Silva (we know, not a real person)

· CBSG's accounting treatment of the income/proceeds on the Fleetwood deal

· CBSG's general practices, policies, and procedures of CBSG (to the extent any exist and the answer may be "no") on the following matters that apply equally or evenly to the Fleetwood deal as to any other deal involving a Texas merchant: application process, underwriting, fee structure, due diligence performed, adjustments, reconciliations, monitoring merchant performance, default and exercising rights and remedies upon occurrence of default, UCC liens, collections, confessions of judgment, and how CBSG responds to merchant's intent to file bankruptcy. On this point, always bear in mind the time period for your answer, and how the time period may affect or alter that answer on any practices, policies, and procedures of CBSG. The Fleetwood deal was signed in January 2017 and completed in July 2017, but Plaintiffs seek to certify a class from January 2015 through the present.

· Never (as you obviously know well) use the following words to describe the Fleetwood (or any) deal and the parties to any CBSG deals: loan, lender, lending, lent, borrow, borrower, borrowed.

Let us know when you can have a call Monday afternoon to do some final review. Per both of our discussions with joe, We should also meet in person before the deposition Monday morning. Let me know. Thanks.



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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FLEETWOOD SERVICES, LLC, ROBERT L. FLEETWOOD, and PAMELA A. FLEETWOOD, individually and on behalf of all others similarly situated, Plaintiffs, v. COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING; JOHN AND JANE DOES Defendants.	CIVIL ACTION 18-cv-00268 (JS)

NOTICE OF DEPOSITION PURSUANT TO RULE 30(B)(6)

TO: Complete Business Solutions Group, Inc.
d/b/a Par Funding
c/o Brett Adam Berman
Jonathan David Christman
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Fleetwood Services, LLC, Robert Fleetwood, and Pamela Fleetwood ("Plaintiffs") will take the deposition of the **designee(s) of Complete Business Solutions Group, Inc. ("CBSG") corporate designee(s) starting at 10:00 a.m. on February 11, 2020 at the offices of White and Williams, LLP located at 1650 Market Street, Suite 1800, Philadelphia, PA 19103.**

CBSG shall designate and produce one or more officers, directors, or managing agents (or other persons who consents to testify on its behalf) as to the topics listed in **Exhibit A.**

At the deposition, CBSG also shall produce to the undersigned any and all documents in its possession, custody, or control relating to the topics listed in **Exhibit A**, to the extent such documents have not already been produced.

The deposition will continue from day-to-day until completed and will be recorded by stenographic means before an officer duly authorized to administer oaths. You are invited to attend and cross-examine.

Dated: January 31, 2020

WHITE AND WILLIAMS LLP

BY: /s/ Shane R. Heskin
Shane R. Heskin
Justin E. Proper
William H. Fedullo
1650 Market Street | One Liberty Place,
Suite 1800 |
Philadelphia, PA 19103-7395
Phone: 215.864.6329
Attorneys for Plaintiffs

EXHIBIT A

DEFINITIONS

As used herein, the following terms shall have the meaning ascribed to them below:

1. "Broker" as used herein shall mean any third party entity or individual who either (1) facilitated communications or interaction between You and any entity or individual who entered a Merchant Agreement as defined herein, or (2) received compensation arising out of or relating to any Merchant Agreement as defined herein.

2. "You," or "Your" refer to Complete Business Solutions Group, Inc. and, where applicable, its officers, directors, employees, partners, corporate parents, subsidiaries, or affiliates.

3. "Merchant Agreement" means any contract for the advance of money from You to any individual or entity, purportedly or actually based on the alleged purchase of future receipts or receivables.

4. "Merchant" shall mean any individual or entity receiving funds under a Merchant Agreement.

5. "Fleetwood" shall mean, collectively, Fleetwood Services, LLC, Robert L. Fleetwood and Pamela A. Fleetwood and, where applicable, its officers, directors, employees, partners, corporate parents, subsidiaries, or affiliates.

TOPICS

1. The marketing, soliciting, underwriting and funding of each Merchant Agreement between You and Fleetwood.

2. The application process for the Merchant Agreement between You and Fleetwood including all materials received from or concerning Fleetwood, all correspondence exchanged with Fleetwood or Prime Time and any analysis done regarding the application.

3. Your communications with or concerning Fleetwood including any such communications with Prime Time.

4. Your interactions with Brokers from August 2, 2013 to the present, including but not limited to, interactions with Prime Time concerning Fleetwood.

5. Your relationships with all agents acting on Your behalf with respect to Fleetwood and any Merchant Agreements it had with You.

6. Your accounting treatment of income derived from all Merchant Agreements between You and Fleetwood.

7. All non-privileged communications, internal and/or external, concerning Texas usury laws in relation, direct or indirect, to the Merchant Agreements between You and Fleetwood.

8. All information exchanged with any financial institution providing credit to You concerning or characterizing the Merchant Agreement between You and Fleetwood.

9. Your practices, policies, procedures and protocols concerning the following:

(a) the application process in entering into a Merchant Agreement;

(b) the underwriting process in entering into a Merchant Agreement, including the factors relied upon by You to determine the amount of purchased receipts, the purchase price, the specified percentage and the daily or weekly payments due thereunder;

(c) the fee structure under Merchant Agreements including, without limitation, how You determine the amount of the origination fee, the ACH program fee, and the default fee;

(d) the due diligence You perform in connection with entering into a Merchant Agreement and advancing amounts thereunder including, with limitation, the

obtainment of credit reports with respect to a Merchant and efforts to verify a Merchant's monthly receipts or outstanding receivables;

(e) the evaluation or assessment of a Merchant's request for a reduction in the daily or weekly payments due under a Merchant Agreement;

(f) the evaluation or assessment of a Merchant's request for a reconciliation of its daily or weekly payments due under a Merchant Agreement;

(g) the use of information provided to You by a Merchant in connection with obtaining an advance from CBSG under a Merchant Agreement; and

10. Your practices, polices, procedures and protocols concerning the following:

(a) the collection of amounts due under Merchant Agreements including, without limitation, how You set up and use ACH withdrawals;

(b) the monitoring of a Merchant's performance under a Merchant Agreement including whether the Merchant timely makes a payment due thereunder or obtains additional financing in violation the terms of a Merchant Agreement;

(c) the method by which You record and track payments received under a Merchant Agreement;

(d) Your response in the event a Merchant fails to make a specified daily or weekly payment due under a Merchant Agreement; and

(e) Your response when a Merchant advises that it intends to file for bankruptcy or is forced to close its business by reason of flood, fire, hurricane or other Act of God.

11. Your practices, polices, procedures and protocols concerning the following:

(a) defaults under Merchant Agreements including, without limitation, how You monitor and respond to such default;

(b) exercising Your default rights and remedies under Merchant Agreements or other applicable law including, without limitation, determining when to issue UCC lien notices, file confessions of judgment or commence a lawsuit; and

(c) determining to whom UCC lien notices should be sent upon a default under a Merchant Agreement;

12. Your practices, policies, procedures and protocols concerning Your accounting treatment of daily and weekly payments received under the Merchant Agreements.

13. The forms and conditions of each and every agreement, referred to as "factoring or loan agreements" in the January 15, 2020 Court Order, between You and members of the proposed Class.

CERTIFICATE OF SERVICE

I, William H. Fedullo, Esq., hereby certify that on January 31, 2020, I caused a copy of the foregoing **Notice of Deposition of Defendant Complete Business Solutions Group, Inc.** to be served by electronic and first class mail to the follow persons:

Brett A. Berman
2000 Market Street, 20th Floor
Philadelphia, PA 19103
bberman@foxrothschild.com

Jonathan D. Christman
10 Sentry Parkway
Suite 200, P.O. Box 3001
Blue Bell, PA 19422
jchristman@foxrothschild.com

Signed: **/s/ William H. Fedullo**
William H. Fedullo, Esq.
Dated: January 31, 2020

From: Dean Vagnozzi <djv42@outlook.com>
Date: July 29, 2021 at 9:28:20 PM EDT
Subject: Video From Dean Vagnozzi
Dear Investor, Family and Friends,
It has been a while. Please, watch the video that I recorded for you. Click this link to view it:

https://vimeo.com/deanvagnozzi/review/580912142/94dc72b780

The attachment that I refer to in the video is actually a link, and it is just a few lines below next to number # 663. Throughout this "Motion to Dismiss" document, it references numerous exhibits that provide the proof needed to validate the claims made. Investors will particularly like exhibit 34...which outlines Par's proposal to repay investors.
Thank you!
Dean

Hello,
Documents have been filed in a case you are following on DocketBird.
Case: Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al (flsd-9:2020-cv-81205)

Court: Southern District of Florida
663. MOTION to Dismiss with Prejudice [119] Amended Complaint/Amended Notice of Removal by Joseph Cole Barleta, Joseph W. LaForte, Lisa Mcelhone. Attorney David Lawrence Ferguson added to party Joseph Cole Barleta(pty:dft), Attorney David Lawrence Ferguson added to party Lisa Mcelhone(pty:dft). Responses due by 8/11/2021

1. Exhibit

2. Exhibit

3. Exhibit

4. Exhibit

5. Exhibit

6. Exhibit

7. Exhibit

8. Exhibit

9. Exhibit

10. Exhibit

11. Exhibit

12. Exhibit

13. Exhibit

14. Exhibit

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16. Exhibit

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19. Exhibit

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27. Exhibit

28. Exhibit

29. Exhibit

30. Exhibit

31. Exhibit

32. Exhibit

33. Exhibit

34. Exhibit

Download these documents as a single PDF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. **CASE NO.: 20-cv-81205-RAR**

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

Defendants.
_____/

DECLARATION OF SHANE R. HESKIN, ESQ.

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Shane R. Heskin. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. I am a partner at the law firm White and Williams LLP, and am admitted to practice law in New York, Massachusetts, and Pennsylvania. I am also admitted to practice law within the United States Court of Appeals for the First, Second, Third and Sixth Circuits.

3. Since at least 2017, I have represented numerous small businesses and their individual owners in actions against Complete Business Solutions Group ("CBSG").

4. In June 2019, the Chairwoman of the Small Business Committee of the U.S. House of Representatives, Nydia M. Velázquez, invited me to testify before Congress about the predatory collection practices of merchant cash advance companies. I testified before Congress on June 26, 2019 and specifically advised Congress about the collection tactics used by CBSG. The written portion of my testimony can be viewed here: https://smallbusiness.house.gov/uploadedfiles/06-26-19_mr._heskin_testimony.pdf.

5. My first contact with the Securities and Exchange Commission concerning CBSG was on August 20, 2019 when I received an unsolicited telephone call from an SEC enforcement attorney. Annexed hereto as Exhibit 1 is the e-mail from my assistant reflecting this call.

6. I was not the author of the client declarations submitted by the SEC in connection with its action against CBSG. Rather, I merely forwarded draft declarations to my clients that the SEC drafted.

7. I have never been directed by the SEC to seek discovery in any case I have ever litigated, nor has the SEC ever asked me to inquire about any matter in any case I have ever litigated or worked on concerning CBSG.

8. The SEC has never even encouraged me to inquire about any matter or area, or encouraged anything for that matter, in connection with any case I have ever litigated or worked on concerning CBSG.

9. In the cases I litigated against CBSG, I sought evidence (including through depositions, interrogatories, and document requests) solely because the evidence was relevant to the claims and defenses in those cases.

10. I was never deputized as an investigator by the SEC, and was never encouraged or instructed to seek any evidence by the SEC. I never investigated for the SEC. I never worked jointly with the SEC to do anything whatsoever.

11. I have never had any financial arrangement with the SEC. If anything, the SEC's case has harmed my work because the cases I was litigating have been stayed.

12. In the cases I was litigating, I was seeking discovery about investors, potential investors, and governmental investigations dating back to at least 2017, well before I was contacted by the SEC.

13. Attached as Exhibit 2 are true and correct copies of the first discovery requests I served on CBSG, which are dated October 26, 2017, well before any contact with the SEC. For example, deposition topics 1, 16, 17, 24, and 26 specifically seek information concerning CBSG investors and any federal or state agency investigations.

14. In fact, the District Court in the *Fleetwood* class action case entered an order specifically permitting deposition testimony concerning communications with investors of CBSG. Attached as Exhibit 3 is a true and correct copy of that order.

15. Communications with investors are relevant because, among other things, John and Jane Doe Investors are alleged RICO defendants in those class actions. Attached as Exhibits 4 and 5 are true and correct copies of District Court Orders denying CBSG's motions to dismiss my clients' RICO and class action claims against CBSG and its investors. These cases are now stayed pursuant to the Order entered in the SEC case.

16. I have been in direct communication with counsel for Joseph LaForte concerning his subpoenas seeking documents from my clients and law firm. Before making the allegations in Defendants' current motion to dismiss, counsel for the defendants never asked to speak with me concerning my alleged conspiracy with the SEC and the Receiver.

Executed on this 14th day of August 2021 in Camden County, New Jersey.

SHANE R. HESKIN

Jacqmein, Victoria

From: Spencer, Karen <Spencerk@whiteandwilliams.com>
Sent: Tuesday, August 20, 2019 12:13 PM
To: Heskin, Shane
Subject: Pls. call Linda Schmidt from US Securities & Exchange. 305.982.6315

Karen M. Spencer | Legal Secretary to
Shane R. Heskin, Adam M. Berardi, and Michael E. DiFebbo
1650 Market Street | One Liberty Place, Suite 1800 | Philadelphia, PA 19103-7395
Direct 215.864.6375 | Fax 215.864.7123
spencerk@whiteandwilliams.com | whiteandwilliams.com

WHITE AND WILLIAMS LLP
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(216) 864-7000
heskins@whiteandwilliams.com

Attorney for McNider Marine, LLC, McNider Marine and Power Sports, LLC, and John Bruce McNider

COMPLETE BUSINESS SOLUTIONS GROUP, INC. Plaintiff, v. McNIDER MARINE, LLC; McNIDER MARINE and POWER SPORTS, LLC; and JOHN BRUCE McNIDER Defendants.	IN THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY, PA COMMERCE PROGRAM MARCH TERM, 2017 NO. 003026

McNIDER MARINE, LLC; McNIDER MARINE and POWER SPORTS, LLC; JOHN BRUCE McNIDER Plaintiffs in Counterclaim, v. COMPLETE BUSINESS SOLUTIONS GROUP, INC.; and RICHMOND CAPITAL SOLUTIONS, LLC Defendants in Counterclaim.

DEFENDANTS AND COUNTERCLAIM PLAINTIFFS' FIRST SET OF INTERROGATORIES TO PLAINTIFF AND COUNTERCLAIM DEFENDANT COMPLETE BUSINESS SOLUTIONS GROUP, INC.

Pursuant to Rule 4005 of the Pennsylvania Rules of Civil Procedure, Defendants and Counterclaim Plaintiffs' McNider Marine, LLC ("McNider Marine"), McNider Marine and

Power Sports LLC ("McNider Marine and Power Sports"), and John Bruce McNider ("McNider") (collectively "McNider"), by their attorneys, White and Williams LLP, hereby requests that Plaintiff and Counterclaim Defendant Complete Business Solutions Group, Inc. d.b.a Par Funding provide a written response to the following Interrogatories within thirty (30) days of the date of service hereof to the offices of White and Williams LLP, 1650 Market Street, One Liberty Place, Suite 1800, Philadelphia, PA 19103.

INSTRUCTIONS

1. Each part and sub-part of each Interrogatory should be answered with the same completeness and effect as if each part and sub-part were the subject of, and were asked by, a separate Interrogatory. When an Interrogatory relates to more than one person or subject, it is to be answered as to each person or subject separately.

2. The singular form of a noun or a pronoun includes within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the feminine form of a pronoun includes within its meaning the masculine form of the pronoun so used, and vice versa; and the use of any tense of any verb includes within its meaning all other tenses of the verb so used.

3. You (as defined below) are to furnish all information which is available to you as of the date of your answers to the Interrogatories, including any information obtained by or in the possession of your attorneys, representatives, or agents, and not merely the information of your own knowledge. The Interrogatories are of a continuing nature and you are required to serve supplemental responses if you obtain or become aware of additional or different information after the date of your initial answers.

4. If you are unable to answer any of the Interrogatories fully and completely, after exercising due diligence to obtain the information necessary to provide a full and complete

answer, so state, and answer each such Interrogatory to the fullest extent possible, specifying the extent of your knowledge and ability to answer the remainder, and setting forth whatever information or knowledge you may have concerning the unanswered portions thereof and efforts you made to obtain the requested information.

5. These Interrogatories shall be deemed to seek answers and documents as of the date hereof and to the fullest extent provided by the Pennsylvania Rules of Civil Procedure. Each Interrogatory is of a continuing nature and you are required to serve supplemental responses if you obtain or become aware of additional or different information after the date of your initial answer.

6. As used herein, the words "and" and "or" are to be construed conjunctively or disjunctively as necessary to make the Interrogatories inclusive rather than exclusive and shall not be interpreted to exclude any information otherwise within the scope of any Interrogatory.

7. When an Interrogatory uses a term or word defined herein, each part of the definition is incorporated into the Interrogatory and should be answered with the same completeness and effect as if each part and sub-part were the subject of, and were asked by, a separate Interrogatory.

8. If you are withholding any information because of a claim of privilege or protection, state the nature of the information withheld and identify the precise privilege or protection claimed with sufficient specificity to permit a full determination of whether the claim of privilege or immunity is valid.

9. Identify each person answering each Interrogatory, and identify the source(s) of his or her answers. Further, identify each person who was consulted or provided information in connection

with each Interrogatory and describe the type of information provided relating to the substance of the answers to these Interrogatories.

10. McNider reserves the right to serve supplemental Interrogatories.

DEFINITIONS

1. As used herein, "McNider" means McNider Marine, LLC ("McNider Marine"), McNider Marine and Power Sports LLC ("McNider Marine and Power Sports"), and John Bruce McNider ("McNider").

2. As used herein, the terms "communication" and "communications" mean, without limitation, the transmission of a word, statement of fact, thing, idea, document (as defined below), instruction, demand or question.

3. As used herein, the term "Complaint" refers to the Complaint filed by Complete Business Solutions Group in this action on or around March 28, 2017.

4. As used herein, the term "Counterclaim" refers to the Answer, New Matter, and Counterclaim filed by McNider in this action on or around April 20, 2017.

5. As used herein, the terms "document" and "documents" mean any written, typed, printed, recorded, photographic, graphic or other tangible matter, however produced or reproduced. They include all matter that relates or refers, in whole or in part, to the subject referred to in the request, including, but not limited to, correspondence, e-mails, records, graphs, schedules, reports, memoranda, notes, messages (including, but not limited to, reports of telephone conversations and conferences), studies, contracts, agreements, assignments, licenses, certificates, permits, ledgers, books of account, statements, receipts, bills, photographs, photographic negatives, phonograph recordings, video recordings, transcripts, logs, summaries of investigations, expressions or statements of policy, opinions or reports of consultants, drafts and

revisions of drafts of any documents, and all other data compilations from which information can be obtained or translated. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations or other modifications, are no longer identical), each non-identical copy is to be considered a separate document.

6. As used herein, the term "identify" when used with respect to persons means the full name, current address, last-known place of employment, employer, and job title of any and all natural persons, and, if other than natural persons, the full name and address of the entity and the name, last-known address, place of employment and employer of each and every natural person employed by or representing such entity, having knowledge of or with whom communications have been had relating to the subject matter of the Interrogatory.

7. As used herein, the term "identify" when used with respect to documents means that you are required, for each and every document, to:

a. state the exact name and title by which you refer to it;

b. state the date of the document and all other serial or identifying numbers thereon, including bates numbers;

c. identify each and every person who wrote, signed, initialed, dictated or otherwise participated in the creation of said document;

d. state its general subject matter;

e. identify each and every addressee, if any, of said document or any copy thereof;

f. identify each and every person having custody or control of said document or any copy thereof;

g. specify the location of any file or files where the document, or any copy thereof, is normally or presently kept, and identify the custodian thereof; and

h. briefly summarize the contents of the document.

8. As used herein, the terms "person" and "persons" mean all entities of every description and includes any natural person, corporation, partnership, association, company, estate, group, organization, business and/or governmental entity or agency (public or private) having a separate identification, recognized in law or in fact.

9. As used herein, the terms "representative" or "representatives" mean each and every present and former owner, director, officer, partner, employee, agent, attorney, accountant, independent consultant, trustee, investment advisor, money manager, analyst, broker, dealer or expert or other person acting, purporting to act or having acted on behalf of the person or entity.

10. As used herein, the words "you," "your," "Complete Business Solutions Group," "Plaintiff," and "Counterclaim Defendant" refer to Complete Business Solutions Group, Inc. d.b.a Par Funding and its predecessors and successors in interest, its divisions, subsidiaries, affiliates, directors, officers, employees, attorneys, agents, servants and representatives, and all other persons acting or purporting to act on Complete Business Solutions Group's behalf.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each and every Person with knowledge concerning each Transaction, and identify their title, role and last known address.

INTERROGATORY NO. 2:

Identify Your organizational structure, including ownership interests and investors.

INTERROGATORY NO. 3:

Identify the methods You use to identify customer leads, and how You specifically were Identify the methods You use to identify customer leads, and how You specifically were introduced to McNider.

INTERROGATORY NO. 4:

Identify the policies and procedures for conducting a reconciliation under each of the McNider Merchant Agreements.

INTERROGATORY NO. 5:

Identify every merchant that has exercised their alleged right to perform a reconciliation under Your Merchant Agreements within the last two years, and all amounts You have refunded to the merchant, if any.

INTERROGATORY NO. 6:

Identify how the alleged fair market value of receivables is generally determined by You in connection with the alleged purchase of receivables, and how the alleged fair market value of receivables was actually determined with respect to each Transaction.

INTERROGATORY NO. 7:

Identify how the "Daily Payment" amount is generally determined by You in connection with the alleged purchase of receivables, and how the "Daily Payment" amount was actually determined with respect to each Transaction.

INTERROGATORY NO. 8:

INTERROGATORY NO. 9:

Identify the factors You evaluated in underwriting each Transaction and all of the information You reviewed to assess those factors.

INTERROGATORY NO. 10:

Identify McNider's customers at the time of each Transaction, and the estimated receivables You had purchased from each of those customers.

INTERROGATORY NO. 11:

Identify all efforts You made to collect upon the receivables You allegedly purchased from McNider.

INTERROGATORY NO. 12:

Identify all complaints or allegations made against You within the last two years where You were accused of violating any state's usury laws or any other federal or state regulation related to the lending of money.

INTERROGATORY NO. 13:

Identify how You generally determine the "Origination" and "ACH Program" fees for Your merchant agreements, and how each were actually determined with respect to each Transaction.

INTERROGATORY NO. 14:

Identify the amount of broker fees paid for each Transaction, and how that amount was determined.

INTERROGATORY NO. 15:

Identify all amounts paid by You to McNider under each Transaction, and all amounts McNider paid to You under each Transaction.

INTERROGATORY NO. 16:

Identify how determined McNider's average monthly receivables under each Transaction, and the actual monthly receivables that You calculated for McNider under each Transaction.

INTERROGATORY NO. 17:

Identify McNider's customers at the time of each Transaction, and the estimated receivables You had purchased from each of those customers.

Dated: September 29, 2017

WHITE AND WILLIAMS LLP

By: _____

Shane R. Heskin
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103-7395
(215) 864-6329
heskins@whiteandwilliams.com

Attorney for McNider Marine, LLC, McNider Marine and Power Sports, LLC, and John Bruce McNider

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2017, a copy of Defendants and Counterclaim Plaintiffs', McNider Marine, LLC and John Bruce McNider, First Set of Interrogatories to Plaintiff and Counterclaim Defendant, Complete Business Solutions Group, Inc., was served via first class mail, postage pre-paid, upon the following:

Norman M. Valz, Esquire
Norman M. Valz & Associates, P.C.
205 Arch Street – 2nd Floor
Philadelphia, PA 19106
Attorney for Complete Business Solutions Group, Inc. and Richmond Capital Solutions, LLC

Shane R. Heskin, Esquire

WHITE AND WILLIAMS LLP
Shane R. Heskin, Esquire (PA.I.D. 201925)
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103-7395
(216) 864-7000
heskins@whiteandwilliams.com

Attorney for McNider Marine, LLC, McNider Marine and Power Sports, LLC, and John Bruce McNider

COMPLETE BUSINESS SOLUTIONS GROUP, INC. Plaintiff, v. McNIDER MARINE, LLC; McNIDER MARINE and POWER SPORTS, LLC; and JOHN BRUCE McNIDER Defendants.	IN THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY, PA COMMERCE PROGRAM MARCH TERM, 2017 NO. 003026

McNIDER MARINE, LLC; McNIDER MARINE and POWER SPORTS, LLC; JOHN BRUCE McNIDER Plaintiffs in Counterclaim, v. COMPLETE BUSINESS SOLUTIONS GROUP, INC.; and RICHMOND CAPITAL SOLUTIONS, LLC Defendants in Counterclaim.

DEFENDANTS AND COUNTERCLAIM PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO COUNTERCLAIM DEFENDANT COMPLETE BUSINESS SOLUTIONS GROUP, INC.

Pursuant to Rule 4009.11 of the Pennsylvania Rules of Civil Procedure, Defendants and Counterclaim Plaintiffs' McNider Marine, LLC ("McNider Marine"), McNider Marine and Power Sports LLC ("McNider Marine and Power Sports"), and John Bruce McNider ("McNider") (collectively "McNider"), by their attorneys, White and Williams LLP, hereby propound these Requests for Production of Documents to Plaintiff and Counterclaim Defendant Complete Business Solutions Group, Inc. d.b.a Par Funding. Said documents or tangible things are to be produced to the offices of White and Williams LLP, 1650 Market Street, One Liberty Place, Suite 1800, Philadelphia, PA 19103, within thirty (30) days of the date of service hereof and supplemented thereafter in accordance with Rule 4007.4 of the Pennsylvania Rules of Civil Procedure.

INSTRUCTIONS

1. Each part and sub-part of each Request should be answered with the same completeness and effect as if each part and sub-part were the subject of, and were asked by, a separate Request. When an Request relates to more than one person or subject, it is to be answered as to each person or subject separately.

2. The singular form of a noun or a pronoun includes within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the feminine form of a pronoun includes within its meaning the masculine form of the pronoun so used, and vice versa; and the use of any tense of any verb includes within its meaning all other tenses of the verb so used.

3. You (as defined below) are to furnish all information which is available to you as of the date of your answers to the Requests, including any information obtained by or in the possession of your attorneys, representatives, or agents, and not merely the information of your own knowledge. The Requests are of a continuing nature and you are required to serve supplemental

responses if you obtain or become aware of additional or different information after the date of your initial answers.

4. If you are unable to answer any of the Requests fully and completely, after exercising due diligence to obtain the information necessary to provide a full and complete answer, so state, and answer each such Request to the fullest extent possible, specifying the extent of your knowledge and ability to answer the remainder, and setting forth whatever information or knowledge you may have concerning the unanswered portions thereof and efforts you made to obtain the requested information.

5. These Requests shall be deemed to seek documents as of the date hereof and to the fullest extent provided by the Pennsylvania Rules of Civil Procedure. Each Request is of a continuing nature and you are required to serve supplemental responses if you obtain or become aware of additional or different information after the date of your initial answer.

6. As used herein, the words "and" and "or" are to be construed conjunctively or disjunctively as necessary to make the Requests inclusive rather than exclusive and shall not be interpreted to exclude any information otherwise within the scope of any Request.

7. When a Request uses a term or word defined herein, each part of the definition is incorporated into the Request and should be answered with the same completeness and effect as if each part and sub-part were the subject of, and were asked by, a separate Request.

8. If you are withholding any information because of a claim of privilege or protection, state the nature of the information withheld and identify the precise privilege or protection claimed with sufficient specificity to permit a full determination of whether the claim of privilege or immunity is valid.

9. Identify each person answering each Request, and identify the source(s) of his or her answers. Further, identify each person who was consulted or provided information in connection with each Request and describe the type of information provided relating to the substance of the answers to these Requests.

10. McNider reserves the right to serve supplemental document requests.

DEFINITIONS

1. As used herein, "McNider" means McNider Marine, LLC ("McNider Marine"), McNider Marine and Power Sports LLC ("McNider Marine and Power Sports"), and John Bruce McNider ("McNider").

2. As used herein, the terms "communication" and "communications" mean, without limitation, the transmission of a word, statement of fact, thing, idea, document (as defined below), instruction, demand or question.

3. As used herein, the term "Complaint" refers to the Complaint filed by Complete Business Solutions Group, Inc. in this action on or around March 28, 2017.

4. As used herein, the term "Counterclaim" refers to the Answer, New Matter, and Counterclaim filed by McNider in this action on or around April 20, 2017.

5. As used herein, the terms "document" and "documents" mean any written, typed, printed, recorded, photographic, graphic or other tangible matter, however produced or reproduced. They include all matter that relates or refers, in whole or in part, to the subject referred to in the request, including, but not limited to, correspondence, e-mails, records, graphs, schedules, reports, memoranda, notes, messages (including, but not limited to, reports of telephone conversations and conferences), studies, contracts, agreements, assignments, licenses, certificates, permits, ledgers, books of account, statements, receipts, bills, photographs,

photographic negatives, phonograph recordings, video recordings, transcripts, logs, summaries of investigations, expressions or statements of policy, opinions or reports of consultants, drafts and revisions of drafts of any documents, and all other data compilations from which information can be obtained or translated. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations or other modifications, are no longer identical), each non-identical copy is to be considered a separate document.

6. As used herein, the term "identify" when used with respect to persons means the full name, current address, last-known place of employment, employer, and job title of any and all natural persons, and, if other than natural persons, the full name and address of the entity and the name, last-known address, place of employment and employer of each and every natural person employed by or representing such entity, having knowledge of or with whom communications have been had relating to the subject matter of the Request.

7. As used herein, the terms "person" and "persons" mean all entities of every description and includes any natural person, corporation, partnership, association, company, estate, group, organization, business and/or governmental entity or agency (public or private) having a separate identification, recognized in law or in fact.

8. As used herein, the terms "representative" or "representatives" mean each and every present and former owner, director, officer, partner, employee, agent, attorney, accountant, independent consultant, trustee, investment advisor, money manager, analyst, broker, dealer or expert or other person acting, purporting to act or having acted on behalf of the person or entity.

9. As used herein, the words "you," "your," "Complete Business Solutions Group," "Plaintiff," and "Counterclaim Defendant" refer to Complete Business Solutions Group, Inc. d.b.a Par Funding and its predecessors and successors in interest, its divisions, subsidiaries, affiliates, directors, officers, employees, attorneys, agents, servants and representatives, and all other persons acting or purporting to act on Complete Business Solutions Group's behalf.

DOCUMENT REQUESTS

Pursuant to Rule 4009.11 of the Pennsylvania Rules of Civil Procedure, please produce:

1. Any documents reflecting your organizational structure, including ownership interests and investors.

2. Your complete underwriting file for each Transaction.

3. Any documents reflecting communications between You and any broker/third-party involved in origination and/or execution of each Transaction.

4. Any documents relating to each Transaction, including but not limited to, documents reflecting internal communications by and between Your officers and/or employees and/or investors.

5. A copy of any pleadings or demand letter where there was an allegation by any party that You entered into an agreement that violated the usury laws of any State.

6. Any documents reflecting knowledge by You of other loans and/or merchant agreements executed by McNider.

7. The employment and/or personnel file for any person who was involved with each Transaction.

8. The employment and/or personnel file of any person who has been terminated by You within the last two years.

9. Any advertising and/or marketing materials where You represented that Your business involves and/or specializes in loans or lending money to businesses and/or individuals.

10. Any documents between You and any third-party and/or broker concerning finding or soliciting individuals and/or businesses to lend money and/or purchase receivables.

11. Any documents reflecting communications involving You relating to state usury laws, including but not limited to whether Merchant Agreements are subject to state usury laws.

12. Any documents reflecting communications (whether internal, with a third-party, a prospective borrower or a borrower) whereby an officer and/or employee of Your company refers to a Merchant Agreement as a loan or as lending.

13. Any documents reflecting changes to Your form and/or standard Merchant Agreements over the last 5 years, including but not limited to, a copy of each version of Your form or standard Merchant Agreement and the reason or reasons for the change.

14. Any documents evidencing the standards and procedures for reconciliation under Your Merchant Agreements.

15. Any documents evidencing reconciliations that You conducted under any Merchant Agreement within the past two years.

16. Any documents referencing investigations by any state or federal agency relating to Your business activities, including any allegations of unlawful activity.

17. Any documents reflecting communications by and between You and any investor or potential investor discussing the recourse available to recover any monies that were advanced in the event of a default under the terms of any Merchant Agreement.

18. Any documents reflecting that You refunded money because a merchant had paid more receivables than required under a Merchant Agreement within the past two years.

19. Any documents reflecting how You calculated the factoring and/or interest rate for the Transaction or Transactions, as well as any documents discussing how the factoring rate changes based on the nature of the merchant's business.

20. Any documents provided to Your officers and/or employees, including but not limited to, training materials, that discuss Merchant Agreements and/or usury laws.

21. Any documents relating to how you determined that the daily specified payments for each Transaction purportedly reflected a certain percentage of McNider's receivables.

22. Any documents evidencing circumstances where any of Your officers and/or employees were disciplined by any state or federal licensing body.

23. Any documents reflecting the policies and/or procedures that Your employees should or must follow in determining what constitutes a default under the terms of a Merchant Agreement.

24. Any documents relating to the process that You follow when a merchant misses a daily payment under the terms of a Merchant Agreement and/or is deemed to be in default.

25. Any financial documents, including but not limited to Your balance sheets, reflecting how you treat income derived from purported loan transactions versus purported sales of receivables.

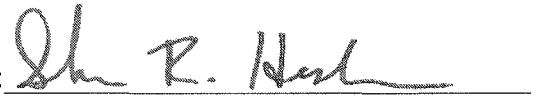
26. Any documents reflecting communications with potential investors which explained or described the investment opportunity with Your purchase of receivables and/or merchant agreements.

27. Any documents identifying Your agents and the scope of their authority to act on Your behalf.

28. Any documents concerning Your underwriting procedures and policies.

Dated: September 29, 2017

WHITE AND WILLIAMS LLP

By: 

Shane R. Heskin
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103-7395
(215) 864-6329
heskins@whiteandwilliams.com

Attorney for McNider Marine, LLC, McNider Marine and Power Sports, LLC, and John Bruce McNider

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2017, a copy of Defendants and Counterclaim Plaintiffs', McNider Marine, LLC and John Bruce McNider, First Set of Request for Production of Documents to Plaintiff and Counterclaim Defendant, Complete Business Solutions Group, Inc., was served via first class mail, postage pre-paid, upon the following:

Norman M. Valz, Esquire
Norman M. Valz & Associates, P.C.
205 Arch Street – 2nd Floor
Philadelphia, PA 19106
Attorney for Complete Business Solutions Group, Inc. and Richmond Capital Solutions, LLC

Shane R. Heskin, Esquire

WHITE AND WILLIAMS LLP
Shane R. Heskin, Esquire (PA.I.D. 201925)
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103-7395
(216) 864-7000
heskins@whiteandwilliams.com

Attorney for McNider Marine, LLC, McNider Marine and Power Sports, LLC, and John Bruce McNider

COMPLETE BUSINESS SOLUTIONS GROUP, INC. Plaintiff, v. McNIDER MARINE, LLC; McNIDER MARINE and POWER SPORTS, LLC; and JOHN BRUCE McNIDER Defendants.	IN THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY, PA COMMERCE PROGRAM MARCH TERM, 2017 NO. 003026
McNIDER MARINE, LLC; McNIDER MARINE and POWER SPORTS, LLC; JOHN BRUCE McNIDER Plaintiffs in Counterclaim, v. COMPLETE BUSINESS SOLUTIONS GROUP, INC.; and RICHMOND CAPITAL SOLUTIONS, LLC Defendants in Counterclaim.	

NOTICE OF DEPOSITION PURSUANT TO RULE 4007.1(e)

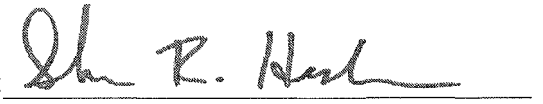
PLEASE TAKE NOTICE that pursuant to Rule 4007.1(e) of the Pennsylvania Rules of Civil Procedure, Defendants and Counterclaim Plaintiffs McNider Marine, LLC ("McNider

Marine"), McNider Marine and Power Sports LLC ("McNider Marine and Power Sports"), and John Bruce McNider ("McNider") (collectively "McNider"), through their attorneys, White and Williams LLP, will take the deposition upon oral examination of the designee of the Complete Business Solutions Group, LLC ("CBSG"), by stenographic means, on the topics set forth in "Addendum A" attached hereto.

The deposition will take place on **October 26, 2017 at 9:30 a.m.** at the office of White and Williams LLP, 1650 Market Street, Suite 1800, Philadelphia, PA 19103, or another date and location agreed upon by the parties and the witness, before an officer duly authorized to administer oaths in the Commonwealth of Pennsylvania, and such deposition will continue from day to day thereafter until complete.

Dated: September 29, 2017

WHITE AND WILLIAMS LLP

By: 

Shane R. Heskin
7 Times Square, Suite 2900
New York, NY 10036-6524
(215) 864-6329
heskins@whiteandwilliams.com

Attorney for McNider Marine, LLC, McNider Marine and Power Sports, LLC, and John Bruce McNider

ADDENDUM A

DEFINITIONS

As used herein, the following terms shall have the meaning ascribed to them below:

1. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

2. "McNider" refers to McNider Marine, LLC, and/or any officers, employees, attorneys, or agents.

3. "Broker" as used herein shall mean any third party entity or individual who either (1) facilitated a connection between CBSG and any entity or individual who entered a Merchant Agreement as defined herein, or (2) received compensation arising out of or relating to any Merchant Agreement as defined herein.

4. "Communication" or "communications" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) from one person to another.

5. "Concerning" means, without limitation, relating to, referring to, describing, evidencing or constituting.

6. "Document" is used in the broadest sense permitted and includes, without limitation, any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained directly, or if necessary, after translation into a reasonably usable form. The term "Document" also includes, without limitation, any Document now or at any time in the possession, custody or control of the entity to whom these document requests are directed (together with any predecessors, successors, affiliates, subsidiaries or divisions thereof, and their officers, directors, employees, agents and attorneys). Without limiting the term "control" as used in the preceding

sentence, a person is deemed to be in control of a Document if the person has the right to secure the Document or a copy thereof from another person having actual possession thereof, including without limitation, work product contracted by you from others. Documents that are identical, but in the possession of more than one person or entity, are separate Documents within the meaning of this term. A draft or non-identical copy is a separate Document within the meaning of this term.

7. "Employee" as used herein means anyone who performs work for the company, whether officer, employee, independent contractor, intern, or other staff.

8. "Entity" or "Entities" means any firm, sole proprietorship, partnership, corporation, association, trust, governmental body or agency, and each and every past and present owner, director, officer, partner, employee, agent, attorney, accountant, independent consultant, trustee, investment advisor, money manager, analyst, broker, dealer or expert, along with others acting, purporting to act or having acted on such entity's behalf.

9. "Including" means "including without limitation."

10. "Merchant Agreement" as used herein shall mean any contract for the advance of money from CBSG to any merchant, that is based on the alleged purchase of receivables.

11. "Person" or "persons" means any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

12. "Representative" or "Representatives" mean each and every present and former owner, director, officer, partner, employee, agent, attorney, accountant, independent consultant, trustee, investment advisor, money manager, analyst, broker, dealer or expert or other person acting, purporting to act or having acted on behalf of the person or entity.

13. "Request for Production of Documents" means this Plaintiffs' First Request for Production of Documents.

14. "Pleadings" as used herein shall mean any court filing, draft court filing, or any document submitted to an arbitrator.

15. "Transaction" as used herein shall mean any contract for the provision of money by CBSG to McNider, including future receipts sales agreements, merchant cash advances, factoring agreements, loans, or any other financing product, including but not limited to any contracts between CBSG and McNider that have been identified in either party's initial disclosures, interrogatory responses, or document request responses. "Transaction" shall also encompass performance of those contractual obligations, any invocations of rights under the contract (such as reconciliation requests), any breach of those contractual obligations, any collection attempts arising out of those contractual obligations, and any reformation or attempted reformation of those contractual obligations.

16. "CBSG" or "you" or "your" refers to Complete Business Solutions Group, LLC and/or any officers, employees, attorneys, agents, parent entity, or subsidiary entity.

INSTRUCTIONS

The following instructions are applicable to this Notice of Deposition and the subpoena:

1. Pursuant to Rule 4007.1(e), CBSG must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf. The persons designated must testify about information known or reasonably available to the organization.

2. CBSG must furnish all information that is available to it as of the date of the deposition, including any information in the possession of its attorneys, representatives, agents, directors and/or officers.

3. As used herein, the words "and," "or," "any," and "all" are to be construed conjunctively or disjunctively as necessary to make this discovery inclusive rather than exclusive and shall not be interpreted to exclude any information otherwise within the scope of any document request.

4. Any topic propounded in the singular shall also be read as if propounded in the plural and vice versa, to make this discovery inclusive rather than exclusive.

5. Any topic propounded in the present tense shall also be read as if propounded in the past tense and vice versa, to make this discovery inclusive rather than exclusive.

6. If CBSG withholds any information because of a claim of privilege or protection, state what information is being withheld and identify the precise privilege or protection claimed with sufficient specificity to permit a full determination of whether the claim of privilege or immunity is valid.

SUBJECTS OF TESTIMONY

The designee(s) shall testify regarding the following subjects:

1. Your organizational structure, including ownership interests and investors.

2. Your complete underwriting file for each Transaction.

3. Communications between You and any broker/third-party involved in origination and/or execution of each Transaction.

4. Any allegation by any party that You entered into an agreement that violated the usury laws of any State.

5. Your knowledge of other loans and/or merchant agreements executed by McNider.

6. The identity of any person who was involved with each Transaction.

7. The identity of any employees who have been terminated by You within the last two years.

8. Your advertising and/or marketing materials relating to the lending of money or providing cash advances to businesses and/or individuals.

9. Your solicitation of individuals and/or businesses to lend money and/or purchase receivables.

10. Your knowledge and understanding of state usury laws, including but not limited to whether Merchant Agreements are subject to state usury laws.

11. Communications (whether internal, with a third-party, a prospective borrower or a borrower) whereby an officer and/or employee of Your company refers to a Merchant Agreement as a loan or as lending.

12. Changes to Your form and/or standard Merchant Agreements over the last 5 years.

13. Your standards and procedures for reconciliation under Your Merchant Agreements.

14. Reconciliations that You conducted under any Merchant Agreement within the past two years.

15. Investigations by any state or federal agency relating to Your business activities, including any allegations of unlawful activity.

16. Communications by and between You and any investor or potential investor discussing the recourse available to recover any monies that were advanced in the event of a default under the terms of any Merchant Agreement.

17. Your refunding of money because a merchant had paid more receivables than required under a Merchant Agreement within the past two years.

18. How You calculate the factoring rate under a Merchant Agreement, including for each Transaction.

19. How You determine that the daily specified payments purportedly reflect a certain percentage of the merchant's daily receivables under a Merchant Agreement, including for each Transaction.

20. The terms and conditions of Your Merchant Agreements, including the terms and conditions of each Transaction.

21. The policies and/or procedures that Your employees should or must follow in determining what constitutes a default under the terms of a Merchant Agreement.

22. The process that You follow when a merchant misses a daily payment under the terms of a Merchant Agreement and/or is deemed to be in default.

23. How you treat income derived from purported loan transactions versus purported sales of receivables.

24. Communications with potential investors which explained or described the investment opportunity with Your purchase of receivables and/or merchant agreements.

25. Your agents and the scope of their authority to act on Your behalf.

26. Your underwriting procedures and policies.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2017, a copy of McNider Marine, LLC's Notice of Deposition Pursuant to Rule 4007.1(e) to the designee of Complete Business Solutions Group, LLC was served via first class mail, postage pre-paid, upon the following:

Norman M. Valz, Esquire
NORMAN M. VALZ & ASSOCIATES, P.C.
205 Arch Street – 2nd Floor
Philadelphia, PA 19106
Attorney for Complete Business Solutions Group, Inc. and Richmond Capital Solutions, LLC

Shane R. Heskin, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HMC INCORPORATED, et al.	:	CIVIL ACTION
	:	
v.	:	No. 19-3285
	:	
COMPLETE BUSINESS SOLUTIONS GROUP, INC., et al.	:	

ORDER

AND NOW, this 4th day of March, 2020, upon consideration of Defendant Complete Business Solutions Group, Inc.'s February 28, 2020, letter, Plaintiffs HMC Incorporated and Kara DiPietro's response, and Complete Business's reply, and following a March 4, 2020, teleconference with the parties, it is ORDERED:

1. Complete Business shall produce a deponent pursuant to Federal Rule of Civil Procedure 30(b)(6).
2. At the deposition of Complete Business's deponent, HMC and DiPietro shall not inquire into the following matters:
    a. The identity of any individual or merchant with whom Complete Business has agreements.
    b. Complete Business's relationship with any individual or merchant, including any specific factoring or loan agreement.
    c. The identity of any investor of Complete Business.
    d. Complete Business's relationship with any investor.
3. At the deposition of Complete Business's deponent, HMC and DiPietro may inquire into the following matters limited to the period between February 2018 and October 2019:

a. Complete Business's general practices, policies, procedures, and protocols regarding factoring or loan agreements with merchants in general, including, but not limited to:

i. Accounting treatment of income and losses and characterization of the agreements;

ii. The method used to allocate and account for payments under the agreements;

iii. The method used to determine payment schedules;

iv. The method used to determine the amount to be paid on the agreements;

v. The method used to determine finance fees charged to accounts;

vi. The application process, the underwriting process, the due diligence process, and the fee structure for the agreements;

vii. The response to merchants' requests for reduction or consolidation of payments under the agreements;

viii. The process and use of information in responding to merchants' advances under the agreements;

ix. The process of collecting amounts due under the agreements;

x. The monitoring of merchants' performance of an agreement and method(s) used to record and track payments;

xi. The response to merchants' failures to make payments under the agreements, defaults under the agreements, and how Complete Business exercises default rights and remedies, including the use of UCC lien notices;

xii. The response to merchants' intent to file for bankruptcy; and

xiii. The accounting treatment of payments received under the agreements.

b. Complete Business's application of its general practices, policies, procedures, and protocols to the agreements and relationship with HMC and DiPietro, including whether Complete Business established or used a reserve for its agreement with HMC and DiPietro.

c. The information Complete Business shares with potential and secured investors regarding factoring or loan agreements. Pursuant to section 2(d) above, this matter does not include specific communications with specific investors.

d. Investigations by any local, state, or federal administrative, regulatory, or law enforcement body or agency relating to Complete Business's use of factoring or loan agreements.

4. HMC and DiPietro shall not inquire into the matters listed in 3(a)–(d) outside of the relevant time period between February 2018 and October 2019.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, C.J.

Neutral
As of: March 13, 2020 2:10 PM Z

Fleetwood Servs., LLC v. Complete Bus. Solutions Group, Inc.

United States District Court for the Eastern District of Pennsylvania

October 23, 2019, Decided; October 23, 2019, Filed

CIVIL ACTION No. 18-268

Reporter
2019 U.S. Dist. LEXIS 183250 *; 2019 WL 5422884

FLEETWOOD SERVICES, LLC, et al. v. COMPLETE BUSINESS SOLUTIONS GROUP, INC. doing business as PAR FUNDING

Prior History: *Fleetwood Servs., LLC v. Complete Bus. Sols. Grp., 374 F. Supp. 3d 361, 2019 U.S. Dist. LEXIS 61504 (E.D. Pa., Apr. 10, 2019)*

Core Terms

allegations, injunctive, unconscionable, futile, declaratory relief, private plaintiff, receivables, voluntary payment, changes, injunctive relief, irreparable harm, class action, equitable, courts

Counsel: **[*1]** For FLEETWOOD SERVICES, LLC, ROBERT L. FLEETWOOD, PAMELA A. FLEETWOOD, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs: MATTHEW K. DAVIS, LEAD ATTORNEY, JONES DAVID & JACKSON PC, DALLAS, TX; WENDY D. DAWER, LEAD ATTORNEY, JONES DAVIS & JACKSON PC, DALLAS, TX; JUSTIN E. PROPER, SHANE R. HESKIN, WHITE & WILLIAMS LLP, PHILADELPHIA, PA.

For COMPLETE BUSINESS SOLUTIONS GROUP, INC., doing business as PAR FUNDING, Defendant: NORMAN M. VALZ, LEAD ATTORNEY, LAW OFFICES OF NORMAN M. VALZ, P.C., BLUE BELL, PA; CYNTHIA A. CLARK, PAR FUNDING, PHILADELPHIA, PA.

For PRIME TIME FUNDING, LLC, Defendant: ANTHONY A. PETROCCHI, LEAD ATTORNEY, ANTHONY A PETROCCHI PC, DALLAS, TX; ERIC R. SOLOMON, LEAD ATTORNEY, SOLOMON LAW GROUP, LLC, CONSHOHOCKEN, PA; ERIC R. SOLOMON, SOLOMON LAW GROUP, LLC, CONSHOHOCKEN, PA.

Judges: Juan R. Sánchez, Chief Judge.

Opinion by: Juan R. Sánchez

Opinion

MEMORANDUM

Juan R. Sánchez, C.J.

Plaintiffs Fleetwood Services LLC, Robert Fleetwood, and Pamela Fleetwood filed a Complaint alleging they were the victims of a financial fraud perpetrated by Defendants Complete Business Solutions Group, Inc. and John and Jane Doe investors. Plaintiffs have moved to amend their Complaint. Among other changes, **[*2]** they would like to add class claims, request injunctive and declaratory relief, and include allegations related to a Bloomberg article. While the Court will grant leave to amend the Complaint, it will not allow the request for injunctive and declaratory relief. The Court finds amending the Complaint to seek injunctive and declaratory relief would be futile.

BACKGROUND

Fleetwood Services is a golf course construction company owned by Robert and Pamela Fleetwood. Complete Business is a company that buys future receivables from small businesses.[1] In January 2017, Complete Business allegedly approached Fleetwood Services with a plan to consolidate Fleetwood Services' debt. Fleetwood Services agreed to this consolidation plan. To implement the plan, the two companies signed an agreement in which Complete Business paid $370,000.00 for $547,600.00 of future receivables.

According to Fleetwood Services, this agreement was not a purchase of future receivables. Instead, Fleetwood Services alleges, the agreement was actually a loan designed to keep Fleetwood Services in never-ending debt. Plaintiffs allege Complete Business demanded daily payments unrelated to any future receivables. They also allege **[*3]** Complete Business charged usurious interest rates and unauthorized fees. When Fleetwood Services got behind on its payments, Complete Business allegedly called Mr. and Mrs. Fleetwood and threatened to take away their business and their personal assets if they did not pay. In July 2017, Fleetwood paid back the money it owed to Complete Business with a loan from another company.

On January 22, 2018, Fleetwood Services and Mr. and Mrs. Fleetwood filed a Complaint in this case. Complete Business moved to dismiss. Plaintiffs responded to the motion to dismiss by filing their First Amended Complaint. The First Amended Complaint included claims for violations of Texas usury laws, fraud, negligent misrepresentation, damages pursuant to a term in the contract, and violations of the *Racketeer Influence and Corrupt Organizations Act (RICO)*. Complete Business then moved to dismiss the First Amended Complaint. On March 29, 2019, the Court dismissed the contract claim in the First Amended Complaint, but allowed the rest of the Complaint to go forward.

On July 19, 2019, Plaintiffs sought leave to file a Second Amended Complaint. The Second Amended Complaint included many of the same claims as the First **[*4]** Amended Complaint: violations of Texas usury law, fraud, and *RICO*. It also removed some of the claims in the First Amended Complaint; it removed the negligent misrepresentation claim and a claim relying on an inapplicable Texas law. The Second Amended Complaint added a new claim for attorneys' fees and a new request for injunctive and declaratory relief. Finally, the Second Amended Complaint included additional allegations such as: facts tending to show the agreement the parties signed was unconscionable; facts tending to show the agreement the parties signed was a loan rather than a purchase agreement for future receivables; and class action allegations.[2] To demonstrate that Complete Business treated its agreements with businesses like loans instead of purchases of future receivables, Plaintiffs included allegations related to a Bloomberg article. This article focused on Complete Business's "mob-like intimidation tactics" when a business cannot pay. Pl.'s Mot. for Leave to File Second Am. Compl. (Pl.'s Mot.), Ex. A at ¶ 93. According to Plaintiffs, if the agreements were actually for future receivables as they purported to be, Complete Business would have contacted the business's customers **[*5]** rather than the business itself.

As explained in detail below, Complete Business opposes three of the changes in the Second Amended Complaint. It urges the Court to deny Plaintiffs leave to make those three changes. The Court will allow Plaintiffs to make two of these three changes, but the Court finds that the remaining change—the new request for injunctive and declaratory relief—is futile.

DISCUSSION

A court may grant leave to amend a pleading under *Federal Rule of Civil Procedure 15(a)(2)*. This rule instructs a court to "freely give leave [to amend] when justice so requires." *Fed. R. Civ. P. 15(a)(2)*. A court can deny leave to amend, however, when the amendment would be futile. *City of Cambridge Ret. Sys. v. Altisource Asset Mgmt. Corp, 908 F.3d 872, 878, 69 V.I. 1034 (3d Cir. 2018)*. An amendment is futile when it "could not withstand a renewed motion to dismiss." *Id.* (internal quotations omitted). A court may also strike allegations in a complaint when they are "redundant, immaterial, impertinent, or scandalous." *Fed. R. Civ. P. 12(f)*.

Complete Business argues two changes in the proposed Second Amended Complaint are futile: the

[1] Future receivables are money a business expects to receive, typically money owed to a business by its customers.

[2] While Plaintiffs had originally styled this case as a class action, they did not include any class action allegations in their First Amended Complaint.

new class action allegations and the new request for declaratory and injunctive relief. Complete Business also argues the allegations relying on the Bloomberg article (in paragraph 91-97 of the Second Amended Complaint) should be stricken under **[*6]** Rule 12(f) as "immaterial, impertinent, or scandalous." The Court will address each of these proposed changes in turn.

Plaintiffs' amendment adding class allegations is not futile. Complete Business makes two arguments to the contrary, but neither is persuasive. First, Complete Business argues Plaintiffs cannot represent the class because their claims are barred by Texas's voluntary payment rule.[3] Second, Complete Business argues the class allegations are futile because of the class action waiver in the parties' contract.

Complete Business's voluntary payment argument fails because the voluntary payment rule does not apply to the claims in this case. The voluntary payment rule is a defense to equitable claims for unjust enrichment. BMG Direct Mktg., Inc. v. Peake, 178 S.W.3d 763, 768 (Tex. 2005). A defendant can assert this defense when the plaintiff voluntarily pays money "on a claim of right, with full knowledge of all the facts, in the absence of fraud, deception, duress, or compulsion." *Id.* Because the voluntary payment rule is an equitable defense, it does not apply to claims based on a statutory scheme. Id. at 776 n. 9. ("[T]he voluntary-payment rule would not apply to situations in which the Legislature or commonlaw has provided a right of recovery even though payment **[*7]** is voluntary."). In particular, this defense is not available when a plaintiff brings a claim under Texas's usury laws. Id. at 770 (explaining that, since 1890, Texas courts have held the "usury statute prevented [the] voluntary-payment defense"). Because the claims in this case are under Texas's usury laws, the voluntary payment defense does not apply here.

Complete Business's argument that the class action waiver makes the class claims futile is unpersuasive because Plaintiffs plausibly allege the contract was unconscionable. Complete Business correctly points out Plaintiffs waived their right to bring a class action in the parties' contract. The contract says "the parties hereto waive any right to assert any claims against [an]other party as a representative or member in any class or representative action, except where such waiver is prohibited by law against public policy." Def.'s Resp. in Opp'n to Pl.'s Mot. for Leave to File Second Am. Compl. (Def's Resp.), Ex. A at 5. Plaintiffs do not argue this language would allow them to bring a class action. Instead, they argue this waiver cannot be enforced because the contract is unconscionable.

Texas law "recognizes both substantive and procedural **[*8]** unconscionability." In re Olshan Found. Repair Co., LLC, 328 S.W.3d 883, 892 (Tex. 2010). Substantive unconscionability refers to the unconscionable terms in a contract, while procedural unconscionability refers to the unconscionable methods used to negotiate the contract. *Id.* The Texas Supreme Court has noted that determining whether a contract is unconscionable can "involve[] a highly fact-specific inquiry into the circumstances of the bargain, such as the commercial atmosphere in which the agreement was made, the alternatives available to the parties at the time and their ability to bargain, any illegality or public-policy concerns, and the agreement's oppressive or shocking nature." Venture Cotton Co-op. v. Freeman, 435 S.W.3d 222, 228 (Tex. 2014). A contract is not unconscionable solely because it is a contract of adhesion. In re Lyon Fin. Servs., Inc., 257 S.W.3d 228, 233 (Tex. 2008).

At this stage, Plaintiffs have alleged enough facts to be entitled to further discovery regarding whether the contract was unconscionable. They allege Complete Business fraudulently coerced them into signing an agreement with unfair and one-sided terms. Regarding procedural unconscionability, they allege Complete Business falsely represented the nature and purpose of the contract. Pl.'s Mot., Ex. A at ¶¶ 44-46. They also allege Complete Business took advantage of Fleetwood's "desperate **[*9]** financial condition." *Id.* at ¶ 44. Regarding substantive unconscionability, the contract's provisions included: a provision giving Complete Business the irrevocable right to withdraw money directly from Fleetwood's bank accounts; a provision giving Complete Business the power of attorney to act as if it were Fleetwood, including collecting checks and signing invoices in Fleetwood's name; a provision preventing Fleetwood from transferring, moving or selling the business or any assets without permission from Complete Business; and a one-sided attorneys' fees provision obligating Fleetwood to pay Complete Business's attorneys' fees if Complete Business won any litigation but not obligating Complete Business to pay Fleetwood's attorneys' fees if Fleetwood won. Def.'s Resp., Ex. A. at 3-4. Given the allegations of substantive and procedural unconscionability, the Court will not foreclose discovery on the unconscionability of the contract. If Plaintiffs

[3] In its memorandum dated April 10, 2019, the Court found Texas law applies to the contract in this case.

move to certify a class, the Court will have an opportunity to address the contract's unconscionability with the benefit of discovery.[4]

Next, the Court addresses Plaintiffs' amendment requesting injunctive and declaratory relief and finds this **[*10]** amendment would be futile. A party seeking an injunction must prove "(1) it will suffer irreparable injury, (2) no remedy available at law could adequately remedy that injury, (3) the balance of hardships tips in its favor, and (4) an injunction would not disserve the public interest." *TD Bank N.A. v. Hill, 928 F.3d 259, 278 (3d Cir. 2019)*. Declaratory relief can be appropriate "to settle actual controversies before they ripen into violations of a law or a breach of duty." *Disabled in Action of Pa. v. Se. Pa. Transp. Auth., 539 F.3d 199, 215 (3d Cir. 2008)*. Like injunctive relief, declaratory judgments are "by definition prospective in nature." *CMR D.N. Corp. v. City of Philadelphia, 703 F.3d 612, 628 (3d Cir. 2013)*. In other words, both injunctive and declaratory relief prevent future harm.

Plaintiffs will not suffer any future harm here. In their complaint, they conceded they have already paid Complete Business the money they owed under the contract. First Am. Compl. ¶ 46. Since they have already paid off the contract, there is no likelihood they will have to pay more in the future. At oral argument, they conceded they could not prove they would suffer any future irreparable harm. Instead, they argued they did not have to prove future irreparable harm because they are seeking an injunction under *RICO*.

The Third Circuit has not addressed injunctions for private plaintiffs under *RICO*. *See* **[*11]** *Ne. Women's Ctr., Inc. v. McMonagle, 868 F.2d 1342, 1355 (3d Cir. 1989)* (declining to address whether injunctive relief is available to private plaintiffs under *RICO*). Other courts are split on whether private plaintiffs in *RICO* actions can request equitable relief. *Compare Religious Tech. Ctr. v. Wollersheim, 796 F.2d 1076, 1088 (9th Cir. 1986)* (finding private plaintiffs are not entitled to equitable relief under *RICO*), *with Chevron Corp. v. Donziger, 833 F.3d 74, 137 (2d Cir. 2016)* (finding private plaintiffs are entitled to equitable relief under *RICO*). Even if injunctions are available for private plaintiffs in *RICO* actions, courts have found that private plaintiffs must still show future irreparable harm. *See, e.g., Trane Co. v. O'Connor Sec., 718 F.2d 26, 29 (2d Cir. 1983)* ("[T]o obtain a preliminary injunction under *RICO* there must be established a likelihood of irreparable harm."); *see also Jackson v. Rohm & Haas Co., No. 05-4988, 2009 U.S. Dist. LEXIS 23194, 2009 WL 948741, at *4 (E.D. Pa. Mar. 20, 2009)*, *aff'd*, *366 F. App'x 342 (3d Cir. 2010)* (explaining that "[w]here a private plaintiff in a civil *RICO* action has been permitted to seek preliminary injunctive relief, the courts have consistently applied traditional preliminary injunction standards, including the requirement of irreparable harm in the absence of an injunction" and listing cases). Because Plaintiffs admit they cannot show any future harm, they would not be entitled to injunctive relief under *RICO* even if such relief were available for private plaintiffs.

Finally, the Court will deny Complete Business's request **[*12]** to strike the Second Amended Complaint's allegations about the Bloomberg article. Under *Federal Rule of Civil Procedure 12(f)* a court may strike an allegation that is "redundant, immaterial, impertinent, or scandalous." "Motions to strike are not favored and usually will be denied unless the allegations have no possible relation to the controversy." *Associated Builders & Contractors, E. Pa. Chapter, Inc. v. Cty. of Northampton, 376 F. Supp. 3d 476, 522 (E.D. Pa. 2019)* (internal quotations omitted). Courts should only grant a motion to strike when the allegations "are so unrelated to plaintiffs' claims as to be unworthy of any consideration." *Id.* (internal quotations omitted).

The Bloomberg allegations do not meet the high standard for a motion to strike. These allegations are related to the case because they tend to support the idea that Complete Business treated the contracts as loans rather than as contracts for future receivables. The allegations are also not "impertinent or scandalous" under *Rule 12(f)*. They are based on a public report from a reputable news source. They are not unsupported allegations nor do they maliciously publicize previously private information. The Court will therefore allow Plaintiffs to include the Bloomberg allegations in their Second Amended Complaint.

In sum, the Court finds the amendment adding the class allegations **[*13]** is not futile, the amendment requesting injunctive and declaratory relief is futile, and the Bloomberg claims should not be stricken. The Court will therefore give Plaintiffs leave to file their Second Amended Complaint after they remove their request for injunctive and declaratory relief.

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[4] The Court notes, even if the contract is unconscionable, Plaintiffs still may not meet the requirements under *Federal Rule of Civil Procedure 23* for class certification. If Plaintiffs file a motion for class certification, the Court will address the *Rule 23* requirements when it rules on that motion.

An appropriate order follows.

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, C.J.

ORDER

AND NOW, this 23rd day of October, 2019, upon consideration of Plaintiffs Fleetwood Services, Robert Fleetwood and Pamela Fleetwood's Motion for Leave to File a Second Amended Complaint, Defendant Complete Business Solutions Group, Inc.'s opposition thereto, and the parties' presentations at the September 16, 2019, oral argument on the Motion, and for the reasons set forth in the accompanying Memorandum, it is ORDERED Plaintiffs' Motion (Document 55) is GRANTED in part insofar as Plaintiffs are granted leave to file their Second Amended Complaint after they remove their request for injunctive and declaratory relief.
BY THE COURT:

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, C.J.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FLEETWOOD SERVICES, LLC, et al.	:	CIVIL ACTION
	:	
v.	:	No. 18-268
	:	
COMPLETE BUSINESS SOLUTIONS GROUP, INC. *doing business as* PAR FUNDING	:	

MEMORANDUM

Juan R. Sánchez, C.J. **April 10, 2019**

Plaintiffs Fleetwood Services, LLC (Fleetwood Services), Robert L. Fleetwood, and Pamela A. Fleetwood (collectively, Plaintiffs), on their own behalf and on behalf of those similarly situated, bring claims for violations of the federal Racketeer Influenced and Corrupt Organizations Act (RICO) and Texas law against Defendants Complete Business Solutions Group, Inc. (CBSG), Prime Time Funding, LLC (PTF), and unnamed John and Jane Does (the Investor Defendants). Plaintiffs assert the Defendants worked together to exploit cash-strapped small businesses by luring them into endless cycles of usurious debt under the guise of false promises of consulting services and debt reduction. CBSG and PTF each moved to dismiss the claims against them. For the reasons explained below, the Court denied their motions to dismiss in its order of March 29, 2019.

FACTS[1]

Robert and Pamela Fleetwood are the owners of Fleetwood Services, a Texas limited liability company, which provides golf course construction, development, renovation, and

[1] This matter was originally filed in Texas state court. The matter was then removed to the United States District Court for the Northern District of Texas and transferred to the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1404(a). On February 15, 2018, Fleetwood filed its First Amended Complaint, from which the Court draws the facts, unless otherwise indicated.

remodeling services. CBSG is a Delaware corporation headquartered in Philadelphia, Pennsylvania. PTF is a Pennsylvania entity also headquartered in Pennsylvania.

CBSG and PTF are engaged in the merchant cash advance industry, which is the merchant-to-merchant equivalent of consumer pay-day lending—an industry allegedly notorious for its predatory practices and extremely high interest rates. PTF and CBSG, along with the unidentified Investor Defendants, work together to fund, originate, underwrite, and service loans, which, like their consumer analogs, feature exorbitant annualized interest rates. Defendants have been engaged in this business—mostly through their online presence—since at least 2015.

In late 2016 or early 2017, Fleetwood Services experienced a cash shortage, but was ineligible for conventional financing. As a result, it entered into several merchant cash advance agreements, which ultimately encumbered the business with an obligation to make daily payments of $6,667.00 to its lenders. In January 2017, Fleetwood Services was approached by PTF and CBSG, who, through various email exchanges, offered to provide it with financial consulting and a debt consolidation program that would "provide capital for paying off existing debt as well as capital with which to grow the business." Am. Compl. ¶ 31. More specifically, PTF and CBSG claimed their assistance would reduce Fleetwood Services's daily payments by $1,666.75.

Defendants' promises, according to the Amended Complaint, were lies manufactured to conceal the true purpose behind CBSG and PTF's offer, which was to "worsen [] Fleetwood Services's cash flow and thereby increase its dependence on further loans exclusively from [] CBSG." Am. Compl. ¶ 41. And, this is exactly what is alleged to have happened to Fleetwood Services. After the funds provided at the beginning of the relationship were exhausted, Fleetwood Services was left "paying thousands of dollars more to [] CBSG than it had been paying prior to the debt consolidation program." Am. Compl. ¶ 40. Moreover, at around the time Fleetwood

Services experienced cash flow issues created by its obligation to Defendants, CBSG offered Fleetwood Services the "opportunity" to restructure its agreement with CBSG by spreading the amount owed over a larger number of smaller payments. As part of this supposed accommodation, CBSG charged Fleetwood Services $11,000 in "Finance Charges," which were not provided for in the parties' agreement. Am. Compl. ¶ 44. Ultimately, Fleetwood Services escaped its relationship with Defendants on July 5, 2017, after receiving a traditional small business loan that it used to repay Defendants in full, including what Plaintiffs' characterize as an undisclosed annualized percentage rate of interest at 114.07%.

The relationship between Plaintiffs and CBSG was governed by the terms of the "Factoring Agreement," which was executed on or about January 4, 2016. [2] *See* CBSG Mot. to Dismiss Ex. A at 2.[3] The Factoring Agreement obligated CBSG to provide Fleetwood Services with $370,000 (the Purchase Price) allegedly in exchange for $547,000 worth of Fleetwood Services accounts receivables (the Receipts Purchased Amount). *Id.* at 2. However, allegedly unlike a traditional factoring agreement, the fair market value of the accounts receivable (i.e., the Receipts Purchased Amount) was unilaterally dictated by CBSG and based upon the creditworthiness of *Fleetwood Services*—not the creditworthiness of the customers who were to pay the accounts receivable or

[2] Black's Law Dictionary defines "factoring" as "the buying of accounts receivable at a discount" and explains "the price is discounted because the factor (who buys them) assumes the risk of delay in collection and loss on the accounts receivable." *Factoring*, Black's Law Dictionary (10th ed. 2014).

[3] Ordinarily, a Court may not consider material extraneous to the complaint on a motion to dismiss. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). There are, however, several exceptions to this general rule, including one for "indisputably authentic documents integral to or explicitly relied upon in the complaint." *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014). Here, the First Amended Complaint explicitly relies upon the Factoring Agreement, and no party has challenged the authenticity of the document. Accordingly, the Court will consider it in adjudicating the instant motions.

any appraisal of the actual value of Fleetwood Services' accounts receivable. Am. Compl. ¶ 34. The Factoring Agreement obligated Fleetwood Services to repay the Receipts Purchased Amount in 110 daily installments of $5,000.25, which were effectuated by electronic automated clearing house debits from Fleetwood Services's Texas-based bank accounts. These daily payments were, like the Receipts Purchased Amount, also divorced from Fleetwood Services's actual accounts receivable because the Factoring Agreement made "any and all receivables from any customer in any amount based on any sale subject to Defendant CBSG for payment of the daily fixed debit." *Id.* ¶ 35.

The Factoring Agreement contained several other terms material to the instant motions. These additional terms include: (1) a declaration the money provided by CBSG to Fleetwood Services "is not intended to be, nor shall it be construed as a loan;"; (2) CBSG's promise to refund Fleetwood Services any amount greater than the maximum lawful interest rate, in the event "a court determines that [CBSG] has charged or received interest" under the Agreement; and (3) a Pennsylvania choice of law provision. CBSG Mot. to Dismiss Ex. A at 2.[4] Along with the

[4] The pertinent paragraph of the Agreement states:

> [Fleetwood Services] and CBSG agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount and that such Purchase Price is not intended to be, nor shall it be construed as a loan from [CBSG] to [Fleetwood Services]. [Fleetwood Services] agrees that the Purchase Price is in exchange for Future Receipts pursuant to this Agreement [and] equals the fair market failure of such Receipts. [CBSG] has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Payments made to [CBSG] with respect to the full amount of the Receipts shall be conditioned upon [Fleetwood Service's] sale of products and services and the payment therefore by [Fleetwood Service's] customers in the manner provided in Section 1.1. IN NO EVENT SHALL THE AGGREGATE OF THE AMOUNTS RECEIVED BE DEEMED INTEREST HEREUNDER. In the event that a court determines that [CBSG] has charged or received interest hereunder, and that said amount is in excess of the highest applicable rate, the rate in effect hereunder shall be automatically reduced to the maximum rate permitted by applicable law and

Factoring Agreement, the Defendants also required Fleetwood Services to ensure repayment by granting CBSG security interests in "all accounts, chattel paper, documents, equipment, general intangibles, instruments and inventory . . . now or hereafter owned or acquired by [Fleetwood Services] and (b) all proceeds, as that term is defined in Article 9 of the UCC," and obligating Pamela and Robert Fleetwood to personally guarantee Fleetwood Services paid CBSG the Receipts Purchased Amount ($547,000). CBSG Mot. to Dismiss Ex. A at 5-6.

Based on the forgoing, Plaintiffs filed an Amended Complaint asserting claims for breach of Texas Business & Commercial Code § 17.44(a) (Count I); the Texas Usury Statute (Count II); common law fraud (Count III); RICO (Count IV); common law civil conspiracy (Count VI); and common law negligent misrepresentation (Count VII). In addition, the Amended Complaint seeks specific performance of paragraph 1.10 of the Factoring Agreement (Count V). CBSG and PTF moved to dismiss the Amended Complaint on February 16, 2018, and March 27, 2018, respectively. Although Defendants seek to dismiss Counts IV, V, and VII specifically, they claim the Factoring Agreements were not usurious loans under governing Pennsylvania law, an argument which, if credited, all parties agreed would require the dismissal of all but a few of Plaintiffs' claims.

> [CBSG] shall promptly refund to [Fleetwood Services] any interested received by [CBSG] in excess of the maximum lawful rate, it being intended that merchant not pay or contract to pay, and that [CBSG] not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by [Fleetwood Services] under applicable law. [Fleetwood Services] ACKNOWLEDGES THAT PENNSYLVANIA LAW APPLIES TO THE WITHIN AGREEMENT.

Agreement ¶ 1.10 (emphasis in original).

The Court held oral argument on the motions on November 2, 2018, and on March 29, 2019, it issued an order granting CBSG's motion as to Count V and denying it in all other respects. This order also denied PTF's motion to dismiss in its entirety. The Court writes now to supplement the order with the basis for its ruling.

DISCUSSION

Counts IV, V, and VII allege violations of RICO, seek specific performance, and allege negligent misrepresentation, respectively. The Defendants move to dismiss these counts pursuant to Federal Rule of Civil Procedure 12(b)(6). To survive a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the facts pleaded "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*.

In evaluating a Rule 12(b)(6) motion, a court first must separate the legal and factual elements of the plaintiff's claims. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). The court "must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." *Id*. at 210-11. The court must then "determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Id*. at 211 (quoting *Iqbal*, 556 U.S. at 679).

Before the Court can address the Defendants' arguments, it must first characterize the Factoring Agreement. If the Factoring Agreement is in substance a factoring agreement, i.e., a purchase of accounts receivable below their face value, then there can be no usury—and thus the Amended Complaint must be dismissed to the extent it relies on illegality of the alleged interest rates charged. *See Equip. Fin., Inc. v. Grannas*, 218 A.2d 81, 82 (Pa. Super. Ct. 1966) (noting

usury is not at issue where "there is no loan or use of money on the part of the buyer"); *Stedman v. Georgetown Sav. & Loan Ass'n*, 595 S.W.2d 486, 489 (Tex. 1979) ("For usury to apply there must be an overcharge by a lender for the use, forbearance, or detention of the lender's money so as to constitute interest."). If the Factoring Agreement functions as a loan, however, the Court must (1) determine whether it is subject to the usury laws of Pennsylvania or Texas, as the Agreement calls for the application of Pennsylvania law but the Plaintiffs assert Texas law applies, and (2) assess the merits of the Amended Complaint.

Despite the obvious significance of the issue, neither CBSG nor PTF offer any substantive defense of the Factoring Agreement as a true factoring agreement. CBSG claims—without legal citation or explanation—the transaction between it and Fleetwood Services is subject to Article 9 of the Uniform Commercial Code, which governs secured transactions. *See* CBSG Mot. to Dismiss 2. PTF makes no argument at all. As a result of Defendants' failure to effectively address this issue, the Court assumes—without deciding and only for purposes of the instant motions to dismiss—the Factoring Agreement was a loan. The Court's assumption is undergirded by the allegations in the Amended Complaint and a review of the Factoring Agreement as a whole.[5] *See Simpson v. Penn Discount Corp.*, 5 A.2d 796, 798 (Pa. 1939) ("As usury is usually accompanied by subterfuge and circumvention . . . to present the color of legality, it is the duty of the court to examine the substance of the transaction as well as its form."); *Gonzales County Sav. & Loan Ass'n v. Freeman*, 534 S.W.2d 903, 906 (Tex. 1976) ("It has often been said that courts will look

[5] The Court's assumption is supported by the allegations in the Amended Complaint describing: (1) how the "Daily Specified Amount," i.e., the daily $5,000.25 debit from Fleetwood Services' bank account, operated as a fixed loan payment, (2) how the "Purchased Amount," i.e., the $547,000 Fleetwood Services was obligated to repay, was the sum of the principal and interest of the loan; and (3) the manner in which the Factoring Agreement shifted all risk of loss from Defendants to Fleetwood Services and Pamela and Robert Fleetwood. *See* Am. Compl. ¶¶ 47-58.

beyond the form of the [transaction] to its substance in determining the existence or nonexistence of usury . . . Labels put on particular charges are not controlling.").

Assuming the Factoring Agreement is a disguised loan, the Court must determine whether the Factoring Agreement is governed by Pennsylvania law (as specified in Paragraph 1.10 of the Factoring Agreement) or Texas law (as Plaintiffs argue). The parties agree if the Court concludes Pennsylvania law applies to claims arising from the Factoring Agreement, all but a few of Plaintiffs' causes of action must be dismissed (i.e., those that rely on a finding the Factoring Agreement constituted a loan with usurious interest under Texas law). They also agree the Court must apply Pennsylvania's choice of law principles to resolve the alleged conflict between Pennsylvania and Texas usury laws. Pennsylvania utilizes Restatement (Second) of Conflict of Laws § 187(2) where there is a "true conflict" involving a question of contract law. *See Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 463-64 (3d Cir. 2005).[6] Restatement Section 187(2) requires the Court to apply the law of the state specified in the agreement unless:

> (a) The chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) Application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188 [of Restatement (second) of Conflicts of Law], would be the state of the applicable law in the absence of an effective choice of law by the parties.

Kaneff v. Del. Title Loans, Inc., 587 F.3d 616, 621-22 (3d Cir. 2009) (quoting Restatement § 187(2)); *see also Chestnut v. Pediatric Homecare of Am., Inc.*, 617 A.2d 347, 350-51 (Pa. Super. Ct. 1992) (applying Restatement § 187).

[6] A "true conflict" exists where "the governmental interests of [multiple] jurisdictions would be impaired if their law were not applied." *Budget Rent-A-Car Sys., Inc. v. Chappell*, 407 F.3d 166, 170 (3d Cir. 2005) (alteration in original).

The Defendants' conclusory arguments to the contrary notwithstanding, Plaintiffs have averred sufficient facts to warrant the application of Texas law. As an initial matter, the Court finds a "true conflict" between Pennsylvania and Texas law concerning usury. In *Kaneff* (discussed in greater detail below), the Third Circuit has recognized "there [could] be no question" a "true conflict" existed where the law of one jurisdiction has an applicable usury law, and the other does not. *Kaneff*, 587 F.3d at 622 (noting Delaware does not have usury laws, and Pennsylvania does have a general usury law, and concluding "[t]here can be no question that there is a true conflict between Delaware and Pennsylvania in their approach to and treatment of usurious interest."). This is the case here: Pennsylvania has no usury protections for businesses, and Texas does. *Compare* 15 Pa. Cons. Stat. § 1510 ("A business corporation shall not plead or set up usury, or the taking of more than the lawful rate of interest…as a defense to any action…or to enforce payment of…any obligation executed or effected by the corporation.") *with* Tex. Fin. Code § 305.001(a-1)("A creditor who contracts for or receives interest that is greater than the amount authorized by this subtitle in connection with a commercial transaction is liable to the obligor….). Accordingly, the Court finds there is a true conflict between Pennsylvania and Texas usury laws.

Having found a "true conflict," the Court turns to Restatement § 187(2)(b), which calls for a two-part inquiry.[7] First, the Court must determine whether, under Restatement § 188, the chosen state or another state's law would apply in the absence of the choice of law provision. Restatement § 188 calls for the application of the law of the state which has

[7] Restatement §187(2)(a) permits a court to disregard a choice of law provision where the chosen state "has no substantial relationship to the parties or to the transaction and there is no other reasonable basis for the parties' choice." This provision is inapplicable. CBSG's principal place of business is located in Pennsylvania where Plaintiffs concede that at least part of the parties' course of dealing took place. Amended Compl. § 21; Opp'n to CBSG Mot. 10. As a result, § 187(2)(a) provides no basis to disregard the choice of law provision.

> the most significant relationship to the transaction as determined by several factors, including: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.

Restatement § 188(1-2); *see also Hammersmith v. TIG Ins. Co.*, 480 F.3d 220, 233 (3d Cir. 2007) (applying the § 188 factors to determine whether Pennsylvania had the most significant contacts in a choice of law analysis).[8] Second, if the Court finds the § 188 balancing requires the application of the law of a state other than the chosen state, the Court must then determine whether applying the chosen state's law would contravene a "fundamental policy" of the other state. Restatement § 187(2)(b). So, to apply Texas law, the Court must find Texas has the most significant relationship to the transaction *and* a fundamental public policy of Texas would be violated by the application of Pennsylvania law.

The issue before the Court is similar to the one decided by the Third Circuit in *Kaneff*. 587 F.3d 616. Kaneff—a Pennsylvania resident—traveled to Delaware to obtain a short-term loan secured by a lien against the title to her automobile. The annualized interest rate of the loan was approximately 300%. After falling behind on her payments, Delaware Title Loans (DTL) repossessed her vehicle, and Kaneff sued DTL in Pennsylvania state court. DTL removed the action and sought to compel arbitration. Kaneff opposed the motion to compel on unconscionability grounds. In deciding the arbitrability of Kaneff's challenge to the title loan, the

[8] Pennsylvania Supreme Court has never formally disavowed the rule of lex loci contractus, which calls for the application of the law of the place of contracting. *Hammersmith*, 480 F.3d at 227-29 (describing the history of Pennsylvania choice of law jurisprudence in contract and tort actions). Nevertheless, the Third Circuit has predicted the Pennsylvania Supreme Court would extend its ruling abolishing lex loci delicti in tort matters in favor of the application of the "law of the forum with the most interest in the problem" to contract matters. *Id.*at 228-29. This Court will, as it must, follow the Third Circuit's lead. *Id.*; *see also Pacific Employers Ins. Co. v. Global Reinsurance Corp. of America*, 693 F.3d 417, 432 (3d Cir. 2012).

Court considered whether it must apply the law of Pennsylvania—which prohibits usurious loans to consumers—or the law of Delaware—which does not prohibit usurious loans, but was the state law selected in the contract's choice of law provision.

The Third Circuit found Pennsylvania had a more significant interest than Delaware because the plaintiff lived in Pennsylvania, the collateral was located in Pennsylvania, and, that if Kaneff's car were repossessed and she lost her job as a result, Pennsylvania would have to pay her unemployment and medical benefits, and lose the taxes generated from her income. Citing Pennsylvania's "antipathy to high interest rates such as the 300.01 percent interest charged in the contract at issue," the Court also found applying Delaware law would violate a fundamental public policy of the Commonwealth. *Id* at 624. As a result, the Court found the law of Pennsylvania should be applied to Kaneff's title loan, and the choice of law provision in the loan documents discarded. *Id.*

A similar situation is before the Court here. As an initial matter, Plaintiffs have averred sufficient facts—which the Court must accept as true—to establish Texas's materially greater interest in this dispute. As Plaintiffs aver, Fleetwood Services is a Texas limited liability company headquartered in Dallas, Texas, and Robert and Pamela Fleetwood are individuals residing in Dallas, Texas. Amend. Compl. ¶¶ 18-20. Furthermore, the commercial and personal property—including Robert and Pamela's home and personal assets—securing repayment is located in Texas. Amend. Compl. ¶ 43. Plaintiffs also allege Defendants' "conduct in inducing Plaintiffs to enter into the [Factoring Agreement] involved a series of consumer and commerce related transactions that substantially occurred within the state of Texas." Amend. Compl. ¶ 61. In light of these circumstances (and Defendants' failure to explain how or why the Court should disregard them, or consider other factors weighing in favor of Pennsylvania's relationship to the transaction at

issue), the Court finds Texas has a more significant relationship to the transaction than Pennsylvania.

The Court also finds applying Pennsylvania law would violate a fundamental public policy of Texas, namely its "antipathy" to high interest rates, regardless of the nature of the debtor. *Kaneff*, 587 F.3d at 624. As Plaintiffs point out, the Texas constitution prohibits usury. *See* Opp'n to CBSG Mot. at 10 (citing Texas Const., Art. XVI § 11). Moreover, the Texas Financial Code sets a specific maximum interest rate for lending for "a business, commercial, investment, or other similar purpose." *See* Tex. Fin. Code § 303.009(c). The Texas Financial Code also permits private causes of action for usury in commercial transactions. Texas Fin. Code § 305.001(a-1)("A creditor who contracts for or receives interest that is greater than the amount authorized in this subtitle *in connection with a commercial transaction* is liable to the obligor….") (emphasis added). This statutory framework makes clear the existence of Texas's fundamental public policy against the payment of excessive interest rates—no matter the character of the debtor. As a result, enforcing Pennsylvania law—which affirmatively *prohibits* several types of business entities from claiming a usury defense—would violate Texas's policy. *See* 15 Pa. Con. Stat. § 1510(a).[9] On this basis,

[9] In full, this statutory provisions states:

> A business corporation shall not plead or set up usury, or the taking of more than the lawful rate of interest, or the taking of any finance, service or default charge in excess of any maximum rate therefor provided or prescribed by law, as a defense to any action or proceeding brought against to recover damages on, or to enforce payment of, or to enforce any other remedy on, any obligation executed or effected by the corporation.

15 Pa. Con. Stat. § 1510(a). Although this provision applies directly to "business corporations," it is elsewhere made applicable to "domestic associations" and "foreign associations." *See* 15 Pa. Con. Stat. § 114 ("A domestic association other than a business corporation shall be subject to section 1510 . . . with respect to obligations . . . to the same extent as if the domestic association were a domestic business corporation."); 15 Pa. Con. Stat. § 402(g) ("A foreign association shall be subject to section 1510 . . . with respect to obligations . . . to the same extent as if the foreign association were a domestic business corporation.").

the Court finds that applying Pennsylvania law would violate Texas's fundamental public policy against usury.

Having determined Texas has the most significant relationship to the transaction at issue here and enforcing Pennsylvania law would violate Texas's fundamental public policy against usury without regard to the nature of the debtor, the Court concludes the Factoring Agreement is subject to Texas law. *See Kaneff*, 587 F.3d at 621-22; *Chestnut*, 617 A.2d at 350-51; Restatement (Second) of Conflict of Laws § 187(2). The Court will, therefore, deny the motions to dismiss to the extent they are premised on Defendants' argument that their conduct was permissible under Pennsylvania law. The Court next turns to the merits of the Defendants' motions. Because the motions focus primarily on the Plaintiffs' RICO claim, the Court will consider that issue first, and then address Defendants' arguments with respect to the specific performance and negligent misrepresentation claims.

The heart of Plaintiffs' Amended Complaint, and the focus of CBSG and PTF's respective motions to dismiss, is the civil RICO claim. At issue is the application of 18 U.S.C. § 1962(c), which makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate . . . commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." To state a claim for relief under this statute, a person[10] must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 362 (3d Cir. 2010).[11] A person must also establish

[10] A "person" is "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3).

[11] Texas law applies to the Factoring Agreement, but the Court applies federal law to the RICO claim. *See Williams v. Stone*, 109 F.3d 890, 895 (3d Cir. 1997) (noting "the state law offenses the [plaintiffs'] claim were committed by [the defendant] serve no more than a 'definitional purpose'

standing to bring a RICO claim by alleging he was "injured . . . by reason of a violation of § 1962." *Anderson v. Ayling*, 396 F.3d 265, 269 (3d Cir. 2005). CBSG and PTF each move to dismiss on the grounds the Amended Complaint fails to allege a cognizable enterprise, predicate acts of racketeering activity, and lack of standing. None of these arguments is availing.[12]

First, Defendants argue the Amended Complaint fails to adequately allege a RICO "enterprise." The RICO statute defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Here, Plaintiffs allege the existence of an "association-in-fact" enterprise, which requires its own three-part showing: "(1) there exists an ongoing organization, formal or informal; (2) the various associates of the organization function as a continuing unit; and (3) the organization has an existence separate and apart from the alleged pattern of racketeering activity." *Schwartz v. Lawyers Title Ins. Co.*, 970 F. Supp. 2d 395, 402 (E.D. Pa. 2013) (citing *United States v. Turkette*, 452 U.S. 576, 583 (1981)). To ultimately prevail, a plaintiff must also establish three "structural" features of the enterprise: "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Id.* (quoting *Boyle v. United States*, 556 U.S. 938, 940 (2009)).

The Court finds the Amended Complaint satisfies both *Turkette* and *Boyle* at this stage. The Amended Complaint describes the "Lending Enterprise" as a group of John and Jane Doe

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vis-à-vis an allegation of a RICO violation—they merely define the types of activity that may constitute predicate acts pursuant to the federal RICO statute"). The parties cite primarily to Third Circuit and Supreme Court authority in support of their respective positions, and so the Court assumes for purposes of the instant motions that Third Circuit precedent applies. However, the Court will defer making a definitive ruling on this choice of law question until the parties have had an opportunity to fully brief the issue.

[12] In their opposition, Plaintiffs also address whether they have adequately alleged a pattern of racketeering. However, Defendants do not appear to have raised this issue so the Court will not consider it.

individuals and two corporate entities associated with one -another which that engaged in unlawful activity, including in a course of conduct (*i.e.*, mail and wire fraud, and the collection of unlawful debts—both of which are discussed below) for a common purpose (to make money). This "Lending Enterprise" also featured included an informal, on-going organization which operated as a unit to provide both legal credit services and the allegedly usurious loans. It is thus sufficient under *Turkette*. *See United States v. Bergrin*, 650 F.3d 257, 270 (3d Cir. 2011). To the extent Defendants challenge the third *Turkette* element—the alleged enterprise's existence separate and apart from the business entities—the Court is satisfied Plaintiffs have met this requirement. The Amended Complaint alleges Defendants have done more than carry on the normal affairs of actors in the legal credit market. Rather, the Amended Complaint explains how they each worked together in this scheme to originate, underwrite, and service loans with illegal interest rates. Each player in the enterprise had a different role, but the alleged enterprise was greater—and distinct from—its component parts (at least some of which were likely legitimate).

The Court is also satisfied that the Amended Complaint meets the *Boyle* requirements. The Amended Complaint "plausibly impl[ies]" the purpose of the enterprise was to make money by means of luring small businesses into otherwise unenforceable loans or collecting unlawful debts, there were relationships between each of the members (the John and Jane Does provided the capital, PTF brokered the loans, and CBSG serviced them), and sufficient longevity (from at least 2015) to accomplish that purpose. *Brokerage*, 618 F.3d at 370. Thus, the Amended Complaint is also sufficient under *Boyle*.

CBSG also challenges Plaintiffs' ability to plead the existence of an enterprise because companies engaged in the "provision of routine credit services," like CBSG, are beyond the scope of RICO liability. CBSG Mot. to Dismiss 11-12. CBSG cites *Jubelirer v. Mastercard Int'l., Inc.*,

68 F. Supp. 2d 1049, 1052-53 (W.D. Wisc. 1999), and *In re Mastercard Int'l, Inc.*, 132 F. Supp. 2d 468, 487 (E.D. La. 2001) in support of this position. The Court is not persuaded. As an initial matter, *Jubelirer* and *Mastercard* were the product of concerns about unbounded RICO liability based on the "many million combinations of merchant, MasterCard and lender." *Jubelirer*, 68 F. Supp. 2d at 1053. Nothing in this case suggests a similar issue here. Moreover, the persuasive value of *Jubelirer* and *Mastercard*, which turned on the plaintiffs' failure to allege hierarchical or consensual decision making, is unclear in light of *Boyle*, which rejected a rigid definition of association-in-fact enterprises. *See Boyle*, 556 U.S. at 948.[13] As a result, the Court will not dismiss the RICO claim on this basis.

The Defendants next challenge the RICO claim on the basis the Amended Complaint fails to adequately allege "racketeering activity," as required by 18 U.S.C. § 1962(c). The definition of "racketeering activity" includes wire fraud in violation of 18 U.S.C. § 1343. 18 U.S.C. § 1961(1). "Mail or wire fraud consists of (1) a scheme to defraud, (2) use of the mail or interstate wires to

[13] More specifically, the Supreme Court noted:

> As we said in Turkette, an association-in-fact enterprise is simply a continuing unit that functions with a common purpose. Such a group need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules and regulations, disciplinary procedures, or induction or initiation ceremonies. While the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence. Nor is the statute limited to groups whose crimes are sophisticated, diverse, complex, or unique; for example, a group that does nothing but engage in extortion through old-fashioned, unsophisticated, and brutal means may fall squarely within the statute's reach.

Boyle, 556 U.S. at 948.

further that scheme, and (3) fraudulent intent." *Bonavitacola Elec. Contractor, Inc. v. Boro Developers, Inc.*, 87 F. App'x 227, 231 (3d Cir. 2003) (citing *United States v. Pharis,* 298 F.3d 228, 233 (3d Cir. 2002)).[14]

At its core, the Amended Complaint alleges the Defendants engaged in a scheme to defraud by intentionally misrepresenting the enforceability of the Factoring Agreement, when, in fact, the Factoring Agreement was a usurious, and thus unenforceable, loan. As evidence, Plaintiffs allege the existence of (but have not actually filed with the Court) two email exchanges between Plaintiffs, PTF, and CBSG, in January 2017, in which Defendants fraudulently (1) claimed the Agreement would help move Fleetwood Services away from cash advances and save money, and (2) the Agreement was legally enforceable. In further support of its claim, Plaintiffs allege Defendants' use of the interstate wires to electronically debit its bank account "further created the impression" the Factoring Agreement was enforceable, and once Fleetwood Services experienced issues making payments, Defendants used emails and other wire communications to bolster this impression.

The Defendants claim the allegations supporting Plaintiffs' wire fraud theory are insufficient to withstand scrutiny under Federal Rule of Civil Procedure 9(b), which requires a party to "state with particularity the circumstances constituting fraud," and applies to RICO claims alleging wire fraud. *Schwartz*, 970 F. Supp. at 406. The purpose of this heightened burden is to "place the defendants on notice of the precise misconduct with which they are charged, and to safeguard defendants from spurious charges of immoral and fraudulent behavior." *Id.* (quoting

[14] "The mail fraud and the wire fraud statute are 'in pari materia and are, therefore, to be given similar constructions." *United States v. Fumo*, 628 F. Supp. 2d 573, (E.D. Pa. 2007) (quoting *United States v. Tarnopol*, 561 F.2d 466, 475 (3d Cir. 1977), *abrogated on other grounds by Griffin v. United States*, 502 U.S. 46 (1991)). Thus, cases construing the mail fraud statute are equally applicable to the wire fraud statute. *Id.*

Seville Indust. Machinery Corp. v. Southmost Machinery Corp., 742 F.2d 786, 791 (3d Cir. 1984)). Allegations of a misrepresentation's date, place, or time are sufficient, but not necessary to satisfy Rule 9(b); a plaintiff is also "free to use alternative means of injecting precision and some measure of substantiation into their allegations of fraud." *Seville*, 742 F.2d at 791. Nevertheless, a plaintiff "must allege who made a misrepresentation to whom and the general content of the misrepresentation." *Lum v. Bank of Am.*, 361 F.3d 217, 224 (3d Cir. 2004), *abrogated in part on different grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Conditions of a person's mind, including knowledge and intent, "may be alleged generally." Fed. R. Civ. P. 9(b); *see also Marangos v. Swett*, 341 F. App'x 752, 757 (3d Cir. 2009) ("Rule 9(b) requires particularity when pleading fraud, but it allows factual matter concerning malice, intent, and knowledge to be alleged generally under the 'less—than—rigid—though still operative—strictures of Rule 8.'" (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009))).

Defendants argue the Amended Complaint must be dismissed because it fails to "specify the identity of any person making any purported misrepresentation; the time, place[,] and content of the alleged misrepresentation; and the method by which the misrepresentation was communicated and to whom." CBSG Mot. to Dismiss 14. The Court disagrees. The Court is satisfied Plaintiffs have alleged "who made a misrepresentation to whom and the general content of that misrepresentation," *Lum*, 361 F.3d at 224, and that the Amended Complaint suffices to put Defendants on the notice of the "precise misconduct with which they are charged," *Seville*, 742 F.2d at 791. As recounted above, the Amended Complaint alleges (1) a scheme to defraud borrowers and their guarantors by luring them into credit arrangements with illegal interest rates, despite Defendants' knowledge of the illegality of those rates, (2) the use of the wires (i.e., January, 2017, emails and ACH debits between Defendants and Fleetwood Services furthering the false

impression of the enforceability of the unenforceable agreements) to further the scheme, and (3) Defendants engaged in this scheme with the intent to defraud (which may be averred generally). As a result, the Court will deny Defendants' motion to dismiss on this ground.

Even if the Amended Complaint failed to properly allege wire fraud, the Court would not grant Defendants' motion to dismiss on the grounds Plaintiffs failed to establish a RICO violation. An enterprise violates RICO not only by conducting its affairs through a "pattern of racketeering activity," but also by engaging in the "collection of unlawful debt." 18 U.S.C. § 1962(c). An "unlawful debt" is defined as a debt "(A) incurred or contracted . . . which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) . . . which was incurred in connection with . . . the business of lending money . . . at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate." 18 U.S.C. § 1961(6). Defendants do not challenge Plaintiffs' allegation the payments Fleetwood Services made amounted to "collection of unlawful debt" and the Amended Complaint sufficiently alleges a RICO violation based on this theory.

The Defendants also move to dismiss on the grounds Plaintiffs lack standing to prosecute their RICO claim. As noted above, RICO standing "requires a plaintiff to show (1) that he was injured (2) by reason of a violation of § 1962." *Anderson*, 396 F.3d at 269. The "injury" element "can be satisfied by allegations and proof of actual monetary loss, i.e., an out-of-pocket loss." *Maio v. Aetna, Inc.*, 221 F.3d 472, 483 (3d Cir. 2000). Three factors guide the assessment of whether an alleged RICO violation proximately caused the injury: "(1) the directness of the injury, (2) the difficulty of apportioning damages, and (3) whether there are direct victims of the alleged violation that could better vindicate the policies underlying RICO." *Knopick v. UBS Fin. Servs., Inc.*, 121

F. Supp. 3d 444, 460 (E.D. Pa. 2015) (citing *Holmes v. Sec. Inv'r Prot.*, 503 U.S. 258, 269-70 (1992)).

Defendants offer little argument in support of their position. They claim the Amended Complaint "fail[s] to state what damages [Plaintiffs have] actually suffered as a result of Defendants' actions." CBSG Mot. to Dismiss 15; *see also* PTF Mot. to Dismiss 8 ("Plaintiffs have not shown any damages caused by Defendants' actions."). The Court disagrees. As Plaintiffs point out, Plaintiffs allege they have been damaged in the amount of the usurious interest payments and lost profits. Am. Compl. ¶ 121. Both categories of damages are compensable RICO injuries. *See Maio*, 221 F.3d 472; *see also Frankford Trust Co. v. Advest, Inc.*, 943 F. Supp. 531, 533-34 (E.D. Pa. 1996) ("The vast majority of cases that have addressed this issue . . . have ruled that lost profits, or expectancy damages are recoverable under RICO, subject to proof of proximate causation and that the damages are not speculative."). As a result, the Court finds Plaintiffs have alleged a cognizable loss.

The Court also finds Plaintiffs' alleged damages—the usurious payments and lost profits—were proximately caused by Defendants' RICO violations—Defendants' pattern of racketeering activity *and* collection of unlawful debts. Defendants did not make any argument as to how or why the factors discussed in *Knopick* and *Holmes* weigh against a finding of proximate cause. Accordingly, the Court need not analyze them in any great depth, other than to say the usurious payments and lost profits appear to stem directly from Defendants' alleged violations of both aspects of § 1962(c), the Court perceives no potential difficulty apportioning damages (at least at this stage), and there does not appear to be a more directly injured party. *Knopick*, 121 F. Supp. 3d at 460. As a result, the Court finds the Amended Complaint alleges sufficient proximate cause.

The Amended Complaint sufficiently alleges an association-in-fact enterprise, RICO violations, and damages sufficient to establish Plaintiffs' standing to bring their claim. The Court will, therefore, deny Defendants' motions to dismiss as they pertain to Plaintiffs' RICO claim.

Having addressed the sufficiency of Plaintiffs' RICO claim, the Court turns to the claims for specific performance (Count V) and negligent misrepresentation (Count VII). CBSG moves to dismiss Count V of the Amended Complaint, which is entitled "Contract," and seeks recovery based on Paragraph 1.10 of the Factoring Agreement. The Court will dismiss Count V, but not for the reasons advanced by CBSG. Count V is properly construed as a claim for specific performance of Paragraph 1.10. However, Texas law [15] does not recognize a cause of action for specific performance independent of a claim for breach of the underlying contract, and Plaintiffs have not alleged CBSG breached Paragraph 1.10 by retaining the difference between what it was paid in interest and the legal maximum rate of interest after a court characterized the Factoring Agreement as a loan. *Stafford v. S. Vanity Magazine, Inc.*, 231 S.W.3d 530, 535 (Tex. App. 2007) ("Specific performance is an equitable remedy that may be awarded upon a showing of breach of contract."). Thus, this stand-alone claim for specific performance shall be dismissed without prejudice to reassertion as a measure of damages.

Finally, Defendants' motions challenge Plaintiffs' claim for negligent misrepresentation (Count VII), arguing that the Amended Complaint is too vague. CBSG offers no legal citation in support of its argument, and PTF only gestures towards Rule 9(b) without explaining how or why

[15] The Court applies Texas law to this claim because it is tied directly to the Factoring Agreement, which the Court found is governed by the law of Texas, and because the law of Texas would apply in the absence of the transfer from the Northern District of Texas to this Court. *See Van Dusen v. Barrack*, 376 U.S. 612, 639 (1964) ("[W]here the defendants seek transfer, the transferee district court must be obligated to apply the state law that would have been applied if there had been no change in venue. A change of venue under § 1404(a) generally should be, with respect to state law, but a change in courtrooms.").

that rule would apply. *See* CBSG Mot. to Dismiss 15; PTF Mot. to Dismiss 8. The Court will not dismiss this aspect of the Amended Complaint. Although Texas law appears to govern the substantive aspects of the claim, *Van Dusen*, 376 U.S. at 639, it is not clear—and Defendants have not explained—whether courts in the Fifth Circuit apply Rule 9(b)'s specific pleading requirements to negligent misrepresentation claims arising under Texas law. *Compare Benchmark Electronics, Inc. v. J.M. Huber Corp.*, 343 F.3d 719, 724 (5th Cir. 2003) (noting "[a]lthough Rule 9(b) by its terms does not apply to negligent misrepresentation claims, this court has applied the heightened pleading requirements when the parties have not urged a separate focus on the negligent misrepresentation claims"), *with Am. Realty Trust, Inc. v. Hamilton Lane Advisors, Inc.*, 115 F. App'x 662, 668 (5th Cir. 2004) ("Rule 9(b)'s stringent pleading requirements should not be extended to causes of action not enumerated therein. Accordingly, plaintiffs' negligent misrepresentation claims are only subject to the liberal pleading requirements of Rule 8(a)."). In light of Defendants' failure to explain why the allegations are too vague or whether Rule 9(b) applies to this claim—and the Court's conclusion that the RICO claim which also references Defendants' alleged misrepresentations is sufficient to go forward—the Court will deny the motions to dismiss.

CONCLUSION

In light of the foregoing, the Court granted CBSG's motion to dismiss as it pertains to Count V, and denied it in all other respects, and denied PTF's motion to dismiss in its entirety.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, C.J.

From: Joe Mack <joe@parfunding.com>
Sent: Thu, 31 Oct 2019 11:28:59 -0400
Subject: we need to go after this Heskin.. i hired you to be a bulldog.. please
To: "Berman, Brett" <BBerman@foxrothschild.com>

Joseph LaForte
PAR FUNDING
Client Services Manager
Main Office : 215-922-2636
Direct line : 215-279-9011 Ext. 105
Email: joe@parfunding.com

https://www.marketwatch.com/press-release/joseph-laforte-at-par-funding-announces-short-term-funding-deal-that-saves-cd-coal-company-from-bankruptcy-2019-01-17

https://www.prnewswire.com/news-releases/joseph-laforte---par-funding-helps-keep-the-dream-alive-for-commercial-developers-and-home-flippers-300820441.html

https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2019/09/17/building-to-sell-what-sales-directors-should-do-to-position-a-company-for-ma/#283cbe7a52dc

https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2019/08/23/10-tips-for-knowing-your-limits-as-a-small-business-owner-letting-go-can-help-you-grow/#f7ce976bca79

From: Joe Mack <joe@parfunding.com>
Sent: Wed, 8 Jul 2020 11:44:13 -0400
Subject: introduction
To: NORMAN VALZ <NVALZ@msn.com>, Abe@evelopseo.com

Norm I would like to introduce you to my dear friend Abe. Abe is helping me on the matters we are currently discussing. He is looking for certain information for a project I have him working on for me. Can you please provide him with certain docket info on cases Heskin and Jason Proper are on that would cause him embarrassment if his clients were to find these cases?.

Joseph LaForte
PAR FUNDING
Client Services Manager
Main Office : 215-922-2636
Direct line : 215-279-9011 Ext. 105
Email: joe@parfunding.com

https://www.marketwatch.com/press-release/joseph-laforte-at-par-funding-announces-short-term-funding-deal-that-saves-cd-coal-company-from-bankruptcy-2019-01-17

https://www.prnewswire.com/news-releases/joseph-laforte---par-funding-helps-keep-the-dream-alive-for-commercial-developers-and-home-flippers-300820441.html

https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2019/09/17/building-to-sell-what-sales-directors-should-do-to-position-a-company-for-ma/#283cbe7a52dc

https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2019/08/23/10-tips-for-knowing-your-limits-as-a-small-business-owner-letting-go-can-help-you-grow/#f7ce976bca79

From: Joe Mack <joe@parfunding.com>
Sent: Fri, 27 Mar 2020 22:56:39 -0400
Subject: Heskin
To: Brett Berman <BBerman@foxrothschild.com>, "anthonyr@parfunding com" <anthonyr@parfunding.com>, Joe Cole <joecole@parfunding.com>

We won't ever settle a deal he is going to earn on. We can take away deals from him, but the minute he gets involved there are no deals.

Sent from my iPhone

From: Joe Mack <joe@parfunding.com>
Sent: Wed, 5 Feb 2020 17:29:36 -0500
Subject: RE: Very Recent Heskins Losses
To: Pete Mulcahy <pmulcahy@parfunding.com>, "Berman, Brett" <BBerman@foxrothschild.com>
Cc: Joe Cole <joecole@parfunding.com>, "John P. Hartley" <jhartley@parfunding.com>

More of a reason we cant lose to this guy.. it will hurt our reputations and have repercussions for our industry.. He needs to be rendered useless.. and a menace to the court..

From: Pete Mulcahy <pmulcahy@parfunding.com>
Sent: Wednesday, February 5, 2020 5:26 PM
To: Berman, Brett <BBerman@foxrothschild.com>; Joe Mack <joe@parfunding.com>
Cc: Joe Cole <joecole@parfunding.com>; John P. Hartley <jhartley@parfunding.com>
Subject: FW: Very Recent Heskins Losses

Shane had a tough week last week. He lost three Appellate decisions in NY against Funding companies and his challenges to Confessed Judgments.

QFC v. Iron Centurian – The trial court erred in vacating a judgment by confession on a theory of usury. Trial court decision was reversed unanimously. http://www.nycourts.gov/courts/AD2/Handdowns/2020/Decisions/D59993.pdf

QFC was represented on appeal by Stein Adler Dabah & Zelkowitz, LLP. Iron Centurian was represented by Amos Weinberg.

Merchant Funding Services, LLC v. Volunteer Pharmacy – The trial court erred in vacating a judgment by confession on a theory of usury. Trial court decision was reversed unanimously. http://www.nycourts.gov/courts/AD2/Handdowns/2020/Decisions/D59997.pdf. Merchant Funding Services was represented on appeal by Proskauer Rose. Volunteer Pharmacy was represented by Amos Weinberg and Shane Heskin.

Merchant Funding Services, LLC v. Micromanos Corp. – The trial court correctly held that the judgment by confession could not be challenged on a mere post-judgment motion where Defendants argued the agreement was a usurious loan. Trial court decision affirmed unanimously. http://www.nycourts.gov/courts/AD2/Handdowns/2020/Decisions/D59990.pdf. Merchant Funding Services, LLC was represented on appeal by Stein Adler Dabah & Zelkowitz, LLP. Micromanos was represented by Amos Weinberg and Shane Heskin.

Peter J. Mulcahy
General Counsel

Par Funding
20 N. 3rd Street
Philadelphia, PA 19106
215-922-2636 Ext 1019
Email: pmulcahy@parfunding.com

From: Joe Mack <joe@parfunding.com>
Sent: Sat, 24 Feb 2018 12:21:49 -0500
Subject: Re: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]
To: NORMAN VALZ <nvalz@msn.com>

U have to get him. U cant let this guy win. Question. Did he include fast advance in this

Sent from my iPhone

On Feb 24, 2018, at 11:30 AM, NORMAN VALZ <nvalz@msn.com> wrote:

> They did get the letter!! They will try to make a deal out of Gino visiting. I think the judge will make them put up a bond for there to be a restraint on our contact with AR.
> I may come in tomorrow to finish a motion to dismiss the case. I hate Heskin so much.

Norm

Sent from my iPhone

Begin forwarded message:

From: "Heskin, Shane" <heskins@whiteandwilliams.com>
Date: February 23, 2018 at 8:13:15 PM EST
To: NORMAN VALZ <nvalz@msn.com>
Cc: "Wells, Stuart" <Wellss@whiteandwilliams.com>, "McDaniels, Luke" <McDanielsl@whiteandwilliams.com>
Subject: RE: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]

Norm,

Let me know when you can have a call with chambers on Monday. We are going to ask for an evidentiary hearing as soon as Judge Jones has availability to seek a temporary injunction against your client. Despite your representations below, your client paid another uninvited visit to my client's place of business.

Your client has also engaged in a smear campaign that violated the reasonable collection standards of the UCC. They also waived the attorney-client privilege by sending around an apparent opinion letter from you that contains factual misrepresentations about our firm.

Please provide a time for a joint call to chambers.

Regards,
-Shane

From: NORMAN VALZ <nvalz@msn.com>
Date: Wednesday, Feb 21, 2018, 7:10 PM
To: Heskin, Shane <heskins@whiteandwilliams.com>
Cc: Wells, Stuart <Wellss@whiteandwilliams.com>
Subject: Re: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]

My client will agree to no direct contact with your client.

Get Outlook for iOS

From: Heskin, Shane <heskins@whiteandwilliams.com>
Sent: Wednesday, February 21, 2018 7:04:03 PM
To: NORMAN VALZ
Cc: Wells, Stuart
Subject: RE: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]

> Norm,
>
> Will your client agree to stop contacting my client and its employees or do we need to get in front of the judge? They are genuinely in fear for their physical safety and do not want any further contact from Gino, Joe or any other CBSG employee.
>
> Please confirm ASAP or we will be contacting the court for an emergency hearing.
>
> -Shane
>
> ---
>
> **From:** Heskin, Shane
> **Sent:** Wednesday, February 21, 2018 4:03 PM
> **To:** 'NORMAN VALZ'
> **Cc:** Wells, Stuart
> **Subject:** RE: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]
>
> > I am only asking your client to stop it's ILLEGAL collection tactics. I am not required to post a bond for that relief. Please confirm by 5 pm or you can explain to the court why we need to post a bond to have your client stop its illegal conduct.

From: NORMAN VALZ [mailto:nvalz@msn.com]
Sent: Wednesday, February 21, 2018 3:57 PM
To: Heskin, Shane
Cc: Wells, Stuart
Subject: Re: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

You are denying my clients access to purchased receivables.
There needs to be a bond

Get Outlook for iOS

From: Heskin, Shane <heskins@whiteandwilliams.com>
Sent: Wednesday, February 21, 2018 3:55:24 PM
To: NORMAN VALZ
Cc: Wells, Stuart
Subject: RE: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]

Norm,

There is no judgment so there is no need for a bond. If your client believes there has been a breach, it is free to pursue its rights through **proper legal** means. We are only asking the court for a TRO concerning the improper means that have been used to date. You need to read the complaint. This is the worst conduct I have ever seen.

Please confirm that your client will cease all contact or we will need to call the court.

From: NORMAN VALZ [mailto:NVALZ@msn.com]
Sent: Wednesday, February 21, 2018 3:50 PM
To: Heskin, Shane
Cc: Wells, Stuart
Subject: Re: Radiant Request for Restraining Order [WW-PHLDMS1.FID3867867]

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

What type of bond will your client agree that out up?

Sent from my iPhone
W
On Feb 21, 2018, at 3:39 PM, Heskin, Shane <heskins@whiteandwilliams.com> wrote:

Norm,

Attached is a complaint that was filed in the SDNY on Monday concerning Broadway/CBSG. A similar complaint is also being filed in the EDPA today. The factual allegations are of the most serious nature, so unless we have assurances from you that your client will immediately cease all collection efforts and stop all contact with the client, we will need to seek an immediate TRO from the SDNY.

My clients are in genuine fear for their physical safety. I am hoping you and I can work this out amicably without this escalating out of control.

Please advise by 5 pm today if your client will agree to cease and desist. Otherwise, we will contact Judge Kaplan for an emergency hearing.

Please also let me know if you will accept service on behalf of client or we will immediately effectuate service.

Regards,
-Shane
<127121894921.pdf>

From: Joe Mack <joe@parfunding.com>
Sent: Wed, 8 Jul 2020 10:24:51 -0400
Subject: FW: Ideas on Heskin Story
To: Abe@evelopseo.com
Mass Retailer Sues Digital Lender Over 32M Arbitration Win.pdf
Heskin Loss.pdf

From: NORMAN VALZ <NVALZ@msn.com>
Sent: Wednesday, July 8, 2020 10:10 AM
To: Joe Mack <joe@parfunding.com>
Subject: Ideas on Heskin Story

Hi Joe,

This could be an interesting take on Shane. Check out the NBC link below. After that story, in May, Shane lost the case trying to overturn the arbitration award. Reading in between the lines of the story, these people owed Kabbage millions more than they ever paid back. It would be interesting to see what they think of Heskin now.

https://www.nbcnews.com/business/economy/ftc-official-legal-loan-sharks-may-be-exploiting-coronavirus-squeeze-n1173346

Norm

From: Joe Mack <joe@parfunding.com>
Sent: Tuesday, July 7, 2020 6:53 PM
To: NORMAN VALZ <NVALZ@msn.com>
Subject: RE: Recent losses by Shane Heskin

Like it

From: NORMAN VALZ <NVALZ@msn.com>
Sent: Tuesday, July 7, 2020 5:54 PM
To: Joe Mack <joe@parfunding.com>
Subject: Re: Recent losses by Shane Heskin

We do have the facts - but to get it newsworthy, if would really help to get a Mom and Pop business owner that paid Heskin a fee and ended up sucking wind. I was googling up Shane Heskin and I was amazed at how much publicity that pointless imbecile has been able to get. He is better at pumping out press releases than he is court pleadings.

We could juice it up also, but compiling all of the derogatory things Judges say about him in their Court Orders. Basically some judges have stated that he can't use news articles as evidence. Also, he knowingly keeps making the same RICO claims and usury claims that he

has never won. Maybe show that he uses the same Motions over and over again.

I absolutely agree with you. He is a pointless pest that costs you and other MCA companies a lot of money.

Norm

From: Joe Mack <joe@parfunding.com>
Sent: Tuesday, July 7, 2020 3:44 PM
To: NORMAN VALZ <NVALZ@msn.com>
Subject: RE: Recent losses by Shane Heskin

Well we don't necessarily need quotes. We can publish the facts. I can get it in print easily.

From: NORMAN VALZ <NVALZ@msn.com>
Sent: Tuesday, July 7, 2020 3:43 PM
To: Joe Mack <joe@parfunding.com>
Subject: Re: Recent losses by Shane Heskin

I think you are making the right move in responding with Brett Berman. I am impressed with the guy. I think he will make short work of Shane (who isn't a smart or talented attorney). This has to start catching up with Shane. He isn't making any money for his clients and I don't see him winning anything.

One idea I have is figuring out some way to publicize Shane's inability to really achieve anything for his clients. The only thing Shane does seem to have a talent for is publicity. Maybe find some of his ex clients who are willing to speak up about Shane's promises and fees followed up with no victory. Might be worth exploring. McNider might hate him by now. You'd have to be really careful in how these ex clients are approached.

Norm

Get Outlook for iOS

From: Joe Mack <joe@parfunding.com>
Sent: Tuesday, July 7, 2020 3:32:44 PM
To: NORMAN VALZ <NVALZ@msn.com>
Subject: RE: Recent losses by Shane Heskin

Cant stand this company. They are targeting me. What are your thoughts on more offense I can pursue. I am always on defense

---

From: NORMAN VALZ <NVALZ@msn.com>
Sent: Tuesday, July 7, 2020 3:11 PM
To: Joe Mack <joe@parfunding.com>

Subject: Re: Recent losses by Shane Heskin

White and Williams is one of the worst managed firms in Philadelphia. Look at the fraud perpetrated by one of their "top" attorneys on the firm's own clients (he is now in Federal prison). No firm with any management would let something like this happen.

https://www.bizjournals.com/philadelphia/news/2019/10/01/ex-white-williams-partner-charged-with-3-4m-fraud.html

Looking forward to that Post Covid cigar.

Norm

From: Joe Mack <joe@parfunding.com>
Sent: Tuesday, July 7, 2020 3:05 PM
To: NORMAN VALZ <nvalz@msn.com>
Subject: RE: Recent losses by Shane Heskin

This clown is all over the place. I don't get how White and Williams keeps this funded.. call you after covid to come hang in the lounge if u have some time.. Hope you are well and thanks for all the info.. Helpful

From: NORMAN VALZ <nvalz@msn.com>
Sent: Tuesday, July 7, 2020 3:01 PM
To: Joe Macki <joe@parfunding.com>
Subject: Recent losses by Shane Heskin

Hey Joe,

Obviously, not much has happened in Court anywhere lately, but Shane did have one big recent loss (first week of May) in Federal Court in the District of Massachusetts. NRO Boston vs. Kabbage (19-CV-11901) He lost a bid to overturn a losing federal arbitration and his clients ended up with over a $3 million judgment (attached).

It seems like CBSG has been his primary direct target with the cases in the Eastern District Brett is handling. Overall, the number of MCA cases Shane is handling are down significantly. It also appears as though he is working with Amos Weinberg on more of the cases outstanding.

Yellowstone has been active in taking Shane all the way to the Court of Appeals in New York quite a few times. That has to keep the MCA business unprofitable for White and Williams.

Below are a few cases he lost with Amos Weinberg more than six months ago.

Later today, I will send you some info on the Cannabis deal I am working on in California. It may be of interest to you.

Let's get together for a cigar soon.

Take care,

Norm (6 month to a year old cases below).

More that 6 months ago

QFC v. Iron Centurian – The trial court erred in vacating a judgment by confession on a theory of usury. Trial court decision was reversed unanimously. http://www.nycourts.gov/courts/AD2/Handdowns/2020/Decisions/D59993.pdf

QFC was represented on appeal by Stein Adler Dabah & Zelkowitz, LLP. Iron Centurian was represented by Amos Weinberg.

Merchant Funding Services, LLC v. Volunteer Pharmacy – The trial court erred in vacating a judgment by confession on a theory of usury. Trial court decision was reversed unanimously. http://www.nycourts.gov/courts/AD2/Handdowns/2020/Decisions/D59997.pdf. Merchant Funding Services was represented on appeal by Proskauer Rose. Volunteer Pharmacy was represented by Amos Weinberg and Shane Heskin.

Merchant Funding Services, LLC v. Micromanos Corp. – The trial court correctly held that the judgment by confession could not be challenged on a mere post-judgment motion where Defendants argued the agreement was a usurious loan. Trial court decision affirmed unanimously. http://www.nycourts.gov/courts/AD2/Handdowns/2020/Decisions/D59990.pdf. Merchant Funding Services, LLC was represented on appeal by Stein Adler Dabah & Zelkowitz, LLP. Micromanos was represented by Amos Weinberg and Shane Heskin

From: Joe Mack <joe@parfunding.com>
Sent: Tue, 7 Jul 2020 15:47:00 -0400
Subject: FW: Recent losses by Shane Heskin
To: Abe@evelopseo.com

Can we get this done below. Publish this fucks losses and the fact that he is hurting the businesses he represents by losing and empty promises. I would send pay a lot for a damaging article on this guy

---

From: NORMAN VALZ <NVALZ@msn.com>
Sent: Tuesday, July 7, 2020 3:43 PM
To: Joe Mack <joe@parfunding.com>
Subject: Re: Recent losses by Shane Heskin

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SECURITIES AND EXCHANGE COMMISSION

v.

COMPLETE BUSINESS SOLUTIONS GROUP, INC. D/B/A/ PAR FUNDING,
FULL SPECTRUM PROCESSING, INC., ABETTERFINANCIALPLAN.COM LLC D/B/A/ A BETTER FINANCIAL PLAN,
ABFP MANAGEMENT COMPANY, LLC, F/K/A/ PILLAR LIFE SETTLEMENT MANAGEMENT COMPANY, LLC,
ABFP INCOME FUND, LLC,
ABFP INCOME FUND 2, L.P.,
UNITED FIDELIS GROUP CORP,
FIDELIS FINANCIAL PLANNING, LLC,
RETIREMENT EVOLUTION GROUP, LLC,
RETIREMENT EVOLUTION INCOME FUND, LLC, F/K/A RE INCOME FUND, LLC,
RE INCOME FUND 2, LLC,
LISA MCELHONE,
JOSEPH COLE BARLETA, A/K/A/ JOE COLE,
JOSEPH W. LAFORTE, A/K/A JOE MACK, A/K/A/ JOE MACKI, A/K/A JOE MCELHONE,
PERRY S. ABBONIZIO,
DEAN J. VAGNOZZI,
MICHAEL C. FURMAN,
AND JOHN GISSAS,
DEFENDANTS,
AND
THE LME 2017 FAMILY TRUST, A/K/A LME 2017 FAMILY TRUST,
RELIEF DEFENDANT.

Preliminary Injunctive and Other Relief

Two Types of Claims:

(1) Unregistered Securities Offering
(2) Securities Fraud

The Court found that the S.E.C. established a *prima facie* case for all of its claims and granted emergency, temporary relief. D.E.42 (July 28 Order).

The Defendants cannot show cause why the Court should not enter preliminary relief against them.

Since the entry of the Court's Order, evidence has emerged that further strengthens the S.E.C.'s case.

The Defendants' conduct and arguments further demonstrate the need for the relief the S.E.C. seeks.

The Unregistered Securities Offering Claim

Registration Violations: The S.E.C. made a *prima facie* showing that the Defendants participated in the offer and sale of securities and no registration statement was in effect

The Defendants Admit

- They did not file registration statements
- Promissory notes and security agreements were offered and sold

But Argue

- These are not securities
- They were exempt from registration because there was no public offering

Fraud Violations: The S.E.C. made a *prima facie* showing that the Defendants made material misrepresentations and/or omissions, and engaged in a fraudulent scheme

The Defendants Argue

- They did disclose, they were in the dark, they lack scienter, and/or the information is not material, and the S.E.C. is not likely to prove otherwise

Who Is Behind Par Funding?

CERTIFICATION OF TRUST
THE LME 2017 FAMILY TRUST

The undersigned, being all of the currently serving Trustees of "THE LME 2017 FAMILY TRUST," dated March 20, 2017 (the "Trust"), being first duly sworn, depose and say that said trust provides in pertinent

11. The Trust has not been revoked, modified or amended in any manner that would cause the representations contained in this Certification of Trust to be incorrect.

EXHIBIT 187

Page 1

IN THE UNITED STATES DISTRICT COURT

Q. Okay. So the sole owner of CBSG is and always has been Lisa McElhone?

A. The family trust technically.

Q. She has a family trust?

A. Yes.

" dated
ertinent

and

PH W.

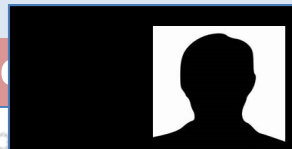
MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com

EXHIBIT 3

MAGNA LEGAL SERVICES

The Par Funding Founders

Joseph LaFort



Joe Mack, a/k/a
Joe Macki, a/k/a
Joseph McElhone

Lisa McElhone

PAUL J. FISHMAN
United States Attorney

Anthony Moscato
Assistant United States Attorney

CBSG COMPL

PA FUN

Section 371. If Mr
sentenced on this c

...between on or about the 19th day of March, 2004 and ... County of Nassau, State of New York, and elsewhere, the ...RTE, JAMES LAFORTE, JR., TINA LAFORTE, JAMES LA... TARA CAMINITI, JAIME LYNN GULI, FRANCIS AL... and others did violate Section 105.10 of the Penal Law of the State of New York, CONSPIRACY IN THE FOURTH DEGREE, a class E Felony, in that the defendants, with intent that conduct constituting class B and class C felonies be performed, the defendants agreed with one another to engage in or cause the performance of such conduct and committed various overt acts in furtherance of the conspiracy, to wit: the defendants and others, with intent that conduct constituting the crimes of Grand Larceny in the First Degree, a class B felony, Grand Larceny in the Second Degree, a class C felony and Money Laundering in the First Degree, a class B felony be performed, entered into an agreement with one another to engage in and cause the performance of conduct constituting those offenses by forming a corporation, LaMattina & Associates, Inc., which they caused to appear to be a law firm, and used as a means of obtaining wire transfers in excess of twelve million dollars from lending institutions, which were clients of LaMattina & Associates, Inc., into the LaMattina & Associates, Inc., Joseph LaMattina Settlement Trust Account, upon agreements that the funds would be disbursed to or on behalf of borrowers and the defendants then caused the funds to be transferred into other accounts under their control causing losses in excess of twelve million dollars to the lending institutions, and transferred the proceeds of those grand larcenies to related entities, commingled funds and laundered the proceeds of those grand larcenies through related entities to their own personal use.

The following overt acts, among others, were committed by the conspirators in furtherance of the conspiracy:

1. James LaForte had a conversation with Joseph LaMattina, an attorney, recruiting him for the use of his name.

2. Joseph W. LaForte, formed LaMattina & Associates, Inc. and became its first owner and President on March 19, 2004.

...l to be a true and copy of the original

...SERVICES...

...and ...s to ...Only

...TRUM ...SSING

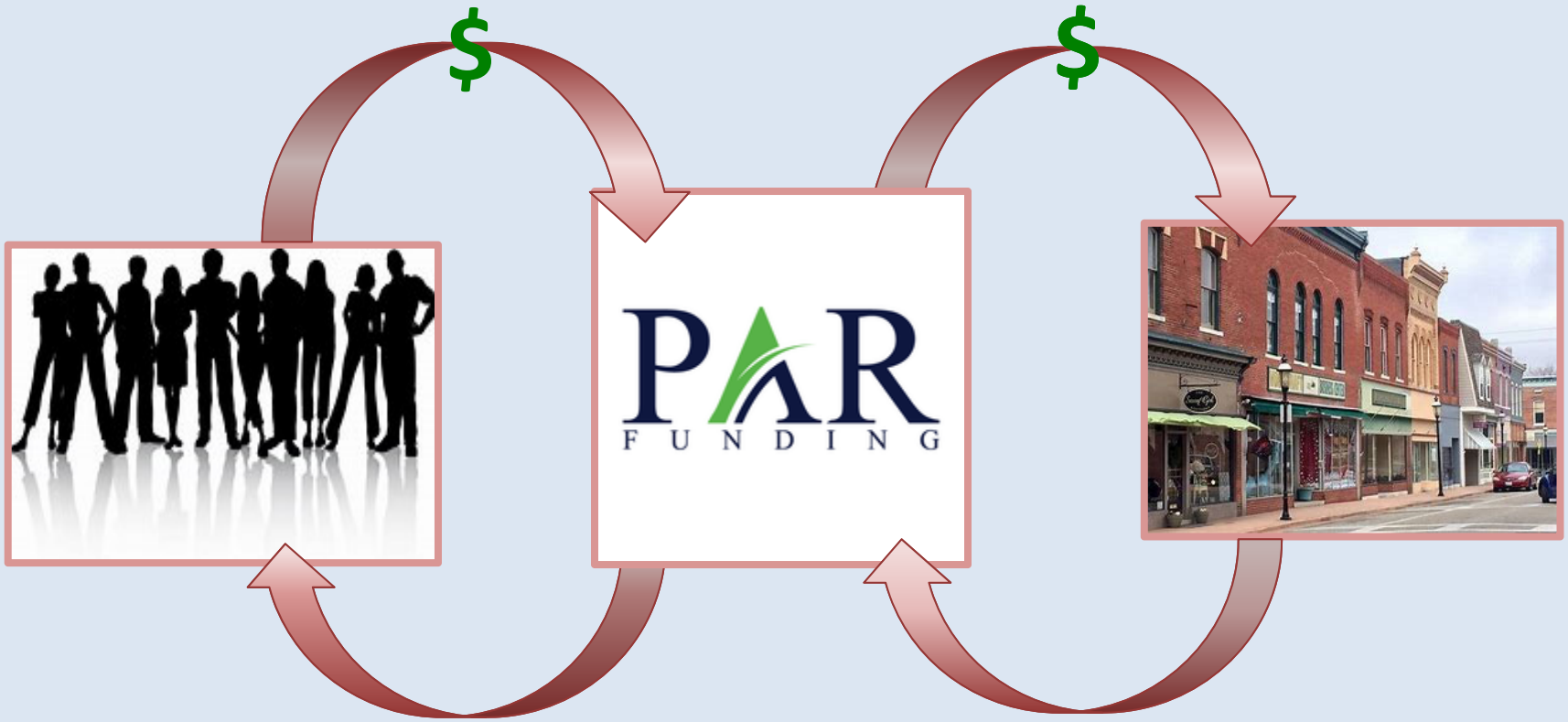
...ess ...ained ...Rules ...der ...ough ...d

...ase and Desist, Hearing ("Notice ...e (McElhone). ...as properly served the ...Pittsburgh, PA 15219. ...pired.

EXHIBIT 14

...Order to Cease and ...ly

Investor Money Fuels Par Funding



Ex.88 pg2

The source of funds for payment to these merchants has been the sale of non-negotiable, non-transferable term promissory notes issued by CBSG to individuals who met the definition of Accredited Investor in Rule 501 of SEC Regulation D. The source of funds for repayment of the

2015: Par Funding Is Issuing, Offering, and Selling Promissory Notes and Security Agreements

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THIS NOTE MAY NOT BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT PERTAINING TO THIS NOTE UNDER SUCH LAWS, OR IF SUCH REGISTRATION IS NOT REQUIRED TO EFFECT SUCH SALE OR OFFER.

NON-NEGOTIABLE TERM PROMISSORY NOTE

$120,000.00 Dated as of May 26, 2017

FOR VALUE RECEIVED, COMPLETE BUSINESS SOLUTIONS GROUP INC., a Delaware corporation ("Maker"), with an address of 141 N 2nd Street, Philadelphia, PA 19106, promises to pay, without rights of set-off, to the order of Jan Garber, AND NOMINEE OF ENTITY of their heirs, successors or assigns (hereinafter called "Payee") with an address [redacted], New Castle, DE 19720 or such other place as Payee may designate to Maker in writing the principal sum of One Hundred Twenty Thousand Dollars ($120,000.00) lawful money of the United States of America, together with interest on the outstanding balance thereof, as provided herein.

1. Interest shall accrue on the outstanding principal amount hereunder at the rate of 12% (monthly distribution payment $1,200.00). Accrued interest shall be paid in arrears on Mondays (or if such day is not a business day, on the immediately following business day) during the term of this Note until the principal amount of this Note and all accrued interest is paid in full, subject to acceleration and payment in full in accordance with Sections 6 and 7 below. All interest shall be calculated based upon the actual number of days elapsed.

2. REPAYMENT.

   (a) Commencing on June 26, 2017 and continuing on the 26th day of each month thereafter up to and including May 26, 2018;

   (b) The Principal Amount and any accrued interest shall be paid in full on or before May 26, 2018.

   (c) A MONTHLY DISTRIBUTION OF $1,200.00 MADE PAYABLE TO "Payee" Jan Garber and Nominee of Entity or their heirs, successors or assigns)

3. To secure the obligations of Maker under this Note, Maker has entered into a Security Agreement with Payee, dated as of the date hereof (the **"Security Agreement"**).

4. Each of the following shall constitute an **"Event of Default"** hereunder:

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (**"Security Agreement"**) is made as of May 26, 2017, by COMPLETE BUSINESS SOLUTIONS GROUP INC., a Delaware corporation (**"Debtor"**), with an address of 141 N 2nd Street, Philadelphia, PA 19106, and Jan Garber ("**Secured Party**") with an address of [redacted], New Castle, DE 19720 or such other place as Payee may designate to Maker in writing.

WHEREAS, in order to secure loans made by Secured Party to Debtor and to induce Secured Party to revise the terms of such loans, Debtor wishes to grant a security interest in substantially all of its assets, including, without limitation, its inventory, accounts receivable and general intangibles, to Secured Party, all as more fully set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. As used herein the following terms have the meanings indicated:

(a) The term **"Collateral"** means all tangible and intangible personal property of Debtor, wherever located and whether now owned or hereafter acquired, including but not limited to, all accounts, contracts rights, general intangibles, chattel paper, machinery, equipment, goods, inventory, fixtures, investment property, letter of credit rights, supporting obligations, books and records, deposit accounts, bank accounts, documents and instruments, together with all proceeds thereof. Any term used in the Pennsylvania Uniform Commercial Code (as amended from time to time, the "UCC") and not defined in this Security Agreement shall have the meaning given to the term in the UCC. In addition, the term "proceeds" shall have the meaning given to it in the UCC and shall additionally include but not be limited to, whatever is realized upon the use, sale, exchange, license, or other utilization of or any disposition of the Collateral, rights arising out of the Collateral and collections and distributions on the Collateral, whether cash or non-cash, and all proceeds of the foregoing.

(b) The term **"Obligations"** means all indebtedness, obligations and liabilities of any kind of Debtor to Secured Party now existing or hereafter arising, and whether direct or indirect, acquired outright, conditional or as a collateral security from another, absolute or contingent, joint or several, secured or unsecured, due or not due, arising before or after the filing of a petition by or against Debtor under the United States Bankruptcy Code or any applicable federal, state or foreign bankruptcy or other similar law, contractual or tortious, liquidated or unliquidated or arising by operation of law or otherwise, including without limitation all liabilities of Debtor to Secured Party under (i) the Credit Note dated as of the date hereof in the principal amount of $120,000.00 payable by Debtor in favor of Secured Party (the **"Existing Note"**), (ii) this Security Agreement and (iii) any future promissory note, loan agreement, security agreement, pledge agreement, guaranty or other agreement or instrument representing indebtedness or financial obligation of Debtor to Secured Party (collectively, **"Future Loan Documents"**).

EXHIBIT 89

From The Onset, LaForte Personally Solicited Investors

DECLARATION OF KAREN SMITH

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Karen Smith. I am over twenty-one years of age and have personal knowledge of the matters set forth herein. I am semi-retired and reside in Dallas, Texas.

2. I first heard of an investment opportunity with Complete Business Solutions ("CBSG") through a friend who referred me to Joe Macki ("Macki") CBSG's owner.

3. In late December 2015, I had a conference call with Macki and my friend so I could learn more about the CBSG investment opportunity. Although my friend was on the call, Macki is the one who pitched the investment and answered my questions.

4. During our call, Macki told me that he CBSG was his company. He explained that CBSG made short-term loans to small businesses.

5. According to Macki, to fund these loans, CBSG offered one-year investments that paid investors approximately 35% annual returns. Macki told me that I'd receive a monthly interest payment from CBSG.

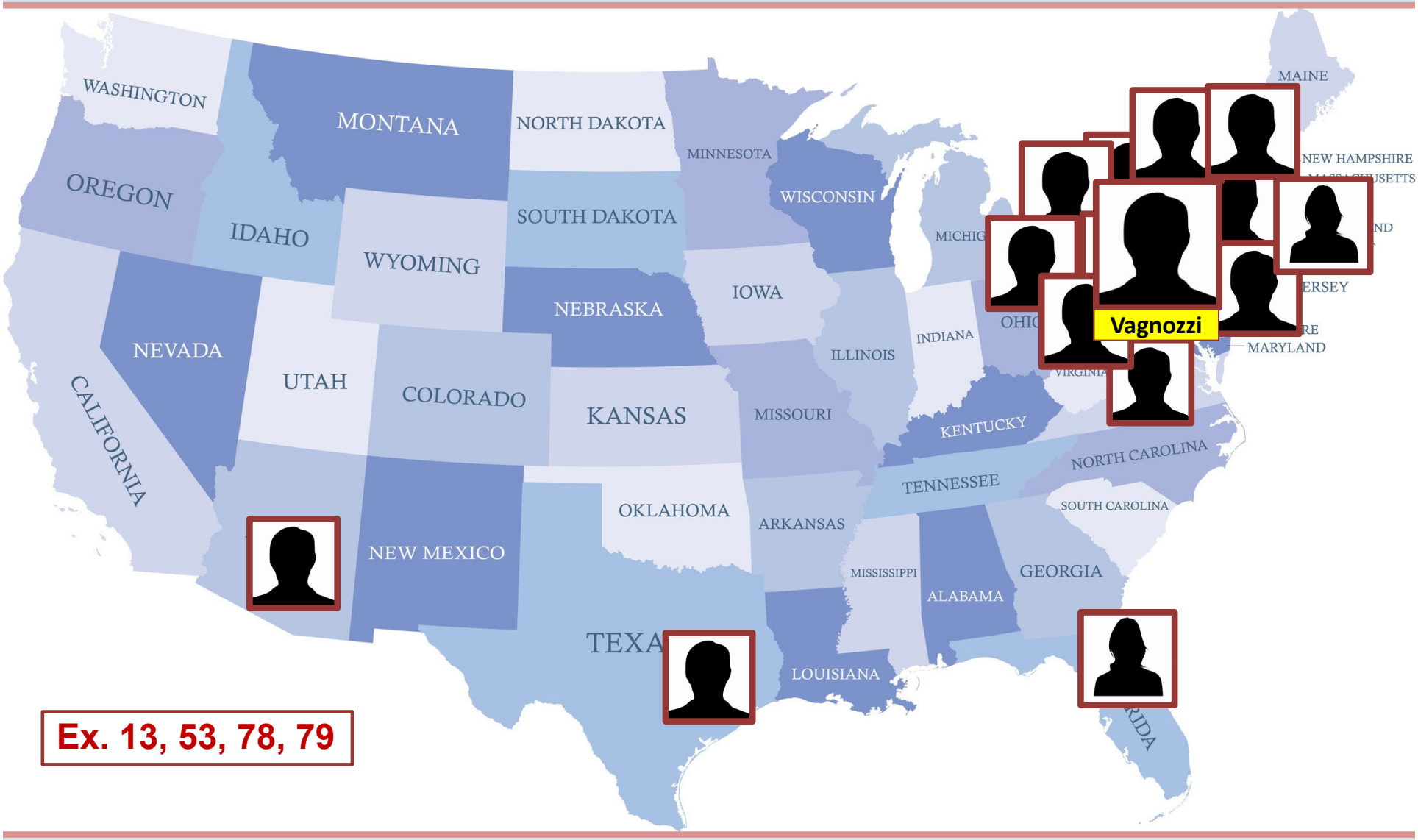
6. Macki touted CBSG's managerial expertise and careful underwriting process. He told me that CBSG vetted borrowers before issuing loans and that they were in constant, daily contact with borrowers to ensure payment.

7. Macki emphasized that CBSG was so entrenched in the borrowers' businesses that CBSG became like a partner of the borrower and knew everything that was going on with their business and financial accounts to help the small businesses succeed. Throughout our call, Macki exuded confidence and appeared very knowledgeable and successful.

EXHIBIT
207

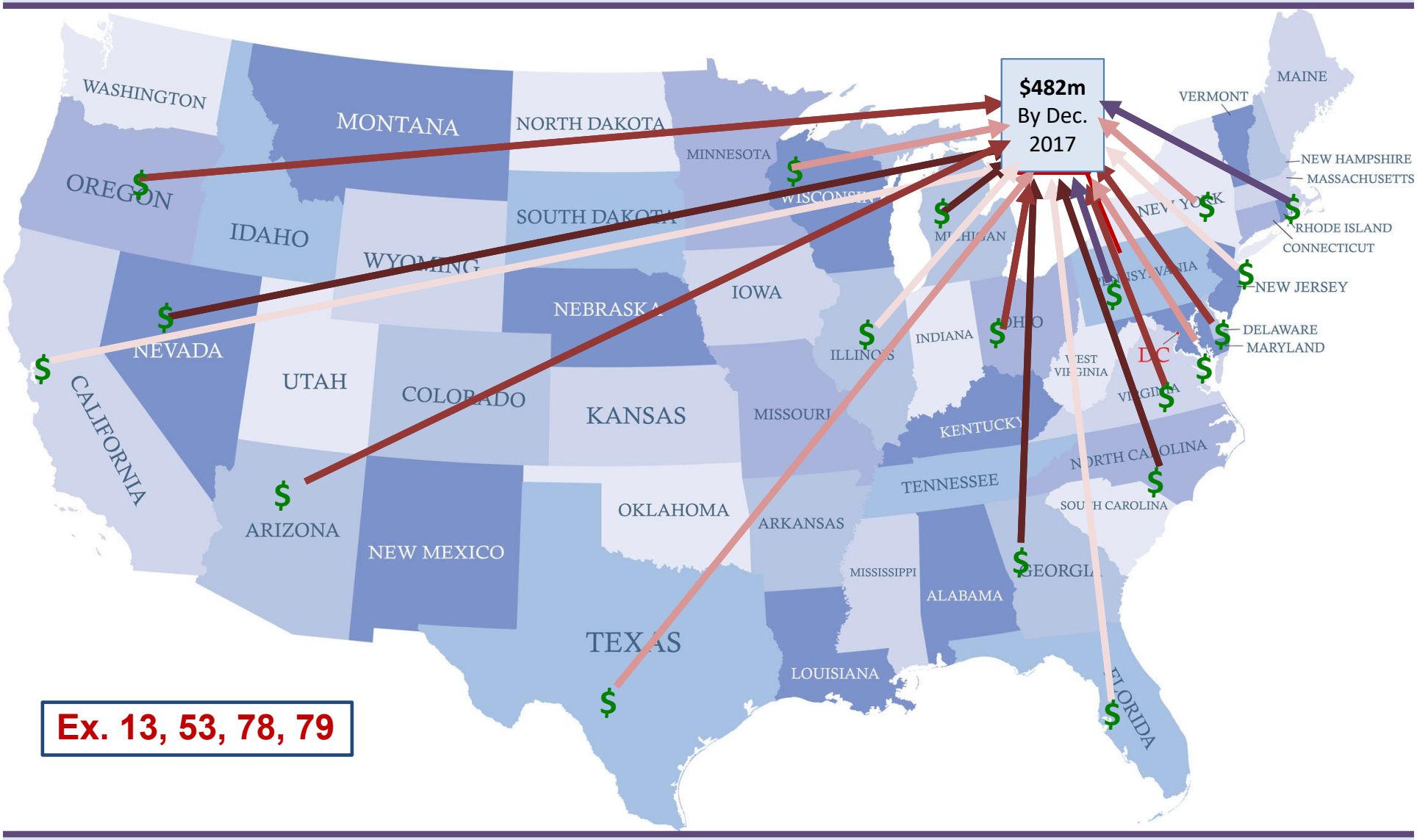
Ex. 18,

2015-2017: Network of Par Funding Sales Agents



Ex. 13, 53, 78, 79

Par Funding Agents Solicit Investors Coast to Coast



Ex. 13, 53, 78, 79

Par Funding Solicits Through Agents Until 2018

May 2016
Dean Vagnozzi and ABFP are soliciting investors
D.E. 154-2; Ex. 169, 170

DECLARATION OF JOSEPH BROCK

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Joseph Brock. I am over twenty-one years of age and have personal knowledge of the matters set forth herein. I work in consulting and reside in Richland, Michigan.

8. In September 2016, based on what Vagnozzi told me about the CBSG investment, including CBSG's managerial expertise, careful underwriting process, low default rate, and that my principal would be covered by insurance, I decided to invest $100,000 of my retirement savings. Attached as Exhibit B is a true and correct copy of my promissory note and security agreement with CBSG. The note was signed by Joseph Cole who worked for CBSG, but I do not recall if we met when I toured the office. I opened a self-directed Investment Retirement Account ("IRA") through Cama Plan.

November 2017
Vagnozzi again asks Par Funding to use investment funds rather than sales agents.
Par Funding again does not change. **Ex. 118**

2016
Vagnozzi asks Par Funding to use investment funds rather than sales agents.
Par Funding declines
Ex. 40 at 244:19-249:5

No later than September 2
Par Funding & Vagnozzi are soliciting retirement m
Ex. 204

...tments with Dean Vagnozzi ("ABFP.") In approximately ... new investment opportunity ...BSG") a company that was in ...at CBSG also did business as ...rm loans to small businesses. ...% annual returns that CBSG ...ertise and track record. He ... and fully vetted borrowers by ...ore issuing the loans to make ...iting process resulted in a very low default rate from borrowers. This was very important to me when deciding whether to invest because this minimized potential investment risk, thereby protecting my principal.

EXHIBIT 204

January 2018: Par Funding Learns It Is Under Investigation

January 3, 2018
Par Funding is still offering and selling Par Funding promissory notes and securities agreements.
Ex. 120 (last page)

Still using sales agents.

2018

January 4
P.A. Securities Regulato subpoena Par Funding about an investigation. Seeks all marketing materials
Ex. 77

Thank you.
Russell Meyer

From: Alexis Abbonizio [mailto:alexis@parfunding.com]
Sent: Wednesday, January 03, 2018 1:25 PM
To: KahunaFL@bellsouth.net
Cc: michael furman <mfurman@unitedfidelisgroup.com>
Subject: MCA Paperwork

Hi Russell,

Happy New Year!

Please see attached paperwork and follow the instructions below. All paperwork is to be scanned back to me at your earliest convenience.

1. CBSG Security Agreement- SIGN
2. CBSG Promissory Note- SIGN
3. Asset Purchase Directive- SIGN
4. TIN/EIN Packet- COMPLETE/SIGN
4. W9-Complete/Sign

Thank you!

Alexis Abbonizio
Investor Relations

PAR FUNDING
141 N 2nd St
Philadelphia, PA 19106

Cell: (215) 740-9258
alexis@parfunding.com

[redacted]

rs of age and have
ge Commission (the
nt that appears in the
er Financial Plan in
lan (NY-9593).
d made in good faith.
main
EIN

Ex. 120
Jan. 3
Par Funding Email to investor Russell Meyer

EXHIBIT
120

Vagnozzi Claims He Doesn't Know Until He Reads It In The Newspaper Nearly A Year Later

Q. So did the -- do you have any knowledge about whether the -- that the change to the fund structure in January 2018 occurred at that time because of the investigation being conducted by the Pennsylvania regulators?

A. Yeah. No, I knew nothing about it at that time. So, yeah, I knew nothing about that investigation when -- when -- when we started the first fund.

Q. Okay. And no one at -- when did -- when did CBSG or anyone at CBSG first tell you about the Pennsylvania investigation into their potential securities law violation?

A. Nobody ever told me. I saw it in the newspaper in December later that year. December.

Q. December of 2018?

A. Yes.

August 6, 2020 Deposition 226:17 – 227:7

Par Funding Immediately Knows In January 2018 That The Investigation Is Triggered By And Concerns Vagnozzi

Justification

In March 2017, the Pennsylvania Department of Banking and Securities (Department), Bureau of Securities Compliance and Examinations (Bureau), received an online customer complaint, from a Florida resident, regarding Complete Business Solutions Group, Inc. (CBS). The complaint identified CBS as a Pennsylvania entity offering and selling unregistered securities, in the form of investment contracts, disguised as factoring agreements. In this regard, the complaint alleged that CBS had offered and sold the complainant an investment contract that was originated and then sold to other investors (fractionalized), but titled this contract a factoring agreement or business loan. The complaint further alleged that the underlying assets, which were purchased, and then fractionalized, were the accounts receivable of participating "seller" entities.

Also in March 2017, the Bureau received an online customer complaint, from a Pennsylvania resident and registered Investment Adviser, regarding CBS, Dean J. Vagnozzi (DV), and A Better Financial Plan (BFP). The complaint related to an advertisement that the complainant reported to have received from an investment advisory client, who was also an attorney. The complaint indicated concern regarding the advertisement's identified rate of return and method of offering (promissory note) for an investment opportunity in CBS, through DV and BFP. Review of the advertisement revealed language and documents, which purported to illustrate DV's personal investment in CBS, the high rate of return on this investment, the lack in a shortage of other investors to participate in investments such as this, and advice to review and consider an investment opportunity in CBS. This advertisement instructed readers to contact DV for further information regarding this investment opportunity.

Ex. 77, p.2
Jan. 3 PADOBS Justification Letter to Par Funding

Par Funding and Vagnozzi Suddenly Change Course . . . Together

January 3, 2018
Par Funding is still offering and selling Par Funding promissory notes and securities agreements.
Ex. 120 (last page)

Still using sales agents.

-

January 11
Vagnozzi emails agents about new agent fund model
Ex. 164.
***See also* Ex. 18 ¶ 8**

January 4
P.A. Securities Regulators subpoena Par Funding about an investigation. Seeks all marketing materials
Ex. 77

From: scott stooksbury [scott@synergywealthcoach.com]
Sent: Thursday, January 11, 2018 3:24:51 PM
To: Dean Vagnozzi
CC: Perry Abbonizio
Subject: Re: Please review
Attachments: synergy.jpg; picture-607-1422995815.png; PastedGraphic-1.tiff

Am I understanding this correctly?? Now you are saying we need to spend $10,000.00 on attorney fees to set up our own fund for the MCA product?? I have been out the last month selling all these clients that came to our dinner about investing 200k in the MCA and now you're saying Perry will only let us invest if we do a fund? If that is the case, this is not good. Now I look life a fool to all these investors and have to change direction now. This is all turning out very sketchy to me guys. You can't be saying one thing one week and then telling us something the next, that don't work with these high net work clients. Now I'm going to lose trust and credibility with them, not good!!

settlement policy suppliers who is extremely knowledgeable about the industry and will be the guy you work with should you want to do a life settlement fund. So that we are clear...in order to make

EXHIBIT
164

NY-09593_MIGRAT

Confidential Treatment Requested by a Better Financial Plan

big money in the alternative investment space, you need to do your own fund....and when you visit Perry's office, you will want to for sure! My office will do all of the back office support for you so don't worry about that. But you need the ability to invest 10k to start a fund. PERRY's Company, WILL ONLY WORK WITY YOU IF YOU DO A FUND. Even though they are confident that they are not breaking any securities laws, they are not taking any chances. Creating your own fund eliminates that risk.

The Fund Model In Effect From January 2018 – The Court's Order

Par Funding uses Agent Funds to offer and sell promissory notes the Agent Funds issue to investors.

The Agent Funds then funnel investor money to Par Funding, which then issue Par Funding Notes to its Agent Funds.

Exhibit 149, Transcript of Vagnozzi & his attorney speaking to investors, at 10:25-11:25; 20:24-21:19.

The Fund Model In Effect From January 2018 – This Court's Order

Promissory Note

Promissory Note

Par Funding Pays The Agent 20% Interest

The Agent Keeps 8-10% and Gives Investors 10-12%
Ex.24 at 47:24-50:5

Agents Give Vagnozzi 25% of Their Profit
Ex.41; Ex.24 at 47:24-50:5

January 23 2018: Vagnozzi Reports To Par Funding The PPM Is Done

January 3, 2018
Par Funding is still offering and selling Par Funding promissory notes and securities agreements.
Ex. 120 (last page)

Still using sales agents

January 23
Vagnozzi reports to LaForte that he made a PPM, has "22 guys lined up" to be agents, and has more who will open funds
Ex. 180

January 11
Vagnozzi emails agents about new agent fund model
Ex. 164.
***See also* Ex. 18 ¶ 8**

January 4
P.A. Securities Regulators subpoena Par Funding about an investigation. Seeks all marketing materials
Ex. 77

-------- Original message --------
From: Joe Mack <joe@parfunding.com>
Date: 1/23/18 10:19 PM (GMT-05:00)
To: Dean Vagnozzi <dean@abetterfinancialplan.com>
Subject: Re: Legal settlement

Looking forward to it my friend. Don't be a stranger. Come visit soon. Cigar lounge is always open for you.

Sent from my iPhone

On Jan 23, 2018, at 10:17 PM, Dean Vagnozzi <dean@abetterfinancialplan.com> wrote:

Thanks for heads up. Send me a link of you can.

Fyi....my attorney called me today. Told me he is done ppm. He is working on the escrow agreement for victory bank, the bank in royersford our by me that will act as the escrow. He said he will have to their legal team tomorrow to review . We should be good to go by next week. I wish it was done but it's out of my control. We will crush it when it's open. I have 22 guys lined up for the next group of agents coming in feb8th. I have a few guys ready to open their own ppm for you guys as soon as mine is done. Thanks for your support

Sent from my T-Mobile 4G LTE Device

-------- Original message --------

EXHIBIT
180

Confidential Treatment Requested by a Better Financial Plan

From: Joe Mack <joe@parfunding.com>
Date: 1/23/18 10:10 PM (GMT-05:00)
To: Dean Vagnozzi <dean@abetterfinancialplan.com>
Subject: Re: Legal settlement

Correct. There is a big outcry particularly in Ny that it is a predatory product. All over the news

Lulling Investors During the Transition

EXHIBIT
121

Confidential Treatment Requested by a Better Financial Plan

From: michael furman [mfurman@unitedfidelisgroup.com]
Sent: Tuesday, January 30, 2018 8:47:41 PM
To: Perry@parfunding.com; Anita; Dean Vagnozzi
Subject: Need Update on New Note for Meyer
Attachments: image017.jpg; image018.jpg; image019.png; image020.jpg; image021.jpg; image022.png; image023.jpg; image024.png

Good Day!

I wanted to check in and see if you know exactly when we will be able to get Russell Meyer's MCA Note started as I know it was about 14 days out a couple weeks ago and his funds have been sitting there for over 30 days and REALLy need to get these invested and start his income... Can someone please let me know when Dean's fund will be setup and if I can do anything to help? Have a lot more ready for this year but just need to get him taken care of as Perry has called him as well after I calmed them down. Thanks so much!

See you in a week or so & Go Eagles!

--

Michael C. Furman, *MDRT*®
Financial & Estate Planning
Income Planning Specialist
THE UNITED FIDELIS GROUP
561-623-0913 Home Office
1-800-727-8139 Toll Free
561-202-7345 Direct Cell
1-888-229-2756 Fax
MFurman@UnitedFidelisGroup.com
Specialized Tax Planning Services Provided By The Palm Beach Tax Group

See Exhibit 25:
Keep the Meyers on the hook with no explanation until March 2018.

Responding to the PADOBS Subpoena

January 3, 2018
Par Funding is still offering and selling Par Funding promissory notes and securities agreements
Ex. 164
See also Ex. 18 ¶ 8

January 4
P.A. Securities Regulators subpoena Par Funding about its investigation; seeks all marketing materials
Ex. 77

January 30
Keeping investors on the hook while creating investment fund
Ex. 121

For the period from January 2016 to the present, all books, records,[1] and other documents[2]

CBSG has entered to contracts with "finders" who have received compensation for finding individuals who met the definition of Accredited Investor in Rule 501 of SEC Regulation D to purchase notes issued by CBSG. Upon advice of counsel retained in the above-captioned matter, CBSG advises that it has terminated this practice with immediate effect and until CBSG has received further advice and direction from the Department.

Responds to subpoena but does not produce Vagnozzi's fund PPM
Ex. 163, 77 (p.10)

PADOBS Subpoena
Ex. 77, p.10 of Exhibit

January 2018: Par Funding and Vagnozzi Suddenly Change Course

January 3, 201
Par Funding is sti
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Par Funding prom
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agreements.
Ex. 120 (last pag

Still using sales

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January 11
Vagnozzi ema
agents about
agent fund mo
Ex. 164
***See also* Ex.**

January 4
P.A. Securities R
subpoena Par Fu
its investigation;
marketing mater
Ex. 77

From: Dean Vagnozzi [/O=CHOST/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DEAN1A2]
Sent: Tuesday, April 03, 2018 3:30:02 PM
To: joecole@parfunding.com
CC: 'Alexis Abbonizio (alexis@parfunding.com)'
Subject: 2nd Fund
Attachments: image003.png

Joe,

Note sure if Perry told you...but I have another fund that will be giving you money soon.

I opened my next "Life Settlement Fund" last week. We are calling it the "ABFP Multi-Strategy Investment Fund". 30% of the money raised will be invested with you guys. The monthly income this fund generates will help pay for the life insurance policies premiums.

Since this fund will give you guys less money then the other fund we have, we will send it in as soon as we have at least 100 k and not on the 10th or 25th of each month like we were doing.

We will be sending over our first chunk in the next few days, about 200k. I assume we will work with Alexis to complete the note paperwork each time we send money over.

That's all. Have a good day.

Dean J. Vagnozzi
President & CEO
Abetterfinancialplan.com, llc
234 Mall Blvd, Suite 270
King Of Prussia, PA 19406
484-425-7393
Increased Returns - Decreased Risk

Exhibit 181

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9-23:8

Par Funding's Misleading Response to PADOBS

January 3, 2018
Par Funding is still offering and selling Par Funding promissory notes and securities agreements.
Ex. 120 (last page)

Still using sales agents

January 23
Vagnozzi reports to LaForte that his PPM is done, and he has people lined up to be agents and set up funds
Ex. 180

January 30
Keeping investors on the hook while creating investment fund
Ex. 121

February 16
Vagnozzi alerts Par Funding that his Fund is open to investors
Ex. 60

April 3
Vagnozzi alerts Par Funding that he is starting a new Fund to raise money for Par Funding
Ex. 181

October 2018
Par Funding responds to PADOBS and does not disclose the Agent Funds or that it converted "finder" agents to Agent Fund Managers through which it is raising money through the sale of securities
Ex. 53, 77-79, 88-89, 163; Ex. 196-211

January 4
P.A. Securities Regulators subpoena Par Funding about its investigation; seeks all marketing materials
Ex. 77

January 11
Vagnozzi emails agents about new agent fund model
Ex. 164
***See also* Ex. 18 ¶ 8**

February 5
Par Funding assures PADOBS it has stopped using the "finders"
Ex. 163

Responds to subpoena but does not produce Vagnozzi's fund PPM
Ex. 163, 77 (p.10)

April – Sept. 2018
Additional Agent Funds managed by Vagnozzi are raising money for Par Funding through the offer and sale of promissory notes. Par Funding is paying them through notes it issues to the Agent Funds.
Ex. 196, 211-213

Vagnozzi and Par Funding Work Together To Manage The Agent Funds

- Vagnozzi recrui
- Vagnozzi and A
- Vagnozzi teach
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- Par Funding pr
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Agent Guide

Section A - Getting Started

1) Contact John Pauciulo to get your MCA Income fund started. He can be reached at (215) 851-8480 or via email, jpauciulo@eckertseamans.com
2) You will need to sign an engagement letter with him and pay him $ 5,000 before any work will be completed.
3) You will sign a non-compete with me prior to receiving your fund. The document is designed to protect me from anyone that tries to circumvent this process.
4) It will take about 3 weeks or so to complete your PPM. The total investment on your end will be between 9-12k. The more questions you ask, and changes you make, the more it will cost.
5) You'll need to give John a name for your fund. I named my fund the "ABFP Income Fund."
6) Once John is finished to setting up the fund, you will need to open a bank account at PNC Bank, TD Bank or Wells Fargo. You will need the articles of incorporation, company registration, and the letter with your EIN number you will receive from the IRS. The IRS letter comes in the mail about 2 weeks after John's office files for your EIN.

Once your account is open with them, you will add Michelle Price as an authorized signer on the account. Michelle will be the one paying handling the check writing on your behalf and paying all investment expenses and investment payouts to your investors as well as the management expense to ABFP Management Company. Michelle is a CPA and is as organized as they get. She will do a fantastic job for you...allowing you to focus on selling.

Exhibit 110

EXHIBIT A

Ex. 24 at 6:6 thereto; **Ex.** 4:19**Ex. 156**

& 27 and Exh. E **Ex. 152** at 2:5-**211-214**

Gissas Is One Of The Agent Fund Managers Vagnozzi Recruited

- John Gissas is an Agent Fund Manager
- Retirement Evolution Group
- RE Income Fund
- RE Income Fund 2
- Retirement Evolutions Insurance Fund

Exhibits: 51, 54, 58, 59, 101, 145, 195-197, 203

- Raised at least $12 million

Exhibits: 51, 58, 145

Par Funding Helps The Agent Funds Raise Investor Money

- **Par Funding, through LaForte, Cole, and Abbonizio, helps solicit investors**
- **They speak at the Agent Funds' sales events**
- **Abbonizio also helps the Agent Funds solicit investors through telephone calls**
- **Abbonizio, Cole, and LaForte solicit investors to invest in Par Funding through the Agent Funds during meetings hosted at Par Funding's office**

Exhibit 20 and exhibit thereto; ***Id.*** at Transcript of November 21, 2019 video recording, beginning at 16:25; **Exhibit 25** (Abbonizio speaking at one of Furman's events); **Exhibit 101** (Abbonizio speaking at one of Gissa's solicitation events); **Exhibit 136** at 6:19-7:16 and 25:2-26:10; **Exhibit 152**; **Exhibits 125, 126** & **141, 175-175**, **176, 189**

The Defendants Reaped the Benefits of the Agent Fund Plan

- **About 40 Agent Funds for Par Funding**
- **1,200 Investors**
- **More than $380 million raised through Agent Funds alone**

Exhibit 152, at 2:5-4:19; **Exhibit 141**, at 89:18-91:3**; Exhibit 13** at ¶ 9.

The Defendants reaped massive profits.

- Par Funding, Full Spectrum, McElhone, and LaForte: $492,398,894.
- ABFP: $1,914,045;442
- ABFP Income Fund: $25,487,690
- ABFP Income Fund 2: $13,252,600;444
- Retirement Evolution Group: $6.5 million
- Abbonizio: $14.4 million
- RE Fund:$5,450,000;447
- RE Fund 2: $150,000;448
- Cole: $16,159,000
- LME 2017 Family Trust (i.e., McElhone and LaForte): $14.3 million

Exhibit 13, 56, 58, 145, 52, at 2:5-4:19; **Exhibit 131; 141**, at 89:18-91:3**; Exhibit 13** at ¶ 9.

How the Defendants Lured Investors

- **A Massive Network of Agents and Agent Investment Funds**
- **Public Offerings**
- **Advertising on Radio, Television, the Internet**
- **Inviting the Public to Sales Events**

- And then lying and concealing the truth from Investors

Dean Vagnozzi's Broad Solicitation Efforts

Sales Events | **Radio, Television, Email** | **Referral Program**

9. From 2017 until the COVID pandemic began in early 2020, ABFP held sales events bi-annually or quarterly, where investors and potential investors were invited to hear about investments ABFP offered, including the investments in the merchant cash advance business CBSG. The bi-annual sales events were typically attended by about 75-200 people and quarterly sales events were attended by about 30 people. Sales events occurred primarily in Pennsylvania, but occasionally in New Jersey also.

10. During some of the sales events, people from CBSG spoke at the sales events. For example, on occasion, Joseph LaForte, Perry Abbonizio, and Joseph Cole Bareleta spoke about CBSG during the sales events.

11. ABFP also had sales events at the offices of CBSG in Philadelphia, Pennsylvania. During these sales events, Joseph LaForte, Perry Abbonizio, and Joseph Cole Barleta spoke to the investors and potential investors about the investment.

ABFP Employee, Ex.199

Dean

See also Ex. 169-171, 174-175

Dean Vagnozzi's Broad Solicitation Efforts

Sales Events	Radio, Television, Email	Referral Program

THE WITNESS: I would -- I would say again that the radio was the primary source of people that would hear about our offerings and hear about, you know, the kinds -- that we focus on alternatives. And that was the primary source of people that would come into our office to learn about everything we do, including the income funds.

Dean Vagnozzi Testimony, August 6, 2020 at 155:12-18

A. Yeah, KYW News Radio and 1210 WPHT in the Philadelphia region. And we did that primarily the -- early -- early 2016 through, you know, just recently.

Dean Vagnozzi Testimony, August 6, 2020 at 157:2-4

Dean Vagnozzi's Radio Advertisements

Radio, Television, Email

DECLARATION OF RICHARD MULDAWER

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Richard Muldawer. I am over twenty-one years of age and have personal knowledge of the matters set forth herein. I work in marketing and reside in Philadelphia, Pennsylvania.

2. In approximately April 2019, I hear
("Vagnozzi") advertising investment opportunities thr
Better Financial Pl

ABFP.
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5. Zweibel said that Par Funding's carefu
very low default rate from borrowers. This was very important to me when
whether to invest because this minimized potential investment risk, thereby protecting my principal.

EXHIBIT 206

2. In approximately early 2019, I heard about the investment opportunity through a radio ad by Dean Vagnozzi ("Vagnozzi") and A Better Financial Plan ("ABFP.") I had already invested in other opportunities with ABFP, so I contacted Vagnozzi and spoke with Jason Zwiebel ("Zweibel") who works for ABFP.

DECLARATION OF JOSEPH GREENBERG

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Joseph Greenberg. I am over twenty-one years of age and have personal knowledge of the matters set forth herein. I am a senior citizen and reside in Feasterville, Pennsylvania.

2. In approximately early 2019, I heard about the investment opportunity through a radio ad by Dean Vagnozzi ("Vagnozzi") and A Better Financial Plan ("ABFP.") I had already invested in other opportunities with ABFP, so I contacted
ibel") who works for ABFP.
tment opportunity with a company by the
unding made short-term loans to small
year and with a 10% fixed annual return,

nanagerial expertise and track record. He
underwriting process, and fully vetted
d doing on-site visits before issuing the
orrowers.

5. According to Zweibel, Par Funding's underwriting process ensured a very low default rate from borrowers. This was very important to me when deciding whether to invest because this minimized potential investment risk, thereby protecting my principal.

6. Zweibel emphasized that my principal was fully insured by a well-known insurance company, so that in the unlikely event of a default, I would never lose my

EXHIBIT 205

Dean Vagnozzi Advertised on Television

DECLARATION OF BRAD BEEBE

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

2. In approximately early 2018, I saw a television commercial about investment opportunities featuring Dean Vagnozzi ("Vagnozzi") and A Better Financial Plan ("ABFP") that aired on local Channel 10 in Wilmington, Delaware. Vagnozzi provided a telephone number to call to find out more about the investments he offered. I called the number in the ad and spoke with Anita Badalamenti ("Badalamenti") who works for ABFP. She referred me to Andy Zuch ("Zuch") who also worked for ABFP.

3. Zuch told me about an investment opportunity with a company by the name of Complete Business Solutions Group ("CBSG") that is also known as Par Funding.

r twenty-one years of age and have
I reside in Wilmington, Delaware.
aw a television commercial about
("Vagnozzi") and A Better Financial
Wilmington, Delaware. Vagnozzi
e about the investments he offered. I
a Badalamenti ("Badalamenti") who
uch") who also worked for ABFP.
opportunity with a company by the
CBSG") that is also known as Par

n loans to small businesses. He said
ear depending on how much money I
ly interest payments from CBSG. I
invited me to visit CBSG's offices.
April 2018, I visited CBSG's offices
in the Old Town section of Philadelphia, PA. Zuch met me there. A receptionist took us upstairs to the office of CBSG's president. A man greeted us and introduced himself as the president of CBSG. I do not recall his name.

6. CBSG's president showed me around the office and said that there were 9 to 10 companies like ABFP that raised money from investors for CBSG.

EXHIBIT
109

Ex.205, 206;
Ex. 20 (beginning at page 16), 25, 62, 109, 101, 128 at 9:8-9

Dean Vagnozzi Advertised on The Internet

SOAH DOCKET NO. 312-20-3303

TEXAS STATE SECURITIES BOARD, Petitioner	§ § §	BEFORE THE STATE OFFICE
v	§ §	OF
ABETTERFINANCIALPLAN.COM, LLC AKA A BETTER FINANCIAL PLAN, Respondent	§ § §	ADMINISTRATIVE HEARINGS

DECLARATION OF WILLIAM ROBERT MITCHELL

1. My name is William Robert Mitchell. I am over the age of 18, I am of sound mind and I am capable of making this declaration. This declaration is true and correct, it is based on facts within my personal knowledge and it is signed pursuant to Section 132.001 of the Texas Civil Practice and Remedies Code.

BACKGROUND AND EXPERIENCE

2. I graduated from Texas State University in San Marcos and was conferred a degree in Criminal Justice in 2007.

3. I earned a certification as a Certified Fraud Examiner from the Association of Certified Fraud Examiners in 2013.

4. I was employed as an Insurance Specialist at the Texas Department of Insurance from in or around April 2008 to in or around November 2011.

5. I have been continuously employed as a Financial Examiner with the Texas State Securities Board (the "Securities Board") in or around November 2011.

6. I am assigned to the Enforcement Division of the Securities Board (the "Enforcement Division"). The Enforcement Division is dedicated to protecting the public from illegal, deceptive and fraudulent securities offerings.

7. As a Financial Examiner assigned to the Enforcement Division, I am responsible, in part, for identifying suspect securities offerings, investigating complex securities transactions, securing evidence, analyzing financial records, conducting source-and-use analyses of income and expenditures, interviewing suspects and witnesses and testifying at administrative hearings and criminal trials. I also perform other duties as assigned by my direct supervisor, the Assistant Director assigned to the Austin Office. I also perform other duties as assigned by the Director of the Enforcement Division (the "Director").

EXHIBIT
189

Gissas Advertised In The Newspaper & Through Sales Events

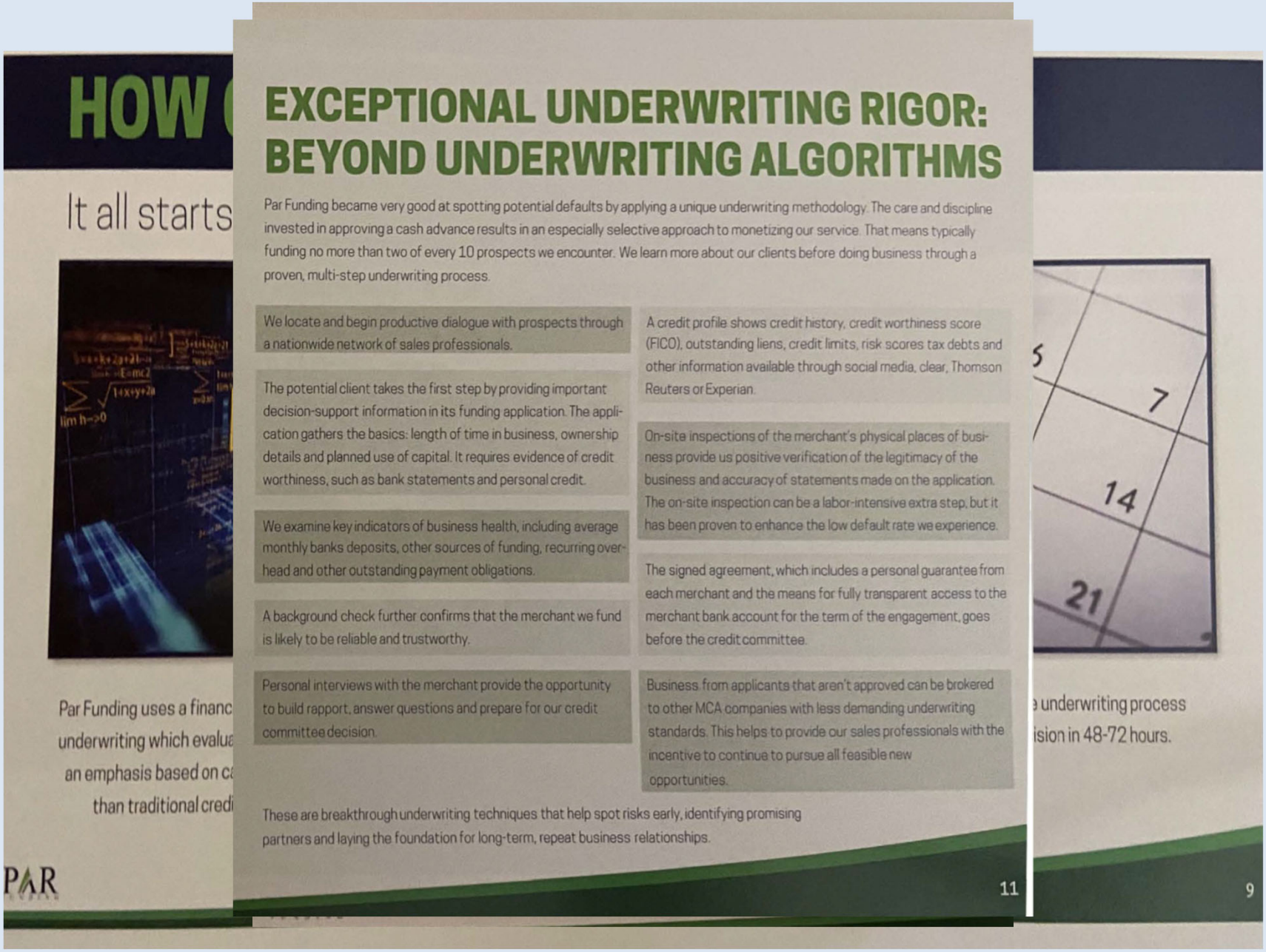
- Primarily targets investors in the The Villages retirement community in Florida
- Advertises on the RE Fund website
- Advertises the RE Fund PPM on the internet
- Newspaper advertisements
- Sales events

- Exhibits 59, 101, 203

Lies About The Underwriting Process

- **Misrepresentation:**
  - Brochure touts the exceptional "underwriting rigor."
  - "There is no substitute for personal on-site merchant inspections," and "Visual confirmation of a business' viability yields the highest levels of confidence in the future viability of merchant partners."
  - Par Funding emphasizes that the on-site inspection "…has been proven to enhance the low default Par Funding experience[s]."
    - Exhibit 25, at Exh. E thereto (pages 9 & 11 in brochure); Exhibit 103, at ¶ 5 & Exh. C thereto (pages 9 & 11; pdf pp. 16 and 18 of 24 in Exhibit 103)
    - Repeatedly said to investors in one-on-one sales sessions. Ex. 25, 62, 109, 136, 101, 203-208.

Lies About The Underwriting Process (Ex 25)



HOW

It all starts

Par Funding uses a financ
underwriting which evalua
an emphasis based on c
than traditional credi

PAR

EXCEPTIONAL UNDERWRITING RIGOR: BEYOND UNDERWRITING ALGORITHMS

Par Funding became very good at spotting potential defaults by applying a unique underwriting methodology. The care and discipline invested in approving a cash advance results in an especially selective approach to monetizing our service. That means typically funding no more than two of every 10 prospects we encounter. We learn more about our clients before doing business through a proven, multi-step underwriting process.

We locate and begin productive dialogue with prospects through a nationwide network of sales professionals.

The potential client takes the first step by providing important decision-support information in its funding application. The application gathers the basics: length of time in business, ownership details and planned use of capital. It requires evidence of credit worthiness, such as bank statements and personal credit.

We examine key indicators of business health, including average monthly banks deposits, other sources of funding, recurring overhead and other outstanding payment obligations.

A background check further confirms that the merchant we fund is likely to be reliable and trustworthy.

Personal interviews with the merchant provide the opportunity to build rapport, answer questions and prepare for our credit committee decision.

A credit profile shows credit history, credit worthiness score (FICO), outstanding liens, credit limits, risk scores tax debts and other information available through social media, clear, Thomson Reuters or Experian.

On-site inspections of the merchant's physical places of business provide us positive verification of the legitimacy of the business and accuracy of statements made on the application. The on-site inspection can be a labor-intensive extra step, but it has been proven to enhance the low default rate we experience.

The signed agreement, which includes a personal guarantee from each merchant and the means for fully transparent access to the merchant bank account for the term of the engagement, goes before the credit committee.

Business from applicants that aren't approved can be brokered to other MCA companies with less demanding underwriting standards. This helps to provide our sales professionals with the incentive to continue to pursue all feasible new opportunities.

These are breakthrough underwriting techniques that help spot risks early, identifying promising partners and laying the foundation for long-term, repeat business relationships.

11

5
7
14
21

underwriting process
ision in 48-72 hours.

9

In Truth, U t Occurred

- They did not
- LaForte adm e does not do any underwr
- Par Funding t checks, profit inquiries, ac
- **Exhibit 98**, a **xhibit 93** at ¶¶ 2-5 & 7; **Exh** t 2-4 & 7; **Exhibit 100** **hibit 111**, January 5 In *twood v. Complete Bu* -12 ("On January 4, 2 ntiff Fleetwood Services, LL **06** at ¶¶ 2-4 and 8-10.

DECLARATION OF LONIESE JONES

I, the undersigned, Loniese Jones, pursuant to 28 U.S.C. § 1746, declare that:

1. My name is Loniese Jones, I am over twenty-one years of age, and I have personal knowledge of the matters set forth herein.

2. From February 2018 until April 2019 I worked for Full Spectrum Processing, Inc. ("Full Spectrum") in its underwriting department, located in Philadelphia at 22 N. 3rd Street, and my title was "Assistant Underwriter."

3. Full Spectrum and Complete Business Solutions Group were interchangeable. The employees at Full Spectrum ran operations for Complete Business Solutions Group ("CBSG") and other related companies. I was informed of a position at CBSG, and after a trial day, I received my employment offer from CBSG (which is also known as Par Funding). A true and correct copy of the job offer is attached as Exhibit A. My work email address was a Par Funding email address. The Full Spectrum office where I worked operated CBSG.

4. The underwriting process at Full Spectrum's office was not stringent. For example, sometimes the underwriting process included an on-site inspection of the merchant's business, and sometimes it did not.

5. The head of Full Spectrum and CBSG is Joseph LaForte. He uses the name Joe Mack. I observed LaForte working in the Full Spectrum office where I worked on a daily basis and he had the power and authority of a CEO. I observed him running the day-to-day operations of Full Spectrum, CBSG, and other related businesses. He was the boss, the head of our office. I observed him fire, direct, and supervise employees. When I came to visit Full Spectrum to see whether I wanted to work there (as sort of a "test" day), I met with LaForte for a few minutes. LaForte and another person in the Full Spectrum office named Alek made the decisions about which MCA applications CBSG would approve or deny and which MCAs or loans CBSG would fund.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21th day of July 2020.

DocuSigned by:

Loniese Jones

EXHIBIT 98

Scienter – Knew or were reckless in not knowing

They are touting this.

In reality, Par Funding has filed more than 2,000 collections lawsuits against small business borrowers for defaulting on Loans since 2013 alone.

Par Funding claims to have funded $600 million in Loans.

It has filed lawsuits seeking more than $300 million in defaulted Loan payments small businesses allegedly failed to repay Par Funding.

LaForte admits he has 100 or so “anchor” merchants from whom he does not do any underwriting whatsoever

ABFP knows it is the most important thing (Westhead Declaration)

Pitched at massive marketing events, like November dinner.

Exhibits 73-75, 20, 43

False and Misleading Claims About The Default Rate

- The Defendants told potential investors Par Funding had a less than 1 % default rate on merchant cash advances. **Exhibit 18; 136 at 28:3-29:5; 20 at** 51:5-52:19
- These representations are false and misleading.
- In reality, Par Funding has filed more than 2,000 collections lawsuits against small business borrowers for defaulting on Loans since 2013 alone.
- Par Funding claims to have funded $600 million in Loans.
- It has filed lawsuits seeking more than $300 million in defaulted Loan payments small businesses allegedly failed to repay Par Funding.
  - Exhibits 73-75
- Knew the numbers were wrong. Klenk declaration

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. **CASE NO.: 20-cv-81205-RAR**

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

Defendants.

_____/

DECLARATION OF JAMES KLENK

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is James Klenk. I am over twenty-one years of age and have personal knowledge of the matters set forth in this Declaration.

2. I began work at Full Spectrum Processing ("Full Spectrum") in February 2018 and was the Controller of Full Spectrum from February 2018 until no earlier than July 28, 2020.

3. As Controller, I worked on all accounting-related activities for Full Spectrum and Complete Business Solutions Group ("CBSG"), and reported to CFO Joseph Cole Barleta ("Cole"). I am a Certified Public Accountant.

4. Based on my work as Controller, I am familiar with the salaries, payments, money transfers, and agreements pursuant to which money transfers and payments were made.

5. Each year since about 2018, Full Spectrum paid Cole an annual salary of about $94,000.

6. Perry Abbonizio's ("Abbonizio") job at CBSG was to raise investor money to fund the merchant cash advances CBSG made to businesses.

7. Each quarter, CBSG would transfer out an amount equal to 10 percent of the total CBSG had funded in merchant cash advances during that time period, including companies owned by Cole, Abbonizio, and Lisa McElhone and/or The LME 2017 Family Trust.

8. For example, in the fourth quarter of 2019, CBSG paid $98 million to small businesses in merchant cash advances and transferred $9.8 million (10%) to companies.

9. From at least 2017 until June 2019, CBSG paid Cole's company Beta Abigail. From July 2019 until the CBSG bank accounts were frozen in July 2020, CBSG paid Cole's company ALB Consulting.

10. From at least 2017 until the CBSG bank accounts were frozen in July 2020, CBSG paid Abbonizio's company New Field Ventures.

11. From at least 2017 until June 2018, CBSG paid Heritage Business Consulting. From about July 2018 until CBSG's bank accounts were frozen, CBSG paid Eagle Six Corporation.

12. Of the 10% funded to merchants in the MCAs, CBSG paid: (i) Heritage Business Consulting 64% until June 2018 and paid Eagle Six 64%-71% from July 2019 until the Receiver was appointed; (ii) New Field Ventures 15%; and (iii) Beta Abigail or ALB Management 10%.[1]

13. For 2019, CBSG had about $36 million in what CBSG had deemed bad debt expense.

14. According to the draft 2019 trial balance I had access to when I worked at CBSG, investors were owed approximately $345 million. A draft June 2020 trial balance of the creditor/investor notes showed about $355 million. However, these were draft figures and had not been reconciled[2]

15. CBSG also paid 5% commissions to Recruiting and Marketing Resources on the MCA deals they provided to CBSG. This company is owned by The LME 2017 Family Trust.

16. As Controller, I am also a contact with CBSG's outside auditors. The last year CBSG had an audited financial statement was for the year ending 2017. It was done by the firm Friedman, LLC. Friedman, LLC initially provided CBSG with an unqualified audit report, and a true and correct copy is attached as Exhibit A. Joseph LaForte disagreed with this financial statement and demanded that the Friedman, LLC firm not include the default/bad rate allowance in the audited financial statement. Thereafter, Friedman, LLC provided a second audit report consistent with what LaForte directed. This second audit report has an adverse opinion and a true a correct copy is attached as Exhibit B. I am aware of these facts because I participated in and/or was otherwise advised of these facts in connection with my work as Controller for CBSG.

17. In November 2019, Aida Lau stopped working from the CBSG office where the accountants work and began working in the CBSG office where Joseph LaForte has his office. Since that time, she worked as the accounting liaison to Joseph LaForte to assist him and to help with customer payment and receipt tracking.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.

Executed this _17__ day of August 2020.

James Klenk

[1] CBSG also paid Lindsay Blake 7.5%, GEMJ CHehebar Grat. LLC 2.1875%, and Isaac Chehebar 1.3125% of the amount equal to 10% of the total CBSG funded in MCAs.

[2] I am without knowledge of any additional amount investors who bought promissory notes in ABetterFinancialPlan, Fidelis Financial Planning, and Retirement Evolution are owed.

COMPLETE BUSINESS SOLUTIONS GROUP, INC AND AFFILIATE

CONSOLIDATED FINANCIAL STATEMENTS

YEAR ENDED DECEMBER 31, 2017

AND

INDEPENDENT AUDITORS' REPORT

Basis for Adverse Opinion

As more fully described in Note 1 to the consolidated financial statements, the Company has not accounted for its provision for credit losses in accordance with accounting principles generally accepted in the United States of America. In our opinion, accounting principles generally accepted in the United States of America require the Company to recognize a provision for credit losses on advances receivable in an amount equal to the estimated probable losses net of recoveries. Instead, the Company accounts for its provision for credit losses following the method used for income tax reporting purposes, and therefore only records credit losses when the advances are written off as bad debt during the year. Accordingly, no provision for estimated credit losses is recorded in the accompanying consolidated financial statements as required by accounting principles generally accepted in the United States of America. The financial effects of this departure could not be quantified.

Adverse Opinion

In our opinion, because of the significance of the matter discussed in the Basis for Adverse Opinion paragraph, the consolidated financial statements referred to in the first paragraph do not present fairly, in accordance with accounting principles generally accepted in the United States of America, the financial position of Complete Business Solutions Group, Inc. and Affiliate as of December 31, 2017, or the results of their operations or their cash flows for the year then ended.

Net income	1,214,852
Net loss attributable to non-controlling interest	(24,111)
Net income attributable to Complete Business Solutions Group, Inc.	$ 1,238,963

COMPLETE BUSINESS SOLUTIONS GROUP, INC.
AND AFFILIATE

CONSOLIDATED FINANCIAL STATEMENTS

YEAR ENDED DECEMBER 31, 2017

AND

INDEPENDENT AUDITORS' REPORT

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Net loss	(6,695,103)
Net loss attributable to non-controlling interest	(24,111)
Net loss atrributable to Complete Business Solutions Group, Inc.	$ (6,670,992)

EXHIBIT
B

False and Misleading Claims About The Default Rate

- When Vagnozzi touted Par Funding's low default rates to potential investors during an ABFP solicitation dinner on November 21, 2019, Par Funding had filed more than 1,000 lawsuits in Pennsylvania alone, seeking more than $147 million in missed Loan payments from small businesses. Exhibit 73 at 7(c)

- Par Funding did not include loans in the default calculation if the merchant was making *any* payment or talking to Par Funding. **Exhibit 3** at 113:22-130:9; Exhibit 30 at 14:12-15:8

- There was no disclosure of the 2,000 lawsuits, the $300 million being sought in those lawsuits, or the fact that in 2019 alone there was more than $30 million that Par Funding ***did*** deem in default. ***Andjich* and *Gissas Declarations***

Exhibit 199

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

_____/

DECLARATION OF SHANNON WESTHEAD

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Shannon Westhead. I am twenty-six years of age and have personal knowledge of the matters set forth in this Declaration.

2. I began working at ABetterFinancialPlan.com ("ABFP") in 2017, first as an Administrative Assistant for Dean Vagnozzi and then, beginning in about early 2019 as the Operations Director.

3. During my entire time working at ABFP, Dean Vagnozzi, had ultimate authority over everything at ABFP and had the final say on everything.

4. Dean Vagnozzi had final approval on the marketing materials ABFP used for the investment in the promissory notes that invested in Complete Business Solutions Group ("CBSG").

5. At all times I worked at ABFP, my job responsibilities included, among other things, clerical work, sales appointments, and coordinating sales events.

6. ABFP Income Fund, ABFP Income Fund 2, ABFP Income Fund 3, ABFP Income Fund 4, and possibly ABFP Income Fund 6 all offered investments in promissory notes that invested in CBSG. Prior to the COVID pandemic, ABFP was beginning ABFP Income Fund 7 to sell promissory notes that would invest in CBSG.

7. There are numerous ABFP Income Funds because when a fund reached 35 unaccredited investors or 99 investors total, ABFP would open a new fund.

8. Each ABFP Income Fund invests in the same underlying asset (CBSG). The terms (rates of return) of each fund were different, so the funds are not the exact same. ABFP Income Fund 2 has a slightly different component that includes 20% Franklin Square stock (FSK) and 80% CBSG.

9. From 2017 until the COVID pandemic began in early 2020, ABFP held sales events bi-annually or quarterly, where investors and potential investors were invited to hear about investments ABFP offered, including the investments in the merchant cash advance business CBSG. The bi-annual sales events were typically attended by about 75-200 people and quarterly sales events were attended by about 30 people. Sales events occurred primarily in Pennsylvania, but occasionally in New Jersey also.

10. During some of the sales events, people from CBSG spoke at the sales events. For example, on occasion, Joseph LaForte, Perry Abbonizio, and Joseph Cole Bareleta spoke about CBSG during the sales events.

11. ABFP also had sales events at the offices of CBSG in Philadelphia, Pennsylvania. During these sales events, Joseph LaForte, Perry Abbonizio, and Joseph Cole Barleta spoke to the investors and potential investors about the investment.

12. Dean Vagnozzi told me about two years ago that Joseph LaForte was a convicted felon.

13. During my time at ABFP, I sat in on probably more than 100 sales meetings between Vagnozzi and potential investors. Joseph LaForte's criminal history was only disclosed if an investor directly asked about it, in which case Dean Vagnozzi would confirm it.

14. When I met with potential investors about the CBSG investment through ABFP, I did not use a script. Instead, I told investors what I heard Vagnozzi tell investors during the roughly 100 sales meetings I observed him have with potential investors and what I heard Vagnozzi say about the investment in the video he made about the investment.

15. For each of the ABFP Income Funds, generally the same sales points were used in sales presentations. The sales point that seemed to have the biggest impact with potential investors was that CBSG did a thorough job underwriting the loans it offered.

16. Some sales presentations for the ABFP Income Fund investments in CBSG included showing potential investors a video of Dean Vagnozzi speaking about the merchant cash advance industry.

17. Some sales presentations for the ABFP Income Fund investments included showing potential investors a video of John Pauciulo discussing the securities Regulation D model used among all the ABFP Investment Funds.

18. Attached as Exhibit A is a true and correct copy of one of the handouts ABFP used in the sales presentations for the ABFP Income Fund investments.

19. When an investor invested through their CamaPlan account, the investor fills out and signs the Asset Purchase Directive Camaplan Form, which directs his/her money from the investor's

Exhibit 199 Cont'd

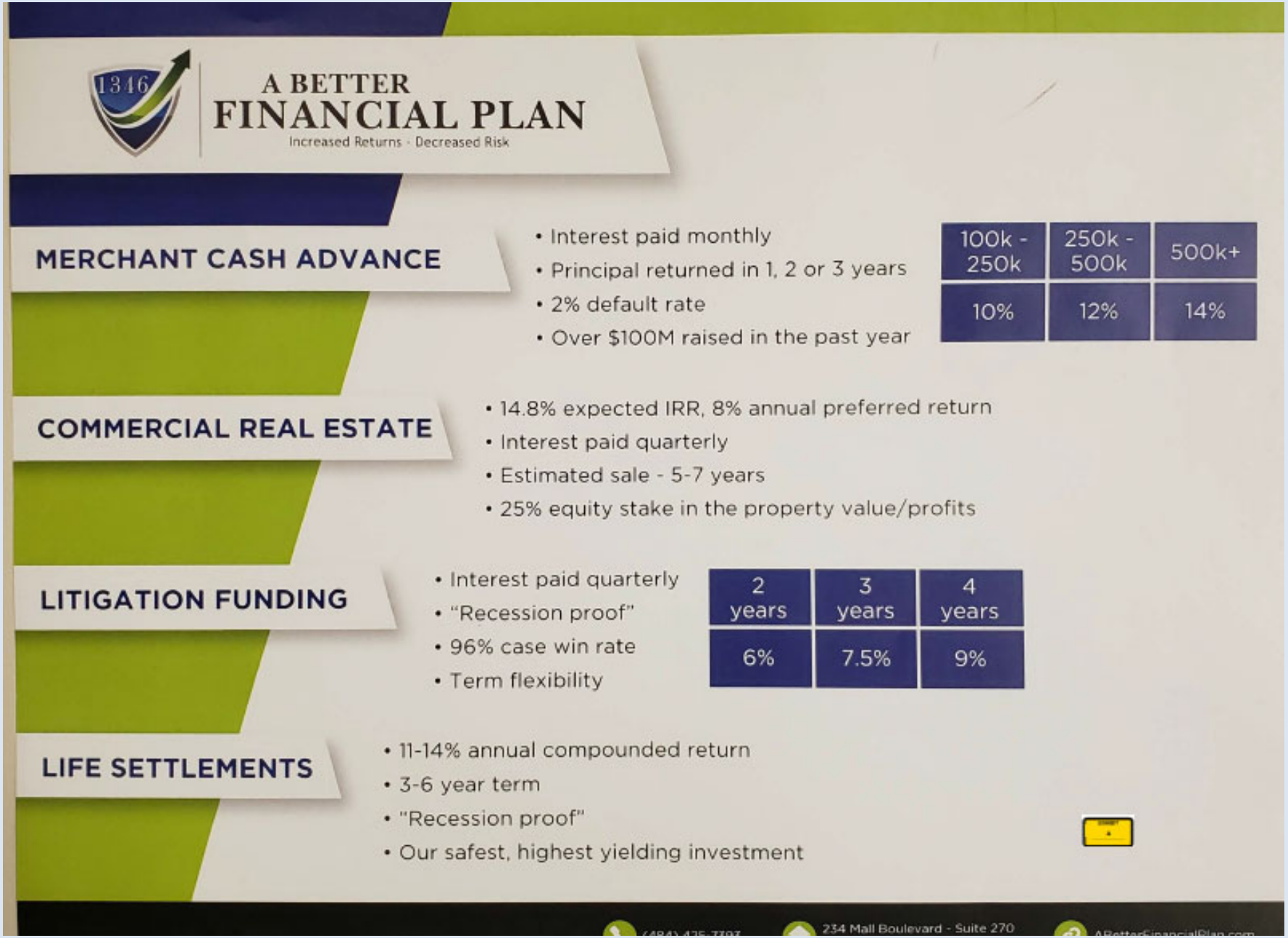
Camaplan IRA account to the bank account of the fund that they intend to invest (i.e. ABFP Income Funds).

20. ABFP and the ABFP Income Funds were paid by CBSG through their promissory notes with CBSG.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.

Executed this 11th day of August 2020.

Shannon Westhead


1346
A BETTER
FINANCIAL PLAN
Increased Returns · Decreased Risk
MERCHANT CASH ADVANCE
• Interest paid monthly
• Principal returned in 1, 2 or 3 years
• 2% default rate
• Over $100M raised in the past year
100k - 250k
250k - 500k
500k+
10%
12%
14%
COMMERCIAL REAL ESTATE
• 14.8% expected IRR, 8% annual preferred return
• Interest paid quarterly
• Estimated sale - 5-7 years
• 25% equity stake in the property value/profits
LITIGATION FUNDING
• Interest paid quarterly
• "Recession proof"
• 96% case win rate
• Term flexibility
2 years
3 years
4 years
6%
7.5%
9%
LIFE SETTLEMENTS
• 11-14% annual compounded return
• 3-6 year term
• "Recession proof"
• Our safest, highest yielding investment
234 Mall Boulevard - Suite 270

DECLARATION OF ROBERT STOLLER

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Robert Stoller. I am over twenty-one years of age and have personal knowledge of the matters set forth herein. I am retired and reside in The Villages, Florida.

2. Beginning in the summer of 2019, I saw an advertisement in the local newspaper for a lunch event at a Japanese steakhouse hosted by Retirement Evolution Group ("Retirement Evolution"). The ad offered an 8%-10% guaranteed annual return on investment. A true and correct copy of the advertisement is attached as Exhibit A. I called the phone number in the ad to attend the event to learn more about the investment opportunity.

3. On August 29, 2019, I met John Gissas ("Gissas"), the owner of Retirement Evolution, at his investment seminar. There were about 20-25 people at the event. Gissas showed us a slide presentation about a Philadelphia company that made short-term, high-interest loans to small businesses. I recall that Gissas mentioned that the Philadelphia company had the words "Business Solutions" in its name. I later learned that the Philadelphia company was known as Par Funding.

4. Gissas said that Par Funding was very profitable, and paid 8%-10% annual returns on a monthly basis. He said that our principal was guaranteed, and that we could get it back at any time.

5. Gissas touted Par Funding's managerial expertise, its years of success, its thorough underwriting process, and 1% default rate. During the presentation, Gissas encouraged us to go visit Par Funding's offices, and even offered to pay our airfare to go see them. I did not take him up on his offer.

EXHIBIT
203

6. Gissas emphasized the safety and security of this investment. He said that while other companies had default rates of 10% or higher, Par Funding had a default rate of just 1% due to its careful underwriting process.

7. Gissas said that Par Funding management took many steps to qualify borrowers, such as conducting extensive background checks, obtaining financial statements, and performing site visits to the see the businesses and verify assets. He said that Par Funding did its "homework" before lending money to borrowers.

8. While Gissas was describing the underwriting process, he showed us a photo of an abandoned warehouse as an example of a small business that did not meet Par Funding's standards. He told us that Par Funding turned away borrowers who did not meet its stringent underwriting standards. He said that it took Par Funding three to four days to qualify borrowers as compared to other companies that qualified borrowers in just minutes.

9. Gissas said that our investment principal was 100% guaranteed by an insurance policy through Euler Hermes, a subsidiary of Allianz, a well-known insurance company. He explained that the insurance policy protected our investment funds if a small business borrower ever defaulted. This was very important to me because I would be investing my retirement savings.

10. Gissas said that investors would receive the promised returns on a monthly basis paid directly to your bank account, to a self-directed Individual Retirement Account ("IRA") with Nuview Trust, or we could have the monthly returns rolled over into

principal and paid out at the end of the one-year investment term. He reassured us that anyone could have the principal returned at any time during the year, along with any accumulated returns. Exhibit B is a true and correct copy of some of the marketing materials Gissas provided at the investment seminar.

11. Soon after I attended this presentation, I received a letter from Gissas thanking me for attending, and inviting me to a dinner meeting. A true and correct copy of that letter is attached hereto as Exhibit C.

12. After the first presentation, I attended a second presentation at that dinner meeting at a local recreational center with my wife and another couple we were friends with. That presentation had about 100 people in attendance. The four of us attended a third luncheon presentation at the Japanese steakhouse.

13. During all three presentations, Gissas emphasized the safety and security of the Par Funding investment, their managerial expertise, their careful underwriting process, low default rate, and insurance to safeguard the investment principal. This gave me confidence that this was a good investment.

14. On or about October 4, 2019, my wife and I met with Gissas at his office. Based on what Gissas told me about the Par Funding investment throughout the three investment seminars I attended, including Par Funding's managerial expertise, careful underwriting process, low default rate, and that my principal would be covered by insurance, my wife and I decided to invest $50,000 of our retirement savings.

15. During our meeting, Gissas provided us with a Confidential Offering Memorandum, Subscription Agreement, and Promissory Note with Retirement Evolution Insured Income Fund, LLC ("RE Insured Income Fund"). A true and correct copy of these materials is attached hereto as Exhibit D. Gissas explained that our investment with Par Funding would be through RE Insured Income Fund. I wrote a check to RE Insured Income Fund for $50,000 from my savings account and signed the investment paperwork. I expected to receive an 8% annual return paid on a monthly basis.

16. It was very important to me that my funds were fully insured and guaranteed. Attached as exhibit E is a copy of a "Certificate of Investment" that Gissas gave me indicating that our $50,000 principal investment was insured by Euler Hermes, and that it was due back September 30, 2020. Gissas provided me with Exhibit E about the same time we decided to invest.

17. I received the first interest payment on Oct 30, 2019, and continued to receive monthly interest payments through July 30, 2020.

18. Through July 2020, I saw that Retirement Evolution continued to advertise in "The Daily Sun," a local newspaper available to residents of The Villages, the 55 and older retirement community where my wife and I live. The recent ads are very similar to the ad I responded to before I made my investment.

19. Before my wife and I decided to invest, Gissas never mentioned that the states of Pennsylvania and New Jersey had filed regulatory actions against Par Funding and related parties for violations of state securities laws. If I had known about those actions, I never would have invested.

20. If I had known that Par Funding had a default rate of more than 1% as Gissas represented to me, I never would have invested.

21. Had I known that my investment funds were not 100% guaranteed by insurance as Gissas touted, I never would have invested.

22. If I had known that Par Funding did not conduct on-site inspections or take other steps to qualify borrowers, I never would have invested.

25. I do not have any expertise with loans to merchants or investments of this type. I was looking for a safe and secure investment with low risk to my principal, which was part of my retirement savings. I wanted a passive investment and relied on Retirement Evolution and Par Funding for my investment returns. The investment only involved me contributing money, and the profits would be generated from payments merchants made on their loans.

26. No one told me that my principal would be used for anything other than to fund loans to merchants. Had I known that my money would be used for any other purpose, I would never have invested.

27. No one told me that Retirement Evolution received a promissory note from Par Funding offering 20% interest. Had I known that Par Funding was paying this level of interest rate to Retirement Evolution, and that Retirement Evolution was making these types of profits from my investment funds, I never would have invested.

28. No one told me that Par Funding was using investor funds to pay Par Funding President Lisa McElhone's consulting companies more than $80 million, or that it was paying her trust more than $14 million. Had I known about these payments to McElhone's consulting companies and trust from investor funds, I never would have invested.

29. No one told me that there is a lawsuit pending in federal district court against all Par Funding investors. Had I known, I never would have invested.

30. No one ever told me that Joseph LaForte, a twice-convicted felon, was the Director of Sales for Par Funding or had any managerial role. Had I known this, I would not have invested

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.

Executed on this 12th day of August 2020.

Robert Stoller

ROBERT STOLLER

False and Misleading Claims About Insurance

- Par Funding advertises as having insurance on its products.
- This brochure is distributed by the Agent Fund Managers for Par Funding
  - Exhibit 25 and Exh. E thereto (p.8); Exhibit 103 and Exh. C thereto
- Par Funding further claims that "[t]he insurance protects Par Funding in case of a default or nonpayment."
- LaForte has also represented to at least one investor that if a small business defaulted on a Loan, Par Funding had insurance to back up investor funds, thus reassuring the investor that her investment was safe and secure. Ex. 18, at ¶ 14
- In truth, there was no insurance coverage for the merchant cash advance loans.
- Merchants were not always even offered insurance. Exhibit 91 at ¶ 7; Exhibit 92 at ¶ 6; Exhibit 95 at ¶ 5; Exhibit 97 at ¶ 5; Exhibit 99 at ¶ 6; Exhibit 100 at ¶ 6; Exhibit 102 at ¶ 5; Exhibit 105 at ¶ 5; Exhibit 106 at ¶ 6.

LaForte's Background

- **LaForte touts his background and success. Par Funding's website includes his articles where he is described as one of the industry's most accomplished and distinguished leaders. Exhibit 18, 81 83, 84.**

- **Cole, Gissas, and Vagnozzi all tout the management experience at Par Funding when soliciting investors. Ex. 96, at ¶ 14; Stoller Declaration; Investor Decs.**

- **Cole admits he knew about Vagnozzi's history as a convict "from day one" and Vagnozzi admits he knew about it beginning in at least 2018. Exhibit 4, Cole Deposition, at 41:18-43:18; Exhibit 20; Exhibit 101; Exhibit 25; Exhibit 136; Exhibits 203-206.**

- **Vagnozzi now admits he did not tell investors.**

- The only ones who did not know were the investors.

Par Funding's Regulatory History

- The Par Funding Defendants did not disclose the Pennsylvania Order, or even the investigation. They solicited investors during the investigation and kept it a secret. **Exhibit 25, 62, 101, 103, 104, 109, 96, 20, 203-206.**
- Nor did they disclose the New Jersey Order. ***Id.***
- Nor the Texas Order. ***Id.***
- Nor the Order against Dean Vagnozzi by Pennsylvania.

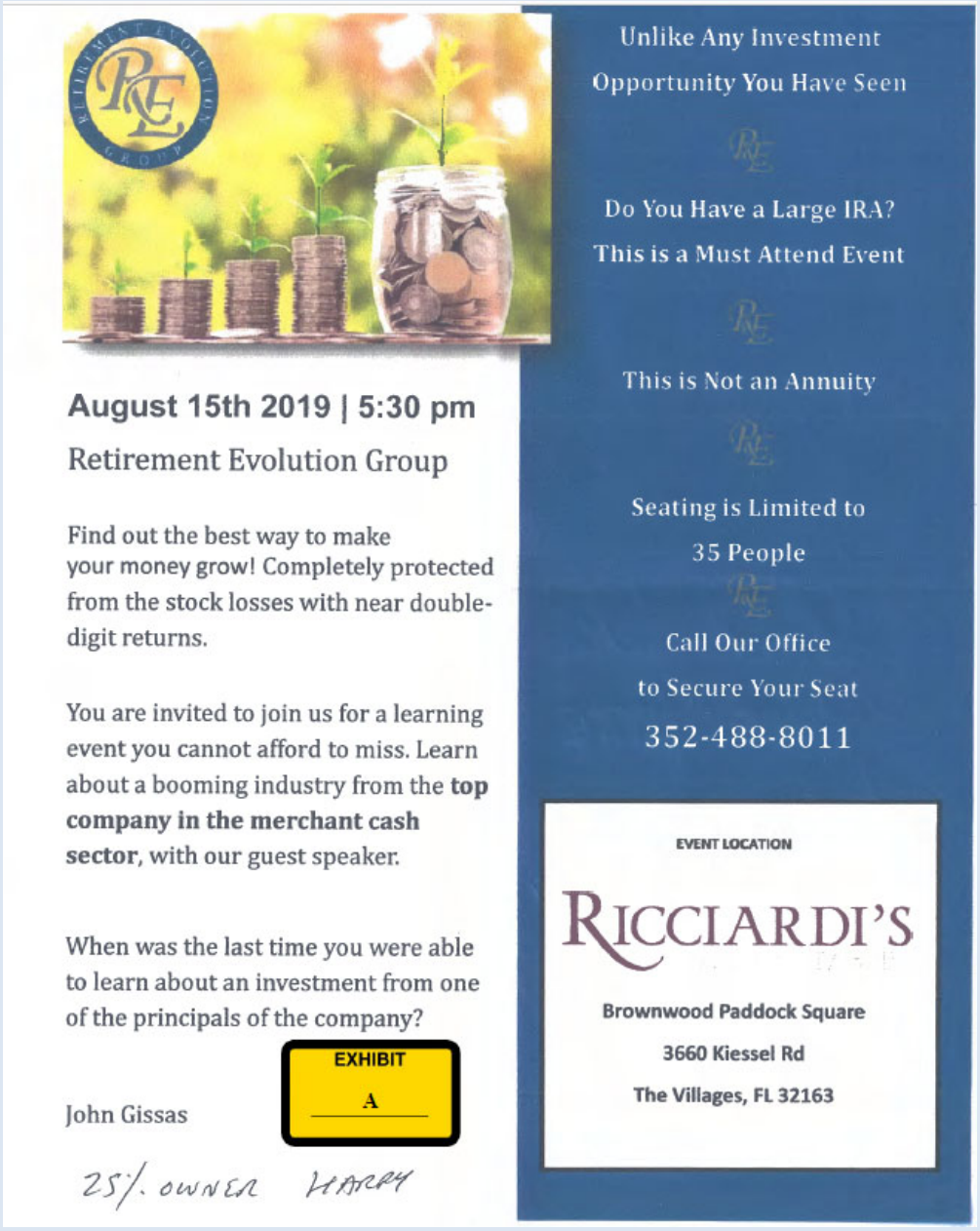
- **Each of these Orders was to stop Par Funding from violating securities laws in connection with the very offering at issue in this case.**

Par Funding's Regulatory History

- **Dean Vagnozzi touted Par Funding as "one of the best merchant cash advance lenders you can find."**
- **He distributed this message through a video he emailed to potential investors and showed potential investors in his office.**
- **When he made these representations about Par Funding, he knew – by his own admission – about the Pennsylvania Order, the Order against him by Pennsylvania, the New Jersey Order, and LaForte's felony convictions.**

Dean Vagnozzi's Marketing Video

Exhibit 101



August 15th 2019 | 5:30 pm

Retirement Evolution Group

Find out the best way to make your money grow! Completely protected from the stock losses with near double-digit returns.

You are invited to join us for a learning event you cannot afford to miss. Learn about a booming industry from the **top company in the merchant cash sector**, with our guest speaker.

When was the last time you were able to learn about an investment from one of the principals of the company?

EXHIBIT A

John Gissas

25% OWNER HARRY

Unlike Any Investment Opportunity You Have Seen

Do You Have a Large IRA? This is a Must Attend Event

This is Not an Annuity

Seating is Limited to 35 People

Call Our Office to Secure Your Seat

352-488-8011

EVENT LOCATION

RICCIARDI'S

Brownwood Paddock Square

3660 Kiessel Rd

The Villages, FL 32163

- On February 12, 2019 Form D Filing
- April 28, 2020 Form D Filing
  - Both state no investor funds had been or was proposed to be used for payments to McElhone and Cole **Ex 11, 75**
- This is patently false. Both McElhone and Cole received proceeds from the securities offering – together, more than $20 million. **Ex 13**

Misleading Statements and Omissions About Vagnozzi and ABFP

- The website for ABFP touts the returns
- Publishes testimonials
- Touts the safety
- Includes a blog post by Vagnozzi that the only time he ever broke the law was when he got a speeding ticket
- That he works closely with a lawyer

Exhibit 37; 46; 109 & Exh. H thereto; 189

In truth, ABFP and Vagnozzi have both been sanctioned for violating securities laws in connection with the Par Funding offering, and that Texas Securities Regulators have a case pending and have issued a Cease and Desist Order against ABFP.

Why Is It Important That They Offered To The Public?

The purpose of the registration requirement is to "protect investors by promoting full disclosure of information thought necessary to informed investment decisions."

- *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953)

Sections 5(a) and (c) of the Securities Act of 1933 prohibit the "sale" and "offer for sale" of any securities unless a registration statement is in effect or there is an applicable exemption from registration.

The Court has found that the S.E.C. established a *prima facie* case for a violation of Section 5 of the Securities Act. **D.E.42**

The Defendants filed with the S.E.C. claiming certain exemptions.
They have the burden of demonstrating the application of that exemption.
They absolutely cannot.

They Violated The Registration Provisions

The purpose of the registration requirement is to "protect investors by promoting full disclosure of information thought necessary to informed investment decisions."

- *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953)

Sections 5(a) and (c) of the Securities Act of 1933 prohibit the "sale" and "offer for sale" of any securities unless a registration statement is in effect or there is an applicable exemption from registration.

The Court has found that the S.E.C. established a *prima facie* case for a violation of Section 5 of the Securities Act. **D.E.42**

The Defendants filed with the S.E.C. claiming certain exemptions. They have the burden of demonstrating the application of that exemption.

They absolutely cannot.

They Engaged In Securities Fraud

They made misrepresentations and omissions to investors.

- About facts concerning the safety of the investment
- The use of investor funds
- The fact that the owner and *de facto* CEO is a convicted felon
- That Par Funding, Abbonizio, ABFP, and Vagnozzi all have regulatory histories ***for this very securities offering***
- That the merchant cash advance loan business at Par Funding was not as successful in obtaining loan repayments as they claimed
- That there were thousands of lawsuits pending to collect on these defaulted loans
- That they used one definition of default with investors and another one entirely for accounting purposes
- That they did not engage in rigorous underwriting
- And more.
    - That the individual investors are all defendants in a lawsuit for RICO violations based on the Par Funding investment. **Exh. 179, 203-205.**

END

Message

From: Berman, Brett [BBerman@foxrothschild.com]
Sent: 7/26/2020 9:41:17 PM
To: Joe Cole [joecole@parfunding.com]
CC: Joseph LaForte (joe@parfunding.com) [joe@parfunding.com]; DeMaria,Joseph A. [jdemaria@foxrothschild.com]; Elgidely, Robert F. [RElgidely@foxrothschild.com]; Christman, Jonathan D. [jchristman@foxrothschild.com]
Subject: Re: [EXT] Re: Your affidavit

Thank you. Will review.

As noted earlier, very important to make sure you download or keep all key financial information or emails so we have them readily accessible.

We have not yet heard from sec in response to our letter.

Brett A. Berman, Esq.
Partner
Co-Chair of Litigation Department

Fox Rothschild LLP
ATTORNEYS AT LAW

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NY: 101 Park Avenue | Suite 1700 | New York, NY 10178

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(215) 299-2842 (Philadelphia office)
(212) 878-7945 (New York office)
(215) 299-2150 (facsimile)
bberman@foxrothschild.com

California | Colorado | Connecticut | Delaware | DC | Florida | Georgia | Illinois | Minnesota | Nevada | New Jersey | New York | North Carolina | Pennsylvania | South Carolina | Texas | Washington

On Jul 26, 2020, at 5:27 PM, Joe Cole <joecole@parfunding.com> wrote:

> Sounds good Brett, we can get into the details as needed to complete a through affidavit in response to the SEC complaint.
>
> To help with the narrative and to get everyone on the same page, here's a brief timeline of the legal / securities related matters involving our creditors:
>
> - 2014: Jason Berger at Offit Kurman produced our initial template promissory note / security agreement for use with raising capital through third party creditors in the form of debt, typically with monthly interest installments and principal repayment over 12 to 24 months. These notes ranged between $50K - $500K in principal, with some creditors purchasing multiple

concurrent notes at rates between 20-44% annually. There was approximately $4.8M in creditor liabilities at year end 2014.

- July 2016: Lisa Jacobs at DL Piper reviews our boilerplate notes clean up language and the "This note has note been registered under the securities act of 1933..." as a disclosure to creditors that the notes were debt instruments and not securities. Around this time we also started working with Jeffrey Shneider and subsequently his partner Perry Abbonizio to raise capital for the company through their entity. Finders fee agreements were executed which included upfront fees from 2%-5% of capital raised. Chuck Frei, Dean and a few smaller finders were subsequently hired. Jeffrey's agreement was terminated and Perry signed a consulting agreement later this year to pay profits as capital was raised - this was subsequently amended to a fixed percentage by the end of 2016. There was approximately $26.6M in creditor liabilities at year end 2016, rates averaged 25% annually.

- December 2017: We received a subpoena from the PA DOB for records regarding our creditors and finders that we worked with. At this point, CBSG paid roughly $3.5M in finders fees to brokers to find investors and raise capital. We retained Phil Rutledge, a former Securities officer in Harrisburg, to respond to the state subpoena in January 2018 and to form a game plan to address the concerns of the state and our structure to raise capital. Per Phil's recommendation we ceased paying finders fees in January of 2018 and he filed a response in February along with additional accounting details regarding investors and fees paid over the past two years. In October a fee of $499,999.00 was assessed for paying fees to unregistered brokers to find creditors. A consent agreement was signed in November to reflect the nature of the relief with the assessment and the order did not indicate that CBSG or its affiliates "should be subject to any disqualification contained in the federal securities laws". To improve compliance and mitigate subsequent liability, Phil introduced a note purchase agreement for us to use with creditors and to begin working with PPM entities for that liabilities for raising creditor capital would fall under the PPM entities and CBSG would not directly be involved with soliciting and raising capital from the entity's creditors. Phil Ruteledge also registered CBSG in PA under the SEC 503b guidelines for it's non-principal debt instruments.There was approximately $173M in creditor liabilities at year end 2018, rates averaged 20% annually.

- January 2019: A cease and desist letter was received from the NJ Bureau of Securities for the same issues on the PA matter and Martin Hewitt (referred to by Phil Ruteledge) was retained to respond to the letter. From his communication with the state, we were required to file Form D under Regulation D rule 506 which satisfied and resolved the issues brought up from the letter. Martin subsequently reviewed and filed any state registrations needed for CBSG's current creditors. We would conduct a quarterly review of our creditor notes to update state filings as needed to keep them current.

- September 2019: A suit was filed against Chuck Frei when the company was notified of prior criminal activity which violated his consulting agreement and this matter is currently outstanding.

- November 2019: Dean Vagnozzi hosted a dinner at the Sheraton in King of Prussia to update his clients regarding the performance of his life insurance annuities funds and to hand out distribution checks. At the end of the dinner, time was allocated for Joe, myself and Bill Bromley to discuss the opportunities of investing directly into purchasing shares of a bank in Dallas, TX and to generally talk about potential returns from the 36 month transaction. Separately, Joe and myself provided a general and brief update on the performance of CBSG's portfolio and general year-end status of the company. There was approximately $241.5M in creditor liabilities at year end 2019.

- February 2020: An emergency cease and desist order was received from the TX State Securities Board to cease securities activities in the state stemming from solicitation made by the PPM manager Gary Beaseley and CBSG's consultant Perry Abbonizio. CBSG, Gary, Perry, Dean Vagnozzi and their respective entities were included in the order. We are currently pending a hearing and will ultimately aim to settle with the state. Perry also introduced a potential

investor, Dawn Taylor, to myself and Joe during an in office meeting. She was introduced by PPM manager Mark Furman.
- March 2020: In response to the global outbreak of coronavirus, CBSG issued a moratorium of interest payments and communicated with its investors that payments will be held until further notice due to existential concerns for the business and ability to satisfy debt obligations of the business. Management, along with working with counsel at Fox Rothschild, discussed a strategy which ultimately resulted in offering modified note terms to the majority of CBSG's creditors in May of 2020. The modified note would allow for the company to save cash flow and stay in business as it managed the effects of the coronavirus crisis on its business. The majority of CBSG's creditors signed these documents.
- June 2020: A meeting in Jupiter was held between David Chessler, Perry, Joe, myself, Dawn Taylor and her associate Kevin McCarthy to discuss investing in David's fund to potentially purchase equity in CBSG along with other transactions his fund was handling. We discussed several transactions in addition to getting a general update on CBSG's financial performance during the meeting. No concrete terms were established during the meeting or the subsequent dinner held the same day. In July, ths strategy shifted to have a $10M promissory note executed directly between CBSG and Dawn's entity KM Capital. On July 24th, CBSG and its affiliates received a complaint seeking injunctions and other relief from the SEC regarding it's activities claiming it was raising money through unregistered securities offerings. There was approximately $465M in creditor liabilities at the end of June 2020.

Please see our investor list through last month attached. I am currently updating this again to reflect additional repayment of principal through July.

I have the current management reviewed financials attached for 2018-2019.

I have not heard back from Phil yet.

Let me know when you guys want to go over the general strategy. Thanks.

Joe Cole

On Sun, Jul 26, 2020 at 9:33 AM Berman, Brett <BBerman@foxrothschild.com> wrote:

> Joe
>
> We are working on your affidavit.
>
> Few things we need detailed info from you on:
>
> - The complaint dates back to timing from 2015 forward. We need to write about/describe the notes/documentation that was used for all of the years leading up to march. Do you have documents/information that can lay out the story of the note process from inception. Do you

have documents/information to show what was raised, what was paid, and show the extent of the payments/payoffs made over the years. All will go to argument that these are not a security.

- Can you send list of all investors so we can explain the $350mm outstanding showing the breakdown of PPM investors versus individual investors.

- Need a breakdown of which investors (scope/extent/detail) didn't agree to exchange offer. Which/what percentage of those investors were paid off. Which/what investors signed the exchange offer.

- Do you have all of the form d/sec filings phil did or do we need from him? I have the email he sent to you/me where he showed the state law filings.

- How can we demonstrate, through documentation that the investor notes are being paid through the operating business – i.e. from payments on the MCA deals. We want to show breakdowns of normal business expenses, investor payments, etc.

- What financials can we show, audited and not audited for all of these purposes.

All of this is very important for your affidavit.

Any word back from Phil?

Brett A. Berman, Esq.

Partner

Co-Chair of Litigation Department

<image001.jpg>

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(215) 299-2150 (facsimile)
bberman@foxrothschild.com

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<CBSG Managment Financials 2018-2019.pdf>

<CBSG Investors - 0720 (1).pdf>

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To: 'k.dipietro@hmcincorporated.com'[k.dipietro@hmcincorporated.com]
From: Schmidt, Linda S.
Sent: 2019-08-15T10:12:27-04:00
Importance: Normal
Subject: smail RE: smail RE: smail United Fidelis Group FL-04188
Received: 2019-08-15T10:12:00-04:00

It would be helpful to review any documents concerning investments you made with Complete Business or others. We can discuss the other records when we speak.

We can email a link to upload the documents if that would be more convenient for you. Please let me know . Many thanks. Linda

Linda S. Schmidt
Senior Counsel
U.S. Securities and Exchange Commission
Miami Regional Office
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Direct Dial: 305.982.6315
Fax: 305.536.4146

-----Original Message-----
From: k.dipietro@hmcincorporated.com <k.dipietro@hmcincorporated.com>
Sent: Thursday, August 15, 2019 9:29 AM
To: Schmidt, Linda S. <SCHMIDTLS@SEC.GOV>
Subject: RE: smail RE: smail United Fidelis Group FL-04188

I have thousands of documents. What type of documents would be useful for you?

--- Originally sent by schmidtls@sec.gov on Aug 15, 2019 9:02 AM ---

Dear Ms. DiPietro: Are you available next week on Thursday or Friday, after 9am? We may also have time next Wednesday afternoon. Please let me know your preference, and many thanks for your response.

To help us during the call, do you have any documents concerning Complete Business Solutions Group or related companies you could email to me for review before we speak? Many thanks. Best regards, Linda

Linda S. Schmidt

Senior Counsel

U.S. Securities and Exchange Commission

Miami Regional Office

801 Brickell Avenue, Suite 1800

Miami, FL 33131

Direct Dial: 305.982.6315

Fax: 305.536.4146

From: k.dipietro@hmcincorporated.com <k.dipietro@hmcincorporated.com>

Sent: Thursday, August 15, 2019 2:33 AM

To: Schmidt, Linda S. <SCHMIDTLS@SEC.GOV>

Subject: RE: smail United Fidelis Group FL-04188

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Hi Linda - I have left you a few voicemails as well. It was John Murray that provided you with my contact information correct? I am not familiar with the matter referenced. Is the name, United Fidelis Group FL-04188, the name of the investigation?
If so, possibly that is why I am not familiar. When would you like to speak?

--- Originally sent by schmidtls@sec.gov on Aug 13, 2019 2:33 PM ---

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message was sent securely using Zix®

Dear Ms. DiPietro: I am contacting you in connection with the above-referenced confidential, non-public

investigation. I have left you two voice messages, but I'm not sure you have received them. My direct line is 305-982-6315 or you can reach me via this email. Thank you, and I look forward to speaking with you soon. Best regards, Linda

Linda S. Schmidt

Senior Counsel

U.S. Securities and Exchange Commission

Miami Regional Office

801 Brickell Avenue, Suite 1800

Miami, FL 33131

Direct Dial: 305.982.6315

Fax: 305.536.4146

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To: 'k.dipietro@hmcincorporated.com'[k.dipietro@hmcincorporated.com]
Cc: 'heskins@whiteandwilliams.com'[heskins@whiteandwilliams.com]
From: Schmidt, Linda S.
Sent: 2019-08-23T13:13:53-04:00
Importance: Normal
Subject: Schedule call -United Fidelis Group FL-04188
Received: 2019-08-23T13:13:00-04:00
Form 1662.pdf

;;;
Dear Ms. DiPietro: I have spoken with your attorney (copied here) and would like to schedule a call with you for next week at your earliest convenience. I understand from your attorney that he does not expect to participate in the interview, but he will forward to me the complaint, as well as the documents concerning your investment and business dealings with CBSG. Please see attached SEC Form 1662 that describes our routine uses of information.
Please advise when you are available, and I will confirm so we can schedule your informal interview.
Thank you and best regards, Linda

Linda S. Schmidt
Senior Counsel
U.S. Securities and Exchange Commission
Miami Regional Office
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Direct Dial: 305.982.6315
Fax: 305.536.4146

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

_____/

PLAINTIFF'S AMENDED RESPONSE TO DEFENDANT JOSEPH LAFORTE'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff Securities and Exchange Commission provides the following responses pursuant to Rule 34 of the Federal Rules of Civil Procedure to Defendant Joseph LaForte's First Request For Production Of Documents.

RESPONSES AND OBJECTIONS

1. All documents that prove or disprove any of your claims in the Action.

Objection: This request is overbroad and it seeks internal and other communications that are protected by the attorney client, common interest, deliberative process, and statutory privileges and work product doctrine. We previously produced to you evidence supporting our Motion for Temporary Restraining Order, as well as all evidence in our possession in the investigative and litigation files for this case, that is not privileged and not subject to any protection doctrine, and we will continue to produce such evidence as we receive it.

Privilege Log:

(a) Internal Commission communications, including draft complaints and other pleadings, action memorandums, notes, memos, draft press releases, and emails. All of these communications reflect the staff's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client and deliberative process privileges and work product doctrine. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(b) Communications with the United States Attorney's Office ("AUSA"), including emails. All of these communications reflect the staff's and/or the AUSA's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(c) Communications with the Federal Bureau of Investigation ("FBI"), including emails. All of these communications reflect the staff's and/or the FBI's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(d) Communications with the Florida Office of Financial Regulation ("FLOFR"), including emails. All of these communications reflect the staff's and/or the FLOFR's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to

assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

Response: The Commission has produced all non-privileged documents responsive to this request in its possession, custody, or control.

2. All documents concerning or relating to Shane Heskin, including documents received from, or sent to, Shane Heskin and documents concerning communications with Shane Heskin. *During conferral, you narrowed this Request so that it seeks documents related to a defendant, claim, or witness in this case.*

Response: We respond to the narrowed Request, which tailors the Request to seeking documents received from Shane Heskin that relate or refer to a witness, investor, merchant, claim, or defendant in this case. Shane Heskin is an attorney representing witnesses and he is a law partner at the law firm of White and Williams. We previously produced to you the document production received from White and Williams in response to our subpoena. This was produced to you in August 2020. We are producing additional responsive documents to you comprised of email messages with attachments we sent to or received from Shane Heskin, including but not limited to messages reflecting our correspondence with Mr. Heskin as counsel for individuals who executed Declarations in connection with this case. Please note that we received privileged messages/documents that were inadvertently produced to us, which were quarantined or otherwise not maintained in our file pursuant to the Rules relating to inadvertently produced privileged materials, and are therefore not part of any production.

3. All documents concerning or relating to communications with the Receiver about Shane Heskin.

Response: We are producing all responsive documents – namely, email messages with the Receiver/his counsel regarding a Receivership issue in a private action involving a Receivership

entity, the SEC subpoena to White and Williams/Shane Heskin, and correspondence from Shane Heskin to the SEC and Receiver.

4. All documents concerning or relating to any Heskin Merchant Client, including documents received from, or sent to, any Heskin Merchant Client, and documents concerning communications with any Heskin Merchant Client.

Objections: This request is overbroad and seeks internal and other communications that are protected by the attorney client, common interest, deliberative process, and statutory privileges and work product doctrine.

Privilege log:

(a) Internal Commission communications, including draft complaints and other pleadings, action memorandums, notes, memos, draft press releases, and emails. All of these communications reflect the staff's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client and deliberative process privileges and work product doctrine. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(b) Communications with the United States Attorney's Office ("AUSA"), including emails. All of these communications reflect the staff's and/or the AUSA's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(c) Communications with the Federal Bureau of Investigation ("FBI"), including emails. All of these communications reflect the staff's and/or the FBI's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product

doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(d) Communications with the Florida Office of Financial Regulation ("FLOFR"), including emails. All of these communications reflect the staff's and/or the FLOFR's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

Response: We are not producing privileged documents, as set forth above. However, we are producing non-privileged documents responsive to this Request. We understand from our conferral that you are only seeking documents related to or concerning the Heskin Merchant Clients: Kara DiPietro, Pamela A. Fleetwood, Fleetwood Services LLC, Julie Caricato, Indoor Playgrounds Int'l, Mary Carleton, CapJet, Michael Foti, SRA Home Products, James Frost, NationalRx, Chad Frost, Volunteer Pharmacy, J.R. Harrison, Petropangea, Inc., Amos Jones, Julie Katz, Tourmappers North America LLC, Bruce McNider, McNider Marine, Joseph Pucci, American Heritage Billiards LLC, Dennis Wood, Woodside Investments Inc., Christine Rainwater, Quantico Business Center, Sean Whalen, Flexogenix Group Inc., Gianna Wolfe, and Radiant Images Inc.

We previously produced to you non-privileged documents in our possession concerning the Heskin Merchant Clients as defined in this Response. Additionally, some of the Heskin Merchant Clients have produced documents to you. We are producing additional non-privileged documents in response to this request, including additional correspondence from Kara DiPietro received after we made our production of correspondence with DiPietro, together with correspondence and draft declarations related to Heskin Merchant Clients as defined in this Response, correspondence with

counsel Shane Heskin on behalf of the Heskin Merchant Clients as defined above, and correspondence from the Heskin Merchant Clients you identified, as set forth above.

5. All documents concerning or relating to communications with the Receiver about any Heskin Merchant Client.

Response: We searched emails with the Receiver for the names of the Heskin Merchant Clients identified in our Response Number 4 above, and we have no responsive documents that have not already been provided to you.

6. All documents concerning or relating to any Qui Tam action against Par Funding by Shane Heskin on his own behalf or as legal counsel.

Objection: This request is overbroad and vague in its reference to "any Qui Tam action," and therefore we conferred to ask for the identity or caption of the cases to which you are referring. We have not received that information and therefore cannot determine whether we have responsive documents. This request also seeks attorney work product because it asks the Commission staff to review any Qui Tam cases filed against Par Funding by Shane Heskin as counsel and then to use legal skills and though to analyze which documents in our possession could be relevant to any claim or defense in any such Qui Tam cases. Finally, this request is not relevant and is not proportional to the needs of this case as it does not seek any document concerning any claim or defense in this case. We have previously produced all production received from White and Williams/Shane Heskin in response to our subpoena for documents and a declaration related to the appearance of counsel on behalf of a Receivership entity in private litigation after the Receiver was appointed. Therefore to the extent the documents we previously produced relate to the "Qui Tam action," you have them. If you provide more specific information in connection with what you are seeking, we can provide a more specific response.

7. All documents concerning or relating to any Qui Tam action against Par Funding by a Heskin Merchant Client.

This request appears identical to Request Number 6 and therefore we repeat the same objections and response to Request Number 6.

8. All documents concerning or relating to any financial agreements between the S.E.C. and Shane Heskin.

Response: We have no documents responsive to this request.

9. All documents concerning or relating to any financial agreements between the S.E.C. and any Heskin Merchant Client.

Response: We have no documents responsive to this request.

10. All communications and documents that you have sent to, or received from, the Department of Justice in connection with this Action.

Objection: This request is overbroad and it seeks internal and other communications that are protected by the attorney client, common interest, deliberative process, law enforcement, and statutory privileges and work product doctrine. There is no claim or defense in this case related to the Department of Justice in this case.

Privilege Log:

(a) Internal Commission communications, including draft complaints and other pleadings, action memorandums, notes, memos, draft press releases, and emails. All of these communications reflect the staff's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client and deliberative process privileges and work product doctrine. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(b) Communications with the AUSA, including emails. All of these communications reflect the staff's and/or the AUSA's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest

privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(c) Communications with the FBI, including emails. All of these communications reflect the staff's and/or the FBI's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

Response: There are not any non-privileged documents responsive to this request.

11. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding the Receiver's Notice of Filing Report on Operations in Connection with Status Conference to be Conducted on December 15,2020 (DE 426). *During conferral, we confirmed that this request does not seek service of the Report on Operations or correspondence about scheduling matters or availability matters regarding the Status Conference. We also understand you are not seeking email messages that your counsel was included on.*

Response: There are no responsive documents.

12. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding Exhibit 1 to DE 426, Declaration of Bradley D. Sharp (DE 426-1), including all drafts of DE 426-1. *During conferral, we confirmed that this request does not seek service or delivery of the Declaration. We also understand you are not seeking email messages that your counsel was included on.*

Response: There are no responsive documents.

13. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding Mediation in this Action.

Objection: We object on relevance grounds as the request does not seek documents related to any fact or issue alleged in the complaint, at issue in any charge, or related to any defense. The request is not proportional to the needs of the case as mediation during litigation has no bearing on any claim or defense in this case whatsoever.

14. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding the December 15, 2020 Status Conference in this Action.

Objection: We understand through conferral that this request does not seek correspondence that is the delivery or service of filings related to the status conference and does not include correspondence or messages/service documents that your counsel was included on or that relate to scheduling/availability issues for the Status Conference. We have no responsive documents.

15. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding the Receiver's Notice of Filing Report on Operations in Connection with Status Conference to be Conducted on December 15, 2020 (DE 426).

Response: We have identified no responsive documents, having searched email correspondence for messages referencing the Report of Operations. We understand through conferral that this request does not seek correspondence that is the delivery or service of filings related to the status conference and does not include correspondence or messages/service documents that your counsel was included on.

16. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding any Investor/s.

Response: We have produced all responsive documents through prior productions, including all documents located at Receivership sites that the Receiver provided to us, the production of our investigative file to all counsel in this case, and other productions from the Receiver and SEC. We have received email messages from individuals who also include the Receiver or his counsel on the messages. We also sometimes receive messages from investors and forward those messages to the Receiver. Please clarify if you wish to receive these messages we have received or forwarded; if so, we will produce them. If not, we have no additional responsive documents to produce that have not already been produced to you through prior productions.

17. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. regarding any Merchant he represents.

This request appears duplicative of Request Number 2, and we repeat and reassert our objections and response to Request Number 2 in response to your Request Number 17.

18. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and the White and Williams LLP law firm regarding any Merchant it represents.

Response: Based on our conferral with your counsel, we understand that "Merchant" means Kara DiPietro, Pamela A. Fleetwood, Fleetwood Services LLC, Julie Caricato, Indoor Playgrounds Int'l, Mary Carleton, CapJet, Michael Foti, SRA Home Products, James Frost, NationalRx, Chad Frost, Volunteer Pharmacy, J.R. Harrison, Petropangea, Inc., Amos Jones, Julie Katz, Tourmappers North America LLC, Bruce McNider, McNider Marine, Joseph Pucci, American Heritage Billiards LLC, Dennis Wood, Woodside Investments Inc., Christine Rainwater, Quantico Business Center, Sean Whalen, Flexogenix Group Inc., Gianna Wolfe, and Radiant Images Inc. We previously

produced White and Williams' production in response to our Subpoena as well as correspondence with various merchants on the above list. We are now producing additional correspondence with anyone at White and Williams that references any of the Merchant clients identified above. Please note that we received inadvertently produced privileged correspondence that we handled pursuant to the Rules relating to inadvertently produced privileged material, as set forth in Response to Request Number 2, and thus those materials are not included in productions or our files.

19. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding the Action.

Response: We are producing all documents, communications, or correspondence in our possession, custody or control that were exchanged between the SEC and anyone at White and Williams LLP regarding this case. Please see Request Number 2 regarding inadvertently produced documents.

20. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding the Action.

Response: This appears to be duplicative of Request Number 19 and therefore we repeat our response to Request Number 19.

21. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding Par Funding.

Response: We are producing all responsive documents that have not already been produced to you. Please see Request Number 2 regarding inadvertently produced documents..

22. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding the Action.

Response: We are producing all responsive documents regarding this case that have not already been produced to you. Please see Request Number 2 regarding inadvertently produced documents.

23. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding any Defendant in the Action.

Response: We are producing all responsive documents regarding any Defendant in this case that have not already been produced to you. Please see Request Number 2 regarding inadvertently produced documents.

24. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding any Declaration, including all drafts and final versions of any such Declarations, related to this Action.

Response: We are producing all responsive documents that have not previously been produced to you or filed in this case. Our production in connection with this Request includes our July 2020 correspondence with Shane Heskin as counsel for declarants, July 2020 draft declarations attached to correspondence we sent to the declarants through their counsel, Shane Heskin, and executed declarations via email messages received from the declarants through correspondence from their counsel, Shane Heskin, to the SEC.

25. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and

Williams LLP regarding any Declaration filed in this Action, including all drafts and versions of any such Declarations.

Response: We are producing all responsive documents that have not previously been produced to you or filed in this case. Our production in connection with this Request includes our July 2020 correspondence with Shane Heskin as counsel for declarants, July 2020 draft declarations attached to correspondence we sent to the declarants through their counsel, Shane Heskin, and executed declarations via email messages received from the declarants through correspondence from their counsel, Shane Heskin, to the SEC.

June 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 11, 2021, the foregoing document is being served this day on all parties, witnesses, and counsel of records by email.

s/Amie Riggle Berlin
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

No. 10-CV-457 (GLS/DRH)

TIMOTHY M. McGINN and DAVID L. SMITH,

Defendants.

APPEARANCES:

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DAVID R. HOMER
U.S. MAGISTRATE JUDGE

MEMORANDUM-DECISION AND ORDER

Presently pending are the motions of (1) defendants Timothy M. McGinn ("McGinn") and David L. Smith ("Smith") to compel plaintiff Securities and Exchange Commission

("SEC") to serve responses to three interrogatories (Dkt. No. 189),[1] and (2) non-parties Financial Industry Regulatory Authority ("FINRA") and four of its employees (collectively "FINRA") to quash subpoenas for documents and testimony served by McGinn and Smith (Dkt. No. 192).[2] For the reasons which follow, the motion of McGinn and Smith to compel is denied and FINRA's motion to quash is granted.

I. Background

The SEC is a government agency charged with regulating the securities market, including enforcing securities laws. See 15 U.S.C. § 78a et seq.. FINRA was created by statute in 2007 as the only officially registered national securities association. Nat'l Ass'n of Sec. Dealers, Inc. v. S.E.C., 431 F.3d 803, 804 (D.C. Cir. 2005).

> By virtue of its statutory authority, [FINRA] wears two institutional hats: it serves as a professional association, promoting the interests of [its] members ... and it serves as a quasi-governmental agency, with express statutory authority to adjudicate actions against members who are accused of illegal securities practices and to sanction members found to have violated the Exchange Act or [SEC] regulations issued pursuant thereto.

Id. (citing 15 U.S.C. § 78o-3(b)(7)); see also Shorris Decl. (Dkt. No. 192-3) at ¶¶ 2-4. In its self-regulatory role, FINRA may investigate the conduct of a member and impose sanctions. See Karsner v. Lothian, 532 F.3d 876, 880 (D.C. Cir. 2008).

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[1]At the time this motion was filed on November 15, 2010, McGinn and Smith were jointly represented by a single attorney. See Dkt. No. 189. On December 23, 2010, both defendants filed substitutions of counsel and are now represented by the separate and different counsel set forth above. See Dkt. Nos. 239, 240.

[2]The subpoenas were all issued in the Southern District of New York. The motion to quash was originally brought in that district, but at the suggestion of the court there, the motion was dismissed in the Southern District and re-filed in this district. See Dkt. No. 192-2.

For almost thirty years until April 2010, McGinn and Smith owned and operated a business in Albany, New York offering financial services to clients, including investment advice stock brokerage services, and investments in securities sold by McGinn and Smith. Am. Compl. (Dkt. No. 100) at ¶¶ 22-24. As registered brokers, McGinn and Smith were both subject to the standards and procedures of FINRA. FINRA Compl. (Dkt. No. 192-3) at ¶¶ 11-14. In September 2008, FINRA commenced an investigation of McGinn and Smith for violations of securities laws and regulations regarding alleged fraud in four unregistered securities offerings sold between 2003 and 2006. Russo Decl. (Dkt. No. 189-2) at ¶ 3; but see Shorris Decl. at ¶ 9 (investigation commenced in January 2009); see also FINRA Compl. at ¶¶ 1-9.

FINRA's investigation initially focused on the administrative operations of the McGinn and Smith business and its sales practices. Russo Decl. at ¶¶ 7-8. FINRA's investigation included interviews with McGinn and Smith in April 2009 with which McGinn and Smith were required to cooperate as a condition of their FINRA membership and registration. Id. at ¶¶ 7,8. In July 2009, FINRA issued an examination report finding seventeen violations of administrative requirements principally including private placement memoranda and procedures regarding certain sales. Id. at ¶ 10. In September 2009, FINRA advised McGinn and Smith that it had referred the results of the investigation to its Enforcement Division for review and disposition. Id. FINRA interviewed McGinn and Smith a second time over several days in February 2010 concerning not only the violations cited in the June 2009 examination report but also allegations of personal gain by McGinn and Smith at the expense of investors and fraudulent securities offerings. Id. at ¶¶ 22-26, 28, 29. FINRA filed a formal complaint against McGinn and Smith on April 5, 2010 alleging fraud in the four

unregistered offerings in 2003-06. FINRA Compl. The hearing on that complaint is scheduled to commence in May 2011. Shorris Decl. at ¶ 10.

In December 2009, FINRA referred the matter to the SEC for its investigation of what FINRA had found were "potentially serious securities law violations." Shorris Decl. at ¶ 1; see also Russo Decl. at ¶ 13; Paley Decl. (Dkt. No. 205-1) at ¶ 2. The SEC commenced a formal investigation of McGinn and Smith on January 5, 2010. Russo Decl. at ¶ 17. FINRA provided the SEC with evidence obtained during its investigation and has continued to do so since the referral. Russo Decl. at ¶¶ 13-16, 18, 21, 30, 31, 35, 36, 38-40. The evidence provided included transcripts of the testimony given to FINRA by McGinn and Smith. See, e.g., id. at ¶¶ 30.

The SEC commenced the present action on April 20, 2010 alleging that in the four unregistered offerings in 2003-06, McGinn, Smith, and others violated the anti-fraud provisions of § 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b); Rule 10b-5 under the 1934 Act, 17 C.F.R. § 240.10b-5; and related provisions. Compl. (Dkt. No. 1). In preliminary proceedings, the SEC advised that evidence obtained by FINRA and provided to the SEC constituted a portion of the evidence upon which the SEC relied to prove its case, particularly including the testimony given to FINRA by McGinn and Smith. See transcripts of testimony by McGinn and Smith provided by the SEC in support of its motion for a preliminary injunction at Dkt. Nos. 4-26 through 4-31.

As part of their defense in this action, McGinn and Smith contend that the testimony which they gave to FINRA was compelled in violation of their Fifth Amendment right against self-incrimination in that FINRA, a private entity, acted as the agent of the SEC in requiring

their testimony. See, e.g., Defs. Mem. of Law (Dkt. No. 210) at 1. To discover evidence supporting this defense, McGinn and Smith served interrogatories on the SEC which included the following:

> 1. Identify each FINRA employee with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, [or the securities offerings], including the name, telephone number, address, email address, and title of such individuals.
>
> 2. Identify each person associated with the Department of Justice, including but not limited to persons associated with United States Attorneys' Office for the Northern District of New York with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, [or the securities offerings], including the name, telephone number, address, email address, and title of such individuals.
>
> 3. Identify each person associated with the Federal Bureau of Investigation[] with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn [or the securities offerings], including the name, telephone number, address, email address, and title of such individuals.

Russo Decl. at ¶¶ 42, 43 & Exs. NN (Dkt. No. 189-42) at 7, OO. The SEC declined to serve responses to these interrogatories asserting various privileges and objecting on grounds of relevance. Id. at ¶ 45 & Ex. QQ. McGinn and Smith also served five identical subpoenas on FINRA and four of its employees seeking documents and testimony on FINRA's interaction with the SEC in the investigation of McGinn and Smith. FINRA Mem of Law (Dkt. No. 192-1) at 1. FINRA and its employees declined to testify or produce documents beyond those provided to McGinn and Smith in the FINRA proceedings. These motions followed.

II. Discussion

A. Interrogatories to SEC

The SEC's original response to the three interrogatories asserted as grounds for its objections that the information sought was protected by various privileges and was not relevant. Dkt. No. 189-45. The sole ground asserted by the SEC in response to the present motion is that the information sought is not relevant. Pl. Mem. of Law (Dkt. No. 205). Under Fed. R. Civ. P. 33(a)(2), a party may serve another party with interrogatories which "relate to any matter that may be inquired into under rule 26(b)." Under Fed. R. Civ. P. 26(b)(1),

> Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense--including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. . . .

The standard for relevance under Rule 26(b) is "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978); Barrett v. City of N.Y., 237 F.R.D. 39, 40 (E.D.N.Y.2006) (noting that the information sought "need not be admissible at trial to be discoverable").

"The party seeking the discovery must make a prima facie showing that the discovery sought is more than merely a fishing expedition." Evans v. Calise, No. 02-cv-8430, 1994 WL 185696, at *1 (S.D.N.Y. May 12, 1994); United States v. Int'l Bus. Mach. Corp., 66 F.R.D.

215, 218 (S.D.N.Y. 1974) (holding that burden is on moving party to establish relevance). "Disclosure should not be directed simply to permit a fishing expedition." United States v. Berrios, 501 F.2d 1207, 1211 (2d Cir. 1974). "In a motion to compel, it is incumbent upon the moving party to provide the necessary linkage between the discovery sought and the claims brought and/or defenses asserted in the case." Palm Bay Int'l, Inc. v. Marchesi Di Barolo S.P.A., No. CV 09-601(ADS)(AKT), 2009 WL 3757054, at *2 (E.D.N.Y. Nov. 9, 2009).[3]

McGinn and Smith contend that various facts and circumstances combine to meet their burden of demonstrating the relevance of the information sought in the interrogatories. They contend that FINRA's initial investigation of McGinn and Smith was concluded with only minor findings of infractions of FINRA regulations but that it was then re-opened at the behest of the SEC to facilitate the SEC's investigation. They further contend that FINRA'S questioning at their second interviews was done at the behest, guidance, and direction of the SEC. They support these contentions with references to undisputed evidence that FINRA shared documents and information obtained in its investigation with the SEC. McGinn and Smith also rely on the nexus in the timing of the investigations and charges in the FINRA and SEC actions.

McGinn and Smith must demonstrate a prima facie basis for finding that the SEC

[3]The three interrogatories seek information related to the admissibility of certain evidence which the SEC has proffered in support of its claims. Those interrogatories do not relate directly either to the SEC's claims or to any defenses asserted by McGinn and Smith. Such interrogatories nevertheless fall within the scope of the "subject matter" of this action for which discovery is permitted under Rule 26(b)(2) upon a showing of "good cause" by the party seeking such discovery. Therefore, for this reason as well, McGinn and Smith bear the burden of demonstrating their entitlement to the discovery sought here.

and FINRA worked together to obtain evidence from McGinn and Smith in the FINRA investigation without McGinn and Smith having access to evidence from either of those parties. Nevertheless, the burden on McGinn and Smith to demonstrate state action here is a difficult one in light of Second Circuit decisions.

For example, in D.L. Cromwell Investments, Inc. v. NASD Regulation, Inc., 279 F.3d 155 (2d Cir. 2002), a securities brokerage firm and individual brokers sued the investigative arm of the National Association of Securities Dealers (NASD), a predecessor of FINRA, to enjoin it from requiring plaintiffs to testify as part of an investigation. The district court denied the injunction and plaintiffs appealed. On appeal, the court of appeals held that plaintiffs had failed to demonstrate that the NASD was acting as an arm of the law enforcement authorities then conducting a parallel investigation of plaintiffs when it compelled plaintiffs to provide testimony in its investigation. 279 F.3d at 162. In its analysis, the court of appeals held that to demonstrate the requisite state action, plaintiffs were required to show that

> To establish a Fifth Amendment violation, a plaintiff must demonstrate that in denying the plaintiff's constitutional rights, the defendant's conduct constituted state action. . . . That is because the Fifth Amendment restricts only governmental conduct, and will constrain a private entity only insofar as its actions are found to be fairly attributable to the government. . . . Actions are fairly attributable to the government where there is a sufficiently close nexus between the State and the challenged action of the regulated entity. . . . That nexus exists either (1) where the state has exercised coercive power [over a private decision] or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State; or (2) where "the private entity has exercised powers that are 'traditionally the exclusive prerogative of the State. . . .

Id. at 161 (internal quotation marks and citations omitted); see also United States v. Solomon, 509 F.2d 863, 869 (2d Cir. 1975) (finding no state action where private entity had

independent regulatory responsibilities and merely shared the transcript of the defendant's testimony with law enforcement authorities).

Thus, to meet their burden here, McGinn and Smith must demonstrate that the SEC exercised the degree of direction and control over FINRA's questioning of McGinn and Smith that FINRA's actions "must in law be deemed to be that of the [SEC]." D.L. Cromwell, 279 F.3d at 161. Speculation based on no more than the temporal nexus of certain events, the apparent ebbs and flows of an investigation, or the sharing of information and evidence will not suffice absent evidence of direct SEC involvement in the FINRA investigation, such as the presence of SEC personnel at the testimony of McGinn or Smith, requests to FINRA to obtain certain evidence, or evidence of jointly undertaken activities. See, e.g., In re Quattrone, Rel. No. 53547 (S.E.C. Mar. 24, 2006) (Dkt. No. 189-50) (finding showing of state action sufficient for an evidentiary hearing in SEC administrative proceeding based on evidence of joint cooperation set forth in jointly signed letter which also stated that entities would decide together how to proceed in matter).

Here, McGinn and Smith are the subjects of investigations and proceedings by FINRA and the SEC as well as criminal law enforcement authorities. See Dkt. Nos. 86 at 6 n.10, 190 (motion of McGinn and Smith to prohibit SEC from using evidence obtained by criminal law enforcement authorities). FINRA and the SEC have independent responsibilities and authority. While a government entity such as the SEC cannot direct a private entity such as FINRA in the execution of that entity's responsibilities, the entities are not prohibited from sharing information and evidence independently obtained. Thus, the threshold showing which McGinn and Smith must meet here is not simply cooperation or information-sharing between FINRA and the SEC but joint action, direction, or control of

FINRA's investigative activities with or by the SEC. FINRA and the SEC deny any such conduct. See Paley Decl. (Dkt. No. 2015-1); Shorris Supp. Decl. (Dkt. No. 192-4). McGinn and Smith have offered facts which at best demonstrate information-sharing between FINRA and the SEC but only mere speculation as to joint action, direction, or control. In these circumstances, McGinn and Smith have not met their burden of demonstrating a prima facie basis for the relevance of the information sought in the three interrogatories. Accordingly, their motion to compel the SEC to serve responses is denied.

B. Subpoenas to FINRA and FINRA Employees

The subpoenas to FINRA were served pursuant to Fed. R. Civ. P. 45 which authorizes the responding party to move to quash if the subpoena "requires disclosure of privileged or other protected matter, if no exception or waiver applies . . . ." Fed. R. Civ. P. 45(c)(3)(A)(iii). The subpoenas here required FINRA to produce documents and testimony concerning FINRA's investigation of McGinn and Smith. Dkt. No. 192-3 at 59-90. FINRA contends in this motion that (1) McGinn and Smith failed to exhaust available remedies for obtaining the documents in the FINRA proceeding, and (2) the documents and testimony sought by the subpoenas are protected from disclosure by the investigative privilege. FINRA Mem. of Law (Dkt. No. 192-1.

1. Exhaustion of Remedies

In the FINRA proceedings, the presiding hearing officer issued a scheduling order on July 7, 2010 which required the parties to file all discovery-related motions by August 23,

2010. FINRA provided McGinn and Smith with approximately 31,250 pages of documents plus other materials from its investigative file. Shorris Supp. Decl. at ¶ 6. FINRA declined to produce (a) notes from interviews of investors; (b) internal memoranda and analyses regarding the FINRA action; and (c) internal schedules and analyses. Id. FINRA asserted that these categories of documents were protected from disclosure by various privileges, including the investigative privilege, and by FINRA rules of procedure. Id. at ¶ 6. McGinn and Smith did not move to compel FINRA to produce the withheld documents in the FINRA proceeding as allowed by the scheduling order issued by the hearing officer. FINRA and its employees contend here that McGinn and Smith were required to exhaust all such remedies in the FINRA proceeding before seeking the withheld documents through the Rule 45 subpoenas. FINRA Mem. of Law (Dkt. No. 192-1) at 10-11.

FINRA relies for its authority on McLaughlin, Peven, Vogel, Inc. v. Nat'l Ass'n of Sec. Dealers, Inc., 733 F. Supp. 694 (S.D.N.Y. 1990). There, a securities brokerage firm brought an action in federal court against FINRA's predecessor for disclosure of the records of an investigation. The defendant moved to dismiss on the ground that the plaintiff's request was subject to the requirement of exhaustion of remedies before commencing an action for disclosure of records. The court granted the motion on that ground. Id. at 696-97. McLaughlin, however, solely concerned the disclosure of records and, therefore, the policies underlying the exhaustion requirement were directly applicable. Here, however, the action was commenced to enforce securities laws, not simply to obtain records, and the records and testimony sought here by McGinn and Smith are ancillary to, not the direct object of, the action.

Where, as here, this action overlaps significantly with the FINRA action, the rights

and procedures governing this action must govern the availability of records unless statutory provisions or binding precedent dictates otherwise. To hold otherwise would allow the rights and procedures applicable in other forums to supplant those applicable here. No such other statutory provisions or binding precedent has been cited which would alter this conclusion. Accordingly, McGinn and Smith were not required to pursue all available remedies to obtain the documents and testimony sought here before resorting to the rights and procedures afforded by Rule 45. FINRA's contention to the contrary is rejected.

2. Investigative Privilege

The investigative privilege asserted by FINRA derives from the law enforcement privilege. In re U.S. Dep't of Homeland Sec., 459 F.3d 565, 569 (5th Cir. 2006) (citing Coughlin v. Lee, 946 F.2d 1152, 1159 (5th Cir. 1991)); In re Sealed Case, 856 F.2d 268, 271 (D.C. Cir. 1988); In re Dep't of Investigations of City of New York, 856 F.2d 481 (2d Cir. 1988); Otterson v. Nat'l R.R. Passenger Corp., 228 F.R.D. 205, 207 (S.D.N.Y. 2005); see also United States v. Sixty-one Thousand Nine Hundred Dollars and No Cents, No. 10 Civ. 1866(BWC), 2010 WL 4689442, at *2 (E.D.N.Y. Nov. 10, 2010) ("courts have used 'investigat[ive] privilege' to refer to the law enforcement privilege, . . . interchangeably" and citing Otterson). The privilege is generally limited to the files of civil and criminal law enforcement investigations. See In re U.S. Dep't of Homeland Sec., 459 F.3d at 569.

However, "a similar policy has been recognized with respect to investigative materials generated by industry regulatory organizations. . . ." Apex Oil Co. v. DiMauro, 110 F.R.D. 490, 496-97 (S.D.N.Y.1985). Thus, courts have applied the investigative privilege to FINRA and similar regulatory organizations. See DGM Investments, Inc. v. N.Y. Futures Exch.,

Inc., 224 F.R.D. 133, 140 (S.D.N.Y. 2004); In re Adler, Coleman, Clearing Corp., No. 95-08203, 1999 WL 1747410, at *3 (S.D.N.Y. Dec. 8, 1999); Ross v. Bolton, 106 F.R.D. 22, 23 (S.D.N.Y. 1985), The privilege affords a qualified protection against disclosure of "the investigatory process of [FINRA] from routine scrutiny by a litigant absent a showing of need by the party for the information." Apex Oil, 110 F.R.D. at 496. Like the law enforcement privilege, the investigative privilege exists to encourage and shield the efforts of law enforcement and regulatory agencies to obtain information without fear of premature disclosure to those under investigation. DGM Investments, 224 F.R.D. at 139. Against this interest must be balanced the need of the party seeking disclosure in obtaining the information in connection with the pending law suit. Id. (collecting cases).

As the law has developed, a burden-shifting analysis has evolved requiring the party asserting the privilege first to demonstrate the applicability of the privilege to the materials sought. See DGM Investments, 224 F.R.D. at 139-40 (following In re Sealed Case, 856 F.2d 268, 270 (D.C. Cir. 1988). To meet this burden, a party asserting the privilege must demonstrate (1) a formal claim of privilege through the individual who controls the requested materials and information, (2) that the individual has asserted the privilege based on personal consideration, and (3) why the material and information at issue is protected by the privilege. Id. If this burden is satisfied, the requesting party must then demonstrate a compelling need for the material and information which outweighs the responding party's interest in protecting it. In re Adler, Coleman, Clearing Corp., 1999 WL 1747410, at *6; see also United States v. Sixty-one thousand Nine Hundred Dollars and No Cents, 2010 WL 4689442, at *2 (describing similar procedure for asserting the law enforcement privilege as "a rather elaborate mechanism").

To meet its initial burden, FINRA has submitted the declarations of James S. Shorris, FINRA Executive Vice President and Acting Director of Enforcement. Shorris Decl. at ¶ 1; Shorris Supp. Decl. at ¶ 2. In those capacities, Shorris heads the division of FINRA which maintains control over the materials and information at issue here and has formally asserted the investigative privilege against their production. Shorris Decl. at ¶¶ 16-17. Shorris demonstrates sufficient personal consideration of the materials and information at issue, the FINRA investigation which generated them, and the impact disclosure will have on FINRA's investigation of McGinn and Smith and on other investigations. Id. at ¶¶ 9, 14, 16-21; Shorris Supp. Decl. at ¶¶ 6, 7.

As to the third element of FINRA's preliminary showing, FINRA has limited its privilege claim to (a) notes from interviews of investors,(b) internal memoranda and analyses regarding the FINRA action,[4] and (c) internal schedules and analyses. Shorris Supp. Decl. at ¶ 6.[5] It thus appears from the record that FINRA has disclosed to McGinn and Smith the materials and information in its possession containing factual matters but withheld that containing the observations of investigators and attorneys about the investigation, analyses of factual matters that would constitute FINRA work product, the

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[4]FINRA has submitted for ex parte, in camera review a privilege log of its communications with the SEC. That submission will be filed under seal in the docket of this case. See also note 5 infra.

[5]McGinn and Smith contend that FINRA should be required to serve complete privilege logs of the withheld documents as required by Fed. R. Civ. P. 45(d)(2)(A)(ii). See also Fed. R. Civ. P. 26(b)(5)(A)(ii) (same). However, that rule requires a party asserting a privilege to identify the documents and information withheld in a manner sufficient to assess the claims of privilege. Given the volume of documents at issue here, FINRA has satisfied the requirements of this rule with its descriptions of the categories withheld.

identities of all those who provided information to FINRA in its investigation, descriptions of the methodology of FINRA's investigation, and a preview of FINRA's case for the May 2011 hearing. Shorris Decl. at ¶¶ 15-21; Shorris Supp. Decl. at ¶¶ 6, 7. Such a showing suffices to satisfy FINRA's initial burden.

The burden then shifts to McGinn and Smith to demonstrate "a need for the privileged information that outweighs the competing interest in non-disclosure." DGM Investments, 224 F.R.D. at 140; see also Friedman v. Bache Halsey Stuart Shields, Inc., 738 F.2d 1336, 1342 (2d Cir. 1984). The party seeking disclosure must establish a particularized need for the material and information at issue and may not rely on unsupported allegations. DGM Investments, 224 F.R.D. at 140; In re Adler, Coleman, 1999 WL 1747410, at *6. "Nor will speculation as to the 'mere possibility' of useful information be deemed sufficient to overcome the protection for investigative files . . . ." DGM Investments, 224 F.R.D. at 140 (citing Apex Oil, 110 F.R.D. at 498). However, where the information sought is narrowly tailored to the requesting party's need and is crucial to that party's claim or defense, the requesting party's need may outweigh the responding entity's interests in non-disclosure and production may be compelled. Id.

As noted, McGinn and Smith contend that FINRA violated their respective Fifth Amendment privilege against self-incrimination when it compelled them to provide testimony in the FINRA investigation because FINRA acted as an agent of the SEC. Defs. Mem. of Law at 23. The subpoenas to FINRA seek materials and information which would support this defense and provide cause to suppress at least the testimony given by McGinn and Smith in the FINRA investigation. In support, McGinn and Smith cite the same events which they cite in support of their contention that the interrogatories to the SEC sought

relevant information. For the same reasons noted in subsection II(A) supra, however, the allegations, subjective perceptions, speculation, and beliefs of McGinn and Smith, unsupported by facts, are insufficient to demonstrate a particularized need for the material and information in question.

McGinn and Smith principally contend that purported anomalies in the conduct and course of the FINRA investigation support their contention of SEC direction and control. They contend that an expansion of the scope of the FINRA investigation after its initial phase appeared completed, the exploration of the personal assets of Mcginn and Smith, communications between FINRA and the SEC during the FINRA investigation, and the temporal nexus of the commencement of formal proceedings in the FINRA and SEC actions all point to SEC control. However, FINRA categorically denies the contention that it took any action in its investigation at the behest of the SEC. Shorris Decl. at ¶ 13;[6] see also Paley Decl.

More significantly, the import which McGinn and Smith impute to these events is unsupported by any fact or evidence in the record. No evidence has been offered that FINRA and the SEC acted jointly at any stage, let alone at the questioning of McGinn or Smith. No evidence has been offered that the SEC requested FINRA to obtain certain

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[6]FINRA did not take direction from the SEC concerning FINRA's investigation of the Defendants and their Firm, nor did FINRA coordinate its on the record interviews of defendants and others with the SEC. FINRA and the SEC did not exchange outlines, questions, or documents with respect to testimony taken in either the FINRA Action or the SEC Proceeding. Pursuant to its authority to refer investigations, FINRA provided the SEC with copies of transcripts of relevant testimony after such testimony had been taken in the FINRA Action.

Shorris Decl. at ¶ 13.

evidence, was present when McGinn and Smith gave their FINRA testimony, or suggested any questions for them. Compare In re Quattrone, Rel. No. 53547 (finding that party in an SEC administrative proceeding had offered sufficient evidence to obtain an evidentiary hearing where evidence included joint communications from the two entities and a joint statement that any resolution would require the agreement of both entities). Accordingly, McGinn and Smith have failed to meet their burden of demonstrating a particularized need for the material and information they seek.

McGinn and Smith further contend, however, that even if the material sought by the subpoenas is protected from disclosure, they are still entitled to take the depositions of the FINRA employees concerning non-privileged matters. The employees include the prosecuting attorney, the supervising examiner, two examiners, and the custodian of records. Dkt. No. 192-3 at 59-90. Where, as here, the investigative files sought by the requesting party are protected by privilege, courts have prohibited the requesting party from deposing those involved in the investigation because "[i]t would make little sense to protect the actual files from disclosure while forcing the [producing entity] to testify about their contents.". In re Sealed Case, 856 F.2d at 271; see also In re Adler, 1999 WL 1747410, at *5 (finding that investigative privilege protects both investigatory files and testimony concerning those files and declining to compel testimony even where sought only as to factual matters). Moreover, where materials containing such factual matters have already been provided to McGinn and Smith in substantial volume by FINRA, the limited, non-privileged testimony which could be adduced concerning those matters would be merely cumulative. Therefore, the request of McGinn and Smith to compel the testimony of the FINRA employees concerning non-privileged matters must also be denied.

III. Conclusion

For the reasons stated above, it is hereby

ORDERED that:

1. The motion of McGinn and Smith to compel the SEC to serve responses to three interrogatories (Dkt. No. 189) is **DENIED** in its entirety; and

2. The motion of FINRA and its employees to quash five subpoenas served on them for materials and testimony (Dkt. No. 192) is **GRANTED** in its entirety.

IT IS SO ORDERED.

DATED: January 5, 2011
Albany, New York

David R. Homer
U.S. Magistrate Judge

U. S. SECURITIES AND EXCHANGE COMMISSION

Investigation # FL-04188

DECLARATION OF RUSSELL CASTILLO

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is RUSSELL CASTILLO, I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. I am assigned as an IT Specialist to the U.S. Securities and Exchange Commission's Division of Enforcement in Washington, D.C. As part of my duties I am tasked to conduct a Website Capture.

3. In support of investigation FL-04188, and at the direction of my supervisor, I was tasked to conduct Website/video capture of the following URL's, including Exhibits A, B, C, and D, attached hereto.

   https://web.archive.org/web/20121212020618/http://parfunding.com/index.html

   https://web.archive.org/web/20121212005132/http://parfunding.com/apply/apply.php

   https://web.archive.org/web/20121212020642/http://www.parfunding.com/services.html

   https://web.archive.org/web/20131126034117/http://parfunding.com/index.html

   https://web.archive.org/web/20131126030551/http://parfunding.com/apply/apply.php

   https://web.archive.org/web/20131126033900/http://parfunding.com/clientportal.html

   https://web.archive.org/web/20131126034251/http://parfunding.com/contact.php

   https://web.archive.org/web/20150124072727/http://www.parfunding.com/index.html

   https://web.archive.org/web/20150123043729/http://parfunding.com/testimonials.html

   https://web.archive.org/web/20150124072708/http://parfunding.com/clients.html

   https://web.archive.org/web/20150124072713/http://parfunding.com/contact.html

   https://web.archive.org/web/20140412073800/http://investcbsg.com/

   https://web.archive.org/web/20140413094413/http://investcbsg.com/about.php

   https://web.archive.org/web/20140413094502/http://investcbsg.com/invest.php

   https://web.archive.org/web/20140413094623/http://investcbsg.com/whycbsg.php

   https://web.archive.org/web/20140413094417/http://investcbsg.com/contact1.php

   https://web.archive.org/web/20141025205511/http://www.investcbsg.com/index.php

   https://web.archive.org/web/20150429095143/http://investcbsg.com/invest.php

https://web.archive.org/web/20141024183954/http://www.investcbsg.com/whycbsg.php

4. To complete the above mentioned website/video capture on November 21, 2019, the following tools were used:

   Full Page Screen Capture

5. After each website/video was captured, an email containing the identified web capture was produced to

   or

   After each website/video was captured for the above criteria, It was stored on a network share in which the location was provided by Raynalda Milord. The location that was provided is as follows:

   \\ad\enfdataexchange\HQtoMIRO_dropoff\Webcapture

6. Any additional comments related to this Website/video capture are provided below:

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.

Russell Castillo
[Analyst Name]

Executed on this 21st day of November 2019

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. **20-CV-81205-RAR**

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff
vs.
COMPLETE BUSINESS SOLUTIONS GROUP, INC., ET AL.,
Defendants.

August 17, 2020

STATUS CONFERENCE VIA VIDEO

BEFORE THE HONORABLE **RODOLFO A. RUIZ, II**,

UNITED STATES DISTRICT COURT JUDGE

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P R O C E E D I N G S

(The following proceedings were held in open court via Zoom teleconference.)

THE COURTROOM DEPUTY: So who do we have on behalf of Lisa McElhone?

MR. FUTERFAS: Yes, good afternoon, Alan Futerfas, F-U-T-E-R-F-A-S for Lisa McElhone.

THE COURTROOM DEPUTY: Are you representing anyone else in the case?

MR. FUTERFAS: No.

(Thereupon, there was a brief pause.)

THE COURT: Okay, good afternoon, everyone. This is Judge Ruiz. In Case Number 20-81205, Securities and Exchange Commission versus Complete Business Solutions Group, Inc., et al.

My court reporter, I believe, has taken a roll call already and when we have today's telephonic status conference here in just a moment, if we can make sure we identify ourselves when speaking so we have a clean record, but I do believe everyone is present and accounted for at this time based upon my court reporter's notes.

So let's talk a little bit about what has happened, if you will, since we last spoke because there's been a flurry of activity including over the weekend that has necessitated a couple of major rulings from the Court. Obviously, the first

one that I'm sure everybody has seen was the entry of the Amended Order on the receivership which the Court, as stated in my order, felt compelled to do given representations by the receiver of some of the difficulties he was having to
02:44 accomplish his goals of getting a good sense of what is happening with Par Funding and what is really going on in the books and records and behind the scenes.

Since then we have also been advised over the weekend of some concerns regarding access electronically to the G Suite
02:44 of Par Funding and what could be termed somewhat of an unauthorized access by several individuals and concerns, again, from the receiver that records have either been downloaded or manipulated or somehow damaged and, therefore, the Court went ahead and entered another order that dealt with access and
02:44 supervised access, as is termed in the moving papers, to make sure that the receiver could preserve some of those electronic records and work on trying to get full access.

So that has been some of the flurry of activity, I guess, if you will, that has kind of changed a little bit of
02:45 what's going on.

Now, of course, we still are on pace tomorrow to have our Zoom preliminary injunction hearing. I'm in receipt of responses by the defendants as well as exhibits and amended witness lists from the SEC. And I have a good sense of who we
02:45 plan on hearing from tomorrow.

Before I kind of get into the nuts and bolts and get an update, I think it would be best to turn to receiver's counsel and the receiver just to get a sense of what, if anything, the Court needs to be aware of that may have happened even in the last 24 to 48 hours since the Court amended the receiver order, opened up the receivership, expanded its scope and its powers, gave them managerial control, resulted in the withdrawal of counsel so there's no longer the representations concerns. I think it should have also resolved any privileged issues that the receiver was having issues with also. And then, of course, anything that may have happened with the electronic records.

Can I get an update from receiver, receiver's counsel as to the latest of what's going on with their activity, please?

MR. ALFANO: If I may, this is Gaetan Alfano. I will start. So there's really been a few things that are relevant to the motions that we filed over the weekend. The first is that we have eventually started to receive, but it was very late last night, certain of the materials that have previously been claimed as privileged. We're still, obviously, evaluating them. We're not at all confident of when we receive these materials to really provide much of an evaluation of those materials at this point.

Again, we did eventually begin to receive them. I

said some parties were more cooperative than others, but we have started to receive some of the materials, first of all. With respect to the archive access issue, it's still a matter that is very troubling to the receiver. One particular employee Aida Lau downloaded over 95,000 documents according to the log that we have received.

02:47

Mr. Kolaya and I just interviewed her at 1:00 o'clock this afternoon. She claims that with respect to many of those records, they were apparently on some sort of automatic download system to her computer at home. She has a home office that she can work from and she has access to various records, including records of businesses, other businesses that may be owned by certain of the individual defendants. She is still doing, apparently, some work for them on those businesses.

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He tells us that this somehow was a result of some sort of automatic download which we are investigating and will continue to investigate, but she also told us that, conveniently, apparently, over the weekend, before she was aware of Your Honor's order, which I provided her with this morning, she evidently not just deleted but permanently deleted all of those records that were subject to that major download that occurred from August 3rd through August 12th.

02:48

She explained to us that she did access the system at times after the receiver was appointed from July 28th to go in and check information that she had provided or was providing

02:49

for purposes of the affidavits and declarations that she's put before the Court for purposes of tomorrow's hearings, which, again, was concerning to us. And that evidently she has gone into the system for purposes of printing checks, she claims, for matters and voiding checks to make certain electronic payments she claims for matters that are unrelated to the receivership.

But we believe, although we're not confident, but we believe that by virtue of Your Honor's order with any action that we took over the weekend, she has been, to a very large degree, if not effective, you know locked out of her access those systems at this point.

That's about all that I can update the Court on that particular issue.

There was another issue that came up, and I'm attempting to work with counsel for Mr. Cole but we were led to believe that Mr. Cole may have a personal laptop that he has retained that also contains investor information on it. And I've requested that that laptop be delivered to my office by the close of business, and I know that request is pending with his counsel and we have been discussing that, the provision of that laptop to the receiver, hopefully today.

I think those are the most recent updates.

THE COURT: So let me ask a couple of things, if I could, and this probably is best directed to counsel, yourself,

and co-counsel for the receiver.

You know, I'm stepping back here and understanding a bit of the better picture in light of the fact that now we have pleadings from all sides about what our plan is here and I
02:51 think we have talked extensively that we want to, wherever possible, save this business. We want to avoid kind of a liquidation scenario here, but I'm sure one of the things that you've heard of or you saw, and for the benefit of all parties I will share, and whether it's a concerted effort from
02:51 defendants or not is a point for another day but the Court has been inundated, there is no other word, inundated with letters that have been e-mailed to me from all the individual investors. They repeatedly request the Court for all the same thing, which is to prioritize the principal that was given to
02:51 Par Funding, and we can talk about this through any method, whether it was through a direct Par Funding, whether it was there through an agent fund, whether it was through a note issued by an agent fund as opposed to Par Funding, et cetera. But I have been asked repeatedly by these investors to please
02:52 prioritize the recovery of investor principal.

Now, we talked a little bit through the orders about a seven-day plan or it was -- I don't know if it was necessarily a seven-day plan, but it was a proposed plan that was offered by several defense counsels and I had asked the receiver, to
02:52 the extent possible, understanding that I have given you guys

time to retain an expert in the merchant cash advance field, to look into the possibility of implementing any of the plan that was recommended, if feasible, and, by the same token, I wanted to ask now, if we do have any sort of focus, if you will, on recovering investor principal, perhaps as a priority, and if that is part of what's going on, I think we need to make it clear because at some point, although the SEC I think has reached out to some of these investors, there is a lot of misinformation in my view going on to innocent individuals who, for better or for worse, were led into giving their hard-earned money, in some cases, retirement funds and investments that they made and savings, into Par Funding, and as the e-mails many times indicate, not knowing a lot of what happened here. And I don't mean that these are registered or unregistered 506 type securities, I'm talking about we didn't know this individual may have had a criminal history. We didn't know the nature of the business in terms of the truth behind default rates, that kind of information. That may have, in the view of the SEC, all of this being material, led them not to invest.

And so they are very concerned about their principal and whatever is left in the coffers of Par Funding and so I am curious if the receiver has the sense of the ability to try to put these investors at least at ease and let them know that it is the Court's intention to recover these monies, first and foremost.

Did I get a sense from anyone on behalf of the receiver whether this is their focus just so we can get a true sense of purpose here going forward?

MR. STUMPHAUZER: Yes, Your Honor, this is Ryan Stumphauzer speaking. If I can address this one directly, I think that would be helpful.

We have a whole team of people literally working around the clock, seven days a week, for that exact purpose, to collect on the portfolio. A single thing, and maybe only one single thing that I think everybody agrees upon is that the collection needs to be restarted as soon as humanly possible.

To that end, I want everyone to understand, not just Your Honor, but also the investors, that DSI, of course, we hired that company with the Court's permission, DSI is physically on site right now figuring out the portfolio. They have multiple people there who are digging through the portfolio, determining the status and determining the best way to get the collections restarted.

In addition, we have already brought back -- who we have identified as key employees that we think are necessary to help us move forward. Those are people from accounting, from compliance, from IT, and I'm referring to employees at this point. Some of them need to be brought back.

And on a positive note, I can go through this in more detail, Your Honor, but DSI actually believes that the

operational plan proposed by the defendants is workable subject to a few tweaks that I can explain in more detail later, but generally it would have been their game plan anyhow.

But I want to be clear on one point: We would be much further if we had cooperation, meaningful cooperation from anyone, quite frankly, and just to give you an example, Your Honor, and we didn't attach all the exhibits, we have been begging, we have been pleading repeatedly, dozens of e-mails, please give us whatever opinion helps us analyze the lawfulness of these MCA advances and we, after writing letters, I will Mr. Alfano jump in regarding timing, but even moments before this hearing, we continue to file more and more e-mails where we get indirect responses about, is there a comprehensive legal opinion.

So to be clear, we're ready, we're willing, we're able, we understand that it's emphatically important. The defendants themselves, Your Honor, have filed numerous pleadings with you to tell you how urgent this is. And now we're waiting on them.

There is some lawyer somewhere that has this analysis. In fact, the defense gave me the time and dates of some of these particular opinions, most of which we still don't have. And we -- I'm glad to send them to the Court if you're interested, but it got to the point, Your Honor, where we drafted single requests each, you know, very clear, citing the

exact opinions we needed, and many of them we still do not have.

We cannot restart operations until we know they're legal. It's really that simple.

02:57 **THE COURT**: And I appreciate that, and I don't want to interrupt, but I appreciate that, in fact. I would add another little wrinkle, not only did they give you the time and date, Mr. Stumphauzer, but I think they even gave you the price because last time I remember, Vagnozzi talked about the 18,000. He dropped to make sure he got some cover legally on this, and one of the things I can garner from the collection efforts we listed is we have these merchant cash advance contracts in default. We have people in Pennsylvania state court trying to recover on them, but it is obviously very important that for us to try to make this thing a going concern and revitalize this business or find a way forward, the legalities of some of the merchant cash advance, which I understand in no uncertain terms, quite honestly, seems like the wild, wild west here when it comes to some of these investor funds.

02:58 But, to me, I couldn't agree more that we need to have some cover to understand a little more about the legalities of the business plan and what it was that Par Funding, and some of the associated agent funds used to go ahead and enter the space legally, and I understand some of that doesn't necessarily just have to do with the SEC opinions on whether or not -- I think

it was Mr. Small who pointed it out in his briefs in opposition when he talked about Mr. Gissas and what he sought as an opinion for his not having to require registration and the nature of the securities and we got into all sorts of discussions in the defendant's briefings about whether or not these were public solicitations, the nature of these meetings, et cetera.

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I think that the bottom line I want everyone to understand, to the extent investors are listening in on this call or going to be told a little more about what's going on, you have to understand that the only reason the Court felt compelled to enter this amended order was because of the representations that have now been made again, by the receiver, that without these tools, he was being frustrated in doing his job, which I've directed him to do, and that is to get these investor principals back.

So that cannot be accomplished if we're going to put up roadblocks. I trust that some of these have been removed by the amended order, but it's startling to me that we continue to have some dilatory activity on behalf of defendants here who want to go ahead and show the SEC that they can fix this business, that it is a true business, that it is appropriate to let them reopen their doors, yet do not want to give the receiver what he needs to make an educated decision about the viability of the business.

We cannot have one without having the other and I'm not here to start quibbling over privilege issues. I get that there's some concerns over that. And I have already referred, as of this morning, the motion to compel for the opinions to my magistrate judge who is getting directions from me on that because he knows it's going to be time sensitive and we need to get through to that.

So I want everyone to understand there's been so much lamentation about the Court, at first glance, holding back the SEC from a broader order on purpose, which is my intent, and feeling like my hands were tied and that defendants put me in a position to have to let the receiver come in and clean house as he did.

Now I am somewhat happy to hear that we're going a little bit in reverse. We shut everything down and now we're bringing back pieces of the business, key employees, accountants, et cetera, once we can figure out that it's safe to let them resume some operations, just like we're lifting litigation stays where it's appropriate.

But I take issue with the characterization that has been raised that the Court is simply either looking to liquidate or is giving a rubber stamp to the agency, which is not what I want to do. Part of this problem is created by the defendants and their unwillingness to cooperate with the receiver. I said it in the last hearing. You have the keys to

unlock your own cage on a lot of this. If you give us what we need in accounting, if we get these legal opinions, I think that the receiver can continue to bring back key elements of the business and, hopefully, help us locate some of its
03:01 investor principal, and that's really all I need to say when it comes to where I'm at on the receivership, because there's not much more to do their job other than to let them do their job and keep getting information and get what they need.

So what I want to turn to now, and I'll let everybody
03:01 speak, but this is more to get some primers for tomorrow. I want to turn to the SEC in preparation for tomorrow's hearing, and the reason why is because I have, in my view, three categories of defendants here. I have the CBSG Par Funding level, if you will, with McElhone and, you know, all our main
03:02 players, if you want to call them that. You know, McElhone and Joseph Cole, et cetera. Then I have a medium tier, as I see it, of Vagnozzi who has a little bit of a different situation. And then I have at the bottom of this whole set accounts, I have Mr. Gissas who is only being brought in from a negligent
03:02 perspective for purportedly not going out and finding out more about Cole and what's going on with his prior record and all the sanction orders in Texas and Pennsylvania, et cetera.

Can I ask the SEC, are we focused tomorrow on all of these actors? Are we focused on some of these actors? Because
03:02 one of the things, although I know that the standard for the

agency is lower than your traditional Rule 65 preliminary injunction, you know, I'm being told in no uncertain terms, as I was last hearing, that I think Mr. Gissas and his counsel are looking to resolve this case with the SEC. I think Mr. Vagnozzi keeps telling us that he's out of the game, he's been effectively suspended, there's no future harm, and he's willing to work with the SEC, and I think we have maybe a different approach, understandably, from the fund, obviously, I think from the McElhone view and from the Cole view and the LME Family Trust view, I get that they may be in a different world.

So, Ms. Berlin, can you tell me, is your view preliminary injunction across the board with all these players? Is it focused on some versus the others? Have we had any meet and confer so that tomorrow's hearing is maybe more detailed in certain actors, or is it just across the board?

I'm curious if anything has changed in the SEC's approach going into tomorrow.

MS. BERLIN: Thank you, Your Honor. This is Amie Riggle Berlin. And I think (inaud.) because we have had discussions with some of the counsel in the last couple of weeks since our last hearing and since the initial filing.

With respect to the approach for tomorrow, we anticipate that we will be filing documents before the hearing, maybe even today, that resolve the relief being sought tomorrow as to Mr. Furman. So we expect that we will not be addressing

Mr. Furman tomorrow and, hopefully, this will be filed today.

With respect then to Mr. Vagnozzi, and the CBSG individual defendant, the focus will be on showing the Court some of the additional evidence that has come in since our initial filing to show that that has only strengthened the case to present some evidence about some of the defendants' conduct, some of the receivership that we believe further shows the relief we sought. And then addressing the arguments in their memorandum.

03:04 03:05

With respect to Mr. Gissas, that has also changed significantly. Additional evidence has come to light since our initial filing that is a very different of Mr. Gissas and we believe it's completely contrary to what's been represented to the Court by Mr. Gissas, and we will be presenting that evidence tomorrow during the hearing.

03:05

So there is a rather dramatic shift with respect to Mr. Gissas with respect to his actual conduct and severity of his conduct.

THE COURT: Okay.

03:05

MS. BERLIN: We don't plan to go through, and I am not going to go through all 220 exhibit. With the Court's permission, my hope was that we would be able to, at the beginning of the hearing, move our exhibits into evidence and address some of the objections. I think everything we provided has been authenticated. And so we would move to enter it and

03:06

then present if the Court, you know, finds this acceptable would be to present a PowerPoint through share screen on Zoom that shows the additional evidence that has come in and it references all of the arguments the defendants have made. So it would be a more focused presentation to the Court and I think the most efficient, because I do understand that we have a lot of defendants and many of them will want to be making presentations.

03:06 Also, Your Honor, trying to provide declarations instead of live testimony for all of the witnesses we can and so while you see the witness list, I know that James Klenk will be presented by declaration, and I've advised the defendants of that, as will anything from the receiver. And we're also working to do that with respect to our final witness which was Ray Anchik (ph.).

03:07 So, you know, as far as the hearing, we're working so that we can do this efficiently as possible tomorrow.

I did want to ask the Court -- I mean, I imagined that the SEC is able to present rebuttal evidence to the evidence the defendants provided to the Court on Friday, which was -- I think they filed after you (inaud.), the SEC filed our supplemental evidence and then the defendants filed their memos in opposition with their evidence.

03:07 And the Court's order didn't state that the SEC could file a reply, which I don't believe is necessary, I don't think

we need to file a reply, but there is evidence that I think we should be able to present to give the Court the full picture that rebuts some of the (inaud.) the defendants provided in their filing, and I wanted to ask the Court how we should, one) if we are able to do that, and two) if so, how -- what the logistics would be for doing so.

THE COURT: Well, I think that, without question, I'm more than comfortable with allowing the SEC to present any rebuttal evidence tomorrow. I mean, I'm looking at, between declarations and the scope of the testimony in the amended witness list that you've provided me, I think that it seems like it's going to be fairly streamlined, so it won't take too long.

I mean, I'm okay with any rebuttal witnesses you may want to call. Obviously, on the defense side, we need to be somewhat organized because I'm not going to have four or five cross-examinations here. I need to have some -- I want to prevent having any sort of duplicative testimony. So I'm certain that there may be some questions that each lawyer may have with respect to their client. So I don't think there will be too much overlap if, for example, Mr. Small want to ask a question as to Mr. Gissas or if Mr. Hirschhorn wants to ask on behalf of Ms. McElhone, however we want to do it, I'm comfortable with that. I'm able to direct it through Zoom so if for some reason we find ourselves overlapping unnecessarily

or belaboring something that's been covered, I'll direct the parties to move on.

I don't have an issue, though, once we go ahead and you guys present it. I think that the only witness that was suggested to me, unless -- I haven't checked the most recent list, but I know that Mr. Miller had indicated he wanted to call Mr. Vagnozzi. I mean, he's going to get a chance to cross Mr. Vagnozzi and I would rather have him, if he needs to handle some of his case in chief or his rebuttal or his defense, rather, he can go ahead and do that when he has Mr. Vagnozzi on the stand already testifying.

But I don't know that from the rebuttal evidence point of view how many other live witnesses we would expect from the defense. My understanding is he's the only one that is being called or even listed.

So I think most of the defense counsels are going to live off cross-examination of Andich (ph.), Vagnozzi, Mr. Stumphauzer and I guess Mr. Klenk will have his declaration. But I have no problem. Are you intending from a rebuttal perspective of recalling somebody or is this separate witnesses? I'm just asking the SEC what they are thinking of doing.

MS. BERLIN: Yes, sir. I think it's even more streamlined than that. Because my hope, Your Honor, is that we will present all of our witness by declaration. Mr. Andich,

the receiver, and Mr. Klenk by declaration, instead of live. And with respect to Mr. Vagnozzi, we have the transcript of his deposition and so I will either utilize that or if he is called by Mr. Miller, I will cross-examine him.

03:11 And so I am very hopeful, Your Honor, that the SEC will not have to call any live witnesses tomorrow, that we will present them all through declaration and for all, once I read the defendants' memorandum I have been busy obtaining declarations from witnesses so that in the event we need them 03:11 at the hearing, I would present the declarations as my rebuttal testimony at that time rather than have to actually call a live witness to join us on Zoom.

THE COURT: Oh, okay. Yeah that's fine. Yeah, that's very streamlined then. Yeah. No problem. I thought maybe you 03:11 had people standing by in case you needed them to join Zoom, or something to that effect, which I have had happen since the pandemic.

That's not a problem at all. I think you have your rebuttal evidence ready to go. And once we hear the argument 03:12 from the defense, you are free to present it and you will be able to kind of, I think, from what you're telling me between highlighting deposition excerpts for Vagnozzi, reading in declarations, et cetera, it sounds to me like you should be able to methodically go through your witness list and your 03:12 evidence so as to carry your burden, and then I will hear,

obviously, argument at the conclusion from both sides.

I mean, at the end of the day we know that your entitlement, under the Calvo case, really is the prima facie case of previous violations of federal securities laws and then
03:12 a reasonable likelihood that the wrong will be repeated. So it's a fairly straightforward two-prong issue, although I know that the indicia that a wrong will be repeated is probably where we get into a little more of the gray area, because I think we all know that most of the arguments raised by defense
03:12 counsels deal with scienter, deal with the possibility of future violations, for example, in the case of Vagnozzi that's been a major argument, and things of that nature that really go to kind of the wrongful nature, or the defendant's recognition, rather, of the wrongful nature of the conduct.

03:13 So I think it's a pretty streamlined proceeding, truth be told. I hope it is. I am hearing from the SEC that you do have, or it does seem that you do have your pieces of evidence lined up in such a way that we won't have any problems with authenticity or admissibility. We can move them in. We can
03:13 then start to refer to certain portions of them and have them up on the screen so everybody can see them, and then let the defendants put forth their case.

And, look, I don't know from what you're telling, Ms. Berlin, it sounds like the defendants, and I'll turn to
03:13 them in a moment here, it sounds like most of their argument

will be driven by the testimony that you introduce and whether or not you guys have met your burden. And, again, I do not know, for example, if the thrust of the defense argument here is more about the exemptions and whether or not these were
03:13 registered. I would note that that's but one portion of it because even if the SEC didn't carry their burden on that, the way I read the law, and the way the briefings have broken down, there are still other concerns about disclosure requirements, everything from prior regulatory action to default rates to the
03:14 way in which, for example, some of these defaults are being computed and all of those types of things that I think are probably going to form, from what I can tell, the bulk of the SEC's case.

So I don't know that we need to get too deep in the
03:14 weeds on the legal opinions or the fight over whether or not these are registered versus unregistered, given some of the disclosure requirements the SEC has pointed out needed to be made.

But I'm fine with the way you've proposed a rebuttal,
03:14 it makes sense to me, and I think it's a pretty streamlined thing.

Now do you want, before I turn over to the defendants and hear their version or updates about what's going on for tomorrow, Ms. Berlin, is there anything else you want to add
03:14 having -- I know you've been receiving some these of investor

letters and I think you've corresponded with some of these individuals and I know you're in touch with the receiver.

Is there anything you wanted to add as to just the general status of the case? I'm happy to hear that we may get some documents as to Mr. Furman already, but anything else that I should be aware of going into tomorrow since things are fast moving and developing?

MS. BERLIN: There are just a few things. So we began receiving e-mails and phone calls, including on my personal cell phone, from investors and our team -- you know, our team speaks to investors, update them about the case. After speaking with the receiver about this, the receiver did set up a website over the weekend that's now active and it's been a tremendous thing, I think, because we're able to direct the investors to the website where they can get information about the case and be more informed about what's happening rather than if they know how to call the SEC and locate one of us. It's now much easier to get access. So I wanted to advise the Court of that. I think that would be a huge help going forward.

The other thing is just for tomorrow, there are two declarations that were filed by the CBSG-related individual defendants that we, you know, were going to move to strike and we're trying to work that out with defense counsel instead of having to burden the Court. So we have had communications

yesterday and today. One is Ada Rau declaration that relies on the documents that were downloaded during the receivership. And the other is a declaration from Vincent Camarda that discusses what he claims in his declaration was an SEC exam
03:16 that, according to him, occurred and certain findings by the SEC during the exam. I just wanted to flag for the Court that we are discussing that with the defense because there's a federal law that prohibits the SEC from looking public, whether or not there was an exam, let alone what the findings of any
03:17 exams were, even if there was one.

So we're unable to even address the representations in that declaration about the SEC without obtaining authorization from all five members of the SEC, and which would then require the SEC to seek that. It takes time. And it would supplement
03:17 the record after tomorrow when we get it to the extent that the defendants still want to rely on that piece of evidence.

So we're hopefully not going to have to burden the Court with evidentiary issues. We are working these through. However, those are sort of two of the most significant issues
03:17 that have arisen and, you know, I just feel like I should let you know about them in the event that we do have to litigate them before we actually begin tomorrow.

THE COURT: Yeah, if you want, I'll give you the opportunity to work that out with opposing counsel and,
03:18 obviously, if that's still an issue, raise it tomorrow, if you

want to, before we officially begin your presentation and the Court can rule on that. But I will leave it to you all to attempt to streamline some of those issues so that tomorrow my hope is that we can jump right into the presentation of
03:18 evidence by the SEC, given the amount of filings and the Court is now probably more educated about the merchant cash advance business than I have ever been. I don't know that I need to have a full explanation. I digested most of the way in which this has been structured, the notes, how the notes flow, the
03:18 agent funds, then the exchange notes, the rates of interest, et cetera. So I'm pretty well versed and we can probably get right into the burden that the SEC has to carry.

But if you want, just bring those issues to my attention up front and then we can figure out if they're still
03:19 pending before we start with the SEC's presentation tomorrow.

MS. BERLIN: Thanks, Your Honor.

And two more things. One is that we are hopeful, we believe that we are going to also have an agreed order with Mr. Berman concerning, as Your Honor might recall, there was
03:19 some other investment funds that he operated through his company that have no connection to the Par Funding investors. So his counsel was extremely cooperative in providing a proposal for exactly how he can carve out those companies that were circulated in draft form to the SEC counsel last night and
03:19 we're hoping that we'll have that for you tomorrow as well.

With respect to the other defendants, it was complained about the other funds set remain in the receivership and they believe don't have any investor Par Funding investor money in them. We have not received any proposals from anyone else and so, you know, at this point we have only received that from Mr. Furman and we took immediate action as to the receiver so that we could meet the goal of streamlining the receivership and making sure that it doesn't impact any other investment. So I just wanted to provide that update.

03:20 And the final point, Your Honor, is I saw in the defense memorandum there was argument concerning whether these are merchant cash advances or loans, and I wonder if we can get some clarification for tomorrow. You know, our position is it doesn't matter if they were selling produce on the other side of this securities offering or if it was a loan or if it was a merchant cash advance, the nature of what they were selling is not at issue in this case. What is at issue is the securities offering and the representations made.

You know, there's been extensive litigation that is ongoing. Every investor in Par Funding is named in several lawsuits in federal district court in RICO actions versus investors of CBSG in connection with this, and the issue of whether it's a merchant cash advance versus a loan, you know, have been litigated and are currently in active litigation in the Eastern District of Pennsylvania.

We just want to make sure that -- we don't want the defendants to turn this case into another case about whether it's a loan or a merchant cash advance. If they would like to agree to a term that we can all use, merchant cash advance, loan, or any word at all, it doesn't matter. We just don't -- you know, I need to make sure to the fact that we don't want to turn it into a case on this collateral red herring issue that has no relevance to any claim in the case --

THE COURT: So let me tackle that.

03:22 **MS. BERLIN**: -- and justify this massive amount of time and resources to litigate, but I don't see the relevance in any way.

THE COURT: Let me tackle that because both of those points are important for the Court to cover as well. Let's talk first. Let's go in reverse order.

So the first thing you pointed out was the level of discussion tomorrow regarding the nature of these loans or advances. I agree wholeheartedly that it is not really a feature of the case. Whether or not we're dealing with MCAs or loans is not the basis for the SEC's regulatory action.

What the basis for the action are representations or omissions that were made in offering these products, however, we want to describe them, these promissory notes and issues regarding, for example, the diligence, or lack thereof, of underwriting or the facts that the folks offering them had been

sanctioned before in different proceedings in different states or had a criminal record.

Those are the representations that are at issue in this case. That is really the thrust of the SEC's enforcement action. It's not what kinds of products they were and how they worked in the marketplace because, to me, that's -- again, it's subject of different litigation but it's not really in the relief that's been requested by the SEC in their initial complaint and other filings, quite honestly. The focus has never been on the nature of the product or the actual loan or MCA, it's really more about how they approach investors who have decided to put their money into an agent fund or directly with Par Funding and receiving a promissory note in exchange and the idea, for example, that the representations about default rates, let's say, were not one or two percent, but closer to ten percent, or perhaps the way in which defaults were characterized were unique because folks were making a partial payment of $500 and now these certain loans were now in default status.

Those kinds of representations upfront inducing the investment is the thrust of the case. I don't really see why, and this is for everyone's edification, why we're going to spend any time tomorrow unnecessarily discussing the nature of this business. I mean, look, you can talk a little bit about maybe how the underwriting process plays into it or if there

even is one. But I just don't think that needs to be a feature nor should it be tomorrow at all.

So I agree with you on that and I'll hear whether the defendants share that view.

03:24 The other thing I did want to touch on before that was unfreezing of assets. So I'm glad to hear that Mr. Furman has been able to provide documentation so that he can get some of non-Par tainted funds, if you will, unfrozen.

I have explicit requests from Mr. Gissas's counsel as 03:25 well as Mr. Abbonizio's counsel regarding the freezing of accounts, and, in Mr. Gissas's case the commercial retirement account that he claims had nothing to do with what he's doing, that he has a real estate one, which I know is part of it, and then he has another insurance products type one and he's saying 03:25 to me, look, these two RE funds have nothing do with Parr and Abbonizio talks to me about how he and his wife's personal accounts were frozen, he has done everything he can and talked to the bank despite the SEC pretty much clarifying that it wasn't his personal assets should be frozen, they continue to 03:25 be frozen.

But I am now hearing from you, Ms. Berlin, that you have not received, and I was hopeful you would have by today, information from either of those two defendants that would unable the Court to have peace of mind in directing that these 03:26 assets of theirs be partially unfrozen for personal

expenditures or, in the case, for example, of Mr. Gissas, so that he can pay investors and other individuals that are waiting on some of these monies, you know, especially elderly ones that may reside in the Villages.

03:26 So are you telling me, Ms. Berlin, that as of today we don't have any clarification on the ability to unfreeze Abbonizio and Gissas's accounts; is that accurate?

MS. BERLIN: Yeah. So I've requested several times from Mr. Abbonizio's counsel a proposal on how to do that, and 03:26 obviously we would need to see either the evidentiary basis for unfreezing it. We have not yet received that, I think. I imagine they're still working on it, but they have not provided a proposal and we have followed up after our last hearing, requested on more than one occasion, and with respect to 03:26 Mr. Gissas, the receiver and the receiver's counsel have met with him, made sure that he had what he needed from his office. I think went above and beyond, they even had someone who went up to Wildwood to meet him in his office, make sure he had access to everything he needed access to. And, you know, help 03:27 us help him to get this resolved.

I haven't heard from them and had contact about any sort of proposal and saw, again, there's a demand in their pleadings. If any of them -- we would like to carve out if anything that shouldn't be in the receivership because investor 03:27 money should not be paying for these other funds and these

other companies. The individual defendants should be, not the receivership estate.

So we have the same interest, maybe even a greater interest in making sure this is done. I have followed up. I have not received that information. Hopefully, they hear what I'm saying again on the phone now, and they'll maybe provide it before tomorrow so that we can accomplish this.

If we don't receive it soon, we have a motion to compel to require them to provide this information to us. People aren't cooperating with the receiver. We can't get this information. We don't want these entities in the receivership if they shouldn't be. We don't want the Par Funding investors paying for other funds with their monies that are in the receivership estate. So if we don't receive something soon we're going to have no choice but to ask the Court to direct that it be done by a certain date.

And as soon as I get accountings from most of the defendants. Some of them did provide one. Even those who did, they didn't follow the order and file it with the Court, if they had you would see that they are far from involved. And I've explained to them with respect to banks making decisions about freezing accounts, we don't provide any guidance or instruction to banks. We send the Court's orders, sometimes banks will look at the orders with their own attorneys and make their decisions. There could also be other agencies or others

involved in matters, I don't know, but we simply send the order on our end. We don't provide any legal interpretation to any banks.

THE COURT: All right. So let me streamline this a little bit. What I'd like to do is let me address the account frozen concerns with individual defendants first. And then I'll turn to the defendants so they can confirm for me my estimation of how things are going to play out that they would also hopefully agree that they are going to be focused more on the representations that were made, or alleged to have been made, really, by some of their clients leading into the investments as opposed to weighing the Court down with the necessary analysis of loans versus MCAs, and then also, of course, I just want to hear generally if there's any other updates from defense counsels on the line.

But let's take, for example, the first two -- now that we know Furman is on its way to resolving this with the SEC. Do I have Mr. Marcus on the line to address Abbonizio.

MR. MARCUS: You do, Your Honor.

THE COURT: So, Mr. Marcus, what I'm hearing here in no uncertain terms is that if you can sit down with the SEC and run a proposed order by them with enough accounting for your client's personal fund for he and his wife, I'm not going to stand in the way of directing the bank to unfreeze the assets but they seem to need a little more, which I understand their

concern.

Can you tell me a little bit about where we're at on that, because I don't have a problem addressing Docket Entry 149 and resolving this particular issue, provided I have what I need and the SEC feels comfortable with it.

03:30

So tell me where you're at on this and then we'll move on and I'll come back to the rest of the issues, but where are we at on the freeze?

MR. MARCUS: So, Your Honor, thank you. We did send a detailed e-mail to Ms. Berlin with a schedule going through our client's assets. Most of his assets are in the form of real estate or passive investments in commercial real estate.

03:31

We can't get -- we can't complete the full accounting because his bank records are not given access to Citizen's Bank because the SEC sent the earlier TRO even though he is not named in it to the bank.

03:31

But, obviously, the SEC has access and we have given, you know, the accounting as best we can in all of these categories to show that the amount of money that's in his account is a very small percentage of his overall assets, and we're happy to show them additional information if they have additional questions.

03:31

We have agreed to effectively restrain assets that we sort of compute to his net profits from Par, sort of the under the Liu analysis. So I think it's just a matter of getting a

03:31

focus on this and work with us. We have been trying to do it. I understand there's a lot going on. But I'd rather not waste the Court's time either tomorrow with unnecessary litigation.

THE COURT: Well, I will tell you, I'm standing by and if anybody is watching the turnaround time, I think you can all attest we have this as a priority for the Court and I'm not going to try to tie up someone's mortgage payments and everything else if they're unable to make them because of an unnecessary freeze.

Obviously, Ms. Berlin is focused on tomorrow. My hope is that when her attention can be dedicated to maybe figuring out the ins and outs of your e-mail, we can then put together a very careful order as she has done with Mr. Furman and his counsel to unfreeze Abbonizio's assets that don't have any Parr involvement.

So the point is I have an eye on that one, just keep me posted. I think we have a little more work we need to do with your client and with the SEC to get there. But it sounds to me like we may be able to get a clean accounting at some point so the SEC feels comfortable to unfreeze at least that one particular account or accounts with that bank that deal with personal expenditures and you can prepare a proposed order, hopefully, one that is obviously unopposed for the Court's review so that you can take it to the bank and get those unfrozen. Okay?

MS. BERLIN: Your Honor --

MR. MARCUS I'm happy to do that, Your Honor.

THE COURT: Yes, Ms. Berlin. Go ahead.

MS. BERLIN: May I please, I just wanted to note that the reference to Ms. Berlin being too busy to address this and not having addressed this is patently false. I received an e-mail. It didn't provide any sort of document backup, any whatsoever. I responded to that and offered to speak with them over the weekend. I offered to speak with them in the afternoon. And I did not receive a response. And it is absolutely not true that this has not been a focus. It absolutely is. And I have responded to every e-mail and request and even offered to speak with them when I got an e-mail from them at 11:00 o'clock Saturday night. I said, "You're e-mailing me now, I'm actually available and I can do this now. If not now, I can do it tomorrow after 3:00." I have not received a response. And I simply wanted to take issue with any sort of, you know, this indication from defense counsel that the SEC is too busy focusing on tomorrow to address the asset freeze. That simply isn't true. We're focused on everything and I think that the fact that we have been able to resolve the issues with Mr. Furman attest to that.

So if they would like to return the calls and respond to the -- and provide the information requested, we can assess it. But until they can provide documents or some sort of basis

for what they're claiming, you know, we would be in waiting mode, but I just needed to respond to what I just heard from counsel.

THE COURT: Well, understood. I think the important thing is that counsel is on notice that the SEC is willing to and able to unfreeze, provided they receive what they need to get in terms of documentation and accounting, and as far as the Court's concerned, I'm not going to wade into those waters until the parties have had a fulsome opportunity to discuss where, if anything, someone has fallen short, then that could be brought to the Court's attention if there can't be a meeting of the minds about what is needed, but, again, I will defer that to you guys to continue communicating so that we can get to the same place that you arrived at with Mr. Furman.

Now let me turn to Mr. Small on behalf of Mr. Gissas who has been raising this issue of freeze. Mr. Small, I don't know if you have any updates. I trust that you're also attempting to provide sufficient accounting and information to perhaps unfreeze at least some of the retirement entities that are not Par affiliated, but I wanted to turn to you.

Any update on your end on in that regard.

MR. SMALL: Yes, Your Honor, thank you. When the receiver said that they have been working day and night, they're not exaggerating, they have been working very hard and we have been working hard. The e-mails go back and forth at

all times, day and night. We have been working very hard to put together everything the receiver needs to reach that level of satisfaction. It has been without a doubt, frustratingly slow for everybody. John Gissas, who worked part-time with no staff and no access to the office until we reached the agreement with the receiver last week. So it's been frustratingly slow but we have -- we provided a verified accounting a week ago to both the receiver and the SEC. The receiver had a couple of follow-up questions which we answered.

03:36 I don't think there has been anything further on the accounting since then. We provided a detailed list of investors by name and making clear whether they invested in Par or whether they did not invest in Par. We provided a complete set of bank records, so we have been working extraordinarily

03:37 hard, as has the receiver. And I thank them for it.

When it was said that the receiver came to the office well, yes, there was a padlock on the office, but in order to get in and work with them, they had to come and un-padlock it. So we have been working very hard with them.

03:37 My understanding was that this is a process which would then lead to an unfreeze agreement. Things just got delayed a couple of days or we haven't yet done it. If the SEC is willing, based on what's been provided, to reach that agreement, we'd be more than happy to process. And that's our

03:38 goal here. But we have been working extraordinarily hard and I

thank the receiver for their extraordinarily hard work as well.

And so that's where we are. I'm, frankly, stunned to hear for the first time just now that there is substantial additional evidence from PowerPoint and all kinds of other things. I don't know what that is, I don't know how I can possibly represent my clients in defending against something I don't know what it is. I would ask that additional evidence and PowerPoint in advance.

But in terms of trying to reach agreement, we have been working very hard at it and we will continue. And that's looking at an e-mail at 1:00 o'clock in the morning the other day. So everyone's been working hard at it. We just are a couple days shy the preliminary injunction, but I'd be happy to come to some agreement if that's doable.

THE COURT: Well, I will say, again, similar to what we discussed with Mr. Abbonizio, this is, in my view, the prerogative of the individual defendants and the SEC to work out an agreement that gives everybody peace of mind. The Court is more than happy, as I know the receiver is, upon confirmation of accounting, to unfreeze those assets that have nothing to do with this case. We have cast, again, let's not forget how we got here, the Court withheld casting a wide net on purpose because I was not a fan of a broadened receiver order, but felt compelled to, but that doesn't mean now that because I've cast a wider net to give the receiver additional

powers so that he can accomplish the Court's directives, that I'm not willing to scale that back or parr that down as we start to figure out exactly what accounts are connected to what happened with Par Funding, as opposed to other investments that have no connection.

03:40

So you guys continue to work through that. I will immediately enter any orders that come through that indicate an agreement as to unfreezing because I don't want to make anyone miss payments on a home or unnecessarily burden anybody in this action, unless it is truly an investor proceed amount that we're trying to recover.

03:40

And so that everybody understands, the Court is acutely aware of the Lou case. I'm well aware of the disgorgement concerns. I'm not going to sit here and stand for a punitive punishment on anybody here. We need to make sure we get the numbers right. I know the receiver knows the case law and is going to be looking at that as well. So I don't want anybody to have any concern in that regard.

03:40

Now that should take care of the immediate concerns of freezing and unfreezing. I've covered the receiver's update. I've given a little more context for the Court's feelings regarding expansion of the receiver. We have already addressed the deluge of e-mails regarding investor principal and the receiver has already confirmed, as I requested that the viability plan proposed by certain defendants is being studied

03:41

and may be implemented with a few changes, which I'm happy to hear, that there has been a priority for the return of investor monies and principal and a website to further that goal and, by the way, I don't know, Ms. Berlin, if that website has been provided to the Court, but I would like to see it. If it hasn't been, you can let me know, file a notice of it. I don't know if it has come through yet, because I'd like to study it as well, make sure that I'm aware of it.

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So all of these things I think are good for transparency so we know what's going on.

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Tomorrow's hearing now appears, and I'm pleased to hear that, that it is somewhat more streamlined and eliminating the necessity for a discussion of legal issues that have no bearing on the regulatory enforcement and no real need for any live witnesses, if any, which will streamline us quite considerably in a medium that we can all agree is not the best for conducting evidentiary hearings or bench trials over Zoom. We would much rather prefer something where we can all look at a transcript or a declaration and see if the SEC has met their burden.

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So the next thing I kind of want to do then is just turn over to the different defense counsel and give them some air time to discuss anything else that needs to be raised at this time. I think all defense lawyers, I understand those that have filed opposition briefs where you are in the

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equation, how you feel, there are some evidentiary issues that have been raised, as I expected, in terms of whether the SEC is painting a picture that is accurate, whether that deals with the way in which some of these funds, investor funds were
03:42 solicited, whether it deals with the use of opinion letters and counsel to give cover to some of these individuals and how they went out and sought these funds.

There as a number of gray issues there that I understand tomorrow the SEC will seek to crystallize through
03:43 the presentation of evidence. And we'll see what, if anything, the defense can point to, to allow the Court to make a determination that perhaps the SEC has fallen short of what they must show me for preliminary injunction. But I just want to, again, turn it over to the defense lawyers now to see if
03:43 there's anything else you need me to be aware of in preparation for tomorrow.

Obviously, you guys are going to present your argument after the SEC puts on their evidence but what, if anything, I may have missed or anything you want me to be aware of now that
03:43 I've consumed all the opposition briefs. So I don't want to have everybody jump on at once, but maybe the easiest thing to do since we haven't heard from anybody yet on the entity's side, really more on the Lisa McElhone, Joe Cole Barleta side, can I hear from the team of lawyers there? I don't know who
03:44 wants to take the lead on that. I know that you guys have the

joint opposition. But I'll turn it over to you guys if you want to chime in, anything I may have missed that you want me to address. Go ahead, guys, and just state your name for the record, please.

03:44 **MS. SCHEIN:** Your Honor, if I could, Bettina Schein for Joe Cole Barleta. I would like to put on the record that I am heartened and I thank the receiver for all the receiver's hard work. We will endeavor to continue to assist the receiver and I am particularly heartened to hear that the receiver has 03:44 hired back some of the employees of CBSG to assist in restoring the business, which, for the record, was an extremely robust business prior to the receivership.

So I understand that the receiver is taking action, particularly with regard to the plan that we proposed in our 03:44 motion last Sunday, and I wanted the record to reflect that.

THE COURT: Thank you for that. And I'm similarly heartened about that as well. From the beginning, we have always said, and many folks have cited my own words back to me, that I didn't want the cure to be worse than the virus, I 03:45 didn't want to lose a going concern if I could avoid it and it's good to see that we're reemploying some folks and trying to find a way forward because I think that this business model, there may be problems with the funds that drove it and there may be some regulatory issues, there was at least some positive 03:45 elements that came out of this and at least some success

perhaps before the coronavirus.

So I'd like to try to see if we can try to recover and get this business back on the right side of the law going forward without any regulatory concerns and not run afoul of the SEC again, if we can do that, I think that's what we should be doing, and all the while understanding that many of the investors were getting their monthly payouts and were getting their principal returns at the end of the 12-month returns.

So there was some success, if you will, I think more than some, a considerable success in the business before some of these problems emerged. So thank you for that.

MS. SCHEIN: Thank you, Your Honor.

THE COURT: Thank you. Any other defense counsel that want to chime in on the Cole/McElhone side, I know you guys are ready for tomorrow, I know your position, but anything you wanted me to be aware of going into tomorrow's hearing.

MR. FUTERFAS: Your Honor, Alan Futerfas for Lisa McElhone.

THE COURT: Yeah.

MR. FUTERFAS: Thank you, Your Honor. I'm going to echo what Ms. Schein said. I have -- with respect to some of the things and some of the difficulties we have had, I just want to alert Your Honor that, first of all, like Ms. Berlin, and I can personally attest that Ms. Berlin seems to work 24 hours a day because I have spoken to her at all hours of the

day and night and she's available. So like her, we also have been doing the same and we have been putting out just too many fires. And I am very glad to hear that obviously the prior counsel opinion writers was a priority. I think what was going on for a while is there were just too many priorities and, on the fence side, it's like we were putting out different fires and then once Your Honor made clear in terms of the privilege, we obviously turned our attention to locating those opinion letters.

03:47 We will be working very diligently to get all legal opinions and everything we can and Dan Fridman is going to speak more to some of the work we have been doing over the last 24 to 48 hours, after we filed our brief Friday afternoon, so it's been kind of one brief after another, and I'm gratified 03:47 that if we can keep the motions to a minimum, and we have been trying to work with the SEC and work with the receiver. If we don't sit here spending time doing motions all the time and we can actually turn to the merits and get them the documents they need and answer the questions, I know it was another sort of 03:48 probation and Ms. Schein said earlier today we could get with regard to some detailed contact information, operational information. So this is all very, very good news.

I have one question for tomorrow, Your Honor, and that is, there are a number of sealed affidavits and sealed -- I 03:48 guess, sealed affidavits seem to be a slew of them.

I didn't know if there they were going to be made unsealed, number one, before the hearing. And number two) it's a little difficult for us on the defense side to decide if we want to call a witness. I am going to use, just as an example, 03:49 Mr. Klenk who is an employee of the company for a long time, we actually facilitated, and I say "we" generically on the defense side, facilitated making sure Mr. Klenk was available to the receiver. He's an important operational person and, hopefully, he's been very helpful to the receiver.

03:49 But I don't know, if we don't see the declaration, it's pretty difficult to determine whether or not we would want to call him or we would want to ask him any questions, and I just wanted a little guidance from Your Honor and maybe the SEC about how you want to handle the sealed documents, and then 03:49 once they're unsealed and we get to see what they are, whether or not there's a procedure in case we wanted to add someone.

We don't want to burden the Court. If we need to ask someone questions, it's going to be limited, it's going to targeted, it's going to very short. But I just wanted a little 03:49 guidance from you and the SEC on how you wanted to handle that.

THE COURT: That's a good question. Let me turn to Ms. Berlin on the sealing. Ms. Berlin, do you want to address that?

MS. BERLIN: Yes. So the sealed records all belong to 03:50 the same category for the purpose that there is (inaud.) -- the

reason why they're sealed, taking everyone who's counsel in this case, and the Court knows, we provided all of those sealed exhibits to every defense lawyer when they came on, when each of them came on to the case, so they all have a copy of it, and
03:50 a copy of those sealed documents.

You know, I think -- at least my plan for tomorrow is to the extent I need to rely on any sort of document or any information in a sealed document, I would simply cite to the docket number of the exhibit instead of showing it on, you
03:50 know, a PowerPoint or presentation. It certainly won't be reading from or, you know, presenting via Zoom the contents of any of those sealed documents.

As far as the declaration of Mr. Klenk, that's not sealed. If we are able to obtain the declaration from him,
03:51 Your Honor, I would let different counsel know that we're going to try to get declarations from everyone so that we don't have to call our witnesses live. If we can obtain that from him in advance, it just depends on what the end results is. If it's rebuttal evidence, impeachment evidence, or if it's something
03:51 that we want to supplement the evidence that we already have. I imagine that's going to be rebuttal evidence, in which case I don't plan to share any of my rebuttal declarations or any of my rebuttal or impeachment evidence in advance with any of the parties, you know, just as we wouldn't if you were in a live
03:51 courtroom.

THE COURT: So I guess my -- that obviously goes without saying. I think the bigger question is, number one) I want to make sure do we all have access to those sealed entries that you're going to be identifying on the docket? Obviously, I do, but my understanding from defense counsel is he wanted to know how that's going to be presented.

So the plan is I will have, and I suggest everyone obviously has, a CM/ECF open, ready to go with all the docket entries so that you can point specifically to sealed entries that are visible only the parties in the Court so we don't have to plaster them on a Zoom platform or plaster them on a slide show. So those Zoom entries, am I correct, you will direct all parties to your reliance on them by docket entry, Ms. Berlin?

MS. BERLIN: Yes, I will.

THE COURT: Okay. All right. So because that counsel's first question is how are we going to be talking about sealed entries. So that's the first one, we're not going to be putting it up on the screen, it will just be Docket Entry X and we can all go ahead and get to that docket entry together, since we're all going to be essentially having a Pacer window open.

Now, the second point, which was the testimony from Klenk. Again, obviously, you're not going to provide anything for rebuttal. I think to counsel's point, I don't have an issue. He's going to be called. I don't know right now as I

understand it, do we have the declaration ready to go from him or we are still trying to see if that's a possibility versus calling him live; is that right, Ms. Berlin? You're still kind of working on that?

03:53 **MS. BERLIN:** Yes, Your Honor. I'm still working on that.

THE COURT: I presume, though, that to the extent we have a declaration, you can make sure that that's made available to all parties as with other exhibits so that he can

03:53 look at that before coming in, and that way he has a sense of what Cling's representations are. And, I mean, in your case in chief, of course, not your rebuttal. That shouldn't be a problem; right? If you decide to do go that route and you get some sort of statement from him, a declaration?

03:53 **MS. BERLIN:** Yes, Your Honor. If we use the statement, if we get a declaration that we're going to use in our case in chief, then I will, of course, provide that to everyone. Similarly, Ray Anchik's declaration would be for our case in chief so that definitely be provided to everyone as the

03:54 receiver would obtain a declaration. Anything that we're using in our case in chief we will present and provide to everyone as soon as we get them.

And then as far as any rebuttal declarations, you know, which after reading the memorandum, what I might need for

03:54 rebuttal, there's rebuttal declarations which I do not plan on

distributing in advance, and would instead ask the Court if I can use the screen share feature on my computer to show those.

THE COURT: Okay. All right. So counsel, does that answer your question a little bit about just kind of the technical aspects of how this is going to be presented?

MR. FUTERFAS: It does, Your Honor, thank you and thank you, Amie.

THE COURT: Great. Moving on, next defense counsel, whoever is in the queue that wants to share any other concerns either procedurally for tomorrow's hearing or something that I may just not have addressed yet in terms of some of your filings. Anybody that wants to go ahead and be heard on that?

MR. FRIDMAN: Yes, good afternoon. This is Dan Fridman from the law firm of Fridman Fels & Soto.

We filed a notice of appearance this past Friday and we came in as counsel for the relief defendant, the LME 2017 Family Trust, and what I want to do is update Your Honor on the discussions that we have had with the receiver and the issues that we discussed at the beginning of the hearing because it is our hope that we will save the Court some time in dealing with motions to compel that I heard Your Honor say will refer to the magistrate judge.

So we got in on Friday. We have had several calls with counsel for the receiver. And, in that time, we have begun the production of the documents that the receiver

requested dealing with the legal opinion and that production will continue on a rolling basis. We're working as quickly as we can to do them. We Bates labeled them ourselves like Sunday night and sent them out. In addition, there was questions that the receiver had sent across on August 10th and we have provided the responses to those questions earlier today.

So it's our intent to help the receiver and be cooperative and not burden the Court with disputes going forward. And I think the receiver's counsel is on the line that they would back me up on the fact that we're trying to work towards this.

In addition, you know, as far as the action plan that defense counsel proposed, it sounds like perhaps we're virtually in agreement on some of those matters as well. So, hopefully, there will be less of a need for court intervention and we can just get to the merits of this case.

THE COURT: All right. That's a good update. Thank you, Mr. Fridman, that's what we're hoping for, that the motion practice would somewhat die down. I think that part of the benefit, if you will, I know the defendants, across the board, were very concerned and, understandably so, about the Court expanding the receiver -- the receivership, as I did in the middle of this week. But I think that one of the things I did do was ultimately dissolve some impediments that were starting to manifest themselves given the limits that I invoked on the

receiver when I saw that the flow of information and communication was not what it needed to be.

So I think from now on, he has the tools they need so we can keep communication going. So that's a good update. All right. Continuing on, any other defense counsels that want to share an update with the Court, anything in tomorrow's preliminary injunction hearing or need the Court to be aware of anything else?

MR. MILLER: Your Honor, it's Brian Miller for Mr. Vagnozzi. I don't know whether you wanted to hear from me or if you --

THE COURT: Absolutely, Mr. Miller. Let me hear from you and I know you have two things to touch on. One) I already raised it, based upon your motion that you were concerned about also some of the freezing, the asset freezes, and you also had kind of a unique view of events because you're somewhere, I don't want to say it's in the middle of the pile when it comes to the defendants and their different levels of involvement. Obviously, you, as an agent fund and your relationship or your client's purported relationship with Cole, you know, meeting him on a golf course and then not really knowing that this guy had a different name and then later on you find out from the Bloomberg piece and there's a lot of scienter issues you've taken issue with, if you will, in your pleadings, understandably so.

I know that you have listed him as a witness tomorrow. Anything you want to raise, just generally, about where we're at, obviously, on the freezing, down to parameters for tomorrow.

03:59 Go ahead, I'll turn it over to you?

MR. MILLER: Sure, thank you, Your Honor.

Yes, so Mr. Vagnozzi will testify, we all recognize, it will be a little bit awkward over Zoom, but we're going to try to do the best we can. We'll try to streamline that as

03:59 much as we can.

I think all counsel who were at his deposition will bear witness to the fact that he sometimes can be a little talkative so I am going to try to make sure he's as tight as possible in responding so that we can streamline his direct

03:59 testimony. So we will deal with that.

In terms of the declarations the SEC mentioned. I guess I will reserve view on that until we see what the declarations are. I don't think that the rebuttal declarations would have anything to do with Mr. Vagnozzi since they're

03:59 talking about rebuttal declarations from employees at Par. So I think let's just reserve and see what they -- see what happens with respect to declarations versus live testimony by the SEC.

In terms of the other two things that were mentioned,

04:00 the privileged documents and carve out issues, if you will, the

bank accounts and the other non-receivership, I can address those very quickly.

First of all, to be clear, there's one legal memo from his law firm in Philadelphia that's at issue here. It has nothing to do to with Par's business or whether it's a merchant cash or loan or anything of that nature, so it doesn't really have anything to do with assisting the receiver in terms of the understanding the business background and being able to come up with his plan. But I did have some discussions with the receiver's counsel about that one memo, and I'm hopeful that we will be able to resolve that as it relates to common interest privilege questions and I'm sure, as the Court appreciates, we're concerned about not waiving a privilege that Mr. Vagnozzi may have in a document without carefully analyzing it first, but I did speak with the receiver's counsel on that and I'm pretty confident we will be able to try to work something out there.

With respect to the carve-outs, if you will, as we have outlined, I think, in our papers, Mr. Vagnozzi created separate legal entities and separate bank accounts for each of the different investments and vehicles that were overseen by him. So there was no commingling of assets, we'll be able to establish that very easily, and we have had some discussions with the receiver about ways to do that and I'll continue to do that. I think that the devil is going to be in the details

about what information the receiver and his counsel want to get to establish that those businesses don't have any Par funds in them, which I think we'll be able to do easily because they weren't commingled, but the devil will be in those details and one of the issues that the receiver's counsel preliminarily raised was whether some of the investors may be the same and I think that really doesn't matter, if it is someone who invested this amount of money into a Par promissory note and this amount of money into something that has nothing do with Par, so long as those funds were never commingled and the other business has nothing to do with Par, I don't think that the fact that there may be any overlap, then the person would matter, but that's what we'll have to work out with the receiver on these other entities, that the expenses can be paid and distributions can be made to people who are involved in other projects that have nothing to do with Par.

And then finally, the last thing I would say, Your Honor, is we did file that motion to seal earlier today. I just wanted to know whether the Court wants us to re-file a brief redacted to not make reference to the sealed material, how Your Honor wants to address that.

THE COURT: I think that I entered a paperless order already on the motion to seal, I did it immediately, so it should already be in there, so let me know if you don't see it or if that's a concern, but that should have taken care of it

and that will automatically take that off, so we don't have to worry about that floating around out there.

MR. FUTERFAS: I'm sorry. My question was, do you want us to re-file something redacted for the public record or just leave it the way that it is sealed.

THE COURT: I thinking you can leave it for now sealed. I don't think -- down the road if we need to unseal anything, we will, but I think for now it's fine, and I take it also, just from your summary, Mr. Miller, that you also agree, and I didn't get a chance to touch base also with prior defense counsels, but they didn't raise it.

You agree that for tomorrow's purposes, obviously we'll hear from Mr. Vagnozzi, et cetera, but we don't need to get into the worm hole of MCAs versus loans; right? I mean, I think everyone agrees that that's really not what's at issue in this case, but I wanted to double-check with you.

MR. FUTERFAS: I agree, and he doesn't really know anything about that anyway.

THE COURT: Right. As far as I know, it's more about the knowledge he had, the relationships he had, the disclosures, the timing, things of that nature, given his kind of agent-fund relationship, et cetera.

So all right. So I think I get a good sense from you where you're at and you're on board for a plan for tomorrow.

Moving on then, anybody else on the defense end that

may not have spoken already that we need to cover, again, parameters for tomorrow, any questions, any concerns, any ongoing communications with the SEC you want me to be advised of?

04:04 (No response.)

THE COURT: All right. I hear silence on the line. No small feat because we have a lot of us on here. So I don't want to push my luck here, but with that being said, I want to give everybody --

04:04 **MS. BERLIN**: Your Honor --

THE COURT: Yes. Go ahead.

MS. BERLIN: Amie Riggle Berlin, I wonder if I can ask for just one more clarifying question for tomorrow just to see if we can streamline. It seems like all of the attorneys that 04:05 are on the case are pretty good at streamlining and trying to get things resolved, but maybe this is another area we can streamline.

I notice that, you know, there are arguments in the defense memorandum about relying on advice of counsel with 04:05 respect to the registration violation. And, you know, if it was a trial, we would file a motion in limine to sort of streamline it and not have a day's evidence about that issue.

I don't know if perhaps that's something that we could just discuss and see if there's any dispute that reliance on 04:05 advice of counsel is not a defense to alleged assertion claims,

even in the Eleventh Circuit pattern jury instruction. It's not an open issue, and if we went the whole day tomorrow listening to that, and my rebuttal evidence is, here is the pattern jury instructions in the case, I think you would be looking at me wondering why in the world we didn't raise this in advance before we heard presentations about that issue at length. I wasn't sure if everyone was aware of that law or the pattern jury instructions or if it's even an issue or you had a chance to look at it. But that was just another area that could save considerable time and it seems like that's something for me to (inaud.) just direct case, but maybe to at least as a courtesy flag to all defense counsel now so that, you know, maybe we can streamline things tomorrow.

THE COURT: Well, I'll open the floor if any defense counsels planned on raising this tomorrow. I will confess, I didn't expect this to be a feature tomorrow, similar to the MCA versus loan dispute because, as far as I can tell, not only is it not a complete defense, but I know the SEC's theory is broader, quite honestly, right, Ms. Berlin, than simply registration issues. There are a number of other material misrepresentations that you have raised as a basis for your preliminary injunction; am I correct?

MS. BERLIN: Yes, it's the fraud claims against all defendants, but also the sections like the registration requirement is actually viewed by the commission and by courts

as being sometimes even more critical because that registration then imposes certain things that are there for the protection of investors. If those things had happened, we might not be here at all. So it's actually a very important -- and the defendants view it as a technical violation, but it's actually a very important issue. So I did plan on going through the issue of why the SEC, as an agency, used this as a security and why the exemption that they claim didn't -- the SEC doesn't apply.

I know their defense was their reliance on attorney counsel issues from their papers, so I just felt like perhaps, just to sort of help move things along, at the very least, mention it to them. I know everybody is busy, but at least raise it for discussion here to see if that's going to be within the scope of tomorrow's hearing.

THE COURT: Let me open the floor. Do I have any defense counsels that believe that's going to be a feature tomorrow in opposition to the preliminary injunction? I turn it over to any defense counsels that want to chime in.

I take it if no one is chiming in, obviously the SEC will have to present it, as Ms. Berlin, you planned on doing, but it will not become a detour as to the ultimate presentation of evidence because it will be less of a feature if no defendants feel that they're going to be injecting the opinions of counsel on the registration issue.

So do I have any lawyers on the defense side that intend on raising the defense of concern that I need to know about?

MR. FUTERFAS: Your Honor, Alan Futerfas for Lisa McElhone. As we put in a brief, we didn't raise it in the brief with respect to advice of counsel. What we said in our brief was -- what we said was that in terms of one of the factors of a preliminary injunction, Your Honor, as Your Honor stated at the beginning of this conversation, was that a likelihood of problems going forward, and all we wanted to do was show the Court that when problems had arisen in the past, we were very upfront about that in our papers, that they did seek counsel, they did resolve those issues.

I have been doing these kinds of cases and securities cases for probably almost three decades, and what -- and regulatory issues do come up across companies from time to time. And the only important thing that the deponent breached was to suggest to Your Honor that in terms of that prong, which is potential issues going forward which is an important prong of the two-prong analysis that, you know, that obviously this is a company that historically had gone sidewise when issues were raised. And we said that.

And the other part in our papers, and I think it's accurate, is simply that in terms of deciding whether or not to impose a preliminary injunction, you can look at how the SEC

has approached other cases, perhaps with far more serious facts than this case. So we're not done. We're obviously not done with the factual development.

Your Honor, after tomorrow there will be a lot of factual development over the weeks ahead. We understand that. We certainly want to be able to say to Your Honor as to that second prong of a preliminary injunction, that in Pennsylvania, for instance, came in and said, "You're doing something wrong," our view is they got good counsel and they fixed it. The SEC had a different view.

When New Jersey came in and said, "We don't like what you're doing," we fixed that. They paid a fine. They did what they were supposed to do and fixed it.

So that was the tenor and that was the point of what our Friday filing was trying to accomplish and say to Your Honor.

So I think that's -- to the extent we say anything tomorrow about those issues, I think that will be the context in which, if we have any argument that we would argue it, Your Honor.

THE COURT: And that's helpful because I think that that is what you will use as part and parcel of your rebuttal, your defense to try to establish or at least counteract the SEC's argument that that second point of the future, the possibility of that future harm and future recurrence of what

the SEC's been concerned about from the beginning is minimized or that there is a course of conduct by which your client have always sought legal assistance when they have had a regulatory issue, and I agree, that's different than getting into it as a defense. It's more about trying to gauge the proclivity to re-offend, if you will, on the part of the defendants.

And I think, by the same token, you know, I expect that the SEC is going to use the repeat violations as their basis for why this could happen again. I expect that Ms. Berlin is going to say, "It happened in Texas, it happened in Pennsylvania, and it happened in New Jersey, and therefore, we need to do more than what's been done before because we seem to have problems complying with the regulatory framework," even couple of ways where someone would say, "Look, we're trying to get things right each time, it's not like we're running afoul of it and just throwing up our hands and going back and doing the same thing again without not checking with somebody.

So, I think Ms. Berlin, to your point, that's less about a true defense argument tomorrow and more about just one factor for the elements of injunctive relief that you're seeking, so I don't know if you want to reply to that, but I think it's really a nonissue now, from what I understand of how you plan on putting it and framing it.

MS. BERLIN: Thank you so much, Your Honor, and thank you for allowing me to raise it and, Mr. Futerfas, thank you

for explaining it. That will also help me to further streamline our direct case knowing that we don't need to address that as an affirmative defense, so I very much appreciate defense counsel letting us know that and I imagine, Your Honor, for tomorrow, it is an evidentiary hearing and so my understanding is that counsel will only be permitted to make -- the Court's only going to consider evidence that's placed into the record.

04:14

THE COURT: Correct.

04:14

MS. BERLIN: It's not --

THE COURT: Correct. My ruling will be based on evidence in the record that's been admitted that has satisfied authenticity and admissibility concerns and that I can hang my hat on in determining that the SEC is carrying their burden, you are correct.

04:14

MS. BERLIN: Thank you very much.

THE COURT: So all right. So going on, again, I think that -- I know that -- I think I've heard from almost everybody, but anything else? Yes.

04:14

Go ahead, Counsel.

MR. ALFANO: This is Gaetan Alfano, before we conclude, two clarifications.

First of all, while we're on the call, Mr. Kolaya posted a notice with the website.

04:14

THE COURT: Yes, I just saw that. Thank you for that.

MR. ALFANO: And I just want to be clear about the status of the employees because I don't want it to be overstated. We have BSI in there now interviewing key employees with an eye towards rehiring employees. That's where we are. I can't tell you today that we have put anybody back on the payroll, but the hope is they're interviewing them as well, but the hope is to identify employees and to consider rehiring those. So that's where we stand, that's as of 4:00 o'clock today.

THE COURT: And the efforts being made are important and laudable and part of what we're hoping we can do to at least keep some folks employed to the extent they pass muster in their involvement in the entities and that we don't run afoul of what we're trying to do to protect the investor fund. And I think between that effort in trying to save what we can in this business and employ folks, and the website being a resource now for those investors to understand that efforts are being taken to recover principal, I think that should hopefully allay and calm some investor fears that I have been receiving over the last six or seven days, and I think that's going to help us in the long run.

Now, obviously, tomorrow, the Zoom link is already up. It's up on the website for everybody, so let's make sure that we all log on timely, that we're ready to go.

I know, Ms. Berlin, you are going to have everything

lined up. It's also, of course, public because we are still having public courtrooms, even though it's on Zoom. I do know that we may have some investors that want to come on. We may have some press that wants to be there. That's all fine, including any other legal staff that wants to be a part of it. I know some of the SEC regulatory team is going to be on there. That's all fine. Obviously, I maintain control so there shouldn't be any interruptions on the presentation of evidence and hopefully we can everybody streamline the presentation without any technical glitches. It's been working quite well thus far, and I think, Ms. Berlin, you have now a bit of a roadmap after today to kind of streamline things even further and make the presentation efficient and I look forward to hearing from everybody tomorrow so we can try to at least get through this phase of the case, and I do believe, and I hope it's not naive of me to think, that once the Court gets through this initial hurdle of the preliminary injunction, then we can go back to what I think a lot of counsel have expressed is a regular pace or regular streamlining of proceedings, as Mr. Furman mentioned earlier, trying to get us back to the parties conversing with one another and the receiver on a continuous basis, without needing Court intervention, so that we can let you guys try to, as we have done with Mr. Furman, get deals done with unfreezing accounts, and assuming with the priorities we have, because one the preliminary injunction motion has been

ruled on, I want to let you guys kind of go back to a less of breakneck speed in terms of court hearings, and more focus on what the receiver needs and meeting with him and conducting the necessary depositions and witness interviews, et cetera, and getting access to ESI and anything else that we're doing with G Suite.

So, obviously, I'm going to turn around anything that is submitted as soon as I physically can. I will be prepared for tomorrow to look at the exhibits. Of course, Ms. Berlin, when you come on tomorrow, let's open up with making sure that we have, to the extent we get one this afternoon or tomorrow morning, stipulations as to any admissibility or authenticity, give me docket entry numbers or Bates stamp numbers from your submissions you delivered to chambers so that I'm going to be walking around my chambers on the camera, but I have all my binders laid out so I can find what it is you are referring to quickly. Same thing with depositions, et cetera, transcripts, just direct me where you want to go, so that I can have the evidence in front of me but everyone else can follow along, okay?

MS. BERLIN: Yes, Your Honor, and we will ask all defense counsel to let us know by the end of today if they have objections to any specific exhibits so that we can resolve those. I believe everything has a declaration authenticating it, but we'll circle back to all defense counsel today so that

if there are any oversights we can correct that before the morning and, hopefully, move them in without incident, or know of any issues that -- I don't anticipate that we're going to have any, we haven't heard any issues as of this time.

04:19 One question with respect to the Zoom, which is will the Court -- I wonder if we should be advising people, meaning the SEC because we have had a lot of investor calls and staff on the team and others who want to observe tomorrow. Should we ask them to or does the Court state at the beginning to not 04:19 have their cameras and microphones on or, is there anything that all counsel on this call can do to assist the Court with that? I believe we're going to have a large number of observers.

THE COURT: Yeah, I think, and I went this over with 04:20 my tech folks. I'm driving the Zoom and I have the ability to mute, I have the ability to also remove people if there's something that's disruptive.

My plan is to state clearly at the beginning that everyone should be muted except for yourself and me when we 04:20 begin. And, obviously, if someone has any sort of objection or concern, they need to un-mute themselves accordingly, if that's one of the counsels of record, but I plan on controlling it.

So I wouldn't worry if for some reason there's an interruption or someone un-mutes, I should be able, without any 04:20 issue, to forcibly mute people, because I think I have the full

control of the audio.

So if we have any issues, don't worry, I'll handle it. But we're going to run a tight ship tomorrow and my plan is to only un-mute you and let you present your case, and if anything else anybody else jumps in, I can always handle that on the fly, but we should be good to go.

From what I understand, I will have exclusive control because I was already somewhat -- yeah, I know these things, we have had stories from some of my colleagues of Zoom bombing and other things, but I've been assured by IT that we're going to make sure that doesn't happen given my exclusive control of the features of the Zoom so we should be good. All right.

MS. BERLIN: Thank you. I was asking -- I think I've told most of the defense counsel I've been trying to teach my mother who plans on watching how to not only Zoom, but to use her microphone and her camera, so I'm relieved to hear that I can stop with that tutorial.

THE COURT: Yes. Yes.

MS. BERLIN: And that the Court can control it. I was more worried about accidents with some of the observers who maybe had have not used Zoom before.

THE COURT: I'll make a brief little statement before we start for all those that are participating to please keep them on mute and should they be disruptive or speak out of turn and they're not counsel of record, that I will be removing them

just like I would physically remove them from a courtroom. So that's not going to be a problem.

So with that said, I don't want to be too presumptuous, but I take it that we have covered all the ground we need to cover in preparation for tomorrow and we will let everybody go now so that you guys can finish preparations, meet and confer, and I expect to see everybody then on the call tomorrow and we'll jump right into it and hopefully it will not be too prolonged an exercise, so that the Court can then get down to the responsibility of turning around an order and making a ruling on the preliminary injunction.

So, again, if something happens this evening or tomorrow, please file the appropriate motion and notify the Court, but that being said, I'm going to go ahead and conclude -- if I don't have anybody else needing to share anything, I will conclude today as status conference and see you all then at 10:00 o'clock tomorrow morning.

So anything else before I let everybody go?

MS. BERLIN: No, Your Honor.

THE COURT: Thank you. Everyone have a good evening and we'll see each other tomorrow at 10:00 a.m.

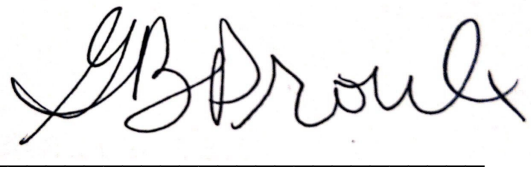
(Thereupon, the above hearing was concluded.)

* * *

C E R T I F I C A T E

This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of reporting remotely.

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



08/22/2020

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T12:10:30-04:00
Importance: Normal
Subject: Pucci Dec.pdf
Received: 2020-07-07T12:10:00-04:00
Pucci Dec.pdf
Pucci Dec.docx

;
Shane,
Attached is the declaration draft for Joe Pucci. I am including a word version in case anything needs edited. He should make sure it is true, make any edits to make it true, and then execute it.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T13:52:23-04:00
Importance: Normal
Subject: Gianna Wolfe Declaration
Received: 2020-07-07T13:52:00-04:00
Wolfe Exhibit B.pdf
Wolfe Exhibit A.pdf
Gianna Wolfe Declaration.docx

;

Hi Shane,
Attached is the declaration for Gianna Wolfe, and Exhibits A and B to it (which we will redact at the top before filing). I am sending this in Word because I do not know the dates and total she borrowed from CBSG. I highlighted these two blanks and just need the months and years, and the total. I wonder if she can fill in those blanks and then sign it.
Thanks,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T13:52:23-04:00
Importance: Normal
Subject: Gianna Wolfe Declaration
Received: 2020-07-07T13:52:00-04:00
Wolfe Exhibit B.pdf
Wolfe Exhibit A.pdf
Gianna Wolfe Declaration.docx

;

Hi Shane,
Attached is the declaration for Gianna Wolfe, and Exhibits A and B to it (which we will redact at the top before filing). I am sending this in Word because I do not know the dates and total she borrowed from CBSG. I highlighted these two blanks and just need the months and years, and the total. I wonder if she can fill in those blanks and then sign it.
Thanks,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T14:05:32-04:00
Importance: Normal
Subject: Julie Caricato Declaration
Received: 2020-07-07T14:05:00-04:00
Julie Caricato Declaration.docx

;
The draft Caricato declaration is attached.

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T14:11:32-04:00
Importance: Normal
Subject: RE: Julie Caricato Declaration
Received: 2020-07-07T14:11:00-04:00
Julie Caricato Declaration.docx

;;;
Sorry, this one includes the corrected signature block.

From: Berlin, Amie R.
Sent: Tuesday, July 7, 2020 2:05 PM
To: 'Heskin, Shane' <heskins@whiteandwilliams.com>
Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>
Subject: Julie Caricato Declaration

The draft Caricato declaration is attached.

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T14:21:09-04:00
Importance: Normal
Subject: Bruce McNider Declaration
Received: 2020-07-07T14:21:00-04:00
Bruce McNider Declaration.docx

;

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T17:00:13-04:00
Importance: Normal
Subject: Mary Carleton Declaration
Received: 2020-07-07T17:00:00-04:00
Mary Carleton Declaration.docx

;
Mary Carleton's declaration is attached. I decided not to resend the other ones.

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T17:31:47-04:00
Importance: Normal
Subject: Robert and Pamela Fleetwood Declarations
Received: 2020-07-07T17:31:00-04:00
Robert Fleetwood Declaration.docx
Pamela Fleetwood Declaration.docx

;
Shane,
Attached are declarations for Robert and Pamela Fleetwood.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T17:58:13-04:00
Importance: Normal
Subject: Julie Katz Declaration
Received: 2020-07-07T17:58:00-04:00
Julie Katz Declaration.docx

;
Shane,
Attached is a draft declaration for Julie Katz.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T18:08:14-04:00
Importance: Normal
Subject: Chad Frost Declaration
Received: 2020-07-07T18:08:00-04:00
Chad Frost Declaration.docx

;
Shane,
Chad Frost's draft declaration is attached.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T18:21:24-04:00
Importance: Normal
Subject: Jim Frost Declaration
Received: 2020-07-07T18:21:00-04:00
Jim Frost Declaration.docx

;
Attached is the declaration for Jim Frost. I imagine he might be a James Frost, but did not want to guess. The document is in word so that any edits can easily be made.
Thanks,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T18:48:10-04:00
Importance: Normal
Subject: Michael Foti Declaration 2
Received: 2020-07-07T18:48:00-04:00
Michael Foti Declaration 2.docx

;
The declaration for Mr. Foti is attached. Linda has sent or will be sending a separate declaration for him concerning other subject areas, and thus there will be 2 declarations.
Thanks,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T18:56:14-04:00
Importance: Normal
Subject: Michael Foti Declaration 2
Received: 2020-07-07T18:56:00-04:00
Michael Foti Declaration 2.docx

;
A revised declaration for Mr. Foti is attached. Linda has sent or will be sending a separate declaration for him concerning other subject areas, and thus there will be 2 declarations.
Thanks,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-07T18:57:13-04:00
Importance: Normal
Subject: Sean Whalen Declaration
Received: 2020-07-07T18:57:00-04:00
Sean Whalen Declaration.docx

;
Shane,
Mr. Whalen's declaration is attached.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-08T01:28:02-04:00
Importance: Normal
Subject: Michael Heller Declaration
Received: 2020-07-08T01:27:00-04:00
Michael Heller Declaration.docx

;

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-08T02:03:50-04:00
Importance: Normal
Subject: Preliminary Fleetwood damage report with exhibits.pdf
Received: 2020-07-08T02:03:00-04:00
Preliminary Fleetwood damage report with exhibits.pdf
Charles S. Lunden Declaration.docx

;
Shane,
Attached is a declaration for Mr. Lunden, authenticating his report.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-10T01:22:44-04:00
Importance: Normal
Subject: J.R. Harrison Declaration
Received: 2020-07-10T01:22:00-04:00
J.R. Harrison Declaration.docx

;
Hi Shane,
Attached is a declaration for J.R. Harrison.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-10T18:24:28-04:00
Importance: Normal
Subject: RE: J.R. Harrison Declaration
Received: 2020-07-10T18:24:00-04:00

;;;;;;;;;
Yep. I will send a revised version. Thanks for catching it

From: Heskin, Shane <heskins@whiteandwilliams.com>
Sent: Friday, July 10, 2020 10:13 AM
To: Berlin, Amie R. <BerlinA@sec.gov>
Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>
Subject: RE: J.R. Harrison Declaration

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Shouldn't it be "merchant cash advance" business, not merchant capital advance?

From: Berlin, Amie R. <BerlinA@sec.gov>
Sent: Friday, July 10, 2020 1:23 AM
To: Heskin, Shane <heskins@whiteandwilliams.com>
Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>
Subject: J.R. Harrison Declaration

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

Hi Shane,
Attached is a declaration for J.R. Harrison.
Thank you,
Amie

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-10T18:26:23-04:00
Importance: Normal
Subject: J.R. Harrison Declaration2
Received: 2020-07-10T18:26:00-04:00
J.R. Harrison Declaration2.docx

;
Thanks for catching the typo. The corrected dec is attached.

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-10T23:28:25-04:00
Importance: Normal
Subject: Amos Jones Declaration
Received: 2020-07-10T23:28:00-04:00
Amos Jones Declaration.docx

;
Thank you, Shane.

To: Heskin, Shane[heskins@whiteandwilliams.com]
Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
From: Berlin, Amie R.
Sent: 2020-07-10T23:28:25-04:00
Importance: Normal
Subject: Amos Jones Declaration
Received: 2020-07-10T23:28:00-04:00

Thank you, Shane.

Cc: Jacqmein, Victoria[JacqmeinV@SEC.GOV]
To: Shane Heskin[heskins@whiteandwilliams.com]
From: Berlin, Amie R.
Sent: 2020-07-16T21:09:12-04:00
Importance: Normal
Subject: Re: TourMappers and Julie Katz v. Complete Business Solutions Group, Inc. d/b/a Par Funding
Received: 2020-07-16T21:09:12-04:00

Thanks, Shane. The attachment didn't get forwarded by your email. Can you resend it?

> On Jul 16, 2020, at 9:04 PM, Schmidt, Linda S. <SCHMIDTLS@sec.gov> wrote:
>
> Thank you.
>
>> On Jul 16, 2020, at 8:54 PM, Heskin, Shane <heskins@whiteandwilliams.com> wrote:
>>
>> CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.
>>
>>
>> I am in receipt of your subpoena and have sent it to our paralegal Art. He will send a more fulsome response tomorrow. In the interim, please see the attached in response to your subpoena.
>>
>> -----Original Message-----
>> From: April Costello <ACostello@szaferman.com>
>> Sent: Wednesday, July 15, 2020 2:18 PM
>> To: Heskin, Shane <heskins@whiteandwilliams.com>; Berman, Brett <BBerman@foxrothschild.com>
>> Cc: MBurke@foxrothschild.com; Wells, Stuart <Wellss@whiteandwilliams.com>; JWarren@foxrothschild.com; Linda R. Feinberg <LFeinberg@szaferman.com>
>> Subject: RE: TourMappers and Julie Katz v. Complete Business Solutions Group, Inc. d/b/a Par Funding
>>
>> CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.
>>
>>
>> Counsel: I apologize, attached is the PDF version of Judge Feinberg's Decision in the above matter. Please disregard my prior attachment. (Please note the only difference is the first document was not on our letterhead).
>>
>> April
>>
>>
>> -----Original Message-----
>> From: April Costello
>> Sent: Wednesday, July 15, 2020 1:35 PM
>> To: 'Heskin, Shane'; 'Berman, Brett'
>> Cc: 'MBurke@foxrothschild.com'; 'Wellss@whiteandwilliams.com'; 'JWarren@foxrothschild.com'; Linda R. Feinberg
>> Subject: TourMappers and Julie Katz v. Complete Business Solutions Group, Inc. d/b/a Par Funding
>>
>> Sent on behalf of Judge Feinberg
>>
>> Dear Counsel,
>>
>> I have attached my decision in the above referenced matter. Regarding counsel fees, each party shall pay their own counsel fees and costs without prejudice to an allocation by the arbitrator appointed. Counsel for the claimant

shall submit a proposed form of Order with copies sent to the Emergent Arbitrator and counsel for the Respondent.
>>
>> Thanking you in advance for your assistance and cooperation. Be safe during this difficult time.
>>
>> Judge Feinberg (Ret.) Emergent Arbitrator
>> <Judge Feinberg decision.pdf>