

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.

_____/

**REPLY IN SUPPORT OF (DE 663) DEFENDANTS' MOTION TO DISMISS THE
AMENDED COMPLAINT DUE TO MISCONDUCT BY THE SECURITIES AND
EXCHANGE COMMISSION AND RELATED CONSTITUTIONAL VIOLATIONS**

“[I]n June 2020, Par Funding transferred millions from the Par Funding, leaving only thousands in its bank account.”

-SEC Counsel Amie Riggle Berlin
to this Court, regarding the need for an *ex parte* asset freeze.
July 27, 2020 (DE 14 at 77)

This statement, and others similar statements by the SEC, had real and immediate consequences on this litigation. Conversely, the out of context quote about winning from Mr. LaForte to his lawyer in the context of litigating nonpaying merchants to recover money owed to Par, which is only seeing the light of day because the SEC was able to induce this Court to appoint a Receiver and shut down Par, does not show that Mr. LaForte or any of the Defendants have done anything wrong, but rather, that Mr. LaForte, like many others, has a will to win. This is not controversial. We do not demonize the late, great Vince Lombardi for his famous quote: “Winning isn’t everything, it’s the only thing,” which LaForte was obviously paraphrasing. The SEC’s Response opens with a continuation of the exact type of conduct that forms the basis for the Rule 41 Motion, demonizing the Defendants with ad hominem attacks, and even falsely accusing the Defense of presenting manufactured evidence. However, the SEC’s conduct about which the Defense complains, was unfair, prejudicial, and has created a significantly unfair advantage in favor of the government that cannot be remedied by anything short of dismissal.

The SEC’s Response fundamentally misunderstands the purpose of Defendants’ Motion, which is not to prove that there is no genuine issue of material fact on any of the allegations of the Complaint, but that the SEC brought this case on an incomplete investigation full of undeveloped theories, many of which later proved false, but were not corrected by the SEC, and facts that were false when they were alleged. Unlike a statement in a complaint or preliminary motion that later is proven unfounded in ordinary litigation, these false statements had real, immediate, and devastating consequences due to the drastic *ex parte*, emergency, preliminary relief sought by the SEC. These false allegations fundamentally changed the character of this litigation by inducing the Court to order an asset freeze and install a Receiver and caused the Defendants to have to fight with one hand tied behind their backs, having to litigate for months just to get access to their own documents to defend themselves. It also caused devastating injury to Par because the Receiver ceased Par’s daily business of making merchant cash advances and collecting money owed by merchants. This is not how an alleged securities registration and misrepresentation cases should be litigated but was done in this way by the SEC in an endeavor to prompt this Court to enter emergency *ex parte* relief so the SEC could

railroad the Defendants. Obviously, it is the SEC that is seeking to win at all costs regardless of the truth and the law. This type of government overreach and misbehavior should not be tolerated, and the case should be dismissed.

I. The SEC Has No Response for the Most Significant Frauds on This Court That Caused the TRO and Receivership

In its Response, the SEC attempts to divert attention away from the real issues by offering a series of strawman arguments, which it of course knocks down. But the facts are indisputable that the SEC's haphazard investigation resulted in false facts and faulty legal contentions being presented to this Court in support of the Motion for Temporary Injunction and Appointment of the Receiver. The SEC goes to great lengths in its Response to take responsibility for the investigation, but that is not the winning argument the SEC thinks it is because if true, it only shows that the SEC, more than the merchant declarants, is responsible for the misrepresentations to the Court.

In the Response, the SEC does not even acknowledge some of the arguments raised by Defendants regarding the false claims it presented to this Court and deflects as to others without providing a substantive response. The SEC completely ignores Defendants' arguments that the SEC misled the Court by falsely alleging that: (1) Joseph LaForte hid his identity from noteholders, which the SEC's own evidence proves is false; (2) Mr. Cole discussed purchasing a bank to avoid usury laws, which the SEC's own evidence proves is false; and (3) the Defendants stole millions of dollars of noteholders' money by cleaning out Par's bank account and sending the money to another company in Georgia leaving behind only \$83,000.00, which did not happen. In fact, the SEC does everything it can to shift focus away from the fact that it told this Court that Par executives raided the company coffers right before this action was filed and implied they were about to abscond.

The significance of the theft of the Company's money misrepresentation cannot be stressed enough as the Defense submits that it had to have been a material inducement to this Court granting the extraordinary and devastating preliminary relief sought by the SEC. Case law is clear that even when there is sufficient prima facie evidence of securities laws violation such that a TRO can be entered, the appointment of a receiver is a different animal only appropriate in extraordinary circumstances. *SEC v. Brigadoon Scotch Distribs.*, 388 F. Supp. 1288, 1293 (S.D.N.Y. 1975) ("The application for the appointment of a Receiver is denied. No showing has been made that such a drastic remedy is necessary for the protection of the public. Indeed, it appears that the expense which a receivership would involve would not only impose an undue burden on the defendants but could jeopardize the interests of the public as well."); *SEC v. Bennett & Co.*, 207 F. Supp. 919, 924 (D.N.J. 1962) (granting preliminary injunction, but denying motion for appointment of receiver because

“[t]here is no evidence that any of the defendants have in the past diverted any funds belonging to others to their own use.”); *see also SEC v. Hollnagel*, 503 F. Supp. 2d 1054, 1058 (N.D. Ill. 2007) (court denied motion for receiver because even though noteholders were owed \$48 million, the defendant would be able to maintain the corporation and obtain the funds to pay the notes better than a receiver). Thus, the SEC needed to convince the Court that Par was in danger of dissipating its assets or that the Receiver could protect the noteholders better than Par. The SEC’s allegations were false when made and the Defendants have now shown this to the Court.

The SEC does not even attempt to deny or justify this false allegation, because it cannot be justified. This case is a house of cards that started with the SEC’s Big Lie that Par was diverting noteholder money out of its accounts resulting in the extraordinary relief from the Court which caused, among other things, the waiver by the Receiver standing in the shoes of Par of the attorney client privilege. Rather than even acknowledging this misrepresentation in its Response, the SEC uses an out of context quote from an email it would not even have had but for its misrepresentation to the Court to demonize the Defendants. The SEC’s smug and callous indifference to what it did here is shameful.

It is now clear that the SEC’s expert, Melissa Davis, whose inaccurate Declaration the SEC cited in its TRO Motion as verifying the theft of Par’s money that never occurred, did not even bother to review all of the relevant accounts. As explained by the Defendants’ expert:

To date, Melissa Davis (“Davis”), the forensic accountant retained by the Securities and Exchange Commission (the “SEC”), has submitted three declarations. The first two, dated July 23, 2020, and August 4, 2020, address bank accounts for which the SEC asked her to analyze. The list of accounts she was provided to analyze as reflected in her July declaration did not include all bank accounts and did not include any ACH accounts. None of the nine automated clearing house (ACH) payment processors used by CBSG was included in this list. Additionally, five bank accounts used by CBSG were not included in the list she was asked to analyze.

Expert Report of Joel Glick, attached as Exhibit B at 5. Thus, the entire basis of Ms. Davis’s theory that Par was moving money out of its bank accounts seems to be the fact that she did not consider that the ACH accounts belong to Par. As further explained by Mr. Glick, Par used these accounts primarily to make interest and principal payments to noteholders and make advances to merchants because the fees Priority charged were significantly less expensive than the cost of wiring the funds through a bank account. *Id.* at 6. This blunder should cause the Court great concern when considering Ms. Davis’s expert opinions in this case. Whether the SEC withheld information regarding Par’s ACH accounts from Ms. Davis, or she simply ignored them, the misrepresentation that Par was transferring

millions of dollars out of its accounts caused immediate and irreparable harm to the defense. The harm done by this false contention and other misrepresentations by the SEC cannot be remedied on post-judgment appeal or by anything short of dismissal.

The SEC likewise ignores the fact that in the Motion the Defendants dismantle the SEC's false allegation that Mr. LaForte hid his identity from noteholders. Mr. LaForte does not dispute that he did not always use his last name when dealing with merchants seeking cash advances, which is a common practice in the industry for safety and security reasons. The SEC twisted that practice into the false allegation LaForte concealed his last name from noteholders obviously to induce the Court to act. Again, however, the damage has been done. Mr. LaForte's past criminal conviction is littered throughout the SEC's case, despite the fact that there is no evidence that he has engaged in any criminal conduct related to Par. The SEC goes further and attempts to deflect attention away from its own bad behavior set forth in the Motion by saying in the Reply that there are ongoing investigations by other agencies. Response at 2 n. 2. Whether that is true or not is wholly irrelevant to the SEC's misconduct and the Motion at hand. Apparently, the SEC's defense to its misconduct is that if other agencies are or may be investigating defendants, then the Court should allow the SEC to lie about them. Moreover, the evidence that Mr. LaForte did not hide his identity from *noteholders* was in the possession of the SEC when it filed this case and made the allegation. The SEC describes in detail a 2019 noteholder dinner put on by Dean Vagnozzi, mentioning it 14 times in its TRO Motion. The SEC alleges that Mr. LaForte's name was concealed from noteholders at the dinner and attached a transcript of that dinner to its TRO Motion. However, the transcript of the dinner filed by the SEC as an exhibit to its TRO Motion shows that Mr. Vagnozzi introduced LaForte by name to the entire crowd over the PA system, stating: "I want to introduce **Joe LaForte**. Come on up, Joe." (DE 41-7 at 57, lines 17-18) (emphasis added). Notably, this evidence was obtained through an undercover private investigator retained by Heskin. The SEC's response when called out for this falsity, again crickets. There is no excuse for such conduct, particularly by a federal agency.

The SEC produced multiple declarations from Heskin's merchant clients stating that Mr. LaForte concealed his identity from them. However, in light of the fact that the SEC was in possession of a recorded presentation where Mr. LaForte was introduced to approximately 300 noteholders by his real name, it is clear that these declarations were submitted for the improper purpose of baiting the Court into believing that Mr. LaForte always hid his identity from everyone, specifically noteholders. This was not the case.

II. Heskin Was a Significant Portion of the Complaint and TRO Motion and a Large Document Dump Does Not Change That

The SEC argues that it conducted its own investigation and points to the percentage of documents it produced from Heskin in relation to the number of documents it produced, as a whole as evidence of this. However, the SEC's argument fails because it ignores that it relied extensively on information and legal theories provided by Heskin in its Amended Complaint and the TRO Motion. Heskin procured the merchants and information in the merchant declarations for the SEC, much of which have been proven false. Heskin is the source of the allegations that Par's MCA's were "loans" and usurious, which the SEC argued to this Court, but now disavows knowing they are false and claiming they are "irrelevant" after the damage has been done. The SEC certainly thought those allegations were relevant when it littered them throughout the Complaint, Amended Complaint, and TRO Motion. Heskin commissioned and paid for the Reehl investigations taping of a dinner on November 21, 2019, which the SEC used as evidence in support of the Complaint and TRO Motion, while conveniently ignoring the fact that Mr. LaForte was introduced to a room of approximately 300 noteholders by his real name. Heskin also invented the specious default rate analysis adopted by the SEC, that was the basis for the Andjich Declaration, whereby the number of confessions of judgment filed in courts equals the percentage of defaulted advances for noteholder purposes.

Additionally, the SEC's attempt to argue Heskin's investor and securities related deposition questions, which read like a blueprint of the Complaint later filed by the SEC, were relevant in his merchant lawsuits fails. Heskin deposed Mr. Cole a mere 24 days before the SEC filed its Complaint and TRO Motion. The SEC argues the investor and securities related questions were somehow not out of line because Defendants knew to expect them and for support points to email correspondence between Mr. Cole and Par's counsel, which the SEC should never have had and only now has because its false allegations induced the Court to appoint a Receiver who thereafter waived Par's attorney client privilege) However, these investor and securities related topics are *not* discussed in the correspondence (yet another example of the SEC making false allegations about conversations, similar to the false allegations about the transcript of the Cole dinner conversation about the bank and the Vagnozzi introduction of Joe LaForte at the noteholder dinner), nor are they on the area of inquiry set forth in the 30(b)(6) Corporate Representative deposition notice prepared by Heskin. Therefore, no matter what was litigated, those questions were outside the scope and wholly irrelevant to Heskin's merchant actions. However, most tellingly, the questions Heskin asked at that deposition read like a word for word rendition of the pleading and motion filed by the SEC just three weeks later. This cannot be a

mere coincidence. Notably, the documents produced by the SEC show that Heskin ordered Cole's deposition transcript on a *rush* basis and immediately forwarded it to the SEC. Furthermore, at the deposition, Heskin told Par's counsel "the time will come," foreshadowing the SEC's complaint that he was obviously gathering evidence for.¹ (DE#20-2). To believe the SEC's explanation it was Heskin with a crystal ball not the Defendants, as the SEC facetiously suggested in Exhibit 12 to its Response (DE #700-1 p. 18).

Finally, Heskin provided a report from his expert in a merchant action, the Lunden Report, and the SEC ran with it. Notably, Mr. Lunden in his report made it clear it was not his expert opinion that Par's MCA's were loans and usurious and he got that theory from Heskin, but the SEC misled the Court by not pointing out that caveat and thereby making it appear it was Mr. Lunden's opinion. Additionally, the Lunden Report makes it clear the Fleetwood advance was funded after the onsite inspection, but the SEC did not care and argued to the contrary when it filed its TRO Motion and still argues falsely that it was funded beforehand. Irrespective of the amount of documents and information the SEC collected from any other sources, it obviously considered what it got from Heskin to be highly relevant and relied heavily upon documents and evidence from Heskin to induce this Court to enter the most drastic pretrial relief there is. The SEC's Amended Complaint and TRO Motion make it clear Heskin was leading the investigation, not the SEC.

III. Response to SEC's Chart About Noteholder Misrepresentations

The SEC continues to attack Par's underwriting through its own chart of "truths." However, the SEC's chart is flawed because it attacks underwriting guidelines made up by the SEC that Par has never promised noteholders. First, the SEC claims that Par regularly approved funding before a site inspection. However, the way the SEC uses "approved" in its filings and merchant declarations is a made-up point in the funding process that does not exist. While merchants are preliminarily qualified based on their document submissions, Par has no obligation to actually fund until the money is actually sent. Par's documents are clear that if it learns anything new about the financial condition of the merchant after preliminary qualification, which would include a failed site inspection, troubling bank statements, or issues with a background check, it is not obligated to fund. Nevertheless, over a year into this case, the SEC continues to harp on the "approval" date, which is a concept manufactured by

¹ In the Response, the SEC claims that Heskin found out about the Complaint filed by the SEC after it was filed from the Philadelphia Inquirer. (DE# 691 at 6). However, the Heskin declaration the SEC points to as evidence of this says no such thing. (DE# 691-5). Yet another example of a made-up allegation by the SEC, not unlike the "approved" before the onsite turned into "funded" switcheroo the SEC pulled with the Fleetwood Declarations, discussed in the Motion and herein.

the SEC. The SEC is aware that the time period it refers to as “approval” was really a pre-qualification, but Par was not obligated to make the advance until funding.

The merchants, and by extension the SEC, were clearly aware that a deal is not finally approved until it is funded because the contracts say exactly that. Par’s contracts state:

You have been pre-qualified based on our preliminary review of the information you have provided. Your pre-qualification is not a guaranty of funding nor a commitment to fund. You must provide the requested additional information, sign and return the Agreement and related documents sent to you, and our underwriting department will make a final determination regarding the terms of your Agreement. Any misrepresentation relating to any information you have provided to us or may provide to us in the future or any adverse change in your financial condition or status may void this pre-qualification offer. Pre-qualification is subject to withdraw, change, and/or cancellation at any time if you no longer meet the requirements for the requested funding.

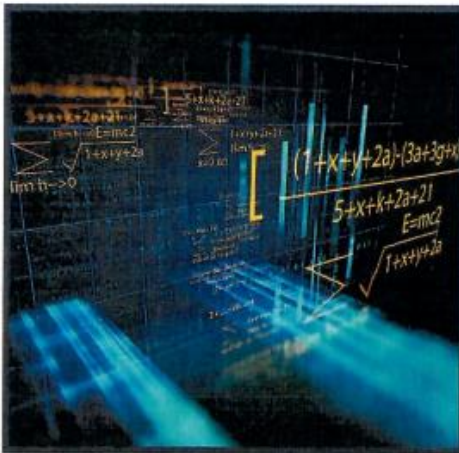
Again, all deals are pre-qualified before Par received the requested documentation needed to fulfill the underwriting guidelines and conducted the site inspection. Par would not waste the money or time to do an onsite if that were not the case. However, the merchants were not funded until the underwriting process was complete, which included all documents requested to complete underwriting and the onsite inspection where appropriate.² See Noteholder Brochure, attached as exhibits 1 and 2 to Exhibit A.

Additionally, the SEC is apparently making the nonsensical argument that Par must get a new application from a merchant and order new site inspections when it funded merchants who are existing clients that already provided an initial application and had an onsite inspection. While the federal government may revel in inefficiency and red tape, profitable businesses do not. The purpose of an onsite inspection is essentially to make sure the business exists. All documents gathered in the underwriting process were subsequently uploaded to and stored and maintained in ConvergeHub, Par’s CRM. The purpose of a CRM is to store all the information that a company collects about its customers. Thereafter, employees have a centralized platform to allow them to access, analyze, and use previously obtained customer data on a continuing basis, rather than repeatedly requesting the same documents and information over and over. The purpose of a CRM is to allow businesses to store and use pre-existing data. Obviously, if a merchant requested a second round of funding after a first application, updated bank statements would be required to show current cash flow, but other

² Contrary to the SEC’s assertion, Defendants did not forge or doctor documents or evidence. Documents were formatted or highlighted to show the Court information from QuickBooks and the application in the most streamlined way possible without needlessly overburdening the Court and filing all the bank statements. In light of the SEC’s false allegations, a complete set of documents are being filed under seal. See Rebuttal Chart attached as Exhibit A 1-99.

documents do not need to be re-requested. Par’s third-party vendor systems are capable of verifying preexisting information and any changes that may have resulted from prior data obtained in the original application process. By logging into Experian Business Background, Clear by Thompson Reuters, Data Tree, Data Merchant, and looking at social media and Google products, Par underwriters can ascertain the data that is needed for renewals.

The SEC also argues that Par does not collect debt schedules, profits and loss statements, and other underwriting documents, but fails to point to a single document that Par promised noteholders it would obtain and did not do so. Further, the SEC’s discussion about profit and loss statements and debt schedules demonstrates a total lack of understanding of the MCA business, which is most concerned with cash flow and the merchants’ apparent ability to repay advances over a short period of time, usually 100 days. In fact, one of Par’s brochures for noteholders explains that: “Par Funding uses a financial matrix for our underwriting which evaluates clients with an ***emphasis based on cash flow rather than traditional credit metrics.***” See Exhibits 1 and 2 to Exhibit A (emphasis added). Again, the SEC has manufactured underwriting guidelines that Par never promised its noteholders.



Par Funding uses a financial matrix for our underwriting which evaluates clients with an emphasis based on cash flow rather than traditional credit metrics.



Given that Par funded deals that usually had 100-day terms or shorter, cash flow information was what it needed to determine a merchant’s qualification for funding. There is no dispute that Par Funding obtained three-months of bank statements along with an application, a voided check, and a copy of the merchant’s driver’s license. Industry standard is a voided check, a driver’s license, three-

months of bank statements, application, and proof of ownership. *See* competitors underwriting standards attached as exhibits 28-1 and 28-2 to Exhibit A. Par went above and beyond that and performed significantly more underwriting than many in the industry including site inspections, although it did accept pictures from the owner when the business was of a sensitive nature such as a law firm, children's playground, or a facility that stores hazardous materials. Par also took other information, when necessary, on a case-by-case basis when it deemed appropriate. Even though this was not a promise made to note holders.

Additionally, the SEC claims Par did not do background checks, but it did. This argument evidences complete ignorance of the fact that Experian has numerous products, not just personal credit report offerings, including individual and business background checks which are two platforms separate and apart through Experian: Experian Business Background for background checks and Experian for personal credit. Par conducted both on every merchant it ever funded, as disclosed to note holders. *See* Exhibit A-14, A-18 A-32, A-46, A-79-82, A-99.

The SEC in its chart continues to double down on many of the false assertions called out in Defendants' Motion despite overwhelming evidence to the contrary. The Defendants have attached a rebuttal chart dispensing with the contentions raised by the SEC in its chart, *See* Exhibit A, hereto, and its supporting exhibits, 1 through 99.

One of the most egregious misrepresentations made by the SEC in its TRO Motion involves the Fleetwood Declarations and the timing of the Fleetwood Services advance. Remarkably, when confronted with irrefutable evidence proving false its allegation that the Fleetwood Services advance was funded the day before the January 5, 2017, onsite inspection, the SEC belligerently doubles down. Defendants provided Par's Bank Statement that shows Fleetwood Services was funded on January 9, 2017, *not* January 4th. *See* Motion Exhibit 29. The SEC's own exhibits filed in support of its TRO Motion confirm that the merchant was funded on January 9, 2017. *See* TRO Motion Exhibit 76, the Lunden Report (provided to the SEC by Heskin), Exhibit "A," at pp. 1 and 13 (confirming Par made the first advance in the amount of \$133,335.00 on January 9, 2017). In fact, the Fleetwoods say nothing about when the advance was first funded and instead allege the advance was "approved" before the site inspection. This approval concept is a false, irrelevant, and misleading concept explained in this Reply, but for the purposes of this argument, even the Fleetwoods knew better than to make the false claim that funding occurred before the onsite inspection. The SEC made the funded allegation up along with other false allegations discuss in the Motion to bait the Court into the most drastic pretrial relief possible. In its Reply, the SEC ignores Par's Bank Statement, its own TRO Motion Exhibit, the

Lunden Report, and does not address the discrepancy between the Fleetwoods' Declarations ("approved") and the SEC's allegation ("funded") in the TRO Motion. Instead, the SEC cites in its chart a "Fleetwood ConvergeHub record" that the SEC has to know is inaccurate and not reliable. *See* (DE 692) SEC Reply Chart at p. 15, footnote 32. Specifically, the "Fleetwood ConvergeHub record" cited by the SEC lists the date of funding as 01/04/2017; the date of Agreement is blank, the Deal Value is USD 0.00; and the Expected Close date is **08/17/2021**. This document is obviously inaccurate and not dispositive. The SEC may not understand or may but does not want to acknowledge that ConvergeHub is an internal database at Par that can be accessed and modified by employees/staff as documents and information are subsequently added to the file. Data entered into the CRM by Par staff does not trump original documents, like contracts, inspection reports, background checks from Experian, or bank statements, and is not intended to. If it read that document the SEC must know it is completely inaccurate. Notably SEC cut off information regarding the bottom of the application and used an application that was not Par's application. Ultimately, the Fast Advance Funding application dated December 29, 2016, was the one that this deal was based on. Ex. A-55.

The SEC does not even attempt to explain the discrepancy between this ConvergeHub record and Par's Bank Statement and the SEC's own (borrowed) Lunden Report because it cannot possibly do so in good faith. Notably, this Fleetwood ConvergeHub record is not something the SEC would have had access to prior to filing its TRO Motion since the TRO Motion was filed on July 27, 2020 (DE# 14) and the Receiver took over Par's operations on July 28, 2020. Therefore, the SEC cannot claim this erroneous internal record caused the SEC to mistakenly make a false allegation to this Court about Par's underwriting. Instead, the SEC uses this record that it obtained after the fact to cloud and confuse the issue and continue the harm caused by the false allegation. The SEC should admit the allegation is false but will not. The SEC's conduct should not be condoned. Without ramifications for this and the other false allegations raised in the Motion, like all the money was stolen from Par's bank account just before suit was filed, the SEC will be emboldened to engage in similar conduct in the future.

IV. The Investigation and Claims to the Court About the Investigation Were Constitutionally Insufficient and the SEC's Statements Regarding Its Sufficiency and the Defendants' Ability to Adequately Defend Themselves at the Prior Hearing Are Disingenuous

The SEC makes a number of statements regarding the sufficiency of its investigation as well as the Defendants' opportunity to defend themselves that are disingenuous and should be ignored by this Court. Contrary to the SEC's argument Defendants do not argue that the SEC has an improper

financial purpose (DE 691 at 10), but rather that given the financial motivation of the private attorney and his clients—to wit—getting paid legal fees and potentially avoiding repaying millions of dollars to Par, that a proper and diligent investigation would have consisted of obtaining declarations from multiple sources. Out of 7,600 Par merchant clients, the SEC starts this case with 14 merchants who were all represented by the same lawyer. While the SEC claims that it drafted all of the declarations, there is no dispute that the SEC used this single private attorney’s clients rather than other sources, and that the contents of the declarations were procured by the private lawyer in a blast email and were not sufficiently vetted such that they were filed with material items left blank on a form declaration that does not vary much between declarants, if at all.³ This is not the first time the SEC’s counsel has relied on a single source with questionable motives and did not diligently confirm facts before submitting them to the Court. Another district judge once noted, calling out SEC’s sole reliance on a single (clearly biased) witness’s statements to prove a case against Defendant, despite the “unquestionable lack of reliability.” *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1326 (M.D. Fla. 2011). The *Kramer* court also called out SEC for relying on this witness’s own statement of location without independently investigating the facts (“The Commission appears not to have diligently attempted to locate Baker but rather to have attempted to ostentatiously fail to locate Baker.”) *Id.* at 1324.

Furthermore, the SEC attempts to argue that the Defendants’ position is that the SEC has an improper financial arrangement with the merchant declarants. Defendants said no such thing in their motion. Rather, the Defendants stated that the merchants have a financial motivation in helping the SEC take down Par and possibly make their debt go away or reducing it. This is indisputable.⁴ Furthermore, while Heskin states in the declaration he filed in support of the Response that his cases are stayed, that is not dispositive of anything. Heskin obviously will seek to get paid for his legal work, whether now or in the future. He could have a contingency agreement with his clients whereby he gets a percentage of any debt that is discharged whether in a private case or this case, or he could simply realize that his private litigation was going nowhere and that this action is the best route for his clients to avoid their debt. Furthermore, the stay of litigation helped stop the bleeding from the losses in federal court. (Sunrooms) which helped Heskin’s clients by taking Par down. The publicity from this case may have resulted in Heskin getting additional Par merchant clients. For example, BT Supply,

³ During a meet and confer telephone call on a discovery issue, Ms. Berlin stated to Laforte’s counsel, Joshua Levine, that she did not seek declarations from any other source because when she has one attorney cooperating, she does not need to seek out other sources.

⁴ Defendants did say that merchants may have sought a whistleblower award as well but did not state that the SEC brought this case for the purpose of handing out a whistleblower award.

Par's largest merchant client that owed Par in excess of ***\$91 million*** has now shown up in Receiver billing as a Heskin client.

Alternatively, through this action, Heskin can obtain discovery he could not otherwise have obtained in his private litigation to build his class action and RICO cases after the stay is lifted by virtue of the Receiver waiving the attorney-client privilege as well as obtaining other evidence that would not have been discoverable in the private litigation he had filed. While the SEC disputes that Heskin led the investigation of this case, it does not dispute that he willfully cooperated with the investigation. If this case truly hurt Heskin and his clients, he would not have so willingly assisted the SEC. This cannot be legitimately in dispute.

Furthermore, there is no dispute that the SEC presented declarations to this Court with inaccuracies, with blanks as to material relevant portions and containing sworn averments as to information that the merchants could not possibly have known, such as whether or not Par conducted a background check on them, even though they all signed documents consenting to background checks. The purpose of the hasty declarations is clear, to bias the Court against Defendants before they would even have a chance to present evidence in their favor. While SEC claims that the merchant correspondence was only a fraction of the production when it did its initial document dump, this statement is misleading because evidence provided by Heskin and his merchants was a significant portion of the "evidence" filed with the Complaint and in support of TRO and appointment of the Receiver. This evidence included merchant declarations, an expert report prepared for Heskin in his private litigation, and an undercover recording by a private investigator bought and paid for by Heskin, and a list of the confessions of judgement filed by New York Unity. The fact that this information does not represent a significant portion of the document dump the SEC made on the defense is irrelevant.

Furthermore, the SEC's so-called "corroborating" evidence either consists of statements taken out of context or is from further biased sources. As already explained above and in the Motion, the SEC presented a statement from the recorded 2019 noteholder dinner about Mr. LaForte being the president of Par but ignored the fact that he was introduced by his real name to these noteholders. The SEC's "corroboration" for Par's allegedly shoddy underwriting included a declaration of Lionese Jones. However, Ms. Jones is a disgruntled former employee who filed a wrongful termination complaint with the NLRB after she quit her job but could not qualify for unemployment due to voluntary resignation. Again, this case is a house of cards built on biased witnesses and outright misrepresentations to the Court.

The SEC also argues that it supported its assertions with declarations of its auditor that reviewed thousands of pages of documents and therefore, the Defendants are misrepresenting the evidence presented to this Court. Again, the SEC misconstrues Defendants' argument, and avoids responding to the true argument. The Defendants acknowledge that Mr. Andjich claimed to have reviewed thousands of documents consisting of court dockets. The argument in the motion to dismiss is that the SEC did not understand the relevance of the New York Unity dockets at the time the declaration was executed and had to obtain this information from Mr. Heskin, which it did after the declaration was executed. Whether he reviewed one document or thousands, not understanding their significance is the hallmark of an insufficient investigation.

Furthermore, the SEC argues that the Defendants should have raised all of these points in the initial response to the Motion for Temporary Injunction, arguing that it provided a document dump on Defendants, that Defendants had the opportunity to take discovery, and that the Defendants were able to pull some documents from their own system because the case was not properly sealed at the outset. While Defendants were able to get some documents, they did not have full access to ConvergeHub. There is no dispute as to that. In fact, there was protracted litigation and negotiation between Defendants' and the Receiver on access to ConvergeHub, which resulted in a stipulation to grant Defendants' access to a static copy of ConvergeHub on April 16, 2021. The SEC's documents were not what Defendants needed to defend themselves at the early hearings; their own documents were. Documents that were only in the possession of the Receiver because of the SEC's misrepresentations and omissions to this Court. Now the SEC disingenuously argues that the Defendants should have put on evidence that it deprived them of before the hearings and that they did not have until mid-2021.

Furthermore, the SEC's reliance on the volume of documents produced, shows why the Defendants were unfairly disadvantaged at the hearings. While the SEC produced a significant amount of documents during the expedited discovery period, the volume of documents made it like looking for a needle in a haystack and the documents relevant to this motion, were either buried in the SEC's production or not yet produced. The Defense has still been receiving production from the SEC through early July, including 1,051,389 documents from the SEC in the last 100 days, that is documents not pages.

Production Summary							
Production Name	Folder	Date Received	Doc Count	Contents		Production	
SEC-KAP_20210126	Par Funding	02/02/21	1,937	Melissa Davis documents - bank statements, wire confirmations, investor agreements		EPROD-SEC-DEF_2021	
2021-01-11 - Production	Par Funding	02/08/21	29,379	Receiver initial production documents - statements, btransaction confirmations, accounting worksheets - already hosted on Dropbox		EPROD-SEC-DEF_2021	
2021-01-13 - Supplemental	Par Funding	02/06/21	3,521	Receiver provided investor documents - already hosted on Dropbox		EPROD-SEC-DEF_2021	
NVMS	Par Funding	02/23/21	255	NVMS merchant site inspections from 2015		EPROD-SEC-DEF_2021	
EPROD-SEC-DEF_20200811	Par Funding	02/24/21	97,906	PPM solicitation materials, ABFF emails, Alexis emails, investor agreements, voice mail messages, actum emails, deposit slips, Camaplan documents, investor questionnaires and agreements, Dean financials and videos		EPROD-SEC-DEF_2021	
SEC-EMAILS-E_20210223	Par Funding	02/24/21	163	Emails between Kara DiPietro and SEC		EPROD-SEC-DEF_2021	
EPROD-SEC-DEF_20210211	Par Funding	02/24/21	67,678	ABFF Documents, CBSS Client Agreements, COIs, underwriting files, CBSS Investor documents, FSP / VS HR documents, FAF agreements, Retirement Evolution PPM docs		CLA Production P1254	
Premier Trust 2021-02-25	Par Funding	02/26/21	73	Premier Trust entity operating agreements, email correspondence with Lisa		EPROD-SEC-DEF_2021	
EPROD-SEC-DEF_20210219	Par Funding	02/26/21	43,770	Fideliis PPM investor documents, Furman emails (a lot of spam), text messages		EPROD-SEC-DEF_2021	
2021-02-25 - CBSS Receiver	Par Funding	03/05/21	67,680	Fideliis documents, CBSS accounting, investor, underwriting & ISO files, MPMG files, 1st Global underwriting files, ABFF emails, Camaplan documents.		EPROD-SEC-DEF_2021	
EPROD-SEC-DEF_20210301	Par Funding	03/07/21	771	REA tax returns, financials and emails / Additional Kara DiPietro messages			
2021-03-04 - CBSS Receiver Production	Par Funding	03/08/21	244	Convergehub emails and client csv data, missing underwriting pdfs			
EPROD-SEC-DEF_20210225	Par Funding	03/10/21	41,139	Furman documents - text message logs, emails, phone photos,			
Truepic 2021-03-01	Par Funding	03/17/21	3,006	Amended 03/01 production, Truepic invoices, site inspection photos and emails			
EPROD-SEC-DEF_20210308	Par Funding	03/18/21	9,047	Additional Furman PPM documents, investor solicitation and communications.			
2021-03-22 Bybel Ruthledge	Par Funding	03/22/21	22	documents			
2021-03-22 DLA Piper	Par Funding	03/22/21	291	emails and documents from Lisa Jacobs pertaining to consulting agreement and updated notes			
2021-03-22 Fox Rothschild	Par Funding	03/22/21	915	email correspondence pertaining to securities and investor guidance with cbss			
2021-03-23 Haynes and Boone	Par Funding	03/23/21	28	email correspondence with counsel pertaining to TSSB matter from early 2020			
2021-03-23 Offit Kurman	Par Funding	03/23/21	150	legal filings and documents related to cbss and affiliate businesses near foundation of company			
EPROD-SEC-DEF_20210319	Par Funding	03/25/21	6,228	additional Furman PPM documents, investor statements and account materials			
CBSS Database: 5 Custodians	CBSS	03/26/21	1,171,021	Email for parfunding for Joe, Jimmy, Joe Cole, Jamie and Lisa			
CBSS Database: 2 Custodians	CBSS	03/26/21	2,468,902	Email for parfunding for Wendy and Tori			
EPROD-SEC-DEF_20210325	Par Funding	04/02/21	40,713	Additional Furman PPM emails and documents, low value			
EPROD-SEC-DEF_20210402	Par Funding	04/12/21	8,304	About 8,500 merchant underwriting files, John Gissas and Retirement Evolution communications			
EPROD-SEC-DEF_20210408	Par Funding	04/17/21	241,482	FAF sales files, applications, merchant statements, leads, sales rep spreadsheets, collections, sales and accounting employee emails, CFS / FAF emails			
EPROD-SEC-DEF_20210416	Par Funding	04/23/21	122,725	Philadelphia computer files including underwriting, accounting, sales documents, employee emails with attachments, Tori's computer			
EPROD-SEC-DEF_20210427	Par Funding	04/30/21	48,391	Employee communications from the Philadelphia computers, these include attachments for collections, merchant contracts, ACH authorization and funding details. There were also payroll related emails for FSP and Vision Solar.			
ALI Media videos	Par Funding	05/04/21	44	ABFF marketing videos			

The SEC's argument that the Defense had a fair shake at the hearings and should have raised these issues sooner because it dumped documents on them should be rejected.

V. The SEC's Rebuttals to the Motion Is Replete with Strawman Attacks on Points the Defendants Did Not Make Combined with Personal Attacks

The SEC claims that the Defendants' theories about the investigation of this case are unfounded and then, without a hint of irony, accuses the Defense of attempting to intimidate witnesses.⁵ As a preliminary matter, Ms. Berlin had a conversation with counsel for Lisa McElhone, Mr. Futerfas, in which she stated she did not intend to call Kara DiPietro and probably would not call any of the other Heskin merchants to testify at trial, thus, this alleged witness intimidation is illogical. To the extent the SEC changes its mind and desires to call these witnesses at trial, their bias, motives, and credibility will certainly be fair game. But there is absolutely no evidence that there has been any attempt by counsel to intimidate witnesses other than rank speculation by the SEC. This is a scandalous allegation that has no place in a federal court filing, especially in the context it is brought here. Furthermore, the concept that the Defendants are harassing or scaring witness by challenging the veracity, bias, and motives of its accusers is repugnant to due process and absurd.

Additionally, the SEC's arguments dismissing its other misrepresentations as irrelevant are not legitimate. For example, the SEC's argument about how this Court stated that it would not decide the issue of whether Par's transactions were loans or not or whether they were usurious at the Preliminary Injunction phase entirely misses the point. Falsities were used by the SEC to get the TRO, Asset

⁵ Defendants concede that a few documents were filed that should have been redacted, without proper redactions. However, these exhibits were immediately sealed. Defense counsel submits that this was an oversight, not intentional as evidenced by the fact that other information was redacted.

Freeze, and Receiver appointed, and once obtained the SEC says the falsities are now irrelevant. Every misrepresentation made to the Court at the early stages of this case compounded to influence the Court's decision to enter the TRO, asset freeze, and appoint the Receiver. Combined with the SEC's uncorrected misrepresentation that Par executives were raiding the company coffers, the Court could not have reasonably reached any other conclusion than that the appointment of a Receiver was necessary, even though we know that this representation is and always has been false. The Defense has had to litigating against the Receiver extensively. This is not because the Defense wanted to but because it has been forced to. Most notably the nearly nine-month battle to obtain access to its own documents that needed to defend against the Receiver's and SEC allegations of wrongdoing. But for some of the material misrepresentations made to this Court at the outset, this case would have been litigated a completely different way and a profitable company would not have been destroyed by government overreach.

Conclusion

The SEC states: "This is a case about whether the securities offerings were registered and whether the Defendants made false representations to investors." (DE#691 at 26 n. 34). The Defense agrees, and again, this is not the prevailing argument the SEC thinks it is. Rather, it shows that the SEC had an improper motive in littering the record with scandalous, impertinent, and false allegations that induced the Court to enter a TRO, Asset Freeze, and appoint the Receiver. This has resulted in catastrophic injury to Par as well as extraordinary litigation disadvantages including the confiscation of Par's own documents, necessary for its defense, and the wavier of Par's attorney-client privilege and privileged documents being used against them. The primary issue the Court needs to resolve when considering this Motion is if the SEC did not make the false allegations at the inception and brought the case as it now casts it, about "whether the securities offerings were registered and whether the Defendants made false representations to investors," the Court would have ordered a Receivership and allowed Par to be shut down. Imagine if Par had been able to continue to operate and collect while this case was litigated how much different things would be now, how much better off the noteholders would be, how much more fair and just this litigation would be. There is simply no remedy for this conduct in this Court or on appeal, and the only adequate remedy is Dismissal.

1. PETROPANGEA (J.R. Harrison Declaration)

The Left Column is what the SEC Says: The Right Column is Defendants' Reply:

<p>Defendants' Contention About the Declaration Is False, Defendants Know Their Contention is False, And Their Argument Is Misleading</p>	<p><u>Reply to SEC's Response</u></p>
<p>A. As For The Inspection Report Defendants Offer</p> <p>(1) In his declaration, Mr. Harrison clearly states he is testifying about an <i>April 2019</i> loan from CBSG to Petropangea.</p> <p>(2) The inspection report Defendants filed is clearly not for that loan because it is from <i>2017-2 years before</i> the loan at issue</p> <p>a. Defendants know Mr. Harrison applied to a broker, to help him find a lender/MCA company, on April 3, 2019 -more than 2 years <i>after</i> the inspection report Defendants filed.</p> <p>(3) Further, the inspection report Defendants filed states on its face that the inspector visited an address in <i>2017</i> and it was not that of Petropangea, but the site of a <i>different company</i>.</p> <p>a. Consistent with that, the inspection report attaches photos showing a building with signage for a different company: "Transpak."</p> <p>B. As for the "Onsite – Photo" Defendants Offer</p> <p>(1) Defendants know these photos are not from an onsite inspection, and are in truth photos Mr. Harrison took himself and emailed to his broker, Fast Advance Funding.</p>	<p>Par Funding underwriting methods are clearly stated in its brochure titled, "Par Funding Corporate Overview".¹</p> <p>The SEC makes up additional underwriting methods that Par does not use nor any other MCA company such as (Debt Schedules, Approvals, Profit and Loss Statements, Expenses, Debt Schedule Margins & Profit Margins) because they simply do not apply to the short-term nature of the cash advance product.</p> <p>The first paragraph in the brochure regarding underwriting "Par Funding uses a financial matrix (Bank statements) for underwriting which evaluates clients with emphasis based on cash flow rather than <i>traditional credit metrics</i>."</p> <p>The SEC moves the goal post on Par Funding "Underwriting Guidelines" by creating a higher bar that Par never disclosed to any investor which is at issue in this case.²</p>

¹ Exhibit 1 Par Underwriting portion of Brochure

² Exhibit 2 Par Full Brochure

- (1) Mr. Harrison applied for funding on 3/13/2017, 4/3/2018, 1/9/2019, 3/25/2019.³
- (2) The data collected over the life cycle of a customer can be utilized over the life of any customer. The onsite conducted was where the merchant stored highly flammable inventory.⁴
 - a. The SEC fails to realize the merchant applied for funding on 4 occasions prior to the actual funding date of April 5, 2019, so data was gathered and profiled for this merchant on 4 separate occasions.^{5 6 7 8 9}
- (3) This statement is patently false. Par Underwriting conducted the onsite to understand the merchant's product storage, and as shown on Experian Business Report, the address is listed as part of the business. Noticeably left out of the SEC's allegation is that Transpak is listed as Petropangea's landlord on his application, hence the reason Par Funding conducted the onsite there.
 - a. As explained, Transpak does Petropangea's storage and shipping. Regulations require handlers qualified for this business to store and ship. This cannot be done at merchant's office location at 2206 Glen Eagles Drive (the

³ The Purpose of a CRM is to automatically collect, store, and analyze all the information that a company collects about its customers and to use pre-existing data on a continual basis, not to be duplicative to a client and to maintain a database. The use of pre-existing data is done by every business that utilizes a CRM. (Doctors, Banks, Car Dealers).

⁴ Par Underwriters went above and beyond the normal on-site process on Petropangea by conducting an on-site of where material was stored. This location was leased to Petropangea by Transpak. See Applications and Experian Business Background report that lists on its last page *630 McFarland St Houston, TX* as a branch of Petropangea, hence the reason for the site inspection of that address.

⁵ Exhibit 3 3/13/2017 Fast Advance Funding Application.

⁶ Exhibit 4 3/2018 Blue Gates Application.

⁷ Exhibit 5 1/9/2019 NY Tribeca Application.

⁸ Exhibit 6 3/25/2019 USD Funding Application.

⁹ Exhibit 7 Email of broker correspondence with Par Underwriting.

property owned by Mr. Harrison) hence why Petropangea leases space from Transpak.^{10 11}

B.

- (1) Correct, as defendants stated in the motion, “On site photos sent by broker.” If a merchant owns the actual bricks and sticks the purpose of an onsite is moot, we know he owns it. Also, Par collected Petropangea’s Texas Sales and Use Tax Permit to match the office address.¹² The address also matches the merchant’s driver’s license.¹³

¹⁰ Exhibit 8 2206 Glen Eagles Drive owned by Johnny Harrison (See Data Tree)

¹¹ Petropangea Inc. is the single largest multi brand lubricant in the world. Their product is highly flammable shipping which is why they leased space at Transpak where the onsite was conducted.

¹² Exhibit 9 TX Sales and Use Tax Permit

¹³ Exhibit 10 JR Harrison Driver’s License

1. PETROPANGEA (J.R. Harrison Declaration)

Why Defendants' Contention Is, At Best, Misleading	Reply to SEC's Response:
<p>(1) The Defendants cite one thing – <u>credit reports</u> – to assert that Harrison lied when he said that to his knowledge, no <u>backgroundcheck</u> was done by CBSG.</p> <p>(a) As an initial matter, every single credit report Defendants filed: (1) purports to be from <i>before</i> Harrison even applied for the loan at issue in his declaration; and (2) shows no indication that CBSG ran the credit report.</p> <p>(2) Defendants know a credit check and background check are not the same thing, and that the SEC inquired of Mr. Harrison and all other merchants separately as to credit reports vs. background checks.</p> <p>(a) The issue of background checks is relevant in this case because CBSG's brochure told investors they did a background check "<i>in addition to</i>" checking credit scores</p> <p>(b) The SEC provided the Defendants with the written questions we asked Harrison/Petropangea through his counsel, asking (among other things) whether a credit check was done (Harrison answered yes) and then whether a background check was done (no, not to his knowledge)</p>	<p>(1) The defense actually asserted in its previous motion, Experian Business Background, and signed application confirming the merchant knew Par would conduct background checks.¹⁴ The SEC is confusing two separate and different Experian products. One being Experian Business Background and second is Experian Personal Credit which are 2 separate reports conducted on every applicant.</p> <p>(a) The SEC's contention is that previous data collected by Par underwriters is not usable for new transactions. There is no basis for this contention. The merchant in fact applied 4 times.¹⁵</p> <p>(b) Par conducts all credit checks from its own systems.¹⁶</p> <p>(2) Correct, this is why the defendants included Experian Business, and applications to show that Mr. Harrison signed off on allowing us to conduct both background and credit checks of which both were thoroughly performed. Also included is Petropangea's official credit/vendor information which includes an additional background check of the company provided by the merchant.¹⁷</p> <p>(a) Correct. Both were performed. Petropangea background check included (Data Tree)¹⁸ which included Total Value Reports, Open Lien Reports, Property Detail Reports, Tax Status Reports, Sales Comparables, Title Chain and Lien Reports, Transaction History Reports, Legal and Vesting Chain, Instant Recoupable Legal, Rapid Legal and Vesting, (Underwriting Narrative)¹⁹ which includes – Clear Business Report by Thomson Reuters, Data Merchant</p>

¹⁴ (See bottom of all Applications) - By signing below, each of the above listed business and business owners/officer(s) (individual and collectively "you") authorize USD Funding and each of its representatives, successors, assigns and designees ("Recipients") that may be involved with were acquired commercial loans having daily repayment features or purchases of future receivables including merchant cash advance transactions including without limitation the application therefore (collectively, "Transactions") to obtain consumer or personal, business and investigative reports and other information about you, including credit card processor statements and bank statements, from one or more consumer reporting agencies, such as TransUnion, Experian, and Equifax, and from other credit bureaus, banks, creditors, and other third parties. You also authorize USD Funding to transmit this application form, along with any of the foregoing information obtained in connection with this application, or any or all of the recipients for the foregoing purposes. You also consent to the release, by any creditor or financial institution, any of the information relating to any of you, to "ISO" and each of the recipients, on its own behalf.

¹⁵ 3/13/2017 (Fast Advance) 4/3/2018 (Blue Gates) 1/9/2019 (NY Tribeca) and lastly 3/25/2019 (USD Funding)

¹⁶ Exhibit 11 Experian Business Background Report for Petropangea and proof of payment for this report

¹⁷ Exhibit 12 Petropangea credit vendor information – Full Style

¹⁸ See Data Tree Report for Petropangea

¹⁹ Exhibit 13 Underwriting Narrative (Clear Business and Personal)

	MCA Background Check, NY Court Systems. (Experian Business) ²⁰ which includes Risk Dashboard, Business Facts, Commercial Fraud Shield, Credit Risk Score, Quarterly Score Trends, Financial Stability Risk, Financial Stability Risk Quarterly Score, Payment and Legal Findings Summary Industrial Comparison, Trade Payments, Additional Facts, Inquiries.
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2. Amos Jones

Why Defendants' Contention Is Wrong, And They Know It Is Wrong	Reply to SEC's Response:
<p>(1) The credit reports are dated as of <u>June 2018</u> and <u>August 2019</u> – well before Mr. Jones obtained the loan he testifies about (from CBSG in November 2019).</p> <p>a. The credit reports do not indicate that CBSG ran the credit reports, and Defendants offer no evidence of how CBSG obtained these reports</p>	<p>(1) Under every circumstance you would run credit reports before obtaining a cash advance or even a loan. Why would you continue to run a credit report multiple times 90 days after its last credit pull <i>and hurt the merchants credit score with an added inquiry</i>. Amos Jones, an attorney previously submitted an application August 8, 2018, at 12:28 PM. His credit was pulled at that time and on file. This credit report was used as Mr. Jones requested, as is standard to use that credit report to not have an added inquiry.²¹</p> <p>a. Although the defendants should not have to prove who ran credit reports but will offer evidence of how CBSG obtained these reports which the SEC should know and likely does but wishes to press issues that have no relevance to this case. The defense exhibit shows CBSG's customer invoice with account number (TBRC-0102383) which matches Amos Jones Experian Report which is highlighted (Subcode 102383)²²</p>
<p>Defendants offer:</p> <p>(a) Credit reports, which are not background reports and which are addressed above.</p>	<p>(a) The SEC once again cannot understand that Experian offers several products. The 2 Experian products that CBSG utilizes are Experian Business Background for every merchant and Experian Personal Credit which is separate and apart. To be clear, Experian Personal is a credit report, and Experian Business Background is a background report which is completed on every file along with Thomson Reuters Clear Reports which are utilized in many circumstances over and above the Experian product. To be clear because the SEC is not making this distinction in its rebuttal, many large companies offer several products. To ascertain who Amos Jones was in comparison to the Clear report. CBSG requested Amos Jones proof of being a</p>

²⁰ Exhibit 14 Experian Business

²¹ Exhibit 15 Amos Jones Application Cap First Financial 8/8/2018.

²² Exhibit 16 Proof of CBSG Experian Business with account number 102383 and CBSG Subcode Number 102383 top left.

<p>(b) A Clear Report stating it was generated June 4,2018, and thus unrelated to the 2019 loan at issue.</p> <p>(ii) The Clear Report is not for the declarant Amos Jones, whose middle initial is N.</p> <p>(iii) The Clear Report shows it is for a man who was convicted of a felony by a jury in 1988. The declarant would have been 12 yearsold then. The declarant is a civil rights attorney, 2006 Harvard Law School graduate, professor, and not the person on the Report.</p> <p>(c) Applications: As is clear on the face of these documents, they are not applications to CBSG, they are from 2018 – a year before the loan at issue, are made to other companies, and they have no background check information in them.</p>	<p>lawyer which he did by providing his Bar Association card (Bar # 974919) and Driver’s License.²³</p> <p>(b) CBSG conducts thorough backgrounds to make sure people are who they say they are hence the Clear report is generated. This confirmed that Amos Jones was not the convicted felon with the same name, but was in fact a different man, an attorney, who was credit worthy based upon the following backgrounds that the SEC leaves out of its inaccurate and misguided analysis. Par Funding conducted the following background checks: -Experian Business Background which shows Amos Jones has an active business, has a low credit risk, and a medium risk on the financial stability result. Par Funding also conducted a Data Tree search of the address provided by Amos Jones confirming he owns the building where he runs his Law Firm.^{24 25}</p> <p>C. As made clear in footnote 12, Independent Sales Organizations (“ISO’s”) are permitted to utilize applications to submit potential clients to MCA businesses. Amos Jones specifically asked Par underwriters not to run his credit again in fear of his score going down.</p>
<p>(1) The filing has no document with this bates number that we could locate. Since defendants failed to produce documents, we do not have a document with this batsnumber.</p> <p>(2) However, we believe Defendants are referring to schedule attached to their filing at DE 663-22 pdf page 40. If so, their argument is disingenuous. As Defendants know, because they filed the application with their Motion as DE 663-22 at pdf page 33, Mr. Jones sought to consolidate loans and lists them on his application.</p> <p>(3) The schedule in the contract with CBSG (DE 663-22 pdf page 40) lists those same loan debts, and nothing more,which the loan from CBSG was supposed to pay.</p>	<p>(1) This document is located on Converge hub with Amos Jones’ file which the SEC should have had since Day 1 when the receivership took over.²⁶</p> <p>(2) It is the SEC that is being disingenuous by claiming a document that specifically says on top of the page “Current outstanding Business Debts” is not Business Debts.</p> <p>(3) The merchant was specifically asked to fill out outstanding business debts which he as an attorney signed and returned to Par. Yet the SEC refuses to acknowledge this document. He is asked in the document “what did you use this debt for” He answers “radio ad campaigns, expert witness reports, and contract attorney fees.”</p>

²³ Exhibit 17 Amos Jones DC Bar Membership Card and Driver’s License to match

²⁴ Exhibit 18 Experian Business Background Check

²⁵ Exhibit 19 Data Tree (Confirming Business and Building ownership)

²⁶ Exhibit 20 Debt schedule signed and dated by Amos Jones

<p>(4) Defendants presented no evidence that CBSG ever requested any information about the law firm applicant’s expenses or debts, and instead point to the loans being consolidated as purported evidence that this was requested. Obviously, a law firm has more expenses and debts than the loans sought to be consolidated.</p>	<p>(4) The debt schedule submitted in exhibit mentioned above (1) specifically points out as previously mentioned the “law firm applicant’s expenses and debts” for which he lists on this document.²⁷</p>
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American Heritage – Declaration of Joseph Pucci (AMOUNT OWED TO PAR \$177,387.50)

<p>Why Defendants’ Contention Is Wrong, And They Know It Is Wrong</p>	<p>Defendants Reply to SEC:</p>
<p>(1) Defendants failed to file or produce this document. (2) The report shows it was ordered October 28 and the inspection occurred that same day at 3pm. (3) As Defendants know, CBSG approved this loan at 9:10am on October 28, 2019. (4) Thus, the inspection occurred after the approval.</p>	<p>(1) Defendants refile the merchant on-site inspection showing it is the SEC that is wrong.²⁸ (2) Correct, an on-site if ordered early in the day can be completed the same day -unless in a rural area. (3) The SEC knows an “approval” is subject to stipulation and what the SEC calls approval is spin. Prior to “funding” CBSG reserves the right to cancel any contract.²⁹ To be clear, Par has no obligation to fund a merchant advance before it does so. Period. (4) Approval is a sales term the SEC uses to prove its case. As if sending an approval to a merchant at 9:10 AM on October 28th, 2019, stops the entire underwriting process and obligates Par to fund. This is spin! The only thing that would stop the entire underwriting process is funding or a decision not to fund.^{30, 31}</p>

²⁷ Interestingly Amos Jones contacted Amy Berlin at the SEC asking why he was subpoenaed for a deposition by defense counsel indicating he had no idea he was a party to the SEC complaint. Defense counsel contacted Amos Jones at the request of Amy Berlin at the SEC and had a long conversation during which he insisted, he had no clue that his declaration was being used in this case and stated he was disappointed since he had a great relationship with the folks at Par.

²⁸ Exhibit 21 Metro Onsite Inspection

²⁹ It is common for companies to give approvals to merchants, but of course are subject to stipulation in any financial set of circumstances. Example: car dealerships give approvals, but stipulate you need valid driver’s license, insurance card etc. Credit card companies pre-approval pending pay stubs. Home loan companies pre-approval pending a mountain of documents to be provided to underwriting. Further, Par had no obligation to fund prior to doing so at its sole discretion.

³⁰The SEC knows they are wrong. Review of converge hub shows:

Date/Time of processing October 24th, 2019, 7:10 AM

Date/Time of credit committee October 25th, 2019, 6:10 AM

Date/Time of offer made October 25th, 2019, 7:10 AM

Date/Time of contract sent October 28th, 2019, 5:10 AM

Date/Time of contract in October 28th, 2019 6:10 AM

Date/Time of Funding October 28th, 2019 2:17 PM (4 days after the application was received)

Nowhere is the word “Approved” used or exist, but is made up by the SEC in an attempt to “move the goal post.”

³¹ Exhibit 22 American Heritage Contract -CBSG Contracts clearly state- ***“Prequalification is subject to withdrawal, change, and/or cancellation at any time if you no longer meet the requirements of the requested funding....”***

<p>That CBSG received a few months of bank statements is clearly not evidence that CBSG asked or received information about the company’s expenses. It means only that at some point, CBSG received a few months of bank statements showing some of the financial activity for the company.</p> <p>Additionally, Converge Hub shows that the bank statements were uploaded on October 29 – the day after the deal was approved.</p>	<p>Defendants disagree with the SEC on the value of bank statements as a gauge for expenses. Where does the SEC think merchants pay these expenses from?</p> <p>Answer: Banks, hence Par evaluates bank statements. But for the sake of this reply it should be noted that CBSG also obtained American Heritage Billiards 2017 Tax Returns, which provides additional information about many aspects of the business’s finances. Also, to note on the underwriting CBSG performed on American Heritage a financial matrix showing deposits, withdrawals, monthly balances, and number of deposits was created to evaluate the company’s ability to be credit worthy for the purposes of this cash advance, which was to be paid back in 128 days.³²</p> <p>Uploaded to a CRM by back office does not necessitate the file flow. It clearly says <i>modified</i> on October 29, 2019, not uploaded, which means one of the 70 employees at CBSG accessed and modified the file <i>after</i> it was uploaded. Par received the bank statements on October 24, 2019, at 4:43 PM from MGuliano@parfunding.com.³³</p>
<p>As Defendants surely know:</p> <ul style="list-style-type: none"> • The tax return and AR summary are for different companies. • Converge Hub shows they were received by CBSG the day after it approved the loan. 	<p>The SEC is being belligerent as to what the tax returns say in bold print. ³⁴ The AR Summary clearly states American Heritage Billiards (summary historical aged trial balance, which matched the tax returns)³⁵</p> <p>Again, the SEC knows ConvergeHub says “modified” on October 29, 2019, not created on.³⁶ Par had 70 employees working 16 hours a day. The CRM (which is for internal use only) shows when the file was accessed and modified by Par staff and is not evidence of when the physical documents or information eventually uploaded was received. The SEC cannot seriously argue that document or information entry into the CRM would have been simultaneous with receipt. The documents in the CRM that have dates on them are of that date.</p>

<p>The tax return is for a different company, and says this on its face.</p>	<p>The tax return is not for a different company and the SEC is wrong again. Displayed on the top of the tax return it clearly states American Heritage Billiards LLC. The address is 630 Mondial Parkway Streetsboro, OH which is the address of American Heritage Billiards.³⁷ The defense has also provided an exact match of the tax</p>
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³² Exhibit 23 Financial Matrix

³³ CBSG also submitted tax returns for American Heritage Billiards which lays out all expenses. CBSG obtains tax returns when it deems necessary to obtain more data on a case-by-case basis.

³⁴ Exhibit 24 Tax Returns with K1 showing American Heritage Billiards.

³⁵ Exhibit 25 AR Summary

³⁶ Exhibit 26 (1&2) When a file on a CRM is touched it redates automatically to show who last reviewed or modified the file. The SEC knows this and is being disingenuous to the Court. (See Converge Hub snapshot of file *modified* and email from broker MGuliano submitting bank statements, taxes, corporate statements on 11/24/2019 4 days before funding).

³⁷ 2017 Tax Returns

<p>Defendants present no evidence that CBSG requested from Pucci/his company information about American Heritage’s debt schedule margins, let alone whether such a request was made before approving the Loan</p> <p>The tax return was received by CBSG after the loan was approved, per Converge Hub data records.</p>	<p>return from Data Tree, which verifies merchant locations with the exact same address.³⁸</p> <p>Defendants present clear evidence that it was requested from Pucci through his broker. <i>See</i> MGiuliano email with submission, which includes American Heritage Billiards tax extensions, 2017 Taxes, Bank Statements, Application, and Consolidation Form.</p> <p>Once again <i>see</i> MGiuliano email sending Par Funding underwriters 2017 Tax Returns on 10/24/2019 at 4:43 PM and the advance was funded on 10/28/2019. “4 days prior to funding”.³⁹</p> <p>Here the SEC is wrong. The tax returns were received by the broker from Mr. Pucci days before a Par employee “modified” the file. The SEC should know the difference between a modified file and a created file.⁴⁰</p>
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3. Sunrooms America – Declaration of Michael Foti (AMOUNT OWED TO PAR \$1,318,095.56)

Why Defendants’ Contention Is Wrong, And They Know It Is Wrong	Reply to SEC Response:
<p>(1) CBSG approved the Loan on June 4, 2019.</p> <p>(2) The Defendants cite one thing – namely, a Metro Inspection report and claim it is dated June 4, 2019. The Defendants chose not to file it with their Motion.</p>	<p>(1) CBSG TD Bank Statement 9807 – 0619 Page 7 shows that the first funding wire for Sunrooms did not go out until June 5, 2019. Sunrooms America was sent a contract for this advance on June 4, 2019, (<i>see</i> page 1 of the agreement). However, additional documents would be needed for the funding, and the request for funding was made 2 days prior to the contract being sent to the merchant. Par funding waited until the Metro Inspection report was completed on June 5, 2019, to finish its underwriting process and funded the merchant after receiving the inspection report.</p> <p>(2) Michael Foti testified that CBSG did not perform an Onsite inspection prior to being “approved.” This is disingenuous since Par reserves the right to cancel any contract prior to funding. The approval language the SEC uses is made up by the SEC. Sunrooms was funded on the 5th and the onsite was accomplished on the 5th, so the last thing Par needed to do to decide if it wanted to fund this merchant was the onsite, which it did prior to funding. Par received the onsite report at 10am, reviewed the onsite, and funded the transaction by noon that day. ⁴¹</p>

³⁸ Exhibit 27 Data Tree

³⁹ Exhibit 28 (1&2) See top merchant cash advance company underwriting guidelines (*Lendini, and Credibly*)

⁴⁰ Nowhere does Par claim it would engage in the underwriting made up by the SEC.. However, Par was so thorough that it can produce evidence that satisfies even the SEC’s made up underwriting guidelines. Every cash advance company in the industry requires 3 months bank statements, application, voided check, Driver’s License, and any proof of location, yet CBSG is put through additional rigor through made-up guidelines by the SEC.

⁴¹ Exhibit 29 Metro Onsite Inspection for Sunrooms

<p>(3) As the Defendants know from the fact of the inspection report they rely upon, the inspection report states the inspection occurred on June 5.</p> <ul style="list-style-type: none"> ▪ In other words, <u>after</u> CBSG approved the Loan. <p>(4) Once again, Defendants did not file the evidencethey cite which shows on its face that their contentions are false. And so we do.</p>	<p>(3) Again, Par Funding did not fund the merchant until June 05, 2019, at 2:00 PM. ⁴²</p> <p>(4) The on-site erroneously did not upload, so the defense thanks the SEC for pointing this out, and now the defense can show clearly that the onsite was accomplished before the advance was funded.</p>
<p>Defendants cite only background checks, with no indication even that CBSG ran these reports.</p> <p>As defendants, background checks and credit reports are different. The SEC alleges that the CBSG brochure about underwriting is false. That brochure, filed with the TRO, tells investors that “<u>in addition credit scores,</u>” CBSG does a background check and on-site inspection.</p> <p>Further, defendants know we asked Foti separately about background checks and credit reports, as we sent them our questionnaire with his responses. His declaration discusses only the background checks, and Defendants know it is true and that Foti answered to these two items separately; incredibly, Defendants claim his declaration is perjured.</p> <p>There was no background check.</p>	<p>See attached Experian Invoices with Sunroom America’s name on the report to prove that Par Funding ran the report. ⁴³ Also, on the Experian Business background report completed notice the Account number 102383(Par’s account number) listed that shows Par Fundings subcode and proof that Par ran the report.</p> <p>CBSG stands by its brochure about background checks on merchants, the problem is the SEC does not know the difference between a credit report and a background check, is apparently unaware Experian has numerous products including credit and background check (personal and business) products and did not review the documents at its disposal about this merchant when preparing its response to the motion.</p> <p>CBSG performs background checks on every merchant as stated in its Brochure. The SEC is again wrong on this contention.</p> <p>It is apparent Foti was not truthful about the onsite inspection. Foti claimed that there was no onsite inspection prior to approval, however, the Metro Inspection report documents that Michael Foti was actually the one being interviewed during the inspection. Along with the fact that Foti signed his application stating that he gave CBSG the authority to conduct its due diligence.</p> <p>False. There was a background check bought and paid for as proven above. The defense submits Experian Business Background check with subcode 102383 (Par’s account number) ordered on 6/3/2019 at 9:04 AM.⁴⁴ Additionally, CBSG underwriters obtained a Data Tree Business Report containing a property details report, total view report, transaction history report, open lien report, sales comparables, tax status report, title chain lien report, instant recordable legal, rapid legal investing, and legal investing chains on both Mr.</p>

⁴² Exhibit 30 TD Bank Statement pg. 7 highlighted to show funding date.

⁴³ Exhibit 31 Experian bill proof of payment to pull credit for Sunrooms America 6/4/2019.

⁴⁴ Exhibit 32 Sunrooms Experian Business Background check

	Foti's business and home. ^{45, 46, 47}
<p>(1) These documents do not show the company's profit margins or expenses; and there is no indication that this information was ever sought from Mr. Foti in connection with the loan at issue.</p> <p>(2) Further, Converge Hub shows CBSG received them after CBSG approved the Loan.</p> <p>(3) As Defendants know, Converge Hub shows when CBSG received these materials - "June 7 2019" – ie, 3 days after Loan approval.</p>	<p>(1) AR aging summary is dated June 4, 2019.⁴⁸ The report is clearly an internal report directly from the merchant. If an AR aging summary along with bank statements cannot show company's profit margins (which is also a made-up underwriting requirement and not in the CBSG brochure then what will?). The SEC is making up non-sensical underwriting and documentation rules for MCA companies and does not understand that the industry is concerned with cash flow and the merchant's ability to repay advances within 100 days (typically), not profit margins or expenses. The SEC obviously does not care to understand the MCA business</p> <p>(2) This allegation is simply false. <i>See</i> screenshot of converge hub with documents created prior to June 5, 2019.⁴⁹</p> <p>(3) The accusation that the defendants "know" this is a fabrication is false and made up by the SEC and shows that the Commission is being disingenuous as proven by the above exhibit. First, the SEC fails to understand that when a user opens a file on ConvergeHub it can reflect the date the file or field was modified not created, which the SEC knows or should know.^{50 51}</p>

Declaration of Julie Caricato- Funtime

Why Defendants' Contention Is Wrong, And They Know It Is Wrong	Reply to SEC Response:
<p>(1) The documents Defendants filed is not a real QuickBooks report. The information shown on the exhibit – of application date – was added.</p> <p>(2) Converge Hub actually shows Caricato's application. It is dated June 25, 2019. Coverage Hub also shows the contract was done by June 26, and it was moved to "funded" on June 26.</p>	<p>(1) The document is a real QuickBooks snapshot. The SEC's accusation is unnecessary and unfortunate. The purpose of creating the graph for the Rule 41 motion was to show that the declarant was not accurate.⁵² The application was submitted on 2/11/2019 and the deal funded on 6/26/2019 which is more than 48 hours from the time of application hence the lie.</p> <p>(2) The SEC assertion is false. The merchant submitted a</p>

⁴⁵ Exhibit 33 Data Tree Business

⁴⁶ Exhibit 34 Data Tree Home

⁴⁷ Exhibit 35 Michael Foti Driver's License (Addresses matching at 229 Buckingham Ct to validate Data Tree)

⁴⁸ Exhibit 36 Sunrooms AR Aging Summary

⁴⁹ Exhibit 37 Sunrooms Converge Hub Screenshot showing documents prior to funding on June 5, 2019. This screenshot shows file has been modified by the last employee who touched the file in the CRM.

⁵⁰ Exhibit 38 Example of modified file from Wendy Furman.

⁵¹ Every CRM displays on its face the person who last touched the file. CBSG funded over 500 units a month and had a full-time staff uploading documents in its CRM for information to be used as needed. A CRM upload is not proof, documents are proof which the SEC fails to acknowledge. It is an internal system for exactly what it stands for (Customer Relationship Management Software).

⁵² Exhibit 39 QuickBooks snapshot

	prior to application on 2/11/2019 ⁵³ to CBSG before the 6/26/2019 funding, ⁵⁴ which shows the merchant was not accurate on her declaration by stating her advance was funded in less than 48 hours. ⁵⁵
(1) No indication that these are of the declarant’s business, let alone that they are from an onsite inspection. (2) In truth, Metro Inspection did not do an onsite inspection for Funtime or Indoor Playgrounds. These are photos Ms. Caricato emailed to her broker. Thus, there is no inspection report at all, and thus the Defendants do not and cannot present an onsite inspection report.	(1) The merchant runs a childcare center and third-party photos are prohibited due to endangering children. Par accepted photos in lieu of a third party inspection, but did extensive due diligence to further ascertain the business existence. ^{56, 57, 58} (2) The SEC ignores the fact that this is a childcare facility and common sense dictates that an onsite is not optimal. ⁵⁹ CBSG accepted photos and did extensive background that business was at that location which is the purpose of an onsite to validate the business exists. Additionally, as shown on the underwriting control sheet Thomson Reuters Clear report was run on Funtime to validate further the existence of the business.
(1) Defendants cite a credit report which on its face shows it was prepared in March 2018 - more than 1 year before Caricato applied. No indication CBSG ran this report	The merchant applied for multiple advances as mentioned previously and many credit reports were pulled by CBSG underwriters. The SEC is wrong. Ms. Caricato’s credit was pulled on 5/6/2019 at 3:52 PM. ⁶⁰
(1) The document Defendants cite clearly states on its face that it is from February 2020 – about <i>7 months after the deal was approved</i> and funded. DE 636-22 at pdf p 127	(1) The declarant applied for another cash advance in February of 2020, this time to achieve a debt consolidation so the debt schedule was collected. ^{61 62}

4.

Declaration of James Frost (National RX) (AMOUNT OWED TO PAR \$14,931.87)

Why Defendants’ Contention Is Wrong, And They Know It Is Wrong	
(1) National RX entered into an MCA Agreement with CBSG on April 6, 2016. (2) According to the inspection report the Defendants cite, the inspection occurred on April 8, 2016 – <i>i.e., after</i> the Loan was approved	CBSG funded National RX on April 8, 2016, at 4:45 PM. This was not a “Loan,” it was an advance and there was no obligation to fund regardless of the SEC’s phony “approved” argument. Par never had an obligation to fund any merchant before it chose to do so. The onsite was performed at 1:00 PM

⁵³ Exhibit 40 Valor Trust Application 2/11/2019

⁵⁴ Exhibit 41 CBSG TD Bank Statement showing proof of funding wire out on 6/26/2019.

⁵⁵ The merchant requested funding on these dates February 11, 2019 (Valor Trust), May 6th, 2019 (Meg Consulting), March 13th 2018 (Strategic Funding). Notably the merchant applied for funding after June 25th, 2019. On July 25th, 2019 (with Meg Consulting) August 9, 2019 (Meg Consulting) and on September 4, 2019, with (Fast Advance Funding). Obviously with all of her submissions for funding she is mistaken, and the SEC chooses to identify one of several application to prosecute the defendants. Again, the SEC is misguided into thinking past data obtained in a CRM is disqualified which is disingenuous.

⁵⁶ Exhibit 42 Data Tree Business (verifying address at 13200 West Foxfire Drive #144 Surprise, AZ)

⁵⁷ Exhibit 43 Funtime Experian Business Background (verifies exact same address that the business existed)

⁵⁸ Exhibit 44 Funtime Letter of good standing from AZ corporation Commissions

⁵⁹ Exhibit 45 Underwriting Control Sheet (Including search engines used to verify locations).

⁶⁰ Exhibit 46 Funtime – Julie Caricato’s credit 5/6/2019.

⁶¹ The SEC is misguided on a cash advance verse a bank loan and chooses to apply typical bank underwriting to CBSG which it is not.

⁶² Banks evaluate and grant loans differently than cash advance providers. Banks look at debt schedules, tax returns, and collateral. Cash advance companies evaluate merchant deposits, account balances, overdraft fees and negative balances. All of which the SEC has not asked a single merchant about and moved the goalpost to achieve its goals of prosecution by applying a different set of standards that simply do not apply to a cash advance product.

on April 8, 2016, to conclude its underwriting process. National RX received funding after the onsite was completed.⁶³
64 65

Declaration of Gianna Wolfe (Radiant Images) (AMOUNT OWED TO PAR \$2,304,941.10)

Defendants Rely On Knowingly False and Misleading Evidence, As Well As A Manipulated Document	Reply to SEC Response:
<p>To show the application and funding dates, Defendants cite “QuickBooks” but the document they attach is not a true and correct copy of QuickBooks. It is an altered document. The “funding” date and “application date” text do not appear on QuickBooks.</p> <p>Defendants also filed Wolfe’s application to a to a <u>broker</u>. (DE 663-22 at p.144). Defendants know that brokers first obtain the application from their client (here, Wolfe), <i>then</i> shop the application to various lenders, and <i>then</i> choose which lenders to submit their client’s application to. Thus, the application to the broker clearly does not show the date CBSG received this potential deal.</p> <p>The issue is the duration of underwriting. Defendants offer no evidence of when Wolfe applied to CBSG or when CBSG received the broker’s application (if that is what occurred), and when CBSG approved the Loan.</p>	<p>The SEC’s “altered” document accusation is unnecessary and unfortunate. The Defendants created a QuickBooks snapshot and an application snapshot to provide the court with brevity a summary summarize of the relevant information. In that face of the SEC’s accusation, Defendants attach QuickBooks Funding Page, Bank Statement showing Funding Date, and Application.^{66 67 68}</p> <p>When merchant client Brokers shop deals, they often shop multiple MCA providers simultaneously to compare offers. The Declarant signed the application 3 days prior to receive funding. The signature and date are crystal clear on the application. An ISO would not would delay in sending an interested merchant to an MCA business for funding due to the highly competitive nature of the industry. Also, ISO’s understand it is common for a merchant to sign multiple applications to shop the best deal.</p> <p>The merchant applied for funding on 11/24/2015 and was funded 3 days later on 11/27/2015. The SEC’s duration argument makes no sense.⁶⁹</p>
<p>Ms. Wolfe testified about loans she obtained from November 2015 through 2018. The only evidence Defendants can conjure is one 2014 tax return, which clearly is not a document showing all the company’s expenses. Nor do Defendants even claim that they requested evidence of expenses and Ms. Wolfe gave them an old tax return. Nor is there any indication of when CBSG received it – before or after loan approval.</p> <p>This tax return is not in the CBSG underwriting files and it is</p>	<p>From 2015 through 2018 CBSG obtained Bank Statements for all accounts, prepared a full financial matrix for MCA worthiness. Additionally, CBSG requested a full snapshot of the business from Ms. Wolfe. She prepared a professional Deck for CBSG review, which included a full description of her business, industry, and financials. It was so detailed and contained so much information she asked</p>

⁶³ Once again, the SEC uses the term, “Approved” instead of “Funded” which is disingenuous. As any Lender, Par Funding reserves the right to cancel Funding at any time even prior to an offer being made to a merchant. Common sense!

⁶⁴ Exhibit 47 CBSG TD Bank Account 9807 proof of funding on 4/8/2016.

⁶⁵ Exhibit 48 QuickBooks Summary of funding 4/8/2016 to match.

⁶⁶ Exhibit 49 QuickBooks record of funding.

⁶⁷ Exhibit 50 TD Bank Statement showing funding occurred 11/27/2015

⁶⁸ Exhibit 51 Application Dated 11/24/2015

⁶⁹ The SECs contention of “The issue of the duration” is another made up underwriting standard by the SEC. Par told investors 48 hours, but if Par can do better meaning quicker turnaround, then is this not good? If you drop your vehicle off at the mechanic and he tells you “Come back in 48 hours” but calls you to pick up the vehicle in 24 hours does this somehow mean the vehicle is still broken, or perhaps he was able to work harder and satisfy his customer faster.

<p>unclear where it came from, how CBSG received it (if it did), when (before Loan approval?), and whether CBSG requested it from Wolfe (i.e., whether it is relevant to her declaration that CBSG did not request certain information from her).</p> <p>Even so, the fact that CBSG somehow got a copy of a tax return from 2014 does not show in any way that CBSG requested information from Wolfe/Radiant Images about <u>expenses</u> or <u>profits</u> prior to approving the 2015-2018 Loans.</p>	<p>Par to sign an NDA along with attached Bank statements reviewed over the years.^{70 71}</p> <p>The tax return was procured from the SEC! The document is in the SEC's own discovery that they presented to the defense and is now the Commission is asking where it came from? These antics are not acceptable. Further, it is relevant because Ms. Wolfe testifies that from "2015 through 2018" CBSG did not obtain debts, expenses, and profits.⁷²</p> <p>CBSG did not "somehow get a copy," it was provided by the merchant and, thereafter, by the SEC in its discovery albeit with a 7-month head start, but now the SEC claims it doesn't know where it came from. CBSG is an MCA company that makes its funding decisions based on the cash flow of the merchants which is contained in their bank statements. Also, business expenses that impact short term cash flow are reflected in a merchant's bank statements.</p>
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5. Pamela and Robert Fleetwood Declarations (Fleetwood)

<p>Defendants Offer False, Manipulated Evidence They Know Relate to Other Companies/Applications, While Concealing The Truth</p>	<p>Reply to SEC Response:</p>
<p><u>Defendants' Quickbooks Exhibit Is Not A True & Correct Copy:</u></p> <p>Defendants offer a purported page from CBSG Quickbooks showing the application date of December 29, 2016, rather than file the application</p> <ul style="list-style-type: none"> This is a manipulated version of QuickBooks, modified to add an application date and other information that is not on the original. <p>The Documents in the CBSG files – produced to Defendants – show:</p> <ul style="list-style-type: none"> An application dated December 29, 2016 to a company called <i>PrimeTime</i>. Prime Time is a broker in the business of helping its clients find loans, and it was the 	<p>(1) This is not "manipulated." It is a demonstrative exhibit to show the dates to the Court. However, the defense now attaches the full application that was received on 12/29/2016,⁷³ and a Bank Statement showing the wire left CBSG's Bank Account on January 9, 2017.⁷⁴ Also, CBSG's full QuickBooks report for the Fleetwood funding showing 1/9/2017 funding date.⁷⁵</p> <p>(2) The timeline the SEC presents is a misdirection. The SEC admits the application was received weeks before funding.</p> <p>a. The Lunden Report the SEC used to bring its TRO Motion (who the SEC superimposed as its own expert) verifies the advance funded on January 9, 2017.⁷⁶ CBSG's Bank Statements confirm funding date of 1/9/2017 and CBSG's QuickBooks confirm</p>

⁷⁰ Exhibit 52 NDA

⁷¹ Exhibit 53 Pitch Deck

⁷² Although the defendants prove the declarant's claim is inaccurate, expenses, profits, debts of a merchant are not what Par and other MCA businesses are concerned with. Nor did Par ever represent to investors that it obtained such document in its underwriting.

⁷³ Exhibit 54 Fast Advance Funding Application 12/29/2016 and Debt Form.

⁷⁴ Exhibit 55 CBSG Republic Bank Acct # 4169 Bank statement showing wire left on 1/9/2017.

⁷⁵ Exhibit 56 Fleetwood QuickBooks transaction.

⁷⁶ DE 663 Cite Lunden Report.

<p>Fleetwood’s broker.</p> <ul style="list-style-type: none"> • <u>January 3, 2017 at 9:35am</u>: CBSG receives the application from Prime Time. • <u>January 3, 2017, 12:20pm</u>: CBSG sends the information obtained from Prime Time to the CBSG credit committee. • <u>January 3, 2017, 1:25pm</u>: CBSG has its first contact with the Fleetwoods, sending them an offer for an MCA loan. • <u>January 4, 2017, 1:25pm</u>: CBSG sends the Fleetwoods a contract and notice that they have been approved. • <u>January 4, 2017</u>: Date deal is funded; ConvergeHub reflects this as the funding date. 	<p>1/9/2017.</p> <ul style="list-style-type: none"> b. Converge Hub is a CRM, received over 100,000 applications in over 8 years and the SEC is using an internal CRM handled by 70 employees to prosecute the defendants.⁷⁷ When readily available access to QuickBooks and Bank Statements in possession of the SEC is ignored.⁷⁸ c. The timeline presented by the SEC is complete spin, the application to funding was more than 48 hours even using the SEC’s timeline but stubbornly they still insist and state on the last bullet “date deal is funded is January 4, 2017”! To remind the court the SEC submitted the Lunden report with its TRO motion, which confirmed funding on January 9, 2017 and was used to bring the TRO action. Secondly, the SEC has been in possession of CBSG’s bank statements for over a year and is still telling this Court that this transaction funded on January 4, 2017. The SEC’s own CPA Melissa Davis also has been in possession of QuickBooks for the last 13 months and still the SEC contends the deal funded on January 4, 2017! d. The SEC’s exhibit 8 filed in support of the contention that ConvergeHub reflects a funding date of 1/4/17, also states an “expected close” date of 08/17/2021. Clearly, this document is unreliable. The Bank statements and the Lunden report relied upon by the SEC, prove the 1/9/17 funding date is accurate.
<p>Defendants’ assertion is at best misleading. In truth:</p> <ul style="list-style-type: none"> • The Metro Inspection report is <i>not</i> “dated January 4, 2017.” • Nor did the inspection occur January 4, 2017. • It occurred January 5, 2017. <ul style="list-style-type: none"> ○ The inspection report says on its face that the inspection was at 11:10am on January 5, 2017. (DE 663-22 at pp_). • As set forth above, CBSG approved the Loan on January 4, 2017 and sent the contract to them January 4 <ul style="list-style-type: none"> ○ Thus, CBSG approved the deal 1 day before inspection. 	<ul style="list-style-type: none"> • The Metro inspection report <i>is</i> dated January 4, 2017, and delivered to Par Funding January 5, 2017 • The inspection did occur January 5, 2017, at 11:10 AM. The inspector met Robert Fleetwood.⁷⁹ • CBSG funded the advance on January 9, 2017. Regardless of how the SEC chooses to spin this file the advance funded 4 days after the onsite inspection! • Par’s contracts clearly state that it reserves the right to withhold funding pending stipulations. The alleged approval, made up by the SEC is

⁷⁷ A CRM is always subject to clerical errors. It is shocking that a government agency is failing to see the truth, which is the actual documentation in this case, not a CRM.

⁷⁸ Instead of the SEC looking for untruths they could easily verify proof as the defense has done that the Fleetwood advance funded on January 9, 2017.

⁷⁹ Exhibit 57 Fleetwood Onsite Inspection

<p>The Defendants knew the truth when they filed. They knew:</p> <ul style="list-style-type: none"> • The inspection is not – as they claim – dated January 4. <ul style="list-style-type: none"> ○ How? The face of that report • The MCA Loan was approved January 4. <p><u>How? They have the MCA approval sent to the Fleetwoods on January 4 and the same underwriting file cited herein to show the truth.</u></p>	<p>irrelevant and of no consequence. The transaction funded after full diligence was completed.⁸⁰</p> <ul style="list-style-type: none"> • The inspection does say January 4, 2017, date of inspection January 5, 2017. This does not negate the fact that it was in fact before the January 9, 2017, funding. • The approval sent by the sales agent is an offer for funding pending stipulations set forth by Par Underwriters. The SEC’s faulty contention is either that there was a contractual obligation of some kind even before the Fleetwood advance was funded or that perhaps Par could collect without funding. Either is absurd and more spin.⁸¹
<p>Defendants’ assertions are knowingly false and misleading:</p> <ul style="list-style-type: none"> • Defendants offer credit reports as proof of a background check, and they <u>know</u> this is different from a background check <ul style="list-style-type: none"> ○ CBSG told investors that “in addition to credit scores,” they did a background check and onsite inspection. See TRO Motion and brochure filed as exhibit thereto, at p9 <p><u>Consistent with this distinction, Defendants have the questionnaire answers from the Fleetwoods prior to executing their declarations, showing we asked separately about credit checks (the Fleetwoods answered yes) and background checks (they answered no).</u></p>	<ol style="list-style-type: none"> (1) The Experian Business report is clearly not a FICO report, but a business background report. ⁸² (2) CBSG does extensive background checks on merchants, and onsite inspections for businesses when additional verifications cannot be met.⁸³ Extensive background checks took place for Fleetwood. Separately their personal credit was pulled. The SEC is the one that is having trouble making this distinction. Not the Defendants. The following background checks took place on Fleetwood Services. Separate and apart, CBSG ran personal credit for Pamela and Robert Fleetwood.⁸⁴ (3) An extensive background check was done prior to funding as mentioned and exhibited in Footnotes. The application clearly states CBSG reserves the right to do a background check and pull personal credit of which both were done.
<p>The Defendants know the “Application” they cite is not a CBSG application at all. It was an application the Fleetwoods made to a different company.</p> <ul style="list-style-type: none"> • How do they know that? The application says so. The Defendants did not file the application with the Court. We do. 	<p>The SEC is at best does not understand the business of their Declarants or at worst, is making a willful misrepresentation.</p> <ul style="list-style-type: none"> • The application used to fund the Fleetwood’s is dated 12/29/2016 from Fast Advance Funding

⁸⁰ Refer to Language in our contracts- The SEC’s made-up version of approval is spin.

⁸¹ Is the SEC saying that an offer comprises of a legal obligation to fund? This is illogical and inaccurate.

⁸² Exhibit 58 Experian Business for Fleetwood-Contains Risk Dashboards, Business Facts, Commercial Fraud Shields, Quarterly Trends, Business Financial Stability, Payment and Legal Findings Summary, Industry Comparisons, DBT-monthly -quarterly payment trends, Trade payment summaries, Legal Findings, UCC Details, Additional Business Facts, Corporate Linkage, Inquiries. (Best background platform in the world)

⁸³ Exhibit 59 Underwriting Control Sheet- In addition to Experian Business CBSG performed a personal Clear inspection on Robert and Pamela Fleetwood and their business Fleetwood Services.

⁸⁴ Exhibit 60 Personal Credit Reports of Pamela and Robert Fleetwood.

<ul style="list-style-type: none"> How do we know they have that application and are relying on it? They deposed the SEC on August 3, and tried to get the SEC to agree it was the Fleetwood's application to CBSG. <p><u>Plus, the application (which they omit from their filing) to that other company does not have a debt schedule attached.</u></p>	<p>and contained a full debt schedule.⁸⁵</p> <ul style="list-style-type: none"> The defense can prove this because an MCA consolidation debt form was attached to the application. The advance received by the Fleetwood's was a debt consolidation and the application that CBSG relied upon contained the debt schedule. Why and how would CBSG do a consolidation without a debt schedule? And finally, the SEC produced a report from Charles Lunden which was filed in support of the TRO motion and specifically shows that the transaction was a debt consolidation. So, the SEC knew it was a debt consolidation on the day it brought its TRO motion.
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Declaration of Mary Carleton (Cap Jet) (AMOUNT OWED TO PAR \$81,007.33)

Defendants Offer A Misleading Characterization of Evidence While Concealing The Truth	Reply to SEC Response
<p><u>The Defendant's Attack on Ms. Carleton is Wrong and They Know It</u></p> <ul style="list-style-type: none"> Defendants do not dispute that, as Ms. Carleton swears in her declaration, her company obtained a CBSG Loan in August 2019. <ul style="list-style-type: none"> The application was submitted to CBSG on August 8, 2019 at 12:48pm. CBSG approved the Loan on August 9, 2019. The onsite inspection report Defendants filed is from March 2019 –about 5 months before Carleton applied for the Loan. <ul style="list-style-type: none"> Therefore, unless CBSG is claiming a psychic ability to predict in March that Carleton would apply 5 months later for the August Loan, this inspection has no connection at all to the CBSG Loan to Carleton's company. Even if CBSG had a crystal ball and therefore preemptively did an inspection of the Company before Carleton applied for this Loan, the inspection report is as notable for what it says as for what it does not. 	<ul style="list-style-type: none"> Defendants confirmed that the first advance was funded to Ms. Carleton on August 9, 2019. <ul style="list-style-type: none"> The application was signed on July 24, 2019, by both owners Mary Carleton and Craig Campbell. CBSG funded Cap Jet on August 09, 2019, via the funding wire dated the same day.⁸⁶ Cap Jet applied for multiple cash advances, CBSG received a submission on March 21, 2019.⁸⁷ The onsite inspection was initiated on March 25, 2019 and completed on March 26, 2019. The Cap Jet transaction was not funded at that time and the onsite inspection report was completed and stored on the CRM, and then utilized for the August 9, 2019, funding. The SEC fails to recognize once again that the purpose of a CRM is to collect and store documents to be utilized as needed in the ordinary course of business. Metro Inspections is the onsite company CBSG used for most of the onsite inspections for its clients. Cap Jet is owned by Mary Carleton and Craig Campbell (50/50) so the inspector in fact interviewed one of the

⁸⁵ See Exhibit #54 Fast Advance Funding Application and Debt Schedule

⁸⁶ Exhibit 61 CBSG TD Bank 9807-0819 pg 15

⁸⁷ Exhibit 62 March 21, 2019 Cap Jet Application

<ul style="list-style-type: none"> ○ It says it was done by a company called Metro Inspections. ○ It says the inspector interviewed 1 person – Craig Campbell ○ It does not list Carleton as a person onsite or even spoken to ○ It does not say that Metro Inspections told even Campbell that they were there on behalf of CBSG. <ul style="list-style-type: none"> ● In fact, in March 2019, Carleton applied for a loan to a company called “We Fund Capital.” The application is in CBSG’s production and therefore CBSG obtained it at some point. <p><u>Had Defendants deposed Ms. Carleton or conferred before filing, they would have learned that .</u></p>	<p>owners of Cap Jet.⁸⁸</p> <ul style="list-style-type: none"> ○ The SEC cannot really be suggestion that Metro Inspections snuck into the business and took pictures. This argument is not legitimate. ● CBSG did not obtain the file, We Fund submitted the application to CBSG as a contracted ISO to procure advances for the client which is common in the MCA industry, including publicly traded companies like On Deck Capital, which the SEC itself regulates as it trades in the public markets. (ONDK was publicly traded on the NYSE and has been accepting ISO applications since its existence) <p>Irrelevant. The documents make clear that CBSG obtained underwriting documents for this merchant.</p>
<p>Defendants did not file the August 2019 Application they rely on.</p> <p>Because it does not request this information.</p> <p>Instead, it shows that on August 9 CBSG sent Carleton a pre- qualification letter asking for these items only: a drivers license, voided check, AR or list of client statements, bank records, and “completion of a satisfaction survey.” CBSG also says that there will be an onsite inspection. That is it. And CBSG then approved the Loan that same day.</p>	<p>Application dated July 24, 2019.⁸⁹</p> <p>The Metro inspection and report was conducted prior to funding on March 26, 2019, and its being stored on Par’s CRM. ⁹⁰</p> <p>The Business Experian Report was run on July 25, 2019, and verifies the existence and functionality of the company along with further documentation obtained, including online searches to verify that the company was still at this location only a mere 5 months later.</p>

Declaration of Chad Frost (Volunteer Pharmacy) (AMOUNT OWED TO PAR \$273,539.83)

<p>Defendants Offer A Misleading Characterization of Evidence While Concealing The Truth</p>	<p>Reply to SEC Response:</p>
<p>Defendants do not offer any QuickBooks evidence for review.</p>	<p>The SEC has been in possession of CBSG’s QuickBooks, but still asks the defense to “offer evidence for review”. To address the SEC’s baseless concerns, <i>see</i> QuickBooks of Volunteer Pharmacy</p>

⁸⁸ Exhibit 63 See proof of Ownership- Craig Campbell on signed agreement as “owner”.

⁸⁹ Exhibit 64 March 21, 2019, Application

⁹⁰ Exhibit 65 Cap Jet Metro Onsite Inspection Report

<p><u>Frost’s company received \$100,000 through two payments, but in May 2016 rather than June 2016. The June bank statements reflect these two payments occurred in May 2016.</u></p>	<p>Funding.⁹¹</p>
<p>Defendants file no QuickBooks, even a manipulated version, in support.</p> <p><u>Quickbooks does not list the application date – except in the manipulated versions the Defendants try to pass off as real.</u></p>	<p>The defense filed a report for comparison to show that QuickBooks proof of funding and application date, which was more than 48 hours and proved that the merchant was inaccurate in his declaration. A QuickBooks export shows the very first wire date to Volunteer Pharmacy was on November 03, 2013, in the amount of \$44,206.00. CBSG bank statement also shows the wire with the amount of \$44,206.00 was sent to Volunteer Pharmacy on November 04, 2013. Regardless, if it was the 3rd or the 4th, it shows Toby (Chad) Frost applied for a Cash advance on March 18, 2013⁹² and was funded on November 4, 2013, which is more than 48 hours.^{93 94}</p>

Declaration of Sean Whalen (Flexogenix) (AMOUNT OWED TO PAR \$3,966,038.05)

<ul style="list-style-type: none"> ▪ As an initial matter, to claim these 4 declarations are false and the date the applications were sent and deals approved, Defendants offer only a <u>manipulated QuickBooks report</u> to show supposed “application” and “funding dates.” ▪ Even if the QuickBooks report were real, and it is not, it clearly and on its face purports to show information about a 2017 transaction. Each of Whalen’s declarations is about a 2018 deal approved between October and December 2018, in completely different amounts from what the manipulated 2017 QuickBooks page shows. ▪ Thus, Defendants’ challenge fails because (1) they offer only a manipulated QuickBooks report and the real report doesn’t show the application date at all; and (2) the fake report is about the wrong 	<ul style="list-style-type: none"> ▪ Again, the Defense did not present a manipulated QuickBooks report, but rather an export for the convenience of the Court. The defense here will separate the application (dated October 17, 2017). The QuickBooks proving first funding on (November 22, 2017) and Bank Statement showing funding on (November 22, 2017) ^{95 96 97}Showing the deal funded a month after the application was submitted. ▪ Application date is 10/17/2017, became a customer on 11/22/2017. An existing customer need only file one application when the relationship begins.⁹⁸ ▪ The defenses’ challenge is accurate. Any merchant need only fill out one initial application which in this case is dated October 17, 2017. And additional funding occurred more than 48 hours from the initial and only application the merchant was required to file.⁹⁹ There is no fake report.
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⁹¹ Exhibit 66 Volunteer Pharmacy QuickBooks
⁹² Exhibit 67 Volunteer Pharmacy Application 3/18/2013
⁹³ Exhibit 68 CBSG TD Bank Statements showing wire to Volunteer
⁹⁴ Exhibit 69 CBSG Beneficial Bank Statements showing wire to Volunteer

⁹⁵ Exhibit 70 Application
⁹⁶ Exhibit 71 Quickbooks
⁹⁷ Exhibit 72 TD Bank Statements
⁹⁸ The application was 2017, so if the SEC is referring to Flexogenix 2018 transactions that too would not be irrelevant because 2017 to 2018 is more than 48 hours.
⁹⁹ Existing merchants when obtaining additional funds update their financials to CBSG by providing updated statements. Par would have no reason to require an existing customer to refile its application. Flexogenix was an existing merchant since 11/22/2017.

<p>year, wrong deals, and not those Whalen’s declarations are about.</p> <ul style="list-style-type: none"> Nonetheless, because Defendants attack Whalen’s character and accuse him of perjury publicly, we address all 4 declarations below. <p><u>Declaration 1 (10/2018 Loan for \$800,000):</u></p> <p>“Application”: Sunday, September 30, at 1:20am: Whalen emails LaForte asking asking for another loan (Ex. _).</p> <p>CBSG Approves and Sends Contract: Monday, October 1:</p> <p><u>At 12:39am:</u> LaForte emails Whalen a list of CBSG loan offers. <i>Id.</i></p> <p><u>At 10:39am:</u> Whalen responds to LaForte via email, choosing \$800k over 199 days option from those LaForte offered. <i>Id.</i></p> <p><u>At 7:54pm:</u> LaForte emails Whalen, using subject line “contract sent.” LaForte writes: “Want to make sure you received contract.” (Ex. _). Whalen responds that day, confirming he did and he will require time to return it because he is out of the country. <i>Id.</i></p> <p><u>At 9:22pm:</u> CBSG underwriting staff email Whalen that they sent the contract to him earlier that same morning, requesting only contract plus notarized Confession of Judgment. (Ex. _). Contract states agreement between Flexogenix and CBSG as of 10/1/2018. (Ex_p2)</p> <p><u>Tuesday, October 2, at 8:34am:</u> LaForte emails Whalen again that he is still waiting for Whalen to return contract so he can fund (Ex _).</p>	<ol style="list-style-type: none"> (1) The SEC is creating its own imaginary application concept, claiming that an email to LaForte from Dr. Sean Whalen asking for additional capital is an “application.”¹⁰⁰ As if to create Sunday September 30th 1:20 AM as an application” that starts an imaginary clock.¹⁰¹ (2) LaForte emails Dr. Sean Whalen options, after careful review of updated Bank statements pulled by CBSG’s around the clock underwriters, which was made simple because Flexogenix was an existing customer so underwriting already had all credentials to log into accounts and formulate options. (3) Dr. Sean Whalen was given options based on what Par underwriters reviewed by logging into client’s bank accounts which gives month-to-date analysis. (4) LaForte is head of sales and ISO division and has a job which is to satisfy his clients. Tracking the contract while Par’s 70 person staff evaluates underwriting and credit worthiness including Dr. Sean Whalen. (5) As Par underwriters are reviewing files for additional funding it is not uncommon to request additional information from existing merchants. In this case a new notarized confession of judgment. (6) It is two days later since the September 30th request for capital and the underwriting review was completed and greenlighted. The only thing needed was a signed contract. (7) On the third day since Dr. Sean Whalen requested funds he was having trouble with DocuSign so LaForte contacts Par staff to give him a hand.
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¹⁰⁰ An email to Par’s head of sales does not legally constitute an application. Another example of the SEC’s misdirection. Secondly, Mr. Whelan and Flexogenix were existing clients of Par having funded five deals prior to the one being contemplated so application was and has been on record since October 17th, 2017.

¹⁰¹ Even if this absurd, made up, non-legal theory was true, the SEC actually bolstered the defendants’ position. The merchant states in his declaration that the “loan was underwritten in less than 48 hours from the time I applied.” The SEC’s supposed application is on “Sunday September 30th” as stated, and the advance was funded three days later on October 3rd, which is three days later.

Wednesday, October 3, 2018, at 6:10am: LaForte emails staff and Whalen, to help get Whalen’s contract “so I can get him the funds tomorrow.” (Ex. _).

Later that same day, Whalen emails LaForte that he has emailed CBSG his signed contract. *Id.*

CBSG records it as funded, same day. (Ex., showing 10/3 funded date)

Declaration 2 (10/2018 Loan for \$1,200,000)⁴²

ConvergeHub file for this deal has no application in it.

The Defendants have good reason to know, however, that it came about through a request by Whalen to LaForte over the phone and that LaForte sent the contract the next day for \$1.2 million. In fact, ConvergeHub lists the source of this Loan as “Joe Mack, House.” (Ex. _).

October 23: Emails between Whalen and LaForte about a call that samenight (Ex. _)

October 24: CBSG makes offer of \$1.2 million to Whalen (Ex. _; _, CBSG Contract with Flexogenix as of 10/24)

November 1: Whalen sends signed contract to CBSG at 2:11am. (Ex. _).

That same day: ConvergeHub shows the deal as “funded.” (Ex. 25)

- (8) Dr. Sean Whalen had trouble with DocuSign so he was able to download and email to CBSG, the last thing Par needed before for funding.
- (9) CBSG funded this transaction on 10/3/2018.¹⁰²

(1) Dr. Sean Whalen contacted LaForte about additional capital to expand and increase his customer base. Dr. Sean Whalen and his wife are board certified physicians specializing in non-surgical treatments. (Joe Mack) would be the loan source because he is the ISO and it would be labeled, “house” because the deal was already sold to Par Funding on 11/22/2017.¹⁰³

- (2) LaForte spoke to many merchants and developed relationships.
- (3) After a discussion about expansion plans, more clients for Flexogenix’s book to increase his revenues, CBSG offered \$1.2 million for the build out. The contract was sent to the merchant.
- (4) Dr. Sean Whalen signed the contract “6 days later”. What the SEC leaves out is that Par underwriters recreated a massive amount of data from October 24, 2018, to funding date of 11/1/2018.¹⁰⁴
- (5) Again, the ConvergeHub printout relied on by the SEC shows an “Expected Close” date of 08/18/2021, clearly this exhibit is unreliable. The defense has not been in control of ConvergeHub since the day the Receiver took over.
- (6) Dr. Sean Whalen was an existing Par customer. The SEC’s contention is misguided and disingenuous for several reasons. It is assuming that Par underwriters who had 6 days from contract to funding date did nothing, which is again false.

¹⁰² If the SEC is attempting to disprove Par’s contentions of merchants’ inaccurate declarations in both scenarios using the true Whether you use the application dated October 17, 2017, or the email to LaForte as an imaginary application date both scenarios constitute more than 48 hours. So, the imaginary application date of September 30, 2018, and funded date of October 3, 2018. regarding this transaction defeats the SEC’s own claim.

¹⁰³ Exhibit 73 LaForte uses pseudonym “Joe Mack” when dealing with merchants. This is done for protection, especially since a merchant cash advance company operator was gunned down execution style in his office in NY along with his assistant.

¹⁰⁴ Exhibit 74 Screenshot of Converge Hub data collected through November 1 funding by Par underwriters. The SEC fails to understand that often the last stipulation to funding is the contract. Par staff accumulated a mountain of data during those 6 days.

Declaration 3 (11/2018 Loan for \$1 million)

There is no application for this deal, identified on ConvergHub as a “new” deal.

Instead, CBSG’s records reflect it was done via an email exchange between Whalen and LaForte. (Ex _).

On November 19:

At 11:08am: Whalen emails LaForte for \$850k. (Ex _).

At 3:26pm: LaForte responds that he has sent the contract to Whalen. *Id.*

On November 20:

At 3:28pm: Whalen asks to increase the loan to \$1 million (Ex_) 3 Minutes later, or

3:331pm: LaForte responds “You got it.”

On November 26: CBSG underwriting staff emails Whalen that he has not received the new contract because DocuSign software had not been working since the prior week (Ex _)

December 3: date reflected on ConvergHub as receipt of signed contract (which states it is “as of” November 20” and that Whalen signed it November 27, as well as date reflected on ConvergHub that deal was “funded.” (Ex _).

Declaration 4 (12/2018 Deal for \$500,000)⁴⁶

- (1) At this point the merchant has borrowed millions, paid back millions, and already had an application on file along with COJ’s, contracts, access to credit card terminals, access to accounts receivables, and Par had access to bank accounts it could garnish.¹⁰⁵
- (2) Again, is the SEC contending that an application, an email to LaForte as an ISO is a legal document required in order for a funding company to pull credit and background checks and can be procured by emailing an ISO Rep?¹⁰⁶
- (3) Application requirements for any product or service are required when the relationship is established. This guidance set by Experian for Par’s ability to pull credit, which is the only reason you would need an application which we obtained already.¹⁰⁷

¹⁰⁵ An application is not needed for every transaction with Par’s existing customers. This is another underwriting standard made up by the SEC to prove Par’s allegedly shoddy underwriting. As mentioned above with access to all the collateral, why would Par request an application? The COJ and contract previously signed would supersede any non-legally binding application. An application could not possibly give any information not already in Par’s possession.

Notably, Experian audits are done quarterly to make sure there are applications for every merchant not every funding. Also, Experian audited Par Funding for signed applications for 8 years and accepted them as valid as the largest and most prominent credit companies in the world yet the SEC wants to invalidate the ISO relationships that CBSG has.

¹⁰⁷ Again, if the SEC is contending that the application “was done via e-mail exchange” on November 29th and the transaction funded December 3rd, even with this made-up process created by the SEC, it would constitute more than 48 hours from application to funding.

<p>There is no application for this deal.</p> <p>Instead, it appears to have been done through a phone call and via email.</p> <p><u>December 12, 2018 at 5:25pm:</u> Whalen emails LaForte, referencing their prior night’s call and that he wants a new loan for \$1.5 million, stating he is attaching bank records (Ex_)</p> <p><u>December 13, 2018:</u> LaForte responds, declining the \$1.5 million email message “application” and approving a loan for 439,066.66, noting he will grant \$1.5 million if Whalen/Flexogenix put residential or commercial real estate in as collateral (Ex _)</p> <p><u>December 13-17, 2018:</u> Whalen and LaForte negotiate and after Whalen reminds LaForte that the new loan funds will go back to CBSG soon to pay outstanding loans, LaForte approves him for \$500,000. The approval email is dated December 17, and Whalen confirms receipt of the revised contract that same day (Ex _)</p> <p><u>December 27, 2018:</u> Whalen executes the contract, which contract states it is “as of December 17.” (Ex _ Contract)</p> <p>December 28, 2018: ConvergeHub reflects this as the “funded” date (Ex 32)</p>	<ol style="list-style-type: none"> (1) As explained above, a new application is not required for every deal.¹⁰⁸ (2) The SEC again is incorrectly suggesting an application, which is achieved at the beginning of a relationship can be done by phone call.¹⁰⁹ (3) Updated Bank records for additional advances to an existing client merchant are a requirement, but often Par Underwriters use a direct bank account log in provided by the merchant during prior transactions. (4) Often if a merchant went above Par’s credit limit, collateral in the form of real estate would be required to protect the capital. Par declined the \$1.5 million, not LaForte. He is an ISO. (5) Par granted a \$500K approval and declined the \$1.5 million request. (6) The contract is executed 10 days prior to funding which gave Par Underwriters 10 days to do additional diligence. 11 days after the contract was sent which is more than ample time to conduct underwriting.
<ul style="list-style-type: none"> ▪ Defendants offer an inspection report done by a company called <i>Metro Site Inspections (“MSI”)</i> in November <u>2017</u>.⁴⁹ <p><u>However, and as Defendants <i>knew</i> when they filed the Motion:</u></p> <ul style="list-style-type: none"> • The inspection report has a Par Funding logo on it, but Par Funding/CBSG did not do the MSI inspections. It simply paid MSI, a national firm separate from CBSG, to do them. 	<ol style="list-style-type: none"> (1) The SEC’ argument about Metro Site Inspections is not legitimate. The onsite inspection was performed by Metro Site Inspections a vendor many MCA businesses and lenders use, including the SBA. (2) Par Funding advanced funds to over 7,600 merchants and averaged 500 deals per month. Is the SEC contending Par employees should fly to locations for site inspections daily? (3) November 6, which is prior to approving every single advance to Flexogenix, first funding 11/22/2017, which is prior to the initial funding and all subsequent funding,

¹⁰⁸ The SEC spin is nonsensical. An application, which is filed in the beginning of the relationship becomes completely irrelevant when you have signed contracts, signed COJs and access to a merchant’s entire business. After over 30 Experian audits Experian accepted our process which is their right as the vendor, yet the SEC wishes to make the rules for Experian.

¹⁰⁹ The SEC is yet again moving the goalpost by making up underwriting guidelines and Experian Personal Credit guidelines by creating its own application process.

<ul style="list-style-type: none"> • So the report, if accurate, simply shows that MSI did an inspection on November 6, 2017 and CBSG paid for it. • Whalen’s declarations are about 2018 Loans, about 1 yearafter the inspection Defendants cite as evidence • Worse, the Defendants know the truth - that in 2017, Whalen had applied not to CBSG, but to a <i>different</i> company - a lendingbroker called Empower Group • Defendants offer no evidence that Whalen even <i>knew</i> about CBSG on November 6, 2017 when the inspection happened. • <u>We also note:</u> <ul style="list-style-type: none"> ○ The MSI report states the inspector spoke with 1 person – and it is not Whalen ○ There is no indication that the inspector in 2017 told anyoneat Flexogenix that CBSG had paid for the inspection ○ There is no evidence that Whalen <i>ever</i> knew CBSG (as opposed to perhaps the company he <i>did</i> apply with) paid for the inspection of his business in 2017, let alone that he knewthis inspection even occurred 	<p>(4) November 2, 2017, is before 2018.¹¹⁰</p> <p>(5) Empower group is not a lender they are an ISO that have an ISO agreement with Par Funding. The contracts and applications give the right for its ISO’s to assign deals to Par. The SEC knows this, it is in every advance business in the world. As exhibited earlier, it is permitted in every advance business in the world.</p> <p>(6) The person who gave the tour to the Metro Site inspector was Maxine Shen who was the coordinator for the entire operation.¹¹¹</p> <ul style="list-style-type: none"> • The person interviewed was Dr. Sean Whalen’s coordinator. The SEC just spent 3 pages talking about LaForte’s relationship with Dr. Sean Whalen. Is the SEC contending that Dr. Sean Whalen did not know who CBSG was after receiving millions of dollars in funding, and numerous email exchanges with Par’s staff and ISO director, LaForte? <ul style="list-style-type: none"> ○ As irrelevant as who paid for the inspection is, this is also untrue. The merchant pays fees out of the funding for all background checks. <p><u>Dr. Sean Whalen before signing the declaration should know who entered his premises, took pictures of his credit card terminals behind his own desk, and took photos of his licenses as a physician. Dr. Sean Whalen knew and had a great relationship with the staff at Par and was always happy with Par’s services.</u>¹¹²</p>
<p>Defendants cite 2 things, neither of which shows a background check:</p> <p>1. Credit reports</p> <ul style="list-style-type: none"> • As set forth above, credit report are not background checks andDefendants know that and told investors “in addition to credit 	<p>(1) Still the SEC is conflating background checks and credit reports. The company Experian offers both and Par Funding submits to the Court that Par Funding ran both Personal Experian Credit and Experian Business Background check separate and apart. But since the SEC is challenging the defense to produce more background, the defense submits the following exhibits: Clear Report on owner Chen,¹¹³ Clear criminal background on owner</p>

¹¹⁰ The Declaration states, “CBSG did not perform an onsite inspection prior to approving the loan,” is not accurate and is misleading. The inspection was done prior to funding. There is no obligation to fund created by any “approval” And no obligation to fund prior to doing so..

¹¹¹ Exhibit 75 Flexogenix Metro Onsite Inspection.

¹¹² Exhibit 76 (1-3) Emails between LaForte and Dr. Sean Whalen. Mr. Whalen emailed with Mr. LaForte numerous times per week. These are just a sample.

¹¹³ Exhibit 77 Clear Report on owner Chen.

<p>scores,” then ran background checks. <i>See infra.</i></p> <ul style="list-style-type: none"> • The credit reports are not even from the time of the Loans at issue; they are from a year before Whalen applied for the Loans at issue. DE 663-22 at pp 171-172 (top left corner of each page) <p>2. An “Application”</p> <ul style="list-style-type: none"> • As set forth above, and as is apparent on the face of the document Defendants rely on, this is a 2017 application Whalen made to a different company • The application is a one-page document and is not a backgroundcheck report • There is no indication Whalen knew CBSG got this application, let alone that this would be considered a “background check” • Defendants chose not to inquire of Whalen, did not depose him, and have no idea what his knowledge was. 	<p>Chen,¹¹⁴ Clear Report on Flexogenix Corporation¹¹⁵, Clear Report on owner Dr. Sean Whalen¹¹⁶, Experian Business background report 2/9/2018¹¹⁷, Experian Business background report 11/22/2017¹¹⁸.</p> <p>(2) The SEC is being disingenuous. No decent firm would run a merchant’s credit over and over, thereby causing the merchant harm to its credit score.¹¹⁹</p> <p>(3) The application is from CBSG ISO, Empower Group. The application is assignable as mentioned earlier, but this specific application produced earlier as an exhibit authorizes “each representative, successors, assigns, designees, and recipients to obtain credit and investigative report.”¹²⁰</p> <p>(4) Dr. Sean Whalen knew because he signed the Empower Application, and the application explicitly states it is assignable to a lender as mentioned.¹²¹ The merchant declarations are demonstrably inaccurate and depositions are not necessary to prove them.</p>
<p>Defendants:</p> <ul style="list-style-type: none"> • Offered no evidence or explanation of the “Data Book” • Did not file the “Data Book” • Offer no evidence or even assertion that CBSG requested information showing Flexogenix’s profit margins or expenses – ever – let alone prior to approving each 	<p>The defense offered the Data Book to consolidate the massive amount of financial information gathered by Par underwriters.</p> <p>Since the SEC is unsure of the Data Book’s value, the defense offers:</p> <ul style="list-style-type: none"> -Flexogenix 2015 Tax Returns¹²² -Flexogenix 2016 Tax Returns¹²³ -Flexogenix 2016 Balance Sheet¹²⁴

¹¹⁴ Exhibit 78 Clear Criminal Background on owner Chen.

¹¹⁵ Exhibit 79 Clear Report on Flexogenix Corp.

¹¹⁶ Exhibit 80 Clear Report on owner Dr. Sean Whalen.

¹¹⁷ Exhibit 81 Experian Business Background Report 2/9/2018.

¹¹⁸ Exhibit 82 Experian Business Background Report 11/22/2017.

¹¹⁹ The SEC contention of running multiple credit reports on merchants to benefit the underwriting somehow is unfounded and frankly a few points in the credit score delta one way or another wouldn’t matter to an MCA company. Par funds small businesses and multiple credit pulls over and over harm the individuals. These are corporate transactions therefore the SEC’s contention that the president or corporate designee of the company’s credit should be pounded over and over shows their lack of knowledge, at minimum, but more likely made-up to prosecute the defendants.

¹²⁰ *See* Application Language

¹²¹ Also, to note, Mr. LaForte who runs the ISO division spoke weekly to Dr. Whalen as the SEC cites throughout its rebuttal. So he knew!

¹²² Exhibit 83 Flexogenix 2015 Tax Returns

¹²³ Exhibit 84 Flexogenics 2016 Tax Returns

¹²⁴ Exhibit 85 Flexogenix 2016 Balance Sheet

<p>Loan</p> <ul style="list-style-type: none"> Offer no evidence that Whalen gave CBSG the “Data Book” in response to such a request <p>Offer no evidence that “Data Book” even includes information showing the profit margins or expenses of Flexogenics</p>	<p>-Flexogenix 2016 Profit and Loss¹²⁵ (1) -Flexogenix 2017 Data Book¹²⁶</p>
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Declaration of Bruce McNider (McNider Marine) (AMOUNT OWED TO PAR \$316,199.12)

<p align="center">Defendants Offer A Misleading Characterization of Evidence While Concealing The Truth</p>	
<p>Defendants’ assertion that 2 blanks Mr. McNider did not fill in on his Declaration show he did not read it is absurd.</p> <ul style="list-style-type: none"> As the Defendants know from the face of the document: <ul style="list-style-type: none"> McNider filled in his blanks for his residential city and thename his company in handwriting in paragraph 2 of his declaration; The fact that he did not fill in blanks in the following paragraph is evidence of nothing more than the fact that he filled in some blanks and not others Declaration is signed and dated Defendants chose not to depose Mr. McNider, and thus chose not to ask him why he did not fill in these blanks, or to ask if he read it. <p>As the Defendants know, McNider emailed this signed declaration to the SEC through his counsel, and the email chain shows this.</p>	<ol style="list-style-type: none"> The blanks the defense refers to show the haste and sloppy nature of the SEC’s work in obtaining 16 declarants 2 weeks prior to the Complaint and TRO motion and then the SEC filed sworn declarations with material blanks rather than realizing they were filing them with blanks and sending them back to the declarant. The defense may choose to depose McNider, but the better question is why did the SEC accept and file incomplete declarations in its cavalier attitude while a \$500 million asset was eviscerated based on an incomplete investigation and false facts and legal theories. The email chain shows that Heskin sent a form by email to the entire emailed the entire pool of declarants at the same time and urged them to “hurry up.”^{127 128}
<p>Defendants rely on and filed a fake QuickBooks report.</p> <p>As for the Application:</p> <ul style="list-style-type: none"> As Defendants know, the application they filed is not to CBSG 	<ol style="list-style-type: none"> Par Funding had 500 Independent Sales Organizations (ISO’s). CBSG maintains no sales force and pays

¹²⁵ Exhibit 86 Flexogenix 2016 Profit and Loss

¹²⁶ Exhibit 87 Flexogenix 2017 Data Book

¹²⁷ The In the brief, the SEC claims that the Heskin declaration says, “He found out about the SEC complaint in the Philadelphia Inquirer.” However, the declaration says no such thing. In any event, he clearly knew about the case in advance because he was procuring declarations for the SEC.

¹²⁸ Exhibit 88 Shane Heskin email to all 14 Merchant Declarants

<ul style="list-style-type: none"> • Instead, as is clear on its face, it is an application to a different company, called Richmond Capital Solutions. • Defendants present no evidence of when McNider was submitted to CBSG, when underwriting occurred, when CBSG entered a contract with McNider to purchase his company's accounts receivable, how long the underwriting took, or what McNider, the Declarant, was told or otherwise knew. 	<p>commissions to sales agents to obtain its merchants.¹²⁹</p> <ol style="list-style-type: none"> (2) Richmond Capital Group is a CBSG ISO as explained and CBSG is well within its guidelines to accept deals from third party companies.¹³⁰ (3) The defense disagrees and will state for the record again with Exhibits. The application was dated November 15, 2016. ¹³¹The transaction funded November 25, 2016.^{132 133} So the declarant was not accurate because it was funded in more than 48 hours from the application date.
<p>Defendants cite the Application.</p> <ul style="list-style-type: none"> • Application to Richmond does not prove or show a credit check was done by anyone, let alone CBSG. • Instead, it just shows, at best, that McNider gave permission in his application to Richmond Capital Solutions and any of its unnamed affiliates agents permission to pull credit. <p>Defendants also offer two credit reports, with no other support or evidence about these reports, including who performed them.</p> <ul style="list-style-type: none"> • There is no indication that CBSG, as opposed to Richmond (the broker McNider applied to) or anyone else, pulled these credit report, and no evidence presented by Defendants that someone reviewed them • In sum, defendants offer no evidence that CBSG pulled these, reviewed these, or anything whatsoever to show that McNider would have seen a credit pull by CBSG on his credit report <p>Defendants offer no evidence:</p> <ul style="list-style-type: none"> • Showing CBSG (as opposed to anyone else, including the company McNider actually 	<ol style="list-style-type: none"> (1) A credit check was done by CBSG, and Experian Business background check was also performed.^{134 135} As explained earlier same company "Experian" offers two separate products- Personal Credit Report and Business Background check. CBSG's unique account number is displayed on the background report and the CBSG credit report is time stamped in the top left hand corner to show the credit was pulled 9 days before funding. (2) The application permits MCA's, including Par, to pull credits off ISO applications as successors and/or assigns.¹³⁶ (3) Once again, the defense did pull credit and background check. (Experian billing, and Par's Account Number displayed.) (4) The defense disagrees with this absurd allegation and produces proof once again. (5) Simply looking at the top of the credit report which shows the credit was pulled on 11/16/2016 at 11:11:39 the day

¹²⁹ As the SEC knows, every advance firm, bank, or funding company obtains deals from brokers. The application, which McNider signed clearly states that it is assignable to a lender.

¹³⁰ Similar to any lending broker, an application can be placed to any lender by the ISO of it closing. Example- car finance companies do just that. Every MCA firm in the country including publicly traded companies like on deck capital does the exact same thing. The SEC should know this because on deck traded on the NYSE which the SEC regulates.

¹³¹ Exhibit 89 McNider Application

¹³² Exhibit 90 TD Bank Statement 9807

¹³³ Exhibit 91 QuickBooks proof of funding date

¹³⁴ Exhibit 92 Experian business background check

¹³⁵ Exhibit 93 Personal credit check on McNider with time stamp

¹³⁶ Exhibit 94 Language included at bottom of McNider Application

<p>applied to) performed these credit checks;</p> <ul style="list-style-type: none"> • That CBSG performed these credit checks⁵⁸ during the application and underwriting process; or <p>That McBride knew CBSG performed these credit checks, let alone during the application or underwriting process.</p>	<p>after CBSG received the application and 9 days before funding, hence the false declaration.</p> <p>(6) He knew because he signed an application for funding.</p>
<p>As McNider’s application to Richmond Capital Solutions states, he was seeking a loan to consolidate a group of outstanding loans/MCAs.⁵⁹</p> <p>The Matrix:⁶⁰</p> <ul style="list-style-type: none"> • Is general. It states (1) Lender names and balances McNider was seeking to consolidate; and (2) end of month account balances and amount deposited into bank account for 3 months.⁶¹ <ul style="list-style-type: none"> o Defendants offer no evidence of where this information came from, whether from Richmond Capital, McNider, or otherwise • Does not state: (1) Company’s expenses – operating, payroll, overhead, or otherwise - other than loans balances McBride had applied to consolidate;⁶² (2) details about accounts receivable, deals, profit stream, etc.; (3) the Company’s profit margins. • Thus the Matrix appears to have no connection to McNider’s declaration paragraphs 8 and 9. 	<p>(1) The evidence comes from the bank statements produced by McNider.¹³⁷</p> <p>(2) These are not requirements for Par, and reasonably would not be for any other MCA company. MCA companies are concerned with and examine cashflow by thoroughly examining bank statements and if it deems necessary will evaluate additional factors.¹³⁸</p> <p>(3) For understanding, see the underwriting guidelines for these top MCA companies in our industry which pale in comparison to the over-the-top due diligence Par did in examining credit worthiness of its merchants.¹³⁹</p>

¹³⁷ Exhibit 95 See Matrix and Bank Statements – (The Bank Statements match the matrix that is prepared for credit committee to make its funding decisions.)

¹³⁸ The SEC is creating new underwriting guidelines that simply do not apply to any advance company and is lying by stating it’s in Par Fundings brochure because it simply is not, but even if it was Par Fundings guidelines were stricter than most MCA companies in the industry so it obtains these documents over and above the standard guidelines.

¹³⁹ Lendini and Credibly Underwriting Guidelines. Nowhere does it state they are required to collect expenses, profit margins, debt schedules because they do not apply to the Merchant Cash Advance product. The MCA Product is based on cash flow and the made up guidelines would not help lower a potential default rate because the terms of Par’s advances are only 92 days.

Declaration of Kara DiPietro (HMC) (AMOUNT OWED TO PAR \$11,903,752.08)

Defendants Offer A Misleading Characterization of Evidence While Concealing The Truth	Reply to SEC Response:
<p>Defendants seek dismissal because DiPietro supposedly perjured herself in paragraph 4 of her declaration.</p> <p>However, whether or not an application “show[s] MCA” does not have any bearing on DiPietro’s testimony at issue, nor do Defendants explain why this is relevant.</p> <p>To the extent the defendants are trying to argue DiPietro is wrong in her usage of the word “loan” and she should have used the word “MCA,” DiPietro is not a lawyer and as the Defendants have repeatedly been told, whether the deals are loans vs MCAs is not an issue in this case and never will be.</p>	<p>It is relevant because the SEC offered to this Court the false opinion provided by Heskin that the MCA’s are loans (the SEC still refers to them as loans despite abandoning the contention and saying it now does not matter if they are or are not) It is relevant because it is trumpeted over 100 times in the TRO, so the SEC must have felt it relevant. It is also relevant because it is a falsity, and potentially induced the Court into thinking that the defendants were operating an illegal business. Had the SEC merely googled “<i>what is a Merchant Cash Advance</i>,”¹⁴⁰ it would have had a better understanding of the business it was about to needlessly shut down. Notably, the first line of the SEC’s TRO motion is:</p> <p><i>The McElhone- LaForte duo is in the business of making opportunistic loans – some of which charge more than 400% interest – to small businesses across America. They offer the loans through a company they control, Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”).</i></p> <p>But now that it knows those allegations are false, the SEC claims they are irrelevant. Amazing.</p> <p>Importantly the SEC relied heavily on an attorney with an axe to grind a financial gain to be had to form its opinion on the legality of Par’s business.</p> <p>Also, the SEC should have known that this attorney lost every single case arguing the same allegations the defendants stand accused of in the TRO motion. Most importantly, the SEC should have asked some basic but obviously important questions of this attorney, like:</p> <ol style="list-style-type: none"> 1. Are the declarants, all of whom are your clients, in a lawsuit with the defendants? The answer would have been. All of them were. 2. Do the declarants owe the defendants any money? The answer would have been YES, a combined \$25 million between them. <p>And finally, out of Par’s 7,600 merchants, did it not concern the SEC that all the declarants came from 1 single biased source with a financial gain to be had.</p>
<p>Defendants cite attorney-client privileged email messages – clearly marked “attorney-client privileged.” (DE 663-22 at pp 208-209).</p>	<p>While the SEC, seems to now care about attorney-client privilege, the document is not privileged despite the heading. Included in composite exhibit 22 to its motion, Defendants filed an email exchange. This email exchange was between David Alperstein,</p>

¹⁴⁰ Merchant Cash Advance Wikipedia

<p>We stopped reading when we saw the attorney-client privilege designation since to our knowledge Ms. DiPietro has not waived her attorney-client privilege and thus we believe this was inadvertently produced.</p> <p>Based on every other piece of evidence Defendants claim shows perjury when it does not, we imagine this message is of the same ilk.</p>	<p>Joshua Krakowsky, and Kara DiPietro. In the email exchange, Mr. Alperstein and Mr. Krakowsky schedule a call. Mr. Krakowsky then summarizes the conversation he had with Mr. Alperstein to Ms. DiPietro. Nothing in this email exchange is privileged. The email was produced by the SEC in discovery and given that Ms. DiPietro provided significant amount of information to the SEC in its investigation, Defense counsel believed that Ms. DiPietro had produced this document to the SEC. Thus, to the extent that that portion of the email exchange was covered by attorney-client privilege at some point, Defendants submit that it was waived when DiPietro submitted it to the SEC. . However, to the extent the SEC objects to this email, <i>see</i> attached declaration of David Alperstein showing that Mr. LaForte and Par were not informed and there is no reason to believe they knew that DiPietro invested in Par. He would have no way of obtaining this information, because Ms. DiPietro invested in MCA Capital which is owned by an attorney, David Alperstein. DiPietro was a merchant, and someone who at the time was cordial with Mr. LaForte. Even presenting him with gifts and praise. DiPietro would even send lunch to the entire company at least once a month thanking the employees for helping her company prosper. But DiPietro owes Par Funding close to \$12 million, breached her obligations, and is obviously biased and motivated to take down Par. Ms. DiPietro’s allegations in her declarations are backed by zero proof.</p> <p>Mr. LaForte would have no way of obtaining this information, because Ms. DiPietro invested in MCA Capital which is owned by an attorney, David Alperstein. Ms. DiPietro was a merchant, and someone who at the time was cordial with Mr. LaForte. Even presenting him with gifts and praise. Ms. DiPietro would even send lunch to the entire company at least once a month thanking the employees for helping her company prosper. But Ms. DiPietro owes Par Funding north of 11 million dollars, defaulted on her obligations, is obviously motivated to take Par down with more lies. 11 million reasons to lie.</p> <p>Mr. LaForte referred Ms. DiPietro to Mr. Alperstein for a potential investment, and never heard a word about it again.</p> <p>Ms. DiPietro’s allegations in her declarations are backed by zero proof.</p>
<p>The email does not prove Ms. DiPietro’s statement in paragraph 23 are false. Nor do the Defendants challenge the authenticity of the email Ms. DiPietro cites and attaches in connection with Paragraph 23, or present any denial that the events occurred just as she described them.</p> <p>Instead, it appears Defendants argue that if Ms. DiPietro acted kindly or continued to engage or was in their view, “happy,” then she cannot be the victim of</p>	<p>The defense disagrees and so should the SEC if they cared one bit about the investors they are supposedly seeking to protect, instead of a merchant, a so-called “victim,” who has shirked her obligation to repay \$11,557,923.27 of the investors’ money.</p> <p>The SEC continues to act like it is the FTC in its crusade against defendants while coddling biased and inaccurate merchants who owe millions of dollars to Par. The fact is the MCA is a legal business and the SEC is needlessly hurting the investors.</p>

<p>abuse or threat of violence. We will not dignify this frankly ignorant and offensive argument concerning the reactions of such victims with a response.</p> <p>Notably, as with every other person whose declaration they attack, the Defense has not deposed them or even spoken to them about their declarations.</p>	<p>The motivation Ms. DiPietro has is clear, she has Par's money and will say anything to keep it. Not a shred of evidence has been produced to prove her absurd allegations, except for the part about LaForte telling her gruffly in essence to get herself in gear, because he was looking for a simple return phone call to get the company paid.</p> <p>The irony here is while the investors suffer the SEC goes to great lengths to protect the merchants who have taken money from Par and thereby from the investors.</p>
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Declaration of Julie Katz (TourMappers) (AMOUNT OWED TO PAR \$121,379.55)

<p align="center">Defendants Offer A Misleading Characterization of Evidence While Concealing The Truth</p>	
<p>In the challenged paragraph of her declaration, Ms. Katz testifies that CBSG did not perform an on-site inspection and instead she emailed photos she took to her sales representative.</p> <p>Defendants offer nothing more than the email from the sales representative to CBSG, forwarding the photos Ms. Katz testifies she took. (DE 663-22 at 214). If anything, this seems to just confirm the SEC's assertion that there was no on-site inspection and CBSG received photos the applicant took.</p>	<p>CBSG attempted to do an onsite.¹⁴¹ But they experienced issues with the address. Time went by and Ms. Katz qualified for the advance and to provide good service to customers like in any business Par underwriters accepted photos of the business as a courtesy for the delay.¹⁴²</p>
<p>As with all their other challenges, Defendants only file documents with no declaration or proof of what they use the document to try to prove.</p> <p>The "application" defendants filed is clearly not a CBSG application. It states "United Secured Broker" on it. (DE 663-22 at p.232). Nor do Defendants even assert this a CBSG application.</p> <p>The application is not a background check. It states 4 things on it: name of company applying, company address, owner of the company, and the date of the application – January 9, 2020. (DE 663-22 at p.232).</p>	<ol style="list-style-type: none"> (1) The application as explained throughout the exhibit is appropriate and the SEC chooses to spin the use of ISO's as inconsistent with the MCA business. The SEC knows the defense produced the application to prove that Par had authority to run credit and background checks.¹⁴³ (2) The SEC is ignoring the Experian Business background report which is the premier business background product in the world, submitted to the court now a second time.¹⁴⁴ Also, with proof that it was paid for by Par. (3) The defense submits proof of payment from Par to Experian for the Business Background report.

¹⁴¹ Exhibit 97 Email- Metro Inspections attempted Onsite

¹⁴² Part of business is good service. Ms. Katz had needs to fulfill in her business and Par decided to fund with photos. Notably a full background showed her exact location and statements verified her business was open along with confirmation calls to her landlord.

¹⁴³ Exhibit 98 See language at bottom of United Secured Disclosures Application.

¹⁴⁴ Exhibit 99 Experian Business Background Report with proof of payment.

<p>Defendants filed two credit checks from January 9, 2020, the same date as the TourMappers application to United Secured Broker defendants filed. (DE 663-22 at 211-213& 232). Defendants provide no evidence that CBSG pulled these credit reports, let alone reviewed them., or that Ms. Katz would know this (ie, if the company she actually applied to showed up on her credit report as pulling credit).</p>	
<p>CBSG presents no evidence that it asked Ms.Katz for anything. CBSG did present her application, which shows she applied to a broker on January 9, 2020. There is no evidence that CBSG asked Ms.Katz for either of the documents Defendants cite, and the documents clearly do not reflect what the company’s profit margins were.</p>	<p>Par is in possession of 15 sets of bank statements, a copy of Julie Katz Driver’s License, AR aging analysis, which all came directly from Ms. Katz. She obtained funding based on a significant and sufficient amount of underwriting data.¹⁴⁵</p>

¹⁴⁵ Is the SEC suggesting Par stole Ms. Katz Driver’s License and internal financial analysis obtained of TourMappers’ computer? Is this the new “caper”?



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

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

vs.

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

Defendants.

EXPERT REPORT OF JOEL D. GLICK, CPA/CFF, CFE

August 13, 2021

EXHIBIT B

I. **BACKGROUND**¹

The Securities and Exchange Commission (“SEC” or “Plaintiff”) has brought an action against Complete Business Solutions Group, Inc. (“CBSG”) D/B/A/ Par Funding, Full Spectrum Processing, Inc. (“FSP”), 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 (“McElhone”), Joseph Cole Barleta, a/k/a Joe Cole (“Cole”), Joseph W. Laforte (“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 (collectively “Defendants”) alleging violation of securities laws.

On July 24, 2020, the SEC filed a complaint which alleged among other things, that McElhone and LaForte operated an investment scheme whereby they raised more than a half billion in funds from 1,200 investors across the country by offering unregistered securities to investors in the form of promissory notes issued by Par Funding. On July 27, 2020, the Court entered an Order appointing a Receiver (“Receivership Order”).²

II. **SCOPE OF ASSIGNMENT**

Berkowitz Pollack Brant (“BPB”) was retained by the law firm of Fridman Fels & Soto, PLLC to assist with their representation of CBSG. I was asked to review the various declarations filed by the SEC’s forensic accountant and provide opinions as to conclusions reached in those declarations. I was also asked to review the declaration filed by the Receiver’s financial consultants and similarly provide opinions as to conclusions reached in that declaration. As discovery is ongoing, I reserve the right to update this report as more information is provided. I have issued two previous

¹ DE 1

² DE 36

declarations in this matter. I reaffirm those declarations as part of this report. No statements in this report are intended to render any legal opinions or conclusions.

Although most of the activity from January 1, 2020, through July 27, 2020, had been entered into QuickBooks, the books had not yet been fully reconciled as of the date the Receiver took control. The Receiver has subsequently provided what he purported to be a reconciled set of books and records through the date he took control of CBSG. We have verified the cash balances appear to be reconciled. However, as of the date of this report, BPB has not had the opportunity to verify that the recording of these additional cash transactions has been properly coded.

III. QUALIFICATIONS

I am a Director of Forensic Advisory Services at the accounting firm of Berkowitz Pollack Brant. BPB was established in 1980 and today has over 280 employees with offices in Miami, Fort Lauderdale, Boca Raton and West Palm Beach, Florida and New York, New York. I am a Certified Public Accountant (CPA), certified in financial forensics (CFF) both designated by the American Institute of Certified Public Accountants and a Certified Fraud Examiner (CFE), as designated by the Association of Certified Fraud Examiners.

See Curricula Vitae and list of testimony experience, **Exhibit 1**.

IV. DOCUMENTS CONSIDERED

In forming the opinions expressed herein and the two previously filed declarations, I reviewed and considered the following categories. A full listing of the documents considered can be found in **Exhibit 2**.

- Various pleadings
- Supporting documentation
- Internally prepared and maintained financial information.
- Any cited material inadvertently excluded from this list.

V. **EXPERT OPINIONS**³

As discussed in greater detail in Section VI – Basis for Opinion, below, my expert opinions are as follows:

- 1) Based on the nature of CBSG’s business and documents reviewed, an analysis of the cash transactions reflects, on a FIFO basis, investor funds were used entirely to fund merchant advances.
- 2) As a result of investor funds having been used entirely to fund merchant advances, an analysis of the cash transactions reflects, on a FIFO basis, consulting fees were not paid with Investor Funds.
- 3) My opinions and conclusions included in my previous declarations.

VI. **BASIS FOR OPINIONS**

A. **Melissa Davis Declarations**

A. **Davis Was Not Provided All of CBSG’s Accounts.**

To date, Melissa Davis (“Davis”), the forensic accountant retained by the Securities and Exchange Commission (the “SEC”), has submitted three declarations. The first two, dated July 23, 2020, and August 4, 2020, address bank accounts for which the SEC asked her to analyze. The list of accounts she was provided to analyze as reflected in her July declaration⁴ did not include all bank accounts and did not include any ACH accounts. None of the nine automated clearing house (ACH) payment processors used by CBSG was included in this list. Additionally, five bank accounts used by CBSG were not included in the list she was asked to analyze. The following table is a listing, from CBSG’s

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

⁴ Declaration of Melissa Davis, dated July 23, 2020, at ¶3(a)

Statement Review period: 8/14/14 - 06/30/20	
Account Per QuickBooks	Reviewed by Davis
TD Bank - Capital 9807	Y
TD Bank - Operating 9790	Y
TD Bank - Payroll 9782	Y
Bancorp - Operating 6442	Y
Bancorp - Capital 6468	Y
Actum ACH	N
Republic Bank - Operating 4126	Y
Republic Bank - Capital 4169	Y
Qualpay	N
Chase - Operating 9100	Y
TD Bank - ACH 9496	Y
Bento Debit Reserve	N
TD Bank - Legal 6895	Y
Merchant Industry	N
Priority Payment System Client	N
BOSJ - Operating 3352	Y
Priority Payment System Prefund	N
Actum ACH Prefund	N
Chase - ACH 9126	Y
Chase - Capital 9118	Y
NMI Payment Gateway	N
Empire - Operating 4825	N
Authorize.Net	N
Empire - Capital 5805	N
FEDChex	N
First Bank Capital - 7823	N
First Bank ACH - 7831	N
First Bank Operating - 7807	N

QuickBooks accounting software, of all bank accounts and ACH processor accounts active during the period for which she was asked to analyze.

B. Davis Is Mistaken Regarding Some of the Transfers

These first two declarations purport to quantify amounts paid to various individuals or entities,⁵ from bank accounts which Davis determined contained commingled investor funds. Two of the entities Davis was asked to identify as having received the transfer of commingled funds were Broadway Advance, LLC (“Broadway”) and Priority Payments Systems (“Priority”). However, Broadway which received commissions totaling

⁵ Lisa McElhone, ALB Management, Beta Abigail, New Field Ventures, LLC, LME 2017 Family Trust, Heritage Business Consulting, Eagle Six Consulting, Inc., Broadway Advance, LLC, Priority Payment Systems.

\$1,097,725⁶ was an unrelated third-party independent sales organization (ISO). No consulting fees were paid to Broadway.

Priority was an ACH payment processing service used by CBSG to collect the repayment of merchant advances. Davis identified a series of transfers to Priority totaling \$109,641,780:⁷

“Beginning in December 2019 through February 21, 2020, Par Funding made a series of transfers to Priority Payment Systems totaling \$63,650,827 from the Par Funding Accounts containing commingled Investor Funds.

“On February 21, 2020, Par Funding began to make transfers out of the Par Funding Accounts which were labeled as “Par Funding Pref.” During the period from February 21, 2020, to June 30, 2020, these transfers totaled \$45,990,953, of which \$20,865,953 occurred during the month of June 2020 from the JP Morgan Chase accounts. Based on my discussions with the SEC, although labeled as Par Funding Pref, these transfers were also payments to Priority Payment Systems from the Par Funding Accounts.”

The Priority account to which these funds were transferred was actually an account controlled by CBSG. The funds transferred to the Priority account were used primarily to make interest and principal payments to investors and make advances to merchants. Priority was the one payment processor that would allow CBSG to send out funds. The former CFO has indicated the fees Priority charged were significantly less expensive than the cost of wiring the funds through a bank account.

C. Davis Identifies Commingled Accounts but Does Not Establish that Payments to Defendants or Related Entities Were Made with Investor Dollars

The third declaration issued on August 26, 2020, responds to the SEC request that Davis provide specific examples demonstrating the LME 2017 Family Trust (the “Trust”), Lisa

⁶ Declaration of Melissa Davis, dated July 23, 2020, at paragraph 5

⁷ Declaration of Melissa Davis, dated July 23, 2020, at paragraphs 6 and 7

McElhone and other related entities received commingled funds that include investor funds. As stated in her declaration at paragraph 25:

“The examples described in, ¶7-¶24 demonstrate that payments made to the LME 2017 Family Trust, Lisa McElhone and other related parties were derived from commingled funds that include Investor Funds, Agent Funds, merchant cash advance activity and other sources. These examples demonstrate the flow of funds and commingling that occurred in the Par Funding Accounts throughout the period of my analysis.”

A. Commingling Simply Means Funds Are Blended, Not Fraudulent or Tainted

While dollars held in CBSG bank accounts and on ACH account were commingled. However, the act of commingling funds does not by definition equate to fraud and Davis does not reach this conclusion. Commingled simply means mixed or blended. Any attorney/law firm who deposits funds from multiple clients into a single trust/escrow account has commingled funds, yet fraud is not assumed. Bar organizations⁸ require records be maintained to separately track the clients' funds. Similarly, banks commingle account holder funds. They do not maintain a separate bank account for each of their account holders. Through their accounting systems, banks maintain a record separately detailing an account holders' activity and account balance. As with law firms or banks with commingled funds, CBSG maintained a separate record of investor balances⁹.

9 We had a very meticulously managed ledger
10 to keep track of the noteholder funds and to make
11 sure that we're able to identify on a daily basis
12 what deposits were made from merchants and to
13 reconcile their balances with the company records,
14 rights.

⁸ Florida Bar Rule 5-1.1(a) (1) “A lawyer must hold in trust, separate from the lawyer’s own property, funds and property of clients or third persons that are in a lawyer’s possession in connection with a representation.”, Florida Bar Rule 5-1.2(b)(7) “a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance.”

American Bar Association (ABA) Rule 1.15(a) “A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Complete records of such account funds and other property shall be kept by the lawyer...”

⁹ See transcript from the Remote Videotaped Deposition of Joseph Cole Barleta at Page 90, Lines 9 - 14

Generally Accepted Accounting Principles (“US GAAP”) do not prohibit commingling of funds unless such funds are otherwise restricted pursuant to a legal agreement. No such restriction exists in the promissory notes. As such, the commingling of funds in CBSG accounts is not a departure or violation of US GAAP.

B. Tracing Rules Can Be Used to Unwind Commingled Funds

When funds have been commingled and the source and use of such funds is not readily apparent, forensic accountants apply tracing rules to ascertain how funds were used and to assist in determining who may be entitled to funds remaining in an account as of a certain date. Commonly accepted tracing methodologies are: First In, First Out (FIFO); Last In, First Out (LIFO); Pro Rata Distribution; and Lowest Intermediate Balance Rule (LIBR).

Davis authored an article for the American Bankruptcy Institute (“ABI”) on the LIBR method entitled Tracing Commingled Funds in a Fraud Case. The premise of the article is that commingling has occurred as a result of fraud. Tracing is an exercise to help unwind commingled dollars after the existence of fraud has been established. In her article, under the caption Other Tracing Methods, she discusses these tracing methods. *“Courts have also applied the pro rata method, whereby withdrawals from an account containing commingled funds are attributed to the source in proportion to their respective balances at the time of the withdrawals. ...In the “first in, first out” method (FIFO), it is presumed that moneys are paid out in the order in which they were paid in. In the “last in, first out” method (LIFO), it is presumed that the last moneys deposited into an account are the first ones withdrawn, which results in an entirely different outcome.”*¹⁰

1) FIFO Is the Appropriate Tracing Method Here

An excerpt from Davis’ August 26 declaration, at paragraph 14, states a \$240,000 investor deposit on July 17 is included in the \$5 million transfer to the Trust made on July

¹⁰ Tracing Commingled Funds in Fraud Cases, June 21, 2017 ABI [Tracing Commingled Funds in Fraud Cases | ABI \(kapilamukamal.com\)](https://www.kapilamukamal.com)

19. It is necessary to understand a business’s cash flows in order to choose the appropriate tracing method. Davis used the LIBR method when the FIFO method or specific identification would be more appropriate. In reviewing the bank statements, one can see funds from Actum (ACH payments from Merchants) flow in and out of the account almost immediately. Focusing on the snapshot of the bank statement below, on 7/17, an Actum deposit is received in the amount of \$333,041.90. On the same day, the same amount is transferred to the Par Capital account. Even if the 7/17 opening balance of \$305,000 was commingled, the Actum funds should not be considered tainted and therefore taint the Par Capital account. In other words, if something can be specifically identified or matched and does not reduce the previous balance, then it should be considered as identified. Following that same logic, the investor deposit of \$240,000 on 7/18 and the Actum deposit of \$307,981.32 on 7/19 precisely comprise the \$547,981.32 transferred to the Par Capital account on the same day. If the \$240,000 is matched to that transfer, then it cannot be included in the \$5 million transfer.

COMMERCIAL CHECKING		1504126 (Continued)	
Activity in Date Order		Credits	Debits
7/17 ActumPayot Actum Payout	333,041.90		638,041.90
CCD 79558808			
7/17 Transf to Par Capital		333,041.90-	305,000.00
Confirmation number 717180289			
7/18 WIRE-IN 20181990020900 NASHI I	240,000.00		545,000.00
COMPLETE BUSINESS SOLUTIONS GR			
7/18 ActumPayot Actum Payout	299,565.71		844,565.71
CCD 79569382			
7/18 Trsf from Par Capital	4,400,434.29		5,245,000.00
Confirmation number 718180296			
7/19 ActumPayot Actum Payout	307,981.32		5,552,981.32
CCD 79581791			
7/19 Transf to Par Capital		547,981.32-	5,005,000.00
Confirmation number 719180306			
7/19 Check 1016		5,000,000.00-	5,000.00

14. The \$5 million payment to the Trust on July 18, 2018 was comprised of commingled funds sourced from Investors, Agent Funds, merchant cash advance activity and other sources. Notably, only one day prior to making the \$5 million payment to the Trust on July 19, 2018, Par Funding received \$240,000 from Investor Nashi, Inc. The promissory note for this investment is attached as **Exhibit E**. Investor Nashi’s funds were part of the commingled funds used to make the payment to the Trust.

Davis appears to apply an LIBR method of tracing activity in Republic Bank account

#4126 but does not appear to have done the same analysis for the activity in Republic Bank account #4169 or for any other accounts held at other banks. A review of the bank activity in account #4126 across numerous months will demonstrate that it is, for the most part, a sweep account. Funds from merchants, investors and other sources are deposited in #4126 and then transferred to #4169. Typically, if a payment is made from this account, it is only after funds have been transferred in from #4169. While I agree #4169 contains commingled funds because it had an opening balance of \$12.9 million, an LIBR analysis would need to be done on this account which would require more than the July snapshot included in the Davis declaration. Additionally, the July snapshot only addresses intra-bank transfers. It is unclear if account #4169 received funds transferred from another account held at another bank. It is not proper to limit the tracing analysis to one bank if such inter-account transfers exist between banks.

The table below reflects the cash balances reflected in both QuickBooks and bank statements for the 3-day period of Davis' July snapshot. It is clear from the table that

	7/17/2018		7/18/2018		7/19/2018	
	QuickBooks	Bank	QuickBooks	Bank	QuickBooks	Bank
Actum ACH	\$ 2,248,856	\$ 2,449,032	\$ 2,269,379	\$ 2,428,032	\$ 2,285,447	\$ 2,469,993
Kotapay	2,409,567	1,904,623	2,404,964	1,849,399	2,394,724	1,817,704
Bancorp - Capital 6468	126,297	126,297	126,297	126,297	126,297	126,297
Bancorp - Operating 6442	100	100	100	100	100	100
TD Bank - Operating 9790	503,752	787,292	344,074	662,740	880,804	945,040
TD Bank - Capital 9807	4,747,917	4,747,917	4,480,930	4,480,930	4,761,839	4,761,839
Republic Bank - Capital 4169	15,673,770	15,673,770	11,222,816	11,222,816	11,403,727	11,403,727
Republic Bank - Operating 4126	(4,695,000)	305,000	245,000	5,245,000	5,000	5,000
	\$21,015,259	\$25,994,031	\$21,093,560	\$26,015,314	\$21,857,938	\$21,529,700

funds existed in other bank accounts that could have been used to make the \$5 million payment to the Trust. Actum and Kotapay received merchant payments and did not receive investor funds. Therefore, those would have been non-commingled funds available to make the payment to the Trust.

Assuming an LIBR analysis was appropriate, it would require looking at all accounts. With respect to payments made to the Trust, as discussed here as well as Lisa McElhone and other entities analyzed in Davis' third declaration, Davis fails to consider all CBSG's

accounts. Instead, an analysis of the cash transactions in all relevant CBSG accounts reflects, on a FIFO basis, that consulting fees were not paid with Investor Funds.

Based on the nature of the MCA business and its cash flows, an LIBR analysis is not appropriate. Investor funds are advanced to merchants¹¹ and then merchants repay the advances plus a factor (together, the Right to Receivable or RTR). The factor is revenue and the cash available to pay interest and principal to investors, operating expenses, related party payments and distributions. Consequently, a FIFO view of investor funds should be considered.

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

- i. The purpose of a for-profit business is to earn a profit.
- ii. To earn a profit, a business must generate revenue.
- iii. For a business to generate revenue, it must have a product or service to sell.
- iv. To have a product or service to sell, it must have the ability to:
 - a. pay the employees who provide the services,
 - b. purchase the inventory, machinery & equipment necessary to manufacture the products they sell,
 - c. purchase and/or lease the real estate necessary to house the inventory and machinery.
 - d. pay other operating expenses or obligations that arise.
- v. To pay for the items above, funds are required.¹²

¹¹ Investor funds used for merchant advances were from pooled funds. There was not a one-to-one relationship between a specific investor and a specific merchant advance.

¹² The source of such funds can come from the business owners or be raised through debt or equity financing. Setting aside creative hybrid models, equity financing entitles investors to a share of the profits and exposes them to potential

- vi. If a business can borrow funds at a lower rate than the return it can generate in the business, it has created leverage. Leverage is an everyday occurrence in the business world.
- vii. Once the funds are received the cycle can begin.

CBSG's business model was to create leverage using funds borrowed from note holders to advance to merchants who in turn would make the requisite payments back to CBSG thus generating revenue.

Applying these basic premises, the borrowed funds begin the cycle and are the first dollars used to fund merchant advances to generate the revenue. This is the very model that supports the use of FIFO as a tracing method for investor funds.

Additionally, it is not economically prudent for CBSG to use borrowed investor funds to first pay expenses rather than generate revenue. Prior to the revised interest rates in 2020, CBSG borrowed funds at an average interest rate of 20% per annum. As such, each dollar borrowed costed on average \$1.20. Using borrowed funds to pay for operating expenses or make distributions would cost an extra \$0.20 per dollar spent. A \$1,000 utility bill paid for with borrowed dollars ultimately costs \$1,200¹³ resulting in an extra \$200 outflow. Conversely, assuming an average factor of 1.37¹⁴, every borrowed dollar advanced to a merchant would generate on average \$1.37. Using the same \$1,000 example, the merchant would receive \$1,000 and repay \$1,370¹⁵, resulting in an extra

losses. Therefore, such investment comes with higher levels of risk and reward. Debt financing on the other hand provides a stated return in the form of an interest rate on the funds lent to the business.

¹³ The actual $\$1,000 \times 1.20 = \$1,200$ or (the \$1,000 utility bill + \$200 in interest on the investor funds not on the street generating cash flow).

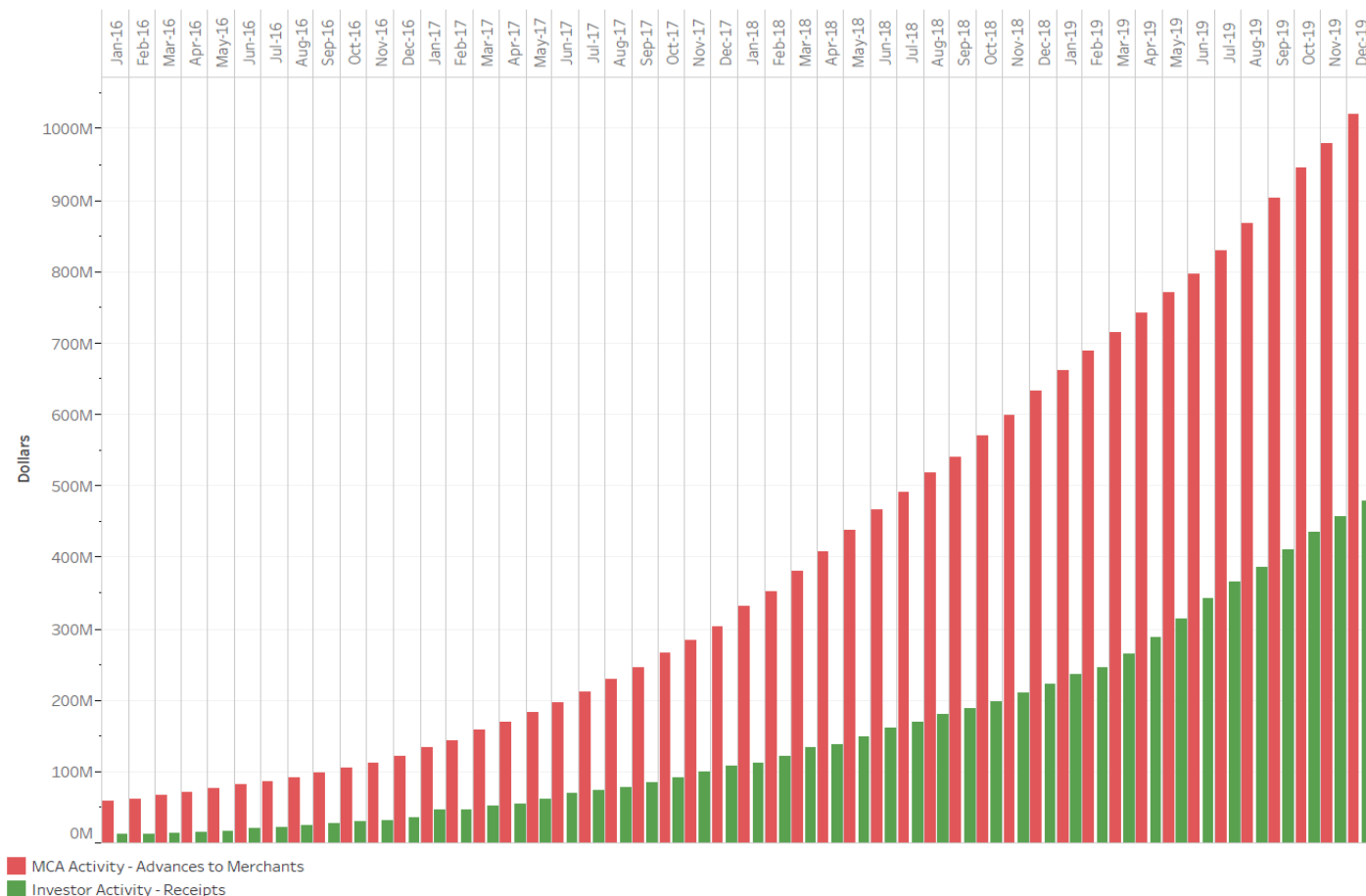
¹⁴ This is lower than the actual average factor calculated in the Declaration of Joel Glick dated April 15, 2021, at paragraph 84.

¹⁵ The actual $\$1,000 \times 1.37 = \$1,370$ repaid by the merchant less the \$200 in interest on the investor funds.

\$370 cash inflow. After payment of \$200 of interest, there would be a net cash inflow of \$170¹⁶, resulting in a \$370¹⁷ swing in cashflow.

The following chart compares cumulative merchant advances¹⁸ and cumulative investor receipts monthly from January 1, 2016, to December 31, 2019.¹⁹ The chart reflects the increasing difference between the cumulative merchant advances and the cumulative Investor receipts (“Merchant Advances in Excess of Investor Receipts”) over time. Funding of merchant advances outpaced the borrowing of investor funds. By December

Cumulative Use of Note Holder Funds



¹⁶ Due to the merchant advances having a shorter-term than the investor fixed term promissory notes, it was possible for CBSG to advance and collect merchant funds more than once before any investor principal obligations matured. Therefore, the \$1.37 is understated and would result in cashflow in excess of \$1.37 and therefore net cashflow in excess of \$170.

¹⁷ \$170 minus a negative \$200 = \$370

¹⁸ As merchant advances are outflows and investor receipts are inflows, for purposes of comparing cashflows of opposite direction, the absolute dollar value was used.

¹⁹ Amounts are cumulative from inception however due to size constraints of a bar chart, only 2016 to 2019 is reflected.

31, 2019, Merchant Advances in Excess of Investor Receipts totaled approximately \$542 million.

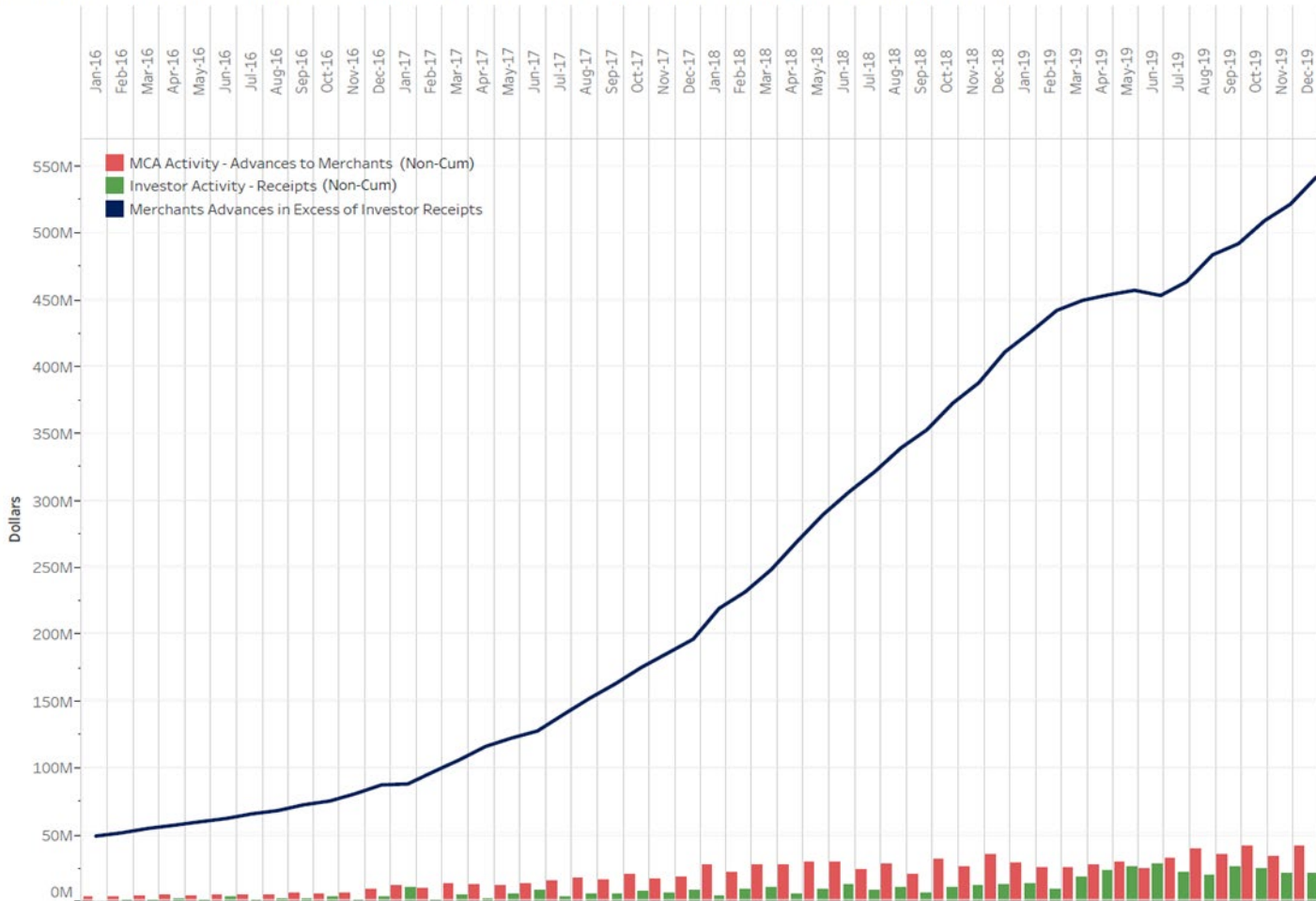
On a FIFO basis, this chart illustrates investor receipts were subsumed by advances to merchants. As such, no investor funds would be available to pay for operating expenses, consulting fees, payments to related parties or principal and interest payments to investors. During 2018, CBSG began depositing investor funds only twice a month around the 10th and 23rd, or within a day or two of those days, yet continued to fund merchant advances daily. So, although on certain days of the month there were higher influxes of investor funds, as such, as soon as investor dollars came in, they were realistically already earmarked to fund merchant advances. According to the former CFO, Joe Cole, consulting fees were typically paid the first week of the month following the close of a quarter.²⁰ An analysis of CBSG's financials, on a FIFO basis, demonstrates that investor funds had been exhausted or committed to fund merchant advances, and therefore not available for use to pay consulting fees by the time CBSG was obligated to pay them during the first week of the month following the close of a quarter.

The following chart superimposes Merchant Advances in Excess of Investor Receipts from the previous chart (depicted as the dark blue line) on top of a comparison of monthly merchant advances and monthly investor receipts from January 1, 2016, to December 31, 2019. This comparison depicts the second True/False test described in a previously filed declaration.²¹ In each month reflected in this chart, except June 2019, merchant advances exceeded investor receipts. In June 2019, investor receipts exceeded merchant advances by \$3.9 million. Because merchant advances are committed to in advance of the receipt of investor funds, on a FIFO basis, the \$3.9 million should be applied against

²⁰ See transcript from the Remote Videotaped Deposition of Joseph Cole Barleta at Page 25, Lines 4 – 9 and Page 143, Line 5 – 8.

²¹ See Declaration of Joel Glick dated April 15, 2021, at paragraph 37. *“The second test was to determine if monthly merchant advances exceeded monthly investor dollars received. An answer of True meant that every dollar of investor money received would have been subsumed by merchant advances and, therefore, not available to pay principal and interest to other investors. Of the 96 months of CBSG’s business life through December 31, 2019, the test returned five (5) false results; three times in 2012, which is and could be expected; once in March 2015 (when the test failed by approximately \$39,000); and once in June 2019 (when investor dollars received exceeded merchant advances by \$3.9M).”* The chart in this declaration only reflects the 48 months through December 31, 2019.

Merchants Advances in Excess of Investor Receipts - Monthly Cumulative from Inception

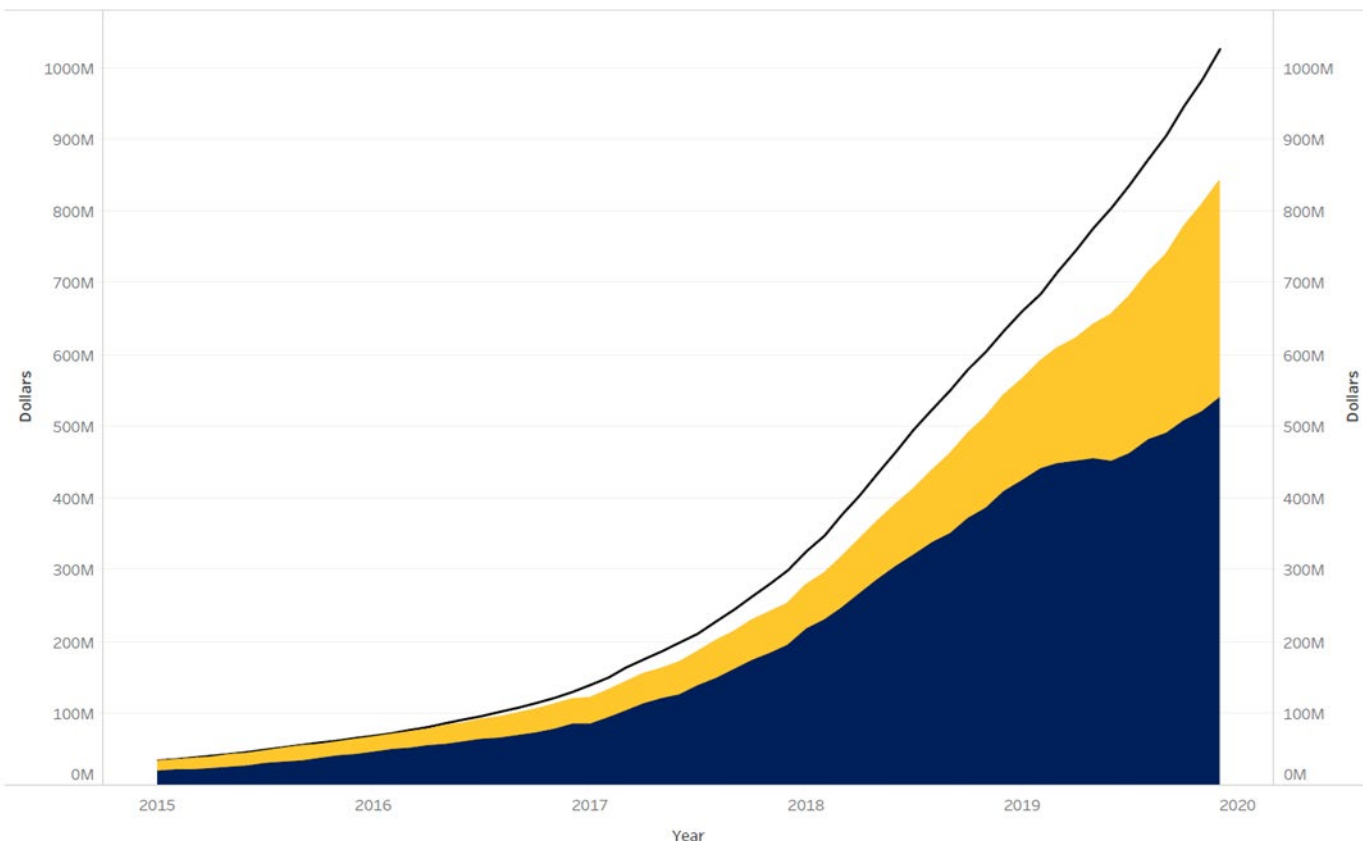


the existing excess advances. As seen above, the impact was to decrease the Merchant Advances in Excess of Investor Receipts from \$457.1 million to \$453.2 million (the dark blue line) but does not impact the premise all investor receipts were subsumed by merchant advances.

The chart below addresses the use of proceeds from the repayment of merchant advances (“MCA Activity – Payments from Merchants”). It reflects the cumulative MCA Activity – Payments from Merchants, Merchant Advances in Excess of Investor Receipts

and the Use of Merchant Repayments^{22,23} from January 1, 2015, to December 31, 2019²⁴. The white area under the black line reflects excess cash.

Use of Merchants' Repayments



- Use of Merchants Repayment*
- Merchants Advances in Excess of Investor Receipts
- MCA Activity - Payments from Merchants

* "Use of Merchants Repayment" includes Investor Principal & Interest, Operating Expenses, Payments to FSP & RMR, Joint Funding Activities, and Commission and Fees to Non-Related Entities

²² Although separately identified by DSI, commission and fees to non-related parties are considered part of operating expenses. Likewise, although FSP and RMR are related parties, it is our understanding they were providing arms-length services and therefore are also being considered part of normal operating expenses.

²³ As payments from merchants are inflows and the use of such proceeds are outflows, for purposes of comparing cashflows of opposite direction, the absolute dollar value was used.

²⁴ Amounts are cumulative from inception however due to size constraints, only 2016 to 2019 is reflected.

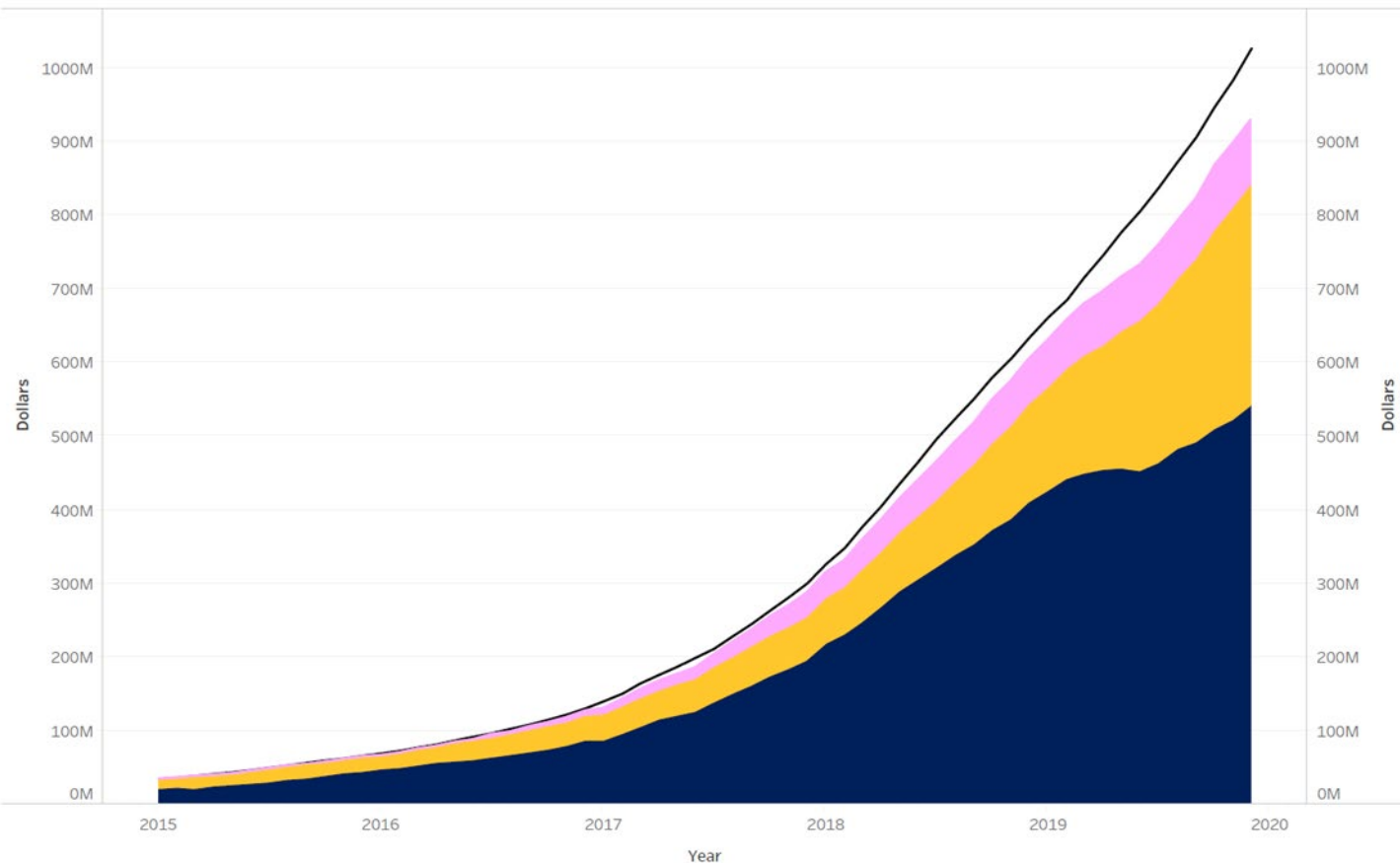
Attached as compound Exhibit 3 to this declaration are bar charts, for each of the years 2015 through 2019, reflecting weekly merchant repayments received and the average weekly repayments for the year.

The following chart is identical to the previous²⁵ however adds cumulative consulting fees paid as a separate layer²⁶. The white area under the black line continues to reflect excess cash after the payment of these consulting fees.

²⁵ As well as each footnote related to the chart or the discussion thereof.

²⁶ The order in which the use of merchant repayments has been layered is not suggestive of the order in which they were actually paid.

Use of Merchants' Repayments



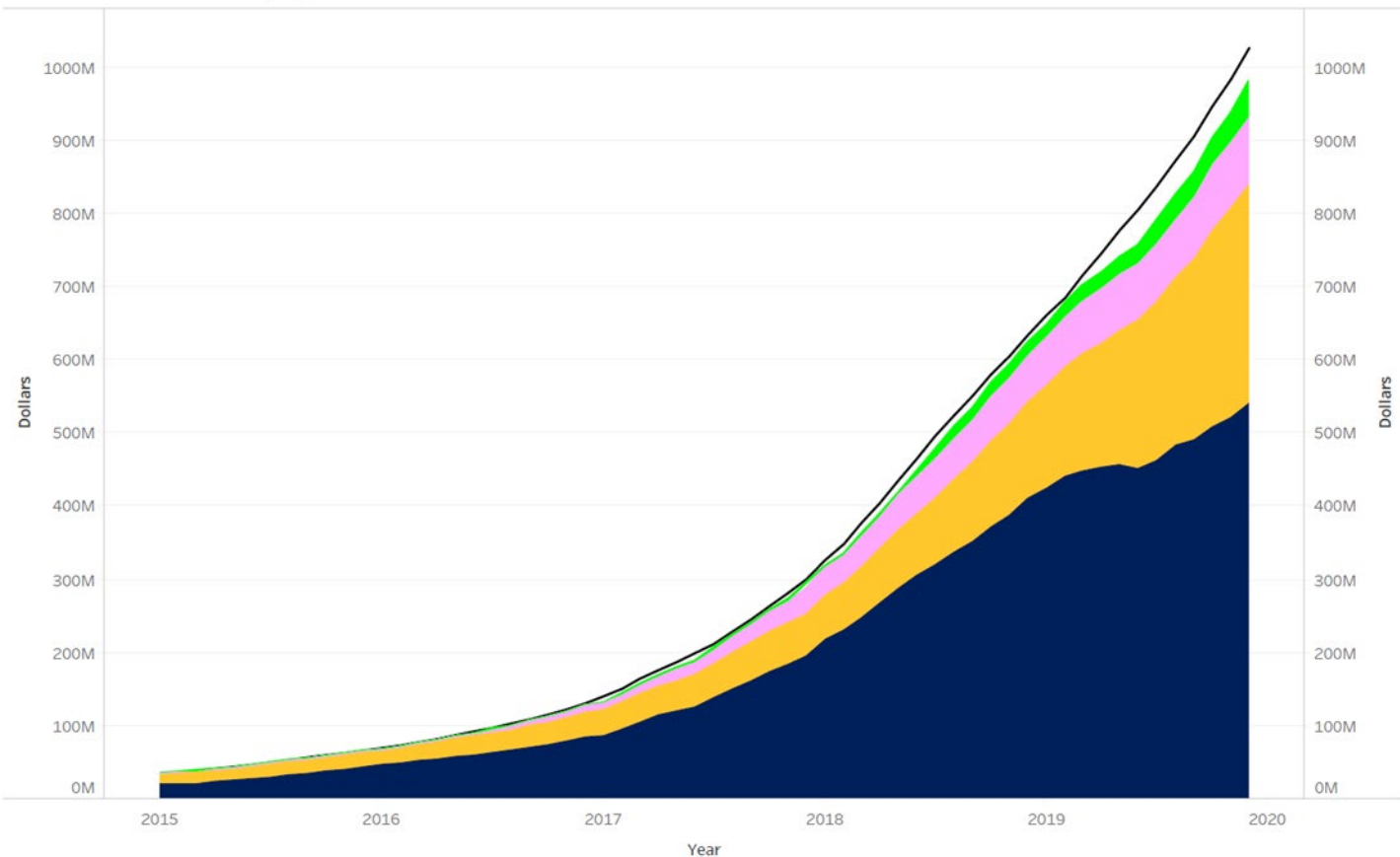
■ Consulting
■ Use of Merchants Repayment*
■ Merchants Advances in Excess of Investor Receipts
■ MCA Activity - Payments from Merchants

* "Use of Merchants Repayment" includes Investor Principal & Interest, Operating Expenses, Payments to FSP & RMR, Joint Funding Activities, and Commission and Fees to Non-Related Entities

The following chart is identical to the previous²⁷ however adds cumulative payments to related parties as a separate layer. The white area under the black line continues to reflect excess cash after these payments.

²⁷ As well as each footnote related to the chart or the discussion thereof.

Use of Merchants' Repayments

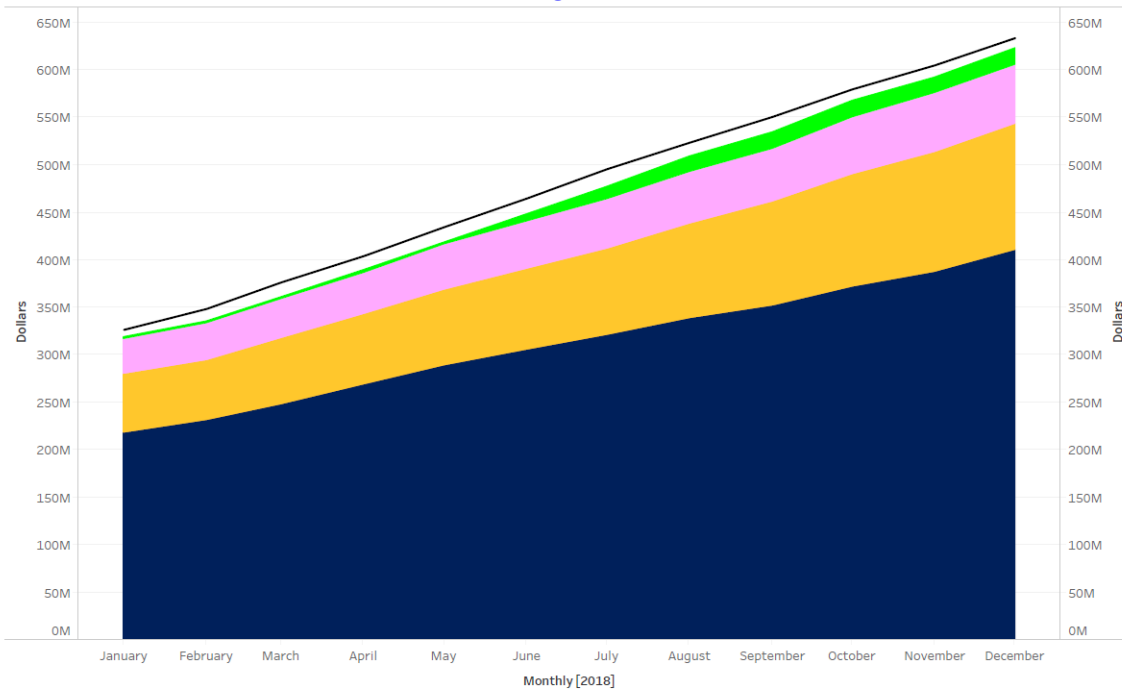


- Related Parties
- Consulting
- Use of Merchants Repayment*
- Merchants Advances in Excess of Investor Receipts
- MCA Activity - Payments from Merchants

* "Use of Merchants Repayment" includes Investor Principal & Interest, Operating Expenses, Payments to FSP & RMR, Joint Funding Activities, and Commission and Fees to Non-Related Entities

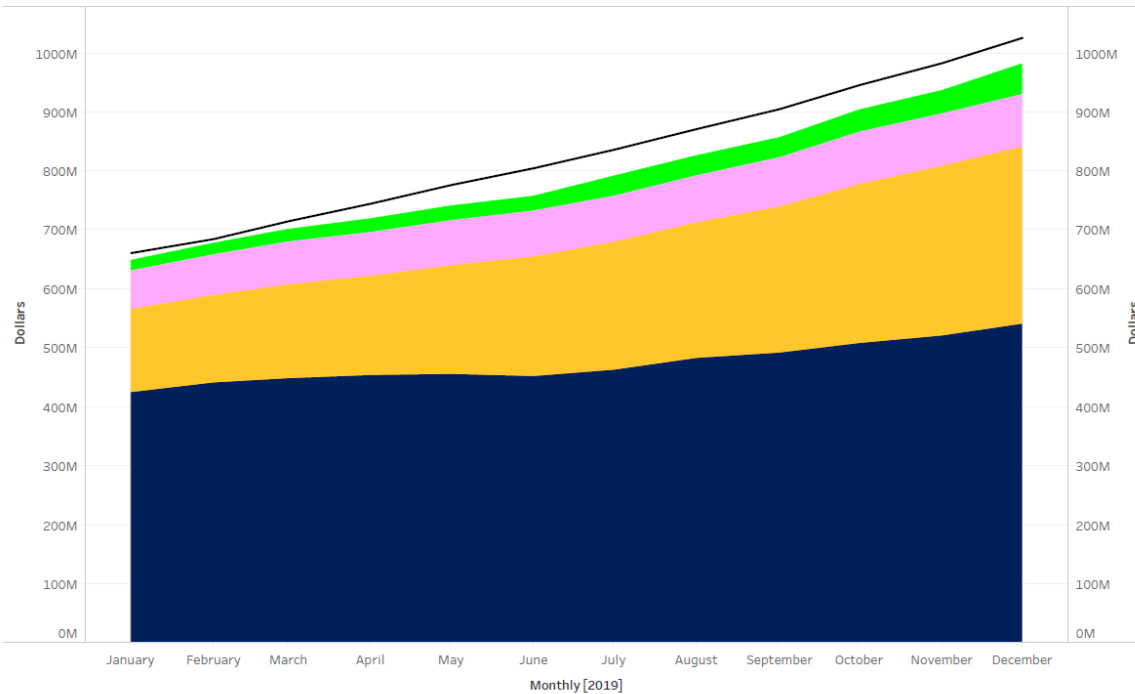
The following two charts are excerpts from the previous chart enlarging 2018 and 2019, respectively, the last two years with significant growth in merchant activity.

²⁸ A data table reflecting the dollars associated with the above chart is attached as Exhibit 5



■ Related Parties
■ Consulting
■ Use of Merchants Repayment*
■ Merchants Advances in Excess of Investor Receipts
■ MCA Activity - Payments from Merchants
 * "Use of Merchants Repayment" includes Investor Principal & Interest, Operating Expenses, Payments to FSP & RMR, Joint Funding Activities, and Commission and Fees to Non-Related Entities

Use of Merchants' Repayments - 2019



■ Related Parties
■ Consulting
■ Use of Merchants Repayment*
■ Merchants Advances in Excess of Investor Receipts
■ MCA Activity - Payments from Merchants
 * "Use of Merchants Repayment" includes Investor Principal & Interest, Operating Expenses, Payments to FSP & RMR, Joint Funding Activities, and Commission and Fees to Non-Related Entities

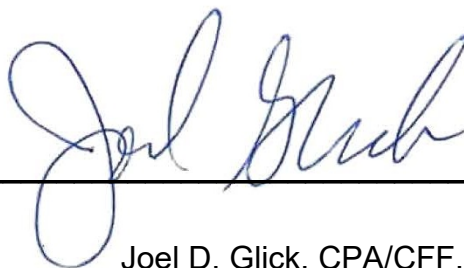
These charts reflect a relatively stable or increasing cash balance over the two-year period.

It has been criticized that CBSG did not maintain sufficient cash balances. Cash is inventory for an MCA business. Carrying as low a cash reserve as is necessary to cover operating expenses and to fund new merchant activity is the goal of the company.

Attached as compound Exhibit 4 to this declaration are charts for each the years 2015 through 2019 reflecting the weekly cash balance and the average weekly cash balance for the year. The average weekly cash balance for 2018 and 2019 were \$13.5 million and \$33.1 million, respectively.

EXPERT COMPENSATION

I am being compensated at my standard rate of \$495 per hour, while other members of our firm who worked on this engagement are compensated at \$85 to \$480 per hour. Neither my compensation nor the compensation of the other BPB personnel who worked on this assignment is contingent on the outcome of this litigation.



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



CURRICULUM VITAE

JOEL D. GLICK

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

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

Practice areas include:

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

Business Background:

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

Qualifications

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

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

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

Educational Background

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

Nova Southeastern University, 1992

Publications

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

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

Professional Memberships

American Institute of Certified Public Accountants

Florida Institute of Certified Public Accountants

Association of Certified Fraud Examiners

REPRESENTATIVE ENGAGEMENTS

Bankruptcy, Insolvency and Receiverships

Rothstein Rosenfeldt Adler, PA: Appointed as forensic accountants for the court-appointed Trustee of the estate of Rothstein Rosenfeldt Adler, PA, in connection with, among other things, the forensic investigation of a \$1.4 billion Ponzi scheme

Fontainebleau Las Vegas: Retained by Defendants to review claims, valued at nearly \$1.0 billion, and the quantification of alleged economic damages associated with the pending bankruptcy of the \$3.0 billion resort casino development in Las Vegas, Nevada.

Puig Development: Retained as accountants to Unsecured Creditors Committee in connection with the bankruptcy of a developer involved in the conversion of rental properties into condominium units throughout the state of Florida

Lancer Partners: Appointed as forensic accountants to the court-appointed Receiver for Lancer Partners, Lancer Offshore and Omnifund, a group of hedge funds with reported assets in excess of \$1 billion, in connection with an SEC action to investigate the funds' scheme to manipulate trading and subsequently overstate the value of thinly traded securities.

Forensic Investigations

Construction Cost Investigation: Retained by the international owner of a high-end Miami Beach hotel to investigate and analyze the costs associated with a ballooning renovation budget.

Construction Cost Investigation: Retained by the international owner/operator group of a high-end hotel/condominium in South Beach to investigate and analyze the costs associated with a ballooning project budget.

Fraud Investigation / Earn-out Dispute: Retained by Defendant / Counter Plaintiff to refute claims by Plaintiff involving the failure to pay an earn-out in connection with the purchase of a seafood distributor by a publicly traded food wholesaler and to investigate and quantify the impact of pre-acquisition fraud alleged by Defendant / Counter Plaintiff.

Fraud Investigation: Retained by financial partner of a multi-million real estate development project to investigate claims of fraud and self-dealing by the project's operating partner.

Bank Investigation: Retained by the directors of an international bank by order of the Office of Comptroller of the Currency (OCC) to analyze bank account transactions, transactional relationships among account holders, unauthorized loan transactions, as well as potential unauthorized transactions involving the Bank's president and/or loan customers/account holders at the Bank

Alter Ego Investigation: Retained by Plaintiff to conduct investigation into issues that would determine whether Plaintiff could "pierce the corporate veil" in connection with the recovery of a judgment against a subsidiary of the Defendant.

Corporate Investigation: Jointly retained by two parties involved in a contractual dispute to investigate and identify any deviations from terms agreed to by the parties in connection with the

resolution of a disbursement of funds to franchisees by a national fast food chain.

Employee Embezzlement Investigations: Retained by multiple companies in connection with claims of embezzlement or defalcation of corporate assets by employees.

Economic Damages / Lost Profits

Lost Profits / Breach of Contract: Retained by the Plaintiff, a reseller of long distance service, to determine lost profits in connection with a breach of contract by its supplier of international long distance service

Lost Profits / Product Liability: Retained by Defendant, a chemical manufacturer, in connection with a customer claim for lost profits arising from the sale of alleged poor quality chemicals

Lost Profits / Breach of Contract: Retained by Defendant, a cruise line, in a breach of contract action involving a claim for lost profits related to the termination of an agreement with a supplier to provide in-cabin video services.

Lost Profits / Breach of Contract: Retained by Plaintiff to calculate and testify as to damages purportedly suffered by the refurbisher of electronic equipment in connection with a dispute with national distributor of cordless telephones.

Lost Profits / Lender Liability: Retained by a Top 5 commercial bank Defendant in a lender liability lawsuit in which a bedding manufacturer purportedly suffered lost profits as a result its lender's decision to accelerate the collection of a loan that had gone into default.

Lost Profits / Tort Claim: Retained by the Defendant in connection with a claim for lost profits brought by a company in the promotional products industry that was purportedly damaged as a result of the alleged negligent conduct of a computer products manufacturer.

Other Disputes

Post-Acquisition Dispute: Represented the Buyer in a post-acquisition dispute involving the calculation of an earn-out payment purportedly owed to the Seller of an agricultural business.

Post-Acquisition Dispute: Represented the Buyer in a post-acquisition dispute involving the investigation and quantification of amounts owed due to breaches of the seller's representations and warranties of the asset purchase agreement.

Insurance Dispute: Retained by Insurance Company in connection with a claim for lost inventory alleged by a tire recycler in connection with a fire.

Joel Glick
Listing Of Cases Testified In
As An Expert Witness

COURT	JUDGE	CASE NAME/SUBJECT MATTER	REPRESENTED	YEAR
In The Circuit Court of the Twentieth Judicial Circuit In And For Lee County, Florida	Hon. Keith R. Kyle	A&E Adventures, LLC, a Florida limited liability company, Plaintiff v. GCTC Holdings, LLC, a Delaware limited liability company, Defendant Case No. 19-CA-8510 (Trial)	A&E Adventures, LLC	2021
In The United States District Court Southern District of Florida	Hon. Aileen M. Cannon	JUST PLAY, LLC, Plaintiff, vs. FITZMARK, INC., Defendant. Case No. 20-80663-CIV (Deposition)	JUST PLAY, LLC	2021
In The United States District Court Middle District Of Tennessee Nashville Division	Hon. Eli J. Richardson	AUTOMOTIVE EXPERTS, INC. Plaintiff, vs. KEITH KALLBERG, KATHRYN KALLBERG, KALLBERG EMERGENCY MANAGEMENT, INC., MATTHEW KALLBERG, and LISA KALLBERG Defendants Case No. 19-CA-8510 (Deposition)	Keith Kallberg, Kathryn Kallberg, Kallberg Emergency Management, Inc., Matthew Kallberg, and Lisa Kallberg	2020
In The Circuit Court of the Twentieth Judicial Circuit In And For Lee County, Florida	Hon. Keith R. Kyle	A&E Adventures, LLC, a Florida limited liability company, Plaintiff v. GCTC Holdings, LLC, a Delaware limited liability company, Defendant Case No. 19-CA-8510 (Deposition)	A&E Adventures, LLC	2020
American Arbitration Association	Hon. Joshua W. Martin, III	U.S. ECOGEN POLK, LLC, a Delaware limited liability company, Claimant and Counterclaim Respondent, vs. DUKE ENERGY FLORIDA, LLC (f/k/a Florida Power Corporation, Inc., a Florida limited liability company), Respondent and Counterclaimant. Case No. 01-19-0001-0249 (Trial)	U.S. ECOGEN POLK, LLC	2020
In The United States District Court Southern District of Florida	Hon. Donald M. Middlebrooks	LB Pharma Serves, LLC v KrunchCash, LLC and Jeffrey Hackman 9:20-cv-80141-DMM (Deposition)	LB Pharma Service, LLC	2020
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable William Thomas	D.P. Monaco, LLC, a Florida limited liability company, Plaintiff, vs. Chateau Beach, LLC, a Florida limited liability company, and Coastal Construction Group of South Florida, Inc., a Florida corporation, Defendants (Deposition)	D.P. Monaco, LLC	2019
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable Jacqueline Hogan Scola	SBM ACQUISITION 2, LLC, a Florida limited liability company, as substituted Party Plaintiff to METROPOLITAN MTG. CO. OF MIAMI, a Florida Corporation, Plaintiff, vs. IVOR HANO ROSE and RITA STARR, his wife, MICHAEL A. STERN, an individual; 900 COLLINS 10 AVE., LLC, a dissolved Florida limited liability company; CITY OF MIAMI BEACH, FLORIDA, CITY OF MIAMI, FLORIDA, Defendants (Deposition)	METROPOLITAN MTG. CO. OF MIAMI	2018

Joel Glick
Listing Of Cases Testified In
As An Expert Witness

COURT	JUDGE	CASE NAME/SUBJECT MATTER	REPRESENTED	YEAR
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable William Thomas	CRAIG A. FINGOLD, individually and as TRUSTEE of the FINGOLD FAMILY 2004 TRUST u/a/d JUNE 10, 2004, individually and derivatively in the right and for the benefit of KF PROPERTY HOLDINGS, LLC, a Florida Limited Liability Company Plaintiffs, vs. R. LEE KRELSTEIN, an Individual, R. LEE KRELSTEIN, as TRUSTEE of the R. LEE KRELSTEIN DECLARATION OF TRUST DATED SEPTEMBER 13, 2007, and L & L INTERNATIONAL I, L.L.C., a Florida Limited Liability Company, Defendants. (Deposition)	Craig Fingold	2018
In The Circuit Court, Seventh Judicial Circuit, In And For Volusia County, Florida	None assigned at time of deposition	Exxelia Usa Holding, Inc. And Exxelia-RAF Tabtronics, LLC, Plaintiffs, v. Robert Malkani, James Tabbi, RBM Technologies, Inc., Attractive Technologies, Inc., Defendants. (Deposition)	Exxelia Usa Holding, Inc. And Exxelia-RAF Tabtronics, LLC	2018
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable John W. Thornton	JEANETTE RAIJMAN BIBLIOWICZ, Individually and derivatively as Co-Trustee of the 2003 Waserstein Family Trust in the Right of and for the Benefit of the Miami Lakes Office Center, Inc, v. RICHARD WASERSTEIN, and individual, ALAN WASERSTEIN, an individual and as Trustee of the ATS TRUST; CHARLES WASERSTEIN, an individual; MARTA WASERSTEIN, an individual, et al., (Deposition)	Jeanette Rajjman Bibliowicz	2017
United States District Court Southern District of Florida Miami Division	Honorable Marcia G. Cooke /Honorable Edwin G. Torres	Jonathan B. Kling v. Jon Bourbeau, P.A. and Jon Bourbeau Case no. 15-22439-CIV-Cooke/Torres (Deposition)	Jon Bourbeau, P.A. and Jon Bourbeau	2016
In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, FL	Honorable Rosa I. Rodriguez	Matthew Rocca v. Victor Ronas individually, as Co-Personal Representative of the Estate of Sidney Boyansky, etc., Irene Boyansky, individually, and as Co-Personal Representatives of the Estate of Sidney Boyansky, etc., and Emile Martin, individually, and as successor Co-Trustee of the Second Restated Sidney Boyansky Revocable Trust, et al Local Case No.11-596-CP-02 (Deposition)	Ronas, Boyansky & Martin	2015
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Adv. No 11-03014-BKC-RBR-A RRA, Stettin as Trustee v Frank Preve et al [ECF No. 67] (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2013
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Approve Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed Jointly by the Trustee and the Official Committee of Unsecured Creditors (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2013

Joel Glick
Listing Of Cases Testified In
As An Expert Witness

COURT	JUDGE	CASE NAME/SUBJECT MATTER	REPRESENTED	YEAR
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Approve Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed Jointly by the Trustee and the Official Committee of Unsecured Creditors (Hearing)	The Honorable Herbert Stettin as Chapter 11 Trustee	2013
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Motion to Approve Settlement and Compromise with (i) Centurion Structured Growth LLC, Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Value Arbitrage Fund LP, and Level 3 Capital Fund LP (the "Funds"); and (ii) Regent Capital Partners LLC, Mark Nordlicht and his wife Dahlia Kalter Nordlicht, Murray Huberfeld and his wife Laura Huberfeld, David Bodner and his wife Naomi Bodner, and the Bodner Family Foundation [ECF No. 3185] (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2012
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Hearing on Motion to Approve Settlement and Compromise with (i) Centurion Structured Growth LLC, Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Value Arbitrage Fund LP, and Level 3 Capital Fund LP (the "Funds"); and (ii) Regent Capital Partners LLC, Mark Nordlicht and his wife Dahlia Kalter Nordlicht, Murray Huberfeld and his wife Laura Huberfeld, David Bodner and his wife Naomi Bodner, and the Bodner Family Foundation [ECF No. 3185] (Hearing)	The Honorable Herbert Stettin as Chapter 11 Trustee	2012
United States Bankruptcy Court Southern District of Florida, Ft. Lauderdale Division	Honorable Raymond B. Ray	Rothstein Rosenfeldt Adler, P.A., Debtor Chapter 11 Bankruptcy Case No.09-34791-BKC-RBR Motion to Substantively Consolidate Alleged Debtor Banyon 1030-32, LLC with and Into the Debtor's Bankruptcy Estate Nunc Pro Tunc to November 30, 2009 (Deposition)	The Honorable Herbert Stettin as Chapter 11 Trustee	2011
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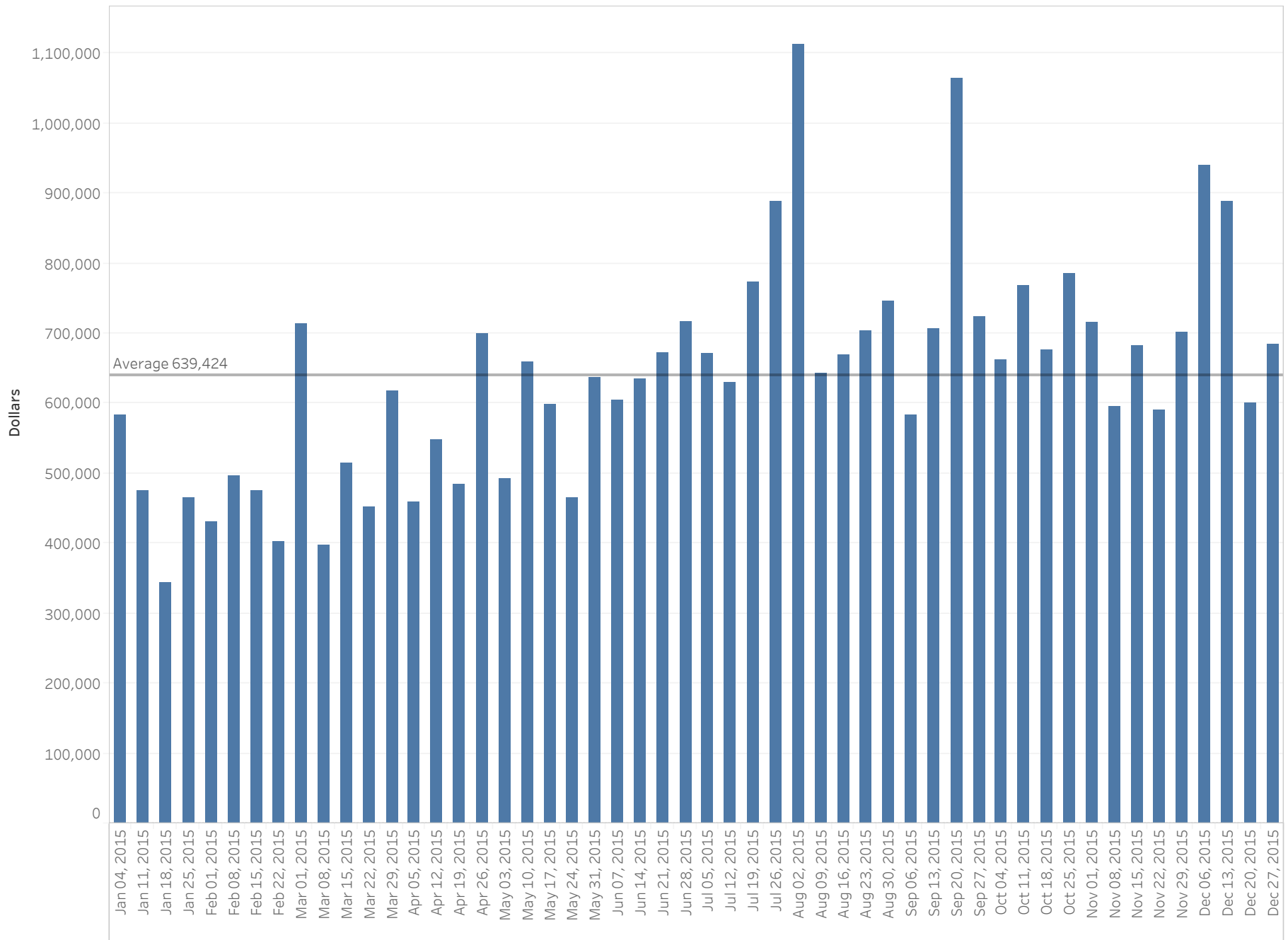
Exhibit 2 – Documents Considered

1. Various docket entries (DE) filed in this matter:
 - i. COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF (DE 1)
 - ii. ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S (DE 36)
 - iii. MOTION FOR APPOINTMENT OF RECEIVER
 - iv. RECEIVER RYAN K. STUMPHAUZER'S INTERIM STATUS REPORT DATED OCTOBER 6, 2020 (DE 305)
 - v. DEFENDANTS' JOINT RESPONSE TO RECEIVER'S INTERIM STATUS REPORT DATED OCTOBER 6, 2020 [DE 305] (DE 355)
 - vi. RECEIVER RYAN K. STUMPHAUZER'S MOTION AND MEMORANDUM OF LAW TO EXPAND RECEIVERSHIP ESTATE (DE 357)
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 - i. Exhibit 1 DECLARATION OF BRADLEY D. SHARP (DE 426-1)
 - ix. DEFENDANTS' MOTION TO COMPEL THE RECEIVER TO PRODUCE DOCUMENTS RESPONSIVE TO DEFENDANT LISA MCELHONE'S REQUESTS FOR PRODUCTION OF DOCUMENTS (DE 459)
 - x. RECEIVER RYAN K. STUMPHAUZER'S QUARTERLY STATUS REPORT DATED FEBRUARY 1, 2021 (DE 482)
 - i. Exhibit 1 STANDARDIZED FUND ACCOUNTING REPORT, dated 02/01/20 (DE 482-1)
 - ii. Exhibit 2 DECLARATION OF BRADLEY D. SHARP, dated 02/01/20 (DE 482-2)
 - xi. RECEIVER, RYAN K. STUMPHAUZER'S SECOND APPLICATION FOR ALLOWANCE AND PAYMENT OF PROFESSIONALS' FEES AND REIMBURSEMENT OF EXPENSES FOR OCTOBER 1, 2020 – DECEMBER 31, 2020 (DE 491)
2. Transcript of December 15, 2020 Status Videoconference
3. Declaration of:
 - i. James Klenk, dated August 17, 2020

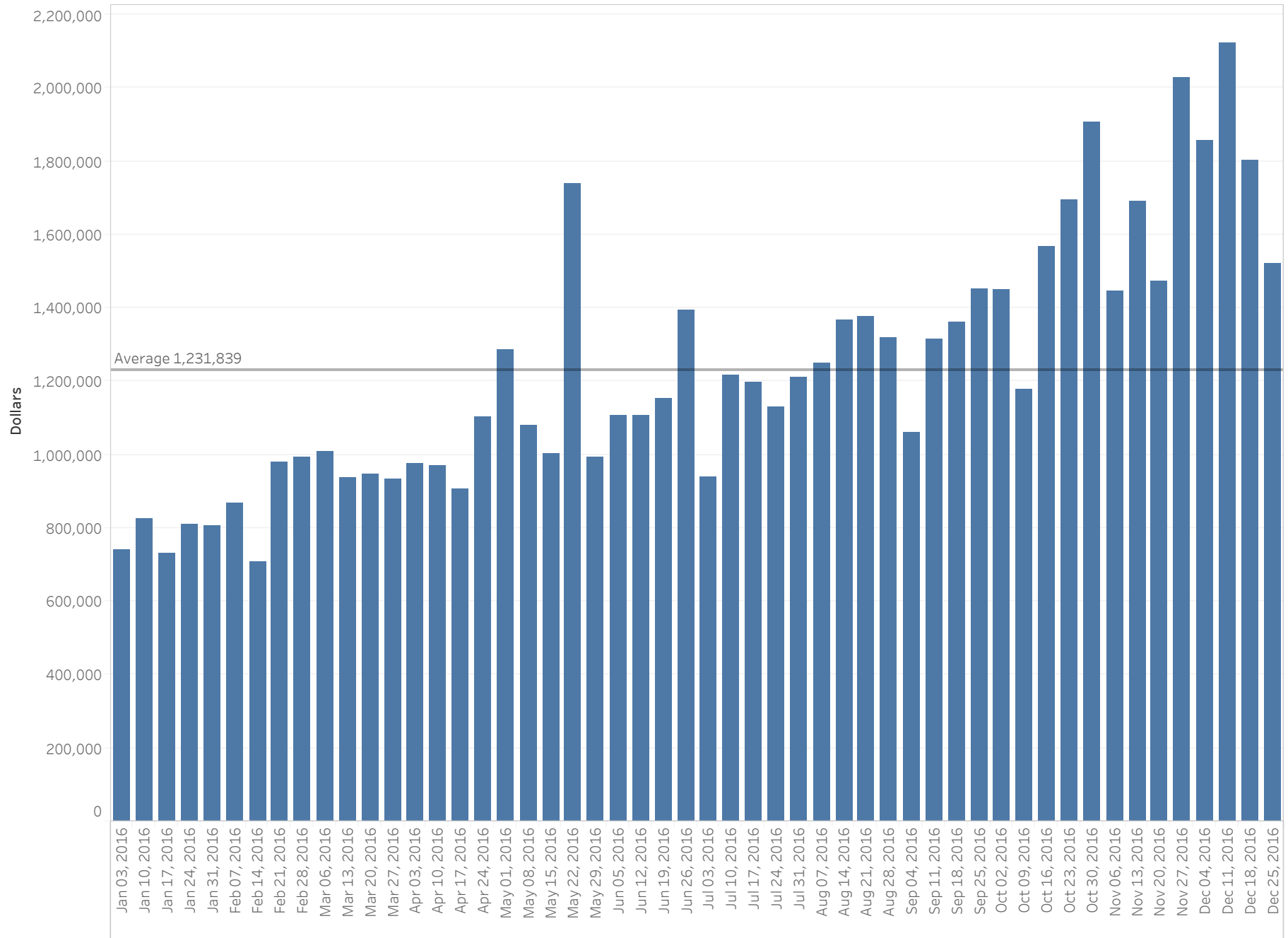
Exhibit 2 – Documents Considered

- ii. Melissa Davis, dated:
 - 1. July 23, 2020
 - 2. August 4, 2020
 - 3. August 26, 2020
- 4. Deposition testimony of:
 - a. Joseph Cole Barleta, dated June 2, 2021
 - b. James Klenk, dated July 26, 2021
- 5. QuickBooks accounting records for CBSG (inception to July 27, 2020)
- 6. Bank statements and ACH vendor statements for CBSG
- 7. Various noteholder promissory notes
- 8. CBSG internally prepared spreadsheets (including but not limited to)
 - a. Daily Deposit Logs
 - b. Investor Logs
 - c. Bank Activity Log
- 9. Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”)
- 10. CBSG Funding Analysis, also known as the Key Performance Indicators (hereinafter “KPI Report”) for the following cumulative periods from January 1, 2013 to:
 - a. September 2018
 - b. May 2019
 - c. June 2019
 - d. February 2020
 - e. June 2020
- 11. Consulting Agreements by and between CBSG and:
 - a. Isaac Shehebar, dated January 10, 2017
 - b. GEMJ Chehebar GRAT, LLC, dated January 10, 2017
 - c. Perry Abbonizio, dated February 2017
 - d. Lindsey Blake Inc., February 17, 2017
 - e. Beta Abigail, Inc., dated January 1, 2018
 - f. Eagle Six Consultants, Inc., July 1, 2018

Merchants Weekly Repayments - 2015



Merchants Weekly Repayments - 2016



Merchants Weekly Repayments - 2017

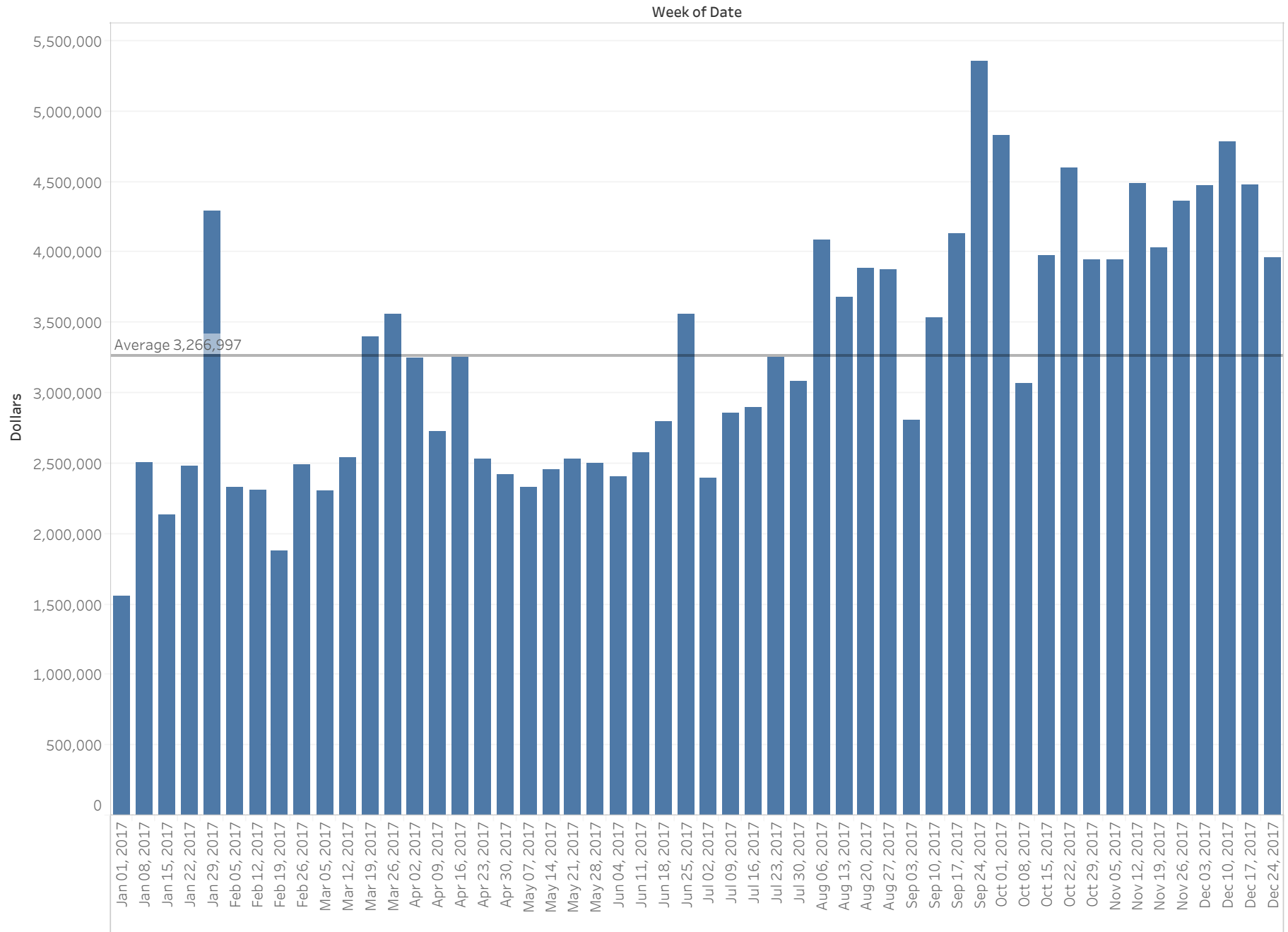
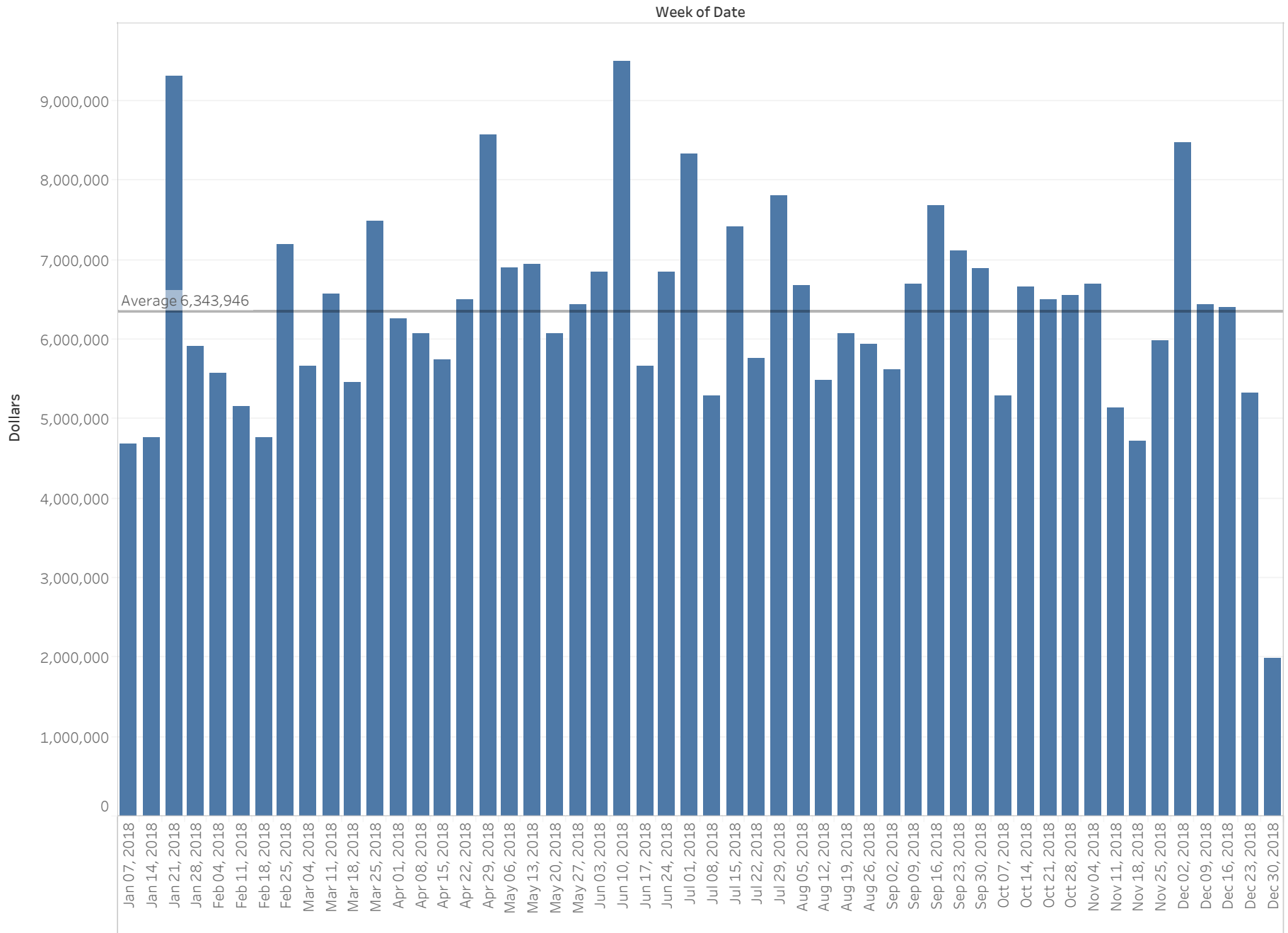


EXHIBIT 3

Merchants Weekly Repayments - 2018



Merchants Weekly Repayments - 2019

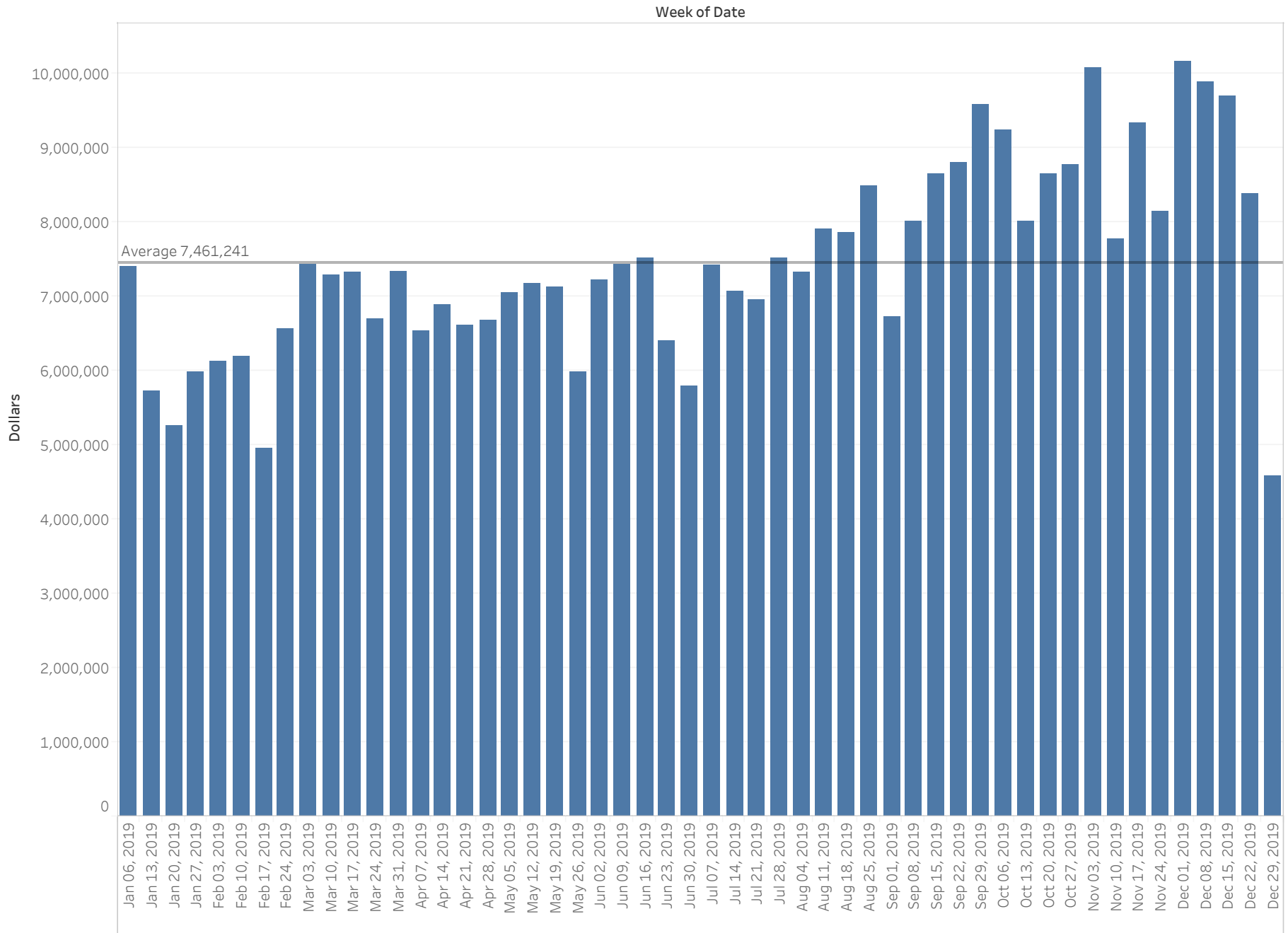


EXHIBIT 4

Weekly Cash Balance - 2015

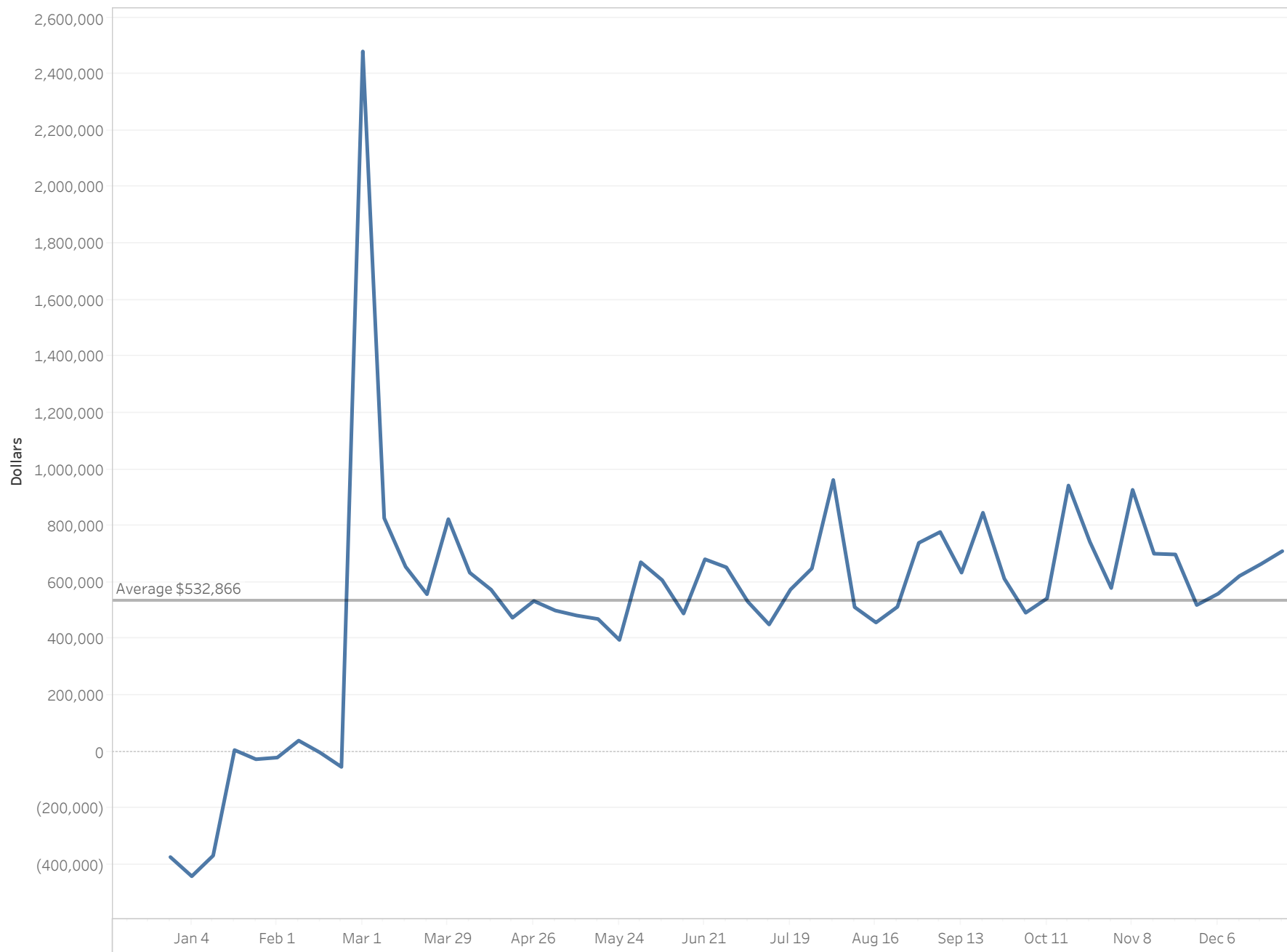


EXHIBIT 4

Weekly Cash Balance - 2016

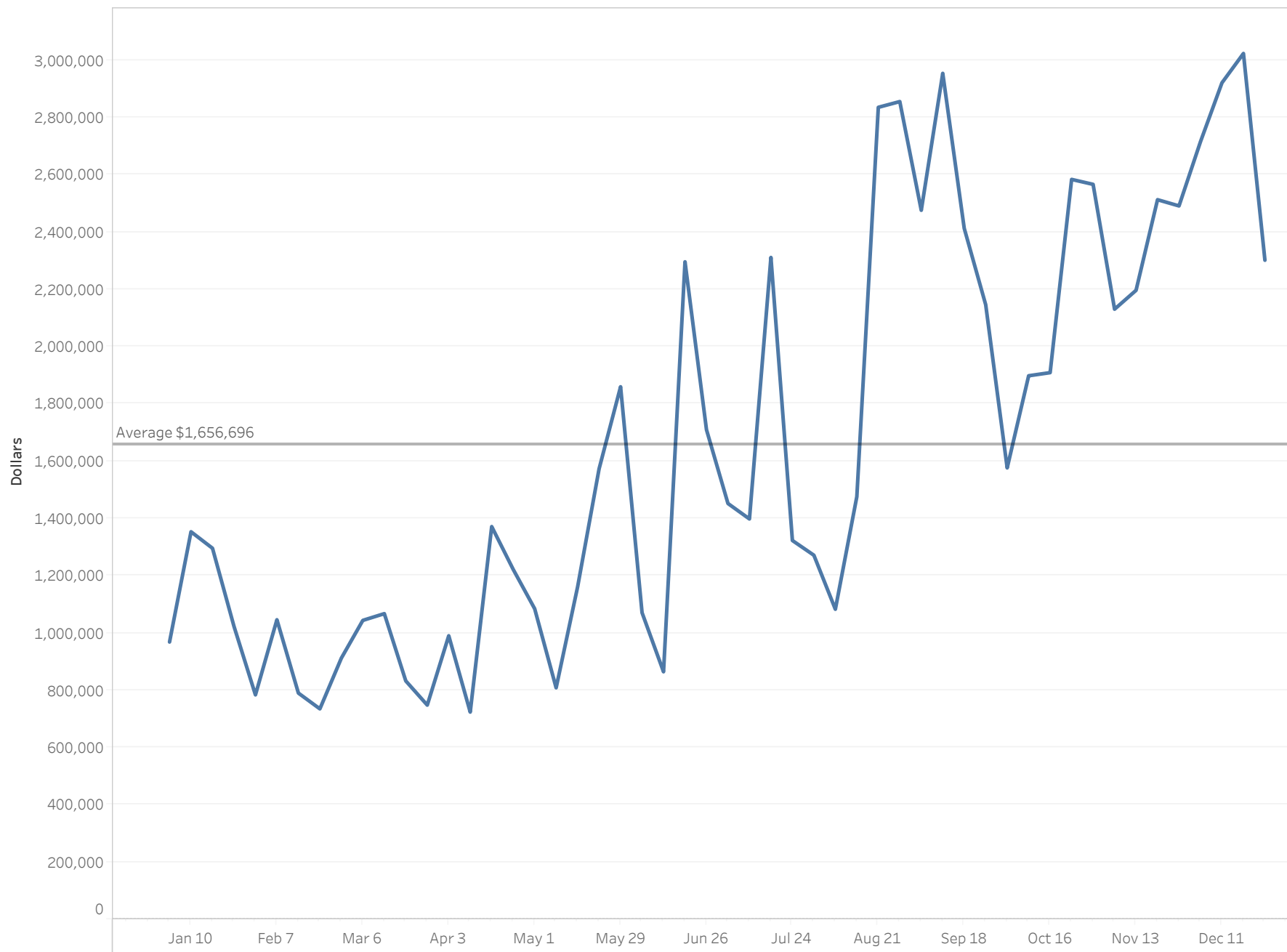


EXHIBIT 4

Weekly Cash Balance - 2017

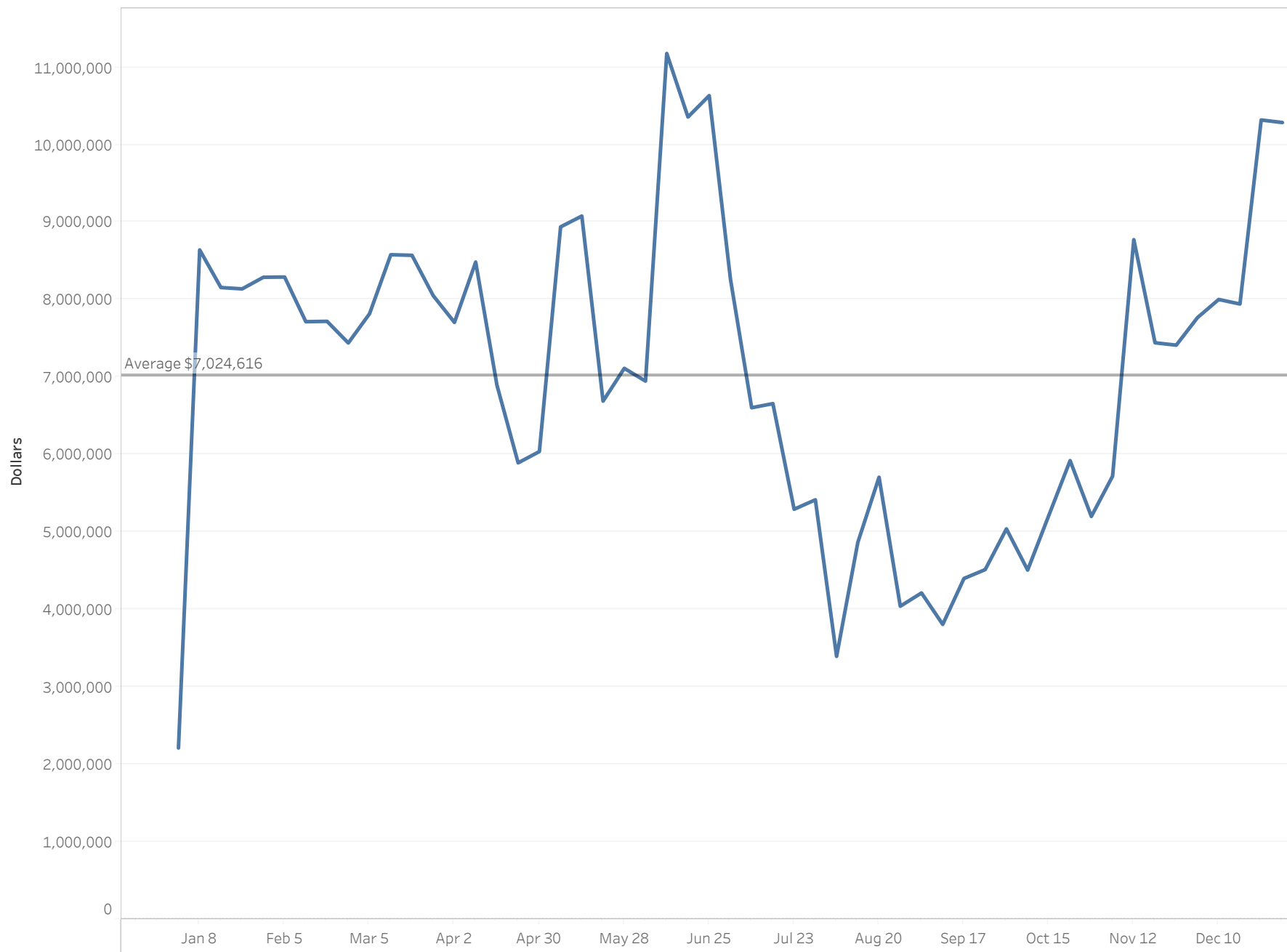


EXHIBIT 4

Weekly Cash Balance - 2018

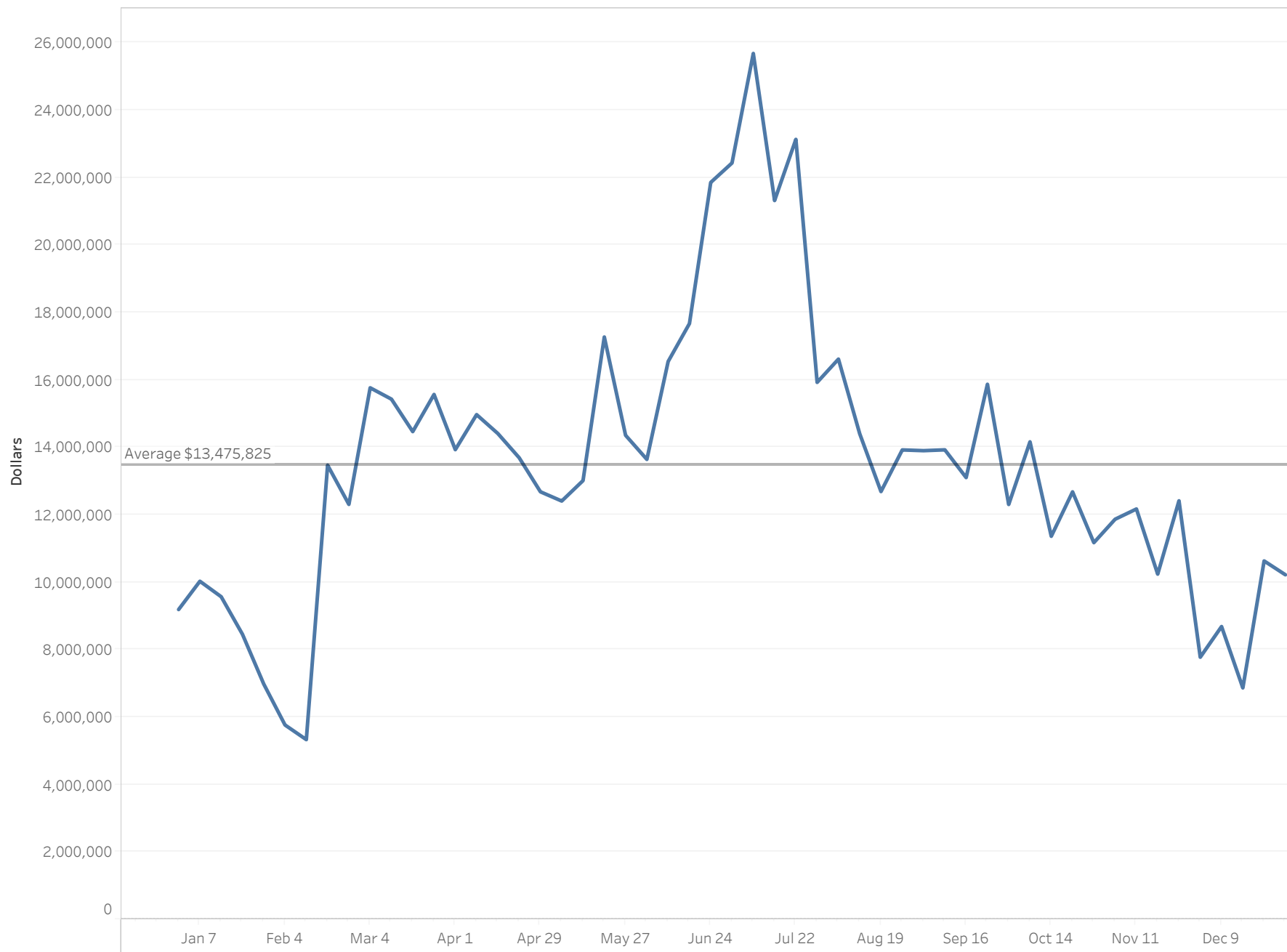


EXHIBIT 4

Weekly Cash Balance - 2019



	2011 - 14	2015	2016	2017	2018	2019	Total
Related Parties							
LME Trust	\$ 182,168	\$ 18,781	\$ 27,703	\$ 31,000	\$ 14,300,000	\$ 25,028,713	\$ 39,588,365
Eagle Union Quest						6,213,000	6,213,000
HBC			382,374	1,858,804	631,086	2,221,132	5,093,396
Related Parties	182,168	18,781	410,077	1,889,804	14,931,086	33,462,845	50,894,761
Consulting Fees							-
To Related Entities	230,000	640,000	3,942,273	22,976,965	25,945,559	21,802,638	75,537,435
To Other Entities	738,140	181,800	1,754,011	3,501,726	2,470,518	4,937,635	13,583,830
Consulting Fees	968,140	821,800	5,696,284	26,478,691	28,416,077	26,740,274	89,121,266
Use of Merchants Repayment							-
Investor Activity - Disbursements - Principal Repayments	2,145,659	2,107,634	1,514,855	3,450,000	39,364,450	86,804,448	135,387,046
Investor Activity - Disbursements - Interest	2,094,073	1,369,729	2,704,417	9,845,738	26,520,213	51,064,663	93,598,833
Commissions to ISOs	648,823	244,298	1,640,360	4,908,993	8,386,292	11,866,115	27,694,881
Commissions to ISOs - RMR	171,938	327,625	1,632,614	2,049,373	635,923	2,557,982	7,375,455
Operating Expenses	2,150,234	1,678,910	2,222,837	2,798,411	9,314,091	8,464,617	26,629,100
Operating Expenses - FSP				965,000	2,967,703	5,040,718	8,973,421
MMCA Activity - Joint Funding and Other Transactions	4,640,062	1,111,316	5,224,930	268,910	(12,042,678)	697,745	(99,715)
Use of Merchants Repayment	11,850,789	6,839,511	14,940,013	24,286,425	75,145,994	166,496,289	299,559,021
Total	\$ 13,001,097	\$ 7,680,092	\$ 21,046,374	\$ 52,654,920	\$ 118,493,157	\$ 226,699,408	\$ 439,575,048

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

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

vs.

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

Defendants.

DECLARATION OF JOEL D. GLICK

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

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

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

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

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

- iii. RECEIVER RYAN K. STUMPHAUZER'S MOTION AND MEMORANDUM OF LAW TO EXPAND RECEIVERSHIP ESTATE (DE 357)
 - i. Exhibits E, F, G & L - Declarations of Melissa Davis
 - iv. RECEIVER RYAN K. STUMPHAUZER'S NOTICE OF FILING QUARTERLY STATUS REPORT PURSUANT TO PARAGRAPHS 53 AND 54 OF THE AMENDED RECEIVERSHIP ORDER (DE 358)
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 - c. Declaration of James Klenk
 - d. QuickBooks accounting records for CBSG (inception to July 27, 2020)
 - e. Bank statements and ACH vendor statements for CBSG

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

CONCLUSIONS³

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

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

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

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

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

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

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

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

BASIS FOR CONCLUSIONS

Alleged/Implied Ponzi Scheme

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

⁵ Op. cit. FN1 ¶122

⁶ Op. cit. FN1 ¶125(a)

⁷ Op. cit. FN1 ¶123

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

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

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

⁸ Op. cit. FN2 14:13-25, 15:1 – 9.

⁹ Op. cit. FN2 15:10-15.

¹⁰ Op. cit. FN2 16:24-25, 17:1 – 9.

¹¹ Case No. 09-34791-BKC-RBR

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

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

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

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

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

¹³ [Ponzi Schemes — FBI](#)

¹⁴ [Ponzi Schemes | Investor.gov](#)

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

¹⁶ Ibid

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

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

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

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

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

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

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

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

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

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

29. Factor fee income is no less real than the income created by selling any other type of product or service. Manufacturers sell products, service providers sell their time and MCAs sell cash. Cash is their inventory. If management is doing a good job, it should not have excess inventory – whether it be cars, legal services, or cash. Manufacturers want their products on store shelves rather than in the warehouse; service providers endeavor to keep their staff busy with billable time; and MCAs endeavor to keep their money “on the street”—in the hands of merchants to increase revenue. If the money is sitting in a bank account, it is not generating a return on investment (the stated purpose of the business) and, in fact, if the MCA is not self-funded, it is still incurring a cost to borrow or accept outside funds.
30. If the Receiver’s premise for the existence of a Ponzi Scheme is the lack of profitability, he is relying on DSI’s flawed analysis which: 1) erroneously focuses on cash flow rather than profit: *“From inception through 2019, CBSG incurred a cash loss from operations...”*; and 2) when analyzing the receivables of an exception portfolio, applies an incorrect methodology to the receipt of merchant payments:¹⁹ *From inception through 2019, CBSG generated only \$6.6 million in cash from MCA Activity...”*

Commingling

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

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

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

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

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

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

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

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

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

manufacture the products they sell,

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

d. pay other operating expenses or obligations that arise.

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

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

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

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

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

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

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

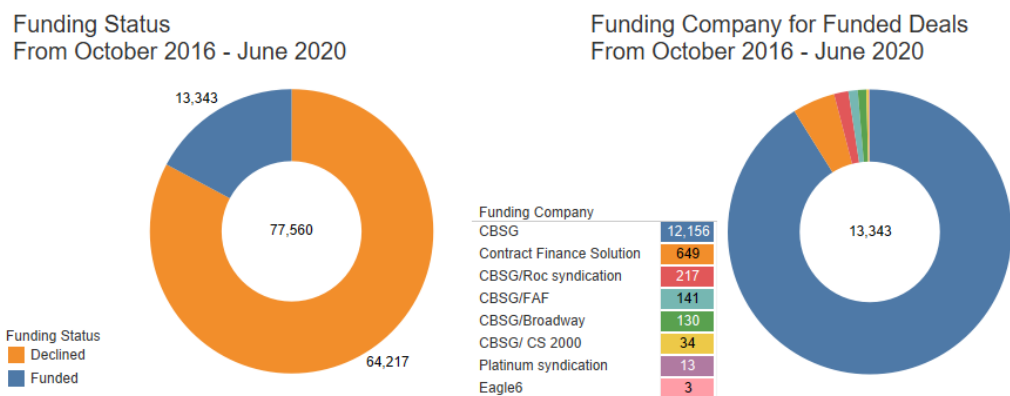
38. This analysis further indicates that CBSG does not meet the above definitions of a Ponzi Scheme and makes the following statement from DSI incorrect: *"CBSG paid \$231.0 million to investors, consisting of principal repayments totaling \$135.6 million and interest payments totaling \$95.4 million.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

Underwriting

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

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

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



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

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

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

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

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

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

Cash Basis vs Accrual Basis Accounting

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

²⁶ Op. cit. FN1

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

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

Improper Form of Analysis

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

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

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

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

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

Improper Analysis

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

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

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

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

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

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

²⁹ FN 1, Op. cit., 18:24-25, 19:1

³⁰ FN 1, Op. cit., 21:3-4

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

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

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

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

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

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

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

Data Analysis

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

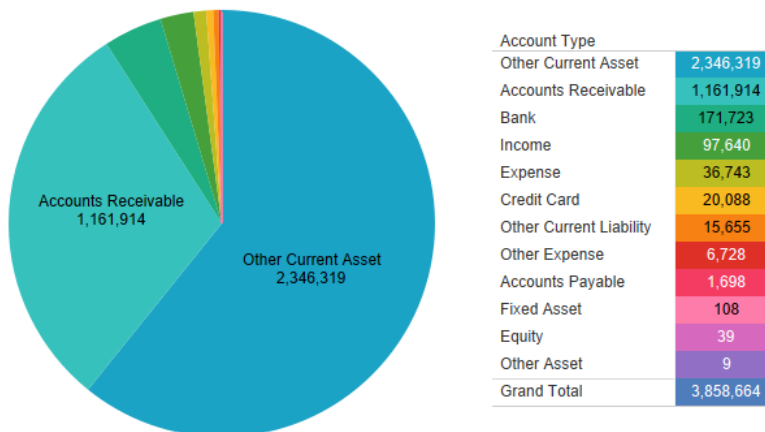
56. BPB has likewise reviewed the same eight-year period and concurs with the number of bank and ACH accounts.

57. BPB reviewed and consolidated the following:

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

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

QuickBooks Number of Records



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

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

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

Analysis of the Merchant Receivables Portfolio and CBSG Profitability

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

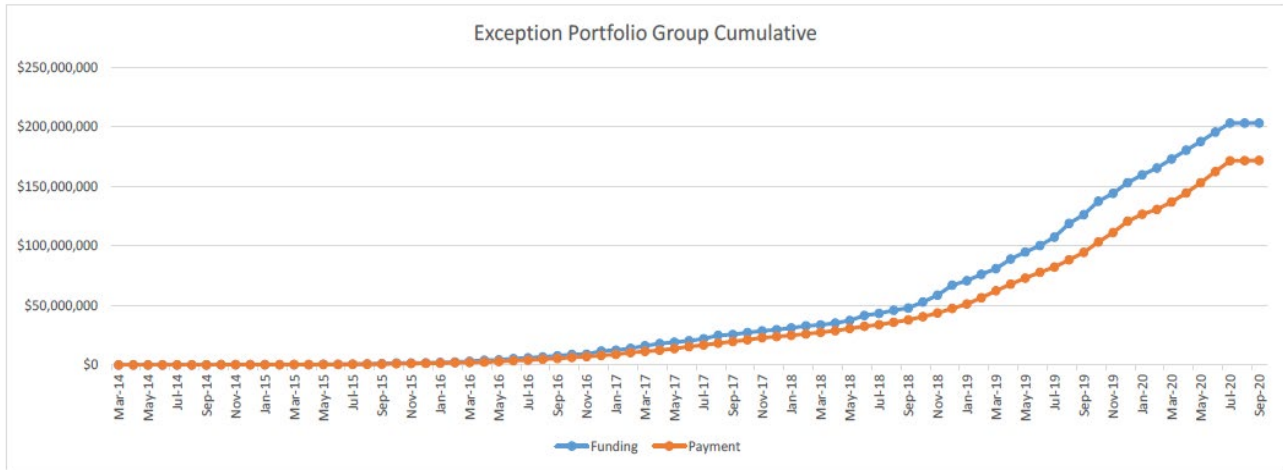
61. The Exception Portfolio represents approximately 46% of the outstanding accounts receivable balance and is comprised of 16 merchants divided into five groups. It is unclear if DSI is suggesting that 100% of the receivable balances related to the exception portfolio is uncollectible, or if they are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

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

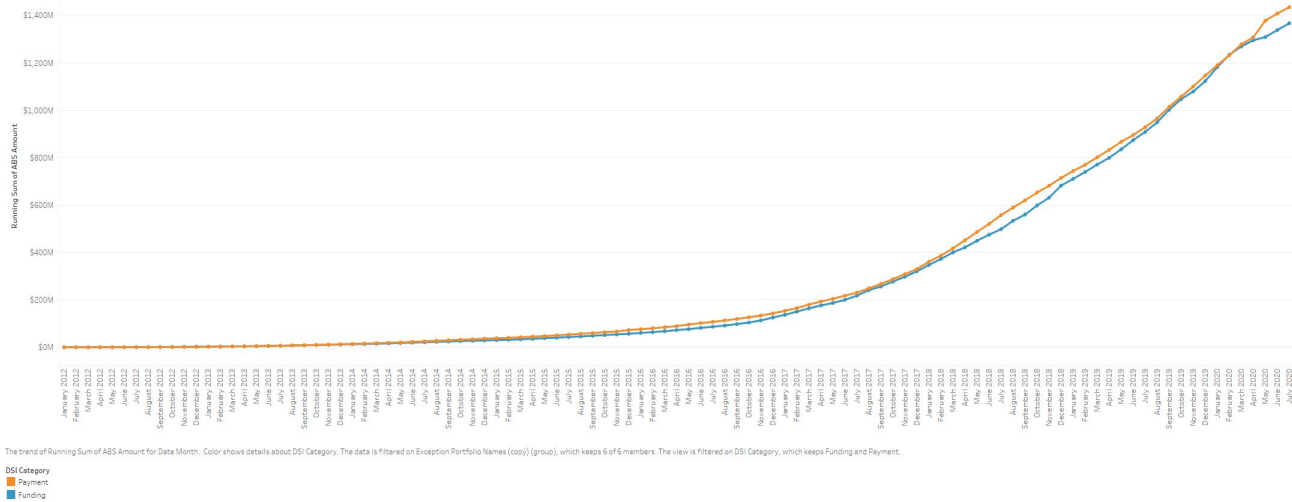
³⁵ Page 7, paragraph 3 of Receiver Ryan K. Stumphauzer’s Quarterly Status Report Dated February 1, 2021 (DE 482)

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

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



DSI - Charts All



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

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

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

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

CBSG Exception Portfolio Merchant Balances and Fees

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

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

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

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

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

inconsistent with GAAP.

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

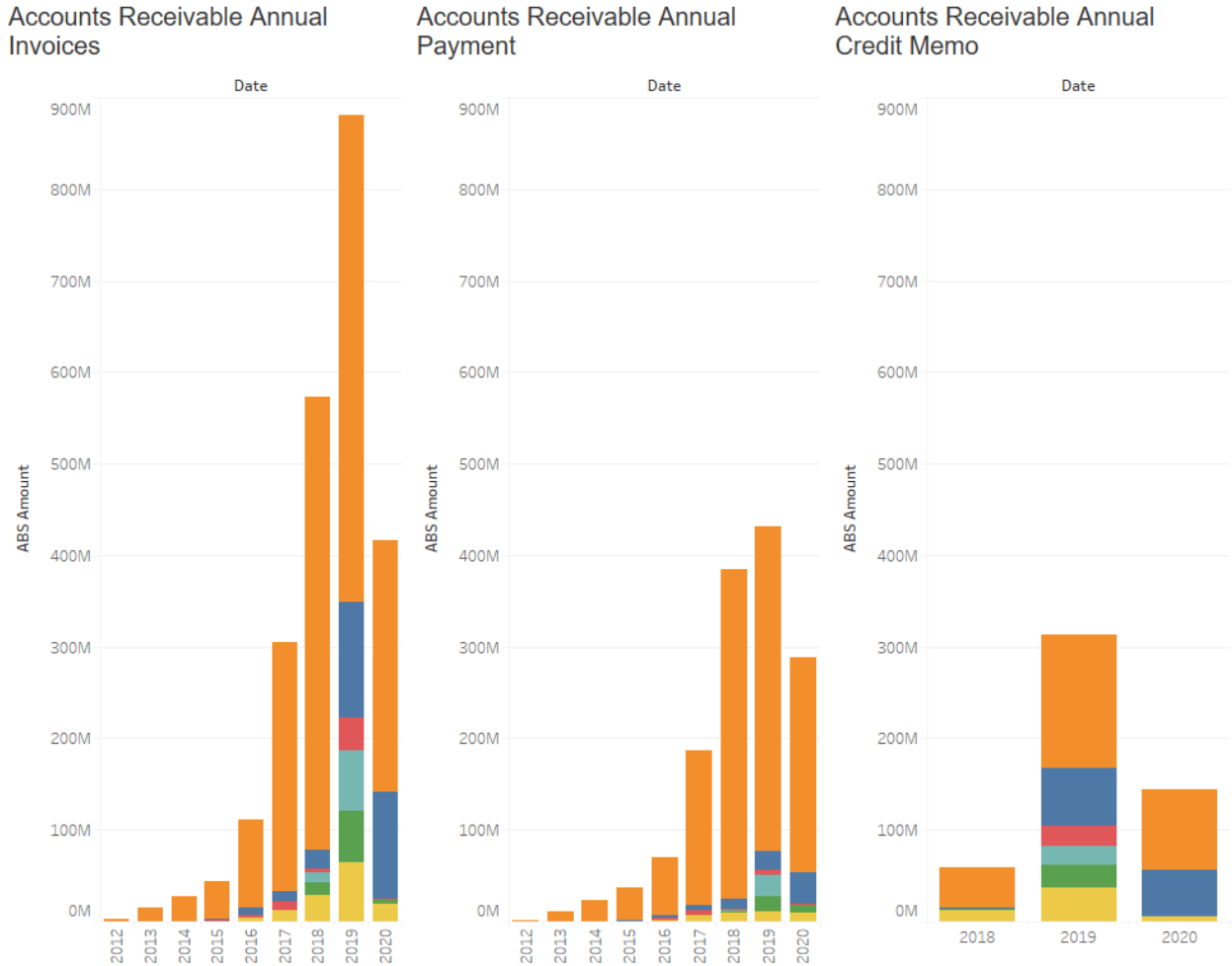
71. It appears that the same circumstances exist for CNP Operating and Colorado Sky, and it also appears that DSI utilized the same flawed methodology throughout, resulting in erroneously understated cash exposure.

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

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

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

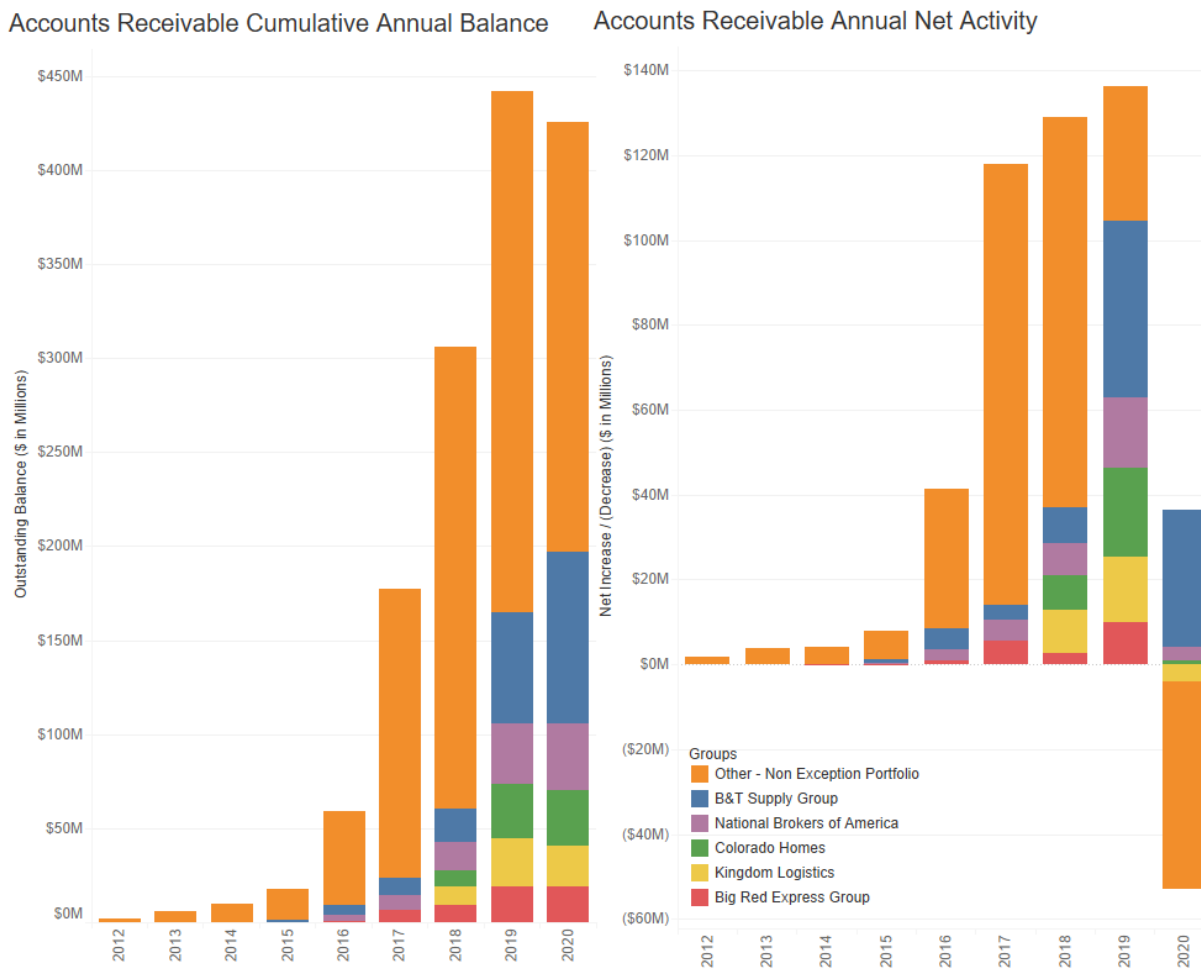
74. The following chart segregates annual accounts receivable activity into various transaction types. Subtracting the payments and credit memos from invoices equals the annual net activity for a given year (See Legend on chart in 76).



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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁹ This does not include other fees and revenue sources.

Balance merchant funding agreements.

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

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

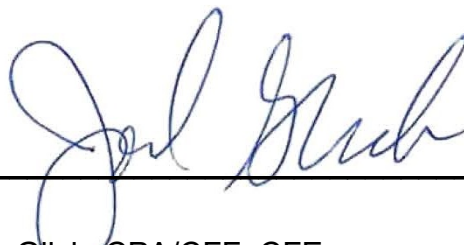
	Dec 31, 12	Dec 31, 13	Dec 31, 14	Dec 31, 15	Dec 31, 16	Dec 31, 17	Dec 31, 18	Dec 31, 19	TOTAL
Income									
Factoring Fee Income	\$ 772,499	\$ 5,452,417	\$ 8,373,426	\$ 13,427,522	\$ 21,598,989	\$ 66,609,332	\$ 123,378,492	\$ 169,213,496	\$ 408,826,174
Interest Income	-	42	-	-	-	-	-	-	42
Merchant Processor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

EXPERT COMPENSATION

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

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

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

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

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

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

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

DECLARATION OF JOEL D. GLICK

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

+ CPA's ("BPB").

8. BPB was retained by the law firm of Fridman Fels & Soto, PLLC to assist with their representation of Complete Business Solutions Group, Inc., d/b/a Par Funding ("CBSG").
9. I have supervised and been extensively involved in the analysis to date of CBSG's books and records.
10. No statements in this declaration are intended to render any legal opinions or conclusions.
11. The goal of the Court was *"that every piece of data that Mr. Sharp used to prepare this affidavit¹ be provided, pursuant to the guidelines [it] put in place, to a defense expert."2 As of the signing of this declaration, it is unclear what the entirety of the data DSI reviewed and relied on to prepare their declaration is and, therefore, it is unclear whether they complied with the Court's wishes.*
12. We understand that most of the activity from January 1, 2020 through July 27, 2020 had been entered into QuickBooks however, as of the filing of this Declaration, we have not received reconciled QuickBooks. As such, it is unclear whether they have yet to be fully reconciled by the Receiver.
13. Based on the foregoing, and as discovery is ongoing, I reserve the right to update this declaration as more data becomes available.
14. I have reviewed the following information:
 - a. CBSG bank statements and ACH vendor statements from January 2013 to July 2020.

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

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

- b. CBSG accounting records maintained in QuickBooks (inception to July 27, 2020). As indicated above, the records in our possession have not been fully reconciled through the date of the Receivership.
- c. CBSG contemporaneously prepared spreadsheets maintained by accounting personnel. These spreadsheets constitute an integral portion of CBSG's accounting process.
 - i. Daily Deposit Logs
 - ii. Bank Activity Log
- d. CBSG Funding Analysis, also known as the Key Performance Indicators (hereinafter "KPI Report") for the following cumulative periods from January 1, 2013 to:
 - i. September 2018
 - ii. May 2019
 - iii. June 2019
 - iv. February 2020
 - v. June 2020

Data Analysis

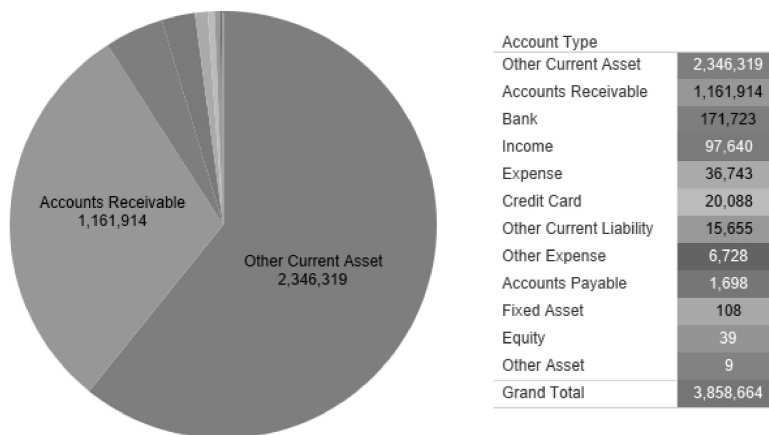
15. BPB has analyzed information for the same approximate eight-year period from January 2013 to June 2020, as reflected in the KPI Report.

16. BPB has reviewed and consolidated the following:

- a. Using the CBSG Daily Deposit Logs ("Deposit Logs"), BPB created a transaction database that contains approximately 1M records. The Deposit Logs are spreadsheets that were created and maintained, in the ordinary course of business, by CBSG on a monthly basis for the purpose of tracking merchant funding activity, merchant defaults, and daily merchant repayments.
 - i. The Funding tab was maintained from March 2012 through the date of the Receivership (July 27, 2020) and contains all information regarding the actual merchant deals. It is cumulative and rolled forward to the next consecutive month. Through the date of the Receivership, it contained 17,432 record entries.

- ii. The Default tab was maintained from January 2013 through the date of the Receivership (July 27, 2020) and contains all information regarding merchant defaults. It is cumulative and rolled forward to the next consecutive month. Through the date of the Receivership, it contained 1,883 record entries.
 - iii. A daily tab was created for each business day beginning January 2016 through the date of the Receivership to track the daily scheduled ACH draws from merchant accounts, wires and other deposits. Individual wires and deposits were deposited directly into CBSG bank accounts and then recorded in QuickBooks whereas the individual ACH debits were processed each day by the third-party ACH processor then, within four to five days, were transferred to CBSG bank accounts in batches. These batches were then recorded in QuickBooks. Through the date of the Receivership, the daily logs contained 1,035,087 record entries.
- b. Using specialized software, BPB created an ACH vendor transaction database containing approximately one million records.
 - c. Using specialized software, BPB created a bank account transaction database containing approximately 96,000 records.
 - d. Using Microsoft Excel, Alteryx and Tableau, BPB created a transaction database of QuickBooks data containing approximately 3.8 million records.

QuickBooks Number of Records



17. CBSG provided noteholders³ with an updated KPI Report every month. The KPI Report summarized, on a month-by-month and then consolidated annual basis, certain financial metrics such as:

- a. Number of merchant cash advance (“MCA”) deals funded in a given month and/or year, referred to in the KPI as “Funding Count.”
- b. Average amount funded per MCA deal for a given month and/or year, referred to in the KPI as “AVG Funding.”
- c. Average factor rate⁴ per MCA deal for a given month and/or year, referred to in the KPI as “Factor Rate AVG.”
- d. Average term of each MCA deal for a given month and/or year, referred to in the KPI as “Avg Term.”
- e. Monthly factor percentage⁵ for a given month and/or year, referred to in the KPI as “Monthly Factor %.”
- f. Funds wired to merchant—the cash actually funded to the merchant per the agreed commitment, referred to in the KPI as “Wire Total.”
- g. Funds committed to merchants – the total amount CBSG agreed to fund, referred to in the KPI as “Funded Total.” Funds were sometimes disbursed by CBSG in installments rather than in full. Because of this and other, initial fees CBSG charged the merchants, the Funded Total differs from the Wired Total.
- h. The amount of the total committed funds for the period plus the corresponding factor fees, referred to in the KPI as “New AR” (“Accounts Receivable”). This is synonymous with the term Right to Receivable (“RTR”) reflected in other client records.
- i. “Factoring Losses”⁶ in the KPI refer to the full amount of Accounts Receivable relating to written-off deals.⁷

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

⁴ As defined in the KPI Report, the average factor rate is the “Weighted average of factor rate in respective month based on total funding commitment per transaction.”

⁵ As defined in the KPI Report, “The proportionate monthly factor rate average in respective month based on AVG Funding divided by AVG Term.”

⁶ As defined in the KPI Report, “Factoring Losses realized in respective month equal to total AR balance for transactions written off against Factoring Loss reserve.”

⁷ I am not rendering any opinion on management decisions regarding factoring losses.

- j. "Funding Exposure"⁸ in the KPI refers to the cash portion of deals that are written off net of recoveries from previously written off deals. Written off deals are also referred to as deals in default as reflected in the Default Tab of CBSG's Deposit Log.
- k. "Total Deposits" in the KPI refer to cash deposits received from merchants, whether from ACH payments, or other means (checks or cash deposits).
- l. Gross ACH payments (a subset of Total Deposits), referred to in the KPI as "Total ACH Payment."
- m. "Returned ACH Payment Total" in the KPI refers to the total dollar amount of ACH payments CBSG was unable to withdraw during the period per a merchant agreement.
- n. "Return %" in the KPI Report refers to the returned ACH payments as a percentage of the total ACH payments debited in a given period.

18. We are not rendering any opinion as to management's decision regarding what information was provided to note-holders or the presentation of such information.

19. The KPI Report calculates the Exposure % by dividing Funding Exposure by the funds wired to merchants. The KPI Report reflects this amount on a period-by-period basis. We have prepared the following tables that reflect the cumulative Funding Exposure from 01/01/2013 – 06/30/2020. Table 1 below is a cumulative analysis prepared using the CBSG KPI Report. Table 2 below is a cumulative analysis prepared using the CBSG Deposit Logs:

⁸ As defined in the KPI Report, "Cumulative exposure, as determined by funding amount minus collected payments, at the time that transactions were written off in the respective month to Factoring Losses."

Table 1.

Based on CBSG Funding Analysis			
Year	Wire Total	Cumulative	
		Funding Exposure	Exposure %
2013	\$ 10,573,755	\$ 468,013	4.426%
2014	27,508,501	822,887	2.991%
2015	56,146,068	653,083	1.163%
2016	124,211,932	856,355	0.689%
2017	315,267,992	3,213,406	1.019%
2018	655,850,437	7,959,252	1.214%
2019	1,051,946,128	9,105,980	0.866%
2020 (Jan - June)	\$ 1,231,298,330	\$ 14,285,812	1.160%

Table 2.

Based on CBSG Deposit Log			
Year	Wire Total	Cumulative	
		Funding Exposure	Exposure %
2013	\$ 10,584,848	\$ 503,931	4.761%
2014	27,533,686	851,740	3.093%
2015	56,171,253	207,097	0.369%
2016	124,225,458	410,369	0.330%
2017	315,283,386	2,767,420	0.878%
2018	655,865,830	7,704,084	1.175%
2019	1,051,930,639	8,850,812	0.841%
2020 (Jan - June)	\$ 1,231,279,740	\$ 14,051,811	1.141%

20. Using the transaction database created from the CBSG Deposit Logs, we recreated a KPI Report. The top half of the attached exhibit reflects CBSG’s KPI Report⁹ which can be compared to the totals from our recreated KPI Report reflected on the bottom half of the exhibit.

21. Using the transaction database created from the CBSG QuickBooks, we quantified the amounts corresponding to certain requested CBSG KPI Report columns. The top half of the attached exhibit reflects CBSG’s KPI Report which can then be compared to the totals from our analysis of the CBSG’s QuickBooks as reflected on the bottom.

⁹ As noted in the schedule, the KPI reflects certain information dating back to 01/01/2013; however, the daily tabs from the Deposit Logs only begin as of 01/01/2016.

22. Both the CBSG Deposit Logs and QuickBooks referenced in this Declaration are the same as those used to prepare my Declaration dated April 15, 2021.

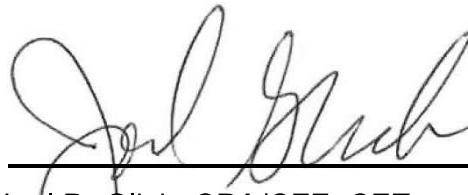
23. The CBSG Deposit Logs were separately maintained Excel spreadsheets, which tracked merchant repayments and were, subsequently reconciled, by CBSG accounting personnel, to the QuickBooks.

24. DSI indicated it independently reconciled the QuickBooks to bank statements and then relied upon the QuickBooks to issue its Declaration dated December 13, 2020.

EXPERT COMPENSATION

25. I am being compensated at my standard rate of \$495 per hour, while other members of our firm who worked on this engagement are compensated at \$85 to \$480 per hour. Neither my compensation nor the compensation of the other BPB personnel who worked on this assignment is contingent on the outcome of this litigation.

26. I declare under penalty of perjury that the foregoing is true and correct, and made in good faith. Executed this 13th day of July 2021.



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

CBSG Funding Analysis
 01/01/13 - 06/30/20⁶

Period	Funding Count	AVG Funding	Rate	Avg Term	Monthly Factor %	Wire Total	Funded Total	New AR	AR Total ³	Factoring Losses ⁴	Funding Exposure ⁵	Exposure % ⁴	Total Deposits	Average Daily Deposit	Total ACH Payment	Returned ACH Total	Return %
2013	358	\$29,535.63	1.35	120	6.1%	\$ 10,573,755.28	\$ 13,881,429.51	\$ 18,799,487.42	\$ 5,688,870.71	\$ 1,300,265.50	\$ 468,013.05	4.4%	\$ 10,144,412.62	\$ 40,519.15	\$ 7,774,763.57	\$ 501,380.77	6.4%
2014	979	17,298.00	1.33	94	7.4%	16,834,746.07	23,945,076.36	31,918,202.93	9,778,474.37	1,622,534.74	364,874.39	2.1%	21,657,990.43	84,225.44	14,900,902.48	1,073,079.75	7.2%
2015	703	40,736.23	1.35	115	6.3%	28,637,566.39	36,979,392.91	49,800,689.92	17,615,473.88	3,041,476.26	(169,804.75)	-0.6%	33,579,213.04	133,316.47	25,248,409.50	993,864.43	3.9%
2016	1,087	62,618.09	1.34	132	5.4%	68,065,864.62	97,740,554.02	130,981,255.68	59,067,326.39	5,541,535.34	203,272.18	0.3%	64,548,823.71	257,306.77	54,943,260.82	1,795,928.41	3.3%
2017	2,036	93,838.93	1.36	139	5.4%	191,056,059.69	271,633,681.34	370,302,596.53	177,067,138.86	12,564,294.70	2,357,051.07	1.2%	174,600,569.32	700,045.64	133,869,631.33	6,750,035.98	5.0%
2018	3,383	100,674.68	1.36	124	6.1%	340,582,444.82	471,403,953.34	642,192,480.47	305,910,444.75	33,534,406.50	4,745,845.88	1.4%	350,666,989.25	1,397,436.51	251,173,901.67	15,735,352.66	6.3%
2019 - Jan	334	77,437.29	1.34	144	4.9%	25,864,055.52	36,176,265.15	48,385,444.62	313,546,655.41	1,864,894.92	335,018.71	1.3%	27,552,044.52	1,312,002.12	23,643,851.53	1,409,298.88	6.0%
2019 - Feb	293	96,440.57	1.30	120	5.2%	28,257,086.80	36,598,668.58	47,631,070.64	327,228,270.63	1,081,775.31	(93,232.22)	-0.3%	25,197,661.19	1,326,192.89	21,480,118.89	1,331,454.65	6.2%
2019 - Mar	403	80,812.97	1.31	108	5.9%	28,537,625.10	35,395,487.45	46,298,554.32	332,808,186.10	2,271,698.46	9,610.72	0.0%	29,145,670.64	1,387,889.08	24,841,630.20	1,233,001.38	5.0%
2019 - Apr	382	65,177.23	1.38	107	7.4%	20,897,703.18	54,790,870.81	75,593,816.52	342,465,691.48	991,621.12	154,659.34	0.6%	30,296,449.40	1,377,111.34	27,039,451.52	1,171,326.27	4.3%
2019 - May	358	84,598.29	1.31	105	6.2%	30,286,186.06	34,549,293.21	45,242,925.10	344,000,270.70	2,553,917.12	(14,262.84)	0.0%	31,515,625.52	1,432,528.43	28,004,677.68	1,273,984.50	4.5%
2019 - Jun	448	66,554.38	1.32	107	6.2%	29,816,960.59	50,272,326.63	66,205,402.20	350,253,767.37	1,585,887.15	26,413.85	0.1%	27,039,054.73	1,351,952.74	25,344,984.02	1,544,254.31	6.1%
2019 - Jul	414	78,423.95	1.32	104	6.4%	32,467,514.92	40,589,278.65	53,466,821.19	361,976,660.11	2,591,860.57	537,395.64	1.7%	30,292,477.42	1,376,930.79	28,290,298.08	1,239,976.80	4.4%
2019 - Aug	393	92,023.94	1.29	106	5.7%	36,165,409.59	86,508,636.22	111,391,920.86	382,030,257.80	9,033,837.09	718,053.01	2.0%	28,588,170.57	1,299,462.30	31,513,628.86	1,757,649.67	5.6%
2019 - Sep	457	107,197.00	1.34	108	6.5%	48,989,028.80	101,415,205.39	135,772,548.34	412,789,245.16	5,870,130.67	(1,946,110.49)	-4.0%	42,784,608.28	2,139,230.41	29,856,760.48	1,798,086.15	6.0%
2019 - Oct	497	80,794.42	1.33	101	6.8%	40,154,829.14	52,551,508.23	69,935,149.43	423,514,559.10	2,222,330.76	167,075.96	0.4%	40,807,674.25	1,854,894.28	35,711,367.09	1,813,977.58	5.1%
2019 - Nov	527	56,885.40	1.34	97	7.2%	29,978,607.59	63,663,091.09	85,000,457.22	432,400,304.26	5,223,938.48	1,015,324.01	3.4%	37,278,536.15	1,962,028.22	33,548,315.34	2,171,390.47	6.5%
2019 - Dec	585	69,540.66	1.32	95	7.1%	40,681,284.12	51,067,496.28	67,633,578.32	441,728,644.35	3,442,462.16	236,782.49	0.6%	42,717,695.90	2,034,176.00	37,092,765.53	2,154,560.69	5.8%
2020 - Jan	885	61,504.04	1.32	98	6.8%	54,431,075.98	62,940,210.05	83,016,014.59	470,676,883.52	2,113,642.73	(329,616.49)	-0.6%	40,179,540.45	1,913,311.45	35,696,117.94	2,236,913.14	6.3%
2020 - Feb	945	51,126.14	1.32	94	7.0%	48,314,206.31	71,565,901.30	94,196,717.52	486,804,522.38	2,520,421.33	34,942.92	0.1%	41,528,592.00	2,165,715.37	35,689,927.33	1,768,645.73	5.0%
2020 - Mar	476	60,799.24	1.31	93	6.9%	28,940,439.63	42,189,095.57	55,116,974.54	478,940,624.39	3,471,926.32	(275,770.90)	-1.0%	41,636,586.48	1,892,572.11	38,800,651.12	3,349,551.51	8.6%
2020 - Apr	92	122,080.11	1.34	88	8.0%	11,231,369.75	27,277,893.61	33,745,378.17	412,669,652.16	39,588,501.59	4,565,355.67	40.6%	29,155,289.98	1,325,240.45	25,509,683.25	2,037,300.66	8.0%
2020 - May	250	48,416.34	1.33	86	8.0%	12,104,083.89	17,495,968.95	22,802,422.29	400,221,204.89	2,203,312.74	614,491.01	5.1%	27,500,491.83	1,375,024.59	23,377,450.34	711,564.10	3.0%
2020 - June	407	59,781.39	1.32	92	7.2%	24,331,025.68	37,524,490.25	46,395,307.03	402,382,550.85	1,940,496.65	570,429.30	2.3%	29,420,598.68	1,337,299.94	25,978,802.62	1,838,687.42	7.1%
16,692	373,765.78	1.33	107	6.5%	\$1,231,298,329.52	\$1,818,163,980.90	\$2,431,947,195.85			\$148,177,270.21	\$14,285,811.51	1.2%	\$1,257,834,762.35		\$ 1,021,331,341.19	\$57,691,265.91	5.6%

CBSG Funding Analysis 01/01/16 - 06/30/20^{6,1}

\$1,192,453,146.27

\$ 973,407,265.64 **\$55,122,940.96** **5.7%**

¹ Weighted average of factor rate in respective month based on total funding commitment per transaction.
² The proportionate monthly factor rate average in respective month based on AVG Funding divided by AVG Term.
³ Reflects month end AR balance not including outstanding funding liabilities or deferral of revenue.
⁴ Factoring Losses realized in respective month equal to total AR balance for transactions written off against Factoring Loss reserve.
⁵ Cumulative exposure, as determined by funding amount minus collected payments, at the time that transactions were written off in the respective month to Factoring Losses.

Factor	Funding Count	AVG Funding	Rate	Avg Term	Monthly Factor %	Wire Total	Funded Total	New AR	AR Total	Factoring Losses	Funding Exposure	Exposure %	Total Deposits	Total ACH Payment	Returned ACH Total	Return %
CBSG Deposit Logs ⁷						[A]					[B]	[C=B/A]		[D]	[E]	[F=E/D]
						Funding Tab					Default Tab		Daily Tabs			
16,804	Not Calculated	\$1,231,279,739.93	\$1,839,227,431.25	\$2,453,300,627.35		\$14,051,810.75				\$147,999,506.91	\$14,051,810.75	1.1%	Not Available for 01/01/13 - 12/31/15 ¹		Not Available	Not Available
CBSG Daily Deposit Logs 01/01/16 - 06/30/20 ^{7,1}															\$ 969,300,562.67	Not Available
															\$1,134,548,589.45	
QuickBooks Data ⁸																
	Not Maintained in QuickBooks	\$1,181,262,221.58	Not Calculated							Not Calculated	\$14,051,810.75	1.2%	\$1,252,636,219.60	\$ 1,021,816,470.00	\$55,051,327.40	5.4%
															\$1,191,302,390.82	\$2,665,151.18
															\$ 973,870,983.00	\$52,665,151.18

BPB Footnotes:
 6 - CBSG Funding Analysis KPI June 2020.pdf
 6.1 - Daily deposit tabs do not start until January 1, 2016. BPB calculated the total deposits from these daily deposit logs in order to compare to the KPI
 7 - Source: Deposit Log 0720 b CBSG-Receiver-00000048.xlsx. Deposit log is a contemporaneous document maintained by CBSG on a daily basis and on an individual client/ideal level information is added in the Funding and Default Tab
 7.1 - Funding and Default tabs from Deposit Log information begins in January 2013 however the daily deposit tabs begin with the first full month of January 2016.
 8 - Based on the QuickBooks data received through and as of July 27, 2020, not yet reconciled by the Receiver.