

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

/

**I. INTRODUCTION<sup>1</sup>**

Defendant Joseph LaForte seeks dismissal for alleged discovery violations on grounds the Securities and Exchange Commission intentionally and in bad faith obstructed the discovery process and prevented Mr. LaForte from discovering the evidence supporting the SEC's claims against him by failing or refusing to answer questions posed during the Rule 30(b)(6) depositions of the SEC.

As set forth below, there was no discovery violation at all, let alone one that should be sanctioned, as almost all of the questions at issue either (a) went beyond the scope of topics noticed for the deposition, (b) invade attorney work product privilege, (c) required the witness to speculate, or (d) improperly argumentative. Mr. LaForte cannot meet his burden for obtaining the extreme relief he seeks and the Court should deny the Motions.<sup>2</sup>

---

<sup>1</sup> The SEC files this Response about 4.5 hours late and respectfully asks the Court to accept it. Undersigned works remotely through a virtual computer for the SEC. A security restriction on virtual computers set by the SEC had the following effect: it "wipes all memory in 5 minutes of inactivity." This response and the exhibits were wiped from memory on October 2 while open after 5 minutes of activity; the SEC was able to recover versions of September 28, and undersigned has worked nearly without pause since October 2 to re-draft them. The delay was caused by intervening circumstances beyond the SEC's control. *Pioneer Inv. Services Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 388 (1993) (interpreting bankruptcy equivalent of Rule 6; finding in the case of a missed deadline, a court may "accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." ).

<sup>2</sup> Mr. LaForte did not confer prior to filing his motions and rejected the SEC's requests to confer in order to resolve these issues without the need for litigation.

## **II. PROCEDURAL AND DISCOVERY HISTORY**

On July 27, 2020, the Securities and Exchange Commission filed its Complaint<sup>3</sup> against Mr. LaForte, Complete Business Solutions Group, a/k/a Par Funding (“Par Funding”) and others, alleging violations of the anti-fraud and registration provisions of the federal securities laws. The Complaint alleges that Mr. LaForte and his wife, Lisa McElhone, orchestrated a scheme to raise investor funds through unregistered securities offerings for the cash advance company they controlled, Par Funding. To fuel Par Funding’s cash advance/lending business, Par Funding used a network of sales agents and investment funds (“Agent Funds”) to sell promissory notes to investors. These securities offerings were not registered with the SEC.

Additionally, the Complaint alleges that Defendants committed fraud by making a series of misrepresentations and omissions concerning: (1) the true nature of Par Funding’s loan practices; (2) Par Funding’s true track record of issuing loans and the default rates of the loans; (3) the safety of investing in Par Funding’s loans; (4) LaForte’s criminal record, identity, and control of Par Funding; (5) three Cease-and-Desist Orders state securities regulators had entered against Par Funding for violating state securities laws; (6) the true result of the New Jersey Division of Securities’ investigation of Par Funding; (7) the fact that contrary to Par Funding’s representations to the Commission in its filings, it diverts investor funds to McElhone and Par Funding’s CFO Joseph Cole Barleta, and also funnels money to L.M.E. 2017 Family Trust, McElhone’s family trust; (8) the fact that contrary to his representations to investors, LaForte never invested in Par Funding; (9) a Cease-and-Desist Order and sanctions issued against Dean Vagnozzi for violating state securities laws in connection with the Par Funding offering; (10) a Cease-and-Desist Order and sanctions issued against Agent Fund ABFP for violating state securities laws in connection with the Par Funding offering; and (11) a Cease-and-Desist Order and sanctions issued against Perry Abbonizio for violating state securities laws in connection with Par Funding’s offering.

Simultaneously with the Complaint, the SEC filed a Motion for Temporary Restraining Order (“TRO Motion”). The TRO Motion repeats the Complaint’s allegations and annotates each allegation with the specific evidence, filed with the TRO Motion, supporting each allegation.

In early August 2020, the SEC voluntarily produced to Mr. LaForte all of the evidence in the SEC file for this case. Following the two-day preliminary injunction hearing in this case in

---

<sup>3</sup> The SEC filed an Amended Complaint that corrected the name of and added one sentence about the Relief Defendant, but is otherwise identical to the Complaint.

August 2020, Mr. LaForte and his wife, Defendant Lisa McElhone, consented to preliminary injunctions and a \$482 million asset freeze against all of their assets that remains in effect.

During the discovery period, which ended September 10, 2021, Mr. LaForte noticed the SEC's Rule 30(b)(6) deposition. The deposition occurred on July 9 and August 3, 2020. Mr. LaForte noticed the same Topics for both depositions:

1. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Complete Business Solutions Group, Inc. ("CBSG") ***made materially misleading statements and omissions to investors in connection with the purchase, offer, or sale of securities regarding:***

- a. CBSG's underwriting practices;
- b. CBSG's loan default rate;
- c. insurance offered by CBSG;
- d. CBSG's regulatory history;
- e. the true result of the New Jersey Division of Securities' investigation of CBSG;
- f. Joseph LaForte's criminal history;
- g. Lisa McElhone and Joe Cole's receipt of funds;
- h. the LME 2017 Family Trust's receipt of funds;
- i. Joseph LaForte's investment in CBSG;
- j. Dean Vagnozzi and ABFP regulatory histories;
- k. Perry Abbonizio's regulatory history;

2. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that ***Joseph LaForte acted as the de facto CEO*** of CBSG and Full Spectrum Processing;

3. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that ***Lisa McElhone was a control person of CBSG and Full Spectrum Processing;***

4. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that ***no exemption from registration existed with respect to the securities allegedly issued by the Defendants.***

5. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the ***Commission's disgorgement calculation as to each Defendant.***

6. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's claims that the ***Defendant's actions presented a risk to investor funds when it filed its Complaint.***

7. The Commission and Commission ***staff's communications with attorney Shane Heskin*** prior to the filing of the Commission's enforcement action, including promises made to Heskin or his clients.

8. The ***Commission's guidelines, policies and procedures regarding joint action with, or direction or control by Commission staff of a private party*** involved in an investigation or private action.

9. The Commission's ***guidelines, policies and procedures regarding the appointment of a Receiver.***

[Emphasis added].

The deposition has not concluded; LaForte's counsel did not rest and cross examination has not occurred. The parties agreed the deposition could continue after the close of discovery.

### **III. LEGAL STANDARDS**

#### **A. Dismissal Under Rule 41(b)**

Federal Rule of Civil Procedure 41(b) provides that if a plaintiff fails to comply with a court order or the Federal Rules, a defendant may move to dismiss the action or any claim against it. Fed. R. Civ. P. 41(b). Whether to dismiss a complaint under Rule 41(b) "is a matter committed to the district court's discretion." *Equity Lifestyle Props., Inc. v. Fla. Mowing and Landscape Serv., Inc.*, 556 F.3d 1232, 1240 n.14 (11th Cir. 2009). "Because dismissal with prejudice is a drastic remedy, it is appropriate only where there is a clear record of delay or willful contempt and lesser sanctions would be insufficient." *Jones v. Lockheed Martin Corp.*, 2016 WL 75413, at \*1 (11th Cir. Jan. 7, 2016) (*per curiam*) (citing *Kilgo v. Ricks*, 983 F.2d 189, 192 (11th Cir. 1993)). "Dismissal with prejudice is appropriate 'where a party, as distinct from counsel, is culpable' for the failure to comply." *Id.* (quoting *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1338 (11th Cir. 2005)). "It is generally not an abuse of discretion for a district court to dismiss a suit for disregard of an order if the litigant was warned and still failed to comply." *Id.* (citing *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989)).

### **B. Dismissal Under Rule 37(b)**

Federal Rule of Civil Procedure 37(b) provides that if a party fails to obey a court order to provide or permit discovery, the court where the action is pending may issue further just orders, including an order “dismissing the action or proceeding in whole or in part.” Fed. R. Civ. P. 37(b)(2)(v). “Dismissal with prejudice is the most severe Rule 37 sanction, but it may be appropriate when a plaintiff’s recalcitrance is due to willfulness, bad faith or fault.” *Shortz v. City of Tuskegee, Ala.*, 352 F. App’x 355, 359 (11th Cir. 2009) (internal quotation marks omitted) (citing *Phipps v. Blakeney*, 8 F.3d 788, 790 (11th Cir. 1993)). Because “dismissal with prejudice is considered a drastic sanction, a district court may only implement it as a last resort, when: (1) a party’s failure to comply ... is a result of willfulness or bad faith; and (2) the district court finds that lesser sanctions would not suffice.” *Id.* (citing *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1542 (11th Cir. 1993)).

### **C. Sanctions Under 28 U.S.C. § 1927**

Section 1927 provides: “Any attorney or other person admitted to conduct cases in any court of the United States who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” The imposition of sanctions under § 1927 is discretionary. *Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004, 1011 (8th Cir.2006). Before awarding sanctions under § 1927, however, the Court must conclude that counsel intentionally or recklessly disregarded their duties to the Court. *Id.*; *Schwartz v. Millon Air, Inc.*, 341 F.3d 1220, 1225 (11th Cir. 2003) (28 U.S.C. § 1927 requires bad faith).

### **IV. THE MOTIONS TO DISMISS<sup>4</sup>**

The Defendants’ Motions are based on the same alleged discovery violations during the Rule 30(b)(6) depositions, and seek relief under different legal standards. The allegations of both Motions are discussed together in this Section.

---

<sup>4</sup> This response addresses Mr. LaForte’s arguments in the same order as his Motions. The first argument is “violations described in the First Motion for Dismissal.” [DE 746 at 3]. Mr. LaForte argues that the allegations he made in his first Rule 41 Motion to Dismiss are true and provide “a backdrop” for the instant Motions. The SEC disagrees with Mr. LaForte’s assertions. These issues have been litigated, and the Court denied the First Motion to Dismiss. Therefore, the SEC does not believe we need to address these allegations again here. However, the SEC will be prepared to do so at the hearing on the Motions if the Court would like the SEC to do so.

**A. Mr. LaForte's Allegations of "Flagrant Discovery Violations" Are Incorrect**

**1. The July 9 Deposition**

***a. The Claim That The SEC Continued The Deposition For Improper Reasons***

On July 9, the SEC presented its designated witness on the topics noticed – a Senior Auditor with the SEC who was a member of the investigative team for this case and has decades of experience testifying. Mr. LaForte alleges that “[a]fter several hours, and after the First Corporate Representative had given testimony which the SEC’s Counsel unilaterally deemed ‘wrong,’ the SEC announced on the record that it would like to continue the deposition to another day with newly designated witnesses.” [ECF No 747 at 5]. In truth, on July 9, 2021 the witness testified for 1 hour, 20 minutes.<sup>5</sup> During a nearly 45-minute break, the witness indicated he was experiencing an involuntary problem impacting his ability to recall and testify accurately that day; undersigned then contacted Mr. LaForte’s counsel by telephone, explained the issue, and an agreement was reached to continue the deposition on another day with another witness. We then went back on the record.<sup>6</sup>

Contrary to Mr. LaForte’s allegations, the issue was not that the witness was unprepared to testify or gave testimony unfavorable to the SEC. The witness spent about 40 hours preparing to testify about the topics noticed for the deposition, and none of the testimony was unfavorable to the SEC, nor has Mr. LaForte identified any such testimony. Regardless, the SEC offered to pay the Court Reporter costs for the second deposition, agreed that the time spent on July 9 would not be counted toward the 7-hour limit for the second deposition, provided Mr. LaForte with corrected and completed sworn answers to the July 9 testimony in advance of the second testimony so that he could inquire further if he so desired during the second deposition, and agreed to the Defendants’ request that the SEC designate a specific staff attorney, Linda Schmidt, as the designated representative on the topic of SEC communications with a private attorney, Shane Heskin, whose clients are witnesses in this case and who produced documents in the investigation.

---

<sup>5</sup> The transcript shows the time the witness is testifying. *See* July 9 Transcript, Ex A to DE 746.

<sup>6</sup> The on-the-record discussion and agreement begins on page 59. The on-the-record does not include the same level of detail about the issue as was discussed during the break, because it would invade the witness’ privacy. The witness will be available to testify at the hearing if the Court wishes to hear from him or Mr. LaForte disputes that he suffered an involuntary memory failure or his level of preparation before the deposition.

***b. That the SEC Failed To Answer Questions Or Did So Inadequately***

Mr. LaForte's arguments about the witness' testimony are incorrect. The testimony cited in Mr. LaForte's Motions and a discussion of each question and answer is in Exhibit A hereto. As set forth in Exhibit A, the questions sought information outside of the noticed topics and the answers were not objectionable. As set forth above, there were issues with this testimony, however, and the SEC resolved those issues by preparing another witness, providing corrected and completed answers before the second deposition, paying the Court Reporter cost of the second deposition, and agreeing to another 7-hour deposition in addition to the time used during the first deposition. As a result, we believe the issues concerning the July 9 deposition are moot.

**2. The August 3 Deposition**

***a. That the SEC Improperly Changed The Witness For the Continued Deposition***

Shortly after the July 9 deposition the SEC learned that Ms. Schmidt, a member of the SEC trial team whose name appears on the Complaint, could not testify as the witness. We raised this issue with Mr. LaForte's counsel on July 11, 2021 and advised that Elisha Frank (the witness for all topics but the one for which Ms. Schmidt was to testify) could testify about the issues concerning the private attorney, Mr. Heskin. On July 12 we confirmed to Mr. LaForte's counsel that Ms. Schmidt could not testify. [Composite Exhibit B]. Mr. LaForte subsequently noticed the deposition to occur on August 3 and his counsel emailed the Notice to Ms. Frank. Mr. LaForte did not raise any issue with the Court about Ms. Frank rather than Ms. Schmidt testifying before the deposition. Ms. Frank appeared at her deposition, having spent about 40 hours preparing to testify about the Topics noticed for the deposition. Mr. LaForte deposed Ms. Frank as the SEC's designated representative for almost a full day and did not object at the deposition to the Ms. Frank serving as the designated representative of the SEC. It is improper that Mr. LaForte raises this issue, after having chosen to conduct the deposition and without objection.

***b. That the SEC Refused to Respond to Questions Asking For the Evidence Supporting The Complaint Allegations***

Mr. LaForte's assertion that the SEC refused to answer any questions identifying the evidence supporting the allegations in the Complaint is false. The SEC objected to questions outside of the scope or privileged and directed the witness not to answer. As set forth in Exhibits C and D hereto, these questions were largely outside of the scope of the noticed topics and

improper.<sup>7</sup> For example, in his Motions, Mr. LaForte identifies 13 times when the SEC purportedly refused to answer questions identifying the evidence supporting the Complaint allegations. [DE 747 at p6, n 18]. Of these, 7 asked whether the SEC had evidence of facts *not* alleged in the Complaint, and 9 asked about matters not noticed for a deposition.

	<b>Asks for evidence supporting a Complaint allegation</b>	<b>Area of inquiry noticed in the Topics</b>
23:2-9	No	No
25:6-26:1	No	No
26:3-17	No	No
40:9-41:8	Yes	Yes, and the SEC answered. 41:11-43
55:5-20	No	No
57:11-59:18	No	No
67:9-25 68:18-69:7 70:2-5	Yes	No SEC testified as to which document (declaration of SEC's expert witness) supports the allegation
90:13-23	Yes	No
92:3-12	no	No
93:3-11	No	No

In one of the answers Mr. LaForte claims the SEC refused to answer with evidence supporting a Complaint allegation, the SEC tried to assist Mr. LaForte obtain answers, by explaining that if he asked about an allegation in the Complaint then the SEC would not object. August Transcript, 23:2-9. He said no. In another of the answers where Mr. LaForte claims the SEC refused to identify evidence supporting the allegation, the witness testified that she could provide the evidence supporting the Complaint allegation and Mr. LaForte's counsel replied that no, he did not want that and proceeded to inquire about a fact not alleged in the Complaint or noticed for the deposition. 24:22-25:15.

After reviewing the transcript, the SEC withdraws certain objections, as indicated in the

---

<sup>7</sup> Exhibit C is Mr. LaForte's Exhibit C to his Rule 41 Motion, with the SEC's responses added. Exhibit D is Exhibit 5 to Mr. LaForte's Rule 37 Motion, with the SEC's responses added.



charts attached as Exhibits hereto.<sup>8</sup> The SEC can testify to the evidence supporting this Complaint allegation, which appears in the annotated Complaint allegations of the Motion for Temporary Restraining Order. [DE 14]. The SEC previously served Mr. LaForte with a copy of this Motion, which annotates each allegation of the Complaint with evidence and attaches the specific evidence supporting each allegation.

Similarly, Mr. LaForte claims the SEC refused to disclose the evidence obtained in discovery supporting each Complaint allegation. The Notice includes the Topic for what the SEC relied on to support the Complaint allegations of misrepresentations and omissions about a 11 sub-topics. This would be the evidence the SEC had at the time of filing, all of which the SEC has made public by voluntarily producing it to all Defendants in July and August 2020. The SEC also annotated the Complaint to show evidence at that time supporting each claim. [DE 14]. Therefore, Mr. LaForte's assertion that he has been deprived the ability to learn what evidence supports the allegations is simply not true. (DE 747 at 10).

In advance of the 30(b)(6) deposition, the SEC conferred with Mr. LaForte's counsel and advised that the SEC would only be testifying about the evidence the SEC had at the time of filing the Complaint, all of which was produced and/or cited in July and August 2020 with the TRO Motion. As set forth above, the Notice only includes the evidence the SEC had at the time of filing. Additionally, as the SEC advised Mr. LaForte's counsel in advance of the deposition, the SEC had not completed its review of the more than 2 million documents produced to both the SEC and Mr. LaForte by the Receivership during the discovery period and therefore had not yet determined and did not yet know how that evidence supports each of the allegations and claims. [Exhibit B].

As Mr. LaForte identifies in the Motions, the SEC refused to answer questions primarily based on objections that the question was outside of the scope of the notice (746 at 8) or privileged. The SEC prepared for questions about the topics that were noticed. Mr. LaForte asked about other topics. For example, in the Motions, Mr. LaForte argues the SEC did not answer questions about whether Par representatives engaged in a general solicitation through radio, television, commercials or internet. (746 at 9). This topic was not noticed. Mr. LaForte argues that the SEC did not answer whether Par Funding was involved in preparing offering documents for Agent

---

<sup>8</sup> During the September 10 hearing, the Court asked Mr. LaForte's counsel if they want to continue the deposition. They did not rest on August 3 and therefore the SEC did not have an opportunity cross-examine its witness, as it is entitled to do.

Funds. This topic was not noticed. He further argues the SEC did not know whether Mr. LaForte's defense evidence proves that merchants' declarations are false. Again, this topic not was noticed. *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1995), *aff'd*, 213 F. 3d 646 (11th Cir. 2000) (topics listed in the 30(b)(6) notice govern the obligations to prepare a witness); *Stone Eagle Servs., Inc. v. Pay-Plus Sols., Inc.*, No. 8:13-cv-2240-T-33MAP, 2015 WL 12843846, \*2 (M.D. Fla. Apr. 29, 2015) (A 30(b)(6) deposition is not meant to be a "memory contest," and Plaintiff was not required to memorize all facts uncovered).<sup>9</sup>

Mr. LaForte claimed these questions fell under Topic 1, but they do not. Topic 1 concerns the facts and evidence the SEC relied on that supported the Complaint allegations concerning Par Funding's alleged misrepresentations and omissions about a list of 11 specific things. As reflected in Mr. LaForte's charts showing the testimony at issue (Exhibits A, C & D hereto), the questions primarily asked about anything other than this. Specifically, the questions at issue asked about:

- Mr. Abbonizio's authority over agent funds (not alleged in the Complaint and not an alleged misrepresentation or omission, let alone within the 11 subtopics
- The meaning of accounting terms and how "gross proceeds" are calculated (not noticed and an area of expert witness testimony in this case by both parties)
- Evidence Mr. LaForte obtained through discovery from the Receiver (which were not produced to the SEC), seeking the SEC's opinion about the weight of these pieces of evidence, what they proved, and whether they disproved other facts in the case (not inquiring about the SEC's evidence supporting the Complaint, but inquiring and seeking opinions about Mr. LaForte's evidence, shown for the first time during the deposition)<sup>10</sup>
- Whether the SEC agreed, after reviewing Mr. LaForte's evidence during the deposition, that the SEC's evidence was "false"

---

<sup>9</sup> Mr. LaForte argues that the SEC has argued against being deposed. The SEC did not make that argument in this case, and therefore we do not respond to Mr. LaForte's assertion about this.

<sup>10</sup> Mr. LaForte withheld his responsive documents and produced nothing in response to the Request for Production, and only produced his massive production near the conclusion of discovery after the SEC learned he had been obtaining responsive evidence from the Receiver and third parties and reached out to confer to obtain it without the need for litigation or a motion to compel).

- Whether the SEC had evidence that Par Funding engaged in a “general solicitation” through television ads, the Internet, Facebook, and other advertising (not an alleged misrepresentation or omission in the case)

It was extremely burdensome to prepare witnesses to testify about the myriad Topics in the Notice, and these Topics were largely ignored by the examiner. *See Apple Inc. v. Samsung Elecs. Co.*, No. C 11-1846 LHK PSG, 2012 WL 1511901, at \*2 (N.D. Cal. Jan. 27, 2012) (internal quotations and footnotes omitted) (issuing protective order against 30(b)(6) deposition notice) (Asking the SEC to designate deponents to provide detailed answers, in person, to inquiries covering every aspect of the complaint “would render unworkable the obligation of the responding party to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the designated subject matter, as that task becomes less realistic and increasingly impossible as the number and breadth of noticed subject areas expand.”)(internal quotations and footnotes omitted) (issuing protective order against 30(b)(6) deposition notice).

***c. That the SEC Improperly Asserted Privilege***

As set forth in detail in Exhibits C and D hereto, almost every question/answer at issue is outside of the scope of the noticed topics. To the extent the Court finds that they are not, then the Court should examine the privilege objections. The vast majority of the questions seek privileged information, as reflected in Exhibits C and D (objections inserted from transcript).

There is no dispute that the Rules apply to the SEC. Unlike a traditional litigant, the SEC does not have first-hand knowledge about the underlying facts in this case, which causes certain issues to arise under the Rules because the SEC bases its Complaint on third-party documents and statements obtained during its investigation.<sup>11</sup> Because the information (and particularly the mental impressions, beliefs, opinions, and theories of Commission counsel) was developed by the SEC in anticipation of litigation, it is protected work product. *See United States v. Nobles*, 422 U.S. 225, 238 (1975); *see also Rosenfeld*, 1997 WL 576021, at \*3 (holding that 30(b)(6) deposition of the SEC is “obviously aimed at finding the nature of the SEC’s attorney work product” because

---

<sup>11</sup> The SEC provided all of those documents to LaForte, together with annotated Complaint allegations showing evidence supporting each, and a list of persons who may have information about this matter. Thus, Mr. LaForte has all of the same evidence as the SEC in this case.

the defendant “seeks to explore the extent of the SEC’s knowledge (how much it knows and how much it does not know) as a result of the investigative efforts of its attorneys.”

During the deposition, the SEC objected to questions seeking to explore the extent of the SEC’s knowledge as a result of the investigative efforts of its attorneys. This is the very core of attorney work product. *See Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 576 (9th Cir. 1992) (One of the primary purposes of the work product doctrine is to prevent one party from exploiting the other party’s efforts to prepare for litigation by “borrowing the wits of their adversaries.”).

A similar category is questions asking for the facts or evidence for various allegations or issues in the case because this inevitably and improperly invades the work product of the SEC investigating attorneys. *SEC v. SBM Certificates*, the Court found that such questions “inevitably and improperly” invade the work product of the SEC investigative attorneys because the SEC, a law enforcement agency, has no independent knowledge of the facts and therefore could only testify about the investigative attorneys’ work product. 2007 WL 609888 at \*25. *See also SEC v. Morelli*, 143 F.R.D. 42 (S.D.N.Y. 1992) (inquiring about evidence of allegations or facts is an impermissible attempt by defendant to inquire into the mental processes and strategies of the SEC”). *Id.* at 47. Questions about the SEC’s impressions of the evidence and views on what facts support the SEC’s allegations is quintessential opinion work product.

As Judge Moreno explained, “[h]ow the SEC intends to marshal facts, documents and testimony in its possession is protected from disclosure, pure and simple.” *SEC v. Monterosso*, No. 07–61693–CIV–MORENO, 2009 WL 8708868, \*1 (S.D. Fla. June 2, 2009). While Mr. LaForte may claim that he is merely exploring the factual basis of the Complaint, this was provided with the TRO Motion at the outset of the case. The way the SEC is preparing for trial and the current view of evidence is privileged: “it is the selection and compilation of the relevant facts that is at the heart of the work product doctrine.” *EEOC v. HBE Corp.*, 157 F.R.D. 465, 466 (E.D. Mo. 1994) (barring Rule 30(b)(6) deposition of EEOC counsel).

Where the SEC objected to questions seeking this information, the SEC instructed the witness she could testify as to evidence already disclosed as supporting a fact or allegation. When this occurred, Mr. LaForte’s counsel often moved to the next question without giving the witness an opportunity to respond, which indicated Mr. LaForte was interested only in the SEC’s privileged information and opinion work product concerning trial strategy or the SEC investigation

that is ongoing. In fact, Mr. LaForte's counsel stated during the deposition that he did not need such answers about the evidence supporting the Complaint because he already knew what evidence supported which facts from his review of the TRO Motion.

The SEC also objected to questions where the examiner showed the SEC Mr. LaForte's defense evidence and asked the SEC to weigh it, interpret it, or opine on its evidentiary value. This information is opinion work product which is protected by the work product privilege.<sup>12</sup> By asking the SEC to give its opinion about his evidence and to opine on it, Mr. LaForte was clearly seeking the SEC's opinions about this case and his evidence.

Similarly, the SEC objected to questions asking what third parties said to the SEC investigators during the investigation. The seminal case on the work-product doctrine is *Hickman v. Taylor*, 329 U.S. 495 (1947). The Supreme Court made clear that the protection extended not only to documents authored by counsel, but also to counsel's *unwritten* mental impressions:

[A]s to oral statements made by witnesses to [counsel], whether presently *in the form of his mental impressions* or memoranda, we do not believe that any showing of necessity can be made under the circumstances of this case so as to justify production. Under ordinary conditions, forcing an attorney *to repeat or write out all that witnesses have told him* and to deliver the account to his adversary gives rise to grave dangers of inaccuracy and untrustworthiness. No legitimate purpose is served by such production. *The practice forces the attorney to testify as to what he remembers* or what he saw fit to write down regarding witnesses' remarks. Such testimony could not qualify as evidence; and to use it for impeachment or corroborative purposes would make the attorney much less an officer of the court and much more an ordinary witness. The standards of the profession would thereby suffer.

The work product doctrine protects from deposition discovery the substance of attorneys' witness interviews. *US Info. Sys., Inc. v. Int'l Bhd. of Elec. Workers Local Union*, No. 3,00 Civ. 4763 (RMB)(JCF), 2002 WL 31296430, at \*5 (S.D.N.Y. Oct. 11, 2002) (collecting cases);

---

<sup>12</sup> *EEOC v. McCormick & Schmick's Seafood Restaurants, Inc.*, Civil Action No. WMN-08-CV-984, 2010 WL 2572809, at \*4 (D.Md. June 22, 2010); *FTC v. Cyberspy Software, LLC*, No. 6:08-cv-1872-Orl-31GJK, 2009 WL 2386137, at \*4 (M.D.Fla. July 31, 2009); *SEC v. SBM Inv. Certificates, Inc.*, Civil Action No. DKC 2006-0866, 2007 WL 609888, at \*23-24 (D.Md. Feb.23, 2007); *FTC v. U.S. Grant Resources, LLC*, No. Civ. A. 04-596, 2004 WL 1444951, at \*10 (E.D.La. June 25, 2004); *SmithKline Beecham Corp. v. Apotex Corp.*, No. 99-CV-4304, 00-CV-4888, 01-CV-0159, 01-CV-2169, 99-CV-2926, 00-CV-5953, 02-CV-1484, 00-CV-1393, 00-CV-6464, 01-CV-2602, 01-CV-1027, 01-CV-3364, 01-CV-2981, 03-CV-3365, 2004 WL 739959, at \*3 (E.D.Pa. Mar.23, 2004) *SEC v. Buntrock*, 217 F.R.D. 441, 445-46 (N.D.Ill.2003); *SEC v. Rosenfeld*, No. 97 CIV. 1467(RPP), 1997 WL 576021, at \*2-4 (S.D.N.Y. Sept.16, 1997); *Pepper's Steel*, 132 F.R.D. at 69.

*McGinnis*, 2015 WL 13505396, at \*3, 7 (quashing Rule 30(b)(6) deposition notice seeking testimony about witness interviews); *cf. In re Grand Jury Proceedings*, 43 F.3d 966, 970 (5th Cir. 1994) (“stricter limits on disclosure of work product which results from oral communications with third parties is also necessary due to the likelihood that such [recollections] will reveal the attorney’s mental processes or litigation strategy”).

The objections to SEC interpretations of accounting terms were also proper for the following reasons, in addition to the reason that they were outside of the topics noticed and not relevant. During the deposition, Mr. LaForte asked about “gross proceeds” and other accounting issues for which both parties retained accounting expert witnesses. The SEC directed Mr. LaForte to the expert’s declarations that had been filed at the time of the deposition, and expert reports were due to be exchanged on these issues on August 13, 2021. While it is understandable that a party may want to get a preview of their adversary’s expert opinion, it is not an appropriate topic of a 30(b)(6) deposition. *See Club v. BNSF Ry. Co.*, No. C13-0967-JCC, 2016 WL 4528452, at \*4 (W.D. Wash. Aug. 30, 2016) (“Outside of these expert reports, the underlying factual information sought by Defendant has already been disclosed. For this reason, the Court concludes that deposing a Rule 30(b)(6) witness on this topic would fail to produce any new or meaningful information and would only serve to reveal NRDC’s attorneys’ interpretation of previously provided information.”). The same applies to the objections to questions about the SEC’s interpretations of “general solicitations” and other terms or legal applications. *SEC v. Kik Interactive Inc.*, 19 Civ. 5244 (AKH) (S.D.N.Y. Nov. 12, 2019), (quashing effort to get agency interpretation of Section 5 through Rule 30(b)(6) topic: “[A]s I originally held, the deliberations within an agency sheds no light on the application of the statute or regulation in issue. If the law is vague, or confusing, or arbitrary, as defendant argues, that can be argued objectively. Proper discovery should be focused on what defendant did, and not why the agency decided to bring the case.”). *Id.*

As Judge Rakoff put it in *JPMorgan Chase Bank v. Liberty Mut. Ins. Co.*, “depositions, including 30(b)(6) depositions, are designed to discover facts, not contentions or legal theories....” 209 F.R.D. 361, 362 (S.D.N.Y. 2002).

***d. That the SEC Has a History of a Win-at-All-Costs Approach***

Mr. LaForte asserts that the SEC and SEC’s Counsel (i.e., undersigned counsel) have “a documented history of engaging in sharp discovery tactics and pursuing claims against defendants that were not supported in fact or law.” (DE 747 at 10). In support, Mr. LaForte alleges that the

SEC has previously argued against a Rule 30(b)(6) deposition, and lost that argument in district court cases in Utah and Massachusetts. (DE 746 at 11). This does not support a win-at-all costs approach.<sup>13</sup>

Next, Mr. LaForte attacks undersigned counsel personally. Mr. LaForte's continued personal attacks and hostility toward counsel have plagued this case. It is improper and unwarranted, and the allegations are false and defamatory.<sup>14</sup>

### **B. Mr. LaForte Cannot Meet His Burden For The Relief He Seeks**

The SEC did not engage in discovery violations, as set forth above and in the exhibits filed with this Response. Even if the Court disagrees with the SEC regarding objections or privilege

---

<sup>13</sup> Court have also quashed 30(b)(6) depositions of the SEC. We did not seek that here, and are citing cases only to address Mr. LaForte's argument that because the *Kramer* case ruled that a 30(b)(6) deposition should occur, this somehow means something in this case where we did not argue to quash the Notice. *See, e.g., SEC v. Mutual Benefits. Corp.*, No. 04-60573-MORENO, slip op. (S.D. Fla. Nov. 22, 2005) (allowing Rule 30(b)(6) deposition would enable defendant to learn how SEC plans to marshal the facts and would disclose attorney mental impression); *SEC v. Monterossa*, No. 07-61693, slip op. at 1-3 (S.D. Fla. June 2, 2009) (because the SEC staff has no independent knowledge of the facts, questioning regarding the basis for an allegation impinges on attorney work product); *In re Bilzerian*, 258 B.R. 846, 848 (Bankr. M.D. Fla. 2001) (Rule 30(b)(6) (deposition regarding the basis for SEC claims would impinge on the work product of counsel); *SEC v. Morelli*, 143 F.R.D. 42 (S.D.N.Y. 1992) (proposed deposition is "an impermissible attempt by defendant to inquire into the mental processes and strategies of the SEC").

<sup>14</sup> First, Mr. LaForte points out that undersigned represented the SEC on another case where the SEC opposed a Rule 30(b)(6) deposition. *Id.* Next, Mr. LaForte claims undersigned engaged in a "pattern of misbehavior" in *SEC v. Kramer*, 08-cv-00455 (M.D. Fla May 27, 2011). Specifically, he argues that in that same case, the undersigned counsel presented an "inaccurate statement of law" to the Court, implying that undersigned lied to the Court. In truth, in *Kramer*, the SEC presented the *Brumberg, Mackey & Wall* SEC No-Action Letter in which the SEC had opined on a legal issue, and the Court disagreed with the SEC No-Action Letter, deeming the No-Action Letter an inaccurate statement of the law. Next, Mr. LaForte takes aim at the ruling on a defendant's motion in limine to exclude an unavailable fugitive co-defendant's investigative testimony, where the Court excluded it. Finally, Mr. LaForte alleges that undersigned engaged in "stonewalling" and "dilatory discovery tactics." To support this, he quotes the Judge as characterizing the SEC lawyers' conduct as "an impressive ledger of perceived indignities suffered through the allegedly devious or neglectful doings of the Commission." DE 746 at 12. However, in reality, the Judge used that phrase to refer to what the defendant *alleged*, finding that although the defendant alleged that behavior, "a critical assessment of Kramer's motion (an assessment supplemented by the district judge's and the magistrate judge's singularly informative opportunity to observe the parties throughout the litigation, including—most informatively—during discovery hearings and during the trial) confirms that, the allegations notwithstanding, the Commission's actual conduct warrants neither investigation nor sanction."

and scope issues, Mr. LaForte cannot demonstrate the bad faith required for sanctions. The SEC had a good faith basis for its objections, began discussing the topics with Mr. LaForte's counsel by no later than June 17, 2021, discussed with Mr. LaForte's counsel the SEC's view of the privilege assertions by no later than July 2021 [*See, e.g.*, Exhibit B, July 2021 email], and after an agreement could not be reached, inquired whether the Court would hear the parties' dispute before the deposition while recognizing that the discovery order prohibits it [ECF No 628].

The SEC did not obstruct discovery in this case and, contrary to Mr. LaForte's contentions, has no pattern of doing so. Instead, the SEC voluntarily provided Mr. LaForte with more than he was entitled to under the Rules – namely, all of the SEC's documents, at the outset of the case. The SEC answered contention interrogatories and Requests for Production, and revised and supplemented them in response to Mr. LaForte's conferrals until he was satisfied.

Mr. LaForte's arguments that he has been deprived knowledge of the evidence supporting the Complaint allegations simply is not true. The SEC's TRO Motion, filed with the Complaint, annotates every allegation with evidence and exhibits the SEC had at the time of filing the Complaint. The Receiver had 2 million documents to produce, and the SEC bore the massive cost for all Defendants of scanning and imaging it, and then voluntarily sent it to Mr. LaForte in electronic format so that he would have all the same evidence the SEC has for this case.

The SEC turns now to address the specific arguments in support of relief that Mr. LaForte makes in his Motions, beginning with the Rule 41 Motion.

**1. Mr. LaForte's Rule 41 Arguments [ECF No 746]**

**First**, Mr. LaForte argues that the Rules apply to the SEC; this is not in dispute and the SEC has not argued to the contrary [ECF No 746 at 13-14]. **Second**, Mr. LaForte argues that it is proper to consider conduct from other cases; as set forth above, there is no pattern of discovery sanctions in other cases. *Id.* at 15.

**Third**, Mr. LaForte argues that dismissal is the appropriate sanction because the SEC made blanket privilege assertions and did not disclose a privilege log. *Id.* There is no privilege log to produce, as Mr. LaForte knows. Also, where the SEC made standing objections, it was, as the transcript reflects, to appease Mr. LaForte's counsel who claimed the detailed objections after each question were taking his time, or stated as part of a response to Mr. LaForte's counsel who was speaking to SEC counsel on the record about objections or asking about them. Mr. LaForte also claims that previously the SEC sought to prevent a Rule 30(b)(6) deposition in other SEC cases;



this is of no import to the issues presented here, motions to preclude such a deposition are more often than not granted, and the SEC did not seek that relief in this case. Within this same third argument, Mr. LaForte also claims that sanctions are warranted because SEC counsel during the first deposition discussed the fact that the deposition was not a memory test after the witness testified and during the on-the-record conferral [ECF 747 at 16 (citing July Transcript at 66:21-67:2)]. Rule 30(b)(6) depositions are indeed not meant to be memory tests. SEC counsel spent more than 80 hours preparing two witnesses to testify about the topics noticed in the depositions, which included reviewing the case evidence and memorizing facts and evidence concerning the topics, which ultimately Mr. LaForte did not inquire about at the depositions.

Finally, within this same third argument, Mr. LaForte claims that the SEC viewed the Rules as inapplicable and dismissed any harm caused by the first deposition when the witness suffered from an involuntary issue affecting his ability to testify. [ECF No 746 at 16-17]. This simply is not true and is contradicted by the evidence of what the SEC did to address the issue with the first deposition. While Mr. LaForte cites the supplemental answers from the first witness as evidence that the SEC believes it is above the Rules, in truth and as Mr. LaForte knows, the SEC provided that sworn supplement before the second deposition occurred so that Mr. LaForte would have his answers and would have the ability to inquire about them again, or further, at the second deposition if he so desired. It was done in an attempt to help and to resolve the issue by providing more information, and for no other purpose.

In support of his arguments for dismissal, Mr. LaForte cites inapposite case law to support his contention that (1) there was willful misconduct; and (2) there is no adequate lesser sanction. [ECF No 16-17]. A discussion of the cases Mr. LaForte cites is as follows:

*Lyle v. BASF Chemistry, Inc.*, 802 F.App'x 479, 482 (11<sup>th</sup> Cir. 2020): Affirming district court order dismissing under Rule 41 based on pattern of willful and bad faith conduct where Court had amended its discovery deadlines three times to give party more time to respond; each time, the party failed to submit complete and adequate responses to the defendants' discovery requests; and the party's attorney admitted that she intended to continue providing inadequate responses. Lesser sanctions were not adequate based on pattern and admission that it would continue.

*Phipps v Blakeney*, 8 F3d 788, 790 (11<sup>th</sup> Cir. 1993) (Affirming dismissal where there was no dispute that plaintiff willfully and deliberately violated multiple court orders and lesser sanctions had been imposed with no effect). This case is inapposite. The SEC has violated no court orders, let alone engaged in any willful or deliberate violations of orders.

*Sciarretta v. Lincoln Nat'l Life Ins. Co.*, 778 F.3d 1205, 1213 (11<sup>th</sup> Cir. 2015) (Affirming monetary sanctions where party selectively prepared its Rule 30(b)(6) witness for trial testimony, only preparing the witness to answer questions that were helpful to the party and not preparing the

witness for areas that harmed it). This case is inapposite. The SEC did not selectively prepare its witnesses, nor can Mr. LaForte demonstrate this. Nor could this occur. Both witnesses are on the investigative team for this case and each testified that they reviewed the noticed topics and spent about 40 hours reviewing documents and preparing to testify about those topics. Mr. LaForte has the same documents the SEC has (and more), and cannot identify any document that the SEC has and did not testify about that was included in the noticed topics, let alone a single damaging piece of evidence in the SEC files whatsoever that the witnesses were asked about.

*Hayas v. Geico Gen. Ins. Co.*, 2014 U.S. Dist LEXIS 149772, at \*10 (M.D. Fla Oct. 21, 2014) (finding discovery violation, but not in bad faith; directing party to disclose and denying sanctions). This case clearly does not support Mr. LaForte's position that sanctions are warranted since it found sanctions were not warranted.

*United States v. Proctor*, 356 U.S. 677, 682 (S.Ct. 983, 986-87 (1958) (finding that defendant had not provided justification for wholesale discovery): Mr. LaForte cites this for the statement that discovery and procedure make trial more fair with "basic issues and facts disclosed to the fullest extent practicable extent." The SEC has done this, providing all of its evidence, all of the Receiver's evidence, answering all interrogatories and Requests for Production, annotating the Complaint with evidence, and testifying about non-privileged matters noticed in the deposition.

*United States v. Ganz*, 806 F.Supp. 1567, 1575 (S.D. Fla. 1992) (involving a plea deal where the government acted in bad faith in the departure sought after the defendant cooperated to great extent). No such bad faith conduct is alleged here.

Thus, the cases upon which Mr. LaForte relies do not support the relief he seeks. Mr. LaForte cannot demonstrate any violation, let alone a bad faith violation, because there is none.

## **2. Mr. LaForte's Request for Sanctions Against Undersigned Counsel Pursuant to 28 U.S.C. 1927**

Mr. LaForte contends that based on counsel's supposed "past litigation history and behavior in this case," she has engaged in a "deliberate scheme to sabotage the discovery process." [ECF No 746 at 18]. This is false. Instead, there is a discovery dispute and the SEC has a good faith basis for its position regarding its objections and contrary to Mr. LaForte's allegations, raised these issues in advance of the depositions in an attempt to resolve precisely the issues that have occurred, where the parties are litigating discovery disputes rather than preparing for trial. As Mr. LaForte knows, undersigned: (a) voluntarily offered and produced to him the entire SEC file for this case immediately after filing, (b) agreed to informal discovery requests without the need for requests for production, (c) agreed to scan and image the Receiver's massive document production for the defendants and Receiver so they would not bear this cost (to the tune of more than \$100,000) of obtaining and processing this discovery, and then produced it electronically to all defendants without any request for production required or issued, (d) immediately notified LaForte's counsel of the witness' issue during the July 9 deposition and offered remedies including

a second deposition, additional time for the deposition, sworn corrections before the second deposition with no objection to asking the questions again, and the SEC bearing the Court Reporter cost (to the tune of thousands) for the deposition; (e) revised the SEC's discovery responses after Mr. LaForte's counsel conferred in order to resolve those issues; (f) answered Mr. LaForte's interrogatories without issue; (g) notified LaForte's counsel in advance of disputes concerning the deposition topics so that he could prepare and/or seek Court assistance in advance of the deposition; (h) agreed for Mr. LaForte to continue taking the SEC's expert witness deposition testimony after the discovery deadline; and (i) agreed to every extension Mr. LaForte requested for responding to discovery requests.

This is the pattern in this case. No evidence has been concealed or hidden. To the contrary, SEC Counsel ensured that Mr. LaForte has the same evidence the SEC has in this case. The issue now is that Mr. LaForte and the SEC have a good faith dispute about deposition objections and answers, and nothing more. Mr. LaForte's final argument, that the SEC timed this dispute so that he would not be able to obtain discovery materials needed to litigate this case [ECF No 746 at 19] is not correct. Mr. LaForte has had the annotated Complaint allegations for more than a year and he chose not to engage in extensive discovery in this case. He chose to notice the deposition for the end of the discovery period. If he needed this deposition to take other discovery, he could have noticed it for earlier in the discovery period. But there is no reason to judge Mr. LaForte's discovery scheduling because, as Mr. LaForte knows, the SEC agrees that he can seek discovery after the discovery deadline and can conclude depositions. We asked only that he not wait to complete discovery on the eve of trial and that he produce any third party productions he receives.

### 3. Mr. LaForte's Rule 37 Arguments [ECF 776]

The Court must deny the relief Mr. LaForte seeks, as it fails as a matter of law and fact. Mr. LaForte argues for sanctions under Rule 37(d)(1)(A)(i),<sup>15</sup> which provides for sanctions if a party fails to appear for a deposition. [ECF No 776 at 11]. Mr. LaForte argues that the SEC was completely unprepared to testify about the noticed topics and therefore the SEC essentially did not

---

<sup>15</sup> Mr. LaForte also cites [Rule 37\(b\)\(2\)\(A\)](#), pursuant to which a court may dismiss a complaint with prejudice when: (1) a party's failure to comply with a **court order** is a result of willfulness or bad faith; and (2) the court finds that lesser sanctions would not suffice. [Malautea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1542 \(11th Cir. 1993\)](#). The SEC has violated any Court order, nor does Mr. LaForte claim this. Therefore, this cannot form the basis for the relief Mr. LaForte seeks.

appear. He provides no legal support or case that would support dismissal under Rule 37(d)(1)(A)(i), let alone on the facts of the deposition at issue. Nor can he demonstrate bad faith. Further, as set forth above and in the exhibits attached hereto, the SEC was not unprepared to testify about the noticed topics. The vast majority of questions at issue were outside of the topics noticed, and these and other questions at issue were improper or sought privileged information.

Mr. LaForte asserts also that Counsel made blanket objections and speaking objections, but the record reflects that some of the blanket objections were made at Mr. LaForte's request so that there not interruptions with objections. Other portions designated as blanket objections show the SEC responding to counsel's questions or comments, explaining an objection made, or, as to the first deposition, discussing a resolution after the witness finished testifying. The transcripts reflect improper dialogue and comments by both parties' counsel and interjections by others. Counsel can do, and have done, better in this case; the SEC will not respond to or engage with counsel when the deposition continues.

As for Mr. LaForte's assertion that the SEC failed to provide a privilege log before the deposition and failed to raise the issues in advance, no privilege log is required as the SEC produced all documents in its file for this case and as discussed above, the SEC did raise the issues in advance. As for Mr. LaForte's assertion that it is improper to object to facts learned while reviewing documents selected by counsel, the SEC reviewed that citation and addresses it in the chart, withdrawing the objection and noting the question was answered elsewhere in the transcript.

Mr. LaForte's claim that the case should be dismissed due to speaking objections is not warranted, and he provides no legal support for this argument. Here, the transcript reflects that when Mr. LaForte's counsel criticized Counsel for making speaking objections, SEC Counsel explained why she believed the objection identifying each privilege objection with some detail was necessary. This was not a bad faith effort to limit time (the SEC offered Mr. LaForte additional time if the deposition continues).

Mr. LaForte cannot demonstrate bad faith, because there is none. Instead, the Motions present a discovery dispute about the scope of a deposition, proper questioning, and privilege objections. When the deposition continues, a Special Master might benefit all parties.

**CONCLUSION**

For the reasons set forth above and in the exhibits attached hereto, the Court should deny the Motions.

October 3, 2021

Respectfully submitted,

Amie Riggle Berlin

Amie Riggle Berlin, Esq.

Senior Trial Counsel

Fla. Bar No. 630020

Direct Dial: (305) 982-6322

Email: [berlina@sec.gov](mailto:berlina@sec.gov)

Attorneys for Plaintiff

**SECURITIES AND EXCHANG COMMISSION**

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

Telephone: (305) 982-6300

Facsimile: (305) 536-4154

Tr. Page & Line Number <sup>1</sup> And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>20:14-16</b></p> <p>“[U]nable to answer basic questions” [ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> So, Mr. Andjich, again, would you agree that attendees at Mr. Vagnozzi's November 21st, 2019, dinner were given an opportunity, by virtue of this flyer, to invest in four investment opportunities, only one of which had anything to do with MCAs?</p> <p><b>A</b> I recall the flyer, seeing the flyer. As I sit here today, I don't have a specific recollection of the other investment opportunities that were being offered. What does, perhaps, come to mind is real estate and then a -- and I forgot the terminology – life settlement. But, you know, I'd like to see the flyer, then I could, you know, speak more accurately</p>	<p><b>Relevance; Memory Test</b></p> <ul style="list-style-type: none"> <li>- The witness is asked to testify from memory what a particular defendant's document (a flyer) says <ul style="list-style-type: none"> <li>- Examining party did not show the document to the witness</li> </ul> </li> <li>- Relevant to show only how good or bad the witness' memory is, which is not relevant to any claim or defense in the case<sup>2</sup></li> </ul>
<p><b>27:11-14</b></p> <p>“[U]nable to answer basic questions” [ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Okay. And my question was, do you have any knowledge, any evidence, that Par Funding directed John Pauciulo to play any role in preparing the PPMs for the agent funds?</p> <p>[Objection, not within topics noticed]</p> <p><b>A</b> As I sit here today, I don't have a specific recollection. If there is a document or something you'd like to show me which might refresh my recollection, I'd be happy to take a look at it.</p>	<p><b>Outside of Noticed Topics (<u>Exhibit C</u>, Notice).</b></p> <ul style="list-style-type: none"> <li>- This does not fall into any noticed topic</li> <li>- If the SEC is required to search the more than 2 million documents produced in this case for LaForte (who has all of the documents the SEC has), it would have required notice so the search could occur to determine if Par Funding directed this non-party to engage in the conduct inquired about<sup>3</sup></li> </ul>

<sup>1</sup> These are the page and line numbers of the answer or objection Mr. LaForte cites in his Rule 37 Motion as the basis for the Court dismissing the case. The citations do not include the questions. The SEC has inserted, in the second column, the questions.

<sup>2</sup> *Stone Eagle Servs., Inc. v. Pay-Plus Sols., Inc.*, No. 8:13-cv-2240-T-33MAP, 2015 WL 12843846, \*2 (M.D. Fla. Apr. 29, 2015) (A 30(b)(6) deposition is not meant to be a “memory contest,” and Plaintiff was not required to memorize all facts uncovered)

<sup>3</sup> *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1995), *aff'd*, 213 F. 3d 646 (11th Cir. 2000) (topics listed in the 30(b)(6) notice govern the obligations to prepare a witness)

Tr. Page and Line Numbers And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>28:23 – 29:1</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Mr. Andjich, there wouldn't be a document, because, to my knowledge, there is no such evidence. I'm asking you whether you're aware of any evidence of the agent funds taking direction from -- or rather, John Pauciulo taking direction from Par Funding with respect to the preparation of the PPMs for the agent funds?</p> <p>[Objection, scope]</p> <p><b>Q</b> Is that correct, Mr. Andjich, that you have no knowledge and you have seen no evidence that Par Funding directed John Pauciulo to prepare PPMs for the agent funds? Is that correct?</p> <p>[Same objection]</p> <p><b>A</b> I think I gave you my answer. I don't have a specific recollection, but if there is a document that might suggest that that's the case, I'd gladly take a look at it.</p>	<p><b>Outside of Noticed Topics.</b> Same as immediately above.</p>
<p><b>31:24-25</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Okay. Do you have any evidence –</p> <p><b>A</b> How many were filed, as I sit here today, I don't recall.</p> <p><b>Q</b> Okay. I didn't ask you how many. That's fine.</p>	<p><b>The Witness Volunteered That He Did Not Recall A Fact Not Asked About</b></p> <p>The examiner responded that “that’s fine” because he did not ask about that fact.</p> <p>It is unclear how this answer can form a basis for sanctions for not recalling a fact not asked about</p>

Tr. Page and Line Numbers And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>44:13-16</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Okay. So the reason we're talking about this is because I asked you whether you were aware of any information or any evidence that Par Funding was involved in general solicitations, and you mentioned this dinner; and we just discussed it. What other general solicitations are you aware of, based on your review of the evidence, that Par Funding is responsible for?</p> <p><b>A</b> I know that there were investor declarations and people who indicated that they did hear radio and television advertisements. Whether they were directly put on by Par Funding or Mr. Vagnozzi, I don't recall.</p>	<p><b>Outside of the Topics Noticed</b></p> <ul style="list-style-type: none"> <li>- LaForte did not notice the deposition to inquire about Par Funding's involvement in general solicitations (<b>Exhibit C</b>, Notice of Deposition)</li> </ul> <p><b>Witness Provided A Sworn Supplemental Response Before The Deposition Continued</b></p> <ul style="list-style-type: none"> <li>- On August 2, before the deposition continued, the SEC provided a sworn errata sheet by the witness (<b>Exhibit B</b>, supplementing answer at 46:3, where the examiner requested this information again).</li> <li>- The SEC advised Mr. LaForte's counsel that we would have no objection to him asking about any of the answers provided in the errata sheet when the deposition continued (it continued August 5).</li> </ul>
<p><b>45:23-46:3</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> So my question was, what evidence are you aware of that Par Funding -- specifically Par Funding, not ABFP -- paid for or in any way caused the general solicitations you just described: radio ads, television ads, anything of the sort?</p> <p><b>A</b> I don't know.</p>	<p><b>Outside of the Topics Noticed</b></p> <ul style="list-style-type: none"> <li>- LaForte did not notice the deposition to inquire about evidence the SEC is aware of regarding who paid for or caused general solicitations.</li> <li>- Had they noticed this topic, the SEC could have prepared by searching the more than 2 million documents Par Funding produced to Mr. LaForte and the SEC during discovery</li> </ul> <p><b>Witness Provided A Sworn Supplemental Response Before The Deposition Continued</b></p> <ul style="list-style-type: none"> <li>- Same as immediately above</li> </ul>



Tr. Page and Line Numbers And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>46:20-47:3</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Name one investor declaration for me where an investor or a witness identifies or testifies that some of the phase one investors were not accredited.</p> <p><b>A</b> I guess you'd have to show me the declarations, and we'd have to go through them. I don't remember as I sit here today.</p>	<p><b>Not Covered By Any Topic</b></p> <p><b>Relevance; Memory Test</b></p> <ul style="list-style-type: none"> <li>- As Mr. LaForte knows, the SEC filed and served him with all copies of all witness declarations in July 2020 (SEC Response to Request for Production).</li> <li>- Therefore, Mr. LaForte is asking the SEC to recite from memory what these declarations (which LaForte has but does not show the witness) say. Thus, the question is relevant only to show how good the witness' memory is at reciting what is stated in declarations filed and served in this case. Mr. LaForte has the declarations.</li> </ul> <p><b>Witness Provided A Sworn Supplemental Response Before The Deposition Continued</b></p> <p>Notwithstanding the foregoing, the SEC provided a sworn errata sheet from the witness to identify the evidence at issue and where it appears in the record. (Exhibit B at Page 46, Lines 15-16).</p>
<p><b>47:11-17</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Okay. And just so I'm clear, are you aware of any evidence that any witness testified in a declaration or otherwise that Par Funding did not take specific steps, or sufficient steps, to ensure that phase one investors were accredited?</p> <p><b>A</b> I don't know the -- I don't have the answer to that.</p>	<p><b>Same as immediately above.</b></p> <p>This question asks the same thing the witness testified to above. The question was asked of the witness 7 times, and he stated he did not recall from memory which declarations we filed included a reference to accreditation.</p>

Tr. Page and Line Numbers And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>49:14-25</b></p> <p><b>And</b></p> <p><b>50:11-18</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Mr. Andjich, if your answer is that you are not aware of any, as you sit here today, I will take that answer and we can move on.</p> <p>---</p> <p><b>Q</b> Mr. Andjich, is that a fair summary?</p> <p><b>A</b> I don't recall which specific investor or investors told the SEC in a declaration that there was no accreditation required or asked, but I know there are a number of SEC declarations from investors.</p> <p><b>Q</b> Okay. And are those investors who purchased directly from Par, or are those investors who were LPs, who purchased from agent funds?</p> <p><b>A</b> It could be both.</p> <p><b>Q</b> Okay. And you can't remember a single one as you sit here today?</p> <p>[Objection. Asked and answered].</p> <p><b>Q</b> You can answer, sir.</p> <p><b>A</b> Well, the one that comes to mind is Kara DiPietro. I don't recall exactly when she invested. But I know there were a number of other declarations by investors.</p> <p><b>Q</b> Okay. Do you know whether -- do you remember whether Ms. DiPietro purchased a note or -- purchased a note directly from Par Funding or from an agent fund?</p> <p><b>A</b> I don't know which.</p>	<p><b>Same as immediately above regarding 46:20-47:3 and 47:11-17</b></p> <p><b>Outside of the Scope of Noticed Topics</b> Had we known this topic would be covered, we would have asked the witness to memorize the declarations or review them for references to the word “accredited” for Mr. LaForte</p> <p><b>Does not seek relevant evidence</b></p> <ul style="list-style-type: none"> <li>• The questions seek information about what the SEC recalls regarding what investor witnesses stated in their declarations the SEC filed in August 2020</li> <li>• Whether or not the SEC can recall facts stated in the declarations is not relevant to any claim or defense in the case</li> <li>• Mr. LaForte has the witness declarations, and has had them since no later than August 2020</li> </ul> <p><b>While Mr. LaForte uses this citation and the ones immediately preceding it to argue the witness repeatedly could not recall, the transcript makes clear that the witness is responding to the same question repeatedly</b></p> <p><b>Supplemental Errata Sheet</b> To provide further clarity, even though this subject is outside of the scope of the noticed topics, the SEC provided a sworn errata sheet clarifying that the witness is testifying about the declarations produced in August 2020 to Mr. LaForte (Exhibit B at 51:4)</p>

Tr. Page and Line Numbers And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>51:20-52:1</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> Okay. So the SEC is alleging that Mr. Cole and Ms. McElhone were paid directly from investor funds? Is that the allegation?</p> <p><b>A</b> I know there was an accounting performed by Melissa Davis from an outside accounting firm, and that will tell you exactly from which accounts the money came.</p>	<p>Outside of the topics noticed.</p> <p>Further, before the deposition, SEC counsel advised Mr. LaForte's counsel that we had not yet completed the accounting (disgorgement) analysis and would therefore not yet be able to testify to this topic (<b>Ex D</b>)</p> <ul style="list-style-type: none"> <li>• Expert reports were due after the deposition. Both parties hired expert witnesses to perform accounting analyses on the Par Funding accounts and movement of investor funds; Melissa Davis is the SEC's expert witness on these issues and Mr. LaForte deposed her</li> <li>• Before the deposition, the SEC served Mr. LaForte with a declaration from the expert (Melissa Davis) stating the accounts held commingled investor funds.</li> </ul>
<p><b>53:20-54:1</b></p> <p>“[U]nable to answer basic questions”</p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p>	<p><b>Q</b> So my question, Mr. Andjich, is simply, cash that comes back to the company, to Par Funding, from merchants does not represent investor proceeds, correct -- not gross proceeds, as referenced here?</p> <p>[objection repeated: calls for expert testimony and not prepared for]</p> <p><b>Q</b> I don't know. All I can do is tell you that there was an extensive review done of the bank records and the accounts, and that those numbers that are cited in the affidavit -- or the complaint come from the analysis that was done by Melissa Davis and her team, the outside accounting firm.</p>	<p><b>As set forth above:</b></p> <ul style="list-style-type: none"> <li>• Outside of topics noticed</li> <li>• Concerns expert witness conclusions in this case</li> <li>• Expert witness accounting analysis was not completed at time of deposition, as Mr. LaForte knew</li> <li>• Reports were exchanged after the deposition, and LaForte deposed the expert for 7 hours about the accounting issues</li> </ul>

Tr. Page and Line Numbers And LaForte's Argument	Question and Answer or Objection At Issue	The SEC's Position
<p><b>58:16-22</b></p> <p><b>“[U]nable to answer basic questions”</b></p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n4]</p> <p><b>“Testified that other individuals would be better suited to answer questions posed by the Defendants”</b></p> <p>[ECF No 746 at p4, n5] [ECF No 776 at ¶ 6, n5]</p>	<p><b>Q</b> Mr. Andjich, you testified earlier that "gross proceeds" means investor funds. Are you changing that answer now?</p> <p><b>A</b> I mean, that would be my understanding, but, again, we'd have to look to the declaration of Melissa Davis as to the source of the monies that wound up in the hands of McElhone and Cole. I don't have that specific knowledge. I know she looked at a number of bank accounts. They're listed in her declaration. She could tell you what the source of those monies were.</p>	<p><b>Witness is repeating a prior answer.</b></p> <p><b>Outside the Scope of Noticed Topics.</b></p> <p>This question concerns an accounting opinion, and this was not noticed for the deposition. Both parties retained accountants as expert witnesses to address the accounting issues.</p> <p>Mr. Andjich directed Mr. LaForte to the expert witness declaration we had filed and served where the expert made conclusions about the flow of investor funds</p>

**Berlin, Amie R.**

---

**From:** Berlin, Amie R.  
**Sent:** Sunday, July 11, 2021 4:14 PM  
**To:** Alejandro Soto  
**Subject:** Re: Deposition date

Hi Alex,

Elisha will be prepared to testify about that. Neither will testify about the investigation or why certain information was requested or discussed, as it is privileged. However, Elisha will be prepared to testify about the Shane Heskin topic in your notice on questions that don't seek privileged information.

I want to flag that regardless of whether Linda's name is redacted on the 30(b)(6) transcript, it has been brought to my attention this weekend that she is a member of the Florida Bar and there is a Florida Bar Rule prohibiting her from being an attorney on the case and testifying. We are seeking guidance on this to make sure she doesn't violate any Bar rules by testifying in a 30(b)(6) deposition since she won't be stepping off the litigation. If it would cause her to violate the Bar rules, we will obviously have to designate someone else and would have someone prepared to testify on the 21st so we don't delay your discovery. I hope to have an answer on that tomorrow. Keep in mind that regardless of who testifies about emails we produced, they cannot testify about why certain information was requested as it is privileged. They can testify only that yes, we received or sent this message. Therefore, we can prepare anyone to testify as to that in the event Linda is precluded by the Bar rules from being a witness.

On a final note, I am concerned that it is impossible for anyone to testify from memory as to the topics you have identified in your notice absent narrowing the topics. Let me know if you can limit or narrow them further. As I wrote previously, I have not completed my review of the documents obtained in discovery or decided how the evidence therein relates to the charges. Nor can any witness review the many terrabytes of data produced in this case as it would take several months (I've been reviewing it for months and haven't finished). Therefore, our witnesses can only testify at this deposition as to non-privileged information based on the investigative file we produced and the evidence we obtained before the preliminary injunction hearing.

On Jul 11, 2021, at 6:48 AM, Alejandro Soto <asoto@ffslawfirm.com> wrote:

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you, Amie. We'll do Elisha's part on July 21. I do want to clarify one issue with you: We discussed having Linda testify regarding any communications she had with investors, merchants and counsel for either and any emails she participated in or was copied on. I will want to ask questions as described in the notice of deposition regarding *any* communications between the SEC and Shane Heskin, which arguably includes communications that may have been had outside of Linda's purview. Will she handle those as well or will Elisha? It doesn't matter to me, but I want to be ready on July 21 to ask those of Elisha if that is your preference.

Alex

**From:** Berlin, Amie R. <BerlinA@sec.gov>  
**Sent:** Friday, July 9, 2021 3:45 PM  
**To:** Alejandro Soto <asoto@ffslawfirm.com>  
**Subject:** Deposition date

Hi Alex,

Since Elisha is available July 21, I wanted to let you know I would have no objection if you want to take her portion on July 21 and then Linda's on August 2 (rather than taking both on August 2). I am amenable to whatever you prefer. Just let me know.

Amie

**Berlin, Amie R.**

---

**From:** Berlin, Amie R. <BerlinA@sec.gov>  
**Sent:** Monday, July 12, 2021 11:41 AM  
**To:** Alejandro Soto  
**Subject:** 30(b)(6) deposition

We have confirmed that the Florida bar rules prohibit Linda from being counsel on the case and testifying in it concerning any substantive matter. Therefore, she cannot be the witness. I'm around all day today if you want to discuss this.

Defendants' Chart: Exhibit C to ECF No 776		SEC Response	
SEC's Allegations	Deposition Testimony	The Question & Answer	Comment to Chart
<p>In addition to managing Agent Funds, Vagnozzi offers and sells promissory notes through his own Agent Funds, ABFP Income Fund and ABFP Income Fund 2 (collectively, the "ABFP Funds"). [D.E. 119 at ¶ 86]</p>	<p>A. So I can agree that that is what the Complaint says in Paragraph 86. I don't have any personal knowledge, and the SEC doesn't have any personal knowledge, as to what Mr. Vagnozzi was doing. I can tell you the evidence that supports the allegations in Paragraph 86. To point to the evidence, I can do that. [Exhibit B at 21:8-14]</p>	<p>[August Deposition, at 20:23-21:17]</p> <p><b>Q.</b> So we're in agreement that during Phase 2, Mr. Vagnozzi was selling promissory notes through ABFP, which are agent funds?</p> <p>MS. BERLIN: Objection to form.</p> <p>BY MR. SOTO: Q. Correct?</p> <p>MS. BERLIN: Objection to form.</p> <p>BY MR. SOTO: Q. Ms. Frank, you can answer, if you can hear me.</p> <p><b>A.</b> So I can agree that that is what the Complaint says in Paragraph 86. I don't have any personal knowledge, and the SEC doesn't have any personal knowledge, as to what Mr. Vagnozzi was doing. <b>I can tell you the evidence that supports the allegations in Paragraph 86. To point to the evidence, I can do that.</b></p> <p><b>Mr. Soto:</b><sup>1</sup> We're going to discuss that. For now, I'm just trying to define some time periods. <b>And so you've answered my question.</b></p>	<p>1. This is outside of the topics noticed</p> <p>2. The Witness answered.</p> <p>3. Mr. LaForte's counsel responded to the answer: "you've answered my question." [21:15-17].</p> <p>4. Thus, there is no basis for sanctions, because the witness answered and because the topic was not noticed.</p>

<sup>1</sup> Mr. LaForte's counsel and the examiner at the depositions.



Defendants' Chart: Exhibit C to ECF No 776		SEC Response	
SEC's Allegations	Deposition Testimony	The Question & Answer	Comment to Chart
<p>"on November 21, 2019, Vagnozzi and ABFP hosted more than 300 investors and prospective investors for a dinner party where they were solicited to invest in Par Funding through Vagnozzi's funds. [D.E. 119 at ¶ 95]</p>	<p>"The SEC doesn't have any personal knowledge who put that dinner on. We just provided the transcript of that dinner . . . as a piece of evidence" [Exhibit B at 46:15-47:1]</p>	<p>[46:15-47:19]</p> <p>Q. Okay. And, Ms. Frank, who put on this November dinner that you're referring to?</p> <p>MS. BERLIN: Objection as to form.</p> <p>BY MR. SOTO: Q. You can answer, Ms. Frank.</p> <p>A. The SEC doesn't have any personal knowledge who put that dinner on. We just have provided the transcript of that dinner --</p> <p>Q. I want to make clear, Ms. Frank -- I'm sorry, I cut you off. Please finish your answer.</p> <p>A. We just have provided that <b>transcript of the dinner</b> as a piece of evidence.</p> <p>Q. Okay. So I want to make clear that I'm not asking for the SEC's personal knowledge -- I'm not sure I even understand what an entity's personal knowledge would be -- and I'm not asking for your personal knowledge. I'm asking for the evidence that the SEC has to support the allegations of the Complaint. <b>My last question was: What evidence do you have of who was responsible for putting on this November dinner that you referenced in your last answer?</b></p> <p>MS. BERLIN: Objection. Asked and answered. The witness has referred you to the evidence.</p> <p>BY MR. SOTO: Q. So, Ms. Frank, do you have -- do you have an answer for my question?</p> <p><b>A. The evidence is the transcript itself.</b></p>	<p>1. This is outside of the topics noticed</p> <p>2. The Witness answered and identified the evidence showing who "put on" the dinner ("evidence is the transcript itself").</p> <p>3. Thus, there is no basis for sanctions because the witness answered and the topic was not noticed.</p>

Defendants' Chart: Exhibit C to ECF No 776		SEC Response	
SEC's Allegations	Deposition Testimony	The Question & Answer	Comment to Chart
<p>The Defendants advertised the investments in newspapers, on television and radio, through email messages, and on the Internet. They held seminars and dinners for potential investors. In sum, they engaged in precisely the activity that precludes the application of registration exemption. [D.E. 14 at p. 55] (the TRO Motion)</p>	<p>Q: You have no evidence that Par representatives engaged in any general solicitation through radio, television commercials, or the Internet, do you? [privilege objections asserted]</p> <p>A: So with respect to that question, though, the SEC has no personal knowledge, and so I can't opine on that. [August Transcript at 113:9-23]</p>	<p><i>The examiner asked this several times. The SEC answered it the first time:</i></p> <p>Q. And can you point me to any evidence that the SEC has that Par Funding engaged in general solicitations through the use of radio, television commercials, the Internet, or Facebook?</p> <p>[objection]</p> <p>A. I would just refer you to the investigative file and the TRO that is annotated.</p> <p>[August Transcript at 111:9-24]</p>	<ol style="list-style-type: none"> <li>1. This is outside of the topics noticed</li> <li>2. The Complaint does not reference a "general solicitation"</li> <li>3. Rather, this is a legal argument the SEC made in the Memorandum of Law to its TRO Motion that Mr. LaForte cites in column 1.</li> <li>4. The TRO Motion is annotated to cite to the evidence showing each fact supporting the "general solicitation" argument in that motion.</li> <li>5. Because this area of inquiry was not noticed and asks about a legal conclusion of the SEC, it essentially asks an attorney who oversaw the investigation in this case for her legal opinion.</li> <li>6. The Witness answered the question by directing Mr. LaForte to the annotated TRO Motion, where the SEC made this legal argument and also cited and filed the specific evidence supporting it. [111:9-24]</li> <li>7. Thus, there is no basis for sanctions because the issue inquired about was not noticed and the witness answered.</li> </ol>

Defendants' Chart: Exhibit C to ECF No 776		SEC Response
SEC's Allegations	Deposition Testimony	Comment to Chart
<p>Par Funding . . . restructured its offering by converting its Agents to Agent Fund managers the Agents created under the guidance and supervision of Vagnozzi and Abbonizio . . . Par Funding did not put this structure into place until January 2018 . . . Under this new structure, Par Funding uses Agent Funds to offer and sell promissory notes the Agent Funds issue to investors. The Agent Funds then funnel investor money to Par Funding, which then issues Par funding Notes to its Agent Funds. . . The Agent Fund PPMs distributed to potential investors state that the Agent Fund is raising money to invest in "an MCA company," but do not disclose that this is Par Funding. [D.E. 119 at ¶¶ 63-67]</p>	<p>Q Okay. Fair to say that the agent funds prepared and issued their own PPMs?</p> <p>[objection, not noticed]</p> <p>THE WITNESS: Could you repeat the question?</p> <p>Q: Yes. Would you agree that the Agent Funds prepared and issued their own PPMs?</p> <p>A: My recollection is that a lawyer by the name of John Pauciulo . . . actually prepared the offering materials relative to each of these funds, that the funds did not actually prepare the documents themselves.</p> <p>. . .</p> <p>Q: And my question was, do you have any knowledge, any evidence, that Par Funding directed John Pauciulo to play any role in preparing the PPMs for the agent funds?</p> <p>[objection, not noticed]</p> <p>A: As I sit here today, I don't have a specific recollection. If there is a document or something you'd like to show me which might refresh my recollection, I'd be happy to take a look at it.</p>	<ol style="list-style-type: none"> <li>1. This is outside of the topics noticed</li> <li>2. This testimony is from the July deposition</li> <li>3. This testimony cannot form the basis for sanctions because the issue was not noticed. Also, the SEC believes the issues concerning the roughly 1-hour deposition in July were resolved</li> </ol>

Defendants' Chart: Exhibit C to ECF No 776		SEC Response
SEC's Allegations	Deposition Testimony	Comment to Chart
<p>The representations in both filings that Cole and McElhone would not receive any of the gross proceeds of the securities offering are false.</p> <p>McElhone received at least \$11.3 million from the offering between July 2015 and October 2019. As for Cole, Par Funding transferred funds, which included investor funds, to companies in which Cole has an ownership interest or otherwise receives financial benefits: \$1.8 million to ALB Management between July 2019 and October 2019; about \$4.9 million to Beta Abigail between July 2016 and April 2019; and about \$9.5 million to New Field Ventures, LLC between February 2017 and November 2019.</p> <p>[D.E. 119 at ¶¶ 239-240]</p>	<p>Q: And so as the SEC's corporate designee, I'm asking you to define what the SEC meant or tell us what the SEC meant by the term "gross proceeds" of the securities offering.</p> <p><b>A: The evidence that supports the claim in Paragraph 239 is Melissa Davis' declaration, so I would refer you to that evidence.</b></p> <p>Q: "Gross proceeds" means investor proceeds, correct?</p> <p>A: I can't answer that question. <b>I would refer you to Melissa Davis' declaration.</b></p> <p>Q: Okay. And cash that is paid back to CBSG by merchants would not be gross proceeds, correct?</p> <p>...</p> <p><b>A: We would refer you to Melissa Davis' declarations.</b></p> <p>(August Deposition</p>	<ol style="list-style-type: none"> <li>1. The questions ask the SEC about an accounting term and related analysis done by the SEC's accounting expert witness.</li> <li>2. It appears these questions fall under Topic 1 of the Notice.<sup>2</sup></li> <li>3. The witness answered the questions by identifying the evidence relied on for the "gross proceeds" allegation. <ol style="list-style-type: none"> <li>a. The facts concerning the gross proceeds allegation are in the Declaration of Melissa Davis, the SEC's accounting expert witness, and that is the evidence relied on and that supports the allegation.</li> </ol> </li> <li>4. Mr. LaForte, who hired his own accounting expert on this issue, deposed Ms. Davis on September 8, 2021.</li> <li>5. Thus, the SEC answered the question by referring Mr. LaForte to the expert accounting witness' declaration on this issue, and Mr. LaForte subsequently deposed the expert on this and other issues she opines on.</li> </ol>

<sup>2</sup> "The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Complete Business Solutions Group, Inc. ("CBSG") made materially misleading statements and omissions to investors in connection with the purchase, offer, or sale of securities regarding: ... g. Lisa McElhone and Joe Cole's receipt of funds;...."

Defendants' Chart: Exhibit C to ECF No 776		SEC Response	
SEC's Allegations	Deposition Testimony	Question and Answer	Comment to Chart
<p>Abbonizio claims to be an owner and managing partner of Par Funding and he is responsible for bringing investment capital into Par Funding. He recruits and trains Par Funding's Agent Fund managers, provides information to potential investors about Par Funding, oversees the Agent Funds, and solicits investors. [D.E. 119 at ¶ 20]</p>	<p>Q: My question is: I would like to understand what the SEC means by the word "oversee" in that allegation. [privilege objection asserted] A: So I can't answer that question Q: . . . you represent the SEC. What did the SEC mean in that allegation? It's your Complaint. A: I can't answer that. I can't answer that question. [Exhibit B at 91:13-92:2]</p>	<p><b>91:1-92:2</b></p> <p>Q. And, Ms. Frank, I would also like to ask you, what did the -- what does the SEC mean by the word "oversee" when it says -- when it alleges that Mr. Abbonizio "oversees the agent funds"?</p> <p>MS. BERLIN: Objection as to form.</p> <p>A. So I can't give you an opinion on the question that you just asked, but <b>I can give you evidence that supports our allegation -</b> BY MR. SOTO:</p> <p>Q. So my question --</p> <p>A. -- regarding Mr. Abbonizio.</p> <p>Q. My question isn't what you have in support, I will get to that.</p> <p>Q. My question is: I would like to understand what the SEC means by the word "oversee" in that allegation. [form objection and privilege]</p> <p>A. So I can't answer that question</p>	<p>1. This is outside of the topics noticed</p> <p>2. The Witness offered that the SEC could provide the evidence supporting the allegation; Mr. LaForte said no.</p> <p>3. There is no basis for sanctions because this area of inquiry was not noticed.</p>

Defendants' Chart: Exhibit C to ECF No 776		SEC Response	
SEC's Allegations	Deposition Testimony	Question and Answer	Comment to Chart
<p>The representations about Par Funding's underwriting process are false. In truth, Par Funding does not conduct the rigorous underwriting process it claims it does. In reality, Par Funding does not always conduct on-site inspections of small businesses prior to funding Loans, and approves Loans in less than 48 hours. . . . Contrary to the rigorous underwriting process Par Funding touts to investors, Par Funding approves and funds Loans to small businesses without obtaining information about the merchant's profit margins, expenses, or debts.</p> <p>[<b>TRO Motion</b>, D.E. 14 at p. 38] (citing to, inter alia: ex. 85, Declaration of Chad Frost; ex. 92, Declaration of Mary Carleton; ex. 19, Declaration of Michael</p>	<p>[when asked about specific statements in each declaration]</p> <p>Frost Declaration: A: The SEC has no personal knowledge of when the funding occurred . . . [Exhibit F at 241:3-6]</p> <p>Carleton Declaration: A: The SEC does not have personal knowledge. [Exhibit F at 154:18-23]</p> <p>Foti Declaration: A: So the SEC has no personal knowledge and also can't answer this because we might potentially be waiving privileges. [Exhibit F at 250:21-251:10]</p> <p>Fleetwood Declaration: A: The SEC has no personal knowledge of that. I can just speak to the words on the document. [Exhibit B at 257:11-14]</p>	<p><b>The Question and Answer Identified in Column 2 as "Frost Declaration"</b></p> <p>Q. And do you see the third entry on April 8, a wire transfer outgoing to National Rx Inc. for \$38,832? [showing deposition exhibit 68, a purported bank document not referenced or cited by the SEC]</p> <p>A. I see those words on the document, yes.</p> <p>Q. Okay. And so this account was funded on April 8, 2016, correct?</p> <p>A. The SEC has no personal knowledge of when the funding occurred, but I can just tell you again that I see those words, "Wire Transfer Outgoing, National Rx Inc.," and an amount on this document.</p> <p>Q. Okay.</p> <p><b>The Question and Answer Identified in Column 2 as "Carleton Declaration"</b></p> <p>Q. So at Exhibit 61, in Paragraph 7, where Mary Carleton said that "CBSG did not request information from me or the company about the</p>	<p>1. The questions do not fall into any noticed topic</p> <p>2. The questions ask the SEC: a) to agree with Mr. LaForte's interpretation of his evidence; b) to agree that various Declarations signed by non-party merchants are false based on Mr. LaForte's evidence</p> <p>3. Because these questions are outside of the topics, the questions asking the SEC to weigh or opine on Mr. LaForte's exhibits are essentially asking an SEC lawyer to give her opinion of Mr. LaForte's evidence</p> <p>4. Relevance. The SEC's opinion of Mr. LaForte's exhibits does not have bearing on any claim or defense in this case. Nor is it proportional to the needs of the case since the SEC's opinion of Mr. LaForte's evidence does not make it more or less likely that he committed securities fraud or</p>

<p>Foti; ex. 93, Declaration of Pamela Fleetwood; and ex. 105, Declaration of Sean Whalen]</p>		<p>company's expenses during the underwriting process or at any other time prior to approving the loans," that statement was false, correct?</p> <p>A. The SEC does not have personal knowledge.</p> <p>[objection, outside of topics]</p> <p>A. I am not going to testify in my personal capacity</p> <p><b>The Question and Answer Identified in Column 2 as "Foti Declaration"</b></p> <p>Q. Okay. So you have, in Exhibit 27, an application prepared by Mr. Foti on behalf of Sunrooms on August 26, 2019, and in Exhibit 28, you have an amount funded to Sunrooms nearly or more than three months later? [both are exhibits Mr. Laforte obtained in discovery from the Receiver]</p> <p>[objection, privilege and form]</p> <p>A. So the SEC has no personal knowledge and also can't answer this because we might potentially be waiving privileges.</p>	<p>participated in an unregistered securities offering.<sup>3</sup></p>
--	--	---	---

<sup>3</sup> After the deposition the SEC had an opportunity to review these same LaForte exhibits as he attached them to his First Rule 41 Motion to Dismiss, and to examine Mr. LaForte's exhibits and representations about them. The SEC filed a Response brief providing the SEC's position on Mr. LaForte's exhibits and his interpretation of them, and filed the evidence from the case showing LaForte's exhibits do not claim what he asserts, and why. The Court denied the First Rule 41 Motion to Dismiss.

		<p><b>The Question and Answer Identified in Column 2 as “Fleetwood Declaration”</b></p> <p>Q. Okay. So Complete Business Solutions, according to this document, wired out a hundred thousand dollars to Fleetwood Services, LLC, on January 9, 2017, right?</p> <p>A. The SEC has no personal knowledge of that. I can just speak to the words on the document. I do see, under "Description," it says, "Wire - out" underneath that, it says, "Fleetwood Services, LLC," and under "Debits," it says "100,000."</p>	
--	--	--	--



**Refusal to Identify Supporting Evidence**

Question	Objection	Testimony	Transcript	SEC Response
Tell me what evidence the SEC has that Par Funding had any control over what the agent funds were obligated to pay investors.	<p>Calls for attorney work product. Deliberative process privilege. We instruct the witness not to answer that question as phrased.</p> <p>LaForte's counsel asked why the SEC was objecting to this question, and so SEC counsel explained with respect to this question that the SEC would have no objection if Mr. LaForte asked the SEC what evidence supported the allegations of the Complaint, and suggested that he rephrase it. [23:10-25]</p>	[none provided]	Frank Depo 23:2-9	<p><b><u>Response A:</u></b></p> <ol style="list-style-type: none"> <li>1. Not within noticed topics</li> <li>2. Not alleged in the Complaint</li> <li>3. Because this is neither a noticed topic nor alleged in the Complaint, the question essentially asks the supervising investigative attorney to discuss aspects of, and evidence in, the non-public SEC investigation<sup>1</sup> that are not alleged in this case.</li> <li>4. Relevance. This question does not seek information about the allegations or any defense, and is not proportional to the needs of the case because it does not concern any allegation.</li> <li>5. No prejudice.<sup>2</sup></li> </ol>

<sup>1</sup> The SEC's investigation is ongoing. SEC Litigation Release Number 24860, published at <https://www.sec.gov/litigation/litreleases/2020/lr24860.htm> ("The SEC's continuing investigation is being conducted by Linda S. Schmidt and Crystal C. Ivory and supervised by **Elisha L. Frank**, Fernando Torres, and Glenn S. Gordon, all of the Miami Regional Office.").

<sup>2</sup> In August 2020, the SEC voluntarily produced all documents that are in the SEC litigation file for this case. More than 2 million Receivership Entity documents were produced to all parties during discovery by the Receiver. For questions about documents showing facts not noticed for deposition or alleged in the case, Mr. LaForte is not prejudiced. If these documents exist, he has the same ability to search for them as the SEC. However, he did not notice this area of inquiry and so the SEC did not search the more than 2 million documents that were produced simultaneously to the SEC and Mr. LaForte to determine if they exist prior to the deposition.

<p>What evidence did the SEC have when it filed the Complaint that Par Funding had any control over what the agent funds paid on their notes?</p>	<p>Investigative privilege. Attorney work product . . . I'll direct the witness not to answer that question. That does not concern one of the Complaint allegations</p>	<p>[none provided]</p>	<p>Frank Depo 25:6-15</p>	<p><a href="#"><u>Response A</u></a></p>
<p>What evidence does the SEC have that Par Funding had any conversations with agent funds with respect to what the agent fund managers were going to be offering their investors during Phase 2?</p>	<p>Calls for attorney work product, and to the extent during the investigation, the investigative privilege and deliberative process privilege. We would direct the witness not to answer that question as phrased.</p>	<p>[none provided]</p>	<p>Frank Depo 26:3-12</p>	<p><a href="#"><u>Response A</u></a></p>
<p>What evidence does the SEC have that Par Funding or any of its representatives played any role in the interest that was paid on notes sold by the agent funds during Phase 2?</p>	<p>Asked and answered. [Repeated asserted objections: investigative and deliberative process privileges].  And we've already stated our objection to that question and directed the witness not to answer it for the grounds stated.</p>	<p>[none provided]</p>	<p>Frank Depo 26:14-22</p>	<p><a href="#"><u>Response A</u></a></p>

<p>So what evidence did the SEC have when it filed its Complaint that Par Funding played any role in drafting the marketing brochures you are referring to?</p>	<p>Asked and answered. And we direct the witness not to answer. Seeking deliberative process privilege information, investigative privilege, and the attorney work product of the SEC.</p>	<p>[none provided]</p>	<p>Frank Depo 55:5-13</p>	<p><a href="#"><u>Response A</u></a></p>
<p>What evidence, if any, does the SEC have to date that anyone at Par Funding drafted the marketing brochures that you just testified about?</p>	<p>[Repeated asserted objections: deliberative process, investigative, and attorney work product privileges].  I direct the witness not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 55:15-20</p>	<p><a href="#"><u>Response A</u></a></p>
<p>What evidence does the SEC have or did the SEC have when it filed this Complaint that anybody at Par Funding, any of the representatives that I've identified, even knew that these marketing brochures were going to be created, the ones that you've identified?</p>	<p>[Repeated asserted objections: deliberative process, investigative, and attorney work product privileges] concerning the investigative file, documents that we produced. ... I'm directing the witness not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 55:13-24</p>	<p><a href="#"><u>Response A</u></a></p>

<p>So what evidence does the SEC -- did the SEC have when it filed its Complaint that anybody at Par Funding, including any of the Defendants identified in this case, authorized any of the content of the marketing brochures to which you referred to early?</p>	<p>But deliberative process, attorney work product, and investigative privilege concerning our investigative file.</p>	<p>[none provided]</p>	<p>Frank Depo 57:11-58:4</p>	<p><b><u>Response B</u></b></p> <ol style="list-style-type: none"> <li>1. Not within noticed topics</li> <li>2. Because this is not a noticed topic, the question essentially asks the supervising investigative attorney to discuss aspects of, and evidence in, the non-public SEC investigation<sup>3</sup> that are not alleged in this case.</li> <li>3. The SEC has advised Mr. LaForte's counsel that if Mr. LaForte notices this area of inquiry for the continued deposition, the SEC will answer this question. <ol style="list-style-type: none"> <li>a. The Complaint alleges that Lisa McElhone and Joseph LaForte had authority over Par Funding, and the SEC can direct Mr. LaForte to the evidence supporting these allegations that the SEC filed with the annotated Complaint allegations of the TRO Motion.</li> </ol> </li> </ol>
<p>What evidence, if any, did the SEC have when it filed the Complaint that anyone at Par Funding -- again, anyone at the entity -- or as I've stated, Joseph Cole, Lisa McElhone, as alleged by the SEC, Joseph LaForte, and/or Perry Abbonizio distributed any of the marketing brochures that you've identified in your previous answer?</p>	<p>[Repeated asserted objections: deliberative process, investigative, and attorney work product privileges].</p> <p>Directing the witness not to provide the SEC's legal opinion about the investigative file we have produced in this case.</p>	<p>[none provided]</p>	<p>Frank Depo 59:7-18</p>	<p><b>Having reviewed the transcript, the SEC withdraws the objection.</b></p> <p><b>The SEC can testify to this by directing Mr. LaForte to the evidence cited in the annotated Complaint allegations concerning these facts in ECF No 14.</b></p> <p><b>The SEC has advised Mr. LaForte's counsel that when the deposition continues, the SEC will answer this question.</b></p>

<sup>3</sup> The SEC's investigation is ongoing. SEC Litigation Release Number 24860, published at <https://www.sec.gov/litigation/litreleases/2020/lr24860.htm> ("The SEC's continuing investigation is being conducted by Linda S. Schmidt and Crystal C. Ivory and supervised by Elisha L. Frank, Fernando Torres, and Glenn S. Gordon, all of the Miami Regional Office.").

<p>You would agree, would you not, that evidence of falsity in this case would require proof that the consulting fees, when paid, exceeded the amount of nongross proceeds in the account from which they were paid?</p>	<p>Attorney work product. Seeks a legal and accounting opinion and not – this witness is not an accounting expert or presented as one today. . . . She cannot answer because of the objections I just stated.</p>	<p>[none provided]</p>	<p>Frank Depo 69:8-20</p>	<p><u><b>Response A</b></u></p> <p>As to the accounting issues Mr. LaForte asked about, the SEC and Mr. LaForte both retained accounting expert witnesses on these issues; Mr. LaForte deposed the SEC’s accounting expert on September 8, 2021.</p> <p>Accounting issues were not noticed in any topic; only the evidence supporting the Complaint allegations of Par Funding’s misrepresentations and omissions regarding “Lisa McElhone and Joe Cole’s receipt of funds” (Topic 1, item g). The SEC testified as to what this evidence is, several times.</p>
<p>The SEC does not have any evidence, does it, that the consulting fees, when paid in this case to Ms. McElhone, to Mr. Cole, when they were paid, were paid from gross proceeds of the offering, does it?</p>	<p>Objection. Asked and answered. I would just add at this point, I think you're harassing the witness.</p>	<p>[none provided]</p>	<p>Frank Depo 70:2-9</p>	<p>Outisde of topics noticed</p> <ul style="list-style-type: none"> <li>- The SEC answered the first time this question was asked by directing Mr. LaForte to the evidence supporting this allegation. [63:1-64:17, 68:18-69:7]</li> </ul>
<p>The only evidence that the SEC has, and the only evidence that the SEC had when it filed this Complaint, is that consulting fees were paid from accounts in which investor proceeds and other sources of income were commingled; isn't that right?</p>	<p>Objection to the extent you’re asking for information beyond the public filings, and you’re seeking attorney work product, investigative privileged information, or deliberative process information.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made.<sup>4</sup></p>	<p>Frank Depo 70:12-21</p>	<p>The SEC did not direct the witness not answer this question and objected to the extent it was seeking privileged information.</p> <p>This question does not seek relevant information because what evidence the SEC had does not bear in any way on any claim or defense, and is not proportional to the needs of the case since what evidence the SEC had at the time of filing has no bearing on whether or not Mr. LaForte engaged in securities fraud and participated in an unregistered securities offering.</p>

<sup>4</sup> Immediately after the SEC objected to the extent the question sought privileged information and permitted the witness to testify about public information (ie, all of the evidence the SEC had supporting the Complaint), the examiner frequently moved to the next question without giving the witness an opportunity to respond. The SEC noted this several times for the convenience of the examiner, and at one point the examiner asks the witness if she has any answers to any of the preceding questions where he did not permit her to respond. See 105-106. The witness testified about evidence supporting paragraph 20 of the Complaint. Had the examiner permitted the witness to testify to each question where the SEC did not direct the witness not to respond, the examiner would have obtained additional answers.

<p>The evidence that the SEC has, which includes Melissa Davis' declarations, does not include any evidence that there were insufficient nongross proceeds in the accounts when these consulting fees were paid; isn't that right?</p>	<p>Asks for a legal and accounting opinion. I believe that it's been asked and answered.</p>	<p>[none provided]</p>	<p>Frank Depo 70:23-71:5</p>	<p><u><a href="#">Response A</a></u></p>
<p>[Reading from paragraph 20 of the Amended Complaint]</p> <p>So I would like to ask you to provide me with any evidence that you -- that the SEC had when it filed its Complaint that Mr. Abbonizio would oversee the agent funds.</p>	<p>Investigative privilege, attorney work product, attorney-client privilege, and deliberative process privilege. We direct the witness not to answer unless she is testifying about evidence and arguments supporting this allegation that we have already made public.</p>	<p>[none provided]</p>	<p>Frank Depo 90:1-23</p>	<p><u><a href="#">Response B</a></u> (not included in the topics noticed; privilege)</p> <p><b>The Witness offered to provide the evidence, requested and the examiner said no [90:1-91:12]:</b></p> <p>Q. Okay. So I would like to ask you to provide me with any evidence that you -- that the SEC had when it filed its Complaint that Mr. Abbonizio would oversee the agent funds.</p> <p>[objection in column 2; witness can testify]</p> <p>Q. And, Ms. Frank, I would also like to ask you, what did the -- what does the SEC mean by the word "oversee" when it says -- when it alleges that Mr. Abbonizio "oversees the agent funds"?</p> <p>MS. BERLIN: Objection as to form.</p> <p>A. So I can't give you an opinion on the question that you just asked, but <b>I can give you evidence that supports our allegation --</b></p> <p>BY MR. SOTO:Q. So my question --</p> <p>A. -- regarding Mr. Abbonizio.</p> <p>Q. My question isn't what you have in support, I will get to that.</p>

<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Is there any – what evidence do you have, or did the SEC have, that Mr. Abbonizio had any authority over the agent funds when it filed its Complaint – when you filed the Complaint?</p>	<p>Objection. Investigative privilege, attorney work product privilege, attorney-client privilege, law enforcement privilege. The witness is directed not to answer other than as to evidence that we have already filed with our annotated Complaint.</p>	<p>[none provided] The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 92:3-12</p>	<p><u><a href="#">Response A</a></u></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Did any witnesses ever interviewed by the SEC say that Mr. Abbonizio had authority over the agent funds?</p>	<p>Calls for attorney work product and invades the investigative privilege and law enforcement privileges. The witness is directed not to answer unless she's testifying about the publicly annotated Complaint evidence.</p>	<p>[none provided] The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 93:3-11</p>	<p><u><a href="#">Response A</a></u></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Did any witnesses ever tell the SEC orally or in writing in a declaration that Mr. Abbonizio oversaw the agent funds, as alleged in the Complaint?</p>	<p>[Repeated asserted objections: attorney work product, investigative, and law enforcement privileges]. [the SEC repeated its objection allowing the SEC witness to testify about public information]</p>	<p>[none provided] The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 93:13-21</p>	<p><u><a href="#">Response B</a></u></p>

<p>Are there any documents, any documents or evidence, suggesting that Mr. Abbonizio had authority to over the agent funds, as alleged in Paragraph 20 of the Amended Complaint?</p>	<p>[Repeated asserted objections: attorney work product, investigative, and law enforcement privileges].</p> <p>And the witness is directed not to answer other than as to the annotations to the Complaint citing evidence that we publicly filed.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 93:23-94:7</p>	<p><a href="#"><u>Response A</u></a></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>I'm specifically interested in any evidence that the SEC has suggesting or demonstrating that Mr. Abbonizio oversaw the agent funds. Whether he solicited or not is a different question, and I'm happy to discuss that after we answer – after you answer this question</p>	<p>Objection to the extent this seeks attorney-client privileged, investigative privileged information, deliberative process privilege, and attorney-client privilege information.</p> <p>...</p> <p>And, yes, so I made the objection, and as with the others, the SEC will testify about what we have already provided publicly..and she may testify about that.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 94:24-101-22</p>	<p><a href="#"><u>Response B</u></a></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Any evidence that any agent fund manager has ever publicly said or said to the SEC that Mr. Abbonizio has this authority to oversee their funds?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns public information]</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 101:25-102:7</p>	<p><a href="#"><u>Response B</u></a></p>



<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>The fact is that no agent fund manager has ever said that, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>["She may testify about public information and evidence."]</p> <p>Objection to the form.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 102:9-20</p>	<p><a href="#"><u>Response A</u></a></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>And the truth is that Perry Abbonizio has never said that publicly or to the SEC, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated She may testify about public information and evidence.]</p> <p>Objection to the form.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made.</p>	<p>Frank Depo 102:16-20</p>	<p><a href="#"><u>Response A</u></a></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>And the fact is that Perry is not employed by the agent funds, is he?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated She may testify about public information and evidence.]</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made</p>	<p>Frank Depo 102:24-103:1</p>	<p><a href="#"><u>Response A</u></a></p>

<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>There is no evidence that any agent fund manager has or ever said that Perry Abbonizio oversees their funds, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns public information or evidence]</p> <p>Objection to the form.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made</p>	<p>Frank Depo 103:19-23</p>	<p><a href="#"><u>Response A</u></a></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>There is no evidence, and the SEC has no evidence, that Perry has ever stated publicly that he oversees or has the authority to oversee an agent fund?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a public information or evidence]</p> <p>Objection to the form.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made</p>	<p>Frank Depo 103:25-104:5</p>	<p><a href="#"><u>Response A</u></a></p>
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Perry is not an executive or officer or director or manager of any of the agent funds, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]</p> <p>Objection to the form.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made</p>	<p>Frank Depo 104:7-11</p>	<p><a href="#"><u>Response A</u></a></p>

<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Perry isn't a partner at any of the agent funds, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]</p> <p>Objection to the form.</p>	<p>[none provided]</p> <p>The examiner moved to the next question immediately after the objection was made</p>	<p>Frank Depo 104:13-16</p>	<p><b>Response A</b></p>
<p>You have no evidence that Par or any of its representatives played any role in the general solicitations that you allege Vagnozzi engaged in, do you?</p>	<p>This is seeking attorney work product, attorney-client privileged information. And to the extent you're seeking the SEC's legal opinion about the evidence, I'm instructing the witness not to answer.</p>	<p>I don't believe I can answer without giving a legal opinion.</p>	<p>Frank Depo 113:25114:13</p>	<p><b><u>Response B</u></b></p> <p><b>The SEC withdraws its objections if Mr. LaForte wishes to <u>notice this topic</u> for the continued deposition, the SEC will direct him to this evidence.</b></p>

<p>What evidence does the SEC have that CBSG represented to anyone that underwriting of merchant cash advance required it to obtain debt schedules?</p>	<p>[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p> <p>I'm just reminding Mr. Soto that she may testify about public evidence and legal arguments we have made, but is instructed not to provide a legal opinion as to how the evidence we have produced would support these allegations this time.</p>	<p>I believe that I can't answer because of work product and the other privileges.</p>	<p>Frank Depo 118:19-119:10</p>	<p><u><a href="#">Response A</a></u></p> <p><b>The witness asked if the examiner could point her to the Complaint allegation so she could consult her notes for an answer, but the examiner moved on:</b></p> <p>“If you can point me to any place in the Complaint where we say debt schedules, I might be able to be of assistance with a particular document based on my notes.” [119:24-120:6]</p>
<p>[Are you aware of any such evidence that Par Funding or any of its representatives represented to investors that underwriting in MCA required it to obtain debt schedules?]</p>	<p>[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p>	<p>I can't give an answer because it would be subject to revealing work product or attorney-client privilege.</p>	<p>Frank Depo 119:14-120:15</p>	<p><u><a href="#">Response A</a></u></p>

<p>What evidence does the SEC have that CBSG represented to investors that underwriting in MCA required it to obtain profit margins?</p>	<p>[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p>	<p>[I can't give an answer because it would be subject to revealing work product or attorney-client privilege.]</p>	<p>Frank Depo 120:16-23</p>	<p><u><a href="#">Response A</a></u></p>
<p>[referring to paragraphs 168-183 of the Amended Complaint]</p> <p>The evidence that you collected in connection with this Complaint in support of allegations were declarations from merchants, correct?</p>	<p>Investigative privilege, attorney work product, and attorney-client privilege. The witness is instructed not to answer to the extent it covers one of those privileges, but may testify about anything that we have already publicly disclosed.</p>	<p>So there are various merchant declarations that support some of these paragraphs from 168 to 183, and other than that, I can't provide an answer because it would be subject to the privileges.</p>	<p>Frank Depo 121:1-24</p>	<p>The witness answered the question and confirmed there are "various merchant declarations that support" these allegations.</p>

<p>Was the SEC aware before it filed the Complaint that the overwhelming majority of the merchants whose declarations it relied on had either sued or been sued by CBSG in connection with merchant cash advances?</p>	<p>[Repeated asserted objections: attorneyclient privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated] instruction to the witness not to answer as to what the SEC and its attorneys knew or did not know.</p>	<p>[none provided]</p>	<p>Frank Depo 122:11-19</p>	<p><u><a href="#">Response A</a></u></p> <p>This question does not seek relevant information in this case. Whether or not the SEC knew that merchants had been sued or had sued CBSG has no bearing on any claim or defense in this case, and the inquiry is not proportional to the needs of the case for this reason.</p>
<p>Were you aware when this SEC Complaint – was the SEC aware when the Complaint was filed that every single one of these merchant – merchants whose declarations were submitted to the SEC were represented by – the declarants therein were represented by an attorney Shane Heskin?</p>	<p>[Repeated] instruction to the witness not to testify.</p>	<p>[none provided]</p>	<p>Frank Depo 122:21-123:3</p>	<p><u><a href="#">Response A</a></u></p> <p>This question does not seek relevant information in this case. Whether or not the SEC knew that merchants had been sued or had sued CBSG has no bearing on any claim or defense in this case, and the inquiry is not proportional to the needs of the case for this reason.</p>
<p>Was the SEC aware that the overwhelming majority of merchants whose declarations were provided to the SEC in support of its Complaint owed Par Funding money in connection with MSA advances?</p>	<p>[Repeated asserted objections: attorneyclient privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Instruction to the witness not to testify.]</p> <p>Object as to form.</p>	<p>[none provided]</p>	<p>Frank Depo 123:5-11</p>	<p><u><a href="#">Response A</a></u></p> <p>This question does not seek relevant information in this case. Whether or not the SEC knew that merchants had been sued or had sued CBSG has no bearing on any claim or defense in this case, and the inquiry is not proportional to the needs of the case for this reason.</p>

<p>Was the SEC aware before filing its Complaint that these merchant declarations were provided by individuals and entities who had been sued by Par Funding for failing to pay the amounts owed to Par Funding in connection with these MCAs?</p>	<p>Object as to form.</p> <p>[Repeated asserted objections: attorneyclient privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Instruction to the witness not to testify]</p>	<p>[none provided]</p>	<p>Frank Depo 123:16-23</p>	<p><u><a href="#">Response A</a></u></p> <p>This question does not seek relevant information in this case. Whether or not the SEC knew that merchants had been sued or had sued CBSG has no bearing on any claim or defense in this case, and the inquiry is not proportional to the needs of the case for this reason.</p>
<p>Wouldn't you agree that a declarant who owes money in connection with a statement made against a particular defendant or target has a conflict with respect to statements made by that individual in a declaration?</p>	<p>Object to form.</p> <p>Object to the extent it's seeking a legal opinion and also instruct the witness not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 123:25-124:8</p>	<p><u><a href="#">Response A</a></u></p> <p>This question does not seek relevant information concerning the claims and defenses</p>
<p>What steps did the SEC take to confirm or corroborate the statements made by these merchant declarants?</p>	<p>Investigative privilege, deliberative process privilege, and law enforcement privilege, the attorney work product and attorney-client privileges.</p> <p>And we instruct the witness not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 124:10-19</p>	<p>This question seeks information protected by the investigative and attorney work product privileges. It does not seek relevant information or evidence concerning the claims or defenses in this case. Not within any noticed topic.</p>

<p>Were you aware when these declarations were filed by these merchant declarants that they contained false statements?</p>	<p>Object to the form. [Investigative privilege, deliberative process privilege, and law enforcement privilege, the attorney work product and attorney-client privileges] and give the witness the same instruction not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 124:21-125:3</p>	<p>This question is improper and does not seek relevant information or evidence concerning the claims or defenses in this case.</p>
<p>This merchant declaration provided by Mr. Frost was relied upon by the SEC in its Complaint, correct?</p>	<p>Attorney work product. Attorney-client privilege. Deliberative process privilege. Investigative privilege. I instruct the witness not to answer that question.</p>	<p>[none provided]</p>	<p>Frank Depo 132:3-10</p>	<p>After reviewing the transcript, the SEC withdraws its objections and will answer this when the deposition resumes.</p> <ul style="list-style-type: none"> <li>- The SEC can direct Mr. LaForte to the specific Complaint allegations where the SEC relies on this declaration and/or the annotated Complaint which shows this information.</li> </ul>
<p>In other words, the SEC relied on a declaration that contained a falsehood, correct?</p>	<p>[Repeated asserted objections: attorneyclient privilege, attorney work product, deliberative process privilege, and investigative privilege] [instruction to the witness not to answer]</p> <p>And I also object as to the form.</p>	<p>[none provided]</p>	<p>Frank Depo 132:12-16</p>	<p>After reviewing the transcript, the SEC withdraws its privilege objections.</p> <p>The form objection we do not withdraw. The SEC would object to this question as improper and not designed to elicit evidence relevant to any claim or defense in this case.</p>
<p>In connection with the work that you did to prepare for today's deposition, did you come across ConvergeHub?</p>	<p>Attorney work product and attorney-client privileged information. Also, the witness has testified what she reviewed to prepare for today's testimony.</p>	<p>I can't answer that without violating privilege.</p>	<p>Frank Depo 193:12-23</p>	<p>After reviewing the transcript, the SEC withdraws its privilege objections.</p> <p>The question was answered elsewhere in the deposition. The SEC witness testified about what she reviewed to prepare for the deposition. That list did not include ConvergeHub.</p>



**Refusal to Discuss Allegations in the Complaint**

Question	Objection	Testimony	Transcript	SEC Response
<p>Can you define what an Action Memo is?</p>	<p>We will -- to the extent the witness can testify about public information, we're not directing her not to answer that, but to the extent you're asking about the Action Memo in this particular case, then we direct the witness not to answer as that is nonpublic information protected by the investigative and deliberative process privilege, attorney work product, and attorney-client privileges.</p> <p>...</p> <p>Again, same objection. Ms. Frank can testify about public information, but to the extent the question is seeking to elicit any information about nonpublic internal processes at the Commission, then Ms. Frank is directed not to answer.</p>	<p>So what I can tell you is that we have -- the SEC has an enforcement manual that is on our website that has information in it about the Action Memo process, and I would refer you to that for the answer to this question.</p>	<p>Frank Depo 28:9-29:11</p>	<p>(1) The Witness Answered, Directing Counsel to the Definition in the Enforcement Manual (which the SEC produced by emailing it to LaForte's counsel during the deposition). 29:7-11.</p> <p>(2) The Witness went on to explain why she was referring to the Action Memo definition in the enforcement manual rather than testifying directly:</p> <p style="padding-left: 40px;">A. Without looking at the enforcement manual to refresh my memory, I don't have a specific recollection of what's publicly available regarding the Action Memo and the Action Memo process, so I can't answer that at this point. [30:6-10]</p> <p>(3) The Complaint makes no reference to the Action Memo; relevance.</p>

Question	Objection	Testimony	Transcript	SEC Response
<p>[Reading from Paragraph 239 of the Amended Complaint]</p> <p>“The representations in both filings are that Cole and McElhone would not receive any of the gross proceeds of the securities offerings are false.”</p> <p>...</p> <p>So I want to understand the SEC’s position here. “Gross proceeds” mean investor funds, correct?</p>	<p>Objection as to the form.</p>	<p>I can’t give you an opinion on the definition of “gross proceeds.” We hired an accounting expert in this case, and she submitted declarations that we provided that are publicly available. So I would refer you to Melissa Davis' declarations with respect to any questions related to accounting.</p>	<p>Frank Depo 62:20-63:12</p>	<p><b>This same question and answer is discussed above in the chart. The SEC repeats its Response</b></p>
<p>I’m asking you, as the SEC’s corporate designee, to define a term in your own Complaint...</p> <p>And so as the SEC’s corporate designee, I’m asking you to define what the SEC meant or tell us what the SEC meant by the term “gross proceeds” of the securities offering [in Paragraph 239 of the Amended Complaint]</p>	<p>Asked and answered.</p>	<p>The evidence that supports the claim in Paragraph 239 is Melissa Davis’ declaration, so I would refer you to that evidence.</p>	<p>Frank Depo 63:14-64:2</p>	<p><b>This same question and answer is discussed above in the chart. The SEC repeats its Response</b></p>

Question	Objection	Testimony	Transcript	SEC Response
<p>[Reading from Paragraph 239 of the Amended Complaint]</p> <p>“Gross proceeds” means investor proceeds, correct?</p>	<p>Asked and answered</p>	<p>I can’t answer that question. I would refer you to Melissa Davis’ declaration.</p>	<p>Frank Depo 64:3-10</p>	<p><b>This same question and answer is discussed above in the chart. The SEC repeats its Response</b></p>
<p>[Reading from Paragraph 239 of the Amended Complaint]</p> <p>Cash that is paid back to CBSG by merchants would not be gross proceeds, correct?</p>	<p>Objection as to the form. Seeking an expert opinion from the SEC on an accounting issue.</p>	<p>We would refer you to Melissa Davis’ declarations.</p>	<p>Frank Depo 64:11-17</p>	<p><b>This same question and answer is discussed above in the chart. The SEC repeats its Response</b></p>
<p>[Reading from Paragraph 239 of the Amended Complaint]</p> <p>“The representations in both filings are that Cole and McElhone would not receive any of the gross proceeds of the securities offerings are false.”</p> <p>...</p> <p>This allegation refers to Section 16 – does it not? At least with respect to this Form D?</p>	<p>[none]</p>	<p>Well, I can tell you that the evidence supporting the allegation that we just looked at includes Melissa Davis’ declaration, and it would also include this Form D.</p>	<p>Frank Depo 67:7-24</p>	<p>The witness responded by citing the evidence supporting the Complaint allegation asked about.</p> <p>However, it is clear from the transcript that Mr. LaForte was asking for confirmation that Section 16 within the Form D asks for information about “gross proceeds.” If Mr. LaForte continues the deposition, the SEC will answer this as “yes,” this is where those words appear on the Form, or can provide a sworn declaration, whichever is preferred.</p>

Question	Objection	Testimony	Transcript	SEC Response
<p>And this Form D is what the SEC is relying on when it alleges that Par Funding and the defendants made a misrepresentation in this form when they said that gross proceeds of the offering would not be used to pay any of the individuals in Section 3?</p> <p>...</p> <p>In other words, Paragraph 239 is referencing this – this statement –</p>	<p>Asked and answered.</p>	<p>I think I've already answered that question.</p>	<p>Frank Depo 68:1-</p>	<p>The SEC had just answered this by testifying what evidence supports this allegation:</p> <p>“Well, I can tell you that the evidence supporting the allegation that we just looked at includes Melissa Davis’ declaration, and it would also include this Form D.” [67:23-24]</p>
<p>[Reading from Paragraph 241 of the Amended Complaint]</p> <p>The SEC alleges, “In a recent recorded conversation with an FBI confidential source, Cole admitted that Par Funding pays him through his consulting firms and that the amounts are reflected in the consulting line on the Par Funding financial statements.”</p> <p>...</p> <p>But Mr. Cole did not admit in any recording that he was paid consulting fees from gross proceeds, correct?</p>	<p>Argumentative.</p>	<p>The transcript of the recording speaks for itself.</p>	<p>Frank Depo 72:8-21</p>	<p>Outside of noticed topics</p> <p>The SEC did not allege in the Complaint or elsewhere that Mr. Cole admitted in any recording that he was paid from “gross proceeds.”</p> <p>Nor is the examiner asking whether there are recordings of a certain subject or eliciting evidence.</p> <p>There are numerous recordings that include many hours of discussions, all of which were produced when the SEC filed its case. The transcripts speak for themselves and the SEC has not memorized them, but the SEC did not allege that Mr. Cole admitted or ever discussed accounting terms on any recording.</p>

Question	Objection	Testimony	Transcript	SEC Response
<p>[Reading from Paragraph 243 of the Amended Complaint]</p> <p>The SEC alleges that, “The representation in Par Funding’s 2020 Form D filing that Par Funding did not pay commissions is false. Par Funding had paid so called finder’s fees of at least \$3.6 million, plus an additional million dollars in payments labeled as commissions, from July 2015 to February 2020.</p> <p>...</p> <p>And would you agree with me that the reason that they deleted that from the 2020 Form D filing was at the – based on the advice provided by Mr. Rutledge in the final paragraph of that e-mail, which is exhibit 6?</p>	<p>Objection as to form.</p>	<p>I would be guessing, and I don’t want to guess or speculate.</p>	<p>Frank Depo 78:12-7</p>	<p>Not within any topic noticed</p> <p>The SEC’s Complaint does not allege anything about Mr. Rutledge, his advice, or Exhibit 6 to the deposition.</p> <p>In this question, the examiner is showing the SEC Mr. LaForte’s defense evidence and asking the SEC to speculate as to whether or not that piece of evidence is the reason why Mr. LaForte’s company decided to edit its SEC filing.</p> <p>This calls for speculation.</p> <p>Further, the SEC’s opinion as to why the Company did something is not relevant to any claim or defense in this case.</p>
<p>[Reading from paragraph 20 of the Amended Complaint]</p> <p>What did the -- what does the SEC mean by the word “oversee” when it says – when it alleges that Mr. Abbonizio “oversees the agent funds?”</p>	<p>Objection as to form.</p>	<p>So I can’t give you an opinion on the question that you just asked, but I can give you evidence that supports our allegation --</p>	<p>Frank Depo 90:1-91:7</p>	<p><b>This same question and answer is discussed above in the chart. The SEC repeats its Response</b></p>

Question	Objection	Testimony	Transcript	SEC Response
<p>My question is: I would like to understand what the SEC means by the word “oversee” in that allegation.</p>	<p>Objection as to form and to the extent you’re seeking attorney work product or attorney-client privilege regarding the attorney’s thoughts who drafted this Complaint allegation.</p>	<p>So I can’t answer that question.</p>	<p>Frank Depo 91:11-21</p>	<p><b>This same question and answer is discussed above in the chart. The SEC repeats its Response</b></p>
<p>What did the SEC mean in that allegation. It’s your Complaint.</p>	<p>[none]</p>	<p>I can’t answer that. I can’t answer that question</p>	<p>Frank Depo 91:23-92:2</p>	<p><b>This same question and answer is discussed above in the chart, and the SEC repeats it here.</b></p>
<p>[Referring to Paragraph 93 of the Amended Complaint]</p> <p>Those alleged advertisements involved or were directed at the sale of notes by ABFP, not by any other entity, correct?</p>	<p>Object as to form.</p>	<p>I don’t agree with that statement, and I would refer you to Phase 1 of the – of the Amended Complaint.</p>	<p>Frank Depo 114:22-115:5</p>	<p>Not noticed; outside of any Topic</p>

<p>With respect to Phase 2 notes, the SEC has no – also has no knowledge, no evidence, that Par Funding engaged in radio, television commercials, or the Internet solicitations through those means, correct?</p> <p>[Do you have an answer with respect to public sources?]</p>	<p>Object as to form Privileges</p>	<p>The SEC – I’m sorry. The SEC doesn’t have personal knowledge. . . And so I can’t opine.</p>	<p>Frank Depo 115:14- 116:16</p>	<p><b>This same question and answer is discussed above in the chart.</b></p>
<p>You have no evidence that Par representative engaged in general solicitation through radio, television commercials, or the Internet, do you?</p>	<p>Privileged. Witness can testify about the evidence that we have annotated publicly.</p>	<p>So with respect to that question, though, the SEC has no personal knowledge, and so I can’t opine on that.</p>	<p>Frank Depo 113:9-23</p>	<p><b>This same question and answer is discussed above in the chart.</b></p>
<p>[clarifying response referring to “Phase 1 of the Amended Complaint”]</p> <p>When you say Phase 1, you mean all of the paragraphs within Phase 1 of the Amended Complaint?</p>	<p>[none]</p>	<p>I believe that we have evidence that – I guess I can’t say – I mean, I have to say the SEC doesn’t have personal knowledge, and so I can’t answer.</p>	<p>Frank Depo 115:7-13</p>	<p>The SEC agrees that this question should have been answered and will do so if the deposition continues or can provide a sworn declaration, whichever Mr. LaForte prefers. The SEC can direct Mr. LaForte to the Complaint paragraphs that under this subheading.</p>

<p>Referring to Paragraph 167 of the Amended Complaint]</p> <p>[The SEC] relied, based on the paragraphs here, which you've reviewed a number of times, Paragraphs 163 through 183, on information provided by merchants?</p>	<p>Object as to form. Object as to investigative privilege, deliberative process privilege, attorney work product, and attorney-client privilege, and we instruct the witness not to testify about what the SEC relied upon.</p>	<p>What I can tell you is that some of the evidence that supports the allegation in Paragraph 167 are merchant declarations and also the declaration of Lionesese Jones.</p>	<p>Frank Depo 229:3-18</p>	<p>The witness answered this question.</p>
---	--	--	--------------------------------	--



**Refusal to Discuss Substance of Its Own Exhibits**

Question	Objection	Testimony	Transcript	SEC RESPONSE
<p>Can you direct me to any statement in Melissa Davis' declaration that indicates that fees paid to executives, as identified in Paragraph 16 of this form, were paid from gross proceeds as opposed to accounts in which gross proceeds and other sources of income were commingled?</p> <p>...</p> <p>Can you point me to any statement in her declaration that says that?</p>	<p>Objection as to the form.</p>	<p>I would just refer you to the declarations of Melissa Davis.</p>	<p>Frank Depo 71:7-19</p>	<p>This topic of whether funds received are "gross proceeds" or any other accounting issue was not noticed in the deposition.</p> <p>The notice identified in topic 1 evidence supporting the Complaint concerning the misrepresentations and omissions about "Lisa McElhone and Joe Cole's receipt of funds" (Topic 1, item g)</p> <p>The SEC testified during the deposition what this evidence is: The Form D, bank records, and declarations/analysis of the SEC's accounting expert witness.</p> <p>The declarations were not shown to the witness and the SEC designated witness cannot be expected to memorize these documents, which speak for themselves.</p>
<p>Is it true, isn't it, that nowhere in Melissa Davis' declaration does it say that there were insufficient nongross proceed funds in the accounts when these consulting fees were paid?</p>	<p>Argumentative.</p>	<p>As a nonaccountant, I cannot opine on the meaning of what's in Melissa Davis' declaration.</p>	<p>Frank depo 71:20-72:4</p>	<p>Same response as immediately prior; argumentative</p>

<p>There is nothing in that recording that indicates that Mr. Cole admitted that he was paid from gross proceeds, correct?</p>	<p>Objection as to the form.</p>	<p>The transcript speaks for itself. . . I can't opine on the language, the wording, the meaning of the wording, but that transcript speaks for itself, and that is our support for that allegation.</p>	<p>Frank Depo 73:23-74:9</p>	<p><b>This same question and answer is discussed above in the chart.</b></p>
<p>I'm asking you to point to the evidence in that transcript which you identified for any indication that Mr. Cole admitted that he was paid using – from gross proceeds. Can you do that?</p>	<p>Objection as to the form.</p>	<p>The document speaks for itself and supports the allegation in Paragraph 241.<sup>5</sup></p>	<p>Frank Depo 73:10-20</p>	<p>Question answered Not a memory test Not within a noticed topic There is no allegation that Mr. Cole admitted he is paid from “gross proceeds”</p>
<p>And the same is true with respect to any payments he received through his entities, correct? In other words, he didn't admit that his entities, any entities that he controlled or owned, received consulting fees from gross proceeds, correct?</p>	<p>Objection as to form.</p>	<p>Again, I can just refer you to the piece of evidence, the undercover video meeting, which supports the allegations in Paragraph 241</p>	<p>Frank Depo 73:21-74:6</p>	<p>Same response as immediately prior</p>

<sup>5</sup> Paragraph 241 of the Complaint alleges: “In a recent recorded conversation with a confidential source, Cole admitted that Par Funding pays him through his consulting firms and that the amounts are reflected in the “consulting” line on the Par Funding financial statements.”

<p>Where in the transcript of the sales dinner that you just referenced is there any evidence demonstrating or supporting [the allegation in Paragraph 20<sup>6</sup> of the Complaint]?</p>	<p>[none]</p>	<p>I don't have specific page cites in the transcript for you.</p>	<p>Frank Depo 106:2-7</p>	<p>The question is asking about the allegation in Paragraph 20 of the Complaint that Perry Abbonizio oversees agent funds.</p> <p>This topic was not noticed for the deposition.</p> <p>Even so, there is no requirement that witnesses memorize page cites in transcripts for a deposition</p>
<p>Give me your best recollection, as you sit here today, of any evidence within that transcript of that sales dinner supporting the allegation [in Paragraph 20 of the Complaint]?</p>	<p>Object as to form.</p>	<p>The SEC isn't going to have an opinion that I can share with you as to where exactly int that evidence, so I can't share that with you.</p>	<p>Frank Depo 106:8-15</p>	<p>Same as immediately above</p>

<sup>6</sup> Paragraph 20 alleges: "20. Abbonizio claims to be an owner and managing partner of Par Funding and he is responsible for bringing investment capital into Par Funding. He recruits and trains Par Funding's Agent Fund managers, provides information to potential investors about Par Funding, oversees the Agent Funds, and solicits investors. From February 2017 until November 2019, Par Funding has paid about \$9.5 million, including investor funds, to Abbonizio's company with Cole, New Field Ventures. Abbonizio held Series 7, 63 and 65 securities licenses that have expired. From 1996 until 2015, Abbonizio was associated with various securities broker-dealers."

<p>Is your answer the same with respect to Exhibit 136, that you can't point me specifically to anything in that exhibit that supports the allegation [in Paragraph 20 of the Complaint]?</p> <p>...</p> <p>I'm asking for you to point me to the exhibit that you referenced in your answer as evidence that Mr. Abbonizio had some sort of oversight authority over the agent funds. So, whatever reason it was that stirred you to say "Exhibit 136," I would like to know what that reason is.</p>	<p>Object as to form and because it's seeking attorney work product.</p>	<p>If we gave any particular pincites in our TRO motion, then that would be the best source for that information, but otherwise, I can't give you that information at this time.</p>	<p>Frank Depo 106:17-107:11</p>	<p>The question is asking about the allegation in Paragraph 20 of the Complaint that Perry Abbonizio oversees agent funds.</p> <p>This topic was not noticed for the deposition.</p> <p>Even so, there is no requirement that witnesses memorize page cites in transcripts for a deposition</p>
<p>Well, Ms. Frank, I could have read, and I did read, the motion for TRO, didn't need to take you deposition to have you tell me to reread it. We called you here today to speak as the SEC's corporate representative and help us understand the evidence that the SEC has in support of the allegations of the Complaint. You identified Exhibit 136 as a piece of evidence in support of the allegation we've been discussing, and so I would like you to tell me why it is that you identified Exhibit 136 in support of that allegation.</p>	<p>Object as to the form. I believe it's – and also to the extent it's seeking attorney work product.</p>	<p>And I was just going to say that that would involve work product unless we've already identified it specifically with a pincite in the TRO.</p>	<p>Frank Depo 107:12-108:8</p>	<p>The question is asking about the allegation in Paragraph 20 of the Complaint that Perry Abbonizio oversees agent funds.</p> <p>This topic was not noticed for the deposition.</p>

<p>I asked you to identify within the declaration of Kara DiPietro, which you testified was evidence of what you believed to be Mr. Abbonizio’s oversight – alleged oversight over the agent funds. So it’s up in front of you. You said you couldn’t provide a pinpoint cite.</p> <p>Can you point to me to any paragraph, any sentence, in this declaration that supports your testimony?</p>	<p>Objection to form. Objection that you’re seeking attorney work product and attorney-client privileged information. And we object to any question asking the SEC to argue, debate, or weigh evidence with the defense.</p>	<p>[none provided]</p>	<p>Frank Depo 108:22-109:10</p>	<p>The question is asking about evidence of Perry Abbonizio overseeing agent funds.</p> <p>This topic was not noticed for the deposition.</p>
<p>[referring to Meyer Declaration]</p> <p>I’ll ask you the same question, which is: Identify within that declaration any statement, phrase, sentence that supports the SEC’s allegation that Mr. Abbonizio had oversight authority over agent funds.</p>	<p>Objection to form. Objection that you’re seeking attorney work product and attorney-client privileged information. And we object to any question asking the SEC to argue, debate, or weigh evidence with the defense.</p>	<p>[none provided]</p>	<p>Frank Depo 109:16-22</p>	<p>The question is asking about evidence of Perry Abbonizio overseeing agent funds.</p> <p>This topic was not noticed for the deposition.</p>

<p>Can you point me to any evidence that the SEC has that Par Funding engaged in general solicitations through the use of radio, television commercials, the Internet, or Facebook?</p>	<p>Attorney-client privilege. Attorney work product privilege. Investigative and law enforcement privileges. To the extent - Ms. Frank is instructed not to testify about any matters that are covered by those privileges, but she may testify about the evidence and arguments that we have made public in this case.</p>	<p>I would just refer you to the investigative file and the TRO that is annotated.</p>	<p>Frank Depo 111:9-24</p>	<p><b>This same question and answer is discussed above in the chart.</b></p>
<p>I'm merely asking you whether the SEC has any evidence that Par Funding or any of its representatives represented to investors that underwriting in MCA required it to obtain debt schedules.</p>	<p>[Repeated previously asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p>	<p>If you can point me to any place in the Complaint where we say debt schedules, I might be able to be of assistance with a particular document based on my notes, but, otherwise, I can't answer because of work product and other privileges.</p>	<p>Frank Depo 119:14-120:3</p>	<p><b>This same question and answer is discussed above in the chart.</b></p>

<p>[comparing the Frost merchant declaration with Frost underwriting documents]</p> <p>The same company identified in Mr. Frost's declaration, correct, as "the company"?</p>	<p>[none]</p>	<p>I don't know if that's the case or not.</p> <p>...</p> <p>I mean they have the same name. You're asking if they're the same company. I don't know.</p> <p>...</p> <p>Actually, I take that back. Now I'm looking at the declaration. The name in the declaration is Volunteer Pharmacy without the Inc.</p>	<p>Frank Depo 125:15-127:19</p>	<p>The witness answered the question</p> <p>This question does not seek evidence of anything other than the witness' reading skills</p> <p>Witness is being asked to compare a Declaration supporting the TRO Motion to evidence Mr. LaForte obtained in discovery</p> <p>This is outside of the scope of noticed topics</p>
<p>Q. So at Exhibit 61, in Paragraph where Mary Carleton said that "CBSG did not request information from me or the company about the company's expenses during the underwriting process or at any other time prior to approving the loans," that statement was false, correct?</p>	<p>I'm sorry, I have to object. We have a standing objection, so that I don't have to keep repeating it, that the SEC believes this is outside -- this line of questioning is outside the scope, and we would object to it and instruct her not to answer. If she wishes to do so in her personal capacity, she may.</p>	<p>The SEC does not have personal knowledge.</p>	<p>Frank Depo 154:15-155:8</p>	<p>Outside of the scope of noticed topics</p>

<p>[comparing Frost merchant declaration with Frost underwriting documents]</p> <p>James Frost was the declarant in Exhibit 44, right?</p>	<p>[none]</p>	<p>The name is the same. The SEC does not know whether it's the same person.</p>	<p>Frank Depo 201:13-23</p>	<p>Outside of the scope of noticed topics</p> <p>Mr. LaForte is showing the SEC his defense exhibits and asking the SEC whether a name on one of them reflects the same person who signed a Declaration</p>
<p>[referring to ¶ 4 of Whalen merchant declaration]</p> <p>What steps did the SEC take to verify this statement in the declaration?</p>	<p>Objection. Investigative privilege, deliberative process privilege, attorney work product, and attorney-client privilege, and Ms. Frank is instructed not to testify in response to that question</p>	<p>[none provided]</p>	<p>Frank Depo 230:19-231:5</p>	<p>Outside of the scope of noticed topics</p> <p>Seeks attorney work product; investigative privilege</p>
<p>[referring to ¶ 4 of Whalen merchant declaration]</p> <p>Did the SEC attempt to obtain documents to corroborate the statement of Mr. Whalen?</p>	<p>[Repeated previously asserted objections: investigative privilege, attorney work, and attorney-client privilege] [Repeated previous instruction to the witness not to answer]</p>	<p>[none provided]</p>	<p>Frank Depo 231:7-12</p>	<p>Same as immediately prior response</p>



<p>[referring to ¶ 4 of Whalen merchant declaration]</p> <p>Did the SEC, knowing that Mr. Whalen was a merchant who owed Par Funding money and was engaged in a lawsuit with Par Funding, did the SEC attempt to in any way corroborate this information?</p>	<p>[Repeated previously asserted objections: investigative privilege, attorney work, and attorney-client privilege]</p> <p>[Repeated previous instruction to the witness not to answer]</p>	<p>[none provided]</p>	<p>Frank Depo 231:13-20</p>	<p>Outside of the scope of noticed topics</p> <p>Seeks attorney work product; investigative privilege</p>
<p>Does the SEC have any knowledge that there are any other false statements in the declarations that we've discussed today?</p>	<p>We object to the form of the question, and we would instruct the -- we disagree with the premise of the question and object to the form. We would instruct the witness not to answer for all of the prior privilege and scope -- not scope, but all of the prior privilege reasons, including attorney work product and deliberative process privilege, which is raised here, and as to form as well</p>	<p>So I would give the same answer as not to testify in my personal capacity, and then also on the basis of work product. And by saying "work product," I'm referring to my personal attorney work product and opinion product as well.</p>	<p>Frank Depo 262:12-263:10</p>	<p>Outside of the scope of noticed topics</p>

**Refusal To Acknowledge Any Documents Not Filed By The SEC**

<b>Question</b>	<b>Objection</b>	<b>Testimony</b>	<b>Transcript</b>	<b>SEC Response</b>
<p>Would you agree with me that this [Form D Filing] indicates that it was filed April 24, 2020, by Joseph Cole, as Chief Financial Officer on behalf of Complete Business Solutions?</p>	<p>[none]</p>	<p>We don't have any knowledge of that, but I see at the bottom of the page that you're showing right here, that it does have a date on it, and it does have a signature block with Joe Cole's name on it, and the title block says, "Chief Financial Officer."</p>	<p>Frank Depo 59:21-60:11</p>	<p>The SEC witness could have answered yes, and the SEC will answer this as yes if the deposition is continued or will provide a declaration, whichever Mr. LaForte prefers</p>
<p>You would agree, would you not, that Mr. Rutledge was providing advice with respect to removing the finder's fees from the 2020 Form D filing, correct?</p>	<p>Objection as to form.</p>	<p>I would be guessing. All I can tell you is these documents speak for themselves.</p>	<p>Frank Depo 78:25-79:15</p>	<p><b><u>Response C:</u></b>                      Outside of the scope of any noticed topic                       There is no allegation in the Complaint about Mr. Rutledge                       Calls for speculation                       The examiner is inquiring about one of LaForte's defense exhibits and Mr. Rutledge is a former attorney for Par Funding                       The exhibit being shown or asked about is not an SEC document</p>

<p>Well, I'm not asking you to guess. I'm asking you whether Mr. Rutledge is providing that advice in his email at Exhibit 6 at the very bottom where he says, "I suggest that CBSG file an amendment to its existing Form D to delete the finder fee information which appeared on the February 12, 2019 filing"</p>	<p>Objection. This has been asked and answered, so I believe it's harassing the witness at this point.</p>	<p>[none provided]</p>	<p>Frank Depo 79:17-80:1</p>	<p><a href="#"><u>Response C</u></a></p>
<p>You would agree with me that he was providing advice that that particular provision of the February 2019 Form D filing be deleted from the subsequent 2020 filing?</p>	<p>Objection. Calls for speculation. It's been asked and answered. Argumentative. We'll direct the client – or we'll direct the witness for the SEC not to answer this question. She's already answered it.</p>	<p>[none provided]</p>	<p>Frank Depo 80:3-12</p>	<p><a href="#"><u>Response C</u></a></p>
<p>In other words, Mr. Rutledge, who was counsel for CBSG, was providing advice to CBSG with respect to that 506(b) exemption in that 2020 filing, was he not?</p>	<p>Objection as to form.</p>	<p>I can't agree with you because I can't guess. I can see on this paper on the exhibit that you've shown me that it reads, "I suggest that CBSG file an amendment to its existing Form D" I see that word.</p>	<p>Frank Depo 80:14-81:13</p>	<p><a href="#"><u>Response C</u></a></p>

<p>[reading from exhibit 7]</p> <p>...</p> <p>So Mr. Rutledge, counsel for Par, has sent an email on April 14, 2020, providing a memo with respect to the Form D filing for April 2020, correct?</p>	<p>Object to form.</p>	<p>So we have no personal knowledge of whether Mr. Rutledge sent this or not, so I can't – I can't answer that question.</p>	<p>Frank Depo 81:19-12</p>	<p><a href="#"><u>Response C</u></a></p>
<p>Do you have any reason to doubt that this was sent?</p>	<p>Objection to form. We're going to direct the witness not to speculate about evidence that you're showing her on the screen.</p>	<p>I don't have any comment on whether I would doubt or not doubt something. I mean, I can't – I can't tell you anything about this document other than what I see.</p>	<p>Frank Depo 82:14-83:6</p>	<p><a href="#"><u>Response C</u></a></p> <p>[witness is being shown one of LaForte's defense exhibits]</p>
<p>In other words, you have no evidence that would cause you to doubt that this email was sent by Phillip Rutledge to the individuals identified here on this date?</p>	<p>Objection as to form.</p>	<p>I have no personal knowledge as to whether he sent it.</p>	<p>Frank Depo 83:7-14</p>	<p><a href="#"><u>Response C</u></a></p>
<p>And that would be consistent with attachment that says, "April 14, 2020, memo to CBSG on Form D filing," correct?</p>	<p>[none]</p>	<p>I have no idea.</p>	<p>Frank Depo 84:11-14</p>	<p><a href="#"><u>Response C</u></a></p>

<p>He's saying that he's attaching a draft Form D filing, and there is a reference in the email to an attachment that says "Form D filing." You don't see a connection between those two things?</p>	<p>Asked and answered.</p>	<p>I have no way of knowing for sure.</p>	<p>Frank Depo 84:15-22</p>	<p><a href="#"><u>Response C</u></a></p>
<p>Mr. Rutledge is providing advice with respect to the process for filing this Form D to Joe Cole, is he not?</p>	<p>Objection as to form.</p>	<p>I have no personal knowledge.</p>	<p>Frank Depo 84:24-85:3</p>	<p><a href="#"><u>Response C</u></a></p>
<p>[reading from exhibit 8]  So in this email, Mr. Rutledge is giving Mr. Cole directions how to fill out the form, the Form D filing, correct?</p>	<p>Objection as to form.</p>	<p>I can see the words that you've read, and I see them on the document, but I have no personal knowledge as to any characterization of what's going on here.</p>	<p>Frank Depo 85:22-86:4</p>	<p><a href="#"><u>Response C</u></a></p>
<p>So here, again, in exhibit 8, like in Exhibit 7, Phillip Rutledge, counsel for CBSG, is providing advice with respect to how to fill out this April 2020 Form D filing to Joe Cole, correct?</p>	<p>[none]</p>	<p>I have no personal knowledge, no way to answer that question. The document says what it says.</p>	<p>Frank Depo 86:11-17</p>	<p><a href="#"><u>Response C</u></a></p>

<p>And you're aware, from your involvement in preparing for today's deposition, that Fox Rothschild was one of the law firms that provided advice to Par Funding?</p>	<p>Objection as to form.</p>	<p>I don't have any personal knowledge of that.</p>	<p>Frank Depo 87:3-12</p>	<p>Outside of the scope of topics  Calls for speculation  Relevance</p>
<p>Well, again, I'm not asking for you to tell us, based on your review of the documents and whatever you did to prepare for today's deposition, that Fox Rothschild was among the law firms that provided advice to Par Funding in connection with the matters raised in the Amended Complaint.</p>	<p>Asked and answered.</p>	<p>I don't have personal knowledge of that, so I can't answer that question.</p>	<p>Frank Depo 87:14-24</p>	<p>Outside of the scope of topics  Calls for speculation  Relevance  Asked and answered</p>
<p>[Regarding prior question of whether Fox Rothschild gave legal advice to Par in connection with Amended Complaint allegations]</p> <p>All right. I just want to make clear. When you say "personal knowledge," I'm not asking for your personal knowledge. I'm asking for any evidence that the SEC has based on your review of what you described based on any conversations you had with others who may have personal knowledge.</p> <p>So it's not just your personal knowledge that I'm after. I'm after any evidence that the SEC has based on the work you've done to prepare as directed by that Notice of Deposition.</p>	<p>Objection to the extent you're seeking a legal opinion, it would be protected by attorney work product to the extent you're asking if the SEC views certain communications as providing legal advice.</p> <p>Otherwise, the witness can answer.</p>	<p>I don't have anything further to give as an answer.</p>	<p>Frank Depo 88:2-19</p>	<p>The examiner was asking his immediately prior question again, asking if Fox Rothchild gave Par Funding legal advice about the issues in the Complaint.</p> <p>Outside of the scope of topics  Calls for speculation  Relevance  Asked and answered</p>

<p>In this email, Joe Cole is receiving advice with respect to how to fill out Form D that was filed in April 2020 and another law firm is copied on this email.</p> <p>So he's receiving advice from two law firms with respect to this one filing, correct?</p>	<p>Objection as to form.</p>	<p>I do not want to speculate on whether or not this is advice, so I can't answer that question.</p>	<p>Frank Depo 88:23-89:4</p>	<p>Examiner is showing SEC his defense evidence and asking the SEC to confirm that Joe Cole received legal advice on a certain issue</p> <p>This was not alleged in the Complaint</p> <p>Calls for speculation Topic not noticed Relevance as to SEC opinion</p>
<p>[Referring to Frost underwriting documents]</p> <p>So Mr. Frost has attested that he is providing as an applicant authority to have his financial information reviewed in connection with this application, including credit card statements and financial information.</p> <p>Do you see that?</p>	<p>[none]</p>	<p>We have no personal knowledge of that.</p> <p>I see the wording that you read to me is on this document</p>	<p>Frank Depo 129:16</p>	<p>Asking if the witness sees words on a document does not lead to admissible evidence</p> <p>Regardless, witness answered</p> <p>Examiner is showing the SEC his defense evidence and inquiring about it; outside of the scope of the deposition notice</p>

<p>[Referring to Frost underwriting documents]</p> <p>The wording as you described it in Exhibit 62, which is an application by Mr. Frost, includes his agreement that a background check be completed, correct?</p>	<p>Object to form.</p> <p>[SEC made objections to outside of scope regarding entire line of questioning about LaForte evidence]</p>	<p>I can't give you an opinion on that. The SEC does not have personal knowledge as to the meaning of those records on the document and signing of the document, so I can't give you an opinion as to the significance or the meaning of it.</p>	<p>Frank Depo 130:9-23</p>	<p><b><u>Response D:</u></b></p> <p>Question is about LaForte's defense evidence and asking SEC to agree with him about its meaning or what it shows, or in some instances to authenticate a document that is not an SEC document</p> <p>Outside of the Scope of Noticed Topics</p> <p>Relevance</p>
<p>[Comparing Frost underwriting documents to Frost merchant declaration]</p> <p>Exhibit 62 is inconsistent with the statement he makes under oath in Paragraph 8 of Exhibit 24, is it not?</p>	<p>Object as to form, that it's seeking an opinion or asking the SEC to weigh any evidence. Instruct the witness not to answer to weigh evidence or provide any privilege. And I also believe that this is outside of the scope of the noticed deposition.</p>	<p>I can't give you an opinion on that.</p>	<p>Frank Depo 130:25-131:12</p>	<p><b><u>Response D</u></b></p>



<p>[Comparing Frost underwriting documents to Frost merchant declaration]</p> <p>Exhibit 62 is evidence that Mr. Frost was lying in his declaration at Paragraph 8; isn't that right?</p>	<p>Objection as to form. Seeking an opinion from the SEC, a legal opinion, and we will instruct the witness not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 131:14-19</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[Comparing Carleton underwriting documents to Carleton merchant declaration]</p> <p>And so you see advances made to this company in those amounts, correct, on a weekly basis?</p>	<p>Objection as to form</p>	<p>The SEC has no personal knowledge of that, and I couldn't give you an opinion of what that means.</p>	<p>Frank Depo 139:19-25</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to Fleetwood Merchant Site Inspection Report]</p> <p>This is a Merchant Site Inspection Report, correct?</p>	<p>Objection as to form</p>	<p>The answer would be the SEC has no personal knowledge as to this document, but I can see from the document that at the top, it says "Merchant Site Inspection Report"</p>	<p>Frank Depo 212:23-213:4</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to Fleetwood Merchant Site Inspection Report]</p> <p>It indicates that the date of an inspection – date of inspection is January 5, 2017, right?</p>	<p>[none]</p>	<p>I see the words on the document. The SEC has no personal knowledge of whether there was an inspection the date of the inspection. I see the words on the document.</p>	<p>Frank Depo 214:4-14</p>	<p><a href="#"><u>Response D</u></a></p>

<p>[referring to Whalen Merchant Site Inspection Report]</p> <p>So this is a Merchant Site Inspection Report for Par Funding, right?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge as to what this document is, but it does state at the top “Merchant Site Inspection Report.”</p>	<p>Frank Depo 222:21-223:1</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[comparing Whalen Merchant Site Inspection Report to Whalen merchant declaration]</p> <p>So the contact person here, Sean Whalen, is the declarant in Exhibit 109, and the Flexogenix company in Los Angeles, California, is the company he says he owns in this declaration, right?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge of whether that statement you just made is correct. The names are the same on both documents.</p>	<p>Frank Depo 223:17-24</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to CBSG’s bank statement showing wire transfer to Flexogenix Group, Inc.]</p> <p>So this is a bank statement for a bank account controlled by CBSG funding d/b/a Par Funding which indicates that a wire transfer went out to Flexogenix on November 22 in the amount of \$580,575?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge what this document is or what exactly these statements on it mean. So all I can tell you is what I see on the document . . . but I do see that in addition to “TD Bank” and “Statement of Account,” at the top, it also says, “Complete Business Solutions Group, Inc. d/b/a Par Funding.”</p>	<p>Frank Depo 224:12-</p>	<p><a href="#"><u>Response D</u></a></p>

<p>[referring to Whalen underwriting documents]</p> <p>And so this is a date of the application, October 17, 2017, correct?</p>	<p>Objects as to form.</p>	<p>The SEC has no personal knowledge of the date of this application, but I can see at the botton, there is a date on the application, and it says, “10/17/17.”</p>	<p>Frank Depo 233:16-2</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to CBSG’s bank statement]</p> <p>This TD Bank Statement of Account indicates that Complete Business Solutions wired funds in the amount of \$580,575 to Flexogenix on November 27, doesn’t it?</p>	<p>Objection as to form and scope as previously stated.</p>	<p>The SEC has no personal knowledge, so we can’t tell you what it indicates. I can tell you that I see on the document wire transfer outgoing, Flexogenix Group, Inc., and a dollar amount.</p>	<p>Frank Depo 234:24-235:10</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to CBSG’s bank statement showing date and amount of wire transfer to National Rx, Inc.]</p> <p>And so this account was funded on April 8, 2016, correct?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge of when the funding occurred, but I can just tell you again that I see those words, “Wire Transfer Outgoing, National Rx Inc.,” and an amount on this document.<sup>7</sup></p>	<p>Frank Depo 240:23-241:6</p>	<p><a href="#"><u>Response D</u></a></p>

<sup>7</sup> The SEC discusses this answer and others in more detail in comments to LaForte’s Chart C

<p>[referring to Frost underwriting documents]</p> <p>I'm sorry, before we go to the next exhibit, you'll see that above Mr. Frost's signature -- name and signature, that there is a statement that indicates that he is an applicant. Do you see that?</p> <p>"The merchant and owner identified above individually, an applicant"?</p>	<p>[none]</p>	<p>I see the words that you just said on the document. The SEC has no personal knowledge as to what those words indicate.</p>	<p>Frank Depo 245:2-10</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to Frost underwriting documents]</p> <p>So this is an application signed by Chad Frost on behalf of Volunteer Pharmacy, correct?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge as to what this document is or who signed it.</p>	<p>Frank Depo 245:15-19</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[referring to CBSG's bank statement showing date and amount of wire transfer to Volunteer Pharmacy]</p> <p>So Exhibit 63 indicates that Complete Business Solutions wired out of its</p>	<p>Objection as to form. And to the extent it's asking for any opinion on the evidence, but objection as to</p>	<p>The SEC has no personal knowledge, so I can't say what this indicates. I can just say what the words are that are on it, which we've already gone over.</p>	<p>Frank Depo 246:17-247:3</p>	<p><a href="#"><u>Response D</u></a></p>
<p>Beneficial Bank account, on November 4, \$44,206 to Volunteer Pharmacy, right?</p>	<p>form.</p>			<p><a href="#"><u>Response D</u></a></p>

<p>[comparing Frost underwriting documents and CBSG's bank statements]</p> <p>So Exhibit 62 indicates that Chad Frost, on behalf of Volunteer Pharmacy, applied for a loan on March 18, 2013, and Exhibit 63 indicates that that loan was funded months later, on November 4, 2013 correct?</p>	<p>Objection as to form.</p>	<p>No, the SEC can't – can't testify as to what either of the documents intended. I don't have personal knowledge of that, so I can just testify to what the documents state on their face, which I've already done.</p>	<p>Frank Depo 247:5-17</p>	<p><a href="#"><u>Response D</u></a></p>
<p>[comparing Foti underwriting documents and CBSG's bank statement]</p> <p>Okay. So you have, in Exhibit 27, an application prepared by Mr. Foti on behalf of Sunrooms on August 26, 2019, and in Exhibit 28, you have an amount funded to Sunrooms nearly or more than three months later?</p>	<p>Objection as to form. And as previously stated, the SEC objects to any topics or questions asking the SEC to opine or weigh evidence. It's attorney work product privilege, deliberative process privilege, and we instruct the witness not to weigh evidence on behalf of the SEC.</p>	<p>So the SEC has no personal knowledge and also can't answer this because we might potentially be waiving privileges.</p>	<p>Frank Depo 250:21-251:10</p>	<p><a href="#"><u>Response D</u></a></p>

<p>[referring to CBSG’s bank statement showing date and amount of wire transfer to Fleetwood Services, LLC]</p> <p>So Complete Business Solutions, according to this document, wired out a hundred thousand dollars to Fleetwood Services, LLC, on January 9, 2017, right?</p>	<p>Objection as to form</p>	<p>The SEC has no personal knowledge of that. I can just speak to the words on the document. I do see, under “Description,” it says, “Wire – out” underneath that, it says, “Fleetwood Services, LLC,” and under “Debits,” it says “100,000.”</p>	<p>Frank Depo 257:11-21</p>	<p><u><b>Response D</b></u></p>
--	-----------------------------	---	-----------------------------	---------------------------------

**Refusal To Answer in “Personal Capacity” Based on Unilateral Determination Question Was Outside the Scope of 30(b)(6) Depo Notice**

**The SEC responds to the below chart section:**

**As to the chart that follows, the questions asked are discussed in the chart above. The questions are outside of the scope of the Deposition topics, as set forth above. The SEC has compared each cite below to the cites in the chart above, and believes we have not missed any that were not discussed above. If we did, it was inadvertent.**

<p>[When asked any questions regarding the underwriting documents for merchant declarant, Mary Carleton]</p> <p>You're instructing her to answer -- or your objection is that she will be answering in her personal capacity because its outside the scope in your opinion?</p> <p>...</p> <p>I just wanted to make clear that for a 30(b)(6) deposition, you don't have that right. You have to answer the questions. If you choose not to, that's fine. We can move on.</p> <p>...</p> <p>I will note for the record that [in the Depo Notice], we asked for the specific facts, information, documents, and other evidence, to summarize, that the SEC has to support its Complaint with respect to -- the very first subsection is CBSG's underwriting practices.</p>	<p>And I'm going to just object to the extent I believe I gave a little leeway, to see if this was going to come back to one of the topics that was noticed for today. It doesn't.</p> <p>And so Ms. Frank can testify about matters not in the notice in her personal capacity, but not on behalf of the SEC.</p> <p>...</p> <p>I believe that this line of questioning is outside of the scope of the deposition notice. So the SEC will not be testifying about certain matters that are outside of the scope. Right now, we're on one of them.</p> <p>And therefore, if the witness, nonetheless, wants to testify in her personal capacity, she may do so, but the SEC, which is who I represent, we object on grounds it's outside of the scope.</p> <p>...</p> <p>I am instructing the witness not to testify as the SEC designee about this matter because -- this issue because it's outside the scope of the notice.</p>	<p>So I am not going to testify regarding this document in my personal capacity since it's outside of the scope of the 30(b)(6)</p> <p>...</p> <p>I'm not going to testify about this document because I do not want to be testifying in my personal capacity.</p> <p>...</p> <p>I'm not going to answer in my personal capacity because I was not noticed in my personal capacity. I thought that I was here in my 30(b)(6) capacity for the Commission. I don't have my own counsel. I don't want to be my own counsel, although in this situation, I'm stuck with that for the moment, and so I'm advising myself not to answer in my personal capacity, so I'm sorry that I can't do that.</p> <p>...</p> <p>I'm not going to answer.</p> <p>...</p> <p>I decline to answer in my personal capacity.</p> <p>...</p> <p>I'm not going to answer in my personal capacity, and from</p>	<p>Frank Depo 141:18-158:18</p>
---	--	--	-------------------------------------

<p>I've heard your position that these are outside the scope. These relate to underwriting. You can continue to object as you see fit.</p>	<p>Ms. Frank has not been noticed in her personal capacity today to testify, and the SEC's objection is that it's outside of the scope, and, therefore, we're directing the witness not to testify about this document.</p> <p>...</p> <p>Ms. Frank wasn't noticed today for a deposition in her personal capacity. I don't represent Ms. Frank in her personal capacity, so I cannot give her personally any legal advice. . . but today's notice is of the SEC proper, not Ms. Frank in her individual capacity, and we've made our objection clear. We've given the</p>	<p>here on, I'll just say "same answer."</p> <p>["same answer" or refusal to testify in a "personal capacity" as to the Carleton merchant underwriting documents asserted 6 additional times]</p>	
--	--	---	--



instruction to the witness, and I believe that that's all.

It's a new exhibit, so I'm going to make the same objection, that this is outside of the scope of the topics noticed for today. The SEC, we're instructing the witness not to testify about any questions concerning this document, and that's it. We're instructing the witness not to testify.

...

Ms. Frank isn't represented by counsel, and you're now converting this into a deposition of her in her personal capacity. So, Ms. Frank will not be answering any questions today in her personal capacity, she's not represented by counsel, and the SEC will not be permitting her to answer any questions that weren't noticed.

...

So we will not be responding in any way to those types of questions, and to the extent you're now seeking to convert this into a deposition of Ms. Frank personally, Ms. Frank will not be answering. My understanding from Ms. Frank is she will not be answering any questions today in her personal capacity. It's not a noticed deposition.

...

<p>I'm sorry, I have to object. We have a standing objection, so that I don't have to keep repeating it, that the SEC believes this is outside -- this line of questioning is outside the scope, and we would object to it and instruct her not to answer. If she wishes to do so in her personal capacity, she may.</p>		
--	--	--

<p>[When asked any questions regarding the underwriting documents for merchant declarant Joseph Pucci]</p>	<p>Since this is a new exhibit, I'm going to state my standing objection to it, that this is outside of the scope of the topics that were noticed, and so we object to this line of questioning and instruct the witness not to</p>	<p>I'm going to decline to answer in my personal capacity and just say "same answer" going forward.</p> <p>["same answer" or refusal to testify in a personal capacity as to the</p>	<p>Frank Depo 158:19-174:8</p>
--	---	--	------------------------------------

	<p>answer on behalf of the Securities and Exchange Commission.</p> <p>...</p> <p>So we have the same objection that it's outside of the scope of today's deposition, and we would instruct the witness not to testify on behalf of the SEC as to the Defendants' evidence or to weigh or opine on any evidence on behalf of the SEC.</p> <p>Any questions asked of the witness concerning the documents presented today that weren't within the topic noticed, we would direct the witness not to answer on behalf of the SEC and a separate objection to the extent you're asking the witness to weigh or opine on evidence or give a legal opinion, that that would be attorney work product.</p>	<p>Pucci merchant underwriting documents asserted 32 additional times]</p>	
--	---	--	--

<p>[When asked any questions regarding the underwriting documents for merchant declarant, Sean Whalen]</p>	<p>I'm so sorry. I object. This is outside of the scope of the topics noticed, and we'll have a standing objection that the witness cannot testify on behalf of the SEC as to this. And, also, we will object as to any questions asking the witness to weigh evidence for the Defendants or provide a legal opinion on attorney work product grounds, and we will instruct the witness not to answer.</p> <p>..</p> <p>.</p> <p>The SEC objects to questions – you're showing the witness a series of documents the defense has provided in a motion recently filed that has nothing to do with any of the topics and is improperly attempting to get the SEC to engage in some sort of evidence weighing with the defense in support of that motion the defense filed.</p> <p>It's outside of the topic, and for all of these questions, we will make the same objection. It's outside of the</p>	<p>[refusal to testify in a personal capacity as to the Whalen merchant underwriting documents asserted 34 times]</p>	<p>Frank Depo - 187:25-191:11;  226:8-19;  232:13-233:5;  and  234:24236:19.</p>
--	---	---	--

	<p>scope, and you've been made aware that the witness will neither testify in her individual capacity or her capacity as the SEC representative to any of these questions based on our instruction not to testify on behalf of the SEC, and the witness has also -- and because it's attorney work product when you're asking her to weigh in or opine, and the witness has also advised you under oath that she's not going to testify in her individual capacity.</p>		
<p>[When asked about the underwriting documents and merchant declarations generally]</p> <p>And all of these declarants own companies who either owed Par Funding money or had been sued by Par Funding when they made these declarations, correct?</p>		<p>[refusal to testify in a personal capacity as to the merchant declarations or knowledge of the SEC before filing the Complaint was filed asserted 4 times]</p>	<p>Frank Depo 191:12-195:10</p>

<p>[When asked any questions regarding the declarant Frost merchant underwriting documents]</p> <p>And I want to make clear that I'm not agreeing that either of these questions are outside the scope, nor am I agreeing that you would be left to testify in your individual capacity, but I am just accepting your noted refusal to answer the question on that basis through the phrase "Same answer."</p>	<p>This does fall into the standing objection, it's not part of what was noticed for today, but is instead just further effort to obtain discovery concerning the motion filed last week. The SEC will instruct the witness not to testify on behalf of the SEC regarding this same line of questioning it appears we're on.</p> <p>And to the extent the witness is asked to weigh any evidence, we object on a work product grounds. And for all questions asking the witness if the screen says certain words, we stipulate that the documents say what they say, that the words on the document appear on the document, and that's just evidenced by the evidence itself.</p>	<p>[refusal to testify in a personal capacity as to the Frost merchant underwriting documents asserted 10 times]</p>	<p>Frank Depo 197:15-208:6;</p> <p>and</p> <p>247:21-248:13</p>

<p>[When asked any questions regarding the declarant Fleetwood merchant underwriting documents]</p> <p>I disagree with your assessment. We asked you to designate a representative for the SEC. You chose to designate Ms. Frank, who is an attorney, and you are now indicating that because she's an attorney, she's going to be asserting attorney-client privilege. That's your choice.</p> <p>...</p> <p>I just want to state for the record that I'm not asking, and have not mentioned, the motion you're referring to. I'm asking about documents and evidence supporting the allegation in the Complaint regarding underwriting, which was noticed, and the fact that there's a motion pending having to do with a fact at issue in the Complaint is both irrelevant to my</p>	<p>Mr. Soto, I want to note for the record, so it's clear, Ms. Frank, as you know, is an attorney. When she's testifying in her personal capacity and raising privilege issues where you're asking for legal opinions, I believe that she is asserting her own privilege as attorney -- her own attorney opinion product and attorney work product on the questions you're asking, and I just wanted to make sure that you were aware of that. Because you keep asking those types of questions, and the way she's asserting, I just wanted to make sure you're aware of what she's asserting as just a courtesy to let you know in case you wanted to address that.</p> <p>...</p> <p>We object on the same grounds of scope and privilege and form, and we direct the witness not to answer on behalf of the SEC. The SEC's legal positions about all of these issues will be reflected in our response to the Defendants' motion that you're asking about. And at this time, we instruct – we continue to instruct the witness not to testify for the reasons I've just stated.</p>	<p>[refusal to testify in a personal capacity as to the Fleetwood merchant underwriting documents asserted 4 times]</p>	<p>Frank Depo 211:5-218:21;</p> <p>and</p> <p>258:6-24- 260:10</p>
---	--	---	--

<p>questions and not surprising because litigation often involves the matters raised in a Complaint.</p> <p>So I don't want you to be confused that I'm asking these questions for any purpose other than the topics noticed in the deposition notice, but I heard your objections, and they're obviously noted for the record.</p>			
---	--	--	--





