

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

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

**DEFENDANT PERRY ABBONIZIO'S STATEMENT OF FACTS IN SUPPORT OF HIS
RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

Defendant Perry Abbonizio ("Abbonizio") submits the below Response to the SEC's Statement of Undisputed Facts [D.E. 816-1] and supplements the record with his own Statement of Additional Facts.

RESPONSE TO SEC'S STATEMENT OF UNDISPUTED FACTS

1-14. No response required by Abbonizio because the SEC does not cite these facts in seeking summary judgment against Abbonizio as to Count VII of the Amended Complaint.

15. Partially disputed. It is undisputed that Abbonizio was permitted to refer to himself as a "principal" of Par. The SEC cites to an instance in which Abbonizio appears to have instead referred to himself as "owner" (Exhibits 23 and 152 are the same). In introducing himself, Abbonizio always intended to convey his actual role with the company, and specifically his role as investor relations liaison, but when it came to his title he understood "principal" to carry a similar connotation as "owner," and he may have used it colloquially. *See* Plaintiff's Exhibit F at 92:20–94:2, 96:19–97:7. If he used "owner," or did not correct someone introducing him as such,

it was for that reason. *Id.* In fact, the other exhibit the SEC cites (Exhibit 136) is a transcript in which, in the cited portion, Abbonizio purports to introduce *McElhone* as owner and notes that he, himself, is “*considered* a managing partner” — which underscores that he was trying to convey his title colloquially. Abbonizio disputes the SEC’s characterization of his responsibilities. Abbonizio’s formal responsibilities as set forth in the Consulting Agreement included a range of investor relations related responsibilities, not just those listed by the SEC. *See infra* at ¶ 99 and Plaintiff’s Exhibit D at § 2. The way Abbonizio interpreted and carried out his responsibilities in practice, however, did not always reflect the responsibilities as listed in the Agreement. *See infra* at ¶¶ 100–05, 109–12. Finally, Exhibit 85 relied upon by the SEC does not offer any support for the SEC’s facts; it is a declaration that never even mentions Abbonizio.

16. Partially disputed. Abbonizio disagrees with the SEC’s use of the word “solicit,” which the SEC improperly uses to encompass contact of any kind with potential investors. While the SEC states, for example, that Abbonizio “solicited hundreds of investors,” the cited portion of Abbonizio’s testimony shows he was referring to the number of potential investors he “spoke with and/or met and/or educated.” *See* Plaintiff’s Exhibit F at 150:1-11. Moreover, it was Abbonizio’s understanding that some of the Agent Fund events were not “hosted for potential investors,” as the SEC characterizes them, but rather were client appreciation events — even if there may also have been some potential investors present. *See infra* at ¶ 111. Abbonizio’s understanding is borne out by the evidence the SEC relies upon, in which Abbonizio says the purpose of his being there is to thank existing clients. *See* Plaintiff’s Exhibit 20 at 49:9-17. Abbonizio would provide materials to Agent Fund Managers in order to educate them and their prospective investors about Par. *See infra* at ¶¶ 100–03.

17. Undisputed.

18. Undisputed.

19. Partially disputed. The Agent Funds were established for the purpose of investing in merchant cash advance opportunities, but were not exclusive to Par. *See infra* at ¶ 108.

20. Partially disputed. The Agent Funds were not “Par Funding Agent Funds” as the SEC characterizes them. The Agent Funds were established for the purpose of investing in merchant cash advance opportunities, but were not exclusive to Par. *See infra* at ¶ 108. As to the remaining facts, no response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

21. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

22. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

23. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

24. Undisputed.

25. Undisputed.

26. Partially disputed. Fidelis was not “created for the purpose of raising investor funds for Par Funding.” The management services agreement between ABFP Management Company LLC and Fidelis Financial Planning LLC states that Fidelis was organized “for the purpose of raising funds and using the proceeds to invest in various Alternative Asset Classes.” *See* Plaintiff’s Exhibit 41. As to the remaining facts, no response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

27. Undisputed. But for the reasons set forth in the Response to Plaintiff's Motion for Summary Judgment filed by Defendants Lisa McElhone, Joseph W. LaForte, and Joseph Cole Barleta, which arguments Abbonizio has incorporated by reference in his own Response (*see* Argument § 2), the offerings were exempt from registration requirements.

28-32. No response required because the SEC does not cite these facts in seeking summary judgment against Abbonizio as to Count VII of the Amended Complaint.

33. Undisputed that at times Abbonizio would meet or speak with potential investors about their interest in investing, and that the other named individuals would do so, as well, but Abbonizio disagrees with the SEC's use of the word "solicit," which the SEC improperly uses to encompass contact of any kind with potential investors.

34. Undisputed.

35. Undisputed.

36. Undisputed.

37. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

38. Undisputed.

39. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

40. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

41. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

42. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

43. Undisputed.

44. Undisputed.

45. Disputed. Par would not "use[] Agent Funds to offer and sell promissory notes" — Par did not have control over the Agent Funds. *See infra* at ¶ 108.

46-51. No response required because the SEC does not cite these facts in seeking summary judgment against Abbonizio as to Count VII of the Amended Complaint.

52. Partially disputed. Abbonizio occasionally would meet at Par's offices with individuals that had an interest in learning about Par and the merchant cash advance industry, including individuals potentially interested in becoming an Agent Fund Manager. The transcripts cited by the SEC (Exhibits 24 and 156), however, do not discuss "trainings," but rather informational sessions. Nevertheless, Abbonizio does not dispute that he would provide information and materials to Agent Fund Managers in order to educate them and their prospective investors about Par. *See infra* at ¶¶ 100–03, 109–12.

53. Undisputed.

54. Undisputed.

55. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

56. Partially disputed. Abbonizio acted as an investor relations liaison, and in carrying out this function he would educate the Fund Managers and their prospects about Par and the merchant cash advance industry. *See infra* at ¶¶ 100–03, 109–12. It was Abbonizio's understanding that some of the Agent Fund events were not "organized to raise money from

potential investors,” as the SEC characterizes them, but rather were client appreciation events. *See infra* at ¶ 111. This includes the November 2019 dinner the SEC refers to through Exhibit 20. *See* Plaintiff’s Exhibit F at 115:21—116:22. Abbonizio also disagrees with the SEC’s use of the word “solicit,” which the SEC improperly uses to encompass contact of any kind with potential investors.

57. Partially disputed. Abbonizio acted as an investor liaison, and in carrying out this function he would educate the Fund Managers and their prospects about Par and the merchant cash advance industry. *See infra* at ¶¶ 100–03, 109–12. Occasionally this would involve meeting or speaking to potential Agent Fund investors to answer questions or provide more information. *Id.* Abbonizio also disagrees with the SEC’s use of the word “solicit,” which the SEC improperly uses to encompass contact of any kind with potential investors.

58. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

59. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

60. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

61. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

62. Undisputed.

63. Undisputed.

64. Undisputed.

65. Partially disputed. The Agent Funds were established for the purpose of investing in merchant cash advance opportunities, but were not exclusive to Par. *See infra* at ¶ 108. It also was Abbonizio’s understanding that some of the Agent Fund events were client appreciation events. *See infra* at ¶ 111. Finally, in support of its premise that “[t]he dinner seminars were for the purpose of getting potential investors to invest in the Par Funding-related promissory notes,” the SEC cites to Abbonizio’s Consulting Agreement. Abbonizio disputes that this document supports the SEC’s premise in any way.

66. Disputed. The email cited does not reference Par Funding as the merchant cash advance company or that Vagnozzi would “pitch the Par Funding investment.” To the contrary, the email indicates that Vagnozzi intended to inform the audience about all the types of investments he offers.

67. Partially disputed. It was Abbonizio’s understanding that the November 2019 dinner the SEC refers to through Exhibit 20 was a client appreciation dinner. *See* Plaintiff’s Exhibit F at 115:21—116:22.

68. Undisputed.

69. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

70. Undisputed.

71. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

72. No response required by Abbonizio because these facts are not material to the SEC’s claim against Abbonizio under Section 5 of the Securities Act.

73. Undisputed.

74. Undisputed.

75. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

76. Partially disputed. In the absence of pinpoint references to the cited transcripts as required by Local Rule 56.1(b), it is unclear what portions of the transcripts the SEC is relying upon in support of its statement. Nevertheless, it is undisputed that Furman occasionally would put potential investors in contact with Abbonizio and that Abbonizio would answer questions about Par, the merchant cash advance industry, and/or their potential interest in investing in Par. Abbonizio disagrees with the SEC's use of the term "solicitation efforts" because the SEC appears to use the term to encompass contact of any kind with potential investors.

77. No response required because the SEC does not cite these facts in seeking summary judgment against Abbonizio as to Count VII of the Amended Complaint.

78. Partially disputed. The evidence does not support that Abbonizio distributed materials at the referenced events. *See* Plaintiff's Exhibit 25 at ¶ 22.

79. No response required by Abbonizio because these facts are not material to the SEC's claim against Abbonizio under Section 5 of the Securities Act.

80. Partially disputed. The referenced call took place, but Abbonizio disputes the SEC's characterization of it. The evidence cited by the SEC shows the purpose of the call was to further educate and update the Fund Managers about Par's model.

81-98. No response required because the SEC does not cite these facts in seeking summary judgment against Abbonizio as to Count VII of the Amended Complaint.

STATEMENT OF ADDITIONAL FACTS

99. Abbonizio’s Consulting Agreement with Par provided that, “in consultation with the Company, Consultant [*i.e.*, Abbonizio] shall (w) identify potential Investors; (x) assist the Company in establishing and developing relationships with potential Investors approved by Company Management; (y) handle communications with such potential Investors; and (z) build and maintain the Company’s relationships with those sources that become Investors.”¹

100. Regardless of his formal responsibilities as set forth in the Consulting Agreement, however, Abbonizio viewed his position as an educational liaison and resource, and he carried out his responsibilities accordingly.² As such, when Abbonizio met with finders, Agent Fund Managers, and/or investors, he would provide them with an overview of the merchant cash advance industry and information about Par’s business model in order to help them better understand the business.³

101. Abbonizio would give tours of Par’s physical office space because he believed it was important to provide finders, Agent Fund Managers, and investors with a visual understanding of the company’s different departments and how the company functioned on a day-to-day basis.⁴

¹ Plaintiff’s Exhibit D [D.E. 816-5], Consulting Agreement dated April 1, 2016, at § 2(a)(1) (listing certain job responsibilities).

² Plaintiff’s Exhibit F [D.E. 816-7], Deposition of Perry Abbonizio, dated June 10, 2021 (“Abbonizio Dep.”) at 140:15–141:1 (describing his role as an “educational liaison and resource”); *id.* at 93:8-11 (describing his role as a “communication liaison . . . from an investor relations perspective to the agents and the respective investors”); *id.* at 211:15-21 (describing his role as an “investor relations liaison”).

³ Plaintiff’s Exhibit F [D.E. 816-7], Abbonizio Dep. at 57:19–61:19 (describing the information provided to finders); *id.* at 64:19–66:18 (describing the information provided to Agent Fund Managers); *id.* at 140:15–143:2 (describing the information provided to Fund Managers and prospective investors).

⁴ Plaintiff’s Exhibit F [D.E. 816-7], Abbonizio Dep. at 66:19–67:13 (explaining that he would “utilize a tour with the respective agent to physically see the areas that I just described, witness the execution of those areas, letting them hear and see visually the people at work”); *id.* at 60:21–23 (“[T]hat attestation visually is what I would utilize to anyone, finder or later PPM manager.”); *id.* at 135:25–136:16 (testifying as to showing prospective investors the collections department during tours).

Abbonizio often would have Fund Managers and investors meet with Cole, as Cole was able to provide them with more details about the company's financial health than Abbonizio could.⁵

102. Abbonizio would distribute Par's marketing materials, monthly KPI (Key Performance Indicator) reports containing operational metrics, and other relevant financial information about the company, but he was not the source of any of the underlying information in these materials; the information was provided or relayed to him by others at the company.⁶

103. Abbonizio understood that the company had received legal advice as to an acceptable level of contact between Par and the Agent Funds and their prospective investors, and that as a result the company had determined there was nothing improper about distributing information about the company.⁷

104. Par had been issuing promissory notes since before Abbonizio started his consulting relationship with Par.⁸ Abbonizio did not have any involvement in structuring Par's offerings.⁹ Abbonizio did not negotiate, prepare, or execute the company's notes, subscription

⁵ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 86:23-87:11 ("I would commonly use Mr. Cole in that exact capacity for either an agent fund manager and/or related investor, both of an agent fund or of CBSG in the earlier days to meet with Mr. Cole for a greater intrinsic look at — intricate look, rather, at the numbers. And in doing so, he would pull from a plethora of data and spreadsheets that would glean insight into additional areas of the company's financial health."); *id.* at 99:25-104:17 (testifying as to Cole's meetings with investors); Exhibit B, Deposition of Joseph Cole Barleta, dated June 2, 2021 ("Cole Dep.") at 38:3-44:12 (discussing his and McElhone's participation in meetings with investors); D.E. 805-5, Declaration of Dan Cistone ("Cistone Decl."), at ¶ 5 (meeting with Cole); D.E. 805-6, Declaration of Dilip Limaye ("Limaye Decl."), at ¶ 7 (same); D.E. 805-7, Declaration of Jose Alves ("Alves Decl."), at 2 (first bullet point) (same); D.E. 805-8, Declaration of Steve Wittmer, at ¶ 6 (same).

⁶ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 57:19-61:19, 64:19-66:18, 140:15-143:2 (describing information he would provide); *id.* at 72:8-23, 20:19-21:5, 22:2-23:20, 66:19-67:5, 126:15-127:3, 129:10-13, 189:8-22 (describing the various sources of information about the company and how he learned about the company).

⁷ Exhibit A, Declaration of Perry Abbonizio, dated October 26, 2021 ("Abbonizio Decl.") at ¶ 8; Exhibit C, Deposition of Philip Rutledge, dated August 19, 2021 ("Rutledge Dep.") at 252:14-254:16.

⁸ Exhibit A, Abbonizio Decl. at ¶ 3; Exhibit B, Cole Dep. at 36:11-14 (testifying as to the promissory notes being in place before he started with the company).

⁹ Exhibit A, Abbonizio Decl. at ¶ 3.

agreements, or any other offering materials.¹⁰ He did not maintain the bank accounts that held noteholder funds, and he was not responsible for paying noteholders, finders, or Agent Fund Managers.¹¹

105. Given Par's reliance upon finders and then, starting in 2018, Agent Fund Managers to identify potential investors and raise capital, Abbonizio typically met or communicated directly with potential investors to answer questions or provide clarifying information only after they already had been identified, informed about the merchant cash advance industry and Par, and expressed a possible interest in investing.¹²

106. When Abbonizio did meet with potential investors, far from giving an aggressive pitch and trying to maximize their investments, Abbonizio routinely advised them to start small if they were interested and make sure they understood how the company worked.¹³

¹⁰ Exhibit A, Abbonizio Decl. at ¶ 3; Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 39:6–41:7 (testifying that he did not have any role in drafting or providing input on documents that investors sign); Exhibit B, Cole Dep. at 37:7-19 (explaining that he and/or McElhone would sign the notes, depending on the period).

¹¹ Exhibit A, Abbonizio Decl. at ¶ 4; Exhibit B, Cole Dep. at 88:5–92:25 (testifying as to the maintenance of bank accounts for noteholder funds); *id.* at 126:23–127:8 (testifying as to his role in overseeing finders' fees).

¹² Exhibit A, Abbonizio Decl. at ¶ 5; Plaintiff's Exhibit 232 [D.E. 290-16], Deposition of Dean Vagnozzi, dated August 6, 2020 ("Vagnozzi Dep.") at 140:19–142:17 (explaining that Abbonizio was the point person at Par that he would work with, and that "if they [potential investors] wanted answers from somebody other than me about coming into my private placement, I would go to Perry"); *id.* at 143:11–147:16 (testifying further as to when he would meet with Abbonizio with a potential investor); Plaintiff's Exhibit 178 [D.E.177-12] (Email between Vagnozzi and LaForte, dated December 14, 2017) ("Perry's close rate is so high because I [*i.e.*, Vagnozzi] never let the bad prospects get to [P]erry."); D.E. 805-6, Limaye Decl. at ¶ 3 ("Dean mentioned a merchant cash advance opportunity with Par, which was the first I had ever heard of the company. Dean provided me with some information about the company and I was interested, so he then made an introduction to Perry Abbonizio."); D.E. 805-7, Alves Decl. at 1 (third bullet) (similar account of being introduced to Par and being introduced to Abbonizio).

¹³ D.E. 805-7, Alves Decl. at 2 (fourth bullet) ("I wanted to invest even more money in Par, but Perry advised me that it is better to diversify instead of putting all my eggs in one basket."); D.E. 805-5, Cistone Decl. at ¶ 7 (recounting a similar experience with Abbonizio).

107. Abbonizio was not involved in Par's decision making with regard to how to raise capital, and this included the transition from using finders to using Agent Funds.¹⁴ Phil Rutledge, Par's lawyer in connection with responding to the Pennsylvania Department of Banking inquiry, also advised the company in relation to the use of finders and Agent Funds.¹⁵ As of March 2020, Rutledge did not even know who Abbonizio was.¹⁶

108. Abbonizio did not direct or have any control over the activities of the Agent Fund Managers.¹⁷ In fact, Abbonizio's understanding was that while Fund Managers had created the Funds for the purpose of pursuing investment opportunities in the merchant cash advance industry, the Managers ultimately had discretion as to which opportunities to pursue — and that Par was not the only such opportunity.¹⁸

109. When Par transitioned to using Agent Funds, the number of potential investors that Abbonizio communicated with directly decreased significantly — *i.e.*, by as much as 80%.¹⁹

¹⁴ Exhibit A, Abbonizio Decl. at ¶ 3; Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 55:6-22 ("I had no relative decision-making responsibility. Rather, I was part of the implementation of whatever strategy was deemed appropriate to go forward. I executed that strategy."); Exhibit B, Cole Dep. at 133:7-22 (testifying as to the origin of Par's use of Agent Funds); Plaintiff's Exhibit 118 [D.E. 31-8] (Email from Vagnozzi to LaForte, copying Abbonizio, dated November 5, 2017) (Vagnozzi discussing ideas for fund model).

¹⁵ Exhibit C, Rutledge Dep. at 170:5-19; 173:3-20; 202:8–203:22 (testifying as to his advice for Par to stop using finders); Exhibit B, Cole Dep. at 134:12–135:17 (testifying as to advice received from Rutledge in relation to Agent Funds, and as to Rutledge's role in preparing documents for use with purchasers).

¹⁶ Exhibit D (Email from Rutledge to Cole, dated March 3, 2020) ("I have never heard of Abbonizio before. Is he part of PAR?").

¹⁷ Exhibit A, Abbonizio Decl. at ¶ 6.

¹⁸ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 45:7–46:16 ("[T]hey were, generally speaking, constructed to avail multiple merchant cash advance opportunities from multiple companies, whoever the manager, respective manager wanted to introduce into that PPM.").

¹⁹ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 150:1-19 ("In 2018 when we adopted as a byproduct of the Pennsylvania Department of Banking, I went to the PPM managers and they became the focal point, I dealt far less with the end user by a percentage of, you know, maybe 80 percent, if you will, and was brought in selectively. So the numbers [of investors Abbonizio spoke with or presented to] dropped off precipitously . . .").

Abbonizio's focus was on assisting Fund Managers by answering questions and educating them and their prospects about Par on an as-needed basis.²⁰ Abbonizio was not the only individual that helped carry out this educational function for Fund Managers.²¹

110. When Abbonizio did meet with a prospective investor of an Agent Fund, the Agent Fund Manager usually attended the meeting, as well.²² Under the Agent Fund model, Abbonizio rarely would learn one way or the other whether a prospective Agent Fund investor proceeded to make an investment.²³

111. Abbonizio occasionally would speak at events hosted by Agent Fund Managers, some of which were client appreciation events.²⁴ Eight to ten of the approximately 40 Fund Managers hosted such events.²⁵ When he spoke at such an event, Abbonizio would not discuss the specifics of the offer and sale of promissory notes.²⁶ Rather, just as he did during one-on-one

²⁰ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 140:15–141:1 (“[A]s we migrated from note holders in 2016 direct with the company to PPM managers and their respective investors, yes, the PPM manager became my represented area of interest to work with them — to work with them when needed to provide clarity and education.”).

²¹ Plaintiff's Exhibit I (and Ex. E attached thereto, transcript of December 2018 conference call) [D.E. 816-10]; Plaintiff's Exhibit 180 [D.E. 177-14] (Email from Vagnozzi to LaForte, without Abbonizio, dated January 23, 2018) (proposing meeting with LaForte and Cole to discuss logistics of money flow between Par and Agent Funds, and other ideas for leveraging Par for prospects, and noting “other agents will be looking to me for answers”).

²² Exhibit A, Abbonizio Decl. at ¶ 7; Plaintiff's Exhibit 232 [D.E. 290-16], Vagnozzi Dep. at 144:13–145:13 (“Perry and I would sit with clients together, clients that had more questions, wanted to meet the staff at CBSG A lot of times I would sit in on the meetings, and I would accompany the potential investor. . . .”).

²³ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 163:3–164:1 (testifying that in 2018, under the Agent Fund model, “I didn't know who was investing or who was reinvesting. I had no inkling of the end user's disposition as to whether or not they wanted to reinvest or not.”).

²⁴ Plaintiff's Exhibit 232 [D.E. 290-16], Vagnozzi Dep. at 150:13–151:21 (testifying that he would host customer events, and that Abbonizio would occasionally participate); Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 115:21–116:13 (testifying as to his participation at a client appreciation dinner).

²⁵ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 139:18–140:9 (testifying as to his attendance at Agent Fund Manager events).

²⁶ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 142:7–143:2 (testifying as to what he would say during Agent Fund Manager events).

meetings, he would provide an overview of the merchant cash advance industry and information about Par's business model.²⁷

112. Abbonizio was not responsible for publicizing the events hosted by Agent Fund Managers or inviting potential investors to the events, and attendees would not reach out to him directly afterward.²⁸

Date: October 28, 2021

Respectfully submitted,

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²⁷ Plaintiff's Exhibit F [D.E. 816-7], Abbonizio Dep. at 142:7-143:2 (testifying as to what he would say during Agent Fund Manager events).

²⁸ Exhibit A, Abbonizio Decl. at ¶ 9.

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2021, a true and correct copy of the foregoing was served via CM/ECF on all counsel or parties of record.

By: /s/ Jeffrey E. Marcus
Jeffrey E. Marcus

EXHIBIT A

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

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CASE NO. 20-CV-81205-RAR

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

Defendants.

-----X

DECLARATION OF PERRY S. ABBONIZIO

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

1. My name is Perry S. Abbonizio. I am over the age of 18 and I make this declaration from personal knowledge.

2. I gave a deposition in this matter on June 10, 2021. I make this declaration to supplement or clarify my testimony on several discrete points that I understand may be relevant to the Court's consideration of the Securities and Exchange Commission's motion for partial summary judgment.

3. When I started my consulting relationship with Par Funding in 2016, I understood the company already been raising capital through promissory notes for several years. I was never a decision maker at Par with respect to how it raised capital or with respect to the structure of its offerings. I did not have any role in negotiating, preparing, or executing the company's promissory notes or any other offering materials.

4. I was not involved in maintaining Par's bank accounts that held noteholder funds, and I also was not responsible for paying noteholders, finders, or Agent Fund Managers.

5. For the entirety of my consulting relationship with Par, I typically would meet or communicate directly with potential investors to answer questions or provide clarifying information about Par only after they already had been identified by finders or Agent Fund Managers, and only after they already had been informed about the merchant cash advance industry and Par and had expressed a possible interest in investing.

6. I did not have any control or purport to exercise any control over the activities of finders or Agent Fund Managers. Rather, I always understood that they had full discretion as to the investment products they recommended to their prospects.

7. I did not meet with every prospective Agent Fund investor. But whenever I did, the Agent Fund Manager usually would attend the meeting, as well, as they already had an established relationship with the prospect.

8. Although I did not speak directly with Par's outside counsel, myself, I did have an understanding that the company had received advice from attorney Philip Rutledge in relation to the use of Agent Funds. My understanding was that there was nothing improper about providing information about Par to Agent Fund Managers and potential Agent Fund investors.

9. When I would speak at events hosted by Agent Fund Managers, I was not responsible for publicizing those events or inviting attendees, and attendees would not reach out to me afterward to the extent they heard about a product they were potentially interested in — they would reach out to the Fund Manager.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 10-26-2021

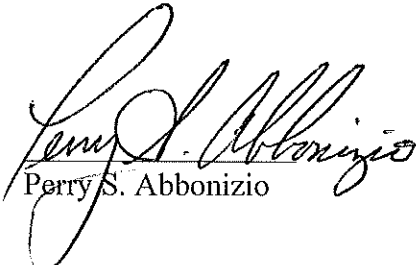

Perry S. Abbonizio

EXHIBIT B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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| COMMISSION, |) | |
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| Plaintiff, |) | |
| |) | |
| v. |) | Case No. |
| |) | 20-CV-81205-RAR |
| COMPLETE BUSINESS SOLUTIONS |) | |
| GROUP, INC. d/b/a PAR |) | |
| FUNDING, et al., |) | |
| |) | |
| Defendants, and |) | |
| |) | |
| L.M.E. 2017 FAMILY TRUST, |) | |
| |) | |
| Relief Defendant. |) | |
| _____ |) | |

REMOTE VIDEOTAPED DEPOSITION OF JOSEPH COLE BARLETA,
called by the Plaintiffs for examination, taken by
and before Ann Medis, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, via Webex
videoconference, on Wednesday, June 2, 2021,
commencing at 10:09 a.m.

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A P P E A R A N C E S

(Participants appeared via Webex videoconference)

On behalf of Plaintiff

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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1 Solutions Group in order to help them offer the
2 promissory notes Complete Business Solutions Group
3 was issuing?

4 A. Yes.

5 Q. Did Complete Business Solutions
6 Group -- I'm sorry. During what specific timeframe
7 again was Mr. Abbonizio retained to do that work by
8 Complete Business Solutions Group?

9 A. I don't recall the specific time period,
10 but he started working in 2016.

11 Q. When did Complete Business Solutions Group
12 begin issuing promissory notes?

13 A. I believe the promissory notes were in
14 place even before when I started with the company.

15 Q. So why in 2016 did Complete Business
16 Solutions Group retain someone to help with the
17 offer of the promissory notes?

18 A. It was to explore the opportunity with
19 additional lenders for the business.

20 Q. During the time period that you worked at
21 Complete Business Solutions Group, so from 2012
22 through 2016, did you participate or did you do any
23 work at all in connection with the Complete Business
24 Solutions Group promissory notes?

25 A. I'm not sure what you mean by that.

1 Q. During the time that you worked at
2 Complete Business Solutions Group, so 2012 to 2016,
3 did you ever do any work at all concerning the
4 promissory notes that Complete Business Solutions
5 Group issued?

6 A. Yes.

7 Q. And what did you do?

8 A. I would email the notes and scan them in
9 and keep track of them. I would also discuss it
10 with lawyers. And later on, I was ending up being
11 the counter-signer for CBSG as a corporate
12 representative.

13 Q. When did you start signing the notes?

14 A. I don't recall. Lisa signed them. I
15 signed them. I signed -- I think around 2016
16 onward, it was a mix between myself and Lisa, and I
17 ended up being the predominant signatory for the
18 company going forward. Maybe '17. I don't recall
19 specifically.

20 Q. Okay. And did that continue once your
21 employer changed to Full Spectrum in 2017?

22 A. Yes.

23 Q. When you said you would email the notes,
24 who would you email them to?

25 A. I would email them to the related parties

1 meaning the noteholders. I would also email it to
2 our office workers to file and print.

3 Q. During the time period of 2012 through
4 2016 when you worked at Complete Business Solutions
5 Group, did you ever participate at all in meetings
6 or discussions with potential investors of the
7 promissory notes?

8 A. I'm not sure what you mean by
9 participated. Do you mean if I was there with them
10 to discuss the company?

11 Q. Well, I mean "participate" is pretty
12 broad. Do you want me to look up the definition of
13 that word for you? It's just a general question.
14 And then, if you would like -- then I'm going to ask
15 you specifically -- if you answer yes, you
16 participated, I'll ask you exactly what you did.

17 But the question pending is whether you
18 participated in any meetings or discussions with
19 potential investors of the Complete Business
20 Solutions Group promissory notes from 2012 through
21 2016.

22 A. Sure. Under the broad definition of
23 participated, I participated with the parties
24 lending money and discussion of these promissory
25 notes to CBSG.

1 Q. Okay. And can you tell me specifically
2 what you did?

3 A. I would typically present company
4 financial information including key performing
5 indicator reports, the number of deals, payment
6 schedules, things like that, related to accounting.

7 Q. And so you would present that information
8 to potential investors?

9 A. Yes. We would share the information and
10 discuss it and talk about it with them.

11 Q. Okay. And did Lisa McElhone ever
12 participate in any of those discussions with you and
13 the potential investors of the Complete Business
14 Solutions Group's promissory notes?

15 A. Yes, she did.

16 Q. Who else would attend those -- I don't
17 want to say meetings because I'm not sure. Are
18 these in-person meetings? What type of
19 communication was this typically? In person or
20 electronic?

21 A. For meetings, it was always in person.

22 Q. Was that at Complete Business Solutions
23 Group's office?

24 A. It depends on the time you're speaking
25 about.

1 Q. Okay. Well, we're talking about the time
2 period of 2012 through 2016. So did the meetings
3 that occurred with potential investors, did those
4 meetings occur at Complete Business Solutions
5 Group's offices?

6 A. Yes.

7 Q. Did they occur anywhere else?

8 A. Not that I can recall.

9 Q. Would they also occur by telephone?

10 A. Not that I can recall.

11 Q. Okay. Other than you and Ms. McElhone,
12 did anyone else ever attend these meetings with
13 potential investors of the Complete Business
14 Solutions Group's promissory notes during the time
15 period of 2012 through 2016?

16 A. Yes.

17 Q. Who would attend those?

18 A. Perry Abbonizio and other employees of --

19 Q. Anyone else?

20 A. Sorry. And also other employees of CBSG.

21 Q. Okay. And can you identify who would
22 attend?

23 A. I don't remember every employee, but there
24 were generally the managers and personnel
25 responsible for certain functions of CBSG and the

1 sales entity Armar.

2 Q. Would Joseph LaForte attend those
3 meetings?

4 A. Yes.

5 Q. So you, Lisa McElhone, Perry Abbonizio and
6 Joseph LaForte would meet with potential investors
7 at Complete Business Solutions Group's offices
8 during the time period of 2012 through 2016; is that
9 accurate?

10 A. Not for every meeting, but it was a mix of
11 different employees. And it's not just limited to
12 that, but we had other managers of the business.

13 Q. Okay. I understand. But during the time
14 period of 2012 to 2016, is it accurate to say there
15 were occasions where you, Perry Abbonizio, Joseph
16 LaForte, Lisa McElhone would meet together with
17 potential investors of Complete Business Solutions
18 Group's promissory notes?

19 A. Yes.

20 MR. SOTO: Objection to form.

21 BY MS. BERLIN:

22 Q. Approximately how many of those meetings
23 did you attend between 2012 and 2016?

24 MR. SOTO: Objection to form.

25 THE WITNESS: I don't recall how many

1 meetings. They were very infrequent though.

2 BY MS. BERLIN:

3 Q. During the meetings that Lisa McElhone
4 attended with the potential investors during the
5 time period of 2012 through 2016, generally, what
6 would she discuss with the potential investors?

7 A. She would discuss the background of the
8 business, how she got started, the current
9 operations, the people that would be working in the
10 business and her projected course for the business,
11 where we're going, the kind of business we're in,
12 and obviously the aspirations of the business to
13 grow and to prosper.

14 Q. Would Ms. McElhone convey to the potential
15 investors that the company was going to be
16 successful and that she would be able to make
17 payments on the promissory notes?

18 MR. SOTO: Objection to form.

19 THE WITNESS: I'm sorry. Are you asking
20 if she's saying that the company can afford to pay
21 the payments on the promissory notes?

22 BY MS. BERLIN:

23 Q. Yeah. During these meetings, I'm not
24 asking if she used these verbatim words, but did she
25 convey to potential investors that the company would

1 be able to make the payments under the promissory
2 notes?

3 A. Yes. The understanding is that the
4 company would be paying the promissory notes per the
5 terms as described on them.

6 Q. Did Ms. McElhone -- did she tell potential
7 investors that the company was anticipated to be
8 successful or profitable so that she could make the
9 payments?

10 A. We had an optimistic outlook of the
11 business, yes. I believe that was what was
12 conveyed.

13 Q. Okay. And so during these meetings,
14 generally what was Mr. Abbonizio's role? And this
15 is during the time period 2012 through 2016.

16 A. Mr. Abbonizio --

17 Q. I apologize. Hold on just a moment.
18 Mr. Abbonizio began with the company in 2016. So I
19 guess during the period in 2016, what was
20 Mr. Abbonizio's role in these meetings with
21 potential investors?

22 A. He would introduce the company to -- and
23 you'll call them investors. I'll call them
24 noteholders. But he would introduce the company to
25 these noteholders to look at the business and the

1 people running it.

2 Q. And what do you mean the people running
3 it? What information would he provide about that to
4 the potential investors in 2016?

5 A. He would introduce them, I mean physically
6 go into the office, meet with certain -- you know,
7 like what we were just describing, sitting down with
8 certain folks that were running the business, have
9 them answer questions about how the business
10 operated, getting a really comfortable understanding
11 of what it was doing and how it was making its
12 money.

13 Q. So who was running the company in 2016?

14 A. In 2016 the company was run by numerous
15 managers including myself.

16 Q. And who else?

17 A. Are you talking about the specific
18 managers for each department?

19 Q. I'm asking who was running CBSG in 2016.

20 A. I was asking if you wanted me to get
21 granular and talk about specific managers, or do you
22 mean from an executive level? I'm not sure.

23 Q. It's up to you in how to answer it. Only
24 you know the answer. You testified that
25 Mr. Abbonizio would introduce the potential

1 believe it was moved around on a couple of occasions
2 as far as the deposit information on what account,
3 but it would have been one of those banks, to the
4 best of my recollection.

5 Q. Okay. And so in 2015, did CBSG maintain
6 separate bank accounts for the purposes of receiving
7 noteholder funds?

8 A. It maintained different bank accounts,
9 yes. Well, are you saying were there accounts
10 specifically used for noteholder funds?

11 Q. I'm asking you if there were separate bank
12 accounts, if you kept the investor money completely
13 separate from the merchant money in 2015.

14 A. So let me describe to you how the cash
15 flow works.

16 Q. I understand how the cash flow works. I'm
17 just trying to make sure we know of all the bank
18 accounts.

19 A. I'm trying to answer the question
20 accurately. I want you to have an understanding of
21 how the deposits came in.

22 Q. I'm not asking that question. In 2015,
23 did CBSG maintain a separate bank account for
24 purposes of collecting money from people who were
25 purchasing promissory notes?

1 A. There were bank accounts used for the
2 collection of these loan proceeds from the
3 noteholders.

4 Q. Okay. And those were separate bank
5 accounts from the accounts that CBSG used to receive
6 the money from the MCAs payments?

7 A. Correct. That's a different bank account
8 than where the MCA payments came in.

9 Q. What bank account was that?

10 A. It depends on the period of time. I
11 mentioned a few of the banks from 2015.

12 Q. Yes, for 2015.

13 A. I mentioned TD Bank, Republic Bank and
14 also Beneficial Bank.

15 Q. So is it your testimony that they were the
16 same banks, but they were in completely separate
17 bank accounts?

18 A. I'm trying to describe the cash flow to
19 better answer your question. The banks would
20 typically have an operating account that these
21 deposits would go in through from the ACH processor
22 and also a capital account which the noteholder
23 funds would be deposited into and used for the
24 merchant cash advance funding.

25 Q. Okay. And was that the same for all

1 years, 2015 through 2020?

2 A. The general structure that there's an
3 operating account and a capital account has always
4 persisted. This was with different banks that CBSG
5 worked with. And when Lisa set up these accounts,
6 she would have them have the multiple accounts so
7 we're able to allocate our deposits separate from
8 merchants.

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

15 Q. Who maintains this meticulously maintained
16 ledger?

17 A. It would be the accounting department.

18 Q. Anyone in particular in the accounting
19 department?

20 A. Several personnel from the accounting
21 department had their hands in this.

22 Q. Okay. Did Aida Lau?

23 A. No, not to my recollection.

24 Q. What about Wendy Furman?

25 A. Wendy Furman is not in the accounting

1 department.

2 Q. Okay. So who were the people in the
3 accounting department that maintained the
4 meticulously managed ledger?

5 A. It depends on the period of time.

6 Q. Okay. So tell me the different people by
7 year. You can start with 2015 and go through 2020.

8 A. So in 2015 -- and you're only referring to
9 the noteholder deposits, you're not referring to the
10 MCA deposits?

11 Q. You testified about a meticulously managed
12 ledger that was maintained --

13 A. Sorry. I can't understand what you're
14 saying.

15 Q. -- actively maintained that meticulously
16 managed ledger that you testified about.

17 A. Sorry. That was incoherent. I couldn't
18 understand what you said.

19 Q. You testified about a meticulously managed
20 ledger. And I'm asking you who maintained that
21 meticulously managed ledger that you testified about
22 in 2015, 2016, '17, '18, '19 and '20.

23 A. This was managed by the accountants in the
24 department. We had lots of different accountants
25 come in and go. Some of them stuck around longer

1 than others. In 2015 -- I mean, do you just want me
2 to just name accountants that were in the
3 department?

4 Q. You testified about a meticulously managed
5 ledger. So I'm asking you to identify who
6 maintained that ledger. And if you can't identify
7 anyone, that could be your answer. But I'm just
8 asking you to identify who maintained this ledger
9 you testified about.

10 A. Well, the ultimate responsibility of the
11 ledger falls on me. I'm in charge of the
12 department. The final review, scrutiny and how
13 these ledgers were booked in QuickBooks falls on me.

14 Now, as far as the folks entering the data
15 and updating the accounting system to keep track of
16 the ledger, it varied. It depended on who was
17 bookkeeping in that time period. If someone was on
18 a vacation day, they're not going to be the one to
19 update it. So it's a department effort.

20 And that's why I'm asking you if you want
21 me to start naming folks in the department. There's
22 a lot of different employees. We had over a dozen
23 accountants by the time this thing was shut down.
24 So it's hard for me to identify specific accountants
25 when there's a group effort here.

1 Q. So at a certain point, Complete Business
2 Solutions Group started utilizing -- I'm going to
3 refer to it as agent fund managers. Do you agree
4 with me and understand?

5 A. Yes. At some point we started working
6 with agent fund managers.

7 Q. Okay. And whose idea was it to use agent
8 fund managers?

9 A. I don't remember who brought the idea up
10 originally. This was something we had discussed
11 with Dean Vagnozzi before, but I don't know who came
12 up with the idea.

13 But in the discussion of how the company
14 would operate going forward with respect to these
15 noteholders or anyone else interested in receiving a
16 return on any loans made to the company, we
17 discussed with Phil Rutledge that it would be
18 appropriate to do so.

19 Q. So when did Complete Business Solutions
20 Group begin using agent fund managers?

21 A. I don't remember the specific date, but I
22 believe it was towards the end of 2018.

23 Q. I'm sorry. So am I understanding
24 correctly that your testimony is that Complete
25 Business Solutions Group stopped using finders at

1 the end of 2017 or early 2018 and then began using
2 agent fund managers at the end of 2018?

3 A. Yes. To the best of my recollection, I
4 think it was around then that the agent fund
5 managers were starting and we were working with
6 them.

7 Q. So from early 2018 until late 2018, is it
8 accurate that there were no finders and there were
9 no agent fund managers for that time period?

10 A. It might have been earlier in the year. I
11 honestly don't recall the specific date.

12 Q. Who was the primary contact at CBSG with
13 Phil Rutledge?

14 A. I believe it was Norman Valz, our general
15 counsel. And subsequently it was Cynthia Clark who
16 replaced Norman Valz in late 2018.

17 Q. Who else was the primary contact? Like
18 where did Norman Valz and the other in-house or the
19 other general counsel of the company get their
20 information? Was it from you or Lisa McElhone or
21 others?

22 A. It depends on what information.

23 Q. Well, with respect to the use of agent
24 funds, did Phil Rutledge know you were going to be
25 using agent funds?

1 A. We keep Phil Rutledge apprised of the
2 system going forward, and he would introduce
3 additional documentation for us to use with the
4 company in relation to the purchasers.

5 Q. Did you tell Phil Rutledge that you were
6 going to use agent fund managers before the
7 Pennsylvania securities regulator's investigation
8 had concluded?

9 A. No. We discussed the strategy after the
10 response to the subpoena was filed. We filed that
11 in, I believe, February of 2018, and we discussed
12 our procedures going forward both with respect to
13 existing noteholders and new noteholders down the
14 road. So that onset of funds managers along with
15 the existing noteholders that we had were discussed
16 with him very candidly. And he gave us counsel on
17 how to proceed with that.

18 Q. Okay. I understand. But my question is a
19 little different. So during the time that the
20 securities regulator's investigation was opened, so
21 before there was an agreed order entered against
22 Complete Business Solutions Group at the end of
23 2018, did you tell Phil Rutledge that CBSG was
24 paying any agent fund manager?

25 MR. FUTERFAS: It's Alan Futerfas. I

EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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| COMPLETE BUSINESS SOLUTIONS |) | |
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| FUNDING, et al., |) | |
| |) | |
| Defendants. |) | |
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REMOTE VIDEOTAPED DEPOSITION OF
GEORGE PHILIP RUTLEDGE, ESQUIRE, VOLUME 2,
called by the Defendant for examination, taken by
and before Ann Medis, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, via Webex
videoconference, on Thursday, August 19, 2021,
commencing at 10:35 a.m.

JOB No. 210819AME

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A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

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A P P E A R A N C E S (Continued)

On behalf of the Receiver Ryan K. Stumphauzer:

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Also present

Dean Vagnozzi
Perry Abbonizio
Michael Furman
Joseph Cole

Carrie Howard, videographer

1 Department's focus was on the payment by CBS of
2 finders' fees in connection with the sale of notes.
3 Do you see that in paragraph 2?

4 A. Yes.

5 Q. In paragraph 3 you gave them what you
6 referred to as strong legal advice. Do you see
7 that?

8 A. Yes.

9 Q. That advice was that CBS immediately
10 desist from paying any finders' fees?

11 A. Correct.

12 Q. That language is in bold and underlined?

13 A. Correct.

14 Q. Why did you feel it necessary to include
15 that language, bold that language and underline it?

16 A. To stress the importance from -- stress
17 the importance for them to desist from paying
18 finders' fees since that is what I thought was going
19 to be the focus of any potential Department action.

20 Q. And at the very -- the last paragraph, you
21 write, "Regarding a potential action by the
22 Department, I think where this is heading is to a
23 consent order, an agreement wherein CBS without
24 admitting or denying any allegations of paying
25 compensation to unregistered persons in violation of

1 the PA Securities Act, it will agree to a finding
2 and payment of a fine. This will be a public order
3 and searchable on the internet."

4 Do you see that?

5 A. Yes.

6 Q. And so why did you include in that final
7 paragraph that this would be a public order and
8 searchable on the internet?

9 A. I wanted them to be aware that if the
10 production resulted in a Department action where
11 that would be an order, that orders of the
12 Department are made public.

13 Q. Made public and available to be viewed by
14 whom?

15 A. Anybody who has an internet connection.

16 Q. Including investors?

17 A. Anybody who has an internet connection.

18 Q. That would include investors, correct,
19 assuming they have an internet connection?

20 A. Assuming --

21 MS. BERLIN: Objection. Form.

22 BY MR. SOTO:

23 Q. Sir, I'm sorry. I didn't hear your
24 answer.

25 A. Assuming they had an internet connection

1 and know how to use a search engine, yes,
2 (indecipherable).

3 Q. And this would include prospective
4 investors as well assuming they have an internet
5 connection?

6 A. Anyone who has an internet connection and
7 knew what they were searching for on the internet
8 and how to search.

9 Q. At the very bottom -- I'm sorry -- did I
10 cut you off?

11 A. No.

12 Q. At the very bottom of this email, you
13 write, "I'm available this afternoon to discuss this
14 matter further."

15 Do you recall whether you discussed this
16 matter further with Joe Cole or Norman Valz?

17 A. I do not recall.

18 Q. You don't recall? Okay. Well, let me ask
19 you: How did CBSG -- I'm sorry -- you referred to
20 them to CBS in this letter. Can we just agree that
21 CBS is Complete Business Solutions Group or CBSG?

22 A. Yes. I think I said CBS. I think later
23 on I probably used CBSG.

24 Q. So we'll use those interchangeably to
25 refer to Complete Business Solutions Group, if

1 that's okay.

2 A. Yes.

3 Q. So how did they respond to your strong
4 legal advice that they immediately desist from
5 paying finders' fees?

6 A. That they did so. I think there's other
7 emails from Joe Cole saying that they did.

8 Q. Did you have conversations with Joe Cole
9 with respect to their immediately desisting from
10 paying finders' fees?

11 A. Likely, yes. I don't recall specifically,
12 but I'm sure there was probably a discussion.

13 Q. When you spoke to Joe Cole at least
14 initially in early 2018, did you typically speak
15 with him alone or did you speak with him and Norman
16 Valz on the line?

17 A. Sometimes both would be on the line. I
18 would say that was more the case in the initial
19 early days, but then it was pretty much just talking
20 with Joe Cole.

21 Q. And do you recall receiving any pushback
22 from either Norman Valz or Joe Cole regarding your
23 strong legal vice that they immediately desist from
24 paying finders' fees?

25 A. No. I don't recall any.

1 Mr. Cole. Do you see that?

2 A. Yes.

3 Q. And you write, "Joe, attached for your
4 review and comment is a proposed response letter to
5 PADOBS."

6 Do you see that?

7 A. Yes.

8 Q. "Please read the first sentence of item 6
9 carefully to see if you can make that
10 representation."

11 Do you recall this email to Mr. Cole?

12 A. Yes. My habit was to send all drafts of
13 any communication with the Department to Joe for his
14 review and comment.

15 Q. And the item that you asked him to
16 confirm, item 6, appears on page 2 of the draft
17 letter, and it reads, "CBSG advised that it was
18 aware that the individuals who received compensation
19 held licenses issued by the Commonwealth of
20 Pennsylvania. Upon receipt of the Department's
21 subpoena, CBSG took immediate steps to obtain the
22 assistance of experienced securities counsel and on
23 advise of counsel moved to terminate all agreements
24 with individuals who had received compensation for
25 the notes -- for the sale of the notes. As it may

1 be more likely than not, then under U.S. Supreme
2 Court ruling in Reves, the notes are not securities.
3 The individuals who received compensation in
4 connection with the sale of the notes may not have
5 been required to be registered under the securities
6 laws."

7 Do you see that paragraph?

8 A. Yes.

9 Q. And so what you were asking him to confirm
10 as part of that paragraph was what?

11 A. Was that CBSG took immediate steps to
12 obtain -- sorry. They took immediate steps to
13 terminate all agreements of individuals who received
14 compensation for the sale of the securities.

15 Q. And you testified earlier that they had
16 taken such steps.

17 A. Joe told me in an email that they had
18 terminated the finders' contracts. As of a date
19 certain I can't recall, but it was in January.

20 Q. So they followed your advice with respect
21 to that?

22 A. Yes.

23 MS. BERLIN: Just a moment, please.

24 Objection as to form.

25

1 And my concern also in that sentence was
2 that they might be acting as an unregistered
3 broker/dealer under the securities laws if they did
4 that. And that was my message to Joe.

5 Q. I tried to write down the concerns that
6 you had as you described them just now. So let's go
7 through some of these, and you can correct me if I
8 miss something.

9 You were concerned that they might be
10 involved with the sale of notes to these pooled
11 investment funds and that they might, you said, own
12 them, owned the pooled investment funds. Was that
13 one concern?

14 A. I don't believe I said that. My concern
15 was that they would be somehow involved in
16 promoting, marketing, forming, participating in
17 setup of funds, PPM funds to use Joe's jargon, which
18 my concern was that that would put them in jeopardy
19 of being deemed to be an unregistered broker/dealer,
20 and that would be, you know -- we're still dealing
21 with the State of Pennsylvania with respect to their
22 concerns. I did not want to add an additional
23 concern and wanted to point that out to Joe.

24 Q. So I scratched out owning. You said
25 forming, setting them up, marketing. Let's talk

1 about each of those.

2 Did you speak with Joe after this email
3 with respect to the structure of these PPMs?

4 A. I spoke to him in terms of when you're
5 looking at selling a note to a PPM, that you can't
6 be involved in, as I said at the risk of repeating
7 myself, marketing, forming, participating, promoting
8 these PPMs.

9 Q. So you did speak to him about those
10 concerns?

11 A. Yes.

12 Q. And did you tell him what the parameters
13 were? When you say forming them, what do you mean?

14 A. Well, that he couldn't be involved in the
15 formation or promoting the formation of the entity.

16 Q. What do you mean by formation? Do you
17 mean funding it? Do you mean logistics? What do
18 you mean?

19 A. Creating it.

20 Q. Do you mean anything different by setting
21 them up different than creating them?

22 A. I think you could say creating them and
23 setting them up could be similar, but it also -- I
24 think the promotion of the creation would maybe come
25 into that. But creating them and setting them up

1 are probably viewed as the same in the vernacular.

2 Q. And so what do you mean by marketing them?

3 Do you mean radio, television ads?

4 A. Any sort of marketing, you know, whether
5 they be that way, whether they be individual
6 contacts, whether it be, you know, again, the
7 promotion of the PIV.

8 Q. Do you mean individual contacts between
9 CBSG and investors or prospective investors with
10 respect to the PIVs?

11 A. Well, it would be more contact people in
12 terms of creating the PIV.

13 Q. So creating, setting them up or marketing
14 the creating or setting up of the pooled investment
15 vehicles were your concern?

16 A. Yeah, and promoting, marketing, yes.

17 Q. Let's look at -- let's go back to 135. So
18 paragraph 2 begins, "CBSG sold the notes exclusively
19 to accredited investors, as that term is defined in
20 Rule 501 of SEC Reg D and good faith reliance on
21 Rule 506(b)." Right?

22 A. Second paragraph; is that correct?

23 Q. Yes, second paragraph.

24 A. Yes.

25 Q. So this is your statement to the

EXHIBIT D

Message

From: Joe Cole [joecole@parfunding.com]
Sent: 3/3/2020 7:54:21 PM
To: Philip Rutledge [Rutledge@bybelrutledge.com]
Subject: Re: CBSG Texas C&D Order
Attachments: image001.png; image002.png

Hi Phil,

Thanks for the quick response and looping me in on your trip to Britain for the rest of the month. Let me know if I should copy someone else at your office for the time being or if we're okay to continue corresponding via email.

The structure with the PPM funds is how we set it up as before, the PPM signs a purchase agreement indicating the protections and accreditation for their entity and purchases notes directly from CBSG. The relationship they have with individuals and how their funds are solicited is a liability on their end though it seems that some may be taking an aggressive approach and potentially misrepresenting themselves as agents of Par or marketing using our information. The PPM fund documents we reviewed do not specify which companies their funds are investing into and they have the ability to direct funds outside of our company if they choose.

Would you recommend providing guidelines and controls to PPM managers of how they are able to solicit their funds? Fortunately, this time it's not Vagnozzi though the relationships we've built with these funds and their investors have been lucrative to all parties involved. You are right about the haircut benefit for the funds, though I'm not sure how that would be treated. It sounds like something we could explain during a hearing.

Perry is a consultant for the company that travels and meets with these funds to discuss the company and how our notes function with their PPM. He is not an equity owner and does not take a commission for any capital raised though we are paying him a regular consulting fee.

I have noted the following factual errors as listed on the letter:

- #25: ABFP is not a commissioned sales agent for CBSG
- #26: CBSG does not provide financing as "hard money" transactions nor "venture capital for high-growth startups"
- #27: Perry is not a principal owner of Par Funding
- #29: ABFP does not invest in merchant cash advances at CBSG
- #30: CBSG does not pay commissions to Beasley or Merchant Growth
- #50: CBSG is registered with the state of Texas as a Reg D Rule 506 Filer (see attached)

I am not sure about the disclosure requirements for the funds to state prior registration issues, pending litigation or the identity of principals at CBSG. There may be some merit there but it would fall under the responsibility of the PPM manager and the counsel they used to set up their funds to begin with. Merchant Growth currently represents \$500K of the \$4.1M in note principal we have from investors in Texas.

Let me know if you or someone on your team can handle the request for a hearing with Texas. I will notify all these respondents that we intend to pursue the rights under the indemnification of their purchase agreement. I don't think it would hurt to add the disclosure for prior issues although we're very upfront about these when we start working with any fund manager.

I'll hold off on taking additional action until your next follow up. Thank you.

Joe Cole

On Tue, Mar 3, 2020 at 5:14 AM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Joe:

As you can see by my out of office notice, I am in the UK teaching until the end of the month.

A Cease and Desist Order means stop what you are doing.

You indicated that you will stop selling notes in Texas which is a correct response to the C&D.

However, it may go beyond that. If PAR is selling notes to Vagnozzi and there are other persons out there raising funds in other jurisdictions to invest in A Better Financial Plan which, in turn, purchases notes from PAR, you will run into the same issue in those jurisdictions as in the Texas C&D.

Now that PA, NJ and TX have taken public actions, other states are going to be on high alert as to whether similar activities are occurring in their states.

This is the risk of continuing to do business with Vagnozzi, etc. because you can't control what he or others say or do and, as a result, PAR gets dragged into any of the problems that they create.

I have never heard of Abbonizio before. Is he part of PAR?

Although the individuals may not be getting a direct selling commission as in the case of the PA situation, I am sure TX will argue that the haircut they receive on the interest paid on the notes constitutes a selling commission.

The Note Purchase Agreement does have notice and indemnification provisions whereby the purchaser of the note indemnifies PAR against their violations of the securities laws.

Immediate recommended steps are:

1. Alert your insurance carrier in case there is coverage.
2. File a request for hearing with TX. Even if PAR may decide not to proceed, it is a place holder because if you don't request a hearing within the time frame, the order becomes final and unappealable.
3. Have PAR send a letter to each purchaser of a PAR note who is a respondent in the TX C&D reminding them of the representations and warranties made to PAR in the note agreement and the indemnification provisions and that PAR is serving notice that it intends to pursue all of its indemnification rights under the note agreement.
4. Consider adding an addendum to the note purchase agreement disclosing the actions taken by PA, NJ and TX so as to avoid future allegations of omissions of material fact in connection with the purchase and sale of the note.

Phil



G. Philip Rutledge

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From: Joe Cole <joecole@parfunding.com>
Sent: Monday, March 2, 2020 7:46 PM
To: Philip Rutledge <Rutledge@bybelrutledge.com>
Subject: CBSG Texas C&D Order

External email - Caution opening links/docs

Hi Phil,

Please see the attached letter received by us and a PPM fund we're working with.

Per our updated policy, Par has a note directly with their fund and they raise capital directly into their PPM without our involvement.

I found several erroneous statements on this response but let me know when you have some time to review.

We're holding off doing any additional notes in Texas for the time being.

We'd greatly appreciate your guidance on this sensitive matter, thanks.

Joe Cole
CFO



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Philadelphia, PA 19106



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joe@parfunding.com