UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____ /

DEFENDANTS' JOINT STATEMENT OF FACTS IN SUPPORT OF THEIR RESPONSE TO THE SEC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants Joseph W. LaForte, Lisa McElhone, and Joseph Cole Barleta respectfully submit the below responses to the SEC's Statement of Undisputed Facts (DE 816-1) and supplement the record with their own Statement of Additional Facts.

RESPONSE TO THE SEC'S STATEMENT OF UNDISPUTED FACTS

1. Partially disputed. The testimony cited does not indicate that LaForte started Par Funding with McElhone. The testimony cited states that LaForte and McElhone are married.

2. Undisputed.

3. Disputed. Par Funding did not make short-term loans to small businesses. *See* Defendants Amended Joint Statement of Undisputed Facts (hereinafter "Def. Am. Facts")[1] (DE 822) at ¶¶ 56–59. Par Funding provided small businesses with merchant cash advances. *Id.* at ¶ 56. The website cited does not state that Par Funding provided loans, at all. The citation, Exhibit E, is illegible.

4. Undisputed.

5. Undisputed.

6. Disputed. It should be noted that the Bureau did not order Par Funding to stop selling promissory notes. The Bureau understood that Par Funding would continue to sell promissory notes through a new Note Purchase Agreement drafted by securities compliance counsel G. Philip Rutledge.

[1] Rather than re-file the same exhibits, Defendants will refer to their previously filed Amended Joint Statement of Facts. If the citation for support requires additional evidence that did not appear in the Amended Joint Statement of Facts, Defendants will refer to those exhibits by letter.

See Def. Am. Facts at ¶¶ 34–47. The Bureau also understood that the promissory notes were exempt under Rule 506(b). *See id.*; SEC Fact Ex. 8 at ¶ 6.

7. Disputed. It should be noted that counsel Martin Hewitt advised Par Funding that the filing of a Form D to claim an exemption under Rule 506(b) would resolve any issues outlined by the New Jersey Bureau of Securities ("NJ Bureau"). *See infra* at ¶ 160. Once Par Funding filed the Form D, Hewitt informed Cole that the NJ Bureau did not have any further issues. *Id.*

8. Disputed. It should be noted that Par Funding hired the law firm Haynes Boone to resolve the matter. *See infra* at ¶ 163. At the time of the receivership, there were ongoing negotiations between Haynes Boone and the Texas State Securities Board to reach an amicable resolution. *Id.*

9. Undisputed.

10. Disputed. Defendants dispute the extent of McElhone's involvement in the company. The evidence shows that McElhone's daily responsibilities diminished as the company grew, and she delegated those responsibilities to others in management. *See* Ex. A, Cole Depo. Tr. at 19. McElhone divided her time among numerous businesses. *See infra* at ¶ 166. Defendants dispute that the Marketing Brochure was approved by McElhone or that McElhone approved the marketing materials used in the offerings for distribution to investors. There is no credible evidence to support that assertion. Rather, the evidence suggests that McElhone delegated drafting and approving marketing material, such as Par's website, to management. *See* Ex. A, Cole Depo. Tr. at 72–80. Defendants dispute that McElhone authorized and directed the offerings. Defendants dispute that McElhone was at the Par Funding office every day. *See* Ex. A, Cole Depo. Tr. at 10:7–8; 11:8–20; 13–18.

11. Partially disputed. Defendants do not dispute the first sentence, except that the citation to the deposition testimony of Jamie McElhone is incorrect. Defendants dispute the SEC's characterization regarding LaForte's use of pseudonyms. *See infra* at ¶¶ 151–153. The transcript cited (Exhibit 136) relates to statements made by Abbonizio and does not indicate that LaForte used the pseudonym "Joe McElhone." LaForte managed ISOs and did not run the day-to-day operations of Par Funding. *See infra* at ¶¶ 148–150; Def. Am. Facts at ¶ 2. The SEC's citation (Exhibit 20 and Exhibit 98) does not support its representation that LaForte acted as the *de facto* CEO. LaForte did not act as the *de facto* CEO of Par Funding and Full Spectrum. *See infra* at ¶¶ 148–150; Def. Am. Facts at ¶ 2. Defendants dispute that Exhibit "H" supports the assertion that LaForte "participated in the drafting of marketing materials and the funding analysis and brochure." LaForte's comments were limited to the appearance of the materials. LaForte did not comment on the content of the materials. Moreover, Cole and the accounting department drafted the funding analysis. *See* Def. Am. Facts at ¶ 5.

12. Undisputed.

13. Undisputed.

14. Disputed. Cole did not receive investor funds. ALB Management Inc. and Beta Abigail received payment from Par Funding pursuant to the terms of his consulting agreement with Par Funding. *See* Ex. A, Cole Depo. Tr. at 25:3–17, 81:1–16. Cole owns both ALB Management Inc. and Beta Abigail. *Id.* Cole does not have an ownership or any beneficial interest in New Field Ventures, LLC. *Id.* at 81:20–25. New Field Ventures, LLC is owned by Perry Abbonizio. *Id.* at 81:17–19. Defendants dispute the amounts reflected in this paragraph. Cole received, pursuant to his consultant agreement and payroll, approximately $6 million from 2012–2020. The citation to Exhibit 132 does not contain the referenced pages.

15. Partially disputed. Abbonizio worked for Par Funding beginning in 2016 under the terms of his consultant agreement. While the consultant agreement permitted the use of the title "Principal," the consultant agreement did not authorize Abbonizio to represent that he is an owner or managing partner of Par Funding. The sole owner of Par Funding is the LME 2017 Family Trust. *See* SEC Facts at ¶ 4. Par Funding employed Abbonizio to serve as a liaison between Par Funding and investors.

16. Disputed. Defendants dispute that the agent funds were "Par Funding's Agent Fund managers" as described here. *See infra* at ¶¶ 133–135. Defendants dispute that Abbonizio "solicited" investors. *See infra* ¶¶ 139–142. Defendants dispute that Abbonizio provided marketing materials for use in solicitation to a third-party. *Id.* The testimony cited shows that Abbonizio's interactions with investors were solely to provide information and educate them. *See, e.g.*, SEC Exhibit F at 150:1–11.

17. Undisputed.

18. Disputed. Defendants dispute the use of the term "solicit." Vagnozzi entered into a finder's fee agreement with Par Funding and received a fee for introducing prospective note purchasers to Par Funding.

19. Disputed. Vagnozzi did not recruit individuals to start agent funds for the purpose of raising money for Par Funding. *See infra* at ¶¶ 133–136. The Agent Funds were established for the purpose of investing in merchant cash advance opportunities but were not exclusive to Par Funding. *See infra* at ¶ 94.

20. Partially disputed. Defendants dispute the last sentence. The Agent Funds are not "Par Funding Agent Funds" as described here. *See infra* at ¶¶ 133–135. There is no evidence cited by the SEC supporting what it characterizes as an arrangement for ABFP to provide services to Par Funding

"in exchange for a portion of the investment returns." Par Funding paid interest to its noteholders pursuant to the terms of the promissory note.

21. Partially disputed. Defendants dispute the fifth sentence. *See supra* at ¶ 18. The finder's fee agreement concluded in 2017.

22. Disputed. Defendants dispute that ABFP Income Fund raised at least $22 million for Par Funding. Vagnozzi testified that ABFP Income Fund offered and sold promissory notes for other entities. *See* Ex. B, Vagnozzi Depo. Tr. at 13:7–13; *see also infra* at ¶¶ 133–136. The Form D filing reflects the general amount raised.

23. Disputed. Defendants dispute that Vagnozzi formed ABFP Income Fund 2 for the purpose of raising investor money to pool and invest specifically in Par Funding. *See infra* at ¶¶ 133–136. Defendants dispute that Vagnozzi raised at least $6 million for Par Funding. ABFP Income Fund 2 used investor proceeds to purchase promissory notes in different merchant cash advance companies and common stock in a NYSE-traded company. *See* SEC Fact at ¶ 63.

24. Undisputed.

25. Undisputed.

26. Disputed. Defendants dispute that Fidelis was 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* SEC Ex. 41.

27. Disputed. At all relevant times, any notes offered and sold by Par Funding were pursuant to an exemption. *See infra* at ¶¶ 99–132. The citations referenced do not support this paragraph.

28. Undisputed.

29. Undisputed.

30. Disputed. The citation in this paragraph does not indicate that Lisa McElhone signed the Par Funding Notes.

31. Disputed. The testimony cited does not make any reference to the terms of the Par Funding Notes.

32. Undisputed.

33. Disputed. Defendants did not "solicit" investors. *See infra* at ¶¶ 140–141, 143. Pursuant to its obligations under Regulation D per the advice of securities compliance counsel Rutledge,

Defendants made themselves available to investors to answer questions and provide information about Par Funding. *See id.*

34. Undisputed.

35. Undisputed.

36. Undisputed.

37. Partially disputed. Defendants dispute the SEC's characterization that "A Better Financial Plan raised about $20 million for Par Funding." *See infra* at ¶ 135. Defendants dispute the use of the term "commission" and "solicit." Pursuant to the finder's fee agreement, Vagnozzi received 2–3.5% of the principal received from the promissory notes as reflected in the accounting records.

38. Disputed. Defendants did not authorize or have control over Furman's actions. The citations in this paragraph do not support that Par Funding authorized Furman's conduct.

39. Disputed. Defendants did not authorize Furman to distribute any marketing materials, make any statements on behalf of Par Funding, or represent that the default rates on the loans were 1% or less. The citations in this paragraph do not support that Par Funding authorized Furman's conduct.

40. *See supra* at ¶¶ 38–39.

41. Disputed. Par Funding did not raise $482 million from investors by December 2017. The citations in this paragraph reflect the overall capital raised through 2020. Additionally, the accounting is overstated. The SEC's expert, Melissa Davis, erroneously calculates the initial amount invested as well as the renewed amount as two separate transactions. They are not. If an investor initially invested $1 million and then decided to renew his investment with Par Funding, this would be considered one transaction because it is the same $1 million.

42. Undisputed.

43. Disputed. Par Funding did not convert its finders to agent fund managers. *See infra* at ¶¶ 133–136. Par Funding has no control over any of the agent funds. With advice of counsel, Defendant Vagnozzi proposed and implemented the use of investment funds for his own purposes. *See infra* at 136. The citations in this paragraph reference what type of investors Par Funding would work with, not that Par Funding converted finders to agent fund managers to continue raising money through agent funds. Par Funding issued promissory notes to agent funds pursuant to the Note Purchase Agreement drafted by securities counsel Philip Rutledge. *See infra* at ¶¶ 116–117.

44. Disputed. Par Funding did not use Agent Funds to offer and sell promissory notes to investors. *See infra* at ¶¶ 133–138. Also, Agent Funds do not "funnel" investor money to Par Funding.

The testimony cited explained that investors do not have a promissory note directly with Par Funding, but rather with the investment fund. As explained, the investment fund would use the gross proceeds received from the investor to purchase the promissory note issued by Par Funding.

45. Disputed. Par Funding does not offer loans. *See supra* at ¶ 3. The promissory notes are repaid through the independent growth of Par Funding's portfolio. Also, the citations do not support that "investors are told that profits will be generated by Par Funding's Loan business in which the Agent Funds invest." The citation also fails to provide a pinpoint citation for the transcript as required by Local Rule 56.1(b).

46. Disputed. Defendants do not dispute that Vagnozzi proposed the creation of his investment funds. Defendants dispute any suggestion of collaboration between LaForte, Par Funding, and Vagnozzi to create his investment funds including the SEC's description that Vagnozzi "spearheaded the effort" and "report[ed] to LaForte on his efforts." Defendants dispute any suggestion of involvement from LaForte. Exhibits 60, 164, and 181 do not support the SEC's assertion that Vagnozzi reported to LaForte his efforts to recruit people to create agent funds. Exhibit 180 demonstrates a cordial conversation, in which LaForte provided no input and did not request any updates about Vagnozzi's investment funds. Defendants dispute that Par Funding "raised funds through" Agents Funds. *See supra* at ¶¶ 43–44.

47. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

48. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

49. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

50. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

51. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

52. Disputed. Par Funding did not train agents at their office. The citations in this paragraph demonstrate that Abbonizio provided background information about Par Funding. There is no citation that shows that any training took place at Par Funding's office. Par Funding did not provide the Agents with marketing materials to solicit investors. The Agent Funds were Par Funding's

Phase 2 investors. Par Funding provided the Agent Funds, its Phase 2 Investors, with information about the company as directed by its securities compliance counsel, Philip Rutledge.

53. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

54. Disputed. Defendants dispute that the Agent Funds raised money for Par Funding. *Infra* at ¶¶ 133–136.

55. Disputed. *See* Ex. B, Vagnozzi Depo. Tr. at 227:19–230 (explaining that no coordination occurred between Par Funding and any of his funds).

56. Disputed. *See infra* at ¶¶ 139–146. There is no evidence that Defendants solicited investors, assisted with hosting the dinner, contributed monetarily to arranging the dinner, or distributed materials to solicit an investment. Defendants were invited to the November dinner and solely there to provide information about Par Funding. Notwithstanding, there were only existing clients in attendance and the event was not open to the public. *See infra* at ¶ 144. Further, as the liaison between Par Funding and investors, Abbonizio answered questions about Par Funding. Par Funding did not authorize or direct Abbonizio to make any statements inconsistent with his consultant agreement. *See supra* at ¶ 15.

57. Disputed. Defendants did not communicate with investors for the purpose of selling, negotiating, or soliciting the terms of an investment agreement with the agent. The purpose of any meeting was solely to provide information about the company. *See infra* at ¶¶ 140–141. The cited transcripts also do not demonstrate any solicitation efforts by Defendants.

58. Disputed. Defendants do not dispute that Par Funding issued promissory notes to the agent funds. The citations in this paragraph do not reference that "Par Funding issued a Par Funding Note to the Agent Fund with a higher promised rate of rate than the Agent Fund promised to its investors in its own notes." There is no evidence in the record that Par Funding exercised any control over the amount of interest the Agent Funds charged their investors.

59. Disputed. Defendants do not dispute that Par Funding paid monthly returns. Par Funding executed payments pursuant to the terms of the promissory note. There is no evidence in the record cited that Par Funding exercised any control over the "spread."

60. Undisputed.

61. Undisputed.

62. Undisputed.

63. Undisputed.

64. No response required because the SEC does not cite these facts in seeking summary judgment against Defendants.

65. Disputed. The dinner events were not held for the purpose of investing in Par Funding-related promissory notes. *See infra* at ¶¶ 144–146. Some events, as referenced in Exhibit 20, were client appreciation events and were held for Vagnozzi's existing clients. *See infra* at ¶ 144. Exhibit "D" pertains to a consulting agreement and does not reference the assertion that "dinner seminars were for the purpose of getting potential investors to invest in the Par-Funding-related promissory notes."

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." Quite the contrary, the email indicates that Vagnozzi intended to inform the audience about all the investments he offered for his purposes.

67. Disputed. *See infra* at ¶¶ 139–146; *supra* at ¶¶ 56, 65. Par Funding did not authorize any materials to be disseminated at this event. There is no pinpoint citation to a flyer in subsection (a)-(b) as required by Local Rule 56.1(b). Defendants dispute the SEC's mischaracterization of Vagnozzi's statements, which are incomplete and out of context. Vagnozzi did not specifically refer to Par Funding when he stated that "we have stock market alternative investments that are secure." Further, Vagnozzi explained that he is not making a guarantee as it relates to any investment because "there's risk . . . pros and cons when you come in." *See* SEC Ex. 20 at 18:6-14.

68. Disputed. *See supra* at ¶¶ 33, 56, 65, 67. Defendants dispute that they "touted" anything.

69. Disputed. Defendants dispute describing the video as "Vagnozzi Par Funding Marketing Video." Par Funding never approved or authorized any such video to be used on its behalf. The video provides general information about the merchant cash advance industry as a whole and never once references Par Funding by name.

70. Disputed. The testimony cited in footnote 147 does not contain or reference any statement that Vagnozzi "told potential investors that he has taken more than 500 investors into an investment with Par Funding." Notwithstanding, Defendants did not authorize Vagnozzi to make any statements on its behalf.

71. Undisputed.

72. *See supra* at ¶ 26.

73. Undisputed.

74. Undisputed.

75. Disputed. Defendants dispute any marketing video being distributed on Par Funding's behalf and that the videos are "Par Funding Marketing Video." *See supra* at ¶ 69.

76. Disputed. Defendants did not solicit any investors to invest in Par Funding. *See supra* at ¶¶ 33, 56, 65, 67. Further, it is unclear what portion of the transcripts the SEC is relying on as the SEC fails to provide specific, pinpoint citations as required by Local Rule 56.1(b).

77. Undisputed.

78. Disputed. Par Funding did not authorize or approve Furman to distribute any marketing brochure to potential investors. Par Funding did not authorize either Furman or Abbonizio to make any representations relating to Par Funding. Par Funding's engagement with Furman and his entities was limited exclusively to the terms of the promissory note. The purchase agreement between the parties contained an indemnification provision that protected Par Funding.

79. Disputed. *See supra* at ¶ 26.

80. Disputed. LaForte joined the call to answer questions and provide additional information about Par Funding, something its securities compliance counsel, Rutledge advised them they could do. *See infra* at ¶ 141. LaForte did not introduce himself as "Joe Mack." Notwithstanding this, there were no prospective investors on the call and the call was not open to the public. Nowhere in the transcript cited does it indicate that LaForte made any statements in connection with the purchase, offer, or sale of securities.

81. *See supra* at ¶ 80.

82. *Id.*

83. Disputed. Defendants dispute that they solicited investors. *See infra* at ¶¶ 140–141, 143.

84. Disputed. LaForte did not conceal his criminal history. *See infra* at ¶¶ 147–152.

85. Undisputed.

86. Undisputed but immaterial.

87. Disputed. LaForte does not conceal his criminal history by using a nickname. *See infra* at ¶¶ 147–152. He openly uses his real name with investors. As is common in the industry, LaForte uses a nickname with merchants for security purposes especially since a merchant cash advance company operator was gunned down execution style in his office in NY along with is assistant. *See infra* at ¶¶ 147–152; Ex. C, Article; *See also,* (DE 41-7 at 57, lines 17-18) (Transcript of dinner where he was introduced as Joe LaForte. LaForte identified himself by his real name to undercover FBI agents posing as investors and even invited them to a meeting at his gated community where they would have to use his real name to gain access (SEC Ex. 129 4::15-20. Additionally, LaForte's name and criminal

convictions were widely known and publicly available. For example, Victoria Villarose leared of LaForte's background by googling it when she started working at company. Villarose Depo at 58::11-22. Brett Berman, Par's counsel testified that everyone knew about his criminal conviction. Berman Depo at 79::21-87::2. Additionally, meetings with potential investors were held in a lounge room at Par's office. In this room was a framed article about Joe LaForte from a magazine including a picture of Mr. LaForte. The article identified Mr. LaForte by name.Declaration of Joe Cole at 15.

88. The email address is undisputed. The remainder of this statement is disputed. *See supra* at ¶ 87.

89. Disputed. The exhibit cited in support of this allegation is an entire deposition transcript of Abbonizio. It contains no pincite in violation of Southern District of Florida Local Rule 56.1(b), which states: "When a material fact requires specific evidentiary support, a general citation to an exhibit without a page number or pin cite (e.g., "Smith Affidavit" or "Jones Deposition" or "Exhibit A") is non-compliant."

90. Disputed. LaForte was not required to be listed as a "Related Person." Therefore, Par did not "fail" to identify him as such.

91. Undisputed.

92. Undisputed.

93. Disputed. LaForte was not required to be disclosed to the Commission. Therefore, Par did not "fail" to disclose him as such.

94. Undisputed.

95. Defendants dispute that the Marketing Brochure was authorized by McElhone or that that McElhone approved the marketing materials used in the offerings for distribution to investors, and there is no credible evidence to support that assertion. Rather, the evidence suggests that McElhone delegated drafting and approving marketing material, such as Par's website, to management. *See* Ex. A, Cole Depo. at T at 72–80.

96. Disputed. LaForte truthfully told investors he had money in Par. *See infra* ¶ 98.

97. Disputed. LaForte truthfully told investors he had money in Par. *See infra* ¶ 98.

98. Disputed. LaForte invested in Par in four different ways. He provided seed capital through his businesses. He was a noteholder through his family trust. LaForte left retained earnings in the company to allow it to grow. Finally, LaForte also a fraction of the money he was entitled to take as an ISO through his company RMR. *See* declaration of Joe Cole Barleta at 19-21.

DEFENDANTS' STATEMENT OF ADDITIONAL FACTS

A. The Offer and Sale of Securities

Phase 1 Offerings

99. From 2012 through 2018, Par Funding issued promissory notes to accredited investors ("Phase 1 Offering").

100. Cole held a reasonable belief that each Phase 1 noteholder was accredited at the time of their note purchase based on his understanding of their investment experience, assets, income, and the amount of money they each invested. *See* Ex. D, Declaration of Joseph Cole Barleta at ¶ 6. Cole did not receive written confirmation of the same. *See id.*

101. The Phase 1 Offering was a limited offering that occurred between 2012 and 2018, and many of the investors were known to Defendants. *See* Ex. A, Declaration of Joseph Cole Barleta at ¶ 7.

102. Par Funding provided prospective and existing purchasers of the Phase 1 Offering with materials regarding the company, including Par Funding's Key Performance Indicators, on a monthly basis. *See* Def. Am. Facts at ¶¶ 13–14.

103. In 2018, the Pennsylvania Department of Banking and Securities ("PADOB") issued a subpoena to Par Funding to investigate the company's use of finders to sell promissory notes ("PADOB Subpoena"). *Id.* at ¶ 26.

104. Par Funding hired attorney Phillip Rutledge to respond to the Subpoena. *See Id.* at ¶¶ 26–27.

105. Rutledge has over 25 years of experience in the areas of securities enforcement and litigation, including as the former Director of the Division of Finance and Chief Counsel at the PADOB. *Id.* at ¶ 29.

106. As securities compliance counsel, Rutledge first advised Par Funding to stop using and paying finders. *Id.* at ¶ 32. Par Funding complied. *Id.*

107. Rutledge then directed Cole to confirm the accreditation status of each Phase 1 noteholder using a questionnaire Rutledge prepared. *See* Ex. D, Declaration of Joseph Cole Barleta at ¶ 6. Rutledge advised Cole that he would use the completed questionnaires to inform the Pennsylvania Regulators that the Phase 1 Offering was exempt from registration under Rule 506(b) of Regulation D. *Id.* at ¶ 10.

108. In connection with the Subpoena, Rutledge drafted a letter to the PADOB and explained that "[a]lthough CBSG believed at the time that its promissory notes were purchased by

accredited investors . . . CBSG went back to *each* noteholder to confirm such status." *See* Def. Am. Facts at ¶¶ 33–34 (emphasis added).

109. Par Funding did in fact confirm that its purchasers were accredited investors. *See* Ex. D, Declaration of Joseph Cole Barleta at ¶ 7, Ex. A. Cole received from each Phase 1 noteholder a signed questionnaire confirming their status as accredited investors. *Id.*

110. The Accredited Investor Questionnaires ("Questionnaire") explained, "the purpose of this Questionnaire is to verify that you meet the standards for participation in a non-public offering under Section 4(2) of the Securities Act of 1933, as amended ("Act"), and under the laws of the various States." *Id.*

111. The Questionnaire instructed the purchaser to certify that it has met one of the accredited investors conditions as outlined in Rule 501 of the Securities Act. *Id.*

112. Rutledge successfully argued to Pennsylvania Regulators that the Phase 1 Notes were exempt from registration under Rule 506(b) of Regulation D because Par Funding held a reasonable belief that all of Par Funding's investors were accredited. *See* Def. Am. Facts at ¶ 34.

113. Rutledge believed that the Phase 1 notes were exempt under Rule 506(b) and told Cole the same. *See* Ex. E, Rutledge Depo. Tr. at 184–186; Declaration of Joseph Cole Barleta at ¶ 10.

114. In an email dated March 30, 2018, Cole explained to Rutledge that Par Funding was no longer accepting new notes from individuals and were directing individuals whose notes matured to the PPMs. *See* Def. Am. Facts at ¶ 36. In the same email, Cole asked Rutledge to review Par Funding's "note/security agreement language for the PPMs." *Id.*

115. Rutledge testified that he understood this to mean that Par Funding was pivoting away from selling to individuals and instead selling to PPM Funds. Rutledge understood PPM Funds to be "pooled investment vehicles." *Id.* at ¶¶ 36–38.

116. In an email dated September 25, 2018, Cole enlisted Rutledge's assistance to "draft agreement" "for the funds we work with." *Id.* at ¶ 39.

117. Three days later, Rutledge attached a draft of a note purchase agreement ("NPA") template for Par Funding to use to sell its notes to the pool investment vehicles. *See id.* at 40.

118. Cole and Par Funding's former in-house counsel Cindy Clarke urged Rutledge to describe as broadly as possible Par Funding's new structure to ensure compliance with the law in connection with its Phase 2 Offering, but Rutledge counseled them against that approach. *Id.* at ¶ 45–46.

119. Rutledge disclosed to PADOB that Par Funding had restructured its method for selling notes using the new NPA. *Id.* at ¶ 47. Additionally, Rutledge advised the PADOB that Par Funding would only sell notes to accredited investors under Rule 506(b), ceased the practice of using brokers, and started to use the NPA where no commission was paid to brokers. *Id.* at ¶ 47.

120. Rutledge settled the PADOB matter on Par Funding's behalf in November 2018. *Id.* at ¶ 37.

121. Rutledge advised Cole and other attorneys for Par Funding that the order issued by PADOB stated that Par Funding could continue to sell promissory notes in Pennsylvania in compliance with the order and should not be a basis for disqualification under federal or state laws. *Id.* at ¶ 51.

Phase 2 Offering

122. Par Funding sold to 42 Agent Fund Managers ("Phase 2 Offering"). *See* Ex. D, Declaration of Joseph Cole at ¶ 12.

123. These 42 Agent Fund Managers are Par Funding's Phase 2 investors. *See* Rutledge Depo. Tr. at 351–352 (explaining that Par Funding's investor was the Agent Fund, and its duty of disclosure would have been to the Agent Fund and not the Agent Fund's noteholders.).

124. The Agent Fund Managers had prior relationships with Par Funding as former finders during the Phase 1 Offering. *See* SEC Fact at ¶ 43[2]

125. Par Funding provided the noteholders of the Phase 2 Offering with materials regarding the company, including Par Funding's Key Performance Indicators, on a monthly basis. *See* Def. Am. Facts at ¶¶ 13–14.

126. The NPA drafted by Rutledge included provisions asking each Agent Fund to certify its status as an accredited investor. *See id.* at ¶ 41.

127. Rutledge advised Defendants to file a Form D with the SEC to claim an exemption under Rule 506(b) of Regulation D for the Phase 2 Offering. *See* Ex. D, Declaration of Joseph Cole Barleta at ¶ 10, at attached Ex. B, at pdf page 3; Ex. E, Rutledge Depo., Vol. II, Tr. at 326-327. The Form D referenced in the above email claimed an exemption under Rule 506(b). *See* Ex. F, Form D Filing.

[2] Defendants, however, dispute that Par Funding "converted" its finders to agent fund managers. *See* Defendants' Response to SEC Fact at ¶ 43.

128. Rutledge recommended that Par Funding delete the finder fee information which appeared on a previous Form D filed by the company. *See* Ex. D, Declaration of Joseph Cole Barleta at ¶ 10, at attached Ex. B, at pdf page 3.

129. At the time Rutledge advised Defendants to file the Form D in this fashion (April 2020), he was already aware that Par Funding was selling its notes to Agent Funds, who were in turn selling notes to their own noteholders.

130. Par Funding provided the prospective and existing purchasers of the Phase 2 Notes with materials regarding the company, including Par Funding's Key Performance Indicators, on a monthly basis. *See* Def. Am. Facts at ¶¶ 13–14.

Par Funding did not "Convert" its Finders to Agent Fund Managers

131. Par Funding did not "convert" its finders to agent fund managers. Par Funding did not direct or have any control over the activities of the agent funds.[3]

132. Vagnozzi testified that he created the idea for the use of investment funds by himself. *See* Ex. B, Vagnozzi Depo. Tr. at 12:11–14 ("in 2018 I started a fund by myself and only for myself and not . . . anybody else but myself to . . . take out investor dollars to invest with merchant cash companies"). This was Vagnozzi's idea alone. *See id.* at 95:22–24 ("I agree that Dean Vagnozzi started a fund for me not called an agent fund[].").

133. Vagnozzi further testified that he did not create the investment funds for the purpose of raising money for Par Funding:

> **Q**: And the purposes of the investment funds you created was for Complete Business Solutions Group and to raise money for them; right?
>
> **A**: No.
>
> . . .
>
> **Q**: Let's talk about your funds because you have ABFP Income Fund – ABFP Income Fund 1, 2, 3, 4, and 6. You created those income funds for purposes of raising money for CBSG. Is that right?

[3] *See* Ex. B, Vagnozzi Depo. Tr. at 15:3-15:

> I was not tasked by any company to raise money for them. I raised money for the -- for my fund for -- you know, that I was in control of, that I controlled. So I -- I had no -- I had no mission from any other company to raise money for them. You keep alluding to that, and that's not what I did.

A: No.

Id. at 114:4–7. Likewise, other investment funds were not created for the purpose of offering promissory notes in Par Funding:

> Amie, I've been trying to work with agents for ten years in various forms, helping them get into life insurance because that's -- that's my background, helping them get into multiple -- multiple offerings, not just the CBSG performance. Okay? So -- so I've been -- I've been -- worked -- trying to work with advisers to help them be successful and make a few bucks for myself along the way long before I met CBSG, long before I met anybody at CBSG.

Id. at 96:4–19.

134. Vagnozzi hired counsel to draft certain documents including a private placement memorandum to be used for any merchant cash company of his choice. *See id.* at 12:11–14. The PPMs were not specific to Par Funding.

135. Vagnozzi also relied on his own securities compliance counsel to educate prospective investors about the legalities of the private placement memorandum infrastructure. *See id.* at 68:8–70:22.

136. With respect to individuals who wanted to create a similar fund as Vagnozzi, he provided guidance on how to form a fund. *See id.* at 99:7-12. Par Funding played no role in this.

137. Pursuant to Rule 506(b), Par Funding issued promissory notes to these investment funds.

138. Pursuant to Rule 502, as an issuer, Par Funding was required to make itself available to answer questions from its purchasers concerning the terms and conditions of the offering. *See* Ex. E, Rutledge Dep. Tr. at 354:20-355:25 (explaining that Par Funding had an obligation to make itself available).

139. Rutledge testified that by making themselves available to the Agent Fund Managers—their Phase 2 investors—to answer questions, for example, about how their business is performing is not tantamount to selling. *Id.*

140. Perry Abbonizio served as the liaison between Par Funding and pooled funds investors. At times, a prospective investor would visit Par Funding's office and meet with Abbonizio to learn more about Par Funding. *See* Ex. F, Abbonizio Deposition Tr. at 57:19–61:19, 64:19–66:18, 140:15–143:2; Ex. B, Vagnozzi Deposition Tr. at 147:7–16, 149:1–8.

141. Prospective investors would also get the chance to speak with Defendants if they had additional questions. The conversations were limited to providing an overview of the merchant cash advance industry, Par Funding's business model and its overall health. *See, e.g.*, Def. Am. Facts at ¶ 15.

142. At times, Defendants were invited to attend events to provide additional information about Par Funding. For example, Vagnozzi hosted an event in November 2019. This event was intended to be a "client appreciation event . . . to provide a life settlement check to individuals." *See* Ex. F, Abbonizio Depo. Tr. at 116:2 –13. This event was not intended to raise money from potential investors for Par Funding. *Id.*

143. Defendants did not play any role in soliciting the attendees at any event, including the November 2019 dinner.

144. Defendants did not plan, orchestrate or arrange any event, including the November 2019 dinner.

B. Joseph LaForte

145. Joseph LaForte worked for Recruiting and Marketing Resources ("RMR") as a sales manager and in the Credit Committee department at Full Spectrum Processing. *See* Ex. A, Cole Depo. Tr. at 17:12 –18

146. LaForte was primarily responsible for generating deals for Par Funding. *Id.*. at 47:18–49:2

> He primarily worked out of Recruiting and Marketing Resources to generate deals for CBSG to fund. . . . His responsibility specifically really focused on the sales and communication with the underwriting departments and credit committee to help determine the worthiness of these MCA deals that CBSG would end up funding through the efforts of the folks at Full Spectrum Processing.

147. LaForte also negotiated deals on behalf of Par Funding through his function as an independent sales operator. *Id.* at 53:1–6. An independent sales operator is responsible for "providing merchants interested in working with [Par Funding] to do these merchant cash advance factoring agreements for receiving operating capital to the respective businesses." *See id.* at 54:15–19.

148. LaForte worked closely with merchants. *Id.* As such, LaForte would use a pseudonym whenever he communicated with merchants. *See id.* at 63:1–10:

> From the capacity of sales and sometimes collections from deals that were forwarded over from his sales entity to CBSG, I believe that the use of an alias or an incomplete name was due to the anonymity and safety of employees working in those capacities.

149. It is common practice in the merchant cash advance industry to use a pseudonym for safety and security purposes.

150. LaForte did not use a pseudonym when speaking to investors. *See id.* at 61:22–62:5.

151. LaForte received materials related to Par Funding in connection with his limited capacity as sales manager and a member of the credit committee. *See id.* at 49:13–24:

> by report if you mean did I have to get his approval on anything or make decisions based on approvals, absolutely not. I would report some of the numbers and issues going on with the business . . . . and copy Joe so the sales group and underwriting team knew what sort of dollars we were working with in the bank, for example.

152. LaForte also did not have any authority to direct the operations of any department including the accounting department. *See id.* at 49:13–24 ("if you're speaking about report in terms of authority or functional authority over my departments or my person. That was only Lisa"); *id.* at 50:5–8, 57:11–19.

153. No one understood LaForte to be president of Par Funding and he was not.

C. Par Funding's Regulatory History

154. Based on the settlement and their attorney's advice, Par understood that selling the promissory notes to the Agent Funds brought Par into compliance with security laws, and Par believed in good faith that it could properly continue selling notes in accordance with the changes implemented by its lawyers, Phil Rutledge and Martin Hewitt. *See supra* at Subsection A; SEC Exhibit 8, PABOBS Consent Order at ¶ 6 (CBSG offered and sold, and continues to offer and sell, Notes only to persons that CBSG had a reasonable basis to believe were accredited investors as that term is defined in Rule 501 (a) of Regulation D adopted by the [SEC] . . . in good faith reliance on the exemptions from security registration . . . . As of February 8, 2018, CBSG does not pay any compensation to any person in connection [with] the sale of Notes.").

155. Rutledge's advice to Defendants was that the Pennsylvania Order was public. *See* Defense Exhibit 2, Rutledge Dep., Tr. at Vol. II, 170:20-171:12, Dep. Ex. 132.

156. In December 2018, Par learned that the New Jersey Bureau of Securities was investigating the same matters issues PADOBS had investigated. *Compare* SEC Exhibit 8, PABOBS Consent Order; with SEC Exhibit 9, NJ Summary Cease and Desist Order. *See also* Def. Am. Facts at ¶ 54; *supra* at ¶ 7.

157. Par Funding hired attorney Martin Hewitt to handle Par Funding's response to the New Jersey Securities Regulator's investigation. Def. Am. Facts at ¶ 54. There is no evidence in the record that Mr. Hewitt ever advised anyone at Par Funding that it had to disclose the NJ investigation to investors. *Id.*

158. Moreover, the issues raised by New Jersey were the substantially the same as those alleged by PADOBS namely, the payment of commissions to finders, *compare* SEC Exhibit 8, PABOBS Consent Order; *with* SEC Exhibit 9, NJ Summary Cease and Desist Order, and Par believed in good faith that it was now operating properly and in compliance with its lawyer's advice and revised operational structure. SEC Exhibit 8, PABOBS Consent Order at ¶ 6.

159. In late February 2020, Par learned of an investigation by the Texas State Securities Board ("TSSB"), premised on the same allegations of commissions to finders. SEC's Statement of Undisputed Facts at ¶ 8; *supra* at ¶ 8.

160. Par hired Haynes Boone to represent it in the matter and cooperated with the TSSB to resolve the matter. The investigations and orders brought by the Pennsylvania, New Jersey, and Texas Securities Regulators were disclosed in the April 2020 Exchange Notes—the very notes referenced in the allegations made by the SEC in paragraph 138. *See* SEC Exhibit 90, Exchange Note, at A-8; and Defense Exhibit 2, Rutledge Dep., Tr., at Vol II, 319-320.

161. Par Funding sought and followed the advice of their attorneys as to what to disclose:

> **Q**: And so in connection with the exchange note offering in April of 2020, what was the advice that Phil Rutledge gave concerning the disclosures that needed to be made for that offering?
>
> **A**: Everything that was disclosed was what Phil Rutledge recommended. That was the scope of disclosures recommended.
> *See* June 8, 2021 Bret Berman Depo. at T-66:9-15
>
> **Q:** And when it came to the disclosure issues that we just talked about and that you recall conversations about, again, did these individuals, who are not attorneys, rely on and utilize the expertise of attorneys with respect to what needed to be disclosed, if anything?
>
> **A:** The answer was they were very proud of the fact that they had someone like Phil Rutledge on their team because he is, to my knowledge, a renowned securities expert. And they relied on -- I can't say what they did, but they asked him questions, and they followed his advice.").

Bret Berman Depo. at T-211:2-16.

D. Lisa McElhone

162. McElhone's daily responsibilities diminished as the company grew, and she delegated those responsibilities to management. *See* Cole Depo. Tr. at 19.

163. McElhone divided her time among numerous businesses. *Supra* at ¶ 10.

164. McElhone was more involved in the business in the early years and exercised less control as time went on. *Supra* at ¶ 10; Ex. A, Cole Depo. at 11, 15.

165. Full Spectrum Processing employed a lateral management structure; individual department managers semi-autonomously ran their departments, including making decisions as to the hiring, termination and administration of employees. *Supra* at ¶ 10 and June 7, 2021 Berman Depo. at T-43:4-5 ("You know, the company was pretty tiered out. And that's what I said before. You had the collection arm, which was Anthony Fazio and Tim. You had the accounting arm, which was Joe Cole, Aida and others. You had the underwriting team, which included -- or underwriting such documentation, which was Wendy Furman and that group.")**)** and T-53:7-9 (The company, as I knew it, was broken up into various subparts, collections, finance, underwriting.").

166. McElhone delegated running Par to the management team and would intervene only when circumstances demanded her attention. *Supra* at ¶ 10.

167. Joseph Cole testified that "[McElhone] wasn't always working in the office. She would often work either from home or on the road depending on what she was doing." *See* Jun. 2, 2021 Cole Depo. at 15:12-15.

168. He also testified that Ms. McElhone was more involved in the business in the early years and exercised less control as time went on. *See* Jun. 2, 2021 Cole Depo. at 11, 15.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all

counsel of record via the Court's CM/ECF Filing Portal on this 28th day of October, 2021.

/s/ Alejandro O. Soto
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