

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.

**DEFENDANT, JOSEPH W. LAFORTE'S, RESPONSE IN OPPOSITION TO THE
SECURITIES AND EXCHANGE COMMISSION'S EXPEDITED MOTION TO
PRECLUDE TRIAL TESTIMONY OF DEFENDANT LAFORTE
AND MEMORANDUM OF LAW IN SUPPORT [DE # 937]**

INTRODUCTION

By initiating this case with false allegations of a theft of all the money out of the corporate bank account and illegal usurious loans to get the green light for a military style raid of the Defendants' homes and offices more appropriate in a drug kingpin case than an SEC registration and disclosures case, and then repeatedly waiving the specter of a criminal case in front of this Court and over the Defendants' head through out this litigation, the SEC compelled Defendants, LaForte and McElhone to assert their 5th Amendment rights against self-incrimination. This tactic played out just as the SEC hoped it would, as LaForte and McElhone's 5th Amendment invocations prevented them from fully defending themselves and permitted the SEC to parade their invocations before this Court. However, the SEC has included LaForte on its witness list and served him with a trial subpoena, indicating that it wants to call him to testify, presumably for the purpose of forcing him to take the fifth in front of the jury for the prejudicial effect rather than simply relying on the adverse inference the SEC could request without LaForte being called to the stand. Additionally, having had the opportunity to review the massive amount of documents produced by the SEC and Receiver, LaForte feels comfortable that he can testify truthfully without incriminating himself and wishes let the jury hear the full story.

Consequently, on November 10, 2021, LaForte accepted the SEC's invitation to drop the 5th Amendment and have his deposition taken immediately. *See* correspondence from SEC attached as exhibit A. However, after LaForte accepted the SEC's offer and made himself immediately available for deposition on the date requested by the SEC, the SEC changed its mind and took the position that permitting him to testify at trial in his own defense would be too prejudicial. Given the extraordinary temporary relief the SEC has already obtained against LaForte as well as the permanent relief it is seeking, this Court should not permit the SEC's fear tactic to play out in their favor and allow LaForte to testify in his own defense.¹ Therefore, Defendant Joseph W. LaForte respectfully requests that this Court deny the SEC's motion and allow him to testify at his trial.

MEMORANDUM OF LAW

I. Applicable Legal Standard

Generally, trial courts have the discretion to determine whether to allow a party to withdraw his Fifth Amendment privilege. *Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 547 (5th Cir. 2012), as revised (Jan. 12, 2012). However, there is no bright line rule determining when parties may withdraw their fifth amendment privilege; rather, the courts weigh the facts of each individual case. *See Evans v. City of Chicago*, 513 F.3d 735, 743 (7th Cir.2008); *United States v. Certain Real Prop. and Premises Known as: 4003–4005 5th*

¹ LaForte remains available to be deposed before trial.

Ave., Brooklyn, N.Y., 55 F.3d 78, 85 (2d Cir.1995); *Edmond v. Consumer Prot. Div.*, 934 F.2d 1304, 1309–10 (4th Cir.1991); *United States v. Parcels of Land*, 903 F.2d 36 (1st Cir.1990); *SEC v. Graystone Nash, Inc.*, 25 F.3d 187, 191 (1st Cir.1989); *Davis-Lynch, Inc.*, 667 F.3d at 547.

II. **ARGUMENT**

LaForte Should Be Permitted to Testify as the SEC Will Not Be Prejudiced by Taking His Deposition at This Stage of the Litigation

Contrary to the SEC’s assertion, there is no bright line rule that prohibits LaForte from testifying. Instead, courts employ a balancing test that weighs a party’s right to testify against any perceived prejudice to the other party. “Generally, [t]he court should be especially inclined to permit withdrawal of the privilege if there are no grounds for believing that opposing parties suffered undue prejudice from the litigant’s later-regretted decision to invoke the Fifth Amendment.” *Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 547 (5th Cir. 2012) (quoting *United States v. 4003-4005 5th Ave.*, 55 F.3d 78, 84 (2d Cir. 1995)). Courts look at the totality of the circumstances surrounding the waiver of the privilege. “Therefore, a party may withdraw its invocation of the Fifth Amendment privilege, even at a late stage in the process, when circumstances indicate that there is no intent to abuse the process or gain an unfair advantage, and there is no unnecessary prejudice to the other side.” *Davis-Lynch, Inc.*, 667 F.3d at 548 (quoting *Evans v. City of Chi.*, 513 F.3d 735, 746 (7th Cir. 2008)). For example, the Evans court found that there was no gamesmanship when the party withdrew its invocation of the 5th Amendment privilege “around the time the special prosecutor was wrapping up his [criminal] probe.” *Evans*, 513 F.3d at 746.

The SEC’s conduct in this case was a large part of the reason LaForte asserted his Fifth Amendment rights in this case. As acknowledged by this Court throughout the litigation, there is a parallel criminal investigation into Par and its principals that seriously affects the Defendants’ rights and decision whether or not to testify in this civil case.

At the October 7, 2020, Status Conference Hearing the Court stated:

So that is something that I’m very aware of, so I don’t want to necessarily belabor it today. But I think it would be good to get a sense of the defendant’s sworn accounting generally, perhaps also the status of the LaForte consent. I know that there’s some limitations because I believe -- I don’t think he’s -- I don’t think he’s out. I think he’s still inside. I know that he’s got the pending criminal case. So I know that’s slow-moving and that’s fine, it can take some time.

[DE# 329 at 93]. At the May 20, 2021, status conference the Court again brought up the parallel criminal investigation, stating:

If you recall, Ms. Berlin, early in the case there was resolutions with a couple of defendants that came out organically. I don’t know if there’s any other discussions in that regard. I know it’s, from what I heard today, there’s parallel, arguably parallel criminal investigations ongoing. I don’t know where that is, but it just would be good

for the Court to know that litigation is proceeding in the normal course while the receiver does his job on recovery.

[DE# 595 at 103]. Finally, again in August 2021, this Court expressed its frustration with the lack of any apparent movement or update of the parallel criminal case, stating:

And, again, I may not be able to be privy to it, and I don't know how much we know about it. There has been that swirling criminal investigation since this case started last July, and I keep waiting and waiting and waiting to find out -- I don't know if it's going to impact my case or not, but do we have any sense of what's happening on that side of the coin?

And I don't know how much any party can divulge on that, but when I saw this case come on my docket originally, I did not think that it would be almost over a year before that side of what's going on here manifested itself one way or the other. I'm just curious because that seems to kind of hang over my head a little bit, and I never really know if that's heading in the direction with regard to Par. And I don't mean unrelated criminal charges that I know one of the defendants has. That's -- I'm not talking about felon and possession counts. I'm talking about a true criminal investigation. Is that something that the parties are monitoring? Can I get at least, to the extent there is an update, some sense of what's going on with that or we don't really know?

[DE# 744 at 172].

It is no secret that the SEC has been working in concert with the FBI to obtain evidence for this case, including using undercover FBI agents to record conversations with LaForte that the SEC has used in this case. The FBI then executed search warrants on LaForte's homes and Par's offices in which they seized electronic devices, documents, currency, and firearms, the last of which has resulted in LaForte being on pre-trial home confinement during the pendency of this action.

It is also no secret that, for the first several months of this case, the Defendants were unable to review company documents to prepare their own defense, while the SEC was able to obtain any documents it wanted from the Receiver. When the Defendants eventually obtained their documents and sought to postpone their depositions so they could review the hundreds of thousands of documents and adequately prepare for their depositions, the SEC objected and obtained an order compelling the Defendants to immediately sit for deposition on the SEC's schedule. [DE## 529; 533]. As a result, LaForte and McElhone asserted their Fifth Amendment rights due to the fact that they lacked time to adequately prepare along with the specter of the criminal investigation. However, with trial approaching, the SEC has now indicated that it wants to parade LaForte and McElhone in front of the jury for the added prejudicial effect of the jury observing them asserting their 5th Amendment rights rather than simply reviewing the deposition transcripts where they did so. *See* SEC Witness List and Trial Subpoena to Joseph LaForte, attached as exhibits B & C. The SEC has even said it wants to tell the jury about LaForte's firearms charges to establish that he purportedly has no respect for the law.

On November 2, 2021, Mr. Futerfas had a one-hour telephonic conference with Amie Berlin and Alise Johnson of the SEC. The purpose of the conversation was to meet and confer on the parties' proposed motions in limine. During the call, one of the topics discussed involved the Fifth Amendment assertions of Mr. LaForte and Ms. McElhone, specifically, whether the SEC intended to have them assert their fifth amendment before the jury, or whether the SEC would agree to put deposition transcripts into evidence, which contain the fifth amendment assertions, and obtain an adverse inference instruction from the Court. Ms. Berlin advised counsel that the SEC intended to have those defendants assert their fifth amendment rights in front of the jury but added that if either wished to change their mind and testify, the SEC would request a prompt deposition before the trial. The sum and substance of that call was memorialized in a memorandum circulated to all defense counsel. *See* Declaration of Alan Futerfas, attached as exhibit D.

Apparently, the SEC's idea of a fair trial is compelling LaForte to testify, but not permitting him to answer any questions. This Court should not countenance such gamesmanship. Had the SEC called LaForte to the stand and he decided to answer questions, they would have had no basis to object to this as they would have opened the door by compelling him to take the stand. However, rather than engaging in such gamesmanship, counsel decided it was best to advise the SEC and take them up on their invitation to immediately depose LaForte. The SEC proposed November 17, 2021, but when counsel for LaForte agreed to the date, the SEC changed its position and filed the instant motion. *See* exhibit A.

The SEC's argument that it will be prejudiced by LaForte being permitted to testify is pretextual at best. The SEC admitted that it was investigating Par for over a year prior to filing this case, amassing over 100,000 documents that it produced in a document dump of its investigative file at the outset of this case. [DE# 691 19-20]. The SEC then moved *ex-parte* for a Receiver and the FBI raided LaForte's homes and Par's office, seizing all computers and documents eventually turning them over to the Receiver. Having done so, it is not exactly clear what, if any, documents LaForte would have been able to produce to the SEC. If anything, all he would have been able to do is have his counsel tell the SEC what documents, already in the SEC's possession, supported which legal theory of the defense, invading the work-product privilege. This is the exact ground upon which the SEC has refused to respond to many of the Defense's discovery requests and deposition questions. *See e.g.*, Exhibit E at 1; DE# 800 at 11-12. The SEC cannot honestly claim prejudice in this situation given that this was the SEC's *modus operandi* in response to discovery in this case.

Other courts have looked at similar claims of prejudice by the SEC with skepticism when it attempted to prevent a defendant from withdrawing its 5th Amendment privilege despite adequate evidence from other sources throughout the litigation.

Moreover, any allegation that the SEC was surprised by suddenly being confronted with new and unexpected evidence must be received with some caution. As noted earlier, Ackerly and Adams were but two of seven defendants who had been sued by the SEC. Before Adams and Ackerly appeared at the hearing, two co-defendants, Shawn M. Crane and Robert L. Rock, had entered into consent judgments for the disgorgement of \$ 60,663.15 and \$ 279,074.00, respectively, and had agreed to testify at any evidentiary proceeding requested by the SEC. ***In addition, the SEC had already taken the depositions of several individuals whose testimony was cited by the district court in support of summary judgment.***

The SEC possessed substantial evidence in addition to the material that Adams asserted he had made available. It is apparent that the government had devoted substantial resources to expose the fraudulent security arrangements and to proceed against those responsible. Therefore, this appears to be a far cry from a case where invocation of the privilege prevented the opposing party from obtaining the evidence it needed to prevail in the litigation.

SEC v. Graystone Nash, Inc., 25 F.3d 187, 193 (3d Cir. 1994) (emphasis added); *accord FTC v. Sharp*, 782 F. Supp. 1445, 1452 (D. Nev. 1991) (declining to bar the defendant's later testimony because the FTC was not unfairly prejudiced by the defendant's prior fifth amendment assertion considering that the "FTC has been able to thoroughly prepare . . . because [the defendant] is not the only, or even the primary source of pertinent information"); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985) (finding that the defendant should be permitted to testify, notwithstanding his prior invocation of his fifth amendment privilege, because the FTC has not been unfairly prejudiced and the FTC was able to thoroughly prepare its case and "anticipate through other witnesses what [the defendant's] testimony would be").

Here, the SEC has deposed ten fact witnesses,² and Defendants' expert witness, and while the Defendants cannot be sure how many potential witnesses the SEC has interviewed without a deposition, it has included 68 potential witnesses on its witness list, indicating that it has clearly not been hindered in its ability to investigate this case. Additionally, given that the Receiver has been in possession of all of Par's books and records and waived attorney-client privilege, the Receiver, not the Defendants have been the primary source of pertinent documents, the Receiver has allowed the SEC to speak to Par employees who were kept on the payroll, and SEC has been able to depose Par's attorneys, George Philip Rutledge, Esq. John W. Pauciulo, Esq., and Brett Berman, Esq., something it would clearly not have been able to do had it not initiated this case in the heavy-handed way it did. "Courts must bear in mind that when the government is a party in a civil case and also controls the decision as to whether criminal proceedings will be initiated, special consideration must be given to the plight of the party asserting the Fifth

² Of these fact witnesses, Defendants Joseph Cole Barleta, Dean Vagnozzi, Perry Abbonizio, and Michael Furman testified and did not invoke their 5th Amendment rights.

Amendment.” *Graystone Nash, Inc.*, 25 F.3d at 193-94. Despite the SEC’s claim that it will not be able to conduct follow-up discovery after deposing LaForte, the SEC has conducted a substantial amount of discovery, exhausting all of its depositions, and has had all of Defendants’ documents from the outset of this case—and this is in addition to the information and evidence it gathered during its yearlong, pre-Complaint investigation. Given these facts, the SEC’s claim of prejudice strains credulity.

Contrary to the SEC’s assertions, LaForte’s withdrawal of the Fifth Amendment privilege does not fit the pattern of gamesmanship described in other cases. For example, LaForte is not attempting to file an affidavit in support of his motion or in opposition to the SEC’s motion for summary judgment insuring that his unquestioned, unverified affidavit would be the only version. *See Davis-Lynch, Inc.*, 667 F.3d at 548 n.20 (citing *4003-4005 5th Ave.*, 55 F.3d at 86; *Edmond*, 934 F.2d at 1308; *United States v. Parcels of Land*, 903 F.2d 36, 45 (1st Cir. 1990)). Rather, his withdrawal of his Fifth Amendment privilege is in direct response to the totality of the circumstances that LaForte and his counsel have had sufficient time to review the documents received from the SEC and Receiver, and LaForte feels comfortable that he can truthfully testify without incriminating himself, and furthermore does not believe that the risk of criminal prosecution outweighs the risks of continuing to assert his right against self-incrimination in this case, combined with the SEC’s attempt to compel him to testify. While the discovery period is complete, LaForte will willingly sit for deposition, which will cure any alleged prejudice.

III. CONCLUSION

For the foregoing reasons, Defendant, Joseph W. LaForte, respectfully requests that this Court deny the SEC’s motion and permit him to testify at trial.

Dated: November 16, 2010,

Respectfully submitted by,

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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 16th day of November 2021.

/s/ Joshua R. Levine
JOSHUA R. LEVINE

Subject: FW: November 17

-----Original Message-----

From: Berlin, Amie R. <BerlinA@sec.gov>
Sent: Thursday, November 11, 2021 12:17 PM
To: Alejandro Soto <asoto@ffslawfirm.com>
Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>
Subject: Re: November 17

Thanks, Alex.

> On Nov 11, 2021, at 10:16 AM, Alejandro Soto <asoto@ffslawfirm.com> wrote:

>

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>

>

> Got it. I've conveyed this to the client and the others. We'll get back to you asap.

>

> -----Original Message-----

> From: Berlin, Amie R. <BerlinA@sec.gov>
> Sent: Wednesday, November 10, 2021 9:18 PM
> To: Alejandro Soto <asoto@ffslawfirm.com>
> Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>
> Subject: November 17

>

> Alex,

> We would like to take Mr LaForte's deposition November 17. I understand you and Alise had a deposition that day that is being cancelled. If not then, then the 16th. Starting at 10. Can you let me know tomorrow so we have time to get the court reporter?

> Amie

Subject: FW: November 17

-----Original Message-----

From: Berlin, Amie R. <BerlinA@sec.gov>

Sent: Wednesday, November 10, 2021 9:18 PM

To: Alejandro Soto <asoto@ffslawfirm.com>

Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>

Subject: November 17

Alex,

We would like to take Mr LaForte's deposition November 17. I understand you and Alise had a deposition that day that is being cancelled. If not then, then the 16th. Starting at 10. Can you let me know tomorrow so we have time to get the court reporter?

Amie

Subject: FW: Par Funding

From: Berlin, Amie R. <BerlinA@sec.gov>
Sent: Thursday, November 11, 2021 5:44 PM
To: Alejandro Soto <asoto@ffslawfirm.com>
Cc: Johnson, Alise <johnsonali@sec.gov>
Subject: RE: Par Funding

Thank you. We will not be noticing his deposition. Per my below message, we will seek to preclude Mr. LaForte's testimony.

From: Alejandro Soto <asoto@ffslawfirm.com>
Sent: Thursday, November 11, 2021 2:58 PM
To: Berlin, Amie R. <BerlinA@sec.gov>
Cc: Johnson, Alise <johnsonali@SEC.GOV>
Subject: RE: Par Funding

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Okay. I can call you tomorrow afternoon to discuss. Let me know what time works for you. For now, we are letting you know that we are free on the 17th for the deposition.

From: Berlin, Amie R. <BerlinA@sec.gov>
Sent: Thursday, November 11, 2021 2:53 PM
To: Alejandro Soto <asoto@ffslawfirm.com>
Cc: Johnson, Alise <johnsonali@sec.gov>
Subject: Re: Par Funding

Alex,
I am writing to confer pursuant to the Local Rules. We believe the Court should preclude the testimony of Mr. LaForte at trial. It is not simply a matter of deposing him, which would not cure the prejudice to the SEC. Among other things, Mr. LaForte asserted the 5th amendment in response to the written discovery we propounded during the discovery period, and discovery has ended.
Thanks,
Amie

On Nov 10, 2021, at 7:53 PM, Alejandro Soto <asoto@ffslawfirm.com> wrote:

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Amie,

I've been trying to reach you for the past few hours, but I realize you've been busy with settlement talks and various other matters. I don't want this to wait any longer — Joe LaForte has decided he wants to testify. We will of course make him available for deposition. Call me whenever you are free to discuss.

Best,
Alex

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[REDACTED]

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Alexa Hauser
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c/o Amie R. Berlin, Esq.
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Miami, FL 33131
Telephone: 305- 982-6322

Corporate Representative
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Owings Mills, MD 21117
Telephone: 410-753-0753

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MIAMI
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
801 BRICKELL AVENUE, SUITE 1950
MIAMI, FLORIDA 33131

DIVISION OF ENFORCEMENT

ALISE JOHNSON
SENIOR TRIAL COUNSEL
DIRECT DIAL: (305) 982-6385
EMAIL: JOHNSONALI@SEC.GO

November 8, 2021

Via **Email** levine@kolawyers.com

Joseph W. LaForte
c/o Joshua Levine, Esq.
Kopelowitz Ostrow Ferguson
Weiselberg Gilbert
One W. Las Olas Blvd., Suite 500
Fort Lauderdale, FL 33301

Via **Email** asoto@ffslawfirm.com

c/o Alejandro O. Soto, Esq.
Fridman Fels & Soto, PLLC
2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134

Re: SEC v. Complete Business Solutions Group dba Par Funding, et al
Case No: 20-cv-81205-RAR

Mr. Levine and Mr. Soto:

The Commission will be calling your client Joseph LaForte as a witness in the trial in this matter, which is set to begin December 6, 2021. Accordingly, enclosed please find a trial subpoena directing your client to appear on the date, time and location specified. We will contact you again when we obtain a more specific time for your client's attendance.

Please contact me at (786) 626-7399 should like to discuss your client's attendance in more detail.

Sincerely,

s/Alise Johonson
Alise Johnson
Senior Trial Counsel

Enclosure

Acknowledgment and Acceptance of
Service of Trial Subpoena by e-mail

Joshua Levine, Esq. for Joseph LaForte

Date:

Acknowledgment and Acceptance of
Service of Trial Subpoena by e-mail

Alejancro O. Soto, Esq. for Joseph LaForte

Date:

AO 88 (Rev. 02/14) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

CBSG DBA PAR FUNDING, ET AL

Defendant

Civil Action No. 20-CV-81205-RAR

SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A CIVIL ACTION

To: Joseph W. LaForte, c/o David L. Ferguson, Esq. and Joshua Levine, Es.
Kopelowitz Ostrow Ferguson Weiselberg Gilbert, One W. Las Olas Blvd., Suite 500, Fort Lauderdale, FL 33301

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Table with 2 columns: Place (U.S. Federal Building and Courthouse, 299 East Broward Boulevard, Ft. Lauderdale, FL 33301) and Courtroom No.: 205C. Date and Time: Dec. 6, 2021 at 9:00 am.

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11-8-2021

CLERK OF COURT

OR

S/Amie Riggle Berlin

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Securities and Exchange Commission, who issues or requests this subpoena, are:

Amie Riggle Berlin, SEC, 801 Brickell Ave., Suite 1950, Miami, FL 33131, berlina@sec.gov; 305-982-6322

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20-CV-81205-RAR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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.

**DECLARATION OF ALAN S. FUTERFAS IN SUPPORT OF DEFENDANT, JOSEPH
W. LAFORTE'S, RESPONSE IN OPPOSITION TO THE SECURITIES AND
EXCHANGE COMMISSION'S EXPEDITED MOTION TO PRECLUDE TRIAL
TESTIMONY OF DEFENDANT LAFORTE
AND MEMORANDUM OF LAW IN SUPPORT**

I, Alan S. Futerfas, hereby declare as follows:

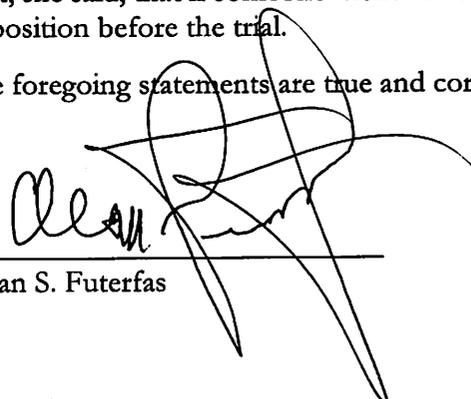
1. I am counsel for Lisa McElhone in the above-styled action and I am competent to make this declaration upon my own personal knowledge.

2. On November 2, 2021, I had a one-hour telephonic conference with Amie Berlin and Alise Johnson of the SEC. The purpose of this conversation was to meet and confer on the parties' proposed motions in limine.

3. During the call, one of the topics discussed involved the Fifth Amendment assertions of Mr. Laforte and Ms. McElhone, specifically, whether the SEC intended to have those defendants assert their fifth amendment before the jury, or whether the SEC would agree to put deposition transcripts into evidence, which contain the fifth amendment assertions, and obtain an adverse inference instruction from the Court. Ms. Berlin stated the SEC intended to have those defendants assert their fifth amendment rights in front of the jury but, she said, that if someone wishes to change their mind and testify, then she will request a prompt deposition before the trial.

4. I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on November 16, 2021



Alan S. Futerfas

EXHIBIT D

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

CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

-----/

**PLAINTIFF'S AMENDED RESPONSE TO DEFENDANT JOSEPH LAFORTE'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff Securities and Exchange Commission provides the following responses pursuant to Rule 34 of the Federal Rules of Civil Procedure to Defendant Joseph LaForte's First Request For Production Of Documents.

RESPONSES AND OBJECTIONS

1. All documents that prove or disprove any of your claims in the Action.

Objection: This request is overbroad and it seeks internal and other communications that are protected by the attorney client, common interest, deliberative process, and statutory privileges and work product doctrine. We previously produced to you evidence supporting our Motion for Temporary Restraining Order, as well as all evidence in our possession in the investigative and litigation files for this case, that is not privileged and not subject to any protection doctrine, and we will continue to produce such evidence as we receive it.

EXHIBIT E

Privilege Log:

(a) Internal Commission communications, including draft complaints and other pleadings, action memorandums, notes, memos, draft press releases, and emails. All of these communications reflect the staff's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client and deliberative process privileges and work product doctrine. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(b) Communications with the United States Attorney's Office ("AUSA"), including emails. All of these communications reflect the staff's and/or the AUSA's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(c) Communications with the Federal Bureau of Investigation ("FBI"), including emails. All of these communications reflect the staff's and/or the FBI's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(d) Communications with the Florida Office of Financial Regulation ("FLOFR"), including emails. All of these communications reflect the staff's and/or the FLOFR's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to

assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

Response: The Commission has produced all non-privileged documents responsive to this request in its possession, custody, or control.

2. All documents concerning or relating to Shane Heskin, including documents received from, or sent to, Shane Heskin and documents concerning communications with Shane Heskin. *During conferral, you narrowed this Request so that it seeks documents related to a defendant, claim, or witness in this case.*

Response: We respond to the narrowed Request, which tailors the Request to seeking documents received from Shane Heskin that relate or refer to a witness, investor, merchant, claim, or defendant in this case. Shane Heskin is an attorney representing witnesses and he is a law partner at the law firm of White and Williams. We previously produced to you the document production received from White and Williams in response to our subpoena. This was produced to you in August 2020. We are producing additional responsive documents to you comprised of email messages with attachments we sent to or received from Shane Heskin, including but not limited to messages reflecting our correspondence with Mr. Heskin as counsel for individuals who executed Declarations in connection with this case. Please note that we received privileged messages/documents that were inadvertently produced to us, which were quarantined or otherwise not maintained in our file pursuant to the Rules relating to inadvertently produced privileged materials, and are therefore not part of any production.

3. All documents concerning or relating to communications with the Receiver about Shane Heskin.

Response: We are producing all responsive documents – namely, email messages with the Receiver/his counsel regarding a Receivership issue in a private action involving a Receivership

entity, the SEC subpoena to White and Williams/Shane Heskin, and correspondence from Shane Heskin to the SEC and Receiver.

4. All documents concerning or relating to any Heskin Merchant Client, including documents received from, or sent to, any Heskin Merchant Client, and documents concerning communications with any Heskin Merchant Client.

Objections: This request is overbroad and seeks internal and other communications that are protected by the attorney client, common interest, deliberative process, and statutory privileges and work product doctrine.

Privilege log:

(a) Internal Commission communications, including draft complaints and other pleadings, action memorandums, notes, memos, draft press releases, and emails. All of these communications reflect the staff's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client and deliberative process privileges and work product doctrine. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(b) Communications with the United States Attorney's Office ("AUSA"), including emails. All of these communications reflect the staff's and/or the AUSA's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(c) Communications with the Federal Bureau of Investigation ("FBI"), including emails. All of these communications reflect the staff's and/or the FBI's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product

doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(d) Communications with the Florida Office of Financial Regulation (“FLOFR”), including emails. All of these communications reflect the staff’s and/or the FLOFR’s thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

Response: We are not producing privileged documents, as set forth above. However, we are producing non-privileged documents responsive to this Request. We understand from our conferral that you are only seeking documents related to or concerning the Heskin Merchant Clients: Kara DiPietro, Pamela A. Fleetwood, Fleetwood Services LLC, Julie Caricato, Indoor Playgrounds Int’l, Mary Carleton, CapJet, Michael Foti, SRA Home Products, James Frost, NationalRx, Chad Frost, Volunteer Pharmacy, J.R. Harrison, Petropangea, Inc., Amos Jones, Julie Katz, Tourmappers North America LLC, Bruce McNider, McNider Marine, Joseph Pucci, American Heritage Billiards LLC, Dennis Wood, Woodside Investments Inc., Christine Rainwater, Quantico Business Center, Sean Whalen, Flexogenix Group Inc., Gianna Wolfe, and Radiant Images Inc.

We previously produced to you non-privileged documents in our possession concerning the Heskin Merchant Clients as defined in this Response. Additionally, some of the Heskin Merchant Clients have produced documents to you. We are producing additional non-privileged documents in response to this request, including additional correspondence from Kara DiPietro received after we made our production of correspondence with DiPietro, together with correspondence and draft declarations related to Heskin Merchant Clients as defined in this Response, correspondence with

counsel Shane Heskin on behalf of the Heskin Merchant Clients as defined above, and correspondence from the Heskin Merchant Clients you identified, as set forth above.

5. All documents concerning or relating to communications with the Receiver about any Heskin Merchant Client.

Response: We searched emails with the Receiver for the names of the Heskin Merchant Clients identified in our Response Number 4 above, and we have no responsive documents that have not already been provided to you.

6. All documents concerning or relating to any Qui Tam action against Par Funding by Shane Heskin on his own behalf or as legal counsel.

Objection: This request is overbroad and vague in its reference to “any Qui Tam action,” and therefore we conferred to ask for the identity or caption of the cases to which you are referring. We have not received that information and therefore cannot determine whether we have responsive documents. This request also seeks attorney work product because it asks the Commission staff to review any Qui Tam cases filed against Par Funding by Shane Heskin as counsel and then to use legal skills and thought to analyze which documents in our possession could be relevant to any claim or defense in any such Qui Tam cases. Finally, this request is not relevant and is not proportional to the needs of this case as it does not seek any document concerning any claim or defense in this case. We have previously produced all production received from White and Williams/Shane Heskin in response to our subpoena for documents and a declaration related to the appearance of counsel on behalf of a Receivership entity in private litigation after the Receiver was appointed. Therefore to the extent the documents we previously produced relate to the “Qui Tam action,” you have them. If you provide more specific information in connection with what you are seeking, we can provide a more specific response.

7. All documents concerning or relating to any Qui Tam action against Par Funding by a Heskin Merchant Client.

This request appears identical to Request Number 6 and therefore we repeat the same objections and response to Request Number 6.

8. All documents concerning or relating to any financial agreements between the S.E.C. and Shane Heskin.

Response: We have no documents responsive to this request.

9. All documents concerning or relating to any financial agreements between the S.E.C. and any Heskin Merchant Client.

Response: We have no documents responsive to this request.

10. All communications and documents that you have sent to, or received from, the Department of Justice in connection with this Action.

Objection: This request is overbroad and it seeks internal and other communications that are protected by the attorney client, common interest, deliberative process, law enforcement, and statutory privileges and work product doctrine. There is no claim or defense in this case related to the Department of Justice in this case.

Privilege Log:

(a) Internal Commission communications, including draft complaints and other pleadings, action memorandums, notes, memos, draft press releases, and emails. All of these communications reflect the staff's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client and deliberative process privileges and work product doctrine. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(b) Communications with the AUSA, including emails. All of these communications reflect the staff's and/or the AUSA's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest

privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

(c) Communications with the FBI, including emails. All of these communications reflect the staff's and/or the FBI's thoughts, mental impressions and analysis, which are protected from discovery under the attorney client privilege, work product doctrine, and common interest privilege. It is unduly burdensome and expensive for the Plaintiff to assemble, process, and then individually log each document, note and/or communication. If needed, Plaintiff reserves the right to supplement, revise, or amend this log as appropriate.

Response: There are not any non-privileged documents responsive to this request.

11. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding the Receiver's Notice of Filing Report on Operations in Connection with Status Conference to be Conducted on December 15,2020 (DE 426). *During conferral, we confirmed that this request does not seek service of the Report on Operations or correspondence about scheduling matters or availability matters regarding the Status Conference. We also understand you are not seeking email messages that your counsel was included on.*

Response: There are no responsive documents.

12. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding Exhibit 1 to DE 426, Declaration of Bradley D. Sharp (DE 426-1), including all drafts of DE 426-1. *During conferral, we confirmed that this request does not seek service or delivery of the Declaration. We also understand you are not seeking email messages that your counsel was included on.*

Response: There are no responsive documents.

13. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding Mediation in this Action.

Objection: We object on relevance grounds as the request does not seek documents related to any fact or issue alleged in the complaint, at issue in any charge, or related to any defense. The request is not proportional to the needs of the case as mediation during litigation has no bearing on any claim or defense in this case whatsoever.

14. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding the December 15, 2020 Status Conference in this Action.

Objection: We understand through conferral that this request does not seek correspondence that is the delivery or service of filings related to the status conference and does not include correspondence or messages/service documents that your counsel was included on or that relate to scheduling/availability issues for the Status Conference. We have no responsive documents.

15. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding the Receiver's Notice of Filing Report on Operations in Connection with Status Conference to be Conducted on December 15, 2020 (DE 426).

Response: We have identified no responsive documents, having searched email correspondence for messages referencing the Report of Operations. We understand through conferral that this request does not seek correspondence that is the delivery or service of filings related to the status conference and does not include correspondence or messages/service documents that your counsel was included on.

16. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You or any of your attorneys and the Receiver or any of his lawyers regarding any Investor/s.

Response: We have produced all responsive documents through prior productions, including all documents located at Receivership sites that the Receiver provided to us, the production of our investigative file to all counsel in this case, and other productions from the Receiver and SEC. We have received email messages from individuals who also include the Receiver or his counsel on the messages. We also sometimes receive messages from investors and forward those messages to the Receiver. Please clarify if you wish to receive these messages we have received or forwarded; if so, we will produce them. If not, we have no additional responsive documents to produce that have not already been produced to you through prior productions.

17. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. regarding any Merchant he represents.

This request appears duplicative of Request Number 2, and we repeat and reassert our objections and response to Request Number 2 in response to your Request Number 17.

18. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and the White and Williams LLP law firm regarding any Merchant it represents.

Response: Based on our conferral with your counsel, we understand that “Merchant” means Kara DiPietro, Pamela A. Fleetwood, Fleetwood Services LLC, Julie Caricato, Indoor Playgrounds Int’l, Mary Carleton, CapJet, Michael Foti, SRA Home Products, James Frost, NationaIRx, Chad Frost, Volunteer Pharmacy, J.R. Harrison, Petropangea, Inc., Amos Jones, Julie Katz, Tourmappers North America LLC, Bruce McNider, McNider Marine, Joseph Pucci, American Heritage Billiards LLC, Dennis Wood, Woodside Investments Inc., Christine Rainwater, Quantico Business Center, Sean Whalen, Flexogenix Group Inc., Gianna Wolfe, and Radiant Images Inc. We previously

produced White and Williams' production in response to our Subpoena as well as correspondence with various merchants on the above list. We are now producing additional correspondence with anyone at White and Williams that references any of the Merchant clients identified above. Please note that we received inadvertently produced privileged correspondence that we handled pursuant to the Rules relating to inadvertently produced privileged material, as set forth in Response to Request Number 2, and thus those materials are not included in productions or our files.

19. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding the Action.

Response: We are producing all documents, communications, or correspondence in our possession, custody or control that were exchanged between the SEC and anyone at White and Williams LLP regarding this case. Please see Request Number 2 regarding inadvertently produced documents.

20. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding the Action.

Response: This appears to be duplicative of Request Number 19 and therefore we repeat our response to Request Number 19.

21. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding Par Funding.

Response: We are producing all responsive documents that have not already been produced to you. Please see Request Number 2 regarding inadvertently produced documents..

22. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding the Action.

Response: We are producing all responsive documents regarding this case that have not already been produced to you. Please see Request Number 2 regarding inadvertently produced documents.

23. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding any Defendant in the Action.

Response: We are producing all responsive documents regarding any Defendant in this case that have not already been produced to you. Please see Request Number 2 regarding inadvertently produced documents.

24. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and Williams LLP regarding any Declaration, including all drafts and final versions of any such Declarations, related to this Action.

Response: We are producing all responsive documents that have not previously been produced to you or filed in this case. Our production in connection with this Request includes our July 2020 correspondence with Shane Heskin as counsel for declarants, July 2020 draft declarations attached to correspondence we sent to the declarants through their counsel, Shane Heskin, and executed declarations via email messages received from the declarants through correspondence from their counsel, Shane Heskin, to the SEC.

25. All Documents, Communications, or Correspondence in Your possession, custody, or control exchanged between You and Shane Heskin, Esq. or anyone else employed by White and

Williams LLP regarding any Declaration filed in this Action, including all drafts and versions of any such Declarations.

Response: We are producing all responsive documents that have not previously been produced to you or filed in this case. Our production in connection with this Request includes our July 2020 correspondence with Shane Heskin as counsel for declarants, July 2020 draft declarations attached to correspondence we sent to the declarants through their counsel, Shane Heskin, and executed declarations via email messages received from the declarants through correspondence from their counsel, Shane Heskin, to the SEC.

June 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 11, 2021, the foregoing document is being served this day on all parties, witnesses, and counsel of records by email.

s/Amie Riggle Berlin
Amie Riggle Berlin

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